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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into the Obligation :
of Incumbent Local Exchange : I-00030099
Carriers to Unbundle Network Elements :

SECRETARY'S BUREAU
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**ORDER GRANTING AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC'S
MOTION TO COMPEL THE VERIZON COMPANIES TO ANSWER CERTAIN
INTERROGATORIES**

BACKGROUND

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This proceeding is an outgrowth of the Federal Communication Commission's *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order (rel. Aug. 21, 2003)(FCC 03-36), as corrected by errata, FCC 03-227 issued on September 17, 2003. (hereinafter "Triennial Review Order" or "TRO"). In reaction to that order, on October 2, 2003, the Commission adopted an order that established the procedural framework for this proceeding ("*Procedural Order*"). The purpose of this order is to dispose of a discovery dispute that has arisen between AT&T Communications of Pennsylvania, LLC and Verizon Pennsylvania, Inc..

On November 21, 2003, AT&T served its First Set of Interrogatories and Requests for Production of Documents on Verizon. On December 5, 2003, Verizon filed objections to most, if not all, of AT&T's discovery requests. On December 9, 2003, AT&T filed a Motion to Overrule Objections and to Compel Responses to Its First Set of Interrogatories and Requests for Production of Documents. On December 11, 2003, Sprint Communications Company, L.P. and the Pennsylvania Carriers Coalition, filed letters supporting AT&T's motion. On December 15, 2003, Verizon filed a Response to AT&T's motion. Also, on December 12, 2003, AT&T filed a letter concerning its motion. Because that letter concisely summarizes the remaining dispute between the parties, we will quote it at some length here:

I am writing to confirm for the Presiding Officers and the Commission that Verizon has not provided the data that that were

the subject of AT&T Communications of Pennsylvania, LLC.'s Motion to Overrule Objections and to Compel Responses to the First Set of Interrogatories and Requests for Production of Documents to Verizon Pennsylvania Inc., which was filed with the Commission on December 9, 2003. Accordingly, AT&T still desires to pursue its Motion to obtain complete responses to its discovery requests.

AT&T's Motion was filed before Verizon submitted its formal responses to AT&T's First Set of Interrogatories, based on counsel for Verizon's representation that it would not provide certain information that had been requested in AT&T's First Set of Interrogatories, Nos. I-1, I-13, I-15, I-16, I-17, I-19, I-20 and I-21. The data that Verizon indicated that it would not provide involved the number of unbundled loops, explicitly disaggregated between residential and business lines, that Verizon provides to those competitive local exchange carriers it claims meet the "trigger" requirements for self-provided switching under the FCC's Triennial Review Order. This data was requested for each wire center in each Metropolitan Statistical Area in which Verizon is seeking a finding of "non-impairment" under the TRO's self-provisioning switching trigger.

Verizon served its written responses to AT&T's First Set of Interrogatories electronically on the evening of December 10. Hard copies were received by overnight mail on December 11. We have confirmed that those responses did **not** include the breakdown of unbundled loop data that had been requested in AT&T's First Set of Interrogatories, Nos. I-1, I-13, I-15, I-16, I-17, I-19, I-20 and I-21. Accordingly, Verizon should be compelled to provide that information for the reasons explained in AT&T's Motion.

DISCUSSION

The dispute here is over AT&T's request that Verizon provide the number of unbundled loops, explicitly disaggregated between residential and business lines, that Verizon provides to those competitive local exchange carriers it claims meet the "trigger" requirements for self-provided switching under the FCC's Triennial Review Order. This data was requested

for each wire center in each Metropolitan Statistical Area in which Verizon it is seeking a finding of "non-impairment" under the TRO's self-provisioning switching trigger.

Verizon argues that this information is not relevant because the Commission need not, and may not, distinguish between residential and small business customers in determining whether certain "triggers" have been met:

The FCC's mandatory triggers are based on "mass market" customers, which consist of both residential customers and small business customers. *See, e.g., TRO ¶ 430, 459 note 1402* ("Mass market customers are residential and very small business customers – customers that do not, unlike larger businesses, require high-bandwidth connectivity at DS1 capacity and above."). In order to determine whether customers qualify as mass market customers, this Commission need not and should not determine whether they are residential or business customers, but rather whether the customers are "analog voice customers that purchase only a limited number of POTS lines and can only be economically served via DS0 loops." *TRO ¶ 497.*

(Verizon Response to Motion to Compel at 6). Verizon also claims not to have the requested information readily available. Verizon admits that it routinely collects such information when a competitor orders an unbundled loop, but Verizon claims that it uses such information only for directory listing purposes. Verizon claims that it does not tabulate this information in any fashion that would permit it to respond to AT&T's request without a "special study." (Verizon Response to Motion to Compel at 4-5).

AT&T argues that the FCC in the *TRO* order recognized that there are differences between the residential and small business markets, citing Note 432. (AT&T Motion to Compel at 5). AT&T also argues that the Commission itself in the *Procedural Order* directed Verizon to provide the information that AT&T now seeks. AT&T also avers that Verizon failed to provide this information in response to the Commission's request. In its Response, Verizon does not deny that it failed to fully respond to the Commission's request; in fact, Verizon has not even addressed this issue.

In Appendix A to the *Procedural Order* the Commission set forth series of questions that a petitioning ILEC (like Verizon here) should answer when it filed its petition. Among those questions were the following (for ease of reference, we have included the Verizon response with each question):

RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA
REQUEST NO. 4, DATED OCTOBER 2, 2003, SUBMITTED IN
DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS
OF ILECS TO UNBUNDLE NETWORK ELEMENTS)
(APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the number of business voice grade equivalent lines that CLECs are serving through own facilities.

RESPONSE:

Attached is the proprietary response detailing CLEC facilities based business access listings as of June 2003. The source of this data was the E911 database. Assuming the CLEC's have accurately entered their E911 listings, these listings should include the UNE Loops included in Appendix B. Section A – Question 2. Unbundled Loops were not broken out by Business and Residential in Appendix B A-2.

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RESPONSE OF VERIZON PENNSYLVANIA INC. TO DATA
REQUEST NO. 8, DATED OCTOBER 2, 2003, SUBMITTED IN
DOCKET I-00030099 BEFORE THE PA PUC (OBLIGATIONS
OF ILECS TO UNBUNDLE NETWORK ELEMENTS)
(APPENDIX A)

REQUEST:

For each wire center in your territory in Pennsylvania, please provide the estimated number of residential lines that CLECs are serving through their own facilities (complete bypass).

RESPONSE:

Attached is the proprietary response detailing CLEC facilities based residential access listings as of June 2003. The source of this data was the E911 database. Assuming the CLEC's have accurately entered their E911 listings, these listings should include the UNE Loops included in Appendix B. Section A – Question 2. Unbundled Loops were not broken out by Business and Residential in Appendix B A-2. (Emphasis supplied.)

It is apparent from this that Verizon, when it filed its petition did not claim to be unable to comply with these Commission's requests; Verizon simply ignored the Commission's data requests on this point. Nowhere in its *Procedural Order* does the Commission authorize the presiding officers to amend or modify the Commission's discovery requests.

In our view, the Commission itself has already decided that a loop count breakdown between residential and small business customers is relevant by requesting such information in the *Procedural Order*. Because Commission orders are effective unless modified or reversed on appeal, 66 Pa. C.S. §316, and because the *Procedural Order* is in full force, Verizon may not be heard to complain that such information is irrelevant. Verizon cannot amend Commission orders by simply ignoring them.

Moreover, Verizon filed its petition with its responses to the Commission's data requests on or about October 31, 2003, almost one month after the Commission entered its *Procedural Order*. On the other hand, Verizon waited until it responded to AT&T's Motion to Compel (over two months after the Commission entered its *Procedural Order*) to complain that the information sought by the Commission and AT&T would require a special study. Had Verizon instead embarked upon the study before filing its petition, there is at least a possibility that the data would have been available by now. At this late stage of this proceeding, we

conclude that Verizon should not be heard to raise an issue that it could have, and should have, raised long ago.

For the foregoing reasons, we conclude that AT&T's Motion to Compel should be granted.

ORDER

THEREFORE, IT IS ORDERED:

1. That the Motion to Overrule Objections and to Compel Responses to Its First Set of Interrogatories and Requests for Production of Documents to Verizon Pennsylvania Inc. filed by AT&T Communications of Pennsylvania, LLC on December 9, 2003, is granted consistent with the discussion set forth in this order.

2. That within seven days of the date of this order, Verizon shall furnish complete answers to AT&T's First Set of Interrogatories, Nos. I-1, I-13, I-15, I-16, I-17, I-19, I-20 and I-21, including a breakdown of unbundled loops between residential and business lines.

Date: December 16, 2003


MICHAEL C. SCHNIERLE
Administrative Law Judge


SUSAN D. COLWELL
Administrative Law Judge