



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE REQUEST OF VERIZON)
NEW JERSEY INC. FOR A WAIVER OF THE BOARD'S) ORDER
INTRALATA TOLL EQUAL ACCESS SCRIPTING)
REQUIREMENTS) DOCKET NO. TO08070530

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated July 29, 2008, Verizon New Jersey Inc. ("VNJ") petitioned the Board of Public Utilities ("Board") for a waiver from the Board's intraLATA toll equal access scripting requirements, which are set forth in: (1) N.J.A.C. 14:10-10.1(c)(2); (2) the Board's order, dated June 3, 1997, in Docket No. TX94090388;¹ and (3) the Board's order, dated January 5, 2005, in Docket No. TO03121013.²

BACKGROUND

As part of its decision to open the New Jersey intrastate intraLATA toll market to competition, the Board found it necessary to establish nondiscriminatory business office practices to, among other things, prevent local exchange carriers ("LECs") from gaining an improper competitive advantage by attempting to steer customers to their intraLATA toll services. Further uniform standards for the fair dissemination of information to customers were deemed necessary at that time, to ensure that consumers were able to make independent and informed choices concerning which carrier they prefer to provide intraLATA toll service.

N.J.A.C. 14:10-10.1(c)(2) contains the following intraLATA toll equal access scripting requirement: "LECs [local exchange carriers] shall not encourage or attempt to persuade customers to subscribe to their own intraLATA service, and shall not discourage or attempt to dissuade customers from selecting another carrier."

¹ I/M/O the Investigation of IntraLATA Toll Competition for Telecommunications Services on a Presubscription Basis, Docket No. TX94090388, Decision and Order (June 3, 1997) (the "1997 Order").
² I/M/O the Request of Verizon New Jersey Inc. for Abatement of Certain Business Office Rules for Local Exchange Carriers, Docket No. TO03121013, Order (Jan. 5, 2005) (the "2005 Order").

The Board's 1997 Order contains the following intraLATA toll equal access scripting requirements:

- a. Incumbent LECs are precluded from "steering" customers to their own intraLATA service and prohibited from dissuading customers from selecting another carrier (1997 Order at 17).
- b. When customers call with questions regarding intraLATA presubscription, the incumbent LEC Customer Service Representative ("CSR") shall respond with a neutral statement describing intraLATA presubscription, and shall inform the customer that he or she may choose from a number of competing carriers (Id. At 18).
- c. When a customer calls with questions regarding intraLATA presubscription, incumbent LEC CSRs are not permitted to market the LEC's intraLATA toll services until after the customer is provided with the neutral information on intraLATA presubscription described in these guidelines and has been informed that he or she has a choice of carriers (Id. at 18).
- d. If an existing customer calls the business office to change intraLATA carriers, the incumbent LEC is prohibited from informing the customer that any optional toll calling plans that the customer may have with the LEC will be lost (Id. at 14).

Although the Board's 2005 Order found that VNJ's business office "script" is consistent with the Board's regulations and rulings, the 2005 Order generally upheld the requirements set forth in the 1997 Order.³

POSITION OF VNJ

In support of its waiver petition, VNJ notes that the Federal Communications Commission ("FCC") recently abolished equal access scripting requirements for toll presubscription for Bell Operating Companies ("BOCs") and their independent Local Exchange Carrier ("LEC") affiliates.⁴ In that order, the FCC found that the market for long distance service has changed dramatically since divestiture, rendering the equal access scripting requirement much less beneficial:

The EA Scripting Requirement was designed to foster fair competition in the provision of stand-alone long distance service at a time when competition in the provision of stand-alone long distance service was nascent and there was little, if any, competition in the provision of local exchange service. Since that

³ That script provides as follows: "You have a choice of Regional/Local toll and Long Distance providers. We are pleased to inform you that Verizon provides regional toll and Verizon Long Distance/Verizon Enterprise Solutions (Business) provides long distance. I can read a list of other providers if you're not sure which company you'd like."

⁴ Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112, 2000 Biennial Regulatory Review of Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175, Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order, FCC 07-159, at paras. 75-78, 87-88, 125-26 (rel. Aug. 31, 2007) ("Section 272 Sunset Order").

time, market conditions have changed substantially, greatly reducing the benefits of the EA Scripting Requirement.⁵

The FCC also found that the stand-alone long distance competition that the equal access scripting order was intended to protect has been replaced by competition for the provision of "bundled" services:

[T]he stand-alone long distance competition that the EA Scripting Requirement was designed to protect has largely given way to competition between service bundles that include both local exchange and long distance service or "any distance" minutes that can be used for both local exchange and long distance calling. For example, service bundles are increasingly available from both cable providers and interconnected VoIP providers. Wireless telephone subscribers also regularly use their "any distance" minutes for long distance calling.⁶

Moreover, the FCC found that, despite the increasing availability and popularity of such bundles, the equal access scripting requirement focuses narrowly on standalone long distance service, which confuses consumers: "Instead of increasing consumer awareness of competitive alternatives, we find that the artificially narrow focus of the EA Scripting Requirement may, in fact, confuse or mislead consumers and cause them not to investigate alternative means of making long distance calls."⁷ The FCC concludes that the equal access scripting requirement "imposes unnecessary costs on the BOCs."⁸ Accordingly, the FCC lifts this requirement for all BOCs and their independent incumbent LEC affiliates.⁹

VNJ urges the Board to follow the FCC's lead and seeks that the Board waive its equal access scripting requirements for intraLATA toll presubscription found in N.J.A.C. 14:10-10.1(c)(2) and corresponding Board Orders related to this issue. VNJ contends that the New Jersey requirements are a legacy of the AT&T divestiture and, like their FCC counterpart, are no longer necessary, useful or in the interests of consumers because the market for standalone regional and long distance toll service is shrinking rapidly as customers increasingly choose to purchase service in bundles from a single provider, and competition is increasingly occurring between bundled offerings, rather than between a bundled package offered by an intermodal competitor and stand-alone local and long distance services offered by incumbent LECs.

Moreover, VNJ contends that waiving the Board's equal access scripting requirements would be consistent with the decisions eliminating the equal access scripting requirements that have been issued by state commissions in Delaware,¹⁰ Florida,¹¹ Illinois,¹² Indiana,¹³ Maryland,¹⁴ Nevada,¹⁵

⁵ Id. at ¶ 120.

⁶ Id. at ¶ 121.

⁷ Id. at ¶ 122.

⁸ Ibid.

⁹ Id. at ¶¶ 125-26.

¹⁰ I/M/O the Investigation into the Competitive Provisions of Intrastate Telecommunications Service through IntraLATA Presubscription and Universal Service Funding, Delaware Public Service Commission, PSC Regulation Docket No. 42, Order No. 7385 (recognizing that consumers are aware that they have a choice of providers, the commission eliminated the intraLATA toll subscription requirements applicable to Verizon Delaware).

New York,¹⁶ Ohio,¹⁷ and Wisconsin.¹⁸ VNJ contends that consumers have a selection of providers such as cable, VOIP and wireless, none of which are subject to equal access requirements. Accordingly, VNJ argues that the requirements are unnecessary, counter-productive and are an unreasonable hardship.

No entity has filed opposition with the Board on VNJ's waiver petition, filed on July 29, 2008.

BOARD DISCUSSION

The Board previously found the intraLATA toll equal access scripting requirements of N.J.A.C. 14:10-10(c)(2) and the Board's 1997 and 2005 Orders to be appropriate to help customers make independent and informed choices concerning intraLATA toll service carriers and to prevent LECs from gaining an improper competitive advantage by attempting to steer customers to their intraLATA toll services. The telecommunications market, however, has evolved since these requirements were established. A myriad of telecommunications carriers, including ILECs, CLECs, cable, cellular, and VOIP providers extensively market and provide both local and long distance service. The Board, through the issuance of several orders aimed at advancing competition, most recently the CLEC Reclassification Order I/M/O the Board Investigation Regarding the Reclassification of Competitive Exchange Carrier Services as Competitive, Docket No. TX06120841 (June 29, 2007) and the ILEC Reclassification Order I/M/O the Board Investigation Regarding Reclassification of Incumbent Local Exchange Carrier

¹¹ In re: Petition for Approval To Eliminate IntraLATA Toll Customer Contact Protocols, by Verizon Florida LLC, Florida Public Service Commission, Docket No. 070671-TL, Order No. PSC-08-0208-CO-TL (eliminating the intraLATA toll scripting requirements applicable to Verizon Florida Inc.).

¹² Joint Petition for Waiver of the Equal Access Scripting Requirements of 83 Ill. Adm. Code Part 773.140(b), Illinois Commerce Commission, Docket No. 07-0549, March 26, 2008 Order (waiving the equal access scripting requirements for Illinois Bell Telephone Company, Verizon North Inc. and Verizon South Inc., and finding that the waiver will not harm consumers, will not impede competition, and is reasonable and consistent with the public interest).

¹³ Verified Petition of Indiana Bell Telephone Company, and Verizon North Inc. and Contel of the South Inc. d/b/a Verizon North Systems for Waiver of the Equal Access Scripting Requirements, Indiana Utility Regulatory Commission, Cause No. 43391, June 4, 2008 Order (permanently waiving the intraLATA equal access scripting requirements for AT&T Indiana and Verizon, and finding that the waiver will not impede the operation of the competitive market that has already developed in Indiana).

¹⁴ I/M/O the Commission's Policies Concerning Presubscribed IntraLATA Toll Dialing, Public Service Commission of Maryland, Case No. 8761, March 5, 2008 Order (granting Verizon Maryland Inc.'s petition requesting relief from the Commission's equal access scripting requirements).

¹⁵ Petition of Verizon California Inc. d/b/a Verizon Nevada To Eliminate the IntraLATA Toll Equal Access Business Office and Scripting Procedures Approved by the Commission in Docket Nos. 96-7036, 96-12018, and 97-2010, Public Utilities Commission of Nevada, Docket No. 07-11018, April 2, 2008 Order (holding that the state business office and scripting procedures for intraLATA long distance service are no longer justified in today's competitive environment).

¹⁶ Petition of Verizon New York Inc. To Eliminate IntraLATA Equal Access Scripting Requirements, New York Department of Public Service, Case 08-C-0063, May 22, 2008 Order (holding that the rationale underlying the scripting requirements no longer exists).

¹⁷ I/M/O the Establishment of Carrier-to-Carrier Rules, The Public Utilities Commission of Ohio, Case No. 06-1344-TP-ORD, October 17, 2007 Entry on Rehearing (removing the equal access scripting requirements for all CLECs, AT&T and Verizon).

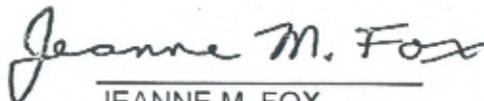
¹⁸ Petitions To Waive the IntraLATA Equal Access Scripting Requirements of Wis. Admin. Code Section PSC 165.043(4)(d), Wisconsin Public Service Commission, Docket No. 5-TI-1743, January 24, 2008 Order (holding that it is reasonable to eliminate the intraLATA scripting obligations that have previously been placed on AT&T and Verizon).

Services as Competitive, Docket No. TX0711873, (August 20, 2008), have recognized the increased level of competition in the telecommunications marketplace. As a result, consumers have more choices today and are more informed of their choices than when the requirements regarding intraLATA toll scripting were first established. In addition, in today's telecommunications environment, many customers no longer choose a separate intraLATA toll provider because they subscribe to bundled products that include local, intraLATA toll and interLATA toll at a flat monthly rate. Because the equal access scripting requirement was initially enacted solely on standalone long distance services and did not include nor contemplated the increasingly popular bundled offerings, the existing scripting requirements are not consistent with the trends in today's marketplace which now allow various alternative means of making long distance calls. Finally, because the scripting requirements do not apply to all providers, the scripting requirement could favor Verizon's competitors.

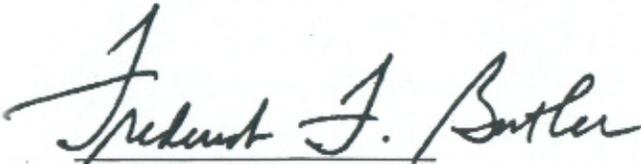
In light of the foregoing, the Board HEREBY GRANTS VNJ's waiver petition. In so doing, the Board acknowledges that VNJ should be able to inform customers of its own service offerings. At the same time, the Board expects and demands that, once VNJ has done so, if the customer clearly communicates her or his decision to select another provider, VNJ will in no way attempt to dissuade the customer at the time of the selection, but rather will timely implement the customer's choice of provider. Furthermore, VNJ will act in accordance with all applicable provisions of the administrative code, including, but not limited to, N.J.A.C. 14:10-10.1(c)3 which states, "LECs shall not engage in any discriminatory or anti-competitive practices when processing PIC service orders". Any attempt to unduly dissuade a consumer's choice of a non-Verizon carrier may be investigated as a potential violation of the provision. Finally, the Board HEREBY ORDERS that N.J.A.C. 14:10-10.1(c)(2) shall be waived as to VNJ, for the good cause shown above, and in compliance with N.J.A.C. 14:1-1.2, and HEREBY DIRECTS Board Staff to consider a modification or deletion of the regulation as soon as practicable.

DATED: 6/10/09

BOARD OF PUBLIC UTILITIES
BY:



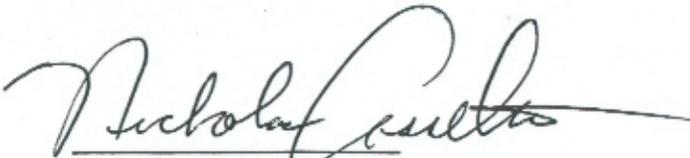
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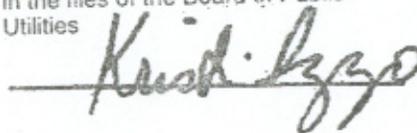
ELIZABETH RANDALL
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
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Docket No. TO08070530

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