



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

February 12, 2002

Ms. Magalie Roman Salas
Secretary Federal Communications Commission
Office of the Secretary
445 – 12th Street S.W.
Washington, D.C. 20024

Re: **Reply Comments of the Pennsylvania Public Utility Commission in the Matter of Performance Measurements and Standards for Unbundled Network Elements, *et al.*, CC Docket Nos. 01-318, 98-56, 98-147, 96-98, 98-141.**

Reply Comments of the Pennsylvania Public Utility Commission in the Matter of Performance Measurements and Standards for Interstate Special Access Services, *et al.*, CC Docket Nos. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, and 00-229 and RM 10329.

Dear Secretary Salas:

The Pennsylvania Public Utility Commission (PAPUC) hereby submits its Reply Comments in response to the Federal Communication Commission's (Commission) Notice of Proposed Rulemakings (NPRMs) related to the Commission's proposal to promulgate national performance measurements and standards for unbundled network elements (UNEs) and interconnection¹ and for interstate special access services.^{2, 3}

¹ *Performance Measurements and Standards for Unbundled Network Elements, et al.*, CC Docket Nos. 01-318, 98-56, 98-147, 96-98, 98-141 (rel. Nov. 19, 2001) (*UNE NPRM*).

² *Performance Measurements and Standards for Interstate Special Access Services, et al.*, CC Docket Nos. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, and 00-229 and RM 10329 (rel. Nov. 19, 2001) (*Special Access NPRM*).

³ Special access services may be ordered out of either federal or state tariffs. The provision of interstate special access services frequently relies upon the traditional local loop for the "last mile" connection to the customer's premises. In many cases, the facilities involved are "mixed use" facilities, providing both intrastate services and interstate services. (See MN DOC Comments at 2.) In some cases, state tariff facilities are used in a shared or split arrangement to provide both intrastate and interstate services.

Background

Since 2000, the PAPUC has utilized performance measurements, standards, and remedies to evaluate and address performance issues related to services and interconnection for UNEs and special access as provided by the state's regional Bell operating company, Verizon Pennsylvania, Inc., (Verizon).⁴ As a result of the Commission's findings in Verizon's Section 271 proceeding,⁵ predicated in part upon Verizon's reported performance pursuant to the existing state measurements and standards, Verizon is now authorized to provide in-region interLATA services.

The PAPUC is confident that the concept of setting performance measurements and standards on a state-by-state basis balances the obligations of the service provider with the needs of the competitive local exchange carriers (CLECs) and the end user customers in the various marketplaces, recognizes the different operating support systems and infrastructures of the incumbent local exchange carriers (ILECs), allows a level of responsiveness to ever-changing technology that would not be available under national performance measurements and standards, and fulfills state obligations under enabling legislation.

National performance measurements and standards for UNEs, interconnection, and interstate special access should not preempt state commission regulation of service quality performance.

The PAPUC views the promulgation of national measurements and standards for UNEs, interconnection, and interstate special access services as being clearly within the Commission's jurisdiction under federal law. However, any national measurements and standards should complement and harmonize with, and not preempt, state activity.⁶ In this regard, the PAPUC agrees with the Minnesota Department of Commerce (MN DOC)

⁴ See the PAPUC's Performance Metrics Order proceedings at PAPUC Docket Nos. M-00991643 (*PMO I*) and M-00011468 (*PMO II*). Pennsylvania's measurements and standards for UNEs, interconnection, and special access are combined in one process. The measurements and standards do not have a sunset provision and are used to compare both Verizon's present performance rendered to the various CLECs as well as its present performance to its past performance.

⁵ See *In the Matter of: Appl. Of Verizon PA, Inc for FCC Authorization to Provide In-region InterLATA Service in PA*, CC Docket No. 01-138.

⁶ The PAPUC agrees with the MN DOC that 47 U.S.C. §§152(b), 261(b), and 261(c) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (TA-96) clearly demonstrate Congress's intent to preserve state jurisdiction over intrastate communications services. The PAPUC maintains that the federal government does not occupy the whole field of local telephone regulation, or even the entire field of the development of competitive local exchange markets. The Commission's actions cannot impose upon a state regulatory agency the requirement to waive a state's sovereign authority. Congress did not intend to unnecessarily disrupt pro-competitive state action. (See *Local Competition Order*, 11 FCC Rcd 15499 (FCC Order 96-325, rel. Aug. 8, 1996) at paras. 53 and 62.

that any such federal standards must be consistent with state standards for similar services. (See MN DOC *Special Access NPRM* Comments at 4).

A decision by the Commission to promulgate national measurements and standards in no way lessens or abrogates the independent right of the individual states to choose to promulgate (or not promulgate) measurements and standards for the facilities and services subject to state jurisdiction.⁷ The PAPUC does not view the Commission's decision to promulgate national measurements and standards as either a "gift" or a "gratuity" from the Federal Government.

Additionally, any remedy or enforcement under federal law should be independent of any enforcement or remedy under state law that a state might seek to impose.

Clearly, the markets being served are not identical between the ILECs' various service territories or even within a given ILEC's multistate service territory. The PAPUC does not believe that the Commission should preempt state efforts to address service quality concerns or restrict state oversight of local service, particularly with respect to the promulgation of national measurements and standards. An exclusive forum for either the promulgation of measurements and standards or for the resolution of complaints is counterproductive to a vibrant and responsive market.

Sincerely,

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⁷ See, e.g., 66 Pa.C.S. §§101, *et seq.*, relating to the regulation of public utilities.