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March 28, 2007

VIA OVERNIGHT MAIL

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Re: Proposed Modifications to the Application Form for Approval of Authority to Offer, Render, Furnish, or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania
Docket No. M-00960799

Dear Secretary McNulty:

I enclose for filing an original and eight (8) copies of the Comments of Sprint Communications Company L.P. in the above-referenced docket.

Please return a filed-stamped copy of this letter in the enclosed self-addressed, postage-prepaid envelope. If you have any questions, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,

Jennifer A. Duane

Enclosure

cc: Tony Rametta, Bureau of Fixed Utility Services
Robert Marinko, Office of Special Assistants
Joseph Witmer, Law Bureau
Louise Fink Smith, Law Bureau

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Proposed Modifications to the Application
Form for Approval to Offer, Render, Furnish
or Supply Telecommunications Services to the
Public in the Commonwealth of Pennsylvania**

Docket No. M-00960799

COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P.

On January 10, 2007 the Pennsylvania Public Utility Commission (“Commission” or “PUC”) entered a Tentative Order requesting comments from interested parties on a staff recommendation to revise the Application Form (PUC-377), as well as the accompanying instructions, filed by new entrants seeking certification to provide telecommunications services in the Commonwealth of Pennsylvania.¹ The Commission requested comments on the staff proposal within sixty days of the publication of the order in the Pennsylvania Bulletin.²

In addition to the Commission’s Tentative Order, Vice Chairman Cawley issued a statement and posed several questions that he asked interested parties to address in their comments. Specifically, the Vice Chairman asked parties to comment on three areas: i) CLEC provisional operating authority and related procedures; ii) adjudication of protested applications and iii) CLEC classifications relating to data service providers and wholesale service providers.³

¹ The Bureau of Fixed Utility Services (“FUS”) staff recommended revisions to the content and format of the Application Form, entitled “Application Form for Approval of Authority to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania.”

² The Tentative Order was published in the Pennsylvania Bulletin on January 27, 2007 at 37 Pa.B. 486, making comments due by March 28, 2007. Reply comments are due within 90 days or by April 27, 2007.

³ Vice Chairman Cawley’s Statement at 1-4.

Sprint Communication Company L.P. (“Sprint”), as a certified competitive local exchange carrier (“CLEC”) and an intrastate interexchange carrier (“IXC”) currently operating in Pennsylvania,⁴ provides the following comments in response to the Commission’s request in its Tentative Order. Sprint’s comments also address the questions put forth in Vice Chairman Cawley’s statement.

DISCUSSION

As an initial matter, Sprint commends the Commission for undertaking this examination of its current certification procedures in an effort to streamline the processes governing the entry of competitive telecommunications carriers seeking to offer telecommunications service alternatives in the Commonwealth.

The Application Form and the Commission’s entry procedures date back to the PUC’s *Implementation Orders* issued in 1996, when competition was just beginning to take shape after the enactment of the Telecommunications Act of 1996.⁵ As the Commission has acknowledged in its Tentative Order, much has changed during the ten-year period following the passage of the 1996 Act and the adoption of its *Implementation Orders*. A considerable amount of technological and legal changes have occurred and have altered the competitive landscape since these Implementation Orders were handed down. It is entirely appropriate for the Commission to undertake this review of its entry procedures with an eye toward streamlining overly burdensome regulatory requirements and minimizing barriers to competitive entry. The Commission’s regulatory requirements must be designed to strike a balance between the public

⁴ *In the Matter of the Application of Sprint Communications Company L.P. to Amend its Certificate of Public Convenience to Begin to Offer, Render, Furnish, or Supply Competitive Local Exchange Telecommunications Services to the Public in the Commonwealth of Pennsylvania*, Docket No. A-310183, F0002, Opinion and Order (Entered December 6, 1996); Opinion and Order (Entered May 1, 1998); Docket Nos. A-310183F0002AMA, A-310183F0002AMB, 310183F0002AMC, Opinion and Order (Entered December 1, 2006).

⁵ *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, Order (Entered June 3, 1996); Order on Reconsideration (Entered September 9, 1996).

interest in providing Pennsylvania consumers with competitive choice while at the same time safeguarding the public safety and welfare.

A. Specific Staff Revisions and Recommendations to the Application Form

The Commission's Tentative Order outlined the sections of the Application Form to which the PUC staff proposed revisions. Specifically, the staff revised the Application Form to reflect the provisions of Act 183, which gave IXCs the option of filing tariffs, price lists or completely detariffing their rates and services and making them subject to Pennsylvania state contract law. Staff also revised the Application Form to reflect that only an applicant for competitive local exchange carrier ("CLEC") status need designate a proposed service territory. The revisions clarify that applicants seeking other types of operating authority, such as IXCs or competitive access providers ("CAPs") are granted statewide authority. Additionally, the staff revised the Application Form to reflect that only CLECs need designate a Pennsylvania Emergency Management Agency ("PEMA") contact. Finally, staff renumbered and changed the order of the information requested in the application to facilitate its review of the material presented.

Sprint supports the specific staff revisions and recommendations to the Application Form. The staff recommendations clarify the IXC's tariff filing obligations as well as the scope of operating authority associated with the various regulatory classifications. The changes to the order in which the questions are presented in the Application Form also appear to organize the document in a more logical format.

B. CLEC Provisional Operating Authority and Related Procedures

Under the Commission's current procedures applicable to CLECs seeking to enter the service territories of non-rural incumbent LECs, the applicant is granted provisional operating

authority and permitted to offer services under the Interim Tariff provided with its certification application while that application is pending before the Commission. Vice Chairman Cawley asked commenting parties to address the sufficiency of these Interim Tariffs to ensure that CLECs adhere to basic consumer protections and the grounds under which provisional operating authority should be revoked in the wake of any tariff deficiencies.

Sprint's position is that, once granted, provisional operating authority should be revoked only under limited circumstances. While a CLEC's Interim Tariff may not be perfect, any defects, in themselves, should not lead to the revocation of provisional operating authority. Any deficiencies contained in the Interim Tariff will be rectified as part of the CLEC application review process. During that process, the CLEC is still subject to the consumer protection requirements set forth in the Pennsylvania code, including the PUC's consumer complaint procedures, so the CLEC's end users will receive the essential consumer protections to which they are entitled.

Sprint does not propose revisions to the Commission's existing practice of advising a CLEC of the revocation of its provisional operating authority, and its subsequent restoration of that authority if applicable, through the issuance of a Secretarial Letter. It does, however, believe that guidelines outlining the standards under which provisional operating authority will be revoked and subsequently restored would be beneficial to CLEC applicants to enable them to take steps to avoid or minimize the circumstances under which these measures would be imposed.

C. Adjudication of Protested Applications

Vice Chairman Cawley noted in his statement that the litigation of CLEC applications seeking, in particular, to enter the service territories of the rural LECs, can prolong the CLEC entry process considerably. The Vice Chairman therefore asked parties to comment on whether

the Commission should revisit and revise the consolidated procedures set forth in the *Implementation Orders* for market entry and interconnection in the service areas of the rural LECs.

Sprint contends that the Commission should revisit and revise its procedures for CLEC entry into the rural LECs' service areas. While these consolidated procedures may have been useful when the 1996 Telecom Act was first enacted, the competitive landscape has undergone extensive changes since that time and these procedures are no longer warranted. In fact, permitting rural incumbent LECs to routinely intervene and protest applications filed by competitive telecommunications carriers for CLEC authority in their service territories and to demand evidentiary hearings before the grant of operational authority acts as a genuine and significant barrier to entry and defeats the pro-competitive purposes of the Telecom Act.

Sprint questions the need for these consolidated entry procedures and their continued relevance. By the time most CLECs apply for entry into the service territories of the rural LECs, they have typically already been granted certification to operate in the service territories of Verizon Pennsylvania, Inc., Verizon North and often in Embarq territory as well. To have been granted this authorization, they must have already demonstrated that they possess the three attributes of the Commission's fitness test: technical, financial and legal fitness. The Commission has described what the three elements of its fitness test include.⁶ An applicant for certification must have the technical capacity to offer the proposed service and it must have the financial fitness to provide and maintain safe, reliable and reasonable service and facilities. Legal fitness means the applicant must not have exhibited a disregard for the Public Utility Code and the Commission's orders and regulations implementing the Code.⁷

⁶ *Seaboard Tank Lines, Inc. v. Pa. Public Utility Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985).

⁷ *See Re Perry Hassman*, Docket No. A-93287, F.2, Am-A, 55 Pa. PUC. 661 (1982).

Moreover, the Commission has previously ruled that, consistent with the pro-competition policies of both state and federal law, an applicant need only demonstrate fitness in order to obtain a certificate to provide facilities-based telecommunications service in the territory of a rural telephone company. Given its policy favoring facilities-based competition, the Commission reasoned that when applicants have demonstrated their fitness, approval of their application is necessary and proper to further the public interest, as required by 66 Pa. C.S. § 1103(a).⁸ Thus, the Commission's fitness test remains the primary consideration to determine whether an applicant should be granted authority to operate as a CLEC in the Commonwealth. There seems little to be gained, other than undue delay, to permit the rural LECs to intervene and protest CLEC applications in their service territories, particularly where the CLEC applicant has previously satisfied the Commission's fitness test for authorization to operate in non-rural service territories. The rural LECs have every incentive to impede to the extent possible the advent of competitive alternatives in their service territories and the consolidated procedures as currently structured give them the means to thwart and delay that competitive entry. Thus, the Commission should revise these procedures to eliminate the option for rural LECs to protest CLEC certification applications.

Additionally, the Vice Chairman posed the question as to whether the Commission should impose time limitations for the issuance of Initial or Recommended Decisions on applications for entry into the rural service territories. Under the current procedures, this entire litigation process, from the filing of the application, the submission of pre-filed testimony supporting the application, the evidentiary hearings, the briefs can take upward of one year or

⁸ *Application of AT&T Communications of Pennsylvania, Inc. and TCG Pittsburgh to Amend their Certificates of Public Convenience to Begin to Offer, Render, Furnish or Supply Facilities-Based Competitive Local Exchange Telecommunications Services in the Service Territories of Alltel Pennsylvania, Inc., Armstrong Telephone Company-Pennsylvania, The Bentleyville Telephone Company, Citizens Telephone Company of Kecksburg, Hickory Telephone Company, Marianna and Scenery Hill Telephone Company, North Pittsburgh Telephone Company, and Yukon-Waltz Telephone Company*, Docket No. A-310213F0002, Opinion and Order at 24-25 (December 20, 2000).

more before a decision is rendered on what should be a fairly routine examination of an applicant's fitness to offer services in the particular service territory. Sprint therefore recommends that the Commission set a time limit of no longer than six months for these types of applications to be fully adjudicated.

D. CLEC Classification

One of the modifications to the Application Form creates a new CLEC category that is limited to the provision of data services and classifies the entity as a CLEC-Data. The Commission's practice has been to exempt these CLEC-Data entities from certain regulatory obligations and tariff requirements imposed on providers of voice services, including the processing of 911 calls. The Vice Chairman asked commenting parties to address whether these CLEC classifications serve a useful purpose and whether they are sustainable in an environment that relies on networks and technologies for the provision of voice and data services other than the conventional circuit switched technologies. Additionally, the Vice Chairman asked commenting parties to consider whether a CLEC classification that distinguishes between the provision of retail and wholesale telecommunication services should be introduced in light of recent Commission decisions addressing this concept.⁹

In Sprint's view, the Commission should maintain the CLEC and CLEC-Data classifications. The classification of entities as data-only recognizes the distinctions in the provisioning of voice and data services. In addition, it is appropriate to continue the

⁹ Vice Chairman statement at 4, citing *Application of Sprint Communications Company L.P. for Approval of the Right to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Service Territories of Alltel Pennsylvania, Inc., Commonwealth Telephone Company and Palmerton Telephone Company*, Docket Nos. A-310183F0002AMA, A-310183F0002AMB, A-310183F0002AMC, Order entered December 1, 2006; *Application of Core Communications, Inc. for Authority to Amend its Existing Certificate of Public Convenience and Necessity and to Expand Core's Pennsylvania operations to Include the Provision of Competitive Residential and Business Local Exchange Telecommunications Services Throughout the Commonwealth of Pennsylvania*, Docket Nos. A-310922F0002AMA, A-310922F0002AMB, Order entered December 4, 2006.

Commission's practice of waiving obligations associated with the provisioning of voice services for those carriers that only provide data services. This practice acknowledges the difficulties that data service providers may encounter in complying with certain requirements associated with voice telecommunications services.

The Commission should also consider establishing a separate classification for a CLEC that, like Sprint, may provide only wholesale CLEC services in certain service territories. The Commission has endorsed the concept of a wholesale CLEC in its recent decisions in the Sprint and Core certification cases.¹⁰ Establishing a distinct category applicable to a wholesale CLEC simply clarifies existing Commission precedent and would facilitate the Commission's review and understanding of CLEC applications seeking this status. Moreover, such a classification is supported by the recent decision of the Federal Communications Commission ("FCC") that granted the petition for a declaratory ruling filed by Time Warner Cable ("TWC") and found that wholesale service providers are telecommunications carriers for purposes of sections 251(a) and (b) of the Telecom Act.¹¹ The FCC declared that wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs when providing services to other service providers, including Voice over Internet Protocol ("VoIP") providers.¹² In particular, the FCC noted that its decision to affirm the interconnection rights of wholesale

¹⁰ *Id.*

¹¹ *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, DA 07-709 at ¶¶ 1, 8-9 (released March 1, 2007) (hereinafter, "TWC Declaratory Ruling").

¹² *Id.* at ¶ 1. While the FCC has not yet determined the regulatory classification of VoIP service as either an information service or as a telecommunications service, it has issued decisions that have obligated interconnected VoIP providers to make contributions to the Universal Service Fund ("USF") and to comply with certain regulations such as 911 and the Communications Assistance for Law Enforcement Act ("CALEA"). See *In re Universal Service Contribution Methodology*, WC Docket No. 06-122, FCC 06-94 at ¶ 34 (released June 27, 2006) ("*VoIP USF Order*") and *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92 at ¶ 8 (2005) ("*CALEA First Report and Order*"), *aff'd*, *American Council on Education v. FCC*, No. 05-1404 (D.C. Cir. June 9, 2006).

carriers will advance its goals to promote facilities-based competition as well as broadband deployment, especially for consumers in rural areas,¹³ which are objectives that this Commission also supports.¹⁴

A wholesale/retail classification is consistent with both federal and Pennsylvania law. The FCC noted in the TWC declaratory ruling that the Telecom Act does not differentiate between retail and wholesale services when defining a “telecommunications carrier” or a “telecommunications service.”¹⁵ Section 153(44) of the Act defines telecommunications carrier as:

. . .any provider of telecommunications services, except such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services

Section 153(46) of the Act defines telecommunications services as:

. . . .the “offering of telecommunications for a fee directly to the public, *or to such classes of users as to be effectively available directly to the public*, regardless of the facilities used. [Emphasis added].

Furthermore, the Commission’s regulations define a CLEC as a telecommunications company that has been certificated by the Commission as a CLEC under its procedures implementing the 1996 Act.¹⁶ There is nothing in this definition requiring that a CLEC must be providing telecommunications services directly to an end user.

And Pennsylvania law defines a “public utility” for telecommunications purposes as:

¹³ *Id.* at ¶ 13.

¹⁴ *See, e.g., Amended Application of Vanguard Telecom Corp. for Approval to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Commonwealth of Pennsylvania in the Areas Served By Selected Rural Telephone Companies, A-310621F0002, A-310621F0003, Opinion and Order at 7 (August 23, 2000) (Vanguard Order).*

¹⁵ *Id.* at ¶ 8.

¹⁶ 52 Pa. Code § 53.57.

(1) Any person or corporation now or hereafter owning or operating in the Commonwealth equipment or facilities for:

(vi) Conveying or transmitting messages or communications . . . by telephone or telegraph or domestic public land mobile radio service including, but not limited to, point-to-point microwave radio service for the public for compensation. 66 Pa. C.S. § 102.

There is no requirement in the Pennsylvania statute that certification as a public utility is limited to the narrow situation of a utility only providing service directly to the public. And the Commission has not restricted its certification process to those entities that only serve the end user directly.¹⁷

In short, there is nothing in federal or Pennsylvania law to prohibit the Commission from classifying a CLEC as a provider of either retail or wholesale telecommunications services and the Commission should consider establishing a wholesale CLEC category as it revisits its CLEC entry procedures and considers modifications to the Application Form.

CONCLUSION

WHEREFORE, Sprint requests that the Commission take these initial comments into consideration as it determines whether to adopt revisions to its entry procedures applicable to new entrants and the accompanying Application Form.

¹⁷ See, e.g., *Waltman v. Pennsylvania Public Utility Comm'n*, 596 A.2d 1221 (1991).

Respectfully submitted,

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