

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of Section 251 Unbundling	)	
Obligations of Incumbent Local	)	CC Docket No. 01-338
Exchange Carriers	)	

**REPLY COMMENTS OF THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (PA PUC) hereby replies to selected comments recently filed in this proceeding.<sup>1</sup> Time does not permit a reply to every comment of interest; silence conveys neither agreement nor disagreement. These reply comments address: (1) preservation of State access regulations, (2) State commissions' roles as monitors of the Bell Operating Companies compliance with section 271 obligations, and (3) an update on Pennsylvania's Batch Hot Cut proceeding.

**Preservation of State Access Regulations**

The Commission must preserve the opportunity for States to require access to network elements at just and reasonable rates when it determines what network elements should be made available for purposes of 47 U.S.C. § 251(c)(3). No

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<sup>1</sup> All comments cited were filed October 4, 2004, unless otherwise noted.

Commission regulations are required to preserve State authority regarding access obligations. Comments suggesting that a “[Commission] decision not to require unbundling under section 251 is binding national policy”<sup>2</sup> should be rejected because they misconstrue the nature of section 251 by turning an additional obligation under section 251(c)(3) into an exclusive obligation in violation of section 251(d)(3). The federal unbundling obligations “place a floor under state regulation of the same subjects but not a ceiling above them.”<sup>3</sup>

The PA PUC’s position is consistent with Congressional intent expressed in 47 U.S.C. § 251(d)(3) (“the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission ...”). This is not to suggest that “more” unbundling is better. Rather, as has often been repeated in the comments and by the Commission itself, State commissions are positioned to construct solutions best suited to local markets.<sup>4</sup>

Congress appropriately preserved the ability of States to respond to local circumstances. It is clear that conditions vary across the country. For example, compare ACS of Anchorage, Inc.’s Comments at 7-8 (“ACS’s primary competitor is the incumbent cable television company, GCI, which has gained approximately 45 percent of the Anchorage local exchange market”) with Alabama PSC’s Comments at 3 (“cable TV companies in Alabama are not a real factor in the local

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<sup>2</sup> See, e.g., USTA Comments at 24.

<sup>3</sup> See AT&T Comments at 188.

<sup>4</sup> See, e.g., *Triennial Review Order* at para. 455 (“state commissions are uniquely positioned to evaluate local market conditions”); PA OCA Comments at 25 (“states could construct solutions best suited to local markets”).

competition picture”). The New York Commission similarly observes that “New York may be unique (*e.g.*, PacketCable phone service availability may be higher in our state than in many regions of the country).” NY DPS Comments at 7. As argued by Pennsylvania’s Consumer Advocate, conditions may also significantly vary within a state. PA OCA Comments at 11-13. *Accord* 47 U.S.C. § 251(f). For example, the Consumer Advocate noted that Verizon Pennsylvania Inc. claimed impairment of mass market switching in only some portions of its’ service territory. PA OCA Comments at 13, citing *Pennsylvania TRO Proceeding*, Tr. 196-97.

Thus, the Commission’s implementation of the statutory necessary and impair standard need only (and should only) be applicable to the Commission’s section 251(c)(3) determinations. The Commission should make no regulation that precludes enforcement of lawful State access regulations.

### **State Commissions are Stewards of Section 271 Obligations**

The Commission should reject the argument that “state commissions have no jurisdiction over elements provided pursuant to Section 271.” Bell South Comments at 79. *See also* USTA Comments at 24. The Supreme Court of the United States has recognized both the Commission and State commissions as “effective steward[s]” of the competition Congress seeks to promote under the Communications Act of 1934, as amended by the Telecommunications Act of

1996, including section 271. *Verizon Commun. Inc. v. Law Off. of Curtis V. Trinko, LLP*, 540 U.S. 398, 124 S.Ct. 872, 882 (2004).

In Pennsylvania, the PA PUC is the custodian of Verizon Pennsylvania Inc. documents (interconnection agreements, tariffs, and Performance Assurance Plan) evidencing Verizon's compliance with its ongoing section 271 obligations. Clearly, the PA PUC, like other State commissions, plays a crucial role in monitoring and evaluating a BOC's compliance with its federal obligations.

When and if the Commission exercises its authority to modify Verizon's (and other BOCs') section 271 obligations, the PA PUC strongly recommends that the Commission document the change in a clear and timely manner. The Commission's process should give State commissions the opportunity to implement an orderly process of updating the State-specific documented obligations to aid their ongoing efforts to monitor compliance. As suggested in the PA PUC Comments, the tariffing of a BOC's section 271 obligations in each State is the most effective means to publicly document and process subsequent Commission-permitted changes to a BOC's section 271 obligations. In this way all stakeholders benefit.

### **Update on Pennsylvania's Batch Hot Cut Proceeding**

In response to the Commission's request for information on state efforts to develop batch hot cut processes, the PA PUC Comments informed the Commission that Pennsylvania has opened a proceeding at PA PUC Docket No.

M-00031754 captioned "Development of an Efficient Loop Migration Process" and that the parties would be submitting a combined list of hot cut issues and procedural schedule by October 15, 2004. The parties' joint submission has been filed with the PA PUC and it is attached for the Commission's consideration.

RESPECTFULLY SUBMITTED,



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Dated: October 19, 2004

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October 15, 2004

**BY OVERNIGHT MAIL**

The Honorable Marlane R. Chestnut  
Office of Administrative Law  
Philadelphia State Office Building, Room 1302  
Broad and Spring Garden Street  
Philadelphia, PA 19130  
United States of America

**Re: Docket No. M-00031754, Development of an Efficient Loop Migration Process**

Dear Judge Chestnut,

As required by Prehearing Order #2 in this proceeding, the parties herby submit the attached "Parties' Combined Issues List" for the Hot Cut Proceeding, which was prepared jointly by all parties to this proceeding. By participating in the preparation and submission of this combined issues list, no party concedes that any issue included in the list is properly part of this proceeding. Nor should any party's participation in the preparation or submission of this list be viewed as indicative of that party's position on the merits of any particular issue.

Several of the issues included in this list may continue to be litigated in the New York proceeding via petitions for reconsideration, and other issues may continue to be the subject of negotiation in Verizon's carrier-to-carrier working group and other industry forums. Because of this ongoing activity, some of the issues on this list may drop out of this proceeding. The parties accordingly will continue their efforts to settle their differences.

The parties have agreed to the following litigation schedule:

November 18, 2004: Verizon Direct Testimony  
December 20, 2004: CLEC Rebuttal Testimony  
January 14, 2005: Verizon Reply Testimony

February 1-3, 2005: Hearings  
February 25, 2005: Initial Briefs  
March 11, 2005: Reply Briefs

Should you have any questions regarding the issues list or the proposed schedule, please do not hesitate to call me.

Sincerely,

Julia A. Conover

## Parties' Combined List of Hot Cut Issues

1. Process Issues:
  - a. General
    - i. Are Verizon's hot cut ordering processes sufficiently automated to accommodate seamlessly mass market volumes?
    - ii. Are Verizon's provisioning processes sufficiently automated to accommodate seamlessly mass market volumes?
    - iii. Are Verizon's hot cut processes sufficiently scalable to accommodate seamlessly mass market volumes in a timely fashion?
    - iv. Does Verizon have an adequate process in place for hot cuts of existing line sharing/line splitting UNE-P customers ("migration hot cuts") to UNE-L?
    - v. Does Verizon have adequate procedures for hot cuts of EELs?
    - vi. What are Verizon's proposed metrics for Project and Batch Hot Cut metrics in Pennsylvania and what will the process be for establishing these hot cut metrics in Pennsylvania?
  - b. Large Job ("Project") Hot Cut Process
    - i. Should the basic hot cut process and the project hot cut process be combined?
    - ii. How long should the negotiation process between Verizon and CLECs to establish a schedule for projects extend and how are impasses resolved?
  - c. Batch Hot Cut Process
    - i. What process for batch hot cuts is Verizon proposing to implement in Pennsylvania in the wake of the New York proceeding?
    - ii. Should the batch hot cut process holding period be shortened?
    - iii. Will UNE-P be available during the holding period? Under what conditions, terms, and functionality?
    - iv. Should Verizon be required to provide CLECs the ability to schedule due dates automatically, or, alternatively, provide a "Smart Clock" type of scheduler?

- v. Should batch hot cuts be available in additional migration scenarios, including but not limited to migrations involving (i) a customer being migrated from one UNE-L CLEC to another; (ii) line split lines; and (iii) IDLC lines?
    - vi. Should other batch hot cut process improvements be required?
    - vii. What is a batch?
    - viii. What is the proposed timetable for availability of Batch migration hot cuts?
  - d. Issues Respecting Customer Responsibility
    - i. What are the end-user customer's responsibilities when a forced change in service takes place?
  - e. "Win back" Migrations
    - i. What are CLECs' responsibilities in "win back" migrations?
    - ii. What metrics should apply to measure CLECs' compliance with their obligations in "win back" migrations?
- 2. Cost issues (Cost to Verizon of provisioning the following types of hot cuts):
  - a. Basic Hot Cut without WPTS (2-Wire and 4-Wire)
  - b. Basic Hot Cut with WPTS (2-Wire and 4-Wire)
  - c. Large Job/ Project Hot Cut
  - d. Batch Hot Cut
  - e. IDLC Surcharge