Keystone Competition

Competition News in Pennsylvania

A newsletter published by the Pennsylvania Public Utility Commission regarding competition in the telecommunications and energy markets.

Summer 2003

Competition in Pennsylvania

The Pennsylvania Public Utility Commission (PUC) ensures safe, reliable and reasonably priced electric, natural gas, water, telephone and transportation service for Pennsylvania consumers, by regulating public utilities and by serving as responsible stewards of competition. Industry monitoring is a crucial part of this mission. The Commission gathers key market data and follows significant developments in the telecommunications and energy industries.

The PUC recognizes the value of a "snapshot" view of competitive markets and major issues being addressed in these industries. This inaugural publication of *Keystone Competition* represents our efforts to provide beneficial information to the public about important developments in the telecommunications and energy competitive markets.

In addition to showing aggregated basic market data, this publication summarizes key Commission decisions affecting competition and discusses legislative activities at the federal and state levels. Additionally, it highlights notable developments at federal agencies, as well as state and federal courts.

We hope you will enjoy this first issue. We plan to periodically release this newsletter to help you stay informed about developing markets in the telecommunications and energy industries in Pennsylvania.

If you have any questions or comments about *Keystone Competition*, please call Cyndi Page at (717) 787-5722.

Council for Utility Choice Conducts Consumer-Education Survey

The Council for Utility Choice conducted a survey in February, revealing that 83 percent of Pennsylvanians are aware they can choose a local telephone service provider. This is up from 72 percent in March 2001. In comparison, only 36 percent of the respondents to a recent National Regulatory Research Institute Consumer Utility Benchmark Survey said they were aware they were able to choose their local telephone company.

There were 1,213 statewide respondents to the Pennsylvania survey on local telephone and natural gas competition. The margin of error is plus or minus 2.8 percent. Efforts were made to reach out to seniors, low-income populations and minority communities.

Other highlights of the survey are:

- There was a higher level of awareness in the regions of Pennsylvania where competition is greatest and where consumer education is ongoing:
    - Pittsburgh, 87 percent;
    - Philadelphia, 87 percent;
- 28 percent of respondents have shopped around, up from 19 percent in March 2001. And 65 percent of respondents who did shop around said better rates and savings drove them to shop;
- 54 percent of respondents said they have received just the right amount of information needed to make an informed choice of company to provide their local phone service;
- 55 percent of respondents say they saw education messages related to local telephone competition on television, up from 47 percent in March 2001; and
- 62 percent of gas customers are aware they can choose their own supplier of natural gas, but only 24 percent have shopped for a different supplier of gas.

Feedback

We welcome any feedback on the *Keystone Competition* newsletter.

For media inquiries or to share ideas, feel free to contact Cyndi Page of the Communications Office at (717) 787-5722.

ON THE INSIDE

Utility Choice Website Exceeds 10 Million Hits

Website Empowers Pa. Consumers

In May, www.utilitychoice.org reached 10 million hits, as the Utility Choice campaign continues to educate Pennsylvania consumers about how to shop for local telephone, natural gas and electric service.

Officially launched in June 2002, the Utility Choice website has continued to experience lengthy user visits from across the Commonwealth. It focuses on three utility industries – electric, natural gas and local telephone – and features information on how to shop for each service, including detailed questions to ask potential providers and suppliers; an online calculator to determine possible savings; consumer protections; lists of providers by county; and glossaries of commonly used terms.

Provider of Last Resort Working Group Update

On March 25, Commission staff reconvened the Provider of Last Resort (POLR) Working Group to discuss the rules that should apply to the default generation service provided by an electric distribution company or alternative supplier approved by the Commission after the transition period.

According to the Electricity Generation Customer Choice and Competition Act, after stranded cost recovery ends and rate caps expire, EDCs will have the obligation to acquire energy at prevailing market prices for consumers who do not shop or who return to the EDC for generation service. In exchange, EDCs will be permitted to fully recover all reasonable costs of acquiring that energy.

Commission staff is reviewing various proposals and intends to hold another meeting of the POLR Working Group this summer to begin developing proposed regulations.

DSR Working Group to Convene

The Demand Side Response (DSR) Working Group, which was formed in January 2001, will meet on June 18, at 10 a.m. in Harrisburg. The Working Group will seek to develop proposed principles that may be utilized by the Commission in adopting a Policy Statement on DSR programs implemented by electric distribution companies. Many positive steps have already been taken by EDCs in Pennsylvania to offer consumers the opportunity to reduce their electric usage and save money on their utility bills during peak periods. The Commission seeks to build upon that progress by establishing guidelines that encourage the further deployment of programs designed to minimize wholesale price spikes and enhance the reliability of electric service.

Pennsylvania Electric Shopping Statistics

These are the results of the Pennsylvania Office of Consumer Advocate's (OCA) survey of Pennsylvania's electric distribution companies to determine the number and percentage of customers served by alternative generation suppliers. The data in these tables reflect information as of April 2003. The information is updated on a quarterly basis at OCA's website (www.oca.state.pa.us).

Number of Customers Served by an Alternative Suppliers

Company	Residential	Commercial	Industrial	Total	Total %
Allegheny Power	939	89	0	1,028	0.2
Duquesne Light	138,644	11,186	541	150,371	25.6
MetEd/Penelc*	2,693	355	102	3,150	0.3
PECO Energy**	100,601	14,679	163	115,452	7.5
Penn Power	556	32	0	588	0.4
PPL	1,888	3,217	147	5,252	0.4
UGI	66	3	0	69	0.1
Totals	**245,387**	**29,561**	**953**	**275,910**	

* FirstEnergy companies formerly a part of GPU.
** Includes 31,123 residential customers assigned to Green Mountain's Competitive Discount Service (CDS). This does not include 158,272 former NewPower CDS customers now served by PECO on a CDS rate.

Electric Supplier Licensing

Quarterly Activity for the period of January 1 to March 31, 2003.

60 Active Licenses
2 licenses canceled
1 license approved
0 applications pending

Natural Gas Prices Reach Record Highs

Spot gas prices and heating oil prices were high during the winter months and remained relatively high in spring. Spot market prices at the Henry hub were above $5 per million Btu through April and hit a record high of $19 on Feb. 26. The Energy Information Agency's (EIA) short-term forecast expects gas prices to remain near $5 per million Btu for the rest of the year.

The combination of higher heating demand for the winter, low storage inventories, and declining gas production pushed natural gas prices to record highs for the winter and is expected to keep prices about twice as high as last year. The United States produced 2.3 percent less natural gas last year than in 2001. Concerns about the war in Iraq, the Venezuelan oil strike and instability in Nigeria also kept crude oil prices high.

The national weather service reported that this past winter through the end of March was 7 percent colder than normal and 28 percent colder than last year. Cold winter weather drained underground gas storage to historically low levels. EIA reported that storage levels at the end of March were at 680 Bcf. This is 43 percent below the five-year average for the report week, and 50 percent lower than the level of last year for the same week. On March 20, storage declined to a record low 635 Bcf. The previous record low of 697 Bcf was set in April 1996. (In the second week of April, 48 Bcf was withdrawn from storage, which again set a new record low of 623 Bcf.)

Cool summer weather and falling crude oil prices could relieve gas storage pressures. The EIA forecast notes that hot summer weather in regions of the country, where electricity generation depends on natural gas, could reduce storage injections, and prices could once again soar above $6 during the heating season. If spot market prices remain high, traders may be reluctant to buy gas to inject into storage. Winter could begin between 2.6 trillion cubic feet and 2.8 trillion cubic feet in storage, well below the 3.2 trillion cubic feet in storage in November 2002.

Another concern is that gas production companies have been reluctant to ramp up drilling activity because of fear that prices will quickly fall again, as it did months after gas prices set a then-record high of nearly $10 in January 2001.

The EIA noted that since the end of winter, heating oil prices have fallen and are expected to be stable. Heating oil prices peaked in March 2003. The wholesale price hit $1.12 at the NY Harbor. The Pennsylvania average residential retail heating oil price peaked in March at $1.87. Normally heating oil prices peak during January or February. The elevated crude oil prices, the late season cold weather and depleted inventories are driving all distillate fuel prices up. The West Texas Intermediate crude oil price for March 2003 of $33.51 per barrel was about $10 per barrel higher than the March 2002 average price.

Supplier of Last Resort Working Group Update

The Supplier of Last Resort (SOLR) Working Group was reconvened by Commission staff on March 25 to discuss principles governing the approval of an natural gas supplier as the alternative SOLR, which would replace the natural gas distribution company as the default supplier. Under the Natural Gas Choice and Competition Act, the Commission must promulgate regulations to prescribe the qualifications and standards that must be met by an alternative SOLR and to establish a cost recovery mechanism. Commission staff is in the process of developing a strawman proposal for circulation to the SOLR Working Group this summer.

Pennsylvania Natural Gas Shopping Statistics

These are the results of the Pennsylvania Office of Consumer Advocate's (OCA) survey of Pennsylvania's gas distribution companies to determine the number and percentage of residential customers served by alternative gas suppliers. The data in these tables reflect information as of April 1. The information is updated on a quarterly basis at OCA's website (www.oca.state.pa.us).

Company	Total Customers	Total Customers Served by Alternative Suppliers	Percent of Customers Served by Alternative Suppliers
Columbia Gas	355,671	86,974	24.4
Dominion Peoples	327,767	95,725	29.2
Equitable Gas	241,135	21,591	9.0
National Fuel Gas	202,740	0	0
PECO Gas	411,412	1,235	0.3
PG Energy	139,959	0	0
PPL Gas	65,570	0	0
TW Phillips	55,972	0	0
UGI Gas	263,144	4,186	1.6
Valley Cities, NUI	4,204	0	0
Totals	**2,067,574**	**209,711**	**10.1**

Natural Gas Supplier Licensing

Quarterly Activity for the period of January 1 to March 31, 2003.

78 active licenses
0 licenses canceled
0 licenses approved
5 applications pending

Telephone Terms

NXX refers to the first three digits of the seven digit telephone number after an area code. A single NXX contains 10,000 individual telephone numbers.

Thousands Block Number Pooling (1K Pooling) involves the allocation of a 10,000 number NXX into blocks of ten 1,000 numbers. All ten 1,000 blocks of the NXX are allocated within one rate center, but can be allocated to multiple service providers.

NPA stands for Numbering Plan Area, also called an area code.

LNP refers to Local Number Portability, which allows customers to keep their same telephone number when switching carriers, as long as they remain in the same local area.

Overlay Area Code refers to an area code that overlays another existing area code, which results in two (or more) area codes in the same geographic region.

Area Code Relief Plan is a plan that is needed when an existing area code is running out of NXXs that can be assigned to carriers.

NXX Pooling in 814

814 NPA Number Pool

This pool was opened on Nov. 6, 2002. The 814 area code pool is part of the Federal Communications Commission's (FCC) **National Pooling Rollout Schedule,** which prescribes a schedule of pools to be conducted in Numbering Plan Areas (NPAs) around the country. The 814 pool is a voluntary pool, since only two of the 177 rate centers in 814 are in the top 100 Metropolitan Statistical Areas (MSAs).

The FCC decided that only NPAs in the top 100 MSAs would be mandatory pools. At this point, 15 of the 25 Local Number Portability (LNP) capable carriers operating in 814 have agreed to pool. By industry consensus, there are 114 rate centers that have pooling. The carriers are also under the obligation that once they have agreed to participate in the pool, they are obligated to continue that participation. A carrier may not decide to opt out of the pool once it has chosen to participate.

NXX Reclamation

The PUC is continuing its number conservation measures as delegated by the Federal Communications Commission (FCC) with the administration of **NXX Code Reclamation**. NXX code reclamation involves the reclaiming of NXX codes that have not been activated by carriers within six months, and, have not had telephone numbers assigned to end users.

If the code has not been activated, or the company is not requesting an extension, the PUC will issue an order that directs the North American Numbering Plan Administrator (NANPA) to reclaim the NXX code. As of February 2003, approximately 237 unused NXXs have been returned to NANPA since the PUC's reclamation authority began.

NXX Code Reclamation and 1K Pooling are two number conservation measures that the PUC believes have contributed to extending the life of Pennsylvania's area codes. As indicated in the article below, the exhaust dates for various Numering Planning Areas (NPAs) in Pennsylvania have been extended by NANPA. In June 2003, NANPA revised the exhaust dates for various NPAs in the country based on the latest Numbering Resource Utilization Forecast (NRUF) data.

Exhaust Dates for Area Codes

412/724/878 – By December 1999, the industry voted to recommend an overlay of the area codes 724 and 412 because both were projected to exhaust. The scheduled implementation date for 878 was August 2001, however, as part of the industry consensus plan 878 would not be opened until either 724 or 412 is exhausted. As of February 2003, 137 NXXs remain in 412 and 57 remain in 724. Because of incorporating the unopened 878 NPA into the exhaust equation, the exhaust date for 412/724/878 is projected to be 2023.

570/717 – By June 2000, the 570 area code was in need of a relief plan. The industry voted to implement an overlay for 570. In May 2001, the industry also voted to recommend an overlay to relieve the 717 area code. Both consensus plans have been submitted to the PUC. Since conservation efforts have pushed back the projected exhaust dates for both NPAs until 2006, the plans are still pending PUC action. As of February 2003, 179 NXXs remain in 717 and 197 remain in 570.

215/267 and 610/484 – In January 2000, the industry submitted a relief plan to the Commission for two new overlays (445 and 835, respectively) of the 215/267 and 610/484 area codes. However, the consensus plan recommended that these new overlays would not be opened until three months prior to exhaust of both underlying area codes. At this point, neither the 445 nor the 835 has been opened, since the projected exhaust dates for 215/267 and 610/484 have been pushed back to 2008 and 2005, respectively. As of February 2003, 10 NXXs remain in 215, 229 remain in 267, four remain in 610, and 172 remain in 484.

814 – The industry met Nov. 13, 2002, to determine if and when area code relief is needed for 814. The industry agreed to postpone the filing of the relief planning document with the Commission. The industry also agreed to meet in June 2003 to review the status of the 814 NPA numbering resources and determine if the relief petition needs to be filed with the Commission. As of February 2003, 214 NXXs remain in 814.

Additional Numbering Resources

Telecommunications carriers who have numbering resources in Pennsylvania are benefiting from a recent delegation of authority to state commissions from the FCC's *Third Report and Order*. State commissions can now provide relief to telecommunications carriers for additional numbering resources in a given rate center if the company cannot meet the demand for resources through its current inventory. The FCC also directs that the request must be for specific customer demand. Since September 2002, eight carriers, including one wireless carrier, have requested relief from the PUC regarding additional numbering resources for specific customer demand.

Extended Area Service Task Force

The PUC recently created a working group to review the Extended Area Service (EAS) regulations. The EAS Task Force will be meeting over the next several months to develop a report containing recommended changes to the current EAS regulations. The EAS regulations provide a means for telephone company local calling areas to be broadened as populations and customer calling patterns change. The current EAS regulations were originally adopted in 1989, and were last amended in 1993. But the telecommunications industry has changed significantly since that time, and the PUC decided that the EAS requirements needed to be reviewed to more accurately reflect the current market situation.

The Task Force is made up of representatives of the various telecommunications industry sectors – incumbent local exchange carriers (ILEC), competitive local exchange carriers (CLEC) and interexchange carriers (IXC), as well as the State Office of Consumer Advocate (OCA) and PUC staff members. Representing those groups at the first meeting of the Task Force were AT&T, Verizon, MCI, the Pennsylvania Telephone Association, North Pittsburgh, D&E Communications, Frontier Companies, Sprint/United, and the OCA. The first meeting was an introductory meeting, with PUC staff outlining the purpose and schedule for the Task Force. A list of suggested issues to address was presented by PUC staff, with more issues to be added by the members during the months to follow.

The Task Force has six months to complete its review, at which time a report with the members' recommendations must be submitted to PUC staff. The PUC staff will in turn prepare a report that will be presented to the Commission for further action.

Performance Measurement and Remedies Review

The PUC has hired the consulting firm of Doherty & Company Inc. to conduct a review and evaluation of Performance Metrics and Related Remedies of Verizon Pennsylvania Inc. This review is required by the PUC's Dec. 10, 2002, order on Performance Measures and Remedies for Wholesale Performance for Verizon (Docket Number M-00011468).

The review allows the PUC and the competitive local exchange carriers to determine if Verizon's processes for calculating and reporting performance metrics and remedies produce accurate and reliable results, and if Verizon is providing nondiscriminatory access and interconnection to its network and Operations Support Systems (OSS). The consultant's work is projected for completion in November 2003, and public release of the consultant's report is projected to occur in December 2003.

Telecommunications Relay Service

The Pennsylvania Telecommunications Relay Service (TRS) is available to enable most deaf, hard of hearing and/or persons with speech and language disorders to communicate by telephone. When a person who is impaired initiates a call, the caller keyboards what he or she wants to say, and their message is relayed by a specially trained operator called a communications assistant (CA), who voices or relays the message to the person being called. That individual's voiced responses are keyboarded to the caller by the CA.

The TRS provides telephone service that is functionally equivalent to that available to hearing persons at no additional cost to the users. The service is funded by a state surcharge imposed on every landline telephone line. The money collected from the TRS surcharge also funds the Telecommunication Device Distribution Program (TDDP), which provides telecommunication equipment to qualifying people with disabilities, enabling them to make and receive telephone calls independently. The Department of Labor and Industry's Office of Vocational Rehabilitation administers the TDDP Program, and the equipment is currently being distributed to qualified persons by the Statewide Independent Living Council (SILC). The PUC is responsible for the oversight of these programs, and for the calculation of the TRS surcharge.

The TRS surcharge is recalculated annually, based on the cost to provide the services and the number of access lines in the state. By PUC order entered May 29, the amount of the surcharge will be $0.08 for residential access lines and $0.17 for business access lines for the year beginning July 1.

PECO MST Developments

The PUC approved commercial and residential Market Share Threshold (MST) processes via orders on Feb. 6 and May 1, 2003, respectively. These orders provided for a price-based competitive bidding process for the assignment of residential and small commercial PECO customers to alternative electric generation suppliers. Three electric generation suppliers submitted valid competitive bids to serve over 64,000 small commercial accounts at a 1.25 percent discount from PECO's current rate.

As of April 8, a total of 9,820 customers elected to opt-out of the MST Small Commercial program, as permitted under the terms of the plan. Service commenced for those small commercial customers who accepted their assignment on May 1. The PUC's order approving the commercial MST process was the subject of an appeal filed by Strategic Energy L.L.C., which withdrew its appeal after failing to secure a court-ordered stay of the competitive bidding process.

The residential MST Process was organized into two phases. Competitive bids for the first phase were due on May 15. Customers assigned as a result of this process would have begun service with alternative suppliers in July 2003. None of the eligible suppliers submitted bids at that time. A second auction for residential customers will occur in September 2003. The available customer pool for the second phase will be 375,000 accounts.

Commission Approves PGW Restructuring Tariff

The 1999 Natural Gas Choice and Competition Act brought PGW under the jurisdiction of the PUC, and made it subject to its regulation and control with the same force as if it were a public utility. PGW submitted its restructuring plan to the PUC on July 1, 2002. Various parties filed formal complaints in response to the plan, and, on March 21, the PUC approved PGW's restructuring plan. The complaints were granted in part, and dismissed in part, consistent with the order.

The restructuring plan will bring PGW into compliance with the Public Utility Code on issues including, but not limited to, customer choice, consumer protection and universal service. PGW's natural gas customers will be able to choose their natural gas supplier beginning on Sept. 1. Most other terms of the approved restructuring plan will take effect immediately.

Another issue addressed by the PUC was PGW's senior citizen discount program. The PUC approved PGW's proposal, which limited the discount to those receiving it as of Sept. 1. The PUC concluded that PGW's proposal was consistent with Section 2212(r) of the Public Utility Code, which addressed PUC authority regarding the program. The PUC denied the City of Philadelphia's petition to intervene and submit an alternative senior citizen discount proposal.

Telecommunications News

Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company

C-20028114 Jan. 7, 2003

In this decision, the PUC addressed a formal complaint filed by Level 3 Communications against Marianna & Scenery Hill Telephone Company (M&SH) that involved a dispute over compensation for access charges incurred by M&SH as a result of Level 3's numbering administration practices at the Washington, Pa. rate center. When MS&H rerouted telephone traffic, the calls failed to be completed, triggering the filing of the complaint by Level 3. The PUC concluded that it lacked subject matter jurisdiction over the compensation issues since the traffic in question was interstate. As to the numbering administration practices of Level 3, the PUC asserted jurisdiction, as delegated by the FCC. By a separate action, the PUC convened a generic investigation regarding virtual NXX codes, which is pending at Docket No. I-00020093.

Petition of Rural ILECs for a 36-Month Suspension of Interconnection Requirements

P-00971177 Jan. 15, 2003

This case involves petitions for relief filed by two groups of rural incumbent local exchange carriers (ILECs) seeking a 36-month suspension of interconnection obligations mandated by the Federal Telecommunications Act of 1996. The Act obliged local phone companies to allow competitors to interconnect to their networks and to lease parts of the networks which competitors then resell to customers. The PUC had previously granted a two-year suspension to rural phone companies, plus three additional one-year suspensions to allow them time to prepare for compliance with the interconnection obligations. The PUC ordered that the request of the joint petitioners (comprised of 28 rural incumbent local exchange carriers) for a 36-month suspension of interconnection obligations be denied.

Petition of US LEC of Pa. Inc. for Arbitration with Verizon Pa. Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996

A-310814F7000 April 17, 2003

The PUC adopted a final opinion and order in the above captioned arbitration proceeding which involved seven unresolved and contested issues. Some of the unresolved issues have been addressed in past arbitration proceedings. The most significant of these seven issues concerned the use and assignment of Virtual NXX (VNXX) codes and the appropriate compensation that should apply to VNXX traffic. On this issue, the PUC ruled that the merits on the use and assignment of VNXX codes will be determined in the pending generic VNXX investigation at Docket No. I-00020093. Regarding compensation for

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FCC Activity

Local Telephone Competition

In December 2002, the Federal Communications Commission (FCC) released data on local telephone competition in the United States. The data demonstrated that incumbent local exchange carriers (ILECs) have 167 million switched access lines while competitive local exchange carriers (CLECs) have 22 million switched access lines. Total CLEC switched access lines increased by 10 percent during the first half of 2002, from 19.7 million to 21.6 million lines. During the first half of 2002, cable telephony lines increased by 16 percent to 2.6 million lines, from approximately 2.2 million. ILECs report providing about 29 percent more unbundled network elements (UNE) loops with switching (7.5 million) to other carriers at the end of June 2002 and about 10 percent more UNE loops without switching (4.1 million). Also, there are 129 million mobile wireless telephone service subscriptions.

High-Speed Connections to the Internet

Also in December 2002, the FCC released data as of June 30, 2002, on the deployment of high-speed connections to the Internet in the United States. High-speed lines connecting homes and businesses to the Internet increased by 27 percent during the first half of 2002, from 12.8 to 16.2 million lines. Of the 16.2 million, 14 million served residential and small business customers representing a 27 percent increase in six months. At the end of June 2002, the presence of high-speed service subscribers was reported in 50 states and in 84 percent of the zip codes. High-speed service provided by cable modem increased 30 percent during the first six months of 2002, from 7.1 million to 9.2 million. The FCC defines high-speed lines as those that provide services at speeds exceeding 200 kilobits per second (kbps) (or 20 Megabits per second) in at least one direction.

UNE Triennial Review

On Feb. 20, the FCC adopted new rules concerning the obligations of ILECs to provide network elements on an unbundled basis to competing carriers. Since the FCC has yet to release the order, the PUC's observations are based upon press releases and oral comments. It appears that the FCC has preserved a role for the states in determining whether the failure to provide access to a particular network element impairs the ability of a CLEC to provide the services it seeks to offer.

Concerning UNE-P and switching, it appears that the states will retain an ability to determine whether these elements should be available to carriers on an unbundled basis. Under the new rules, states may have nine months to complete proceedings determining whether switching should be available on an unbundled basis for mass market customers.

Furthermore, the FCC appears to have taken a major step towards deregulation of ILEC broadband networks by removing unbundled fiber loops to the home, line sharing, and packet switching from the list of available UNEs.

FERC Shifts Focus in Rules for Wholesale Markets

On April 28, FERC issued a White Paper explaining how its Final Rule on a wholesale market platform will differ from its controversial proposal for a single standard market design (SMD) advanced in July 2002. Moving away from the concept of a single SMD, FERC plans to follow an increasingly flexible approach that recognizes regional economic differences. While FERC emphasizes its continuing commitment to customer-based, competitive wholesale markets, it notes that its Final Rule will focus on the formation of regional transmission organizations (RTOs) and on ensuring that all independent transmission organizations have sound wholesale market rules.

One key departure from its original proposal is that FERC will not require public utilities to create or join an Independent Transmission Provider. Rather, FERC indicates that the Final Rule will require public utilities (except for jurisdictional electric power cooperatives that only serve retail load) to join an RTO or Independent System Operator (ISO).

Notably, the Final Rule will also allow for phased-in implementation that is tailored to each region and allows modifications within each region. In addition, FERC intends to permit waivers of any features of the wholesale market platform if a specific RTO or ISO can demonstrate that the costs of implementing a certain feature will outweigh its benefits.

For the basic wholesale market platform, FERC plans to rely extensively on existing principles, such as independence, scope and RTO configuration, which were set forth in Order No. 2000 for RTOs, while adding some features that it believes are necessary for effective wholesale power markets. Specific examples cited by FERC are the need for market power mitigation measures and prohibitions against flawed market designs. FERC also stresses the importance of ongoing market monitoring.

In response to comments that certain features of FERC's original proposal would infringe on state jurisdiction, FERC plans to eliminate some of those requirements from the Final Rule. For instance, FERC will not include a minimum level of resource adequacy, but rather will initially defer to the states to implement such requirements, and allow the RTO or ISO to do so only when a state makes that request or does not act.

FERC invites interested parties to comment on the issues described in the White Paper. The Final Rule is expected to be issued later this year.

Congress Working on Federal Energy Legislation

Congress is currently working on comprehensive energy legislation, several drafts of which include an electricity title dealing with wholesale market design, federal and state jurisdiction and competition issues. Brief summaries of key features of the legislation are listed below.

The House passed H.R. 6, a 768-page bill on a floor vote on April 11 (the "Energy Policy Act of 2003"). The bill includes provisions that would:

- Give the Federal Energy Regulatory Commission (FERC) some backstop authority over the siting of necessary interstate transmission facilities;
- Extend open access obligations to some federal power marketing agencies such as Tennesee Valley Authority (TVA), which were previously immune from the provisions of the Federal Power Act, and require them to participate in regional transmission organizations (RTOs);
- Provide for a limited "native load" exception to the open access provisions of the Federal Power Act for regions of the country not presently incorporated into RTOs;
- Establish a privately operated Electric Reliability Organization to prescribe mandatory, enforceable standards for transmission grid reliability without impinging on RTO operations or authority;
- Repeal the Public Utility Holding Company Act of 1935, while preserving and transferring some functions to FERC;
- Offer incentives for state smart metering, net metering, renewable energy and real-time pricing programs;
- Prohibit "round trip" trading by energy marketers; and
- Increase FERC's penalty authority.

In the Senate, Committee Chairman Pete Domenici (R-N.M.) introduced S. 14 (the "National Energy Policy Act of 2003") on May 6. Around mid-May, debate was put on hold until early June so the Senate could focus on the Administration's tax relief package.

The bill will prevent FERC from issuing a final order for a nationwide market design until July 2005. The bill also supports voluntary membership in RTOs, and protects access to transmission lines by bundled retail electric utilities to meet "native load" obligations. The bill further requires FERC to establish transmission pricing policies and repeals Public Utility Regulatory Policy Act's (PURPA) mandatory purchase agreement. It also repeals the Public Utility Holding Company Act, while providing that round-trip trading, a tactic for artificially raising power prices, is a violation of the Federal Power Act.

Teleco News

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VNXX traffic, the PUC ruled that compensation will be in accordance with "Bill and Keep" as contained in the FCC's ISP Remand Order at CC-Docket No. 96-98.

Petition of Global NAPs South Inc. for Arbitration pursuant to 47 U.S.C. §252(b) of Interconnection Rates, Terms and Conditions with Verizon Pa. Inc.
A-310771F7000 April 17, 2003

In an arbitration proceeding between Global NAPs South Inc. (GNAPs) and Verizon Pa. Inc., the PUC adopted a final opinion and order involving 14 issues. Some of the arbitrated issues have been addressed in past arbitration proceedings. The most significant of these issues concerned the following two matters of first impression: (1) the use and assignment of Virtual NXX (VNXX) codes and the appropriate compensation that should apply to VNXX traffic; and (2) the type of compensation that should apply for calls between carriers when the CLEC defines local calling areas differently than the incumbent local exchange carrier (ILEC). With regard to the VNXX issue, the PUC ruled that the merits on the use of VNXX codes will be determined in the pending generic VNXX investigation at Docket No. I-00020093. The PUC, in considering the compensation for VNXX traffic, directed that it will be in accordance with "Bill and Keep" as contained in the FCC's ISP Remand Order at CC-Docket No. 96-98. With regard to the local calling area issue, the PUC directed that reciprocal compensation apply to calls between those exchanges that the PUC approved in the local calling area section of the ILEC's tariff. For those exchanges that are different than Commission-approved ILEC local calling areas, the PUC directed compensation on an access charge basis pending the outcome of a generic investigation.

Investigation into Voice over Internet Protocol
M-00031707 May 1, 2003

The PUC initiated a proceeding on "Voice over Internet Protocol" (VoIP) service seeking comments from consumers, the telecommunications industry and other interested parties that will assist the PUC in addressing jurisdictional issues raised by the development of this service. As described by the PUC, VoIP is a relatively new technology that allows voice to be transmitted and received in a digital format through the use of IP data packet transmission. The PUC requested all relevant input and posed specific questions designed to gather information about the different types of VoIP service, as well as the manner in which it is offered to consumers. The PUC's order was published in the *Pennsylvania Bulletin* on May 17. Comments are due on July 1, with reply comments due on July 31.