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March 28, 2007

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

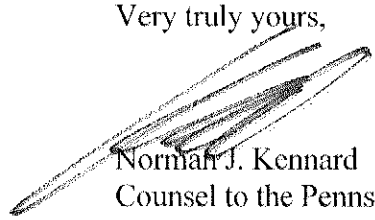
Re: Proposed Modifications to the Application Form for Approval of Authority to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania; Docket No. M-00960799; **COMMENTS OF THE PENNSYLVANIA TELEPHONE ASSOCIATION TO COMMISSION TENTATIVE ORDER**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and ten (10) copies of the Pennsylvania Telephone Association's Comments in the above-captioned matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Norman J. Kennard
Counsel to the Pennsylvania Telephone Association

NJK/bks
Enclosure
cc: David Freet

BEFORE
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 PENNSYLVANIA TELEPHONE ASSOCIATION TO COMMISSION TENTATIVE ORDER

Dated: March 28, 2007

I. INTRODUCTION

At its Public Meeting of December 21, 2006, the Pennsylvania Public Utility Commission ("Commission") entered a Tentative Order proposing certain revisions to the application form used by new entrants seeking certification to provide telecommunication services in the Commonwealth. The Tentative Order was published in the Pennsylvania Bulletin.[1]

The Pennsylvania Telephone Association ("PTA")[2] appreciates the opportunity to present these Comments to the Commission for its consideration.

II. PTA COMMENTS

A. CLEC Certification Confers a Presumption that CLEC Service Is Being Provided.

The original application form was adopted in 1996 following the enactment of the Telecommunications Act of 1996 ("TCA-96"). The Commission, prior to adopting the form for applications, recognized the purpose of TCA-96 and the national policy framework to be implemented thereunder stating, as follows:

> As reflected in the stated purpose, the Act sets forth a national policy framework to be implemented and coordinated in cooperative fashion by the Federal Communications Commission (FCC) and the various state commissions. The primary themes of this national telecommunications policy framework, as reflected in the stated purpose, are as follows: (1) to move away from a fully regulated telecommunications business environment towards a deregulated fully competitive business environment in all markets and submarkets; (2) to accelerate advanced deployment of the Nation's communications infrastructure; and (3) to assure universal service to all

[1] 37 Pa. B. 486 (January 27, 2007).

[2] The Pennsylvania Telephone Association is the state's oldest trade organization for the local exchange carrier industry. PTA represents more than 30 telecommunications companies that provide a full array of services over wire line networks. PTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities. As referenced herein, PTA represents its member companies that have not filed comments individually on this topic.

> Americans through equal access to the Nation's telecommunications infrastructure.[3]

In other words, TCA-96 was designed to assure that the expansion of competition leads not only to positive results for users of telecommunications services but does so in a manner that gradually leads to increased deregulation of incumbents so that a level playing field is maintained among competitors.

In the ten years that have ensued, the importance of the "national policy framework to be implemented and coordinated in cooperative fashion by the Federal Communications Commission (FCC) and the various state commissions" has become even more important. The PTA appreciates the Commission's ongoing efforts to deal with the changing technology and environment, and also recognizes the practical ramifications and the fact that often "the devil is in the details." Assuring equal and fair footing among competitors in furtherance of the public interest requires lots of details.

It is important for the Commission to understand that certification in and of itself may result in benefits to the new certificate holder as well as ramifications, obligations and liabilities to the existing carrier. These dynamics need to be understood to keep the competitive playing field level and promote the public interest in addressing certain matters raised herein.

For example, if a Competitive Access Provider, which provides services that are not used to access the public switched network, is nevertheless considered a telecommunications carrier, such certification alone and the filing of a tariff (even if the services in the tariff are not in fact offered) has been held by the FCC to entitle an entity to certain "benefits" such as attaching to poles. Thus, it is important that the ramifications of

[3] *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799.

an action be understood and, when developing the form, that adequate information and sufficient detail be provided as to exactly what service an entity will be providing and exactly what facilities will be used and what services will be offered, so that the Commission can fully evaluate whether granting a certificate is truly in the public interest or is merely a sham filing intended only for the private benefit of a single corporation.

In the past, the information provided in certificate applications has often been completely inadequate for such a full assessment and determination regarding the carrier's intent, operations, interconnection with the public switched network, and the associated public interest benefits. This dearth of reasonably detailed information in the past has necessitated a great deal of effort by the PUC staff and third parties to ascertain exactly what the facts are or are not, and whether the grant of a certificate is in the public interest. In certain cases, Parties have raised and litigated valid issues. In many instances, where applicants and their business plans are consistent with the national framework previously discussed, those applications have been very quickly processed and rightly so. On the other hand, in instances where there have been valid issues raised and the certification has appeared to have been inconsistent with this framework or there were clear efforts to game the system, the Judges trying the cases have found valid issues that had to be addressed and matters of first impression resolved.

These instances highlight the fact that the Commission should continue to guard against any blanket policy that any application for authority that purports to provide competition in any form is somehow automatically in the public interest. The Commission should continue its policy of being mindful that the decisions it makes in granting certificates have far reaching consequences in furthering true competition versus granting

certain parties authority where only a private benefit to a corporation is achieved instead of serving the full public interest.

This can be accomplished by the continued requirement and insistence that parties seeking certification as telecommunications carriers provide sufficient information to prove they in fact will actually meet all obligations required of true carriers and in return be granted certain rights rather than just be carriers in name only and achieve rights to which they are not truly entitled. It should be also be noted that bankruptcies of numerous carriers have in fact hurt the industry as a whole, as has poor service, noncompliant entities and those whose business plans are to siphon monies away from broadband deployment, universal service and providers of last resort. We urge this Commission to promote competition that treats all competitors fairly and on a level playing field, but not to rubber stamp applications and streamline a form in abdication of their responsibility to protect the broader public interest and thus to assure that the ramifications of any Commission actions have been considered and those actions are truly in the public interest.

B. Vice Chairman Cawley Adjudication Issue

The Statement and Directed Questions of Vice Chairman Cawley recognizes that "the market-entry process of telecommunications competitors in Pennsylvania has not been without problems, and, in certain situations, it has taken place only after much delay in litigation costs." The Vice Chairman's Statement also appropriately frames the Commission's balance as the "work to simplify [these] regulatory processes and procedures,

while striving to protect the legitimate interests and the public safety and welfare of end-user consumers of intrastate telecommunication services."[4]

The PTA member companies have been careful to file and litigate protests only where legitimate questions are raised. Most notably was the Commission's recent decision in the *Sprint Wholesale CLEC* case[5] and the *Core CLEC Application.*[6] The fact that the ILEC protests were affirmed in both cases by the Administrative Law Judge is evidence that legitimate issues were raised. Certainly, the *Sprint Wholesale CLEC* case involved issues that are being debated on a national level. It is worth noting, also, that Blue Ridge, the underlying retail service provider, is in the process of being certificated by the Commission, so that not just the wholesale service provider is subject to Commission review. As was noted in the Commission's Order in the *Sprint Wholesale CLEC* case, regulatory oversight is appropriate to provide regulatory protections and ensure universal service.

With respect to Core, the controversy associated with the use of virtual NXX numbering and the attempt to convert interexchange calls into local calls is and will continue to be controversial on a national basis. So-called CLECs that will not establish a local presence and seek to place the network burden to transport to a distant location, not even in the originating ILEC's local calling area (or even service territory), while demanding that the ILEC pay for termination of "local traffic" is not a business model that the ILEC

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[4] Statement and Directed Questions of Vice Chairman James H. Cawley at 1.

[5] *Application of Sprint Communications Company L.P. To Amend Its Certificate of Public Convenience to Begin to Offer, Render, Furnish, and Supply Competitive Local Exchange Telephone Services to the Public in the Commonwealth of Pennsylvania*, Docket No. A- 310183F0002AMA, Opinion and Order entered December 1, 2006 ("*Sprint Wholesale CLEC*").

[6] *Application of Core Communications, Inc. for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania*; Docket No. A-310922F0002, AmA; Order Entered December 4, 2006 ("*Core CLEC Application*").

community believes is in the public interest. The Commission's Core decision is under appeal currently before the Commonwealth Court.

All other CLEC application cases, of which the PTA is aware of, at least in the last five years have settled before the Commission. These include Adelphia, Service Electric, Blue Ridge and RCN (partial at the present time).

Protesting is often times the only avenue available for the ILEC to formally engage the entrant to determine what will be requested by the CLEC and how those operations will affect the ILEC. The Commission forms do not require sufficient detail regarding facilities, operations or services for the ILEC to know what may be required. As noted previously, in these Comments, once a CLEC certificate is obtained, a presumption of legitimacy is conferred upon the certificate holder. This presents risks to the incumbent local exchange company, which may be forced to offer operational advantages to an entity that may never, in fact, provide local exchange services.

The "consolidated procedures" envisioned in the original TCA-96 implementation orders were designed to combine the certification case with a request to terminate the rural exemption. The PTA is aware of only one incidence in which a certificate and a petition to terminate the exemption were filed, consolidated and litigated, that being the application of Armstrong to operate in Citizens of Kecksburg's territory. In all other cases, the certification has been undertaken without the rural exemption being an issue. Thus, the consolidated procedures do not appear to be an issue.

With respect to procedural time limitations on CLEC application cases, parties are entitled to their due process rights. In prior cases, the incumbent local exchange carriers have had difficulties obtaining information from the CLEC. The process works best when

both parties approach the issues with an open and cooperative mind. However, this is not always the case and multiple sets of discovery and motions to compel have been required. As noted previously, the information contained in the certificate application itself is not sufficient to determine with any particular certainty what the CLEC applicant intends. Moreover, even when protested, CLEC testimony is not filed until well after the Prehearing Conference, thus causing further delay. For the most part, the hearing schedules have been set by the Presiding Administrative Law Judges to efficiently advance the case to conclusion. Generally speaking, the incumbent is provided 45-60 days within which to file responsive testimony, whereupon some rebuttal by the CLEC will ensue. Hearings are held and briefs are generally required thirty days thereafter. The delay is not always due to litigation process. In the *Sprint Wholesale CLEC* and *Core CLEC Application* cases, the Commission's decision was entered approximately 10 months after the hearings were concluded.

In summary, the PTA and other companies have sought to cooperate with the CLECs during certification proceedings and while resolving interconnection issues. The process has not been abused, however, and for the most part cases have settled. PTA and other companies do not seek any changes in Commission procedures at this point.

C. Definition of Data CLEC

The separate "subcategory" of CLEC termed a "CLEC-data only" arises from an August 17, 2000 Order of the Commission.[7] The BlueStar decision provided: "Since BlueStar is not offering voice, its certificate shall be limited to data services only." Order at

[7] *Letter-Petition of BlueStar Networks, Inc. for Waiver of Certain Tariff Requirements Pertaining to Voice-grade Service*, Docket Numbers A-310862, et al., Order entered August 17, 2000.

2. In other words, the absence of offering voice service appears to be the only delineating consideration of what is a data-CLEC. In the instructions accompanying the certification form, a data-only CLEC says: "A subcategory of CLEC authority. The authority is certified in a given Incumbent Local Exchange Carrier's (ILEC) territory; limited CLEC certificate relieves carrier of certain voice-grade obligations." The PTA is unsure of what a data CLEC might be. Information services are not regulated at all. Nor are private networks. Thus, the Commission should clarify its intended meaning of the CLEC-data only classification and undertake any other clarification on this issue as it deems necessary and then seek further comment as to such classification.

III. CONCLUSION

The Pennsylvania Telephone Association thanks the Commission for the opportunity to participate in this proceeding and respectfully requests that the Commission consider the foregoing comments.

Respectfully submitted

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