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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2003 DEC 8 4 11 PM '03

PA P.U.C.

Investigation into the ~~Commission~~ SECRETARY'S BUREAU :
of Incumbent Local Exchange : I-00030099
Carriers to Unbundle Network Elements :

ORDER CONCERNING SERVICE OF RESPONSES TO COMMISSION DATA REQUESTS

On October 2, 2003, the Commission adopted an order that established the procedural framework for this proceeding ("Procedural Order"). The Commission recognized that documents, information and other materials submitted to the Commission and provided to the parties in the course of this investigation may represent or contain proprietary or highly confidential information. Thus, the Commission simultaneously entered a Protective Order with an attached Confidentiality Agreement to ensure that such proprietary or confidential information is afforded protection from unwarranted disclosure, while permitting parties appropriate access to such proprietary or confidential information. The purpose of this unusual step was to ensure unimpeded access to such information on a timely basis, considering the extreme time constraints on this proceeding.

In its Procedural Order, the Commission stated as follows:

The Commission emphasizes that parties are not required to intervene. However, in order to fulfill the FCC's directive, certain information must be collected from CLECs, in order to evaluate Petitions. Consequently, pursuant to the Commission's authority under Sections 504, 505, and 506 of the Public Utility Code as well as the authority delegated by the FCC to conduct these proceedings, certain CLECs and Intervenors are instructed to answer the attached list of questions found in Appendix A.¹⁴ Necessary CLEC representatives may be called as witnesses under the Commission's subpoena power, if necessary. See 66 Pa. C.S. § 333(f) and (j). Any interested party must file a Petition to Intervene (if applicable) and Answer by November 14, 2003.

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¹⁴ CLEC responses to questions are due on November 14, 2003. In order to reduce the burden on the community at large, the following limited list of CLECs must file responses to the attached questions found in Appendix A:

AT&T Communications of Pa., Inc.; Adelphia Business Solutions of Pa., Inc.; Allegiance Telecom of Pennsylvania, Inc.; ATX Licensing, Inc.; Cavalier Telephone Mid-Atlantic; CEI Networks, Inc.; Choice One Communications of Pa., Inc.; ComCast Phone of Pennsylvania; CTSI Incorporated, Inc.; CTC Communications Corp.; Focal Communications Corporation of Pa.; Intermedia Communications, Inc.; Level 3 Communications; MCI WorldCom Communications, Inc.; MCImetro Access Transmission Services, LLC; Metro Teleconnect Companies, Inc.; PECO Hyperion Telecommunications; Penn Telecom; RCN Telecom Services, Inc.; RCN Telecom of Phil.; Sprint Communications Company, LP; Talk America, Inc.; TCG Delaware Valley, Inc.; TCG Pittsburgh; XO Pennsylvania, Inc., and Z-Tel Communications Inc., LLC.

A prehearing conference was held on November 25, 2003. At that conference, it became apparent that not all of the CLECs listed in footnote 14 ("the Footnote 14 CLECs") had petitioned to intervene in the proceeding, and that, because the Commission's order did not direct it, the responders to the Commission's order who had filed responses, had not served any of the parties with those responses. Clearly, if the Commission is to rely on those responses in reaching a decision in this case, all parties must be given access to them. For this reason, we will direct all parties, and the Footnote 14 CLECs who have not become parties to send to all parties copies of any responses that they have or will file with the Commission in response to its Procedural Order. The responses shall be sent by email. Access to all information in those responses shall be subject to the Protective Order entered by the Commission in this proceeding on October 3, 2003. Use of this information is thus limited to litigation in this proceeding pursuant to the Protective Order.

To avoid any misunderstanding of this directive, we emphasize that this information must be sent to parties to this proceeding. Non-party Footnote 14 CLECs should not be sent these responses as they have no litigation-related need to receive them.

To assist all parties and non-party Footnote 14 CLECs to comply with this order, we are attaching to this order a list of counsel for all parties along with their email addresses. The list also contains addresses, and where we could find them, email addresses for the non-party Footnote 14 CLECs.

A secondary problem concerning this situation is that while the parties, as well as the Commission, will have these responses, that is no guarantee that they will be offered into the record of the case. We will initially assume that the party to whom they prove favorable will offer them. However, to protect the Commission's ability to rely on them, if no party offers them by the end of the case, we will mark and admit them as our exhibits pursuant to 52 Pa. Code §5.404. We are providing notice of our intent to all parties at this point should they wish to rebut any information that may be contained in these responses.

In the course of attempting to determine which Footnote 14 CLECs have responded to the Commission's Procedural Order, we reviewed the Commission's Document Folder and our own files. That review resulted in the following list:

<u>CLEC</u>	<u>Response on File</u>	<u>Intervenor</u>
AT&T Communications of Pa., Inc.	Yes	Yes
Adelphia Business Solutions of Pa., Inc.	Yes	No
Allegiance Telecom of Pennsylvania, Inc.	Yes	Yes
ATX Licensing, Inc.	Yes	Yes
Cavalier Telephone Mid-Atlantic	Yes	Yes
CEI Networks, Inc.	No	No
Choice One Communications of Pa., Inc.	Yes	Yes
Comcast Phone of Pennsylvania	Yes	No
CTSI Incorporated, Inc.	Yes	Yes
CTC Communications Corp.	Yes	No
Focal Communications Corporation of Pa.	Yes	Yes
Intermedia Communications, Inc.	No	No
Level 3 Communications	Yes	No
MCI WorldCom Communications, Inc.	Yes	Yes
MCImetro Access Transmission Services, LLC	Yes	Yes
Metro Teleconnect Companies, Inc.	No	No
PECO Hyperion Telecommunications	Yes	No
Penn Telecom	Yes	Yes
RCN Telecom Services, Inc.	Yes	Yes
RCN Telecom of Phil.	Yes	Yes
Sprint Communications Company, LP	Yes	Yes
Talk America, Inc.	Yes	Yes
TCG Delaware Valley, Inc.	Yes*	Yes*
TCG Pittsburgh	Yes*	Yes*
XO Pennsylvania, Inc.	Yes	Yes
Z-Tel Communications Inc., LLC.	Yes	Yes

* These are subsidiaries of AT&T; it is not clear whether AT&T's filing encompasses these companies. AT&T should clarify this ambiguity as soon as possible.

At this point, it appears that three Footnote 14 CLECs (CEI Networks, Intermedia, and Metro Teleconnect) have not complied with the Commission's Procedural Order. They will be reminded to do so in this order.

Finally, as a housekeeping matter, the Commission's Bureau of Fixed Utility Services is attempting to compile the information from these responses into a database for the Commission. To ease that task, we have been asked to order all parties and Footnote 14 CLECs

to provide their responses to Richard Watson of FUS in electronic format, preferably Excel. We will so order.

Order

THEREFORE, IT IS ORDERED:

1. That no later than December 4, 2003, all parties and Footnote 14 CLECs who have not become parties shall send to all parties copies of any responses that they have or will file with the Commission in response to its Procedural Order. The responses shall be sent by email. Access to all information in those responses shall be subject to the Protective Order entered by the Commission in this proceeding on October 3, 2003. Use of this information is thus limited to litigation in this proceeding pursuant to the Protective Order.
2. That CEI Networks, Intermedia, and Metro Teleconnect shall comply with the Commission's Procedural Order immediately if they have not already done so.
3. That no later than December 4, 2003, all parties and Footnote 14 CLECs who have not become parties shall email electronic copies of their responses to rwatson@state.pa.us. The preferred format is Excel.

Date: November 26, 2003


MICHAEL C. SCHNIERLE
Administrative Law Judge


SUSAN D. COLWELL
Administrative Law Judge

to provide their responses to Richard Watson of FUS in electronic format, preferably Excel. We will so order.

Order

THEREFORE, IT IS ORDERED:

1. That no later than December 4, 2003, all parties and Footnote 14 CLECs who have not become parties shall send to all parties copies of any responses that they have or will file with the Commission in response to its Procedural Order. The responses shall be sent by email. Access to all information in those responses shall be subject to the Protective Order entered by the Commission in this proceeding on October 3, 2003. Use of this information is thus limited to litigation in this proceeding pursuant to the Protective Order.

2. That CEI Networks, Intermedia, and Metro Teleconnect shall comply with the Commission's Procedural Order immediately if they have not already done so.

3. That no later than December 4, 2003, all parties and Footnote 14 CLECs who have not become parties shall email electronic copies of their responses to riwatson@state.pa.us. The preferred format is Excel.

Date: December 1, 2003


MICHAEL C. SCHNIERLE
Administrative Law Judge


SUSAN D. COLWELL
Administrative Law Judge