

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation into the Obligations of :
Incumbent Local Exchange Carriers : I-00030099
To Unbundle Network Elements :

DOCKETED
FEB 04 2004

**ORDER DENYING THE PETITION TO INTERVENE OF
ACN, INC.**

On or about December 16, 2003, ACN, Inc. (ACN) filed a petition to intervene in this proceeding pursuant to 52 Pa. Code §5.71-5.75. According to that petition, a copy was served upon the parties in accordance with 52 Pa. Code §1.54. On December 22, 2003, Verizon Pennsylvania, Inc. and Verizon North Inc. filed their Opposition to the Petition to Intervene on the ground that it is untimely, and, in the alternative, that ACN has failed to meet the standard for intervention in the regulations, 52 Pa. Code §§ 5.71-5.75.

DOCUMENT

Petitions to intervene are governed by 52 Pa. Code §5.74, which provides in pertinent part:

§ 5.74. Filing of petitions to intervene.

(a) Petitions to intervene and notice of intervention may be filed following the filing of an application, petition, complaint or other document seeking Commission action, but no later than the date fixed for the filing of petitions to intervene in an order or notice with respect to the proceedings or, except for good cause shown, the date fixed for filing protests as published in the *Pennsylvania Bulletin*. Intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

(Emphasis added.)

This proceeding began with a Commission order that was served on a set list of jurisdictional competitive local exchange carriers (CLECs) in Pennsylvania¹, and published in the Pennsylvania Bulletin on October 18, 2003 at 33 Pa.B. 5267. The Commission included a chart in its Order which clearly indicates that the deadline for Petitions to Intervene and Answers due to CLECs' Response to Questions/Comments were due November 14, 2003. In addition, Paragraph 3(c) of the Commission's Order reads:

3. In regard to the 9-month proceeding, parties participating in this investigation shall follow the rules and procedures outlined in this order including:
 - c. Filing any Petition to Intervene or Answer by November 14, 2003.

Thus, the deadline for filing a petition to intervene was November 14, 2003. ACN's petition is four weeks late.

ACN's argument supporting its Petition to Intervene is unconvincing. ACN argues that 52 Pa. Code § 5.74(a) allows for the grant of a petition to intervene for good cause shown, which it does. However, that question is never reached unless there is a timely filing for intervention, or the lateness of the filing is excused for good cause shown.

The regulation sets up a two-step process for late-filed petitions to intervene. First, the petitioner must show that good cause exists to excuse filing past the deadline. If no good cause exists to excuse the late filing of the petition to intervene, then the petition will be denied. If,

¹ 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.

however, good cause exists to excuse the late filing of the petition, the petitioner must meet the standard for intervention. 52 Pa. Code § 5.74.

As Verizon points out in its opposition to ACN's Petition to Intervene, ACN offered no reason for filing its Petition late. Instead, ACN offered substantiation for granting a petition to intervene which was timely filed. Since ACN's Petition to Intervene was not timely filed, and no excuse has been offered for the lateness of the filing, the Petition is not adequate to justify granting intervention when the other parties have been engaging in discovery and preparing direct testimony for the scheduled hearings.

Notice was adequate. The Commission's order is a "document" which is permitted, if not required, to be published in the *Pennsylvania Bulletin*. 45 Pa. C.S. §§501 (definition of "Document"), 906. Publication of the order in the *Pennsylvania Bulletin* constituted constructive notice of the order to all persons. 45 Pa. C.S. §904. Additional notice is unnecessary, and the giving of supplemental notice in another manner is not prohibited. 45 Pa. C.S. §907. Therefore, ACN received adequate notice of the Commission's proceeding and its attendant deadlines. In addition, ACN would have been aware of the FCC's Triennial Review Order, and its contents, and should have been aware that the Commission would be acting on it within a reasonable time after its issuance. ACN should have been watching for the Commission's Order, if not actively contacting the Commission to be sure that it did not miss the ensuing proceeding.

The objective of publishing a filing deadline for petitions to intervene is to ensure that all parties and the administrative law judge will be apprised at the outset of the case who will be participating. Such certainty supports the efficient and orderly litigation of contested proceedings. This objective would be frustrated if the deadline were not enforced. ACN will not be allowed to participate in this case because it has failed to comply with the deadline for the filing of a petition to intervene.

ORDER

THEREFORE, IT IS ORDERED:

That the petition to intervene filed by ACN, Inc. on December 16, 2003 is DENIED.

Date: Dec. 23, 2003

Michael C. Schnierle
Michael C. Schnierle
Administrative Law Judge

Susan D. Colwell
Susan D. Colwell
Administrative Law Judge