



OFFICE OF CONSUMER ADVOCATE

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Consumer Advocate

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April 27, 2007

James J. McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

Re: Proposed Modifications to the Applications  
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:

Enclosed for filing please find an original and eight (8) copies of the Office of  
Consumer Advocate's Reply Comments, in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached  
Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Shaun A. Sparks".

Shaun A. Sparks  
Assistant Consumer Advocate  
PA Attorney I.D. # 87372

Enclosures

cc: All parties of record

\*960799

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PROPOSED MODIFICATIONS TO THE :  
APPLICATIONS FORM FOR APPROVAL :  
OF AUTHORITY TO OFFER, RENDER, :  
FURNISH OR SUPPLY : DOCKET NO. M-00960799  
TELECOMMUNICATIONS SERVICES :  
TO THE PUBLIC IN THE :  
COMMONWEALTH OF PENNSYLVANIA :

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**REPLY COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE**

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The Office Of Consumer Advocate (OCA) submits these Reply Comments in response to the Pennsylvania Public Utility Commission's (Commission) request for comments in the above-referenced proceeding. On Saturday, January 27, 2007, the Commission published, in the Pennsylvania Bulletin, notice of its request for comments and reply comments in this matter, the OCA thanks the Commission for its attention to these important matters.

**I. INTRODUCTION**

The OCA submits that the Comments filed by the Keystone State Chapter of the National Emergency Number Association (PA NENA) raise important public safety issues. The Commission should give the PA NENA Comments serious consideration because of the importance to Pennsylvania of an effective and efficient 9-1-1 emergency

dialing system. The OCA files these Reply Comments in support of PA NENA's request for Commission assistance in enhancing the working relationship among Pennsylvania's Competitive Local Exchange Carriers (CLECs) and Public Safety Answering Points (PSAPs).

The OCA acknowledges that PA NENA is best situated to describe how the Commission should accomplish this goal regarding PSAPs. Nevertheless, the OCA believes that in addition to safety issues, the Comments of PA NENA raise important legal issues that are the topic of the OCA Reply Comments. In support of the PA NENA Comments, the OCA submits the following Reply Comments.

## II. REPLY COMMENTS

### 1. **The issues and solutions identified by PA NENA are reasonable and support sound public safety practices.**

PA NENA's Comments include a number of requests aimed at enhancing the flow of information among PSAPs and CLECs. The OCA believes that all of PA NENA suggestions regarding these topics are important and that the Commission should give them serious consideration as it revises the CLEC Application form at issue in this docket.

In addition, the OCA understands the PA NENA Comments to specifically request that the Commission assist PSAPs in addressing issues related to CLEC compliance with the Public Safety Emergency Telephone Act (Act), 35 P.S. § 7011 *et seq.* Comments of PA NENA at 7. PA NENA comments that obtaining accurate county-

based access line counts from CLECs presents significant problems to PSAP administrators. Comments of PA NENA at 7-8. PA NENA also briefly illustrates how this negatively affects the PSAP funding process, and provides examples relating to the handling of the 9-1-1 fees collected by those CLECs. Id. The OCA believes that addressing these issues is an important public safety goal that warrants the Commission's attention.

In addition to raising these issues, PA NENA also provides proposed solutions. Id. at 8-10. For example, PA NENA requests that the Commission make it clear to Applicants that compliance with the reporting and funding requirements of the Act is necessary to retain certification as a Pennsylvania utility. Id. at 9 Regarding access line counts, PA NENA requests that the Commission require CLECs, as a part of the application approval process, to agree to provide accurate access line counts on a timely and ongoing basis as a condition of approval. Id. PA NENA also requests that CLEC applicants notify affected PSAPs about which class of service the CLEC intends to offer to its customers.

As PA NENA is comprised of persons that operate Pennsylvania's public safety telephone answering points, its opinions are authoritative on how best to operate Pennsylvania's PSAPs. The OCA believes that all the issues that it raises are important and that the solutions advanced by it are reasonable. As the OCA will explain below, the OCA also believes that the Commission has authority to assist Pennsylvania's PSAPs in all these matters, particularly in regard to compliance with the Public Safety Emergency Telephone Act.

**2. The Commonwealth Court and the Commission have determined that the Commission has jurisdiction regarding telephone utility funding compliance with the Public Safety Emergency Telephone Act.**

Regarding PA NENA's Comments on CLEC compliance with the funding mandates of the Act, the OCA submits that the Commission is the proper Commonwealth agency to which PSAPs or county governments should address these issues. While the OCA understands that the Pennsylvania Emergency Management Agency (PEMA) is the agency charged with the power and authority to promulgate, adopt, publish, and use guidelines for the implementation of the Act, both the Commonwealth Court and the Commission have determined that the Commission is the agency of primary jurisdiction regarding 9-1-1 funding compliance.

On July 12, 2005, the Commonwealth Court decided the case of County of Erie, Pa. v. Verizon North, Inc., 879 A.2d 357 (July 12, 2005) (Erie). In that case, Erie County had filed suit against Verizon North Inc. (Verizon) in the Court of Common Pleas of Erie County alleging that Verizon did not fulfill its financial responsibilities regarding Erie County's 9-1-1 system. Id. at 360. Erie County's complaint focused on its claim that Verizon did not remit the statutory contribution rate for the County's 9-1-1 system. Id. Verizon filed preliminary objections averring that the Commission or PEMA had primary jurisdiction of the compliance and funding mandates of the Act. Id. at 361.

After consideration of this issue, the trial court concluded that Erie County failed to exhaust its administrative remedies because Erie County could have sought assistance from PEMA and because the Commission has primary jurisdiction of the subject matter. Id. That court also reasoned that the proper forum for the resolution of reimbursement and billing issues under the Act was with the Commission. Erie at 361. Erie County

appealed that decision to Pennsylvania Superior Court in December of 2003, and that court transferred the appeal to the Commonwealth Court in February of 2004. The Commonwealth Court subsequently decided the case in July of 2005.

In supporting its decision that the Commission had jurisdiction over the matter, the Commonwealth Court reasoned:

Turning now to the substantive statutory provision of the 911 Act in issue, we observe that the number of telephone subscribers who are assessed the 911 fee is a vital statistic used by the PUC in its review and calculation of the 911 contribution rate. The 911 Act contains a definitional section that explains the various terms used within the Act. The term "contribution rate" is defined as "[a] fee assessed against a telephone subscriber for the nonrecurring costs, maintenance and operating costs of a 911 system...." A "telephone subscriber" is "[a] person who contracts with a local exchange carrier within the Commonwealth for *local exchange telephone service*, either residential or commercial...." .

The interpretation of the term "local exchange telephone service" will, therefore, be dispositive of the merits of the case. The term "local exchange telephone service" is defined in the 911 Act as "the provision of telephonic message transmission within an exchange, *as such is defined and described in tariffs filed with and approved by the [PUC].*" *Id.* (emphasis added). Thus, the fundamental question here concerns interpretation and application of a technical and specialized term defined in tariffs. It, therefore, involves matters that are best determined by the PUC, employing its unique expertise. Moreover, a uniform rule explaining and applying this term to the assessment of 911 contribution rates is in the public interest. In addition, the PUC possesses the authority to order appropriate remedies; it can direct Verizon to make refunds, 66 Pa. C.S. § 1312, and to terminate any illegal practices, 66 Pa. C.S. § 501. Finally, allowing the dispute to be adjudicated in the first instance by the PUC will preserve all rights of the parties, while allowing them, as well as any subsequent re-viewing court, to benefit from the PUC's opinion. Therefore, we agree with the trial court that the doctrine of primary jurisdiction is correctly applied here.

Id. at 365 (citations omitted). Thus, the Commonwealth Court concluded that the Commission had jurisdiction over the matter because of its expertise and because it was able to order appropriate remedies.

The Commonwealth Court also noted that the Commission was addressing the Erie County issues raised while the Common Pleas appeal was pending. Id. at 361 fn. 7. The Commonwealth Court provided a time line excerpted from the Commission's April 1, 2005 Opinion and Order at Docket No. C-20032036, which addressed a Formal Complaint that Erie County filed with the Commission on these same issues. The Erie court noted that the day after the Common Pleas court entered its 2003 decision, Erie County filed a Formal Complaint with the Commission and with PEMA. Id. at 362. In response, PEMA issued a letter stating that it did not have jurisdiction of the matter because the Commission did, and it dismissed the action. Id. The Commission likewise found that it too did not have jurisdiction over the matter as pled by Erie County, but directed Erie County to file an amended complaint and provided for the litigation of that amended complaint. Id. The Commission issued its decision on that Formal Complaint in April of 2005.

The Commonwealth Court read the April 2005 Commission Order to conclude that the Commission also found that it had jurisdiction to address the issue of whether Verizon properly billed and remitted the 9-1-1 fees to Erie County. Id.

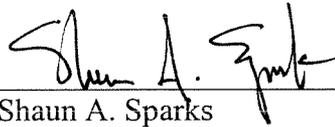
Given all the above, the OCA submits that the Commission is the appropriate regulatory agency to address PSAP concerns about CLEC funding compliance with the Public Safety Emergency Telephone Act. While the OCA agrees with PA NENA that the issues contained in this docket are limited, PA NENA is correct that the Commission is the appropriate agency to which PSAPs should address questions of whether CLECs are fulfilling their obligations under the Act. To this end, and in the interest of the public welfare, the Commission should encourage PA NENA, Pennsylvania's PSAPs, and

Pennsylvania's counties to approach the Commission for assistance with Public Safety  
Emergency Telephone Act funding compliance issues.

**III. CONCLUSION**

The OCA thanks the Commission for its consideration of these Reply Comments and urges the Commission to adopt the Comments of PA NENA.

Respectfully submitted,



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Assistant Consumer Advocate

Counsel for:

Irwin A. Popowsky  
Consumer Advocate

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April 27, 2007

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CERTIFICATE OF SERVICE

Re: Proposed Modifications to the Applications 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

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

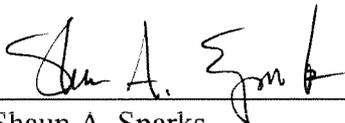
Dated this 27th day of April, 2007.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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