

Standards for Forbearance

Congress requires that three conditions be met before Verizon's petition could be granted. First, the FCC must assure itself that the relevant pricing rules are "not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in conjunction with the telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory." 47 U.S.C. § 160 (a)(1). Second, the FCC must determine that "enforcement of such regulation or provision is not necessary for the protection of consumers." § 160 (a)(2). Third, the FCC must determine that "forbearance from applying such provision or regulation is consistent with the public interest." § 160 (a)(3). The petition should be denied if the FCC finds that any one of the three prongs is unsatisfied. Cellular Telcoms & Internet Ass'n v. FCC, 330 F.3d 502, 509 (D.C. Cir. 2003).

Verizon's Request

Verizon states that it needs forbearance now with respect to broadband elements because Verizon is today designing, testing and planning the next-generation broadband networks that will be deployed beginning in early 2004. Verizon Letter Petition of Oct. 24, 2003 (Petition) at 1. Forbearance is sought specifically with respect to the broadband elements that the Commission has found do not have to be unbundled under section 251, including fiber-to-the-premises loops, the packet-switched features, functions and capabilities of hybrid loops, and

packet switching. *Id.* Verizon advances a number of grounds in support, including the following. Verizon asserts forbearance will provide the Verizon companies with “the greatest assurance of a stable deregulatory environment to justify the massive fixed investments required for a next-generation network.” Attachment to Petition at 7. Verizon further asserts that the obligation to provide access to its broadband network “impose[s] significant redesign requirements, result[s] in suboptimal technology, and add[s] cost, inefficiency and delay that deters deployment” of new technologies. Attachment at 9. Verizon states it has already “spent hundreds of millions of dollars in modifying existing OSSs to handle unbundling requirements for narrowband network elements. For broadband, the requirement would both increase the costs of new systems and reduce their benefit by sacrificing efficiency and quality, all of which further undermines the incentives to deploy.” Attachment at 11. Verizon is also concerned about “the potential for intrusive regulatory involvement in the pricing of these elements” by State commissions. Attachment at 12.

PA PUC Reply Comment

The PA PUC recognizes that the question before the Commission is a matter reserved for the Commission under federal law. The PA PUC refrains from replying to most of the comments filed in this proceeding. The scope of this reply is limited to Verizon’s position concerning the costs of designing its systems to

allow competitors access to network elements. We have selected a portion of AT&T Comments as representative of the comments to which we lend our support in this Reply.¹

AT&T argues that the unbundling imposed by section 271 need not have a material impact on Verizon's investments incentives. AT&T Opposition at 20-21. We agree.

Verizon's representation that it has already "spent hundreds of millions of dollars in modifying existing OSSs to handle unbundling requirements for narrowband network elements" and that "these costs would increase for broadband" is not a legitimate basis of concern. When State commissions, including the PA PUC, establish rates for access to Verizon's unbundled network elements for purposes of 47 U.S.C. § 251, Verizon is allowed to recover its OSS costs through the recurring and nonrecurring rates. Correspondingly, there is no reasonable basis to believe cost recovery would be prohibited pursuant to the traditional "just and reasonable" standard set forth in 47 U.S.C. § 201. If anything, the "just and reasonable" standard is believed to lean more (not less) in favor of Verizon.

¹ The exclusion of any position from these reply comments implies neither support nor opposition.

Conclusion

The petition should be denied.

RESPECTFULLY SUBMITTED,

Maryanne Reynolds Martin
Assistant Counsel
Attorney ID No. 74648

Frank B. Wilmarth
Deputy Chief Counsel

Bohdan R. Pankiw
Chief Counsel

Counsel for Pennsylvania Public
Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
Tel: (717) 787-5000
Fax: (717)783-3458

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