

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 00-C-0188 - Proceeding on Motion of the Commission to
Examine the Migration of Customers Between
Local Carriers

NOTICE CLARIFYING EXIT REQUIREMENTS
AND RECONVENING COLLABORATIVE SESSIONS

(Issued May 10, 2002)

This Notice clarifies and continues the development of guidelines for an orderly exit from the market by competitive local exchange carriers (CLECs), as reflected in the Commission's December 4, 2001 Order Adopting Mass Migration Guidelines in this proceeding.

INTRODUCTION

The Mass Migration Guidelines were designed to ensure adequate notice to customers and an orderly transition without interruption of service. They include requirements for notifying the Commission, the industry and customers, and they create a project management process for managing the migration. The recent experience with mass migrations of telephone customers away from exiting carriers shows that the Guidelines have provided a good workable means of managing migrations on a case-by-case basis, taking into account the unique facts of each case. Recent experience also suggests, however, the need to clarify and remind all carriers of existing exit requirements under the Public Service Law. Moreover, to provide better guidance to carriers exiting the market, interested parties are invited to meet collaboratively to develop more detailed standards for decisions to allow a carrier to terminate service.

Parties will also be asked to consider additional information requirements and the best way to gather and maintain such information. Finally, interested parties are invited to consider measures to protect customers of CLECs from loss of service during migrations.

CURRENT REQUIREMENTS

While compliance with the Mass Migration Guidelines is a necessary predicate to termination of service, carriers are reminded that such compliance is not, in and of itself, sufficient to enable a carrier to exit. There is an independent requirement under the Public Service Law (§ 92) that a carrier first receive permission from the Commission before it terminates service to customers. See, e.g., New York Telephone Co. v. Jamestown Telephone Co., 282 N.Y. 365, 374-75 (1940). Formally, such termination is accomplished through the filing of a tariff supplement canceling the carrier's tariff. The Commission retains the power to allow such tariff supplements to go into effect or to suspend such filings.

PROCEDURE

Carriers are hereby notified that all Exit Plans required by the Guidelines should be formally filed with the Commission. Carriers should submit 10 copies to:

Secretary Janet Hand Deixler
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Each filed Exit Plan will be docketed and will receive a case number. In addition to filing the Exit Plan with the Secretary, exiting carriers should also send a copy directly to:

Chief
Competitive Carrier & Market Analysis Section
Office of Communications
NYS Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Department Staff will review Exit Plans and provide feedback to carriers, but Exit Plans will not be formally approved or disapproved. Staff advice to carriers regarding Exit Plans will focus on whether an Exit Plan is well-suited to put the carrier in a position such that approval from the Commission to terminate service is more likely to be granted.

Carriers must seek formal Commission approval to terminate service. Such approval will normally be accomplished by Commission action on the carrier's filed supplement to cancel its tariff, pursuant to 16 NYCRR 720-5.4. In the case of termination of basic service, carriers must file these supplements at least 30 days in advance of the desired effective date, consistent with PSL § 92(2)(a).

ISSUES FOR COLLABORATIVE CONSIDERATION

The Mass Migration Guidelines were developed largely through a cooperative industry effort coordinated by Department Staff. That process has worked well as a means of considering migration issues with a view to technical feasibility and business practicability. Because there are additional issues, as outlined below, that warrant development through the collaborative process, interested parties are invited to meet for discussion of the following issues:

1. Notice to customers. The Mass Migration Guidelines currently require a single notice to be sent to a carrier's customers 60 days prior to that carrier's exit from the market. Parties are invited to revisit this notice

requirement. Parties should consider the appropriate length of the customer notice period, the number of notices that a customer must receive, as well as various types of notice, including registered mail, telephone, intercept messages on the phone line, and others. Parties are also urged to revisit the content of customer notices, in light of more recent experience.

2. Standards for approval of a carrier's termination.

In deciding upon a carrier's request to terminate service, the Commission will be guided by its view of what is in the public interest. Ordinarily, this will include an evaluation of the impact of any termination on the health and safety of the public. The collaborative group should consider whether these general standards can be developed into more specific criteria that can guide carriers, the Staff, and the Commission in evaluating the prospects for a carrier's termination of service. In particular, the parties should consider the following criteria:

a. Nature of the customer base. A carrier's exit from a market may need to be managed differently if that carrier serves customers such as hospitals, police departments, or school districts whose loss of telecommunication service would seriously jeopardize public health and safety. Parties should provide input regarding which customers fall into such a "jeopardy" category and how they can be identified. The parties should also consider whether a different exit plan should be followed where a carrier's customers are solely or primarily residential or commercial.

b. Migration time and difficulty. The amount of time required to migrate a customer, once that customer has initiated an order with an alternative carrier, is largely a function of the serving configuration of the exiting carrier. The collaborative should consider how this factor can be taken into account in Exit Plans and termination decisions.

c. Cost. The collaborative should consider whether termination approval should depend on the cost to the carrier to continue service or that carrier's ability to fund such continuation of service. The collaborative is invited to consider any other economic or market considerations that may be relevant to such a Commission decision, as well.

d. Progress of Migration. The actual progress of migration will likely be a factor in making a final determination that a carrier's cancellation supplement should be allowed to go into effect. The collaborative should consider how best to measure and track the movement of customers to alternative providers, among other aspects of the migration.

3. Information Collection and Reporting. Presently, there is often insufficient information upon which the Commission can reach a decision. For example, carriers do not now specifically flag or segregate customer records to identify particular "health and safety" customers. Similarly, it is currently difficult to track the status of customer migrations, particularly where customers obtain new telephone numbers rather than porting their current ones. The collaborative should discuss ways that carriers can improve their customer information and their ability to track the migration process.

4. Protection of Customers from Service Interruption. The recent spate of bankruptcies has highlighted the difficulty that financially troubled carriers can have in complying with the 60-day customer notice and other requirements of the Mass Migration Guidelines. Such difficulty may result from a general lack of funds to continue operations, conflicting orders of a Bankruptcy Court, or the termination of necessary wholesale services or supplies to the CLEC. The failure to follow an orderly migration has the potential to threaten public health and safety where it results in the loss of local exchange service to critical customers. In light of such concerns, interested parties are invited to discuss the best means of

protecting the general body of telephone customers, and those who depend upon telephone customers for essential services, from an interruption of telephone service resulting from an abrupt termination by a distressed CLEC. Such protections should be compatible, as much as possible, with the goals of fostering a competitive telephone market.

Parties interested in participating in collaborative meetings to discuss these issues should contact Administrative Law Judge Eleanor Stein at eleanor_stein@dps.state.ny.us or 518-474-7663 by May 24, 2002. The collaborative group should provide a report to the Commission within six weeks of the date of this notice.

JANET HAND DEIXLER
Secretary