

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

Public Meeting held August 27, 1998

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice Chairman  
David W. Rolka  
Nora Mead Brownell  
Aaron Wilson, Jr.

Investigation of Issuance of Local Telephone Numbers to Internet Service  
Providers by Competitive Local Exchange Carriers

P-00981404

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before us for consideration is the Petition of Bell Atlantic-PA, Inc., (BA-PA) for Generic Proceeding to Investigate Issuance of "Local" Telephone Numbers to Internet Service Providers by Competitive Local Exchange Carriers (Petition), filed on June 26, 1998.

**History of the Proceeding**

On June 16, 1998, in *Petition for Declaratory Order of TCG Delaware Valley, Inc., for Clarification of Section 5.7.2 of its Interconnection Agreement with Bell Atlantic-PA, Inc.*, Docket No. P-00971256, (TCG), this Commission entered an Order that resolved a contractual dispute between BA-PA, the incumbent local exchange carrier (ILEC), and TCG Delaware Valley (TCG), the competitive local exchange carrier (CLEC). The Commission decided that locally dialed calls to Internet Service Providers (ISPs) were local calls under Section 5.7.2 of the subject Interconnection Agreement between BA-PA and TCG. BA-PA was, however, given the option of requesting that the Commission initiate a generic investigation of Internet calling within Pennsylvania.

On June 26, 1998, BA-PA filed the instant Petition, requesting a generic investigation of the issuance of allegedly “phony ‘local’” numbers to ISPs by CLECs. BA-PA disputes the practice of assigning local telephone numbers to non-local ISPs because such calls are not “handed to the ISP within the same local calling area where the calls originate.” BA-PA claims that this requires BA-PA to “carry that call outside the local calling area.” (Petition, p. 2.) In Bell’s words, this allows the CLEC to “falsely bill[] BA-PA for reciprocal compensation that only applies to local calls.” (Petition, p. 3.)

On July 16, 1998, TCG filed an Answer to BA-PA’s Petition, arguing that BA-PA’s Petition is baseless and should be dismissed. Additional entities have requested intervention or to be added to the service list.

### **Discussion**

In our June 16, 1998 *TCG* Order, we concluded “that the issue of whether end-user traffic to an ISP is jurisdictionally interstate or intrastate is not material to our authority over interconnection agreements.” (*TCG*, p. 20.) We further stated that “[b]ased on the application of contract principles to this [BA-PA/TCG] controversy, we agree with TCG that according to the plain and ordinary meaning of the words, the traffic from end-users to ISPs is local and subject to reciprocal compensation arrangements” as those terms are used in the subject Interconnection Agreement. (*TCG*, pp. 21-22.)

In its Petition, BA-PA claims that an investigation is now necessary because the disputed practice (1) deprives BA-PA of compensation for originating toll calls, (2) consumes scarce numbering resources, and (3) discourages network deployment. BA-PA reserves the right to contest the determination that ISP calls are local calls in an appropriate forum. (Petition, Note 1.)

We recognize that the June 16, 1998 *TCG* Order, the limited nature of BA-PA’s request in the instant Petition, and the subsequent developments cause uncertainty over Pennsylvania’s treatment of Internet calls. Consequently, we must answer the fundamental question of whether Internet traffic and Internet calls in Pennsylvania are local calls as a matter of public policy in the current

situation. Other states and the federal government recognized the importance of this fundamental policy question.<sup>1</sup>

We believe, however, that BA-PA's Petition for a generic investigation of local number assignment to ISPs does not go far enough. In our opinion, BA-PA's request must be expanded to include the following fundamental question:

Are Internet traffic and calls local as a matter of policy in Pennsylvania?

This is a matter of grave policy concern in Pennsylvania. This Commission must resolve this fundamental policy question or risk placing Pennsylvania in the break-down lane on the information superhighway. For one thing, if Internet traffic and calls are **not** considered local, consumers, students, and educators may wind up paying per-minute-of-use charges for Internet access. On the other hand, if Internet traffic and calls **are** considered local, consumers, students, and educators can access the information superhighway on a basis other than by per-minute-of-use charges on the Internet.

Finally, we recognize that disposition of this policy question has the potential to impact existing and future interconnection agreements, including compensation arrangements, under state and federal law in Pennsylvania. Therefore, other interested parties should be encouraged to assist this Commission in resolving this fundamental policy question. We also want to encourage broader public participation and education on this question. Accordingly, we shall direct that public notice be published in the Pennsylvania Bulletin and posted on this Commission's website setting forth the necessary information to educate the public on this fundamental policy question and to solicit comments.

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<sup>1</sup> Additionally, Arizona, Colorado, Connecticut, Florida, Illinois, Maryland, Michigan, Minnesota, Missouri, New York, North Dakota, Ohio, Oklahoma, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin have addressed the nature of Internet calls. On July 1, 1998, Bell Atlantic, the corporate parent of BA-PA, submitted correspondence to the Federal Communications Commission (FCC) stating that Internet calls are not local. The FCC is also considering GTE Corp.'s Tariff No. 1, Transmittal No. 1148, in which Internet calls would be interstate in nature if access is provided using GTE's Asymmetric Digital Subscriber Line (ASDL). The National Association of Regulatory Commissioners (NARUC) has also passed a resolution advocating that such ISP traffic continue to be treated as a matter subject to State jurisdiction in interconnection agreements or tariffs between ILECs and CLECs.

The questions in this investigation can be answered quickly by incorporating, and building upon, the information contained in this docket, as well as the *TCG* proceeding at Docket No. P-00971256. Accordingly, we shall take official notice of the record in the *TGC* proceeding at Docket No. P-00971256 and incorporate that record into this proceeding.

Further, we shall establish the following timetable in this investigation:

September 1998: Public Notice, Education, and Comment Solicitation<sup>2</sup>

October 1998: Office of Administrative Law Judge proceedings

November 2, 1998: Issuance of a Recommended Decision

November 10, 1998: Deadline for filing Exceptions.<sup>3</sup>

November 17, 1998: Deadline for filing Reply Exceptions

November 25, 1998: Submission of a Joint Recommendation for Commission review by the Commission's Office of Special Assistants, the Law Bureau, and the Bureau of Fixed Utility Services

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<sup>2</sup> Any Comments and Reply Comments must be filed with the Commission's Office of the Secretary by 4:30 PM on the respective due day, as specified in the notice in the *Pennsylvania Bulletin*. The provisions of Section §1.11, (52 Pa. Code §1.11), relating to date of filing, shall not enlarge the time for filing the Comments or Reply Comments in this proceeding. The Comments and Reply Comments shall be filed in hard copy and electronic copy in Microsoft Word® 6.0 format.

<sup>3</sup> Any Exceptions and Reply Exceptions must be filed with the Commission's Office of the Secretary by 4:30 PM on the respective due day. The provisions of Section §1.11 shall not enlarge the time for filing the Exceptions or Reply Exceptions in this proceeding. Hard copies and electronic copies, in Microsoft Word® 6.0 format, of the Exceptions and Reply Exceptions shall be served upon each of the Commission's Office of Special Assistants, the Law Bureau, and the Bureau of Fixed Utility Services by the close of business on the dates specified for filing. In consideration of the short deadlines and the November 11, 1998 holiday, parties filing Exceptions shall ensure that copies are served upon all other parties by the close of business on November 10, 1998.

## Conclusion

The Commission recognizes that access to the Internet is an issue critical to education, commerce, and other areas vital to the well-being of the Commonwealth. With that in mind, we must resolve this fundamental policy question; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Petition of Bell Atlantic-PA, Inc., for Generic Proceeding to Investigate Issuance of "Local" Telephone Numbers to Internet Service Providers by Competitive Local Exchange Carriers (Petition), filed on June 26, 1998, be granted and expanded to include the fundamental question of whether Internet traffic and Internet calls are local in Pennsylvania, consistent with this Opinion and Order.

2. That the Commission's Law Bureau place notice in the *Pennsylvania Bulletin* advising the public and interested parties of this generic investigation and soliciting public input. Any Comments and Reply Comments must be filed with the Commission's Office of the Secretary by 4:30 PM on the respective due day, as specified in the notice in the *Pennsylvania Bulletin*. The provisions of 52 Pa. Code §1.11, relating to date of filing, shall not enlarge the time for filing the Comments or Reply Comments in this proceeding. The Comments and Reply Comments shall be filed in hard copy and in electronic copy in Microsoft Word® 6.0 format.

3. That the Commission's Office of Administrative Law Judge provide notice and conduct such proceedings as are necessary to issue a Recommended Decision on the generic issues presented in this investigation no later than November 2, 1998.

4. That November 10, 1998, and November 17, 1998, be the established deadlines for filing Exceptions and Reply Exceptions, respectively, to the Recommended Decision. Any Exceptions and Reply Exceptions, in both hard copy and electronic, Microsoft Word® 6.0, format, must be filed with the Commission's Office of the Secretary by 4:30 PM on the respective due day.

The provisions of 52 Pa. Code §1.11, relating to date of filing, shall not enlarge the time for filing the Exceptions or Reply Exceptions in this proceeding. Hard copies and electronic copies, in Microsoft Word® 6.0 format, of the Exceptions and Reply Exceptions shall be served individually upon each of the Commission's Office of Special Assistants, Law Bureau, and Bureau of Fixed Utility Services by the close of business on the dates specified for filing. In consideration of the short deadlines and the November 11, 1998 holiday, parties filing Exceptions shall ensure that copies are served upon all other parties by the close of business on November 10, 1998.

5. That a Joint Recommendation/Public Meeting Report regarding disposition of the Petition, the Recommended Decision, and any Exceptions and Reply Exceptions be jointly submitted for the Commission's consideration by the Law Bureau, Office of Special Assistants, and Bureau of Fixed Utility Services no later than November 25, 1998.

6. That the Secretary ensure posting at the Commission's website of this generic investigation, including the Commission's August 27, 1998 Motion at this docket, this Opinion and Order, the schedules established by this Commission and the Office of Administrative Law Judge, and all critical documents. The website posting shall make reference to "Internet Investigation -- Docket No. P-00981404."

7. That the Commission's Office of the Secretary file a copy of this Opinion and Order in *Petition for Declaratory Order of TCG Delaware Valley, Inc., for Clarification of Section 5.7.2 of its Interconnection agreement with Bell Atlantic-PA, Inc.*, Docket No. P-00971256, and shall serve a copy on all parties of record to that proceeding who would not otherwise receive a copy as a party to this proceeding. Official notice shall be taken of the proceeding at Docket No. P-00971256, and the record therein shall be incorporated into this proceeding.

**BY THE COMMISSION,**

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: August 27, 1998

ORDER ENTERED: