

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265**

Public Meeting held August 5, 2004

Commissioners Present:

Terrance J. Fitzpatrick
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland

Pennsylvania Public Utility Commission

v.

Verizon Pennsylvania Inc. Tariff No. 216
Revisions regarding Four Line Carve-Out

Docket No. R-00049524

ORDER

BY THE COMMISSION:

On June 8, 2004, Verizon Pennsylvania Inc. (“Verizon” or “the Company”) filed a tariff revision to its Services for Other Telephone Companies Tariff- Pa. PUC No. 216, effective August 7, 2004, to eliminate Unbundled Network Elements (“UNEs”) for switching and transport, including UNE-Platforms (“UNE-P”), for four or more lines.¹ Verizon indicates that it is seeking to implement the Federal Communications Commission’s (“FCC’s”) Four Line Carve-Out Rule² in the areas served by the 12 central offices in Density Cell 1 (Philadelphia and Pittsburgh).

Specifically, Verizon’s instant filing adds language to Tariff No. 216 to cease provisioning new orders from Competitive Local Exchange Carriers (“CLECs”) after September 9, 2004, for the following UNEs in Density Cell 1:

¹ Verizon also made a separate filing on the same date to eliminate enterprise switching for high capacity loops and related UNE-Ps, docketed at R-00049425.

² 47CFR §53.319(c)(2)

- 1) Four or More Lines Switching Line Ports;
- 2) Four or More Lines Local Switching Line Port Features;
- 3) Local Switching (End Office) Trunk Ports for use with Four or More lines Local Switching Line Ports;
- 4) Common (Shared) Transport for use with Four or More Lines Local Switching Line Ports;
- 5) Platforms that include Four or More Lines Local Switching Line Ports;
- 6) Combinations that include Four or More Lines local Switching Line Ports.

Verizon provided notice to CLECs under existing interconnection agreements that after September 9, 2004, Verizon will offer CLECs the option to receive these UNEs on a resale basis under 47 U.S.C. §251(c) (4) or pursuant to commercially-negotiated agreements.

Verizon claims its filing complies with the FCC's *Triennial Review Order (TRO)*³ and in particular removes an existing conflict with federal law. Verizon also refers to the Commission's May 28, 2004 Order: In re: *Investigation into the Obligations of Incumbent Local Exchange Carriers to Unbundled Local Circuit Switching for the Enterprise Market*, Docket No. I-00030100 (May 28th Order).⁴

On June 24, 2004, the Office of Small Business Advocate ("OSBA") filed a complaint against Verizon's filing. OSBA alleges that Verizon's tariff filing is misleading because they omit pertinent information putting into context procedural steps to be taken to resolve the alleged conflict with federal law. OSBA also states the tariff filing is contrary to the Commission's existing Orders and against Commission's latest mandate in the *Reconsideration Order* to maintain status quo established in its *Global Order*.

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, FCC 03-36, as corrected by FCC 03-227, CC Docket No. 01-338, Report and Order (rel. Aug. 21, 2003), vacated-in-part, remanded-in-part and affirmed-in-part by *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *petitions for cert. pending*.

⁴ This Order disposed of Verizon's Petition for Reconsideration of that Section of Commission's December 18, 2003, Order distinguishing Verizon's distinct access obligation stemming from *Global Order*, the *Pennsylvania 271 Order* and the *TRO*.

OSBA claims that the proper venue for contesting the alleged conflict between state and federal law and the Commission's interpretation of Section 271 is in the federal courts. Accordingly, OSBA request Verizon's tariff revisions be denied and to direct Verizon to seek relief from the federal district court; or in the alternative suspend the tariff revisions for an investigation.

On July 2, 2004, AT&T filed on behalf of its affiliated CLECs, AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh and TCG Delaware Valley, a complaint against the proposed tariff revision. In its complaint, AT&T avers that implementing a four line carve-out rule would preclude CLECs from obtaining or continuing to lease local circuit switching to serve four or more lines and is aimed at inhibiting competitive choice for small and medium business customers in the Philadelphia and Pittsburgh area.

AT&T states that the Commission in its *Global Order* required Verizon to make UNE-P available in Pennsylvania without limitation to residential customers and to business customers generating less than \$80,000 annual total billed revenue. Moreover, Verizon's effort to limit the availability of UNE-P through the imposition of the Four Line Carve-Out rule violates the prior decision of the Commission.

AT&T claims Verizon's suggestion that the FCC's *TRO* authorizes the Four Line Carve Out rule is without merit as the FCC explicitly recognized that specific market factors could result in a different cut-off threshold than the four line proxy. AT&T asserts that the FCC required the *status quo* be maintained until the states establish new thresholds for defined markets. AT&T argues that while the FCC expected states might elect to re-apply the four line limit, there could be significant evidence to the contrary that would justify a higher limit. According to AT&T, the FCC expressly recognized a cross over point may exist where it makes economic sense for a multi-line customer to be served by a DS1 loop. AT&T claims the economically efficient cross-over point in

Pennsylvania is between fourteen and sixteen lines, not the four lines proposed by Verizon. Therefore, AT&T states Verizon's proposed tariff is not authorized by the *TRO*.

On July 12, 2004, in response to Verizon's instant filing, the Pennsylvania Carrier's Coalition ("PCC") filed a Complaint and Request for Suspension of Tariff Supplements ("Complaint").⁵ In its Motion to Dismiss, PCC claims that the instant filings eliminate certain services or regulatory obligations and, as indicated by Verizon, that the revisions are filed in response to the Commission's May 28th Order which directed Verizon to file non-TELRLIC rates for enterprise switching under 66 Pa. C.S. §1301 & 1308. However, although described differently by Verizon, the tariff revisions do nothing more than request the Commission to relieve Verizon from certain of the *Global Order's* unbundling obligations. PCC contends the proper procedural vehicle for Verizon to seek relief from its unbundling obligations is an application to abandon service under 66 Pa. C.S. §1102(a) (2), and that accordingly, the tariff revisions should be dismissed. Specifically, PCC feels that rather than filing tariff supplements under 66 Pa. C.S. §1308, Verizon should have filed a pleading seeking relief from the *Global Order's* unbundling obligations.

PCC's Complaint states that Verizon's instant filing disregards recent Commission Orders wherein Verizon's request was denied to relieve it of the *Global Order* obligations and, therefore, Verizon must continue to offer UNE-P to CLECs for all customers having less than \$80,000 in total billed revenue. PCC also asserts that the FCC Four Line Carve-Out Rule is not binding on the states and should be treated as a presumption not a requirement and that the tariff revision should be summarily rejected.

Further, PCC claims that Verizon has continued obligation to offer unbundling local switching under 47 USC. §271(c) (2) (B) (vi). PCC adds Verizon is bound by the just and reasonable and non-discriminatory rate standard provided in 47 USC §202 which

⁵ On July 12, 2004, PCC also filed a complaint and Motion to Dismiss Verizon's tariff revisions to Tariff 216 regarding elimination of enterprise switching UNEs at Docket No. R-00049524.

is the same standard the Commission applied under state law in approving Verizon's existing Tariff 216 rates, and to charge anything above cost-based rates would be discriminatory under both 47 U.S.C. §202 and 66 Pa. C.S. §1304. Furthermore, Verizon has agreed to similar unbundling obligations as a condition of its merger with GTE Inc.

PCC also claims the Commonwealth Court upheld the \$80,000 TBR rule and specifically found that there was nothing to suggest that the classification was a "mismatch" or otherwise conflict with federal law. PCC also contends that the Commission in its December 18, 2003, Order which was further reiterated in the May 28th Order made legal determinations that under federal law, local circuit switching must continue to be unbundled by Verizon under 47 U.S.C. §271, that under state law and the *Global Order* UNE-P must continue to be offered to serve all customers at or below the \$80,000 TBR threshold, and that Verizon must continue to offer network elements and UNE-P to CLECs at the current rates contained in Verizon Tariff 216.

The PCC professes that the Commission in its DS1 Switching Order and the Reconsideration Order has envisioned the filing of a pleading in the form of a Petition which would be followed by a development of a full evidentiary record in seeking such a relief from its *Global Order* unbundling obligation. PCC further states that Verizon's tariff revisions under §1301 and 1308, which are reserved for rate changes, should be dismissed and required to file a pleading requesting relief from the *Global Order's* unbundling obligations under the *Global Order* standards for such relief.

In its Complaint, PCC claims that since Verizon has not proposed a change of rates and that it is proposing to abandon certain services to its CLEC customers, that the proper procedural vehicle for Verizon to seek relief from its unbundling obligations is an application under 66 Pa. C.S. §1102(a)(2).

Our review of the proposed tariff filing indicates that it may be unlawful, unjust, unreasonable, and contrary to the public interest. Further, in a related filing of Verizon at Docket No. R-00049525, filed concurrently with the instant filing, we are ordering a new

proceeding providing an opportunity for Verizon to demonstrate whether it can be relieved of its *Global Order* obligation to provision UNE-P to CLECs. The decision we make in that proceeding will invariably have an effect in the final determination in this case. Accordingly, we will suspend this filing for investigation and for the purposes of a Recommended Decision on the relevant factual and legal issues. To expedite resolution of this proceeding, the recommended decision should be issued by December 2, 2004, if practicable; **THEREFORE,**

IT IS ORDERED:

1. That an investigation on Commission motion be, and hereby is, instituted to determine the lawfulness, justness, and reasonableness of the rates, rules and regulations contained in the revision to Verizon Pennsylvania Inc.'s Tariff-Telephone Pa. PUC No. 216, filed June 8, 2004 to become effective on August 7, 2004.

2. That the proposed revision to Verizon Pennsylvania Inc.'s Tariff-Telephone Pa. PUC No. 216, filed June 8, 2004 to become effective on August 7, 2004, to remove Unbundled Network Elements ("UNEs") for switching and transport including UNE-Platforms ("UNE-Ps") for four or more lines from the available UNEs in Density Cell 1 (Philadelphia and Pittsburgh), is **suspended for a period not to exceed six months, or until February 6, 2005**, pursuant to 66 Pa. C.S. §1308(b), but without prejudice to Pennsylvania Carrier Coalition's Motion to Dismiss, pending the outcome of this investigation, unless otherwise directed by Order of the Commission.

3. That Verizon Pennsylvania Inc. shall file the appropriate tariff suspension supplements and shall continue to apply the existing rates, rules and regulations in Tariff-Telephone Pa. PUC No. 216 during the suspension period.

4. That the Office of Administrative Law Judge shall assign this matter to an Administrative Law Judge for such proceedings as shall be deemed necessary and the issuance of a Recommended Decision to be issued by December 2, 2004, if practicable.

The Office of Administrative Law Judge shall coordinate, and if appropriate consolidate, this matter with the proceeding at Docket No. R-00049525.

5. That the Administrative Law Judge's Recommended Decision shall include an analysis of the relationship, if any, between the disposition of this case and disposition of the issue pending in Docket No. R-00049525 as to whether Verizon Pennsylvania Inc. can be relieved from the *Global Order* obligation to provision UNE-P to CLECs.

6. That the Motion to Dismiss Tariff Revision filed by the Pennsylvania Carriers Coalition shall be addressed by the Administrative Law Judge *in limine*.

7. That if it becomes clear that a final Commission order disposing of the proposed tariff revision will not be entered by the end of the 6-month suspension period established in ordering paragraph 2 above, the Administrative Law Judge assigned to this case shall issue an Interim Order suspending this filing for an additional three months or until May 6, 2005.

8. That a copy of this Order be served upon Verizon Pennsylvania Inc., AT&T, the Pennsylvania Carriers Coalition, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, the Office of Administrative Law Judge, and published in the *Pennsylvania Bulletin*.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 5, 2004

ORDER ENTERED: August 5, 2004