

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Verizon's Petitions for Forbearance	)	WC Docket No. 06-172
In the Boston, New York, Philadelphia,	)	
Pittsburgh, Providence, and Virginia Beach	)	DA 06-1869
Metropolitan Statistical Areas	)	
	)	DA 07-277
	)	

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

The Pennsylvania Public Utility Commission (PaPUC) files this Reply Comment in response to the Federal Communication Commission's (FCC) Public Notice at DA 06-1869 issued September 14, 2006 (the "Verizon forbearance petitions") and DA 07-277 issued on January 26, 2007 (the Forbearance Comment extension).

The FCC solicits Comments and Reply Comments on six petitions filed by Verizon pursuant to Section 10 (160(a)) of the Telecommunications Act of 1996 (TA-96) seeking forbearance from Section 251(c) and Section 271 obligations imposed on Verizon under TA-96.

**The PaPUC Reply Comment**

*Preliminary Observations.* The PaPUC appreciates the opportunity to respond to the Verizon forbearance petitions. The FCC's extensions provided the PaPUC with time to prepare a more detailed and

Pennsylvania-specific Reply Comment. The observations set out are also relevant to northern regions of the State of Delaware as well as the State of New Jersey because they are located in the Philadelphia MSA.

The PaPUC Reply Comment should not be construed as binding on the PaPUC or any other state commission in any proceeding nor do they constitute the views of any Commissioner or group of Commissioners. The Reply Comment could change in response to subsequent events including review of filed Comments or developments under state and federal law.

*Summary of the Comment.* The PaPUC urges the FCC to reject the Verizon forbearance petitions notwithstanding Comments in support of forbearance for several reasons.

First and foremost, the PaPUC remains concerned about the impact of forbearance on the PaPUC's previously issued order approving the merger (Merger Order) of Verizon Communications, Inc. (Verizon) and MCI, Inc. (MCI). The PaPUC's Merger Order made findings and imposed conditions on Verizon under 66 Pa.C.S. §1102 and 1103 of the Pennsylvania Public Utility Code. Those provisions give the PaPUC the authority to issue certificates approving a merger. The PaPUC's conditions mirror conditions already imposed by the FCC and the Department of Justice when those agencies approved Verizon's merger with MCI.

Those conditions comply with the Commission's legal obligation, set forth in the *City of York v. the Pennsylvania Public Utility Commission*, 449

Pa. 136, 295 A.2d 825 (1972) decision, to issue a certificate of convenience approving a merger only after the Commission is able to find that public benefit will result from the merger. The PaPUC imposed state-specific conditions to underscore the affirmative public benefit of the merger in Pennsylvania.

The PaPUC remains gravely concerned that a grant of forbearance could be interpreted as overturning the PaPUC's state-specific merger findings and conditions. The PaPUC agrees with those parties supporting the importance of these conditions. The PaPUC imposed those conditions under Pennsylvania law although the PaPUC must now defend those very conditions in our state courts.<sup>1</sup> The PaPUC opposes any forbearance which puts the merger conditions at risk at the FCC or in Pennsylvania.

The PaPUC underscores that concern in this Reply Comment because the PaPUC approved the Verizon-MCI merger premised on continuation of the FCC's conditions given the record evidence in our proceeding and at the

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<sup>1</sup> The PaPUC urges the FCC to note, in particular, that the Commonwealth of Pennsylvania's Office of Consumer Advocate (PaOCA) support for the National Association of State Utility Consumer Advocates (NASUCA) opposition to forbearance, given the importance of the FCC's merger conditions, stands in marked contrast to the PaOCA's position in the pending Verizon Merger Appeal underway in the Supreme Court of Pennsylvania. In that Pennsylvania Appeal, the PaOCA agrees with Pennsylvania's Commonwealth Court that the FCC's conditions are not Pennsylvania-specific and are inadequate under Pennsylvania law. *Compare NASUCA Comment* with *Brief in Opposition to Petition for Allowance of Appeal of the Pennsylvania Public Utility Commission*, No. 254 MAL 2007, Supreme Court of Pennsylvania (April 9, 2007), p. 15, 18-22, 23 with *NASUCA Comment*, pp. 1, p. 13, n. 33. Indeed, the PaOCA is the first listed consumer advocate among the state utility consumer advocates vigorously opposing any forbearance given the importance of the FCC's merger conditions.

FCC. Verizon provides no Pennsylvania-specific evidence in this proceeding warranting any other result. The PaPUC imposed our conditions to comply with the public benefit requirement of Pennsylvania law. The FCC's forbearance cannot overturn those conditions when doing so unnecessarily places the PaPUC's merger order at risk or undermines our findings on intramodal and intermodal competition.

Second, the PaPUC is concerned about the impact that forbearance will have on alternative service providers in Pennsylvania. The PaPUC continues to be concerned about that impact on carriers, such as Cavalier and Full Service Network (FSN),<sup>2</sup> because they provide competitive intermodal and intramodal services in Pennsylvania markets as Competitive Local Exchange Carriers (CLECs).

The PaPUC concern about the impact forbearance will have on these specific competitors should be read as exclusive. The PaPUC identifies these two carriers because of their size and the nature of their services in Pennsylvania markets. They are by no means the only carriers whose ability to provide competitive services in Pennsylvania will be put at risk by a grant of forbearance.

For these reasons, the PaPUC urges the FCC to reject the Verizon forbearance petitions. Forbearance must not overturn prior state merger

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<sup>2</sup> FSN is a Pennsylvania-based company serving the Pennsylvania market, primarily residential customers. Founded in 1989 as a long-distance telephone company, FSN jumped into the local telephone market in 1996 after passage of the Telecommunications Act of 1996 ("TA-96").

orders imposing FCC merger conditions as state-specific conditions. Forbearance must not undermine the availability of intermodal and intramodal service providers whose ability to provide service acts as a constraint on any alleged market power.

In the alternative, the FCC must limit any forbearance grant to the express terms of the *Omaha Order* and then only if that forbearance is demonstrated to not disrupt the competitive status quo in the Pennsylvania MSAs. Intramodal carriers, like Cavalier and FSN, must be allowed to utilize current services to continue to serve the Philadelphia MSA and other MSAs. Forbearance must expressly preserve state merger conditions imposed on Verizon. Forbearance must promote competition with intermodal competitors on an equal obligation basis. Finally, forbearance must expressly reject any interpretation that the decision somehow overturns or preempts independent state regulatory power.

Respectfully submitted,  
Pennsylvania Public Utility Commission

Joseph K. Witmer, Esq.  
Assistant Counsel,  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 787-3663  
Email: [joswitmer@state.pa.us](mailto:joswitmer@state.pa.us)