

PUC Publishes Telecommunications Review

Regulatory developments in the telecommunications and energy industries were the subjects of a quarterly review by the Pennsylvania Public Utility Commission. The Spring/Summer 2005 edition of Keystone Connection covers all the major developments in the industries undertaken by the PUC over the previous three months. The report is available on the PUC web site at www.puc.state.pa.us

Key telecommunications Issues include the following:

PUC Implementing the New Chapter 30 Provisions

Over the past few months, the PUC has taken numerous steps to implement the various provisions of the new Chapter 30, which was signed into law as Act 183 by Gov. Ed Rendell on Nov. 30, 2004, and took effect the next day. The original Chapter 30 was in place from July 1993 until it expired on Dec. 31, 2003.

Under the original Chapter 30, the PUC was authorized to permit a reduced, alternative form of regulation for incumbent local exchange carriers (ILECs) who promised 100 percent broadband deployment by 2015. Act 183 seeks to encourage earlier completion of these commitments by providing ILECs with the ability to file amended net-work modernization plans (NMPs) to accelerate broadband deployment. In return, the new legislation offers ILECs more economic incentives and lesser PUC regulation, particularly in the area of reporting requirements.

Currently, the PUC is processing amend-ed NMPs filed by all 33 Pennsylvania ILECs, which must be ruled upon within 100 days of the filing date. The first amended NMP was approved on March 3, and it is expected that all remaining ones will be acted upon by the end of June.

On March 8, the PUC entered a tentative order seeking comments regarding Lifeline programs and eligibility notifications. As to reporting requirements, on March 23 the PUC voted at Docket No. M-0004185 to eliminate various pre-Act 183 reports and convened facilitated discussions on May 11 to address the content of the annual financial report, as well as the validity of other reports that remain open for comment. By order entered on March 29 (Docket No. L-00050170), the PUC initiated a proposed rulemaking to eliminate the requirement for interexchange carriers to file tariffs for intrastate competitive services. On June 23, the PUC is expected to impose the first annual assessments for education technology funds. Other measures taken by the PUC include efforts to de-fine the NMP audit process and the review of filings made by ILECs containing competitive service designations.

Amended Chapter 30 Network Modernization Plan

Act 183 allows ILECs to amend their original Chapter 30 Network Modernization Plan (NMP) to accelerate broadband deployment in return for additional regulatory relief.

The new law outlines three broadband acceleration options for ILECs. Option 1, chosen by all but two rural ILECs, commits the company to 100 percent broadband availability in its service territory by Dec. 31, 2008. Option 2, chosen by Sprint/United Telephone and ALLTEL, requires 100 percent broadband availability by either Dec. 31, 2013, or Dec. 31, 2015, as does Option 3 which only applies to Verizon PA and Verizon North. Options 2 and 3 mandate the offering of a Bona Fide Retail Request Program (BFRR) and a Business Attraction and Retention Program (BARP). Under all three options, the ILECs committed to 100 percent broadband availability for public schools, industrial parks, and health care facilities by Dec. 31, 2005; technical assistance to political subdivisions; a 30 percent discount for intrastate broadband services to schools via a three-year contract; and technical assistance to schools applying for E-Rate funding.

For ILECs serving less than 50,000 access lines, Act 183 provides a waiver of non-facilities-based interconnection rules under Section 251(c) of the federal Telecom Act until Dec. 31, 2008. Therefore, competitive local exchange carriers must use their own network to compete with small ILECs.

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Triennial Review Remand Order Update

In March, following a long and complex history, new federal rules became effective that govern access to an incumbent local exchange carrier's (ILEC's) unbundled network elements (UNEs). In its *Triennial Review Remand Order*, the Federal Communications Commission (FCC) phases out the UNE-Platform over 12 months to eliminate disincentives to infrastructure investment. The FCC also clarifies the impairment standard and modifies its application of the unbundling framework.

If parties cannot reach agreement on alternative terms for discontinued UNEs, a transition plan is provided to service the embedded base of customers. The new rules will be implemented by the parties through amended interconnection agreements pursuant to change of law provisions.

Unbundling Framework

The touchstone of “impairment” (access to UNEs) has been a vague uneconomic entry standard. The impairment standard is now based on the capabilities of a “reasonably efficient competitor,” defined as “a hypothetical competitor acting reasonably efficiently.” This standard is the underlying support for the new rules, and it is being challenged on appeal. Other modifications of the framework are: use of UNEs exclusively for mobile wire-less or long-distance services (“competitive downstream markets”) is prohibited; the prospect for competition in a geographic market is now based on the state of competition in other, similar markets; and UNEs can be used to replace ILEC special access in the local exchange market for several reasons including the possibility of ILECs engaging in price squeeze behavior.

Dedicated Interoffice Transport

The impairment test for dedicated transport is based on business line counts and fiber-based collocators in ILEC wire centers. Competing carriers (CLECs) may access DS1 transport except on routes connecting a pair of wire centers, where both wire centers contain at least four fiber-based collocators or at least 38,000 business access lines. CLECs may access DS3 or dark fiber transport except on routes connecting a pair of wire centers, each of which contains at least three fiber-based collocators or at least 24,000 business lines. Limits are placed on multiple DS1 and DS3 circuits. Entrance facilities connecting an ILEC’s network with a CLEC’s network are not available as UNEs.

The wire center test is considered an accurate, administrable and an appropriately nuanced evaluation of impairment, but possibly under-inclusive or over-inclusive. The FCC may refine its rules during its biennial review procedure.

High-Capacity Loops

CLECs may access DS3-capacity loops except in any building within the service area of a wire center containing 38,000 or more business lines and four or more fiber-based collocators. CLECs are impaired without access to DS1-capacity loops except in any building within the service area of a wire center containing 60,000 or more business lines and four or more fiber-based collocators. Dark fiber UNE loops are no longer available.

Mass Market Local Circuit Switching

Due to the prevalence of CLEC switches deployed nationwide, the use of packet switches and softswitches, and developments in ILEC “hot cut” processes, ILECs have no obligation to provide CLECs with unbundled access to mass market local circuit switching, effectively also eliminating UNE-P. Unlike loops or transport, access to switching is subject to a “nationwide bar” due to the disincentives to investment posed by the availability of unbundled switching.

The FCC implemented the new rules because federal law requires that ILECs provide other telecommunications carriers with “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point at rates, terms and conditions that are just, reasonable and nondiscriminatory.” The FCC is authorized to determine which elements are subject to unbundling.

Verizon, its competitors and others have filed challenges to the new rules before the District of Columbia Circuit at lead Docket No. 05-1095. The PUC is monitoring the appeals.

For further details, see *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, *Order on Remand* (rel. Feb. 4, 2005) (FCC 04-290).

Telecommunication Mergers

Each of the three mergers of large telecommunications firms that have been announced this year will require varying types of approval by this Commission.

An application was filed on Feb. 28, 2005, by SBC Communications, AT&T Corporation and AT&T's Pennsylvania subsidiary for approval of SBC's acquisition of AT&T. The application was formally protested by a small number of parties, and there were notices of intervention filed. Consequently, the case was assigned to the Office of Administrative Law Judge for adjudication or other resolution.

On March 7, 2005, Verizon Communications Inc. and MCI Inc. filed for approval of MCI's acquisition by Verizon and the consequent change in control of several Pennsylvania utility subsidiaries of MCI. This application also has been the subject of protests and interventions. After a protracted bidding contest for MCI between Verizon and Qwest Communications International Inc., Verizon raised its bid for MCI a second time on May 2, and Qwest withdrew its bid later the same day. Following the amendment by Verizon and MCI of their application to reflect these developments, this case has been assigned to the Office of Administrative Law Judge. The Commission is expecting the filing in late June of an application seeking approval of the spin-off of United Telephone Company of Pennsylvania by Sprint Corporation following the latter's merger with Nextel Communications Company. United PA and its 17 sister local exchange subsidiaries of Sprint are planned to be spun-off to become subsidiaries of a brand new independent company that will be formed to only provide local wireline telephone service. Wireless, long distance and Internet service as well as competitive local exchange service will then be provided by the merged Sprint-Nextel.

In other PUC news, Commissioner James H. Cawley has been elected Vice Chairman of the Commission. Cawley replaces Robert K. Bloom, who has retired. Vice Chairman Cawley rejoined the Commission on June 9.

Vice Chairman Cawley, of Mechanicsburg, Cumberland County, was nominated as a Commissioner by Gov. Edward G. Rendell on April 25 and confirmed by the Senate on June 7. He will serve a full term that ends in 2010.

In 1970, Cawley became one of the seven original law clerks serving the judges of the newly created Commonwealth Court of Pennsylvania. He was later appointed Majority Counsel to the Pennsylvania Senate Consumer Affairs Committee where he drafted several major amendments to Pennsylvania's public utility laws and assisted with codification of those laws. In 1977, he was appointed Chief Counsel to the Senate Majority Floor Leader.

Telecom Association Backs Market Driven Forces

The United States Telecom Association (USTA) urged the Federal Communications Commission to extend policies that encourage investment and market-driven competition for special access services, dedicated point-to-point data and voice services provided to telecommunications carriers.

“Thanks to the FCC’s light touch policies, today’s special access markets are highly competitive. With the markets already flourishing, the last thing the Commission should do is impose unnecessary regulations,” explained USTA President and CEO Walter B. McCormick, Jr. “This is an important issue for the industry and we urge the Commission to reject government micromanagement and instead rely on a market-driven environment for special access services.”

In comments filed today in the Commission’s proceeding on Special Access rates for price-cap Local Exchange Carriers, USTA pointed to the success of the Commission’s existing policies and made four specific recommendations going forward:

- Continue to foster competitive investment and entry by preserving current price cap levels, rather than deterring investment and entry through re-initialization or other manipulation of current rates.
- Continue the successful transition to a free-market by allowing voluntarily-negotiated commercial special access agreements everywhere and adjusting the Phase II triggers to account for competitors that offer services without taking collocation.
- Decline to unnecessarily adopt a productivity factor to manage future earnings.
- Decline to prejudge the outcome of the special access proceeding by adopting unwarranted interim rules.

“The Commission has followed a policy of encouraging competition and reducing regulatory management of special access services for approximately twenty years. This policy has led to vibrantly competitive markets in which customers have many choices of providers and services offerings at steadily declining prices. By any measure, the Commission’s special access policy has been very successful,” USTA’s comments state. In this proceeding, “the Commission should build on its special access successes by relying on competition and commercial agreements wherever possible to determine market outcomes.”