

L-2018-3001391

# TENNY JOURNAL COMMUNICATIONS

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September 2, 2018

Pennsylvania Public Utility Commission

Attn: Secretary

P.O. Box 3265

Harrisburg, PA 17105-3265

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Commission Secretary:

I write in response to the solicitation of input from interested parties requested by the Advanced Notice of Proposed Rulemaking Order (the "Notice")

## Verizon's Self-Certification is Not Reliable

The Pennsylvania Public Utilities Commission (the "Commission" or "PUC") cannot and should not rely on Verizon North LLC and Verizon Pennsylvania LLC's ("collectively "Verizon") self-certification that an area is competitive and/or that like alternative services exist. Verizon's self-certification is not sufficient to ensure that affected customers can receive a reasonable substitute service. This is confirmed by Verizon's false certification that it no longer provided payphone services in Pennsylvania.

The competitive telecommunications market eliminated the need for payphone service in Pennsylvania and throughout the nation. Verizon noted that it no longer provided payphone services in Pennsylvania and that payphones also had been rendered obsolete, particularly due to the proliferation of wireless services across the Commonwealth." (Reclassification Order at 90) (Emphasis added) (Notice at Pg. 14)

Verizon believes it can ignore the law immune from any consequences. It cannot. Filing a false certification has actionable consequences. The Pennsylvania courts have long recognized that false certifications will not be tolerated. Similarly, the Commission should not tolerate this type of deceit and deception.

The statement by Verizon that "it no longer provided payphone services in Pennsylvania" is intentionally false and deceptive. Two or more coin operated payphone companies were in business in 2015, and they continued in business until 2017. At that time, to avoid its obligation to provide copper lines to payphones providers and to ensure the Commission did not discover its false certification, Verizon attempted to force one of the payphone companies out of business in Pennsylvania by overbilling and cutting service.

That payphone company was a small company known as Tenny Journal Communications, Inc., ("Tenny Journal") of which I am the CEO. At the time of Verizon's certification and

the Reclassification Order, Tenny Journal had 350 coin payphones located in Philadelphia, Harrisburg, Pittsburgh, Allentown, and York that Verizon was servicing; yet Verizon certified that it no longer provided service to those payphones, and the commission unfortunately conducted no further reviews or audits. In December 2017, at a time when the Commission was deciding whether to make de-tariffing permanent, Verizon, without legal right or justification, refused service to Tenny Journal in Pennsylvania. One could conclude that at the heart of the decision to shut down service to Tenny Journal's payphones was the fear of having its lie disclosed, and the Commission refusing to make the waivers permanent.

My comments to the Commission are twofold. They are to demonstrate to the Commission that its role is critically important in ensuring that competitive small businesses ("CLECs") can compete in the telecommunications market, and that Verizon's transition to new platforms for provision of voice services entails continuing access to copper lines that is absolutely essential to the existence of payphones.

Although payphones are considered to be a dying business along with newspapers, coal, textiles, and many other industries, payphones are vital for consumers who are employed by payphone companies, customers who need payphones, particularly during public safety events, such as hurricanes, tornadoes, and fires and when mobile service is otherwise unavailable.<sup>1</sup> For many low-income consumers the availability of payphones remains a necessity. Payphones are their only means of staying connected to employers, healthcare providers, friends, and family as well surviving an emergency. Congress set forth a federal mandate for the Commission to ensure that the payphone market is competitive and that payphones are available. It was encapsulated in the pro-competitive, federal policy of 47 USCA § 276, the Provision of Payphone Service of the Communications Act and the Commission's prior Orders implementing Section 276. Verizon, however, has repeatedly failed and refused to comply with the code, and the FCC's rulings that mandate Verizon provide the copper wiring that is essential to the operation of payphones.

#### **Verizon's Billing and Collection Practices are Abusive and Illegal**

From the first day that Verizon allowed Tenny Journal to purchase service from its lines, Verizon seemed determined to put Tenny Journal out of business. Verizon considered Tenny Journal, a payphone service provider and a CLEC, to be an annoying competitor that was using copper lines when Verizon wanted to divest itself of copper lines.

When Tenny Journal started up, Verizon required an \$80,000 deposit as the amount it considered to be adequate assurance to protect itself should Tenny Journal default on its obligations. Tenny Journal paid the \$80,000 deposit under duress, and Verizon agreed to activate the New Jersey and Pennsylvania phone lines and to allow Tenny Journal to purchase service from Verizon at the wholesale rate. Verizon's management knew, or with reasonable investigation could have known, the terms of the contract with Tenny Journal, and they should have known, if they denied Tenny Journal service to the Pennsylvania lines, they were breaching the contract. But, they are Verizon, and they can do no wrong.

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<sup>1</sup> During 9/11, transmission was available only with phones using copper lines.

The fact that Verizon abruptly deactivated the Pennsylvania phones knowing that doing so was an unjustified breach of contract, clearly demonstrated Verizon's actions were willful and evidenced an intentional disregard for the safety of the customers relying on payphone service. The correct amount of the deposit should have been \$25,000, according to the tariff and Verizon's wholesale contract with Tenny Journal.

When Tenny Journal received its first bills for the Pennsylvania phones, it discovered Verizon had billed for services it had not purchased, and services for which it was legally exempt. Tenny Journal began immediately to contact Verizon by email and telephone about the unauthorized charges. Verizon's representatives offered no assistance, failed to answer correspondence, failed to return phone calls, and refused Tenny Journal any means of disputing the unauthorized charges.

Verizon's billing and collection system lacks sufficient safeguards to prevent billing and collection of unauthorized charges, and instead, it effectively encourages unauthorized billing by refusing to address a dispute when given notice. This forces a customer like Tenny Journal to pay for unauthorized charges to stay in business.

Verizon knows, or is reckless in not knowing, that its billing and collection system is abusive, and that it has, in fact, used its billing practice to harass and abuse competitors using its services. Verizon knew it was explicitly prohibited from placing unauthorized charges on its customers' bills. State and federal regulations prohibit Verizon from billing for charges without providing information on the process required to resolve a billing dispute. Verizon is further required to provide a description of the manner in which any dispute regarding the charge may be addressed. With utter disregard for Tenny Journal, the payphone users, and the law, Verizon's representatives offered no assistance, failed to answer correspondence, failed to return phone calls, and refused Tenny Journal any means of disputing the unauthorized charges. Tenny Journal's only recourse to stay in business was to pay the unauthorized charges. And it did.

There can be little doubt that Verizon intentionally prevented Tenny Journal from seeking relief from its unauthorized charges, even though it was entitled to do so under State and Federal law. This was not a situation where somehow an unauthorized charge or two slipped through and ended up on Tenny Journal's bill; there were hundreds of inaccurate charges on the bills. After three months of begging for assistance, Verizon provided Tenny Journal with a billing dispute spreadsheet that it knew was limited to only wholesale customers, and knew it was worthless to Tenny Journal as a means of informing Verizon of the erroneous charges because Verizon's managers had transferred the Pennsylvania account from wholesale to retail.

These are not isolated, illegal actions by Verizon. A simple internet search by typing in "Complaints against Verizon" yields thousands of postings, many involving litigation and overcharging. Verizon's business policy is obviously to overcharge and hope to strong arm the customer and get away with it.<sup>2</sup>

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<sup>2</sup> The commission should not be surprised that Verizon would take the low road or falsify its certifications. After all, Verizon is the same company that was caught covertly modifying user wireless packets so it

Tenny Journal tried unsuccessfully for three weeks to submit the spreadsheet, unaware it was limited only to wholesale accounts. The cost to Tenny Journal in labor trying to correct the error message and submit the spreadsheet measures in the thousands of dollars. In short, Verizon denied Tenny Journal any means to inform, dispute, or withhold for unauthorized charges.

As of August 31, 2018, Tenny Journal has overpaid Verizon by an amount of \$86,761.84. As could be expected, Verizon's withholding of service to the Pennsylvania telephones has had a substantial, adverse impact on the financial viability of Tenny Journal's business. Its phones have been inoperable for eight months, and many of the accounts were lost. Forcing Tenny Journal to go back into court to resolve the same issues is an unnecessary expense and hardship; yet Verizon's refusal to release the Pennsylvania phone lines, will force Tenny Journal to go back to court to obtain relief.

When negotiations inevitably stall, the CLECs like Tenny Journal are, in effect, without recourse. There is no "market" for the CLECs to shop in: it's either the ILEC, which in Pennsylvania is Verizon or nothing. Because Verizon still controls the equipment and facilities, the CLECs have two choices: walk away, with no ability to get access to the equipment and facilities they need to provide service to their customers, or pay whatever price Verizon is asking, regardless of how high. The CLECs cannot complain to the FCC, nor can they seek relief in the courts without virtually bankrupting their company. Without the Commissions' oversight, the CLECs have nowhere else to go. If the Commission cannot act, who will?

#### **Verizon is Intentionally Allowing Copper Lines to Deteriorate**

The protocols Verizon is using with respect to its transition from copper to fiber optics virtually puts CLECs like Tenny Journal that provide services to pay phone users out of business. Service to payphone users **must have** access to copper lines because the signals used to charge the payphone's batteries are not compatible with FiOS. Thus, shutting off the copper lines, shuts off the payphone company's ability to sell services. The payphones must be programmed daily and need electricity to charge the phone's batteries and it is only available with the copper lines. This is impossible with the fiber lines. The Payphone providers have no alternative source for the copper lines but Verizon in Philadelphia, Harrisburg, Pittsburgh, Allentown, and York.

Additionally, Verizon is intentionally neglecting its copper repair and maintenance responsibilities. It is allowing copper lines to deteriorate in a manner that is the functional equivalent of removing or disabling it. Verizon is supposed to continue to make "Plain Old Telephone Service" known as "POT Service" available after the transition to fiber optics, but it is not. Verizon is phasing out POT Service in favor of its fiber optic service. Moreover, despite

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could track users around the internet without telling them. Verizon is also the company that throttled the 'Unlimited' data plan of a fire department battling wildfires, and instead of restoring the connection to full speeds, informed the fire department that it needed to upgrade to a new data plan at more than twice the cost. Verizon is also the company that instructed its technicians that they must not fix a copper problem, but offer to resolve the problem for free if the customer upgraded to fiber. If the customer declined, the technician was to inform the customer that the service will be disconnected, and the technician should then call the Fiber Support Line to initiate the disconnect process.

Verizon's statements to the contrary, Verizon is cutting off service with no advance notice. A practice that is a threat to public safety.

The Commission must ensure that Verizon does not disrupt, remove or disable existing copper lines to payphones. Payphone providers must use copper lines to exist, and Verizon will not police itself. Verizon attempts to confuse and conflate the law with half-truths, innuendo, and knowingly false certifications. The Commission cannot and will not be able to ensure that Verizon meets its statutory obligation under 66 Pa. C.S. § 1501 to provide "adequate, efficient, safe, and reasonable service" to customers in competitive wire centers even though Verizon remains statutorily required to do so. If the regulatory waivers go into effect permanently, the statutory jurisdiction and authority of 66 Pa. C.S. § 1501 will not be adequate to provide essential regulatory measure to ensure quality of service.

### **Verizon is Statutorily Obligated to Provide Payphones With Copper Lines**

The Relevant Provisions of Section 201 (b) of the Communications Act, 47 U.S.C. § 201(b), provides in relevant part that "all charges [and] practices ... for and in connection with [communication by wire provided by a common carrier] shall be just and reasonable, and any such ... charge [or] practice.. that is unjust or unreasonable is declared to be unlawful[.]"

Section 51.325(a)(4) of the Commission's rules requires that an ILEC like Verizon "must provide public notice regarding any network change that. .. [w]ill result in the retirement of copper" (the "copper retirement rules").

The "retirement of copper" is defined as:

- (i) Removal or disabling of copper loops, subloops, or the feeder portion of such loops or subloops, (ii) The replacement of such loops with fiber-to-the-home loops or fiber-to-the-curb loops, ... or (iii) The failure to maintain copper loops, subloops, or the feeder portion of such loops or subloops that is the functional equivalent of removal or disabling. 47 C.F.R. §51.332(a).

Similarly, 47 CFR § 51.319(a)(1) mandates that "An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop on an unbundled basis in accordance with section 251(c)(3) of the Telecommunications Act. A copper loop is a stand-alone local loop comprised entirely of copper wire or cable. Section (b)(1) further mandates that "An incumbent LEC shall provide requesting telecommunications carrier with nondiscriminatory access to a copper subloop on an unbundled basis."<sup>3</sup>

Contrary to Verizon's certification, millions of Pennsylvanians do not have access to sufficient competitive voice alternatives in the form of cable telephony, wireless, and competitive local exchange carriers (the latter in particular for business customers), nor are they actually availing themselves of those alternatives.

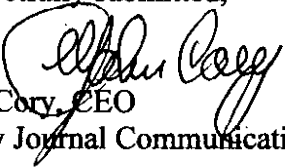
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<sup>3</sup> "A copper subloop is a portion of a copper loop, or hybrid loop, comprised entirely of copper wire or copper cable that acts as a transmission facility between any point of technically feasible access in an incumbent LEC's outside plant, including inside wire owned or controlled by the incumbent LEC, and the end-user customer premises." 47 USC § 251(b)(1)

Verizon must provide sufficient accountability. There is no public policy justification for permitting Verizon to fail to maintain its copper infrastructure, or to allow Verizon to issue false certifications, or to intentionally overbill for services in order to shut down a competitor as it did with Tenny Journal. Verizon as a LEC, has a legal duty under federal law, 47 U.S.C. § 201 *et seq.* not to bill and collect for unauthorized charges. In addition, as an LEC, Verizon has a legal duty under the various regulatory laws of the state of Pennsylvania that prohibit this type of billing and collection practices.

Verizon's policies and conduct are unjust, unreasonable, and unlawful. Copper lines must be available in order to operate existing payphone equipment. If there are no restraints in place, please immediately enact regulation to prevent Verizon from further disrupting CLEC service to pay- phone users. The situation is serious. A small payphone business like Tenny Journal should not be forced to go to court to obtain justice. The Commission has the authority and duty to prohibit this type of illegal conduct. The Commission must not relinquish its jurisdiction and authority. Verizon must not be allowed to use its monopoly status to decimate its competition. The Commission must order Verizon to end its unlawful practices and immediately activate Tenny Journal's Pennsylvania lines.

Respectfully submitted,

  
John Cory, CEO  
Tenny Journal Communications, Inc.

Certified: 7017-1000-0000-6850-5888

## **Summary of the Pennsylvania Public Utility Commission's Advanced Notice of Proposed Rulemaking Order**

In 2015, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered an order at Docket Nos. P-2014-2446303 and P-2014- 2446304 granting in part a petition filed by Verizon North LLC and Verizon Pennsylvania LLC declaring stand-alone basic local telephone service to be competitive in 153 of the 194 Verizon wire centers in Pennsylvania for which Verizon sought a competitive determination under state law. The reclassification meant that in those 153 wire centers Verizon may (1) price the service at its discretion, and (2) maintain a price list for a competitive service rather than maintaining a Commission approved tariff. In the absence of a tariff, Verizon's "Product Guide" would be the governing document to memorialize the terms and conditions of stand-alone basic local telephone service in competitive wire centers.

The changes in the regulations were in response to changes in law, technology and the economy in order to meet the essential needs of the public and the utilities. In making its decision, the Commission relied on evidence that in 153 wire centers, the voice services offered by competing providers, including wireless providers, was "*similar enough*" that consumers were willing and able to switch to them. (Emphasis added) Specifically, for residential customers, the 153 wire centers represented areas where there was 100% wireless coverage by non-Verizon affiliated companies and represented areas where at least 97% of households had access to cable telephony.

The Commission concluded that, regardless of any technological or economic differences that may exist between basic local exchange service and the competing cable and wireless voice services, consumers considered these competing services adequate replacements for basic local exchange service. Therefore, the Commission found these services to be "like" or substitute services to basic local exchange service, which was a statutory prerequisite for declaring a service area to be competitive.

The Commission concluded that many of the monopoly-era Regulations in 52 Pa. Code §§ 63.1, et seq., and 52 Pa. Code §§ 64.1, et seq., no longer made sense in a competitive marketplace and that sufficient competition existed in certain wire centers subject to the Petition to substantially reduce the Commission's regulation. (Reclassification Order at 75.)

With this foundation, the Reclassification Order also granted, in part, a five-year waiver of certain regulation set out in 52 Pa. Code §§ 63.1 and 52 Pa. Code §§ 64.1, (known as Chapter 63 and 64 Regulations) in competitive wire centers. The waivers were conditioned upon the collection of data and input, that contemplated a future rulemaking proceeding to address the status of Chapter 63 and 64 Regulations before making them permanent and industry-wide. The Advanced Notice of Proposed Rulemaking was an effort to obtain input and information before making the previously waived regulations permanent.

The primary impact of designating an area "competitive" was that: (1) Verizon may price the service at its discretion; and (2) Verizon may maintain a price list for a competitive service rather than maintaining a Commission-approved tariff. In the absence of a tariff, Verizon's "Product Guide" was to be the governing document to memorialize the terms and conditions of basic local telephone service in competitive wire centers.

The Commission did not waive, but retained, its authority over certain aspects of landline telecommunications services determined to be competitive, including its jurisdiction over quality of service standards that address the safety, adequacy, reliability, and privacy of telecommunications services and the ordering, installation, suspension, termination, and restoration of any telecommunication service.

The Commission's Tentative Implementation Order addressed the following matters:

- (1) The application of Verizon's Product Guide;
- (2) Verizon's Carrier of Last Resort "COLR" obligations;
- (3) the application of reporting requirements in Section 64.201 of our Regulations, 52 Pa. Code § 64.201; and
- (4) the waiver of Chapter 64's Subchapters E, F and H concerning suspension, termination and restoration of service rules in competitive wire centers, 52 Pa. Code §§ 64.61-111, 64.121-123, and 64.181-182.

The conclusion of the Commission was that Verizon's Product Guide did not have the force and effect of law as did a tariff. (Final Implementation Order at 12; Reclassification Order at 64.) The Commission reasoned that the Product Guide could not take precedence over the Code or the retained regulations in competitive wire centers.

The Commission also determined that designating certain wire centers as competitive did not affect Verizon's "COLR" obligation. The Commission determined that the statutorily-based COLR obligation remains and could not be contractually removed or abandoned. (Tentative Implementation Order at 7-8.)

The Commission determined that the final legal authorities to govern informal and formal complaints for customers located in competitive wire centers were as follows:

- (1) Whether Verizon's conduct is reasonable under Section 1501 of the Code, 66 Pa. C.S. § 1501;
- (2) The Regulations retained by the Reclassification Order, and
- (3) What is reasonable based on the facts presented in a case in accordance with Section 1501 of the Code, which may include consulting the Product Guide for any guidance that it may offer on whether Verizon's conduct is reasonable.

66 Pa. C.S.A. § 1501-Character of Service and Facilities provides:

- (1) Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.



The following Regulations were conditionally waived in the Reclassification Order pending input and comments to the Notice.

- B. (Payment and billing Standards) **Waived. In Product Guide**
- C. (Accounts and Records- billing and Credit) **All Waived**
- D. (Interruption & Discontinuation of Service) **Waived- In Product Guide**
- E (Quality of Service) **Waived**
- F. (Extended Area Service). **All Waived; Outdated**
- G (Public Coin Service). **All Waived- Outdated**
- H. (Restoration of Service.) **(All Waived)**
- I. (Public Information; Record Maintenance) **Waived**
- J. (Annual Reporting Requirements). **Partial Waiver-Annual Report -Kept**
- K. (General Provisions) **Partial Waived- Provisions governing tariffs and waiver requests Kept**

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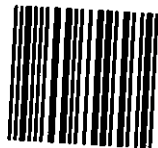
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