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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 29, 1999

Honorable John M. Quain, Chairman
Pennsylvania Public Utility Commission
104 North Office Building
Harrisburg, PA 17105

Re: IRRC Regulation #57-204 (#2036)
Pennsylvania Public Utility Commission
Cramming and Slamming

Dear Chairman Quain:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Fiona Wilmarth at 783-5438.

Sincerely,

Robert E. Nyce
Executive Director

REN:kgg

Enclosure

cc: Terrence J. Buda
Janice Ragonese
Sherri DelBiondo
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

PENNSYLVANIA PUBLIC UTILITY COMMISSION REGULATION NO. 57-204

CRAMMING AND SLAMMING

JULY 29, 1999

We have reviewed this proposed regulation from the Pennsylvania Public Utility Commission (PUC) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ in determining whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to need, reasonableness and clarity, and additional recordkeeping and paperwork. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 64.23. Standardizing LEC responses to customer contacts alleging unauthorized changes to the customer's long distance carrier and unauthorized charges added to the customer's bill. – Reasonableness; Additional Recordkeeping and Paperwork; and Clarity.

Subsection (a) – Cramming.

Subsection (a) sets forth the local exchange company's (LEC) responsibilities when a customer complains that "cramming has occurred on the bill rendered to the customer." (Emphasis added.) The regulation does not provide any time frame within which the customer must report the alleged cramming. Subsection (b), however, establishes the LEC's responsibilities when a customer alleges that "slamming has occurred on one or both of the past two bills." (Emphasis added.)

Why do the cramming provisions in Subsection (a) *not* reference specific billing periods, like the slamming provisions in Subsection (b)? For consistency, the same reference to billing periods should be included in Subsection (a).

Subsections (a)(2) and (b)(3) – Effect of unpaid crammed or slammed charges on basic service.

These subsections provide that when a customer alleges that cramming or slamming has occurred, the LEC must inform the customer that the charges will be removed from the customer's bill and returned to the service provider. The LEC must also explain that removal of the charges does not mean that the service provider will not attempt to collect the charges directly from the customer.

The Office of Consumer Advocate (OCA) recommended that the LEC also inform the customer that failure to pay crammed charges cannot result in termination of basic service. Customers may not be aware that basic service cannot be terminated for failure to pay non-basic

charges. To improve the consumer protection provisions of this rulemaking, the PUC should adopt OCA's recommendation in both of these subsections.

Subsections (a)(5) and (b)(6) – Complaint information.

These subsections require LECs, at the customer's request, to provide information on how to file a complaint with the Pennsylvania Office of Attorney General (AG), the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC). This information may be valuable to customers, but they may not be aware that they can ask for it. By limiting LECs' responsibility to disclose complaint information to only those customers who request it, the consumer protections intended by Sections 64.23(a)(5) and (b)(6) will not be fully realized.

We recognize that it would be burdensome to require LECs to give detailed complaint information to every customer who contacts them with a slamming or cramming complaint. Not every customer will want to pursue a complaint with the AG, the FCC or the FTC. However, it would not be burdensome to require LECs to disclose to customers that complaint information is available if they would like it. This disclosure would ensure that customers are fully informed about their options, but would not require LECs to give detailed complaint disclosure information to every customer. Since the LECs deal directly with the customers, Subsections (a)(5) and (b)(6) should also require LECs to inform customers that complaint information is available upon request.

Subsection (b)(2) - Account safeguard.

This subsection requires the LEC to put a safeguard on the customer's account at the customer's request. The safeguard is intended to prevent the LEC from processing an interexchange carrier's (IXC) request for a switch unless the LEC has the customer's express authorization. As discussed in relation to complaint information in Subsections (a)(5) and (b)(6), the customer may not be aware that a safeguard is an option. We recommend the PUC amend Subsection (b)(2) to require the LEC to inform the customer that a safeguard can be placed on the account.

Furthermore, it is not clear what constitutes the customer's "express authorization." The FCC rules (at 47 CFR 64.1190) require, for example, that there must be written and signed authorization by the customer, or electronic authorization from the customer, or independent third party verification of the customer's oral authorization. For improved clarity, this subsection should be amended to specify what constitutes "express authorization."

Subsection (b)(3) – Recourse of charges to IXC.

This subsection requires the LEC to return the alleged slamming charges to the IXC or its billing agent. We question the reasonableness of requiring the LEC to return the charges. We understand this may not be possible because of contractual agreements between the LEC and the IXC. Furthermore, Conectiv commented that some carriers' billing systems do not have the ability to return the charges to the IXC or its billing agent. Therefore, the PUC should only

require the LEC to remove the charge from the customer's bill. The LEC and the IXC should determine how these charges should be handled.

2. General – Need for and Reasonableness of the Proposed Slamming Provisions; Additional Recordkeeping and Paperwork.

Commentators have questioned the need for the PUC to put the proposed Subsection (b) slamming rules in place at a time when the FCC liability rules on slamming are pending. Commentators assert that if both sets of rules are in place at the same time and contain conflicting requirements, it will be virtually impossible for them to comply. In addition, Representative McCall raised concerns with the timing of this regulation in light of the pending FCC rules and legislation that he has proposed. Why is it necessary for the PUC to proceed with its own slamming rules prior to final implementation of the FCC rules?

If the PUC finalizes these slamming regulations, it should compare the provisions of this rulemaking with the pending FCC rules on slamming to ensure that the final-form regulation does not conflict with FCC requirements. Inconsistencies should be eliminated to avoid potential compliance problems and additional recordkeeping and paperwork requirements.