BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Modifications to the Application Form for Approval of Authority to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania	:	Docket No. M-00960799

COMMENTS OF THE BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA TO TENTATIVE ORDER

At Public Meeting on December 21, 2006, the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted a Tentative Order requesting public comment on potential modifications to the standard application form for authority to render telecommunication services to the public in the Commonwealth of Pennsylvania. The Tentative Order was published in the *Pennsylvania Bulletin* on January 27, 2007.[1] Pursuant to the directives in Ordering Paragraph 2, the Broadband Cable Association of Pennsylvania ("BCAP") hereby submits these comments.

I. INTRODUCTION

BCAP is a trade association of Pennsylvania's cable television operators and related businesses who collectively provide cable service to approximately 3.6 million homes in Pennsylvania. BCAP has been an advocate for many years in proceedings and investigations before this Commission regarding issues impacting the potential entry by cable operators into PUC-regulated telecommunications service markets.[2] For example, BCAP participated in the original proceeding to implement Chapter 30 of the Public Utility Code for Verizon

[1] 37 Pa. Bull. 486 (January 27, 2007).
[2] BCAP was formerly known as the Pennsylvania Cable and Telecommunications Association and the Pennsylvania Cable Television Association.

Pennsylvania, Inc. ("Verizon"), which was then known as Bell Atlantic-Pennsylvania, Inc.,[3] in numerous Verizon-specific and generic proceedings to implement Chapter 30 and the Telecommunications Act of 1996 ("TA-96"),[4] in the "Global Proceeding" that resolved multiple issues related to competitive telecommunication services in Pennsylvania[5] and in proceedings related to the ability of specific individual BCAP members to obtain CLEC authority and interconnection to provide traditional switched-circuit local telecommunication services in Pennsylvania, especially in rural Incumbent Local Exchange Carrier ("ILEC") service territories.[6] At BCAP's urging, the Commission adopted a cautious "hands off" regulatory approach to allow the Federal Communications Commission ("FCC") to determine whether Voice Over Internet Protocol ("VOIP") services are properly classified as "information services" and exempt from PUC regulation under Federal Law.[7] Most recently, BCAP provided input to the Commission regarding issues of national importance, including the proposed revisions to intercarrier compensation referred to as the Missoula Plan,[8] the Commission's authority to issue a Certificate of Public Convenience to allow Sprint Communications Company L.P. ("Sprint") wholesale carriers to interconnect with ILECs pursuant to Section 251 of TA-96 to exchange

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[3] Bell Atlantic-Pennsylvania, Inc.'s Petition and Plan for Alternative Form of Regulation Under Chapter 30, Docket No. P-00930715.

[4] See, e.g., Application of MFS Intelenet of Pennsylvania, et al., Docket Nos. A-310203F0002, A-310213F0002, A-310236F0002 and A-310258F0002 ("MFS"); Pennsylvania Public Utility Commission, et al., v. Bell Atlantic-Pennsylvania, Inc., Docket No. R-00943008, (Bell Atlantic Promotional Offerings Proceeding): Pennsylvania Public Utility Commission, et al., v. Bell Atlantic-Pennsylvania, Inc., Docket Nos. R-00963550, et al., and R-00963556 (Bell Atlantic Rate Rebalancing under Chapter 30); Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth, Docket No. I-00940035; Petition of Bell Atlantic Pennsylvania, Inc. for a Determination that Provision of Business Telecommunications Services is a Competitive Service Under Chapter 30 of the Public Utility Code, Docket No. P-00971307.

[5] Joint Petition of Nextlink Pennsylvania, Inc., et al., for Adoption of Partial Settlement Resolving Pending Telecommunications Issues, Docket No. P-00991648 and Joint Petition of Bell Atlantic Pennsylvania, Inc., et al., for Resolution of Global Telecommunications Proceedings, Docket No. P-00991649 (Global Proceeding).

[6] See Petition of Citizens Telephone Company of Kecksburg to Intervene and Suspend Interconnection Requirements of the Telecommunications Act of 1996 Under Sections 251(f)(2) and 253(b); Docket No. P-0097118.

[7] Investigation into Voice Over Internet Protocol as a Jurisdictional Service, Docket No. M-00031767, Order entered May 24, 2004 (VOIP Investigation Order).

[8] Workshop and Solicitation of Comments on the Missoula Plan, Docket No. M-00061972.

traffic on behalf of VOIP providers[9] and issues impacting the entry by regulated CLECs into the service territory of Commonwealth Telephone Company (in conjunction with the proposed acquisition of Commonwealth Telephone Company's parent corporation by Citizens Communications Company).[10]

The BCAP member companies have individualized strategies related to the provision of advanced and voice services to their subscribers. As the Commission is aware, some BCAP members have sought and currently hold CLEC authorizations from the Commission that were obtained to provide traditional circuit-switched voice services.[11] Other BCAP members have entered into arrangements with CLECs to obtain the interconnection and numbers necessary to offer subscribers IP-enabled voice services that are interconnected with the Public Switched Telephone Network ("PSTN") over their broadband cable networks.[12] Other BCAP members have not introduced voice services, but have responded to customers needs by implementing high speed data services through cable modems and other technologies.

As the competitive advanced services and communications markets have evolved, BCAP and its members have continued to analyze and inform the Commission of issues impacting competitive entry into the traditional regulated circuit-switched telecommunications service markets and the appropriate policy and legal distinctions that must exist between the requirements applied to PUC-regulated voice services and the innovative non-jurisdictional voice

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[9] Application of Sprint Communications Company L.P. for Approval of Right to Offer, Render, Furnish or Supply Telecommunication Services as a Competitive Local Exchange Carrier to the Public in the Service Territories of Alltel Pennsylvania, Inc., Commonwealth Telephone Company and Palmerton Telephone Company, Docket Nos. A-310183F0002, AMA, AMB and AMC, Order entered December 1, 2006 (Sprint CLEC Application Order).

[10] Joint Application of Commonwealth Telephone Company, CTSI, LLC and CTE Telecom, LLC d/b/a Commonwealth Long Distance Company For All Approvals Under the Public Utility Code for the Acquisition By Citizens Communication Company of All Stock of the Joint Applicants' Corporate Parent, Commonwealth Telephone Enterprises, Inc., Docket Nos. A-310800F0010, A-311095F0005 and A-311225F0003.

[11] For example, Armstrong Communications, Time Warner and Comcast Business Communications all hold CLEC authorizations that were obtained based on the traditional circuit switched model.

[12] For example, Blue Ridge Digital Phone Company partnered with Sprint to introduce voice services by purchasing wholesale services from Sprint.

and data services that are being developed for the broadband networks that are used by cable operators. As the Commission astutely recognized in its VOIP Investigation Order:

> VoIP presents a world of opportunities for Pennsylvania's consumers. The technology will allow for different options and applications that will ultimately give consumers more control. VoIP also changes the competitive complexion of the market place in a way that might bring more choices for consumers. Furthermore, this hybrid technology raises significant issues for regulators including, but not limited to, jurisdiction, universal service, 911, law enforcement, consumer protection and disability access.
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> Although there are instances where regulatory intervention is proper (such as market failure or consumer abuse), regulatory restraint is more prudent until the technology is understood and viable. This Commission should not leap into a regulatory scheme until we understand its full impact on this technology.[13]

The competitive market has driven cable operators and others to develop technologies and service offerings that were not anticipated ten years ago when the PUC adopted its original TA-96 Implementation Order (and Order on Reconsideration) and the application form that is in use today. Those networks and services are being developed to meet consumers' needs without PUC mandates or oversight. As evidenced by the recent Microeconomic Consulting & Research Associates, Inc. (MiCRA) study, these innovations are providing tangible benefits to customers through monthly savings.[14]

Due to the existence of competitive alternatives for their primary services (e.g., competition in the video service market from satellite operators, overbuilders and telephone companies), the business motivation to satisfy customers' needs drives pricing, terms and conditions for data and voice services. For example, as their subscribers demanded additional

[13] VOIP Investigation Order, pp. 14-15.
[14] Michael D. Pelcovits, PhD and Daniel Haar, *Consumer Benefits from Cable-Telco Competition*, Microeconomic Consulting & Research Associates, Inc. (MiCRA), Released September 21, 2006.

high-speed internet and data options, BCAP members responded by investing shareholder dollars to upgrade networks and meet the consumers' needs. Today, as the consuming public demands more voice service options, the cable industry is again responding through competitive ventures to meet that market demand. Clearly, the deregulatory policies adopted at the state and Federal levels for telecommunications and information services are beginning to produce the desired results – more choices for customers.

BCAP is participating in this proceeding to provide the Commission with this varied and pro-competitive perspective regarding the application form and other issues identified in the Tentative Order. The current application form was developed in 1996 after the enactment of TA-96. BCAP commends the Commission for recognizing that the application form and entry procedures should be re-examined in light of various events that have occurred since 1996. Although the Commission's resources were once devoted to ruling on issues such as the correct rate for Verizon to charge CLECs for Unbundled Network Elements ("UNEs") or total service resale, the changing competitive landscape and promise of true facilities-based voice competition demands a fresh look at issues such as entry of voice competitors into rural ILEC territories.[15] While the Commission focused primarily on the defined entry strategies in the non-rural or Regional Bell Operating Company ("RBOC") territories for the last ten years, changing market conditions, including the entry of rural carriers into broadband and video (either as overbuilders or resellers of satellite services), suggest that voice competition in rural markets should be a new area of focus. New technologies such as IP-enabled voice services hold the promise for such voice competition in both rural and non-rural areas. Rural consumers deserve the same level of choice as urban consumers.

[15] These factors also militate in favor of the Commission opening an investigation into whether the current regulations in Chapters 56 and 64 of the Public Utility Code should apply to competitive services provided by CLECs, IXCs and CAPs.

Now that facilities-based entry has become the preferred form of competition – both in the marketplace and as a matter of regulatory policy – the Commission should reassess the appropriate level of oversight that it must exercise in determining the initial fitness and on-going service terms and conditions for CLECs. Due to the extensive investment that has been made (and will be made in the future) to install broadband networks to meet consumers' needs, cable operators and other facilities-based providers that offer non-cable services to consumers over those networks are at substantial risk to lose customers when the prices, or terms and conditions for service, are not satisfactory. As the Commission appropriately recognized:

> TA-96, as well as Chapter 30, represents a careful balancing of interests of small/rural ILECs and competition. The lack of potential revenues for a "stand-alone" competing system is an associated trade-off for the suspension of TA-96 mandated obligations. As noted in *Vanguard* and *Armstrong*, "[f]acilities-based service is competition in its truest sense and is clearly a part of what Congress envisioned in the federal act. The burden is on the facilities-based CLEC to make a go of its business. Its performance in the market will dictate the success or failure of that business."[16]

For facilities-based carriers, the discipline of consumers' expectations will be much more effective than proscriptive regulatory oversight to ensure appropriate prices, terms and conditions for service.

In addition to reducing the regulatory burdens on facilities-based entrants, the PUC should ensure that no carrier's request to enter a rural or non-rural ILEC territory to provide

[16] Application of AT&T Communications of Pennsylvania, Inc., and TCG Pittsburgh to Amend their Certificates of Public Convenience to Begin to Offer, Render, Furnish or Supply Facilities-Based Competitive Local Exchange Telecommunications Services in the Service Territories of ALLTEL Pennsylvania, Inc., Armstrong Telephone Company-Pennsylvania, The Bentleyville Telephone Company, Citizens Telephone Company of Kecksburg, Hickory Telephone Company, Marianna and Scenery Hill Telephone Company, North Pittsburgh Telephone Company, and Yukon Waltz Telephone Company, Docket Nos. A-310125F0002 & A-310213F0002, Order entered April 10, 2001, p. 18 (internal citations and footnotes omitted) (AT&T Rural Entry Application Order); see also Application of Core Communications, Inc. for Authority to Amend its Existing Certificate of Public Convenience and Necessity and to Expand Core's Pennsylvania Operations to Include the Provision of Competitive Residential and Business Local Exchange Telecommunications Services Throughout the Commonwealth of Pennsylvania, Docket Nos. A-310922F0002 AMA and AMB, Order entered December 4, 2006, p. 36 (Core Communications CLEC Order).

competitive services is unreasonably delayed or impeded. BCAP respectfully submits that the Commission should acknowledge the substantial amount of time and assistance that rural ILECs have been provided since the original procedures were adopted, to prepare for meeting their obligations under TA-96, and to face and accommodate competitive entry from both facilities-based entrants and those that may rely on UNEs or total service resale.[17] This proceeding represents an appropriate forum for the Commission to confirm that it supports the provision of competitive service alternatives in all areas of the Commonwealth, including areas served by rural ILECs. In addition, the rapid changes in the telecommunications industry and consumers' demand for new services should be addressed by ensuring that no competitive entrant is unnecessarily delayed or thwarted in being able to introduce services to meet consumers' needs through regulatory processes.

Finally, the Commission must be cognizant of the FCC's pronouncements and on-going proceedings regarding both voice and data service offerings that may affect the Commission's jurisdictional scope. For example, the FCC has determined that internet access through cable modems or wireline networks and over Broadband Over Powerline (BPL) technologies are interstate, information services.[18] The FCC recently issued a Declaratory Ruling that broadband access over wireless networks is an interstate, information service.[19] Similarly, the FCC

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[17] See e.g., Petition of Rural and Small Incumbent Local Exchange Carriers for Commission Action Pursuant to Sections 251(f)(2) and 253(b) of the Telecommunications Act of 1996, Docket No. P-00971177; see also Global Proceeding, Docket Nos. P-00991648 and P-00991649 (implementing universal service fund to enable rate rebalancing and access charge reductions).

[18] In the Matter of Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities, FCC Docket Nos. GN 00-185 and CS 02-52, Declaratory Ruling and NOPR released March 15, 2002 (Cable Modem Order); In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, FCC Docket Nos. CC 02-33, CC 01-337, CC 95-20 and 98-10, WC 04-242 and WC 05-271, Report and Order and NOPR released September 23, 2005 (Wireline Broadband NOPR); In the Matter of United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service, FCC Docket No. WC 06-10, Memorandum Opinion and Order released November 7, 2006 (BPL-Enabled Internet Access Order).

[19] In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, WT Docket No. 07-53, Declaratory Ruling released March 23, 2007.

continues to review the appropriate jurisdictional classification and treatment of VOIP services.[20]

As the FCC recognized the in Cable Modem Order:

> By addressing the classification issues in the accompanying Declaratory Ruling, we seek to remove regulatory uncertainty that may discourage investment and innovation in broadband services and facilities. In this part of the Notice of Proposed Rulemaking, we address potential areas of regulatory uncertainty at the State and local levels that could also discourage such investment and innovation. We would be concerned in a patchwork of State and local regulations beyond matters of purely local concern result in inconsistent requirements affecting cable modem service, the technical design of the cable modem service facilities, or business arrangements that discouraged cable modem service deployment across political boundaries. We also would be concerned if State and local regulations limited the Commission's ability to achieve its national broadband policy goals to "promote the deployment of advanced telecommunications capability to all Americans in a reasonable timely manner," "to promote the continued development of the Internet and other interactive computer services and other interactive media" and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[21]

As the FCC stated, for most services provided over broadband networks, the consistent application of a light-handed, deregulatory approach is necessary to fulfill the state and Federal goals of promoting the deployment of advanced networks and the provision of innovative, competitive voice and data options to consumers. The Commission can take the first step in this process by revising the application form and procedures to reduce the regulatory burden on entrants.[22]

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[20] In the Matter of IP-Enabled Services, FCC Docket WC 04-36, NOPR released March 10, 2004 (IP Enabled Services NOPR); see also In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, WC Docket No. 06-55, Memorandum Opinion and Order released March 1, 2007, ¶ 13 (Time Warner Order).

[21] See Cable Modem Order, ¶ 97.

[22] In addition, the Commission must avoid imposing direct or indirect regulatory requirements on services that the FCC has classified (or may classify) as interstate and/or information services, and services for which the FCC is evaluating federal preemption of state and local regulations (such as VOIP services).

II. COMMENTS

BCAP supports many of the proposed modifications to the application form contained in the Tentative Order. For example, BCAP supports the reorganization of the application format, the addition of the tariff designations in revised Paragraph 4 (including the option to file price lists for inter-exchange carriers) and the addition of specific confirmation that the application must be served on the Office of Special Assistants in revised Paragraph 16. In addition, BCAP believes that the issues raised by Vice Chairman Cawley in his Statement are important and should be considered as well. As set forth herein, however, BCAP respectfully submits that the revised application form addresses matters that are beyond the Commission's jurisdictional scope or otherwise inappropriate on a policy basis for competitive entrants. Specifically, the CLEC-Data-only classification, the new financial information requirements and the new affiliated interest information are inappropriate and should be removed. The entire application form should be reexamined to reduce the regulatory burden on entrants, consistent with the best practices in other jurisdictions. In addition, the Commission should adopt a streamlined process for facilities-based carriers to enter rural ILEC territories, including the introduction of a statewide authorization category for CLECs.

A. The Commission Should Not Add Information Requirements to the Application Form and, Instead, Should Examine the Existing Requirements to Eliminate Any Information That is Not Absolutely Necessary To Establish Financial, Managerial or Technical Fitness.

The revised application retains all of the current requirements for CLECs, CAPs and IXCs, and adds three additional information requirements for Applicants: (a) prospective cash flow statement and sources of capital by class available (long-term debt, short-term debt, commercial paper, lines of credit, shareholder equity, etc.); (b) affiliate transaction description; and (c) migration and interference contacts to be posted on the Internet. Revised Application,

Sections 9D, 13 and 14. BCAP recognizes that the Commission must review the fitness of Applicants; however, the requested additional information (and some of the currently-provided information) is not necessary in a competitive environment, especially for facilities-based entrants. To encourage competitive entry, the Commission should reexamine the existing requirements and eliminate all that are no longer necessary.

BCAP will address each of the new proposed requirements below. As a threshold issue, however, the Commission should evaluate whether all of the existing information in the application form is necessary to demonstrate that a CLEC possesses sufficient technical, financial and managerial resources, as authorized by Section 3019(a) of the Public Utility Code, 66 Pa. C.S. § 3019(a).[23] As the Commission is aware, the communications industry landscape has changed in many ways over the last ten years. Although TA-96 authorizes competitive entry based on three business models (UNEs, resale and facilities-based), state and federal policy now favor facilities-based entry for local service competition.

Facilities-based entry requires a commitment to capitalize and support the CLEC entrant in order to have a business plan capable of success. The Commission has recognized that the review of financial fitness for facilities-based entrants should be limited because the entrant itself is undertaking a large business risk to enter the market and, as such, is presumed to have appropriately planned to ensure that its business will succeed.[24] The Commission recently reiterated in the Core Communications CLEC Order that its review of facilities-based CLEC applications is "narrow" because "the burden is on the facilities-based CLEC to make a go of its

[23] Section 3019(a) also requires the Commission to confirm that the certification is in the public interest. 66 Pa. C.S. § 3019(a). The Commission repeatedly has recognized that, "consistent with the clear statutory objectives of state and federal law... the benefits of local telephone competition are in the public interest." Core Communications CLEC Order, p. 36 (citation omitted).

[24] See AT&T Rural Entry Application Order, p, 17.

business."[25] This conclusion applies equally to all competitive telecommunications services that are addressed on the application form. As a result, the trend should be for the Commission to require less financial and other information from entrants as the market develops, rather than more information.

Other states have adopted application procedures that require substantially less information from competitive entrants. For example, Kentucky has extremely reasonable entry requirements:

> The lack of market power of CLECs and wireless carriers, together with the availability of competitive choices, makes it reasonable to require only a proposed tariff with 30 days' notice to the Commission and a cover letter setting forth certain information prior to CLEC or wireless entry into the Kentucky market.
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> The items to be addressed in the cover letter are: (1) the name and address of the company; (2) articles of incorporation or partnership agreement; (3) name, street address, telephone number and fax number (if any) or the responsible contact person for customer complaints and regulatory issues; (4) a notarized statement by an officer of the utility that the utility has not provided or collected for intrastate service in Kentucky prior to filing the notice of intent or, alternatively, a notarized statement by an officer that the utility has provided intrastate service and that it will refund or credit customer accounts for all monies collected for intrastate services; and (5) a statement that the utility does not seek to provide operator assisted services to traffic aggregators as defined in Administrative Case No. 330 or, alternatively, that the utility does seek to provide operator-assisted service to traffic aggregators but that in so doing it is complying with the Commission's mandates in Administrative Case. No. 330.[26]

Similarly, Vermont's registration form (attached as Appendix B) requires less information than Pennsylvania's current application form. Pennsylvania should follow a similar course and

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[25] Core Communications CLEC Order, p. 36 (citation omitted).

[26] In the Matter of Exemptions for Providers of Local Exchange Service other Than Incumbent Local Exchange Carriers, KY Administrative Case No. 370, Order adopted January 8, 1998, p. 3 (Kentucky CLEC Entry Order) (attached as Appendix A).

eliminate all information for the current application form unless it is absolutely necessary to confirm that the applicant is fit and the service is in the public interest.

1. The Proposed Additional Financial Information is Unnecessary and Excessive.

The Commission's proposal to add a requirement for the applicant to provide information regarding prospective cash flow and potential sources of capital by class that may be available seems especially excessive. The application already requires the carrier to provide information regarding its current capitalization and sources of capital, which appears to be unnecessary given the narrow financial fitness review endorsed in previous PUC orders. Adding the requirement for the entrant to identify in the application potential additional sources of capital presumes that the initial capitalization that has been identified is insufficient. Furthermore, this appears to impinge on the CLEC's management decisions regarding financing and capitalization, which is especially inappropriate in the context of reviewing a competitive entity's application.

Neither Kentucky nor Vermont requires the detailed financial information that that is included in Pennsylvania's current and proposed application form. For example, Kentucky noted:

> CLECs and wireless carriers are not rate regulated by the Commission because they neither possess market power nor own local exchange bottleneck facilities. Therefore, there is no need to monitor their financial stability to ensure their continued existence. CLECs do not have carrier of last resort responsibilities and their failure as the result of bad financing decisions would have no impact on the availability of service as other carriers are available to supply service.[27]

[27] Kentucky CLEC Entry Order, p. 2.

Consistent with the Commission's prior recognition that CLECs must "make a go of it," the Commission should eliminate all financial information from the application.[28]

2. Requiring Disclosure of Affiliate Transaction Information in the Application is Unnecessary and Improper.

The revised application form adds the requirement for the applicant to "[i]dentify any affiliate(s) which provide services to or receive services from the Applicant. Describe the nature of the services and how the transactions between or among affiliates will be handled." Revised Application, Section 13. This request is improper due to the competitive nature of the services provided by competitive entrants.

As the Commission recognized in the Tentative Order, one of the reasons for revising the application form is the enactment of Act 183, which added new Sections 3011-3019 to the Public Utility Code. Section 3019(b)(1) of the Public Utility Code specifically addresses the applicability of Chapter 21 to telecommunications carriers, stating:

> A telecommunications carrier shall file affiliated interest and affiliate transaction agreements unless such agreements involve services declared to be competitive. The filings shall constitute notice to the commission only and shall not require approval by the Commission.[29]

Thus, the General Assembly specifically mandated: (a) affiliated interest information need not be filed regarding services that are declared to be competitive; and (b) any such filings for non-competitive services will be for informational purposes only and not subject to the Commission's approval pursuant to Chapter 21.

The services provided by CLECs, CAPs and IXCs are, by definition and by statute, competitive services. Section 3018(a) of the Public Utility Code specifies that IXC services are

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[28] Eliminating the financial information is also consistent with the reduction of ILEC reporting requirements that was implemented in Chapter 30. See e.g., 66 Pa. C.S. §§ 3015(e) and (f).
[29] 66 Pa. C.S. § 3019(b)(1).

competitive services.[30] In addition, services that will be offered by Competitive Local Exchange Carriers and Competitive Access Providers are, by their very nature, competitive.[31] As a result, the Commission cannot require CLECs or CAPs to file information regarding affiliate transactions for review. The proposed new requirement for the application is improper.

Finally, for Applicants that provide non-jurisdictional services in addition to the provision of competitive telecommunications services, initial or long-term reliance on affiliates for activities such as billing support, shared office space, etc., may be an integral part of the new entrant's business plan. Requiring the entrant to include this information on the initial application, even on a confidential basis, may expose highly sensitive competitive strategies. In addition, adding this requirement to the application may provide ILECs with the ability to protest applications to gain access to this information and result in arguments by ILECs that an application should be rejected because it does not sufficiently detail anticipated affiliate transactions. Either result would be inappropriate given the mandate that telecommunications carriers certified by the Commission must file affiliate agreement and transactions only for non-competitive services and only for informational purposes.[32]

As recognized in the Tentative Order, the application form should be revised to reflect the changes to the Public Utility Code under Act 183. The proposed addition of information regarding affiliate transactions to the form is directly contrary to Section 3019(b)(1), which was added by Act 183, and is otherwise unnecessary. This change should not be implemented.

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[30] Id. § 3018(a).
[31] Section 3012 defines "competitive services" as any "service or business activity determined to be competitive by the commission on or prior to December 31, 2003, and a service or business activity determined or declared to be competitive pursuant to section 3016 (relating to competitive services)." 66 Pa. C.S. § 3012. CLEC and CAP services were determined to be competitive in Pennsylvania long before December 31, 2003.
[32] See id. § 3018(a).

3. Migration Contacts Should Not be Listed on the Carrier's Website.

The new application form requests a contact for "migration problems" and requires: "The Applicant's publicly available website address that contains the name(s), e-mail address(s), and telephone number(s) of the person(s) whom another local exchange carrier (LEC) or the Commission should contact to resolve migration problems, including interfering station conditions. The website should also include the names and contact information of individuals of higher authority in your company that a LEC or the Commission may contact if they are unable to resolve migration problems with the primary contact individual(s)." Revised Application, Section 9D.

BCAP recognizes the importance of ensuring that LECs competing in the same markets have the contact information to resolve migration and interfering station issues. Obviously, the ability to seamlessly migrate customers to and from competitive local exchange service is essential in marketing those services to customers. In addition, BCAP acknowledges the need for an escalation procedure if the issue cannot be adequately resolved by the primary contact(s). Finally, BCAP appreciates the Commission's potential role in these issues and need for similar information.

Despite the importance of customer migration to competitive entry, BCAP respectfully suggests that posting of the primary and senior contacts for this issue on the CLEC's publicly available internet website is unnecessary and inappropriate. First, as commercial entities, the parties should keep each other fully informed and up-to-date regarding the appropriate contacts for these issues. In fact, such information is routinely exchanged as part of the interconnection process. Similarly, CLECs can provide this information to the PUC. More significantly, however, BCAP is concerned that including this information on the CLEC's public internet site

may unnecessarily confuse customers and result in customers calling the designated contacts, rather than other LECs. Given the ability of the carriers to coordinate related to these issues without posting the information on the internet, BCAP suggests that the posting requirement should not be included in the application or other PUC procedures.

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Other states have appropriately recognized that the competitive nature of CLEC services necessitates reduced initial entry requirements. Pennsylvania also has concluded that its review of financial fitness for new CLECs (specifically those entering on a facilities-basis) should be narrow. The Commission should revise the application form with these principles in mind and eliminate all financial requirements and any technical or managerial requirements that are not central to the Commission's determinations under Chapter 30, consistent with the processes in states such as Kentucky and Vermont. This will ensure that Pennsylvania remains a leader in the competitive communications marketplace.

B. The Proposed CLEC-Data-Only Classification is Beyond the Scope of the Commission's Jurisdiction and Otherwise Inappropriate.

One of the primary modifications to the application form suggested in the Tentative Order is the addition of a new category of entrant (i.e., CLEC-Data-only). The instructions to the revised application form describe this classification as "a subcategory of CLEC authority. The authority is certified in a given ILEC's territory; limited CLEC certificate relieves the carrier of certain voice-grade obligations." Vice Chairman Cawley's Directed Questions also address several issues related to this proposed new classification.

As explained below, despite the Commission's prior willingness to issue certificates of public convenience to CLECs claiming to offer only data services, no statutory basis exists for this proposed classification. Data services, such as cable modem services, are classified as

information services and preempted from PUC jurisdiction.[33] As a result, the proposed CLEC-Data-only classification should not be added to the application form.

1. The Commission's Jurisdiction As Defined in The Public Utility Code Does Not Include Data Services.

The statutory definition of "Public Utility" at Section 102 of the Pennsylvania Consolidated Statutes, 66 PA. CONS. STAT. § 102, provides the basis for Commission jurisdiction to regulate persons or corporations "owning or operating . . equipment or facilities for . . . [c]onveying or transmitting messages or communications . . . by telephone or telegraph . . ." This definition was crafted to reflect the operations of traditional telephone (or telegraph) companies. In this regard, BCAP notes that the Commission may not assert jurisdiction over any service unless expressly provided in relevant statutes or "by strong and necessary implication therefrom."[34] At first blush, therefore, it would not appear that data, in general, would fall within this definition because it is not a message or communication and, when offered over the types of hybrid fiber coaxial (i.e., broadband) facilities used by cable companies, it is not being transmitted by "telephone or telegraph."

The Public Utility Code defines "local exchange telecommunications service" as "[t]he transmission of messages or communications that originate and terminate within a prescribed local calling area."[35] This does not specifically apply to the transmission of data. The definition of "interexchange services," however, specifically applies to "[t]he transmission of interLATA or intraLATA toll messages or data outside the local calling area."[36] In accordance with the rules of statutory construction, the General Assembly's use of "data" in defining interexchange

[33] At a minimum, the Commission should await the results of the FCC's ongoing rulemaking regarding the jurisdictional treatment of IP-enabled data services to determine whether the FCC preempts states from regulating additional data services as it already indicated regarding internet access.
[34] City of Philadelphia v. Philadelphia Electric Co., 473 A.2d 997 (Pa. 1984); *accord* United Telephone Co. of Pennsylvania v. Pennsylvania Public Utility Commission, 676 A.2d 1244 (Pa. Commw. Ct. 1996).
[35] 66 Pa. C.S. § 3012.
[36] Id. (emphasis added).

services, and omission of the term from the definition of local exchange telecommunications service, must be presumed to be intentional and given effect by the Commission.[37] Clearly the only reasonable conclusion is that the General Assembly intended for the Commission to regulate data only as IXC services when those services involve the transmission of in-state interLATA or intraLATA data[38] outside the local calling area. Moreover, the Commission's jurisdiction over IXC services involving data or toll messages is limited under Section 3018 of the Public Utility Code, 66 Pa. C.S. § 3018. Finally, the Commission's jurisdiction over "data services" may also be further limited by the inability to accurately determine the interstate or intrastate nature of the communications and the FCC's preemptive language in Cable Modem that data services provided over broadband facilities should not be subjected to a patchwork of state regulations.[39]

The history of the jurisdictional statute over time is also relevant here. Prior to 1976, the statute did not contain any specific reference to wireless telephone service. At that time, the definition was expanded to include "public land mobile radio" service.[40] If the pre-existing definition were broad enough to encompass (in effect) any technological means of allowing voice communication or other messages between two people, there would have been no need to

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[37] Section 1921(a) of Pennsylvania's Statutory Constructive Act states that "[e]very statute shall be construed, if possible, to give effect to all of its provisions." 19 Pa. C.S. §1921(a). It is well established that where, as here, the General Assembly includes specific language in one section of the statute and excludes it from another, the language should not be implied where excluded. See Popowsky v. Pennsylvania Public Utility Commission, 706 A.2d 1197, 1203 (Pa. Commw. Ct. 1997) (citing Cherry v. Pennsylvania Higher Education Assistance Agency, 620 A.2d 687, 690-91 (Pa. Commw. Ct. 1994)). Furthermore, the Commonwealth Court has held that "a change of language in different sections of a statute is prima facie evidence of a change of intent." Shawnee Development, Inc. v. Commonwealth, 799 A.2d 882, 888 (Pa. Commw. Ct. 2002).

[38] The absence of statutory definition of "data service" further complicates the PUC's attempt to exercise jurisdiction over "data services." As the Commission is aware, a variety of data services exist. The Tentative Order and revised application form do not specifically define "data services." If the Commission adopts the new classification despite the jurisdictional arguments set forth in this Comments, BCAP urges the Commission to specifically define the precise "data services" that it seeks to regulate and to issue the proposed definition for public comment.

[39] See Cable Modem Order, ¶ 97. See also Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota PUC, Memorandum Opinion and Order, 19 FCC Rcd 6429 (2005) at ¶¶ 23-32, *affirmed*, Minnesota PUC v. FCC, slip op., No. 05-1069 (8th Cir. March 21, 2007).

[40] 1976 Pa. Laws 1057, No. 215.

expand the statutory definition to reach wireless calling. The Commission's jurisdictional statute, focused as it is on traditional, legacy "telephone" networks, cannot reasonably be extended to reach non-voice arrangements, except in the limited circumstance specified by the General Assembly (i.e., when the data is being transmitted as an IXC service offered to the public for compensation).

Similarly, the networks over which many data services are provided are not "telephone or telegraph" facilities. As the Commission is aware, when the definition of Public Utility Code was adopted, ILECs used primarily copper wire, switched facilities to provide service. The fiber-based networks used by cable operators and other competitive providers of data services were not originally installed to provide "telephone" or "telegraph" services. The FCC summarized the differences between the PSTN used to provide traditional telephone service and the IP-based networks being used to provide many data (and VOIP) services as follows:

> ... VoIP services are not necessarily mere substitutes for traditional telephony services, because the new networks based on the Internet Protocol are, both technically and administratively, different from the PSTN. Whereas the PSTN is designed to meet the analog communications requirements of two-way voice conversations, IP networks are designed to meet the short-burst digital data communications requirements of computing networks. Whereas the PSTN's design is logically and physically hierarchical, utilizing highly centralized signaling intelligence to connect parties to a communication, IP network design is "flat," distributing network intelligence and permitting highly dynamic and flexible routing that takes into account network delays, changes in loads, and changes in topology. And whereas enhanced functionalities delivered via the PSTN typically must be created internally by the network operator and are often tied to a physical termination point, IP-enabled services can be created by users or third parties, providing innumerable opportunities for innovative offerings competing with one another over multiple platforms and accessible wherever the user might have access to the IP network. The rise of IP thus challenges the key assumptions on which communications networks, and regulation of those networks, are predicated: Packets routed across a global network with multiple

> access points defy jurisdictional boundaries. Networks capable of facilitating any sort of application that programmers can devise have empowered consumers to choose services they desire rather than merely accepting a provider's one-size-fits-all offering.[41]

Although more ILECs may be using fiber-based networks to provide their "telephone" services, it would be inappropriate for the Commission to begin exercising jurisdiction over previously non-jurisdictional entities solely because the technology deployed by currently-jurisdictional entities has changed and now corresponds with that used in other industries.[42] The Commission's statutory jurisdiction does not extend to "data" services except as competitive IXC services (when meeting the requirement under the IXC definition). The proposed new category of CLEC authorization is not appropriate and should be rejected.

2. Data Services Are Interstate Information Services under Federal Law.

Under Federal law, data services may fall into one of several categories, including: (1) telecommunications service; (2) cable service;[43] or (3) information service.[44] It is appropriate for the Commission to apply these definitions to the "data services" that it seeks to regulate through the new CLEC-data only classification to determine whether the service should properly be

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[41] IP Enabled Services NOPR, ¶ 4.

[42] The potential extension of the Commission's jurisdiction based on this theory is alarming. For example, if cable operators' broadband networks are now considered to be "telephone" facilities, then the next logical inquiry is whether the video services provided by cable operators also constitute "messages or communications" that are public utility services. See Investigation Upon the Commission's Motion to Inquire into the Commission's Jurisdiction and Power to Regulate Television Cable Service, Investigation Docket No. 73, Order entered on March 31, 1964, 41 Pa. PUC 381 (1964).

[43] Federal law defines "cable service" as "(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service." 47 U.S.C. § 522(6). Further, the 1934 Act defines "video programming" as "programming provided by a television broadcast station," whereas "other programming service" is "information that a cable operator makes available to all subscribers generally." Id. at §§ 522(20) & 522(14). In the Cable Modem Order, the FCC states that cable service is characterized by operator control. Cable Modem Order, ¶ 62. Specifically, the operator of a cable service must control both the selection and distribution of content, which must be available to all subscribers generally. Id. ¶¶ 62 & 63.

[44] See e.g., Cable Modem Order, ¶ 7.

subject to the Commission's oversight and/or whether the FCC has preempted regulation of any particular service.

Under TA-96, "telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public."[45] Further, "telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." As the FCC interpreted this definition in Wireline Broadband NOPR, "an entity *provides* telecommunications only when it both provides a transparent transmission path *and* it does not change the form or content of the information."[46] If no "enhanced functionality" is attached to the simple transmission path, then the service provided is telecommunications.

Under Federal law, "information service" is defined as:

> The offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. [47]

Thus, where information retrieved through a telecommunications path is manipulated in some fashion by the network or end user, the FCC likely will define this function as an information service.

In the Cable Modem Order, the FCC explicitly characterizes cable modem service as an interstate, information service.[48] As described by the FCC, "cable modem service is an offering of Internet access service, which combines the transmission of data with computer processing, information provision, and computer interactivity, enabling end users to run a variety of

[45] 47 U.S.C. § 153(46).
[46] Wireline Broadband NOPR, ¶ 19 (emphasis in original).
[47] 47 U.S.C. § 153(20).
[48] Cable Modem Order, ¶ 38.

applications," such as email, newsgroups, and maintenance of a user's World Wide Web presence.[49] Because a cable modem operator provides its subscribers with the ability to generate, acquire, store, transform, process, retrieve, utilize, or make available information, the FCC concludes that cable modem service falls within the definition of information service.[50]

Similarly, in Wireline Broadband NOPR, the FCC concluded that wireline broadband Internet access service is an interstate information service.[51] Applying a rationale similar to the analysis applied in its Cable Modem Order, the FCC states that a subscriber who is offered the ability to create a "home page" on the World Wide Web is "utilizing a 'capability for ... storing ... or making available information' to others."[52] Because these functions fall within the definition of information service, the FCC proposes that wireline broadband be classified as an information service.[53]

Finally, the Commission determined that Internet access provided through BPL technology and via wireless broadband networks are interstate, information services.[54] In doing so, the FCC repeatedly reemphasized the need to encourage broadband deployment in rural and underserved areas.

Any data services provided over broadband networks for which the FCC has not explicitly preempted regulation to date will likely be addressed in the FCC's NOPR into the appropriate regulatory classification of and requirements for various IP-enabled services.[55] The FCC defined the types of services that it was reviewing very broadly as follows:

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[49] Id.
[50] Id. ¶ 41.
[51] Wireline Broadband NOPR, ¶ 17.
[52] Id. ¶ 21.
[53] Id. ¶ 20.
[54] Wireless Broadband Order, ¶¶ 25 & 28; BPL-Enabled Internet Access Order, ¶ 11.
[55] See generally IP Enabled Services NOPR.

> Specifically, the scope of this proceeding – and the term "IP-enabled services," as it is used here – includes services and applications relying on the Internet Protocol family. IP-enabled "services" could include the digital communications capabilities of increasingly higher speeds, which use a number of transmission network technologies, and which generally have in common the use of the Internet Protocol. Some of these may be highly managed to support specific communications functions. IP-enabled "applications" could include capabilities based in higher-level software that can be invoked by the customer or on the customer's behalf to provide functions that make use of communications services. Because both of these uses of IP are contributing to important transformations in the communications environment, this Notice seeks commentary on both, and uses the term "IP-enabled services" to refer to "applications" as well as services."[56]

The classification of VOIP services is included in the FCC's on-going proceeding; however, the proceeding is not limited to voice services and, as defined above, clearly extends to data services provided over IP-enabled networks. Clearly, it would be prudent for the Commission to refrain from asserting jurisdiction over data services provided by competitive entities, especially those provided over IP-enabled facilities, until the FCC resolves the NOPR.[57] This would be consistent with the regulatory restraint that the Commission demonstrated in its investigation into the treatment of VOIP services.[58]

3. The Commission's Prior Provision of CLEC Authorization for Certain Entities to Provide "Data" Services is not Dispositive of the Commission's Jurisdiction.

BCAP recognizes that the Commission previously granted CLEC classification to various entities for "data-only" services. For example, in 2000 the Commission granted BlueStar Networks, Inc., a CLEC certificate to provide service in the territories of Bell Atlantic-

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[56] Id. ¶1 n. 1.

[57] Due to their use of ratepayer-funded facilities, the Commission may have a role in overseeing the data services provided by ILECs. Specifically, the PUC should ensure that ILECs do not unreasonably tie the provision of data services to the provision of regulated local services. In addition, the Commission should ensure that ILEC-provided data services are not inappropriately subsidized with revenues from PUC-related services.

[58] See VOIP Investigation Order.

Pennsylvania, Inc. (now Verizon) and GTE North, Inc. (now Verizon-North).[59] In the BlueStar decision, and all proceedings authorizing CLEC-data only authorization thereafter, it appears that the issue of jurisdiction was not contested. A central theme of these orders, however, is that the carrier sought to interconnect with the ILEC networks or to use Unbundled Network Elements ("UNEs") obtained from Verizon or other non-rural ILECs. The regulatory environment has changed to emphasize facilities-based services and CLEC-Data or DLEC status is no longer necessary on a Federal or local basis. As a result, BCAP respectfully submits that the reliance on these prior cases to assert jurisdiction over data services as CLEC services is inappropriate.

Specifically, the FCC's analysis of broadband services provided over telephone company unbundled loop plant has changed. In 1999, the FCC determined that the "high frequency" portion of the loop was an unbundled network element to be made available to CLECs seeking to compete with the ILEC.[60] This was consistent with the FCC's earlier ruling, in 1998, that ILECs should file tariffs for their DSL services.[61] In an environment in which DSL capability was viewed as a stand-along telecommunications service – consistent with its treatment by the FCC as an unbundled network element – it was not unreasonable for CLECs to determine that they would use this telecommunications service as part of their own offerings to end users – even those that focused on data services. This is why there were "data CLECs" seeking certification from this Commission.

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[59] Application of BlueStar Networks, Inc. for Approval to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Commonwealth of Pennsylvania, Docket No. A-0310862F0002, Order entered June 5, 2000.

[60] See Deployment of Wireline Services Offering Advanced Telecommunications Capabilities, Third Report and Order in CC Docket No. 98-147 Fourth Report And Order In CC Docket No. 96-98, 14 FCC Rcd 20912 (1999).

[61] See GTE Operating Telephone Cos., GTOC Tariff No. 1; GTOC Transmittal No. 1148, Memorandum Opinion and Order, 13 FCC Rcd 22466 (1998).

However, regulatory policy changed substantially in the intervening years. Most significantly, the FCC reversed its earlier determination that the "high frequency" portion of the loop was or should be treated as a separate network element. As the federal court of appeals in the District of Columbia noted, "In *USTA I, 290 F.3d at 428-29*, we vacated the Commission's decision to provide CLECs with unbundled access to the high frequency portion of copper loops to provide broadband DSL services, primarily because the Commission had failed to consider the relevance of intermodal competition in the broadband market. On remand, the Commission decided to reverse its earlier position and eliminated this unbundling mandate."[62] This change in regulatory policy was part of the change that ultimately led to the FCC's determination that broadband data services used to provide Internet access are, in fact, unregulated information services rather than regulated telecommunications services.[63]

In other words, the fact that some CLECs designated themselves as "data CLECs," and the fact that the Commission accepted those designations as appropriate and within the Commission's jurisdiction, reflects a now-superseded view of the proper regulatory classification of these services. During the period from approximately 1998 through approximately 2003, the applicable federal regulatory regime viewed DSL capability as a stand-alone telecommunications service and an unbundled network element. But since that time, as part of the ongoing development of a clear policy favoring true facilities-based competition, the applicable regulatory regime has eliminated the availability of DSL capability as an unbundled network element and, indeed, classified DSL-based data services, along with all other high-speed services used for Internet access, as unregulated information services.

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[62] USTA v. FCC, 359 F.3d 554, 584 (D.C. Cir. 2004).
[63] See Wireline Broadband NOPR, *supra*.

In these circumstances, BCAP respectfully submits that reliance on these prior PUC cases to assert jurisdiction over data services as CLEC services is inappropriate. Those cases date from, and reflect, a regulatory regime that no longer applies to those services.

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In summary, it is questionable whether the PUC possesses the statutory authority to regulate data service providers as CLECs. The FCC has already determined that certain specific data services (e.g., internet access) are interstate information services and is in the process of reviewing the regulatory status of other IP-enabled data services in its IP Enabled Services NOPR. Finally, BCAP questions whether extension of regulation to services that have developed through competitive market focus will unnecessarily and unreasonably stifle continued technological developments and the extension of broadband facilities throughout the Commonwealth. As a result, the Commission should not adopt the proposed new "CLEC-data-only" regulatory classification.

C. The Commission Should Adopt a Statewide CLEC Authorization Process to Reduce Regulatory Burdens on the Commission and Competitive Entrants.

The current and revised application forms require CLEC applicants to describe the geographic territory in which the applicant proposes to offer service, including a request to "[c]learly and specifically delineate each Incumbent Local Exchange Carrier's (ILEC) service territory in which the Applicant wishes to operate." Revised Application, Section 7. The requirement to designate specific individual ILEC territories could result in continued inefficient processing of multiple applications for a CLEC, adding to the financial cost and deployment time for new services. This clearly is unnecessary because the same agency (i.e., the PUC) has sole jurisdiction in Pennsylvania over each such filing and uses the same criteria to review each

application. To eliminate the repetitive review process at the Commission, the current procedures should be revised to provide statewide authorization through a single application.

As previously discussed, the Commission's entry procedures and requirements should reflect the evolution of the market since 1996. The Commission originally adopted an ILEC-by-ILEC entry process presumably to account for the differing regulatory classifications of ILECs in the Commonwealth (i.e., RBOC, non-rural ILECs and rural ILECs). To promote efficiency, the Commission initially determined that it would review CLEC applications for rural territories and any claimed exemptions or suspensions under Sections 251(f)(1) or 251(f)(2) concurrently.[64]

Although originally adopted in the name of efficiency, market developments in the ten years since the adoption of the original entry procedures render the current process inefficient. In the last ten years, the Commission has resolved many issues related to the claims by rural ILECs to the Section 251(f)(1) and (f)(2) protections that necessitated an ILEC-by-ILEC process. After an initial period of suspension of interconnection and other obligations for all Pennsylvania rural ILECs, the Commission has now clearly indicated that it will not allow rural ILECs to use the sword of potential economic burdens to further delay competitive entry:

> We conclude that the public interest benefits of the Application clearly outweigh the asserted detriments. This Commission has been continually faced with the concerns of the incumbents when faced with telecommunications competition in the local exchange market, *i.e.*, the so-called "trilogy" argument. We find the protests of the protesting parties to be a variation of the trilogy argument whereby the trilogy is now to expressly include intercarrier compensation reform. Substantially similar to the concerns that this Commission addressed when we initially authorized competitive entry into the local exchange market... the public interest is not promoted by foreclosing competition until such time as difficult regulatory problems are resolved.[65]

[64] The review of the Section 251(f)(1) exemption is triggered by an interconnection request. It seems inconsistent and inefficient for a CLEC to be required to engage in interconnection regulations until it is assured that it can enter the market.

[65] Core Communications CLEC Order, p. 38 (citations omitted).

Further, the Commission clearly indicated in the Core Communications CLEC Order that it would authorize facilities-based entry in all areas of the Commonwealth (i.e., statewide).[66]

The application form should be revised to confirm that a CLEC can obtain through a single process statewide authority, consistent with the Commission's prior determinations. In addition, similar to the current process to enter non-rural territories, the Commission should eliminate the ability of parties to protest applications for "competitive reasons" and reject any protests that do not raise specific, colorable and supported fitness objections. CLEC Applicants throughout the Commonwealth should be provided with provisional authority to begin operation upon submission of the application form and proposed tariff.[67] Many other states have adopted a statewide entry process such as this to promote competitive entry.[68]

In addition, for CLECs that do not seek statewide authority, the Commission should specifically confirm that authorizations can be granted for the entire ILEC territory, regardless of the specific initial deployment territory. At least one application to enter rural ILEC territories have resulted in protests by the impacted ILEC and, ultimately, a settlement of that protest that included geographic limitations on the CLEC's authority to only limited portions of the entire service territory.[69] As the Commission is aware, authorization is often granted for CLECs to enter the Verizon or Verizon North territory on a "territory-wide" basis even though the CLEC's business may be offered only in portions of that territory. It is inefficient to require CLECs to file multiple applications over the years to enter into additional portions of the same ILEC

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[66] Id. at pp. 7-8.

[67] To the extent an ILEC desires to assert its rights under Section 251(f)(1) or Section 3014(b)(7) of the Public Utility Code, 66 Pa. C.S. § 3014(b)(7), this can be accommodated when the CLEC submits an actual interconnection request to the ILEC.

[68] For example, Alabama, Florida, Indiana, Kansas, Kentucky, Mississippi, New Jersey, Oregon, Virginia, Washington, and West Virginia all have statewide entry processes.

[69] See Application of Service Electric Telephone Company, LLC (formerly Service Electric Telephone, Inc.), Docket No. A-310651F0002, Final Order entered October 9, 2001 (limiting Service Electric Telephone's application to service in the Bungor, Coopersburg, Ferndale, Pen Argyle and Portland exchanges of Commonwealth Telephone Company, and committing not to file for additional authorization in the ILEC's territory for three years).

territory. Competitive entry can be facilitated and expedited by specifically acknowledging that territory-wide authorization will be granted in all portions of an ILEC's service territory with a single application and by prohibiting protests by ILECs to applications on this basis. In addition, the existence of territory-wide authority may encourage facilities-based CLECs to expand their networks, thus furthering the goals of Chapter 30 and TA-96. BCAP urges the Commission to add appropriate clarifying language to Section 7 of the Revised Application confirming that once the CLEC designates the ILEC service territory for which it desires entry, the authorization will be granted for the entire service territory.

D. The Commission Should Eliminate the Requirement for CLECs to Include Exchange Maps in Tariffs.

The Commission's current tariff requirements for CLECs include the requirement to provide exchange maps. The service footprints of many new facilities-based entrants do not correspond with the exchanges maintained by the ILECs, which were based on the ILECs' decisions related to the build-out of facilities from central offices. For example, cable operators install facilities on a franchise-by-franchise basis, with each franchise corresponding to a local governmental unit (e.g., municipality or borough). To the extent a CLEC is going to rely on facilities provided by a cable operator as the "last mile" to the customer, then producing a map similar to the ILEC exchange in the same area may not be feasible.

For other regulated public utility services, the Commission requires only a listing in the tariff of the geographical areas where service is offered. Clearly, if a listing of geographical areas is sufficient for other public utility services, then it should be sufficient for CLECs. BCAP respectfully suggests that this should be an option for CLECs rather than requiring exchange maps.

E. Responses to Vice Chairman Cawley's Directed Questions.

In a statement issued concurrent with the Tentative Order, Vice Chairman Cawley set forth a series of directed questions concerning aspects of the application form and entry process. The Vice Chairman notes the "continuously changing nature of telecommunications technologies, services and industry structures" and the need for the regulatory process to adapt to those changes.

BCAP agrees that the application form and entry process should be revisited periodically to ensure that inappropriate delays and impediments do not exist to competitive entry. As set forth below in response to Directed Question #3, BCAP believes that the entry procedures for rural territories are an integral part of the regulatory process that must adapt to encourage the introduction of competitive communications and advanced service options for consumers in all areas of the Commonwealth of Pennsylvania. BCAP urges the Commission to explore issues beyond the proposed changes to the application form set forth in the Tentative Order that should be evaluated and revised to reflect the developments over the last ten years. If necessary, BCAP suggests that the Commission commence any formal process that may be necessary to implement the proposals contained herein.

> **Directed Question #1: CLEC Provisional Operating Authority and Related Procedures – Sufficiency of Interim Tariffs Filed With Application:** Under the current system, a grant of provisional operating authority allows an applicant CLEC to offer services under the terms and conditions of its Interim Tariff that accompanies its certification Application while this Application is pending before the Commission . The comments should address to what extent the Interim Tariff should be perfected in accordance with the existing *Implementation Orders* and existing Commission regulations so that end-user consumers enjoy requisite regulatory protection, including those that involve basic health and safety protection requirement, e.g., availability of 911/E911 calling capabilities for end-user consumers and appropriate CLEC coordination with 911/E911 Administrators. Similarly, the parties should address what type of continuing imperfections in an Interim Tariff can constitute valid grounds for the revocation of provisional operational authority.

In non-rural territories, a CLEC can begin providing services once the PUC confirms that all information required by the application (including a proposed tariff) has been submitted. This "provisional authority" process appears to function well and ensures that competitive entry is not delayed while the Commission reviews the application. BCAP supports the continued use of the provisional authority process and, as set forth below, urges the Commission to extend this process to all CLEC applications.

As explained in Section II.C., supra, the Commission has clearly determined that it will grant CLEC applications to enter all portions of the Commonwealth, especially on a facilities-basis. In addition, the Commission has confirmed that its review of the financial fitness for facilities-based Applicants is narrow. When combined with BCAP's suggestion to eliminate competitively-based protests in accordance with the precedent in the Core Communications CLEC Order, these two factors militate in favor of extending the provisional authority approach to all CLEC applications.

Based on the experiences of BCAP members, the Interim Tariff process also operates appropriately. To facilitate competitive entry, BCAP urges the Commission to consider the development of standardized tariff language through a stakeholder process for tariffs on the identified topics. This should not, however, prohibit carriers from departing from the standardized language if the alternate proposal is consistent with the Commission's regulations.

Finally, provisional operating authority should be revoked only once appropriate due process protections are fulfilled for the impacted CLEC. This would include notice of the tariff deficiency (or other issue potentially warranting suspension of the provisional operating authority), a reasonable opportunity to cure and, finally, an opportunity to be heard by the Commission itself if the CLEC disagrees with the basis for the suspension of the provisional

authority. This will ensure that the CLEC's due process rights are fulfilled and also that consumers receive continuous and uninterrupted service during the resolution of the issue.

> **Directed Question #2: CLEC Provisional Operating Authority – Revocation and Restoration of Provisional Operational Authority:** The Commission and its Staff have utilized the issuance of Secretarial Letters in circumstances that involved the revocation and subsequent restoration of provisional authority. The comments should address whether this procedure is compatible with the *Implementation Orders,* affords to interested applicant CLECs requisite due process protections, or whether this procedure is unduly burdensome and should be discontinued. Assuming that the revocation and restoration of provisional authority is a necessary practice that should stay in place, address whether the Commission and its Staff should establish transparent and publicly available guidelines under which the revocation and subsequent restoration of provisional authority should be evaluated. All comments supporting abandonment or revisions to the existing procedures should provide concrete and pragmatic alternatives to the current process.

As set forth above, due process and the desire to provide uninterrupted service for customers militate in favor of providing a CLEC facing the potential revocation of provisional operating authority with notice, a reasonable opportunity to cure and then an opportunity to be heard by the Commission prior to requiring the CLEC to cease providing service. BCAP believes that the issuance of a Secretarial Letter specifying the deficiency and a reasonable cure period can be sufficient notice to initiate this process; provided, however, if the CLEC does not agree with the grounds for revoking the provisional authority, the CLEC must have the opportunity to appeal the Secretarial Letter as a determination of staff to the PUC, with the revocation of the operating authority stayed during the appeal. In addition, BCAP supports the establishment of transparent guidelines through a formal process to confirm the basis for and process of revoking and restoring provisional authority.

> **Directed Question #3: Adjudication of Protested Applications – Consolidated Procedures:** Address whether the Commission should revisit and revise the Consolidated Procedures for market entry and interconnection of competitive telecommunications carriers in the service areas of rural ILECs that are contained in the original *Implementation Orders* and in what manner.

Over the last ten years, the Commission has addressed a limited number of issues regarding CLEC entry into rural territories. Initially, rural ILECs sought and were granted multi-year suspensions of their obligations to facilitate rural entry pursuant to Section 251(f)(2) of TA-96 under the guise of needing time to prepare for the technological and financial issues related to competitive entry.[70] Although the PUC indicated that it would not grant further blanket suspensions to the rural ILECs under Section 251(f)(2), the General Assembly included in Act 183 the purported mandate for the Commission to suspend through December 31, 2008, the obligations under Sections 251(c)(2), (3), (4), (5) and (6) for any rural ILEC serving less than 50,000 access lines and committing to an accelerated network modernization plan.[71] In addition, the Commission has authorized CLEC entrance into all territories on a facilities-basis, finding that neither Section 251(f)(1) nor 251(f)(2) supported delaying entry.[72]

Based on the developments that have occurred, BCAP suggests that the Commission revise the Consolidated Procedures for market entry and interconnection into rural ILEC territories to include multiple tracks based on the type of entry strategy.[73] The CLEC should have the option to choose the entry track that best fits its business plans.

Track 1—Statewide Entry; Interconnection Request Not Concurrent: As set forth in Section II.C., supra, many states have adopted statewide entry processes that allow the CLEC to submit a single application. Due to efficiency issues, this may be conducive to entry for carriers such as Core Communications and others that may offer services throughout the Commonwealth.

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[70] See Petition of Rural and Small Incumbent Local Exchange Carriers for Commission Action Pursuant to Sections 251(f)(2) and 253(b) of the Telecommunications Act of 1996, Docket No. P-00971177.

[71] Section 251(f)(2) requires the Commission to evaluate specific criteria before it can grant a suspension. 47 U.S.C. §251(f)(2). The General Assembly's attempt to circumvent this test and dictate the results this inquiry is illegal and preempted by Federal law.

[72] Core Communications CLEC Order, pp. 7-8.

[73] If these changes are implemented prior to December 31, 2008, when the state statutory suspension of the obligations under Sections 251(c)(2)-(6) expires, then the size of the ILEC may also be factor in developing the entry tracks.

As the CLEC requires interconnection, UNEs or resale from specific ILECs, it can submit a request, at which time any technical and, for UNEs and resale, economic issues can be addressed. The review of the application should not be delayed by any issues that are unrelated to the Applicant's fitness.

Track 2—Facilities-Based Entry; Interconnection Request Concurrent or Non-Concurrent: The provisional operating authority process used in non-rural territories should apply for facilities-based applications seeking entry into a rural ILEC territory. The CLEC files and serves on the ILEC the Application with the proposed tariff. Assuming all required information is submitted, the CLEC is granted provisional operating authority upon filing. The ILEC has a 15-day protest period that begins with filing of the Application. Only protests raising specific and supported fitness issues will be accepted. If a protest is filed, the applicant has 10 days to respond and may continue operations on provisional authority throughout the course of the hearing process. If requested by the CLEC, the interconnection negotiation/arbitration process can run concurrent with this application process.[74]

Track 3—UNE or Resale Entry; Interconnection Request Concurrent: The CLEC files and serves on the ILEC the Application with the proposed tariff. The ILEC has a 15-day protest period that begins with the filing of the Application to object to the fitness of the applicant and/or assert its right to the exemption under Section 251(f)(1). The CLEC has 10 days to respond. To the extent no protests are filed, the CLEC is granted provisional operating authority (assuming that all required information is submitted) while the Commission reviews the application. If the ILEC files a protest contesting the applicants' fitness and/or its right to the exemption under Section 251(f)(1), the Commission shall conduct an evidentiary process into the

[74] Because the entry is facilities-based, it is not necessary for the Commission to examine the Section 251(f)(1) claims again under the Core Communications CLEC Order.

identified issues that results in an Initial Decision or Recommended Decision being issued within 120 days of the ILEC's protest. The Commission must issue its decision within 60 days thereafter. If requested by the CLEC, the interconnection negotiation/arbitration process can run concurrent with this application process.

These revised entry procedures appropriately balance the rights of rural ILECs under TA-96 and the access by competitors to rural markets. The Commission has protected the rural ILECs from competitive entry for a sufficient time. Ten years after the enactment of TA-96, it is appropriate to provide an efficient process for carriers to enter the rural areas of Pennsylvania. Adopting the process outlined above will ensure that rural ILECs cannot use the application process as a way to unnecessarily and indefinitely forestall entry by competitors.

> **Directed Question #4: Adjudication of Protested Applications – Procedural Time Limitations:** Address whether the Commission, absent the agreement of the interested parties to the contrary in individual protested application adjudications, should impose time limitations for the issuance of Initial or Recommended Decisions, and, if so, what these time limitations should be.

As the Commission is aware, recent CLEC applications to enter rural ILEC territories have taken up to 18 months to navigate the regulatory process.[75] During this litigation, the potential competitors were prevented from offering services to customers. This both deprived the consumers of competitive options and provided the ILECs with the opportunity to gain a competitive advantage and introduce similar services to the customers while the application was pending.

The current marketplace for telecommunications and broadband services requires prompt responses by carriers to customers' demands for services. As set forth in the response to the previous question, BCAP supports establishing firm timeframes for the adjudication of protested

[75] See e.g., Sprint CLEC Application Order.

applications, and providing most applicants with the opportunity to obtain provisional operating authority during any litigation of the protest. This will facilitate efficient and timely entry into the rural territories.

> **Directed Question #5: CLEC Classification – Classification of CLECs and CLEC-Data Entities:** Address whether the proposed CLEC and CLEC-Data classification serves and can continue to serve in the foreseeable future a material need for distinguishing between applicant CLECs. Also address whether such classification is sustainable where CLECs are increasingly utilizing networks and technologies for the provision of voice and data services other than the conventional circuit switched technologies.

BCAP addresses the problems presented by the proposed CLEC-Data-only classification in Section II.B. of these Comments. The Vice Chairman's directed question highlights a fundamental issue that the Commission and the FCC must address. That issue is whether the anticipated convergence between data services and voice services should be addressed with a regulatory mentality that brings the unregulated data services under the regulatory ambit of the PUC and FCC, or with a deregulatory mentality that results in services that serve as an alternative to traditionally regulated voice services being provisioned with the discipline of market forces rather than command-and-control regulatory mandates. Given the policies in favor of telecommunications competition on both the State and Federal levels, BCAP respectfully submits that the correct paradigm is self-evident—competition for both services must prevail over continued traditional regulation for new entrants.

As previously discussed, the FCC is considering many of these issues in its IP Enabled Services NOPR. Many entities are deploying broadband networks to provide voice, video and data services. The FCC is evaluating the appropriate regulatory classifications for those services (e.g., information v. telecommunications services; interstate v. intrastate). In addition, the FCC is evaluating the extent to which the Commission is required to forbear from applying certain

regulatory requirements to any services that it may deem to be "telecommunications services" because "(1) enforcement of the regulation is not necessary to ensure that charges are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest."[76] To promote continued deployment of broadband networks, a national regulatory approach based on minimal or no regulation for competitive carriers is required. As the FCC recently noted in its Time Warner Order:

> ...the Act establishes – and courts have confirmed – the primacy of federal authority with regard to several of the local competition provisions in the 1996 Act. First, section 201(b) authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the Act." As the Supreme Court has noted, this provision "*explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies" – including issues addressed by section 251. Second, exempt in limited cases, the Commission's authority with regard to the issues of local competition specified in section 251 supersede state jurisdiction over these matters. In the Supreme Court's words, "the question ... is not whether the Federal Government has taken the regulation of local telecommunications away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has."[77]

The PUC initially recognized the need to adopt a national approach to the treatment of services such as VOIP.[78] Despite this promising initial approach, the PUC unfortunately regressed into seeking to apply portions of its regulations to VOIP products. For example, in the Sprint CLEC Application Order, the Commission required Sprint to ensure that any competitive service provider using Sprint's wholesale services "comp[lies] with all applicable Commission rules regarding universal service, and consumer protections are in existence and, as may be

[76] IP Enabled Services NOPR, ¶47.
[77] Time Warner Order, ¶ 18 (citations omitted).
[78] See VOIP Investigation Order.

hereafter, amended."[79] Evidence of "market failure" or "consumer abuse" does not exist to support the extension of the PUC's consumer protection rules to VOIP services and providers.[80] Furthermore, the FCC's own order confirming that carriers such as Sprint can obtain interconnection pursuant to Section 251 to provide wholesale services to cable operators and other VOIP providers imposes only limited conditions on the wholesale providers related to intercarrier compensation and number porting, but does not impose consumer protection obligations on the VOIP provider, except as previously ordered related to E911, CALEA and universal service obligations.[81]

The Commission's statement in the Sprint CLEC Application Order is inconsistent with its prior determination in the VOIP Investigation Order and the FCC's "bottom-up" approach to applying to VOIP only those specific regulatory requirements that are necessary. As the Commission witnessed in the wireless telephone market, adopting a deregulatory, market-driven approach spurred competition and innovation. The "bag phones" of the 1980s have been replaced with cellular phones that are smaller than the consumer's palm. National calling plans are offered. For some segments of the population, a wireless phone is the only communications device needed. All of this occurred without excessive state or federal oversight of pricing, terms and conditions of service.

Due to the multi-state operations of many entrants into the VOIP service market, the national pricing plans, and the converged networks and converged operational and business support systems used to by the service providers, a consistent federal approach is required. The light regulatory touch that has been applied to cable VoIP services thus far has enabled cable

[79] Sprint CLEC Application Order, p. 38.
[80] See VOIP Investigation Order, p. 15 (noting that regulatory intervention may be proper in instances of market failure or consumer abuse).
[81] Time Warner Order, ¶¶ 15 and 16.

VoIP providers to price their services more competitively, which has resulted in consumers savings of approximately $10 per month over traditional phone services.[82] These savings have been enjoyed by consumers in Pennsylvania. The Commission's recent statement in the Sprint CLEC Application Order should be revisited and rescinded by confirming the continued adherence to the well-reasoned result in the VOIP Investigation Order.

> **Directed Question #6: CLEC Classification –CLEC-Data Entities' Obligations:** Address whether the proposed CLEC-Data classification should be accompanied by a presumptive relief from certain regulatory obligations that relate to the provision of voice telecommunications services, including but not limited to the availability of 911/E911 call processing capabilities.

Please refer to Section II.B. for BCAP's explanation of why the CLEC-Data classification is not appropriate.

> **Directed Question #7: CLEC Classification – Retail and Wholesale CLEC Classification:** In view of the Commission's recent decisions regarding Sprint Communications Company L.P. (Sprint) and Core Communications, Inc. (Core), should the Commission establish a Retail CLEC and a Wholesale CLEC classification rather than focusing on a CLEC and CLEC-Data classification? The parties should also address what provisions of the Public Utility Code and federal law, including TA-96, and recent FCC decisions on 911/E911 and CALEA (Communications Assistance to Law Enforcement Agencies) support their respective positions.

BCAP does not support creating a "CLEC-Wholesale" classification for the application. The Commission's decision in the Sprint CLEC Application Order demonstrates that it can accommodate requests similar to Sprint's without creating a new classification. The FCC's recent decision in the Time Warner Order to confirm that interconnection under Section 251 applies to providers of wholesale services also renders a new regulatory classification unnecessary.

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[82] Press Release, J.D. Power and Associates Reports: Cable Companies Dominate Customer Satisfaction Rankings for Local and Long Distance Telephone Service (July 12, 2006).

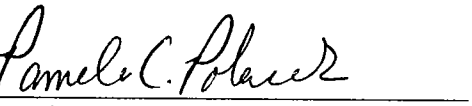
More significantly, the arrangements between VOIP providers, such as Blue Ridge Digital Phone Company, and Sprint may not reflect the precise business model used in other relationships where a CLEC acts at the interconnection entity for another provider. The wholesale CLEC operation is not a "one size fits all" approach and any attempt by the Commission to develop a definition for this classification may inhibit the development by CLECs and their partners of arrangements that meet the business needs of the parties. The Sprint/Blue Ridge model itself illustrates how entities will develop arrangements that the Commission may not anticipate to offer innovative competitive options for customers. Finally, existing CLECs may be offering both wholesale and retail services and should not be required to seek an additional CLEC authorization.

III. CONCLUSION

BCAP applauds the Commission for proactively examining its telecommunications entry requirements and procedures. To achieve the goals of TA-96 and Chapter 30, Pennsylvania must create an environment for regulated and non-regulated voice and data services that facilitates easy entry into all markets (rural and non-rural) and allows consumer demands, rather than regulatory mandates, to dictate pricing, terms and conditions of service. The modifications to the application form and entry procedures advocated by BCAP herein will further these goals, which will benefit consumers throughout the Commonwealth.

Respectfully submitted

McNEES WALLACE & NURICK LLC

By 

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Counsel to the Broadband Cable Association of Pennsylvania

Dated: March 28, 2007

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

EXEMPTIONS FOR PROVIDERS OF LOCAL EXCHANGE SERVICE OTHER THAN INCUMBENT LOCAL EXCHANGE CARRIERS	)))	ADMINISTRATIVE CASE NO. 370

O R D E R

Pursuant to KRS 278.512 and 278.514, the Commission, on its own motion, hereby initiates this proceeding to determine whether providers of telecommunications service other than dominant incumbent local exchange carriers should be exempt from certain regulatory requirements.

When evaluating the reasonableness of regulatory exemption, the Commission is bound by KRS 278.512 and 275.514. The Commission may exempt or reduce regulation of telecommunications services and products if it determines that exemption or reduced regulation is in the public interest. One consideration in determining public interest is the reduction of resources dedicated to regulatory activities no longer required to protect the public.

Financing Applications

Pursuant to KRS 278.300, the Commission has required competitive local exchange carriers ("CLECs") and wireless carriers to submit an application, consistent with our regulations, providing a complete description of securities proposed to be issued or indebtedness proposed to be incurred. This requirement was meant to ensure that the contemplated financings would not impair a local exchange carrier's ability to provide service at fair, just and reasonable rates.

APPENDIX A

CLECs and wireless carriers are not rate regulated by the Commission because they neither possess market power nor own local exchange bottleneck facilities. Therefore, there is no need to monitor their financial stability to ensure their continued existence. CLECs do not have carrier of last resort responsibilities and their failure as the result of bad financing decisions would have no impact on the availability of service as other carriers are available to supply service. Similarly, the wireless market is competitive, and thus oversight of their financing activities is no longer required.

Applications For Transfer of Ownership or Control

Under KRS 278.020(4) and (5), CLECs and wireless carriers are required to seek prior approval for authority to transfer their operations through a sale of assets or transfer of stock. However, there appears to be no need for the Commission to approve these types of transactions for the reasons discussed above. Accordingly, the Commission finds the CLECs and wireless carriers need only supply a letter to the Commission describing the transfer and providing an adoption notice pursuant to 807 KAR 5:011, Section 11, for the tariff with one day's notice.

An original and four copies of this transfer letter should be filed with the Commission and sent to the attention of the Commission's Executive Director. In Administrative Case No. 359,[1] the Commission prohibited a utility from selling its customer base where the utility would still provide the same line of business to new customers or customers whose accounts were not sold. Utilities must obtain a customer's authorization

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1 Administrative Case No. 359, Exemptions For Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin Operated Telephones at 6, footnote 1 (June 21, 1996).

before transferring his service to another carrier. Otherwise, an unauthorized preferred interexchange carrier change has occurred. Any transfer by a CLEC or wireless carrier also will be subject to this limitation.

Applications for Initial Operations for CLECs and Wireless Carriers

The lack of market power of CLECs and wireless carriers, together with the availability of competitive choices, makes it reasonable to require only a proposed tariff with 30 days' notice to the Commission and a cover letter setting forth certain information prior to CLEC or wireless entry into the Kentucky market.

The items to be addressed in the cover letter are: (1) the name and address of the company; (2) articles of incorporation or partnership agreement; (3) name, street address, telephone number and fax number (if any) or the responsible contact person for customer complaints and regulatory issues; (4) a notarized statement by an officer of the utility that the utility has not provided or collected for intrastate service in Kentucky prior to filing the notice of intent or, alternatively, a notarized statement by an officer that the utility has provided intrastate service and that it will refund or credit customer accounts for all monies collected for intrastate service; and (5) a statement that the utility does not seek to provide operator assisted services to traffic aggregators as defined in Administrative Case No. 330[2] or, alternatively, that the utility does seek to provide operator-assisted service to traffic aggregators but that in so doing it is complying with the Commission's mandates in Administrative Case No. 330.

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2 Administrative Case No. 330, Policy and Procedures in the Provision of Operator-Assisted Telecommunications Services (March 27, 1991).

Conclusion

The existence of competitive alternatives with carrier of last resort obligations, together with Commission oversight of these carriers, should provide adequate safeguards to protect customers from unfair treatment, poor service quality, or excessive prices. However, regardless of the extent of the exemptions eventually granted in this proceeding, all customers may continue to exercise their option of filing complaints regarding the exempt services with the utility and the Commission. In addition, the Commission retains jurisdiction over exempted services pursuant to KRS 278.512 and KRS 278.514.

A copy of this Order shall be served on the Attorney General of the Commonwealth of Kentucky and all telecommunications providers in Kentucky. The procedures and exemptions prescribed in this Order shall be effective January 31, 1998 unless the Commission receives from interested persons comments indicating disagreement with any exemption described herein.

IT IS THEREFORE ORDERED, effective January 31, 1998 unless further proceedings are ordered hereafter, that:

1. CLECs and wireless carriers are exempted from filing applications for prior approval of transfers pursuant to KRS 278.020(4) or (5) or applications for securing evidences of indebtedness pursuant to KRS 278.300.

2. CLECs and wireless carriers are exempted from filing applications for initial operations and shall only file 4 copies of a cover letter as described herein with a proposed tariff.

3. The exemptions granted herein are applicable to all non-incumbent local exchange carriers, and wireless telecommunications providers.

Done at Frankfort, Kentucky, this 8th day of January, 1998.

By the Commission

ATTEST:

Executive Director

STATE OF VERMONT
PUBLIC SERVICE BOARD

TELECOMMUNICATIONS PROVIDER REGISTRATION FORM

Section A.

In completing the registration form, applicants shall provide the following information:

1. Name, as registered with the Vermont Secretary of State_____

_____

2. Doing business as _____

_____

3. Is applicant a corporation? Yes_____ No _____

4. Applicant's principle business address and telephone number:

_____
Address

_____
City or town State ZIP Code

_____
Telephone number

5. Contact person for this application, address and telephone number:

_____
Name

_____
Address

_____
City or town State ZIP Code

_____

APPENDIX B

Telephone number

6. Name, address, and telephone number of person to receive annual report forms, if different than given in the response to item five:

Name

Address

City or town State ZIP Code

Telephone number

7. Name of registered agent in Vermont

8. Address of registered agent and telephone number:

Address

City or town State ZIP Code

Telephone number

9. Names and business addresses of current directors and officers:

Name and Position

Address

City or town State ZIP Code

Name and Position

Address

City or town State ZIP Code

Name and Position

Address

City or town State ZIP Code

10. A brief description of proposed Vermont operations and services_____

11. Proposed underlying carrier(s)_____

12. Other states where the applicant is registered and provides or has in the past provided telecommunications service:

13. Counties which the applicant intends to provide CLEC service, if any, within 24 months of obtaining authorization: [1]

14. Has the applicant ever filed for bankruptcy? If yes, please complete Part 1 of Section B.

15. Has the applicant ever been or is the applicant currently the subject of an investigation (excluding an investigation into an application to provide service that was approved) by a state or federal authority? If yes, please complete Part 2 of Section B.

16. Has the applicant ever been or is the applicant currently subject to any fines, penalties, or sanctions imposed by a state utility commission, a state attorney general, or the federal authority? If yes, please complete Part 3 of Section B.

1. The Board will be able to use the information contained in these filings as indicia of the ongoing levels of competition for basic exchange and other services.

Section B.

1. **Bankruptcy**
If applicant has filed for or is currently filing for bankruptcy, please describe the procedural status of the case, and provide all information (including applicable orders, or final order) concerning that proceeding.

2. **Investigation of Applicant**
If applicant has ever been or is currently the subject of an investigation by a state or federal regulatory authority, please describe the procedural status of the case. Also, provide a copy of the notice of investigation if the proceeding is pending, or final order or settlement agreement if the proceeding has concluded.

3. **Fines or Penalties Imposed Upon Applicant**
If applicant has ever been or is currently subject to any fines, penalties, or sanctions imposed by a state utility commission, a state attorney general, or federal agency, please describe the associated incident(s) and the fines, penalties, or sanctions. Also, provide a copy of the appropriate order or notice of sanctions.

Section C.

Necessary Accompanying Documentation
1. Vermont Secretary of State certificate of authority and, if applicable, tradename registration.
2. Description of applicant company's corporate structure and affiliates.
3. List of shareholders having a beneficial interest in 5% or more of applicant's securities.
4. *Disaster Recovery Plan*[2] a triennial filing with the DPS (for facilities-based providers).

2. This would cover repair contingencies, mutual aid agreements, equipment inventory plans, power replacement strategies, communications and customer service plans.

Attestation

The applicant agrees to participate in Vermont's Lifeline Program, and to comply with Vermont statutes and PSB rules and orders regarding telecommunications carriers and the provision of telecommunications services,[3] and it attests that it has financial and managerial ability to provide telecommunications service in Vermont and that it has examined the foregoing information and that the information is correct and complete.

BY: _____
Officer or Duly Authorized Agent of Company

_____
[PRINT NAME]

This document was signed in my presence on the _____ day of

_____, _____.

_____
Notary Public

_____
[PRINT NAME]

3. Including, but not limited to, service quality, consumer protection, privacy, E-911 financing and provision, compatibility with telephone relay system, universal service and funding, and carrier of last resort requirements.