

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

Original: 2213

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
E-Mail: paoca@ptd.net

October 9, 2001

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

Re: Financial Reporting Requirements for All
Telecommunications Carriers
Docket Nos. L-00010153; M-00001374

Dear Secretary McNulty:

Enclosed please find for filing an original and fifteen (15) copies of the Office of Consumer Advocate's 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 "Joel H. Cheskis".

Joel H. Cheskis
Assistant Consumer Advocate

Enclosures

cc: All parties of record

*65743

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Financial Reporting Requirements for : **Docket Nos. L-00010153**
All Telecommunications Carriers : **M-00001374**

**COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE**

I. INTRODUCTION

On June 21, 2001, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) adopted a proposed new rulemaking order which seeks to modify certain financial reporting requirements for both incumbent local exchange carriers (“ILECs”) and competitive local exchange carriers (“CLECs”) while still providing the Commission with the necessary information needed to effectively monitor the telecommunications industry in the Commonwealth. This new rulemaking arose from a Final Report submitted by a collaborative group of all telecommunications carriers and interested parties that was initiated by Commission Order entered on September 12, 2000. This collaborative was charged with determining whether the existing reporting requirements for Pennsylvania’s local exchange carriers should be modified in light of the introduction of competition into the local exchange and toll markets.

The collaborative was specifically asked to answer several questions raised in a Motion by Vice Chairman Bloom that accompanied the September 12, 2000 Order which covered a variety of issues including how CLECs and ILECs should be differentiated, what reports should be treated as proprietary and whether CLECs should be required to maintain

separate accounting systems for their various operations. At the conclusion of the six-month process, the collaborative filed a 31-page Final Report with a Minority Statement by the OCA. The Commission is instituting this rulemaking proceeding in order to review Comments regarding the proposed rule changes that were also suggested as part of the Final Report.

The Office of Consumer Advocate (“OCA”) participated in this collaborative and files these Comments in response to the above-captioned rulemaking, published at 31 Pa.B. 5110, to raise a number of concerns that remain after the submission of the Final Report. In support of such Comments, the OCA submits as follows:

II. SUMMARY OF COMMENTS

The OCA is disappointed in the determination by the collaborative to virtually eliminate all useful ILEC information from the public view. The information eliminated from the ILEC public reports will make it virtually impossible for the public to be productively informed as to how well the regulatory policies within the Commonwealth are advancing the public interest. The OCA appreciates that various public offices will remain privy to such information on a proprietary basis, but the OCA is concerned that it will likely be difficult for all of the public parties to meet the necessary future requirements so that such information can be shared with the public that pays for all telecommunications services.

The OCA also realizes that the potential advance of competition in the telecommunications field creates new challenges for public reporting. The OCA recognizes that it is necessary to be more careful in restricting public access to the most sensitive competitive

information. Nonetheless, the rules recommended in the Final Report swing much too strongly against public access to important ILEC information. Such rules will make it more difficult for the Commission to fully inform the public concerning telecommunications issues in Pennsylvania.

The OCA also suggested some reporting requirements so that consumers could better shop for competitive local services but this request was not acted upon by the collaborative. The OCA continues to encourage the Commission to initiate action in that area.

III. COMMENTS

1. Introduction.

The OCA continues to submit, as it advocated throughout this collaborative, that consumer and other public interests would be substantially harmed by the implementation of the recommendations in the Final Report. The OCA's main concerns are contained in its Minority Statement which was to be included in the Final Report and which are attached to these Comments as Attachment A (hereafter referred to as "OCA Minority Report").¹

2. The Determination Of Schedules To Be Proprietary In Future Reporting Is Too Restrictive.

As discussed in the OCA's Minority Report, the OCA is concerned that the determination of schedules to be proprietary in the new reporting requirements is too restrictive. OCA Minority Report, at 2-5. Section 5.423(a) of the current Commission regulations limit

¹ The OCA respectfully submits that its Minority Statement should have been considered as a part of the Final Report and made available to the general public in the public notice of this rulemaking.

denial of public access to a:

trade secret or other confidential information [when] a participant demonstrates that the potential harm to the participant of providing the information would be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process.

52 Pa. Code §5.423(a) (emphasis added). The OCA submits that this rule is strong in requiring a clear presentation that the harm resulting from public disclosure would be substantial and would outweigh the public interest before information can be declared proprietary. Typically, such a determination would be made by the presiding Administrative Law Judge in an open proceeding based on the facts and positions of opposing parties and subject to review by the full Commission.

However, in this collaborative, there was no real determination made with regard to any specific information that its protection prevents substantial harm to any party and outweighs the public's interest. The current standards are well supported through years of Commission adjudications on this issue and strike an appropriate balance between a company's well-being and the public's long-established right to know the procedures and conduct of a public agency in the Commonwealth such as the Commission. The OCA recognizes that proprietary designation is necessary at times. However, this Collaborative has gone too far in declaring significant portions of reporting requirements proprietary particularly when real and substantial competitive harm is only speculative at this point.

The OCA submits that the standard set by the Commission's adoption of the

recommendations in the Final Report would restrict the public right of access far too much. OCA Minority Report at 3. Rather, the public's right of access should be guaranteed unless and until it is clear that competitors will likely use such information to their advantage and gain a competitive benefit. Id. The OCA further submits that the impending sunset date of Chapter 30 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §3001, et seq., of December 31, 2003, which will require an extensive legislative and public examination of the means by which Pennsylvania's telecommunications industry will be regulated in the future, requires public access to much of the data that the Final Report has deemed proprietary.

The Commission has previously recognized this in the Chapter 30 plan approved for the former Bell Atlantic-Pennsylvania, Inc., now Verizon, when it approved an alternative form of regulation for Verizon and stated that "it is imperative that the Company continue the filing of its quarterly Intrastate Earnings Report as required by 52 Pa. C.S. §71.4 since this information enables the Commission to monitor on a regular basis the financial performance and earnings of the Company." Re: Bell-Atlantic-Pennsylvania, Inc., 52 Pa.P.U.C. 194, 251 (1994). The OCA noted in its Minority Report that the Commission has consistently required such earnings reports to be filed in other Chapter 30 Orders as well. OCA Minority Report at 3. However, through this Final Report, such information is no longer publicly available and will not aid the public and legislative decision-makers when the time comes to evaluate Chapter 30. There is no explanation for this apparent reversal of PUC position.

The OCA submits that the results of such monitoring should be shared with the general public when it becomes necessary to debate the need to authorize a form of alternative regulation for the telecommunications industry in Pennsylvania. The OCA recognizes that the Final Report allows executive and legislative offices similar access to proprietary information with a “need to know such information,” Final Report at 13, but submits that this standard falls far short of allowing the necessary legislative access to this data. Under this standard, members of the General Assembly may be required to vote on important public policy telecommunications issues, but might not be able to tell their constituents the reason for their votes. The OCA submits that such public debate should be based on the best facts available, but such will not be the case in light of the recommendations in the Final Report. OCA Minority Report at 4.

In particular, one purpose of the enactment of Chapter 30 was to encourage investment in modern telecommunications facilities and services throughout the urban, suburban and rural parts of the Commonwealth. See, 66 Pa.C.S. §3001. The General Assembly will likely continue to be interested in the amount of investment in the Commonwealth and the extent to which funds are drained from the state through dividends paid. As such, the OCA submits that by restricting access to financial data reported by the Pennsylvania telecommunications industry, the Commission may be impeding the development of a universally available, interactive, public-switched broadband telecommunications network throughout Pennsylvania.

Finally, the OCA submits that the Final Report allows for further information to be declared proprietary as it allows companies to file a request to designate further material

proprietary. Final Report at 13-14. The OCA remains concerned that there is no guarantee that any annual report information will truly be offered to the public as non-proprietary and that the questions about proprietary designation will continue throughout further litigation. OCA Minority Report at 5. The OCA submits that it is questionable as to the competitive importance that much of the proprietary information will have as there is little geographic detail contained in the annual report. The disclosure of the majority of such information will not reveal truly competitively sensitive information that demonstrates the potential harm as required in the Commission's regulations.

As such, the OCA submits that the determination of schedules to be proprietary in the Final Report in this proceeding is too restrictive and unnecessary. As such, the public's right to know is substantially compromised as well as the ability of the public to hold an informal debate concerning the future of the telecommunications industry in Pennsylvania.

3. The Commission Has Missed An Opportunity To Provide Tools Necessary To Advance The Competitive Marketplace.

As stated in the OCA Minority Report, the OCA is disappointed that the Final Report did not express any position in order to provide better reporting concerning the competitive marketplace in telecommunications. OCA Minority Report at 5-6. The Commission has already indicated its intention to offer an education initiative so that consumers may better understand and participate in local competition. Id. at 6, citing, Global Order at 186-188. The OCA often receives inquiries from consumer as to which CLECs offer service in their areas and what those services may be. There does not appear to exist in the Final

Report, however, any current database demonstrating what those options are. Id. Despite the OCA's advocacy for such reporting, the industry was unwilling to make any such recommendations in the Final Report despite the fact that such reporting would enhance CLECs competitive opportunities.

For example, the OCA currently maintains a shopping guide for alternative electric generators in the electric industry. The OCA provides monthly updates as to what companies are providing services in each incumbent electric utilities service territory and what their competitive prices are. The shopping guide then also includes information as to how to contact such alternative suppliers in the event a consumer chooses to switch to that provider. The OCA also collects quarterly shopping statistics so that the Commission, and the nation, can monitor the level of electric switching at any point in time. Through adopting the recommendations of the Final Report, the Commission is missing a valuable opportunity to develop such information in a consistent, clear and concise method that would aid the development of competition in the local telecommunications market.

The OCA recognizes that the electric industry is vastly different from the telecommunications industry, as telecommunications services are more varied and the offerings tend to be by exchange rather than service-territory wide, but the collaborative would have been the best chance to develop the most effective and productive reporting to achieve these goals. However, the collaborative refused to pursue this avenue and now such information, which may also play a part in determining the future of the telecommunications industry in Pennsylvania when Chapter 30 is reviewed, is undeterminable.

As such, the OCA submits that the Commission has missed an opportunity to gather better information concerning the competitive marketplace in telecommunications in the Commonwealth and provide consumers with the necessary information so that they might effectively participate in the competitive process.

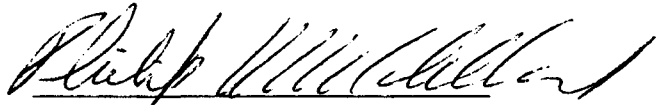
4. Conclusion.

The OCA submits that the Commission should not establish final regulations pursuant to the recommendations of the collaborative in its Final Report. While the OCA recognized that some reporting requirements had become antiquated; that CLEC reporting requirements had to be revised; and that some ILEC data need to be held as proprietary; the OCA objects to many of the determinations made by the collaborative and adopted in the Final Report. The OCA is concerned about the effect of such determinations on the deliberations with regard to the future of regulation in Pennsylvania. Furthermore, the OCA submits that the Commission has missed an opportunity to advance the state of local competition in telecommunications through minimal competitive reporting.

IV. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully requests the Public Utility Commission consider these Comments and remove the extensive and substantial proprietary determinations established in this proceeding that are contrary to existing Commission regulations. The OCA further submits that the Commission should require additional, moderate reporting so that consumers can fully take advantage of the benefits of local competition in the telecommunications in Pennsylvania.

Respectfully submitted,



Philip F. McClelland
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate

For: Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

Date: October 9, 2001

00065607.WPD

ATTACHMENT A

APPENDIX J
Minority Statement of the Office of Consumer Advocate

Docket No. M-00001374
March 12, 2001

I. Introduction.

The Office of Consumer Advocate (“OCA”) has participated in the Collaborative created at Docket No. M-00001374 since its inception to represent the interests of Pennsylvania’s telecommunications consumers as the Commission seeks to modify the filing requirements for Pennsylvania Local Exchange Carriers (“LECs”). The OCA submits this Minority Statement to further discuss a number of concerns with the final Report developed by the Collaborative.¹ The OCA requests that the Commission consider the issues set forth herein as it reviews the Report.

The OCA wishes to recognize the positive work done by the Collaborative in consolidating and streamlining the reports that are now being filed. The Collaborative recognized that the reporting needs for Competitive Local Exchange Carriers (“CLECs”) should be reduced given their competitive status and the final Report will create a new process and reduced requirements for CLEC reports. The Collaborative also revised the schedules contained within the annual reports in order to concentrate on the information that would be most productive for the Commission to examine.

However, and as more fully explained below, the OCA is disappointed in the determination to virtually eliminate all useful Incumbent Local Exchange Carrier (“ILEC”) information from the public view. The information eliminated from the ILEC public reports will make it virtually impossible for the public to be productively informed as to how well the regulatory policies within the Commonwealth are advancing the public interest. The OCA appreciates that various public offices will remain privy to such information on a proprietary

¹The OCA has prepared this Statement in response to the Report currently available. The OCA will reference that Report throughout this Statement.

basis, but the OCA is concerned that it will likely be difficult for all of the public parties to meet the necessary requirements so that such information can be shared with the public that pays for all telecommunications services.

The OCA also realizes that the potential advance of competition in the telecommunications field creates new challenges for public reporting. Nonetheless, the rules recommended here swing much too strongly against public access to important ILEC information. Such rules will make it more difficult for the Commission to fully inform the public concerning telecommunications issues in Pennsylvania.

OCA also suggested some reporting requirements so that consumers could better shop for competitive local services. This request was not acted upon by the Collaborative and the OCA would encourage the Commission to initiate action in that area.

2. **Proprietary Data Restrictions.**

The OCA is concerned that the determination of schedules to be proprietary in the ILEC reports in this proceeding is too restrictive. As noted in the Report, the current Commission regulations limit denial of public access to a “trade secret or other confidential information” only when “a participant demonstrates that the potential harm to the participant of providing the information would be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public’s interest in free and open access to the administrative hearing process.”² The OCA submits that the current rule is fairly strong in requiring a clear presentation that the harm resulting from public disclosure would be substantial and would outweigh the public interest before information can be declared proprietary.

The OCA is concerned that projections about potential competitive harm resulting from the disclosure of various forms of ILEC data would be sufficient to allow this data to be

²Report at 10 citing 52 Pa. Code § 5.423(a).

classified as proprietary. Such a standard sells the public right of access too short. Rather, the public's right of access should be guaranteed unless and until it is very clear that competitors will likely use such information to their advantage and it will give competitors a significant benefit. This has simply not been demonstrated concerning the expansive amount of information that would and may be deemed proprietary by the Report.

To illustrate the point the OCA will focus upon some of the schedules that the proposed restrictions would determine as proprietary. For example, the ability to review the earnings realized on the ILECs' investment should be an essential fact that the public can consider as we continue to determine how such companies should be regulated. It appears from the Report that this earnings and return information will likely not be publicly available through the PUC's annual report and earnings reports.³

OCA also notes that, notwithstanding the proprietary classification of Schedule 38 at the PUC, the same intrastate information concerning rate base and earnings can be derived from other public FCC sources. Thus, it is not clear what purpose proprietary classification at the PUC would serve. Basic data as to how profitable the intrastate telecommunications business is for ILECs in Pennsylvania would no longer be publicly available from PUC reports.

The OCA also recognizes that rate of return information is not currently used in order to directly establish intrastate rates for many of the dominant ILECs in Pennsylvania. However, the rate of return experienced by these companies continues to be important. The OCA notes that the current means by which ILECs are regulated under an alternative rate of return regulation is due to sunset as of December 31, 2003 under Chapter 30.⁴ In Re Bell Atlantic-Pennsylvania, Inc.⁵ the PUC also approved an alternative form of regulation for Bell

³The Report indicates that Schedule 38 (Development of Rate Base) is proprietary in the annual report. Report at 10. Schedule 38 calculates Rate Base, Income Available for Return and Rate of Return Overall. The same type of information will be proprietary in the earnings report. Report at 14-15.

⁴Act 67 of 1993, Section 4.

⁵Re Bell Atlantic-Pennsylvania, Inc., 82 Pa. PUC 194, 251 (1994)

Atlantic pursuant to Chapter 30 and stated that: "it is imperative that the Company continue the filing of its quarterly Intrastate Earnings Reports as required by 52 Pa. C.S. § 71.4 since this information enables the Commission to monitor on a regular basis the financial performance and earnings of the Company."⁶ The results of such monitoring should also be shared with the general public when it becomes necessary to debate the need to authorize a form of alternative regulation in Pennsylvania.⁷ Such public debate should be based upon the best facts available. The OCA is concerned with the effort to restrict public access to such information.

The OCA also suggests that the public and the General Assembly will likely continue to be interested in the amount of ILEC investment in the Commonwealth and the extent to which funds are drained from the state through dividends paid. One of the concerns that Chapter 30 addressed was to encourage investment in the state so that all Pennsylvania consumers could be assured of modern facilities and services throughout the urban, suburban and rural parts of the Commonwealth. Such issues may also play a prominent role in assessing the success of Chapter 30.

Nonetheless, the Report recommends that, unless reported elsewhere, Schedule 29 (Dividends Declared), and items of telecommunications plant in Schedule 12 and the depreciation of such plant in Schedules 13 and 14 will be determined as proprietary.⁸ It would appear that it will no longer be public information as to whether any ILEC is actually making a net investment in its fiber optic or switching plant and whether its net investment in the state is greater than its dividends paid out. This is the type of information that the OCA suggests would be important to have for public review.

⁶The OCA notes that the PUC has also consistently required such earnings reports to be filed in other Chapter 30 Orders as well.

⁷The OCA also notes that the Report would allow executive and legislative offices similar access to proprietary information "with a need to know such information." Report at 13.

⁸Report at 12. The OCA recognizes that the totals in these schedules will continue to be public. However, the aggregate total does not provide substantial information concerning relevant plant and depreciation information.

OCA is also concerned that, notwithstanding the determination that many of the schedules in the annual report will be accorded proprietary treatment, ILECs will still be able to request that all other data not determined to be proprietary may also be claimed as proprietary if an ILEC so chooses. For the data not expressly determined to be proprietary by the Report the ILEC may also file a request to designate further material as proprietary.⁹ Thus, there is no guarantee that any annual report information will truly be offered to the public as not proprietary. The OCA is concerned that such a resolution will not end the questions about proprietary designation but will allow those questions to continue to advance through litigation.

Moreover, the OCA also generally questions the extent to which the information determined to be proprietary will actually offer much competitive benefit in the marketplace. The OCA emphasizes that there is little geographic detail contained within the annual report. For example, if Verizon North or Verizon Pennsylvania would have made a substantial investment in the year 2000 in fiber optic cable or digital switches, that would offer little real insight to their competitors in any particular market. Similarly, if Verizon North or Verizon Pennsylvania would have increased its intrastate equity return by 50% in the year 2000, this will not determine what locations have become more or less profitable. Whether that investment or increased return was made in Philadelphia or Pottsville, Erie or Oil City will not be apparent from the schedules that will become proprietary. The OCA emphasizes that the type of information generally contained within the annual report would not provide that level of information. The OCA also emphasizes that such information will really not disclose any future business plans or initiatives.

3. **Monitoring Competition.**

The OCA is also disappointed that the Collaborative did not express any position in order to provide better information concerning the competitive marketplace in

⁹Report at 13-14.

telecommunications. Notably, the PUC has already indicated its intention to offer an education initiative so that consumers may better understand and participate in local competition.¹⁰ The OCA often receives inquiries from consumers as to what CLEC competitors offer service in their areas. However, there does not appear to exist any current database demonstrating what CLECs offer competition in any particular areas.

As the Report notes, the Collaborative determined this to be outside of the scope of its directive and took no action on that issue.¹¹ The OCA would reemphasize in this Statement that such information would be important for the PUC to develop in order to provide consumers all of the necessary information so that they might participate in the competitive process. Thus, the OCA encourages the PUC to take action on these points in order to better inform the public concerning local competition.

61967.4

¹⁰Global Order at 186-188.

¹¹Report at 3.

CERTIFICATE OF SERVICE

Re: Financial Reporting Requirements for All Telecommunications Carriers
Docket Nos. L-00010153; M-00001374

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's 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 9th day of October, 2001.

SERVICE BY INTER-OFFICE MAIL

Robert Wilson
PUC
Bureau of Fixed Utility Services
400 North Street
3 West Keystone Building
Harrisburg, PA 17105

Carl Hisiro
PUC, Law Bureau
400 North Street
3 West Keystone Building
Harrisburg, PA 17105

Office of Trial Staff
PUC
400 North Street
2 West Keystone Building
Harrisburg, PA 17105

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Office of Small Business Advocate
300 North Second Street
Suite 1102 Commerce Bldg.
Harrisburg, PA 17101

David Freet, President
Pennsylvania Telephone Assoc.
P.O. Box 1169
Harrisburg, PA 17108-1169

Derrick P. Williamson
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Linda C. Smith
Dilsworth Paxson
305 N. Front Street, Suite 403
Harrisburg, PA 17101-1236



Philip F. McClelland
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate
Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
*65745

APPENDIX J
Minority Statement of the Office of Consumer Advocate

Docket No. M-00001374
March 12, 2001

1. Introduction.

The Office of Consumer Advocate (“OCA”) has participated in the Collaborative created at Docket No. M-00001374 since its inception to represent the interests of Pennsylvania’s telecommunications consumers as the Commission seeks to modify the filing requirements for Pennsylvania Local Exchange Carriers (“LECs”). The OCA submits this Minority Statement to further discuss a number of concerns with the final Report developed by the Collaborative.¹ The OCA requests that the Commission consider the issues set forth herein as it reviews the Report.

The OCA wishes to recognize the positive work done by the Collaborative in consolidating and streamlining the reports that are now being filed. The Collaborative recognized that the reporting needs for Competitive Local Exchange Carriers (“CLECs”) should be reduced given their competitive status and the final Report will create a new process and reduced requirements for CLEC reports. The Collaborative also revised the schedules contained within the annual reports in order to concentrate on the information that would be most productive for the Commission to examine.

However, and as more fully explained below, the OCA is disappointed in the determination to virtually eliminate all useful Incumbent Local Exchange Carrier (“ILEC”) information from the public view. The information eliminated from the ILEC public reports will make it virtually impossible for the public to be productively informed as to how well the regulatory policies within the Commonwealth are advancing the public interest. The OCA appreciates that various public offices will remain privy to such information on a proprietary

¹The OCA has prepared this Statement in response to the Report currently available. The OCA will reference that Report throughout this Statement.

basis, but the OCA is concerned that it will likely be difficult for all of the public parties to meet the necessary requirements so that such information can be shared with the public that pays for all telecommunications services.

The OCA also realizes that the potential advance of competition in the telecommunications field creates new challenges for public reporting. Nonetheless, the rules recommended here swing much too strongly against public access to important ILEC information. Such rules will make it more difficult for the Commission to fully inform the public concerning telecommunications issues in Pennsylvania.

OCA also suggested some reporting requirements so that consumers could better shop for competitive local services. This request was not acted upon by the Collaborative and the OCA would encourage the Commission to initiate action in that area.

2. **Proprietary Data Restrictions.**

The OCA is concerned that the determination of schedules to be proprietary in the ILEC reports in this proceeding is too restrictive. As noted in the Report, the current Commission regulations limit denial of public access to a “trade secret or other confidential information” only when “a participant demonstrates that the potential harm to the participant of providing the information would be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public’s interest in free and open access to the administrative hearing process.”² The OCA submits that the current rule is fairly strong in requiring a clear presentation that the harm resulting from public disclosure would be substantial and would outweigh the public interest before information can be declared proprietary.

The OCA is concerned that projections about potential competitive harm resulting from the disclosure of various forms of ILEC data would be sufficient to allow this data to be

²Report at 10 citing 52 Pa. Code § 5.423(a).

classified as proprietary. Such a standard sells the public right of access too short. Rather, the public's right of access should be guaranteed unless and until it is very clear that competitors will likely use such information to their advantage and it will give competitors a significant benefit. This has simply not been demonstrated concerning the expansive amount of information that would and may be deemed proprietary by the Report.

To illustrate the point the OCA will focus upon some of the schedules that the proposed restrictions would determine as proprietary. For example, the ability to review the earnings realized on the ILECs' investment should be an essential fact that the public can consider as we continue to determine how such companies should be regulated. It appears from the Report that this earnings and return information will likely not be publicly available through the PUC's annual report and earnings reports.³

OCA also notes that, notwithstanding the proprietary classification of Schedule 38 at the PUC, the same intrastate information concerning rate base and earnings can be derived from other public FCC sources. Thus, it is not clear what purpose proprietary classification at the PUC would serve. Basic data as to how profitable the intrastate telecommunications business is for ILECs in Pennsylvania would no longer be publicly available from PUC reports.

The OCA also recognizes that rate of return information is not currently used in order to directly establish intrastate rates for many of the dominant ILECs in Pennsylvania. However, the rate of return experienced by these companies continues to be important. The OCA notes that the current means by which ILECs are regulated under an alternative rate of return regulation is due to sunset as of December 31, 2003 under Chapter 30.⁴ In Re Bell Atlantic-Pennsylvania, Inc.,⁵ the PUC also approved an alternative form of regulation for Bell

³The Report indicates that Schedule 38 (Development of Rate Base) is proprietary in the annual report. Report at 10. Schedule 38 calculates Rate Base, Income Available for Return and Rate of Return Overall. The same type of information will be proprietary in the earnings report. Report at 14-15.

⁴Act 67 of 1993, Section 4.

⁵Re Bell Atlantic-Pennsylvania, Inc., 82 Pa. PUC 194, 251 (1994)

Atlantic pursuant to Chapter 30 and stated that: "it is imperative that the Company continue the filing of its quarterly Intrastate Earnings Reports as required by 52 Pa. C.S. § 71.4 since this information enables the Commission to monitor on a regular basis the financial performance and earnings of the Company."⁶ The results of such monitoring should also be shared with the general public when it becomes necessary to debate the need to authorize a form of alternative regulation in Pennsylvania.⁷ Such public debate should be based upon the best facts available. The OCA is concerned with the effort to restrict public access to such information.

The OCA also suggests that the public and the General Assembly will likely continue to be interested in the amount of ILEC investment in the Commonwealth and the extent to which funds are drained from the state through dividends paid. One of the concerns that Chapter 30 addressed was to encourage investment in the state so that all Pennsylvania consumers could be assured of modern facilities and services throughout the urban, suburban and rural parts of the Commonwealth. Such issues may also play a prominent role in assessing the success of Chapter 30.

Nonetheless, the Report recommends that, unless reported elsewhere, Schedule 29 (Dividends Declared), and items of telecommunications plant in Schedule 12 and the depreciation of such plant in Schedule 13 and 14 will be determined as proprietary.⁸ It would appear that it will no longer be public information as to whether any ILEC is actually making a net investment in its fiber optic or switching plant and whether its net investment in the state is greater than its dividends paid out. This is the type of information that the OCA suggests would be important to have for public review.

⁶The OCA notes that the PUC has also consistently required such earnings reports to be filed in other Chapter 30 Orders as well.

⁷The OCA also notes that the Report would allow executive and legislative offices similar access to proprietary information "with a need to know such information." Report at 13.

⁸Report at 12. The OCA recognizes that the totals in these schedules will continue to be public. However, the aggregate total does not provide substantial information concerning relevant plant and depreciation information.

OCA is also concerned that, notwithstanding the determination that many of the schedules in the annual report will be accorded proprietary treatment, ILECs will still be able to request that all other data not determined to be proprietary may also be claimed as proprietary if an ILEC so chooses. For the data not expressly determined to be proprietary by the Report the ILEC may also file a request to designate further material as proprietary.⁹ Thus, there is no guarantee that any annual report information will truly be offered to the public as not proprietary. The OCA is concerned that such a resolution will not end the questions about proprietary designation but will allow those questions to continue to advance through litigation.

Moreover, the OCA also generally questions the extent to which the information determined to be proprietary will actually offer much competitive benefit in the marketplace. The OCA emphasizes that there is little geographic detail contained within the annual report. For example, if Verizon North or Verizon Pennsylvania would have made a substantial investment in the year 2000 in fiber optic cable or digital switches, that would offer little real insight to their competitors in any particular market. Similarly, if Verizon North or Verizon Pennsylvania would have increased its intrastate equity return by 50% in the year 2000, this will not determine what locations have become more or less profitable. Whether that investment or increased return was made in Philadelphia or Pottsville, Erie or Oil City will not be apparent from the schedules that will become proprietary. The OCA emphasizes that the type of information generally contained within the annual report would not provide that level of information. The OCA also emphasizes that such information will really not disclose any future business plans or initiatives.

3. **Monitoring Competition.**

The OCA is also disappointed that the Collaborative did not express any position in order to provide better information concerning the competitive marketplace in

⁹Report at 13-14.

telecommunications. Notably, the PUC has already indicated its intention to offer an education initiative so that consumers may better understand and participate in local competition.¹⁰ The OCA often receives inquiries from consumers as to what CLEC competitors offer service in their areas. However, there does not appear to exist any current database demonstrating what CLECs offer competition in any particular areas.

As the Report notes, the Collaborative determined this to be outside of the scope of its directive and took no action on that issue.¹¹ The OCA would reemphasize in this Statement that such information would be important for the PUC to develop in order to provide consumers all of the necessary information so that they might participate in the competitive process. Thus, the OCA encourages the PUC to take action on these points in order to better inform the public concerning local competition.

61967.4

¹⁰Global Order at 136-138.

¹¹Report at 3.

CERTIFICATE OF SERVICE

Re: Financial Reporting Requirements for All Telecommunications Carriers
Docket Nos. L-00010153; M-00001374

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's 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 9th day of October, 2001.

SERVICE BY INTER-OFFICE MAIL

Robert Wilson
PUC
Bureau of Fixed Utility Services
400 North Street
3 West Keystone Building
Harrisburg, PA 17105

Carl Hisiro
PUC, Law Bureau
400 North Street
3 West Keystone Building
Harrisburg, PA 17105

Office of Trial Staff
PUC
400 North Street
2 West Keystone Building
Harrisburg, PA 17105

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Office of Small Business Advocate
300 North Second Street
Suite 1102 Commerce Bldg.
Harrisburg, PA 17101

David Freet, President
Pennsylvania Telephone Assoc.
P.O. Box 1169
Harrisburg, PA 17108-1169

Derrick P. Williamson
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Linda C. Smith
Dilsworth Paxson
305 N. Front Street, Suite 403
Harrisburg, PA 17101-1236



Philip F. McClelland
Senior Assistant Consumer Advocate
Joel H. Cheskis
Assistant Consumer Advocate
Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
*65745

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

**Final Report to the Commission of the
Collaborative to Determine the
Adequacy and Interpretation of
Existing Accounting Procedures and
Financial Reporting Regulations for
All Telecommunications Carriers
Docket No. M-00001374**

March 15, 2001

I. INTRODUCTION

This Collaborative was created by Commission order entered September 12, 2000, at Docket No. M-00001374, to provide all telecommunications carriers and interested parties with an opportunity to participate in determining what, if any, modifications should be adopted to the Commission's accounting procedures and financial reporting requirements in response to the opening of the local and toll telecommunications markets to competition in Pennsylvania. More particularly, this same order spelled out nine specific questions (addressed later in this report) that the Collaborative participants were to address at the end of the six-month investigative process contained in the order. These questions involved resolving, inter alia, whether competitive local exchange carriers ("CLECs") should be held to the same reporting requirements as incumbent local exchange carriers ("ILECs"), what reports (or subparts thereof) should be treated as confidential, and whether CLECs should be required to maintain separate accounting systems for their various operations.

The Collaborative began, almost immediately, working to address the issues raised in the September 12th Order. The Collaborative consists of participants representing 14 different competitive and incumbent local exchange carriers, the Office of Consumer Advocate, the Office of Trial Staff, and various bureaus within the Pennsylvania Public Utility Commission. As discussed in greater detail in this Final Report, the end result of this collective effort is a

consensus recommendation to streamline significantly the annual financial reporting requirements for both ILECs and CLECs under 52 Pa. Code § 63.36. Further, the proposed changes to the annual financial reports, in turn, will necessitate certain amendments to the current regulations concerning classification of public utilities (52 Pa. Code § 63.31) and systems of accounts (52 Pa. Code § 63.32), which proposed amendments are also provided herein for your consideration. Finally, the participants understood that upon streamlining the reporting requirements, the Commission will likely expect and demand stricter compliance by all jurisdictional local exchange carriers (“LECs”)¹ in submitting completed reports. For non-compliant companies, they should expect more consistent and tougher enforcement efforts to ensure compliance, including the filing of complaints seeking civil penalties, the suspension or revocation of certificates of public convenience, or any other remedies deemed appropriate by the Commission.

Not surprisingly, the most difficult issue raised relating to the annual reports was whether these reports, on a going-forward basis, should be treated as confidential and proprietary. While a consensus position ultimately emerged to treat parts of the report as public and other parts as proprietary in light of the changing competitive landscape in Pennsylvania, this recommendation triggered the greatest discussion within the Collaborative. Some of the concerns raised in

¹ For purposes of this Final Report, the term “LECs” shall mean all telecommunications carriers.

regard to this issue will be discussed below in response to questions 1 and 2 posed by the September 12, 2000 Order.

In addition to the annual reports, other proposed changes to existing Commission reporting requirements were discussed by the Collaborative. These discussions led to several other proposals being included in this report as well. For example, the Collaborative proposes the consolidation of existing access-line reporting requirements filed by LECs to eliminate the filing of duplicative information. The Collaborative also recommends that 52 Pa. Code § 71.3 be revised to clarify that only ILECs are required to file financial earnings reports covered by that section and to reduce the filing requirements from a quarterly to semi-annual basis for ILECs with more than \$10 million in gross revenues.

There were other proposals raised by one or more participants, such as a proposal suggesting that the Commission engage in some type of market-share monitoring, but were not acted upon by the Collaborative. While the Collaborative concluded that such monitoring may be advisable to mark the progress and location of competition within specific geographic regions, this proposal was deemed outside of the scope of this Collaborative's directive contained in the September 12, 2000 Order.

In sum, the reporting requirement proposals recommended herein have been carefully tailored to meet the Commission's and its staff's continuing financial reporting needs for the telecommunications industry. At the same time, the proposed revisions to existing reporting requirements, if adopted, will

substantially reduce the reporting burden on competitive carriers, which may have served as a significant barrier to entry into the local telecommunications market in Pennsylvania, as well as incumbent carriers. Notwithstanding the significant progress the Collaborative has made in streamlining the existing financial reporting requirements discussed in this Final Report, the recommended product still remains among the most extensive in the country. The Commission is thus encouraged to re-examine regularly the process for financial reporting for possible further streamlining. Additional streamlining will encourage new entrants into the local telecommunications market by relieving the reporting burdens that could act, even as revised, as a barrier to entry. Such a re-examination should occur, at a minimum, after Chapter 30 of the Public Utility Code sunsets on December 31, 2003, but may be appropriate even sooner as deregulation, and, hopefully, competition takes hold in the various Pennsylvania telecommunications markets.

II. BACKGROUND

By order entered September 12, 2000, the Commission created a collaborative process to examine the adequacy and interpretation of existing accounting procedures and financial reporting regulations for all telecommunications carriers. The first meeting of the Collaborative occurred on October 10, 2000, and was well attended by industry representatives, the Office of Consumer Advocate (“OCA”), and Commission staff. At this first meeting of the Collaborative, David Freet, President of the Pennsylvania Telephone Association (“PTA”), was elected to chair the working group. To facilitate discussions on the various types of financial reports that telecommunications carriers must file with the Commission, Commission staff (“Staff”) agreed at this meeting to prepare a list of all current reports and provide copies to all participants in the Collaborative.

Subsequently, on October 13 and 27, 2000, Staff circulated the reporting forms and other relevant information as previously agreed at the October 10th meeting. The Collaborative thereafter held subsequent meetings on November 15, 2000, December 13, 2000, January 25, 2001, February 1, 2001, and February 15, 2001, and March 1, 2001. Participation varied at each meeting but over time it included 14 industry members,² the PTA, OCA, the Office of Trial Staff (“OTS”), and Staff members from the Law Bureau and the Bureau of Fixed Utility Services

² Industry members participating in the Collaborative were from Allegiance Telecom, Inc.; AT&T Communications, Inc.; CTSI, Inc.; D&E Communications, Inc.; MCI WorldCom Communications, Inc.; North Pittsburgh Telephone Co.; PaeTec Communications, Inc.; Rhythm Links, Inc.; SBC Telecommunications, Inc.; Sprint; Urban Media; Verizon-Pennsylvania, Inc.; XO Communications; and Yipes Communications, Inc.

("BFUS"). Representatives from the Commission's Bureaus of Audits, Consumer Services, and Conservation, Economics and Energy Planning, as well as the Office of Special Assistants, also provided valuable input to the Collaborative.

In addition, the Collaborative created several subgroups to address specific issues. These issues included evaluating how the Commission's current access line reporting requirements could be streamlined; the effect, if any, of the Federal Communications Commission's decision to end the filing of various ARMIS reports on the Commission's own reporting requirements; and the drafting of this Final Report. The end result of this substantial effort was unanimous agreement on many of the issues presented to the Collaborative and consensus agreement on several issues with only one or two members in disagreement. The strong consensus reached in this Final Report is reflected in the fact that there is only one statement submitted by a participant to discuss its individual views, which statement is attached as Appendix J to this Final Report.

III. DISCUSSION

Commission Question No.1:

Should the quarterly and annual rate-of-return financial reports (52 Pa. Code §§ 71.1 - 71.9) and/or the Form M annual reports (52 Pa. Code § 63.36) be permitted to be treated as confidential and proprietary under 52 Pa. Code § 5.423?

Commission Question No. 2:

Will disclosure of the information in the quarterly and annual rate-of-return financial reports (52 Pa. Code §§ 71.1—71.9) and/or the Form M annual reports (52 Pa. Code § 63.36) cause any type of unfair economic or competitive damage to ILECs or CLECs? If yes, what are the potential types of unfair economic or competitive damage that might occur?

As discussed below, it is the consensus of the Collaborative that only a small number of the schedules contained in the proposed annual reports attached as Appendices D, E, and F should be treated in their entirety as confidential and proprietary. There is another group of schedules that contain both proprietary and public information. Finally, there are still other schedules that may be proprietary for some companies but public for others. The justification for treating any of the information in these annual reports as proprietary, however, rests on the determination that public disclosure of the sensitive information in these schedules could cause unfair economic or competitive damage to the reporting ILEC or CLEC.

Answering the second question first, the public disclosure of competitively sensitive information contained in some of the schedules in the ILECs' and CLECs' revised annual reports, if the Collaborative's reporting proposals contained herein are adopted by the Commission, could indeed cause unfair economic or competitive damage to the reporting carriers. The extensive and detailed financial disclosures that still will be required in the modified annual reports submitted to the Commission will continue to contain substantive information that competitors would find very useful in planning and executing their competitive strategies within the Commonwealth.

Knowing other ILECs' and CLECs' detailed breakdowns of their revenues, expenses, and capital investments where such information is not otherwise publicly available, for example, would permit competing carriers to determine which carriers are weak and which are strong financially. Access to this information could also allow carriers to know which of their competitors are making the infrastructure investments required to meet customers' burgeoning telecommunications needs and which are not. Finally, some of the requested information would allow competitors to determine where and how to deploy their resources based on the close scrutiny of their competitors' financial reports.

This would be especially true where a new CLEC entrant is considering, or is, locking competitive horns with a privately-owned ILEC that has a small service area. The CLEC's access to the small ILEC's detailed financial information on file with the Commission and not reported anywhere else would provide the CLEC

a veritable road map to guide unfairly its entry into the ILEC's market and siphon away the ILEC's customer base. The Commission, in an Order entered on September 28, 2000, recognized and dealt decisively with a similar danger when it accorded proprietary treatment to annual residential account reports filed with the Commission by several small ILECs (as well as by Verizon-Pennsylvania, Inc.) pursuant to 52 Pa. Code § 64.201.³ The Commission thereby prevented the public disclosure of this competitively sensitive information to a CLEC competitor that had asked the Commission for this data.

Furthermore, in a market where a CLEC and an ILEC are competing head-to-head, it would be equally unfair for the ILEC to have access to competitively sensitive nonpublic information in the CLEC's financial reports to the Commission. The ILEC could raise entry barriers in its service area by putting its thumb on the scale of competition to tip the balance in its favor.

Turning to the first question, the consensus answer is also yes, at least as to certain schedules containing information that the reporting LEC deems competitively sensitive and therefore proprietary, and that is not publicly reported or otherwise disclosed elsewhere by the LEC. At the outset, the Collaborative has identified four schedules that will be treated as proprietary and confidential under 52 Pa. Code § 5.423 for all ILECs and CLECs because of the potential economic or competitive harm that may result if the competitively sensitive information is made publicly available. They are Schedule 36 (Telephone Calls), Schedule 37

³ Petitions of Bell Atlantic-Pennsylvania, Inc., et al., Docket Nos. P-00001818/1819/1820.

(Report of Residential Service), Schedule 38 (Development of Rate Base), and Schedule 39 (Compensation of Officers).⁴

Section 5.423(a) of the Pennsylvania Code provides that a protective order to limit disclosure of confidential information shall be issued only when the party establishes that the potential harm to it if there is disclosure “outweighs the public’s interest in free and open access to the administrative hearing process.”⁵ The section then provides that the following five factors, along with other relevant factors, should be considered when determining whether to issue a protective order to keep information confidential:

(1) the extent to which the disclosure would cause unfair economic or competitive damage;

(2) the extent to which the information is known by others and used in similar activities;

(3) the worth or value of the information to the participant and to the participant’s competitors;

⁴ The schedule numbers referenced in this section of the report are those in the proposed Class A Annual Report for alternative form of regulation ILECs. One of the four schedules does not exist in the proposed Class C Annual Report and the other three schedules have different numbers in the proposed Class B and Class C Annual Reports for rate base/rate of return ILECs and CLECs, respectively.

⁵ When discussing whether the protection from disclosure of the proprietary information outweighs the public interest in having the information publicly available under 52 Pa. Code § 5.423(a), the Collaborative recognized that the cited regulation was promulgated at a time when the telecommunications industry was controlled by monopoly providers. These providers were subject to intense regulatory scrutiny because the telecommunications utilities operated under rate based, rate of return regulation. In this monopoly environment, the Collaborative recognized that the public interest in having access to the information was significantly higher than it would be in a competitive environment. As a result, the Collaborative’s consensus recommendation respecting identification of certain schedules which are to be publicly available versus those which are to be afforded confidential treatment, takes into account the evolving competitive environment and represents an appropriate and reasonable balancing of these competing interests.

- (4) the degree of difficulty and cost of developing the information; and
- (5) other statutes or regulations dealing specifically with disclosure of the information.⁶

By way of illustration, applying this standard to the proposed streamlined annual reports, the Collaborative found serious concerns with the public disclosure of executive compensation as this information could be used by competitors to cause economic or competitive harm to the reporting LEC. This is because competitors would unfairly be provided with benchmark compensation data for compensating their own executives, and could use this information in an attempt to lure away the reporting LEC's executives with the promise of higher compensation. Similar competitive/economic harm concerns were found to exist as to the other three schedules as well.

In addition, the Collaborative recommends that LECs, if applicable, be permitted to designate as proprietary all information not publicly reported or disclosed elsewhere (e.g., with the Federal Communications Commission ("FCC" or the Securities Exchange Commission) that is provided in Schedules 8 (Balance

⁶ The Commission's protective order rule reflects Pennsylvania court rulings that have regularly protected from public disclosure competitively sensitive information such as trade secrets and pricing and financial information, including cost information related to materials, labor, overhead, and profit margin. *See, e.g., Walker Pontiac, Inc. v. Pa. Dep't of State*, 582 A.2d 410 (Pa. Cmwlth. 1990) (holding that appellant failed to demonstrate that board abused its discretion by failing to issue subpoena for documents purportedly containing confidential or trade secrets); *Air Products and Chemicals, Inc. v. Johnson*, 442 A.2d 1114 (Pa. Super. 1982) (Opining that trial judge did not error by excluding defendant from in-camera inspection of trade secrets of plaintiff); *Hagy v. Premier Mfg. Corp.*, 404 Pa. 330, 172 A.2d 283 (1961) (holding that corporation's evidence that inspection of records was in bad faith and for purpose of disclosing confidential records and trade secrets to competitors was improperly excluded); *Huessener v. Fisher & Marks Co.*, 281 Pa. 535, 127 A. 139 (1924) (affirming trial court's refusal to compel witness to discuss secret process).

Sheet), 9 (Notes of Balance Sheet), 10 (Income and Retained Earnings Statement), 11 (Cash Flow Statement), 21 (Prepaid Taxes and Tax Accruals), and 29 (Dividends Declared). The rationale for this recommendation is that disclosure of even summary information on these key financial schedules could cause the reporting LEC substantial competitive harm.⁷

For the same reasons, and subject to the same proviso that the information to be protected is not publicly reported or disclosed elsewhere by the reporting LEC, the Collaborative reached consensus that reporting LECs be permitted to designate as proprietary all but total telecommunications plant on Schedule 12; all but total accumulated depreciation in Schedules 13 and 14; all but total information on Schedule 31 (Intrastate Operating Revenues); all but total information on Schedule 32 (Operating Expenses by Category); all but total end-user access lines on Schedule 35 (Annual Access Line Summary Report); and all but total employee information on Schedule 38 (Number of Employees).⁸

The Collaborative further recommends that immediate access to the schedules containing designated proprietary information be also provided by the reporting LEC to representatives of the OTS, OCA, and the Office of Small

⁷ The more expansive proprietary designations permitted for both summary and detailed schedule information filed by a LEC assumes that none of the financial information protected is publicly reported elsewhere by the LEC. The Collaborative proposes that the general instructions to carriers in the annual reports specify the eligibility criteria for invoking these and other proprietary designations and explain how to implement such designations (e.g., filing expurgated schedules for placement in the Commission's public files along with unexpurgated schedules stamped proprietary).

⁸ This schedule includes the competitively sensitive information which LECs file with the Commission annually pursuant to 52 Pa. Code § 64.201 and to which, as discussed above, the Commission recently accorded proprietary protection in rejecting the request of a CLEC competitor for such information.

Business Advocate (“OSBA”) whenever these public agencies agree to abide by its proprietary treatment.⁹ In addition, any state-level executive or legislative branch agency may, upon request to the Commission, receive proprietary information from any of the schedules so long as it is for official governmental use only. However, these agencies must agree not to publicly disclose the information without permission from the carrier or Commission order and that the information will only be provided to agency employees with a need to know such information. A proposed form of Confidentiality Agreement that state agencies must complete before obtaining access to any proprietary information is attached as Appendix I.

In addition, to facilitate the administration of this process by Staff, the Collaborative recommends that if proprietary designation is limited to the above-identified schedules, the reporting LEC may do so without filing a petition for protective order at the same time the LEC files its annual report. Such a petition will only be necessary if a third party subsequently challenges the proprietary designation pursuant to 52 Pa. Code § 5.423. For all other schedules not identified above for special treatment, if the reporting LEC attempts to designate any information in these other schedules as proprietary, it must immediately file a petition for protective order with its annual report. The LEC will then have the

⁹ While the OCA argued that as to ILECs, the financial reporting information deemed proprietary under the Collaborative’s proposal should be publicly available, the Collaborative reached a consensus that the public’s interest in access to such deemed proprietary information is outweighed by the competitive harm that could result from such disclosure. The consensus is also that as a practical matter there is not much public interest in either public or proprietary financial information set forth in the reports.

burden to establish at an administrative hearing why the information should be designated proprietary. Absent the petition, the information provided in these other schedules will not be accorded confidential treatment by Staff.

The protection of competitively sensitive information is of critical importance to all members of the industry, whether they are incumbent carriers or new entrants to the marketplace. The proposal regarding designation of proprietary and confidential information contained in this Final Report to the Commission represents a major concession by industry representatives with respect to their confidentiality concerns. If, for any reason, the Collaborative's designation of schedules containing confidential and proprietary information is not adopted by the Commission, industry representatives may be compelled to file protective motions to guard their competitively sensitive information to avoid irreparable competitive harm.

Turning next to the issue of proprietary treatment of the quarterly and annual rate-of-return financial reports, the consensus of the Collaborative was that the same formula for designating information as proprietary recommended for the annual reports filed pursuant to 52 Pa. Code § 63.36 should be adopted for the rate-of-return reports. In short, the information contained in the report should be treated as public unless it is not publicly reported or otherwise disclosed elsewhere by the carrier. In that case, the information must be marked as proprietary and will be accorded such treatment by Staff without the filing of a petition for

protective order, subject to later challenge by a third party pursuant to 52 Pa. Code § 5.423.

Finally, the Collaborative wants to emphasize that its proposal for deeming certain report schedules as containing proprietary information, if adopted by the Commission, does not constitute a final and binding determination that such information is in fact competitively sensitive and therefore is, in fact, proprietary information. To the contrary, to the extent the proprietary status of specific report information is challenged by any interested party, the reporting LEC will have the burden to establish that the information is proprietary under the criteria set forth in 52 Pa. Code § 5.423(a). This is the present procedure that is generally followed under protective orders entered in Commission proceedings, and it should work equally well in the financial reporting area. Similarly, any reporting LEC that believes any financial information not deemed proprietary under the Collaborative's proposal is proprietary as to it, retains the right, as discussed above, to petition the Commission to protect this information from public disclosure consistent with existing Commission practice.

In sum, the Collaborative's proposal permitting certain financial information to be deemed proprietary for reporting purposes seeks to reach a reasonable accommodation between competing public policy interests. The proposal permits disclosure of such information to those within government who need to know it while avoiding a flood of pre-report filing waiver or protective order applications from LECs.

Commission Question No. 3:

Should CLECs be held to the same quarterly and annual financial reporting requirements under 52 Pa. Code §§ 63.36 and 71.1 – 71.9 as the ILECs?

1. CLECs' Filing of Annual Reports Under 52 Pa. Code § 63.36.

Currently, the CLECs file either the Class A or Class B Annual Reports pursuant to 52 Pa. Code § 63.36, which are attached to this Final Report as Appendices A and B, respectively. The actual report filed currently depends on the number of access lines used by the CLEC and its type of operations. The large facilities-based CLECs with more than 50,000 access lines in Pennsylvania file the Class A Annual Report. The rest of the facilities-based CLECs file the current Class B Annual Report. Currently, CLEC resellers file a one-page annual financial report that is similar to the annual financial report filed by interexchange carriers ("IXCs") and competitive access providers ("CAPs").

The Collaborative reached a consensus that the current definitions of Class A, Class B, Class C, and Class D telephone utilities in 52 Pa. Code § 63.31 do not provide accurate demarcations of the type of annual report that should be filed by the various types of LECs. Under section 63.31, telephone utilities are now divided for reporting purposes based solely on access lines and/or minimal operating revenues. This division, however, fails to separate those carriers that are rate-deregulated, such as CLECs, for example, from those small incumbent carriers that still follow some form of rate based, rate-of-return regulation under

Chapter 30 of the Public Utility Code. Under the present system, therefore, CLECs and ILECs may be required to file the same report even though the Commission's informational needs for these two types of carriers are completely different. The Collaborative reached consensus that a more accurate categorization of carriers should be based on the amount of regulation exercised by the Commission over a specific type of carrier and the particular financial information necessary to carry out responsibly the Commission's regulatory duties.

The Collaborative, therefore, proposes that the classes be redefined based on whether a carrier is an incumbent or new entrant, and, if an incumbent, whether the utility is subject to an alternative form of regulation or some type of rate based, rate-of-return regulation. Under the Collaborative's proposal, Class A utilities would be defined as ILECs subject to an alternative form of regulation under Chapter 30, including but not limited to price cap companies and Plan A companies as defined in the Commission's Order entered January 20, 2000, at Docket No. P-00981425. Class B utilities would be redefined to include ILECs that are subject to rate base/rate of return regulation or the Plan B Simplified Ratemaking Plan as defined by the same Commission order at Docket No. P-00981425. Finally, Class C telephone utilities would be all CLECs, whether they are facilities-based, resellers, or some combination thereof. The former Class D designation would be eliminated under this proposal. Effectuation of these definitional changes will require an amendment to 52 Pa. Code § 63.31, and

attached to this Final Report as Appendix G is proposed rulemaking language incorporating these changes.

In addition to redefining the various classes, the Collaborative also recommends that the current Class A and Class B Annual Reports be modified into three separate reports for each of the new classes. The proposed reports are also significantly streamlined to eliminate a number of reporting schedules that have become outdated and/or unnecessary in an increasingly deregulated telecommunications market. The proposed three annual reports are attached herein as Appendices D, E, and F. In particular, the new Class C Annual Report requests much less information than is required in either the current Class A or Class B Annual Reports and less than is required in the proposed Class A or B reports as well.

In brief, the Collaborative reached a consensus that some of the schedules could be eliminated as detailed in Appendix C. In addition, Appendix C provides a table listing other schedules that have been modified and/or streamlined to reduce the administrative burden of completing them while still maintaining their usefulness to the Commission.¹⁰ Moreover, in response to concerns expressed by

¹⁰ In regard to the Access Line Summary Report schedule found in each annual report, this represents a consolidation of several different reporting requirements now imposed on telecommunications carriers. While most of the schedule involves the collection of data that was already being provided in other existing reports, the "TRS Surcharge Applied" column is intended to collect new data that Staff asserts is necessary to ensure the surcharge is being applied on the right access lines. Because the TRS Surcharge Applied information request imposes a new burden on industry participants, the Collaborative requests that a transition period for the current year only be allowed which will waive compliance for those companies that cannot reasonably provide the information in a timely and cost-effective manner.

CLEC participants that out-of-state CLECs do not keep detailed financial accounting records for individual states such as Pennsylvania, the Class C report provides that Pennsylvania-specific data be required only on schedules 8-12, 18, and 23-28. However, for these designated schedules, a CLEC may submit its Pennsylvania-specific information on an apportioned basis if that is how it normally accounts for this information for tax purposes. For the remaining schedules, CLECs that do not have Pennsylvania-specific data are permitted to report parent or consolidated data.

Finally, the filing of the Class C Annual Report by CLEC resellers is also recommended. This is a change from present internal practice utilized by the Commission's BFUS to allow the filing of a one-page summary report by CLEC resellers. BFUS itself recommended the change during the Collaborative process, asserting that this change is necessary to ensure the fullest use of the financial information obtained in the new Class C report. It will also allow BFUS to monitor effectively the vitality of new entry in the telecommunications markets throughout the Commonwealth if it is obtaining the same information from all CLECs. IXCs, CAPs, and toll resellers will continue to file the one-page annual report, unless they also have CLEC operations. If they have CLEC operations, they will file the new Class C Annual Report.

2. CLECs' Filing of Annual or Quarterly Rate-of-Return Financial Reports under 52 Pa. Code §§ 71.1-71.9.

Currently, few CLECs file a quarterly or annual rate-of-return financial report pursuant to 52 Pa. Code § 71.3(a) as most CLECs do not meet the gross annual intrastate revenue thresholds provided in that regulation. On a going-forward basis, the Collaborative finds no compelling reason, in an increasingly deregulated market, to require CLECs to file either quarterly or annual rate-of-return financial reports, because capturing rate-of-return data on CLECs is of no value in the Commission's efforts to regulate the telecommunications industry. Therefore, the Collaborative recommends that 52 Pa. Code § 71.3 be revised to clarify that the reporting requirements therein apply only to incumbent carriers. Proposed language accomplishing this rulemaking change is incorporated in Appendix H. In addition, the Collaborative unanimously recommends that the quarterly reports for the larger ILECs be reduced to a semi-annual basis, and this change is also reflected in Appendix H.

Commission Question No. 4:

Should the existing Commission quarterly and annual rate-of-return requirements (52 Pa. Code §§ 71.1-71.9) be modified or streamlined as a result of the transition to a competitive environment? If so, how?

As discussed in the immediately preceding section, the Collaborative participants unanimously agree that the filing requirements in 52 Pa. Code §§ 71.1-71.9 should be modified in several respects. First, the Collaborative proposes that the quarterly rate-of-return financial earnings reports of ILECs reporting more than \$10 million of intrastate gross revenues be reduced to filings on a semi-annual basis. Secondly, the Collaborative recommends that the regulation be amended to make clear that CLECs are not required to file any type of earnings reports under chapter 71 even if their gross intrastate revenues exceed the \$1 million or \$10 million thresholds. No other substantive or procedural changes to this regulation are proposed by the Collaborative at this time. The above-described proposed rulemaking changes are contained in Appendix H to this Final Report.

Commission Question No. 5:

Do the current Commission requirements that CLECs maintain separate accounting systems for their competitive access provider operations (“CAPs”), CLEC operations, and interexchange toll (“IXC”) operations impose unreasonable and unduly burdensome accounting separation and reporting requirements on the CLECs’ operations?

The primary concern identified by CLECs with respect to maintaining separate accounting systems for different operations is the fact that CLECs are not currently required by the FCC to maintain their system of accounts pursuant to the “Common Carrier Services; Revision; Uniform System of Accounts (“USOA”), Classes A, B and C Telephone Companies.” The CLECs argue, therefore, that they should not be required to maintain their accounts pursuant to the USOA by Commission regulation. CLECs in the Collaborative asserted that such a requirement, if imposed on a Pennsylvania-specific basis, could create an artificial barrier to entry in the Pennsylvania local telecommunications marketplace. This is because the cost of altering accounting systems by CLECs to implement the USOA would often be prohibitive.

The CLECs’ concerns relating to separate accounting systems and reporting requirements were addressed by the Collaborative in two ways. First, the Collaborative proposes to amend 52 Pa. Code § 63.32, System of Accounts, to recognize that CLECs not required by the FCC to conform to the USOA, must:

(1) inform the Commission of this fact on its annual financial report, and (2) state the method of accounting the utility did utilize, such as Generally Accepted Accounting Principles (“GAAP”), to compile the financial information reported. The proposed amendment to section 63.32 may be found in Appendix G.

Additionally, recognizing that many CLECs may not have Pennsylvania-specific information for certain of the designated schedules or line items, the Collaborative is recommending that CLECs be allowed to designate certain schedules or line items on its Class C Annual Report where Pennsylvania-specific information need not be provided. In those situations, the CLEC will be allowed to provide the information on either a parent or consolidated basis. If parent or consolidated information is provided, the CLEC is also obligated to provide information regarding the identity of the parent company and/or which consolidated information has been provided.

For Schedules 8-12, 18, and 23-28, however, Staff advised that the CLECs must continue to be obligated to provide Pennsylvania-specific information to maximize its usefulness to Staff. To accommodate concerns raised by the CLECs for these same designated schedules, BFUS agreed that if a CLEC normally accounts for these items on an apportioned basis, then that CLEC will be permitted to submit its Pennsylvania-specific information on an apportioned basis for these designated schedules. This proposed change is an important recognition that many of the CLECs now doing business in Pennsylvania are not Pennsylvania-specific

companies or are part of a consolidated group of companies, all of which contribute to its Pennsylvania operations.

This proposal is a reasonable compromise that recognizes the reality of the marketplace by balancing the need for regulatory oversight versus providing flexibility to CLECs in providing the needed information in a truly competitive marketplace.

Commission Question No. 6:

Should CLECs' accounts continue to be subject to our regulations concerning classification of public utilities (52 Pa. Code § 63.31) and systems of accounts (52 Pa. Code § 63.32)?

As already discussed above, the Collaborative thoroughly analyzed the regulations concerning classifications of public utilities found at 52 Pa. Code § 63.31 and unanimously agreed, after review and vigorous discussion, that separate classifications for various types of telephone public utilities remain appropriate. However, the Collaborative determined that the current classifications, based upon access lines and revenues, are outdated and no longer an appropriate measure in today's competitive telecommunications environment. Accordingly, the Collaborative proposes to maintain three separate classes of telephone public utilities, still denominated as Class A, Class B and Class C. The

new proposed definitions, however, recognize the current statutory requirements and the changing telecommunications marketplace in Pennsylvania.

Class A telephone utilities, therefore, are proposed to be defined as ILECs subject to an alternative form of regulation, including price cap companies and Plan A companies as defined in the Commission's Order entered January 20, 2000, at Docket No. P-00981245, pursuant to Chapter 30 of the Public Utility Code. Class B telephone public utilities are to be defined as ILECs subject to rate based/rate of return regulation or the Plan B Simplified Ratemaking Plan approved by the same Commission Order entered January 20, 2000, at Docket No. P-00981245. Finally, Class C telephone public utilities are all CLECs, whether they are facilities or non-facilities based, that are not the incumbent provider in any local exchange within Pennsylvania.

The Collaborative believes that these revised classifications are more appropriate because the type of financial data to be provided by a carrier will be based on the amount and degree of regulatory oversight required rather than simply based on the number of access lines served by the carrier. In short, the revised definitions (and, in turn, the streamlined reporting requirements for all classes of telephone utilities) effect a balance between the degree of regulation deemed necessary by the Commission and the lesser degree of oversight required in an industry that is moving toward competition.

Commission Question No. 7:

Should the FCC's financial reporting requirements for ILECs and CLECs, if any, be adopted by the Commission in order to reduce the regulatory burden on new entrants?

The consensus of the Collaborative is that the Commission should not adopt the FCC's financial reporting requirements but should retain its own set of financial reporting requirements. Further, it was agreed that the Commission should re-double its efforts to ensure that all LECs operating in Pennsylvania comply with the Commission's reporting requirements. In reaching this conclusion, there was a concern that the FCC's financial reporting requirements would not likely provide adequate information for the Commission to regulate properly and effectively Pennsylvania's telecommunications industry. Certainly, it is unrealistic to expect that the FCC would require reporting from LECs on issues that may be unique to Pennsylvania. For example, current FCC financial reporting requirements may not be sufficient to determine whether the LECs are complying with the provisions of Chapter 30 as provided in each LEC's previously-approved Chapter 30 alternative form of regulation plan.

Furthermore, the Collaborative considered that the FCC is likely to change its reporting requirements as it deems appropriate and this too may not adequately meet the needs of the Commission to be able to regulate properly the Pennsylvania telecommunications industry. The Commission may not be able adequately to

fulfill its statutory requirements if it were to rely solely on FCC financial reporting requirements for LECs.

The Collaborative recognizes that regulatory burdens may be further reduced, particularly for new entrants, if the Commission were to adopt the FCC's current financial reporting requirements for LECs. However, Staff believes, and the industry participants acknowledge, it is more important to ensure that the Pennsylvania-specific issues are adequately addressed by its own financial reporting requirements and not rely on FCC reporting requirements, which are likely to change again in the future. Nevertheless, the Commission should continue evaluating future FCC reporting changes to determine whether ever-changing market conditions in the state support adopting these later approved FCC reporting requirements.

Commission Question No. 8:

In the case of a telephone utility that has CLEC, CAP, or IXC services operations, or any combination of these, what combination of revenues should be used for classification purposes under 52 Pa. Code § 63.31?

Again, as discussed above in relation to Commission Question Nos. 3 and 6, the Collaborative recommends redefining the telephone utility classifications on a basis other than revenue and has proposed rulemaking language to accomplish this change. The annual reports have also been modified to make clear that if a telephone utility has a combination of CLEC, CAP, and/or IXC functions within its corporate structure, the utility will be required to report in the same annual report the revenues received from each function separately in Schedule 23 of the Class C Annual Report. On the other hand, if a telephone utility operating within the Commonwealth has a combination of CLEC, CAP and/or IXC operations organized as separate corporate entities, the company will be required to file separate annual reports for each entity. Under this scenario, the company's CLEC operations will file the Class C Annual Report, and the utility's CAP or IXC operations will file the one-page report currently used by CAPs and IXCs.

Moreover, as discussed above in regard to Commission Question No. 5, the Collaborative is also recommending that 52 Pa. Code § 63.32 be amended to allow financial reporting for CLECs to be satisfied through the use of GAAP if they do not currently use USOA. GAAP provides the necessary financial reporting detail

as required by the FCC, including the utility's revenues. However, the CLEC must clearly state on the annual report the accounting method utilized. The Collaborative believes that any additional requirements, such as reporting accounting information in accordance with USOA, is unnecessary and would merely add burdens that may seriously harm or delay competitive entry into Pennsylvania's telecommunications service markets.

Commission Question No. 9:

Should a CLEC be required to account separately for its resale operations and its facilities-based operations?

Consistent with the response to the previous question, the Collaborative recommends that if a CLEC provides service using both resale and its own facilities under one corporate entity, then the CLEC should file one annual report but should account for the resale and facilities-based revenues separately. This determination recognizes the Commission's goal of promoting telecommunications competition within the state.

In furtherance of that goal, a variety of CLECs have been certificated to provide services within the incumbent carrier's territory. These competitive entrants utilize innovative tools to match customers' needs. In doing so, some services are provided via purchase of wholesale from the local incumbent, while other services may be provisioned by the CLEC's own assets such as cable for

transport. It is also logical that a service could use a combination of both resale and the CLEC's facilities. Having to account separately for such hybrid service operations is unnecessary and could impair the speed of competition to the telecommunications market.

Therefore, in order to manage the Commonwealth's overall goal of reducing regulatory costs and administrative burdens to CLECs in order to promote competition, it is neither practical nor necessary for a CLEC to file separate annual financial reports if these combined services are provided through one corporate entity. However, consistent with present practice at the Commission, if the CLEC provides service using both resale and its own facilities through separate corporate entities, then the CLEC must file two separate Class C Annual Reports for each type of CLEC operations.

IV. CONCLUSION

The recommendations contained in this Final Report represent the joint effort of all the participants to answer the nine questions posed by the Commission in its September 12, 2000 Order. The streamlined financial reporting requirements for both ILECs and CLECs proposed by the Collaborative will reduce significantly the administrative burdens of responding to Staff's legitimate information needs, and, in turn, allow all carriers to focus more energies on competing in the local telephone markets. The success of this Collaborative is the result of all the participants' willingness to share their thoughts, ideas, and concerns in a true spirit of cooperation. This cooperative effort allowed the participants to reach consensus, if not unanimity, on all issues raised in the Commission's original order. Looking forward, we encourage the Commission to revisit these reporting requirements on a regular basis for possible further streamlining in response to Pennsylvania's evolving competitive telecommunications market.



Robert C. Barber
Senior Attorney

Room 3D
3033 Chain Bridge Road
Oakton, VA 22185
703 691-6061
FAX 703 691-6093
EMAIL rcbarber@att.com

October 8, 2001

BY OVERNIGHT MAIL

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

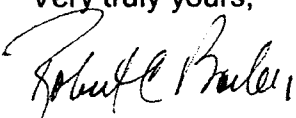
Re: Rulemaking re: Financial Reporting Requirements
For All Telecommunications Carriers
Docket Nos. L-00010153, M-00001374

RECEIVED
2001 OCT 9 10:11:01
COMMUNICATIONS

Dear Mr. McNulty:

AT&T Communications of Pennsylvania, Inc. is submitting this letter in lieu of formal comments concerning the proposed Rulemaking Order in the above-referenced dockets. AT&T generally supports the adoption of those new rules, which seek to reduce the reporting requirement burden on carriers while continuing to meet the needs of the Commission and its staff's for financial information from the telecommunications industry. The proposed rules streamline the reporting requirements for all carriers, and in particular appropriately recognize that competitive local exchange carriers should not be held to be same reporting requirements as incumbent local exchange carriers. While this is a good first step, it is critical that the Commission continue to monitor the condition of the Pennsylvania marketplace and be ready to take further action as conditions there warrant to ensure that reporting requirements do not act as a barrier to effective competitive entry.

Please do not hesitate to contact me with any questions regarding this matter.

Very truly yours,

Robert C. Barber

cc: Carl Hisiro, Esq., Law Bureau
Mr. Robert Wilson, BFUS
Elizabeth Lion Januzzi, Esq., Law Bureau