

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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

November 8, 2001

Honorable Glen Thomas, Chairman
Pennsylvania Public Utility Commission
Keystone Building
400 North Street
3rd Floor, North Wing
Harrisburg, PA 17105

Re: Regulation #57-222 (IRRC #2213)
Pennsylvania Public Utility Commission
Financial Reporting Requirements for All Telecommunications Carriers

Dear Chairman Thomas:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

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

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director
evp

Enclosure

cc: Honorable Chris R. Wogan, Majority Chairman, House Consumer Affairs Committee
Honorable Joseph Preston, Jr., Democratic Chairman, House Consumer Affairs Committee
Honorable Clarence D. Bell, Chairman, Senate Consumer Protection and Professional
Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional
Licensure Committee

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Public Utility Commission Regulation No. 57-222

Financial Reporting Requirements for All Telecommunications Carriers

November 8, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Pennsylvania Public Utility Commission (PUC) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by October 9, 2003, the regulation will be deemed withdrawn.

Chapter 71. Proprietary nature of financial reports. – Conflict with existing regulations.

This proposed regulation amends definitions of utility classes, allows for alternate accounting systems and reduces the filing frequency of some reports. These changes are based on the findings of the Collaborative, a work group convened by the PUC to examine the financial reporting requirements of the telecommunications industry in a competitive market.

The Collaborative also recommended that certain schedules of the financial reports be automatically classified as proprietary. The PUC is implementing this recommendation through adoption of internal operating procedures, and not through the formal rulemaking process.

However, these procedures conflict with Section 71.9 of the PUC's existing regulations, which provides:

The financial reports are public documents. The reports will be maintained by the Secretary and will be available for public inspection. If a public utility requests proprietary treatment for information in the report, it shall be incumbent upon that utility to file a petition for protective order under § 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

Pursuant to this regulation, the financial report and all of its components are a matter of public record, unless designated otherwise through issuance of a protective order. This regulation has the force and effect of law, and supersedes an internal policy to the contrary. Therefore, the PUC must propose an amendment to Section 71.9, if it wants to classify certain portions of a financial report as proprietary.

In addition, Section 71.9 allows a public utility to classify information contained in its financial reports as proprietary by filing a petition for a protective order "under Section 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations)." This is a typographical error. The correct citation is Section 5.423 (relating to orders to limit availability of proprietary information).

We recommend that the PUC initiate a rulemaking to amend Section 71.9 to adopt the policy recommended by the Collaborative and to correct the citation.