Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

IRRC Number: 2206

(1) Agency

Pennsylvania Public Utility Commission

(2) I.D. Number (Governor*s Office Use)

L-00990141/57-224

(3) Short Title

Generic Competitive Safeguards for Telecommunications Utilities

(4) PA Code Cite

52 Pa. Code §§ 63.141-63.145

(5) Agency Contacts & Telephone Numbers

Primary Contact: Carl S. Hisiro 717-783-2812 and David Screven 717-787-2126, Law Bureau (legal)

Secondary Contact: Gary Wagner, Bureau of Fixed Utility Services, 717-783-6175 (technical)

(6) Type of Rulemaking (check one)

- ☐ Proposed Rulemaking
- ☒ Final Order Adopting Regulation
- ☐ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- ☒ No
- ☐ Yes: By the Attorney General
- ☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The final rulemaking establishes competitive safeguards via a Code of Conduct in furtherance of the mandate in Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3001-3009, and other applicable law to encourage and promote competition in the provision of telecommunications products and services. Specifically, the final safeguards prevent discriminatory access for all services and facilities incumbent local exchange carriers (ILECs) are obligated to provide competitive local exchange carriers (CLECs), prevent the unlawful cross subsidization for competitive services from noncompetitive services by ILECs, and prevent local exchange carriers from engaging in unfair competition. The final rulemaking also requires ILEC employees who are responsible for the processing of a CLEC order not be shared with the ILEC's entity that provides local exchange service and requires the ILEC entity that provides local exchange service to maintain its own direct line of management.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

66 Pa. C.S. §§ 3005(b) and 3005(g)(2)

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. 66 Pa. C.S. §§ 3005(b) and (g)(2). There are no deadlines for action.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This final rulemaking is submitted to comply with the directives in Chapter 30 of the Public Utility Code to develop competitive safeguard regulations in order to promote competition in the telecommunications markets in Pennsylvania. The development of competition will be in the public interest because such competition will lower prices, improve the quality of products and services offered, and ultimately promote employment and economic expansion in the Commonwealth.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

None.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All customers of telecommunications services will benefit from this rulemaking because enforcement of the standards of conduct will promote competition for telecommunications services. This increased competition will result in lower prices and/or greater service offerings over time. All telecommunications providers will also benefit because the competitive safeguards will remove entry barriers and create a more level playing field that will better able these providers to compete effectively and fairly for customers.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No person or entity will be adversely affected by this regulation. While some of the final regulations are only imposed on incumbent carriers, the regulations only prohibit what would be characterized as unfair methods of competition and do not otherwise restrict their ability to compete fully and fairly in the marketplace. In short, the regulations simply create a level playing field for all market participants.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All local exchange telecommunications providers under the Commission's jurisdiction will be required to comply with the regulation. There are currently hundreds of ILECs and CLECs licensed to do business in Pennsylvania that will be subject to this rulemaking.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The rulemaking went through an advance notice and an earlier proposed rulemaking order that were published in the Pennsylvania Bulletin, and the Commission received comments and reply comments from a number of parties. These parties included Verizon Pennsylvania, Inc.; AT&T Communicaitons of Pennsylvania, Inc.; The United Telephone Company of Pennsylvania and Sprint Communicaitons Company, LP; the Pennsylvania Telephone Association; the Telecommunications Resellers Association, the Office of Consumer Advocate; and the Office of Trial Staff. The earlier proposed rulemaking was subsequently withdrawn because of the operation of the sine die rule. The rulemaking then went through another proposed rulemaking order that was published in the Pennsylvania Bulletin, and comments and reply comments were received from all the parties listed above except the Telecommunications Resellers Association. Other parties filng comments included XO Pennsylvania, Inc.; Full Service Network; Curry Communications, Inc.; the Office of Small Business Advocate; MCI WorldCom Network Services, Inc.; the Pennsylvania Cable & Telecommunications Association; and several state Senators and Representatives.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

There may be some modest training costs incurred by local exchange carriers to disseminate and educate employees about these provisions.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Costs will be de minimus.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	$	$	$	$	$	$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Not measurable at this time.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

As already discussed, while there may be some de minimus costs associated with implementing these competitive safeguards, the benefits of promoting competition to the public outweigh any associated costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not applicable.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Both the federal Telecommunications Act and Chapter 30 of the Public Utility Code share the same mandate to promote competition in the local telephone markets. The federal statute contains express language that it does not prohibit states from enforcing regulations or imposing requirements on telecommunications carriers that are necessary to further local telephone competition. Because these regulations are directed at eliminating unfair competition and promoting a level playing field among telecommunications providers in the state, they are viewed as being consistent with federal law.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Comparision with other states was not directly made. However, the final rulemaking, to the extent it successfully promotes entry and competition in Pennsylvania telecommunications markets, should not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective upon publication in the Pennsylvania Bulletin following review by the standing committees and the Independent Regulatory Review Commission.

(31) Provide the schedule for continual review of the regulation.

The regulation will be reviewed on an ongoing basis after it becomes effective.

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Copy below is hereby approved as to form and legality. Attorney General.	Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:	Copy below is hereby approved as to form and legality. Executive or independent Agencies.
BY _____ (DEPUTY ATTORNEY GENERAL)	Pennsylvania Public Utility Commission (AGENCY)	BY Bohdan R. Pankiw Chief Counsel
DATE OF APPROVAL _____	DOCUMENT/FISCAL NOTE NO. L-00990141/57-224 DATE OF ADOPTION June 12, 2003 BY James J. McNulty TITLE (SECRETARY)	DATE OF APPROVAL 6-12-03
☐ Check if applicable Copy not approved. Objections attached		☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00990141/57-224
Final Rulemaking
Generic Competitive Safeguards
Under 66 Pa. C.S. §§3005(b) and 3005(g)(2)
52 Pa. Code, Chapter 63

The Pennsylvania Public Utility Commission on June 12, 2003, adopted a final rulemaking order which establishes competitive safeguards to assure the provision of adequate and nondiscriminatory access by ILECs to CLECs for all services and facilities ILECs are obligated to provide CLEC carriers and to prevent cross subsidization and unfair competition. The contact person is Carl S. Hisiro, Law Bureau, 783-2812.

EXECUTIVE SUMMARY

L-00990141/57-224
Final Rulemaking
Re: Generic Competitive Safeguards
Under 66 Pa. C.S. §§ 3005(b) and 3005(g)(2)
52 Pa. Code, Chapter 63

Sections 3005(b) and 3005(g)(2) of the Public Utility Code, 66 Pa. C.S. §§ 3005(b) and 3005(g)(2), require the Commission to establish regulations to prevent unfair competition, discriminatory access, and the subsidization of competitive services through revenues earned from noncompetitive services. On January 29, 2002, the Commission entered a Proposed Rulemaking Order, which solicited comments from jurisdictional telecommunication utilities and other interested parties regarding proposed generic competitive safeguards mandated by Chapter 30 of the Public Utility Code.

The final regulations establish competitive safeguards in furtherance of Chapter 30's mandate to encourage and promote competition in the provision of telecommunications products and services throughout Pennsylvania. The competitive safeguards prevent discriminatory access for all services and facilities incumbent local exchange carriers (ILECs) are obligated to provide competitive carriers, prevent the unlawful cross subsidization for competitive services from noncompetitive services by ILECs, and prevent all local exchange carriers from engaging in unfair competition practices.

The contact persons are Carl Hisiro, Law Bureau (legal), 717 783-2812 and Robert Rosenthal, Fixed Utility Services (technical), 717 783-5242.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting June 12, 2003

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr.
Glen R. Thomas
Kim Pizzingrilli

Rulemaking Re Generic Competitive Safeguards Under 66 Pa. C.S. §§ 3005(b) and 3005(g)(2) L-00990141

FINAL RULEMAKING ORDER

BY THE COMMISSION:

On January 29, 2002, the Commission entered an order proposing to adopt a general Code of Conduct, applicable to all local exchange carriers ("LECs"), in order to prevent unfair competition and ensure nondiscriminatory access to an incumbent local exchange carrier's ("ILEC") services and facilities by competitors as mandated by Chapter 30 of the Public Utility Code and other applicable law. The proposed regulations also would require ILECs with more than one million access lines to maintain a functionally separate wholesale organization for providing certain services to competitive local exchange carriers ("CLECs").

The January 29, 2002 Order was published April 20, 2002, at 32 Pa.B. 1986. On or about May 20, 2002, the Commission received written comments from Verizon Pennsylvania Inc. ("Verizon-PA") and Verizon North Inc. (hereinafter referred to

collectively as "Verizon"); Office of Consumer Advocate ("OCA"); the Pennsylvania Telephone Association ("PTA"); AT&T Communications of Pennsylvania LLC, CoreCom/ATX, Inc., and the Competitive Telecommunications Association (hereinafter referred to collectively as "AT&T"); Sprint Communications Company, L.P. and The United Telephone Company of Pennsylvania (hereinafter referred to collectively as "Sprint"); XO Pennsylvania, Inc. ("XO"); Full Service Network ("Full Service"); and Representative Frank Tulli, Jr. ("Rep. Tulli"). In addition, late-filed comments were received on May 22, 2002, from Curry Communications, Inc. ("Curry").

On or about June 4, 2002, the Commission received reply comments from Verizon; AT&T; PTA; Sprint; Office of Small Business Advocate ("OSBA"); MCI WorldCom Network Services, Inc. ("MCI"); Pennsylvania Cable & Telecommunications Association ("PCTA"); and Senator Vincent J. Fumo, Democratic Committee on Appropriations ("Sen. Fumo"). In addition, reply comments were filed on June 24, 2002, by Representatives Dennis M. O'Brien, Chairman, House Consumer Affairs Committee, and Joseph Preston, Jr., House Consumer Affairs Committee (hereinafter referred to collectively as "House Committee"). On July 3, 2002, the Commission received comments from the Independent Regulatory Review Commission ("IRRC").

This Final Rulemaking Order discusses the comments and reply comments received and sets forth, in Annex A, final amendments to the Commission's regulations for a telecommunications utilities' Code of Conduct.

General Comments

PTA raises the issue that no party has requested a code of conduct applicable to all ILECs in Pennsylvania, and argues that the Commission should not be quick to impose the types of restrictions found in the Code of Conduct without some type of evidentiary finding that these restrictions are necessary. PTA Comments at 1-4. Further, PTA objects to the specific provisions of the Code of Conduct that apply only to ILECs, arguing that the Code should treat all competitors equally. *Id.* at 3.

Whether or not any party has requested a code of conduct applicable to all ILECs ignores the fact that the General Assembly, in enacting Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3001-3009, has mandated that regulations be established by the Commission to prevent unfair competition, discriminatory access, and the subsidization of competitive services through revenues earned from noncompetitive services. That is precisely what we have done in developing the Code of Conduct regulation. As to the second concern raised by PTA, we have already addressed this issue in our Proposed Rulemaking Order at 15-16 when we rejected a similar plea by Verizon-PA that any regulation should be equally imposed on all local exchange carriers ("LECs") and not just ILECs pursuant to the doctrine of regulatory parity. PTA has not presented any arguments on this issue that make us believe we have to reconsider our position as expressed in our earlier order.

OCA submits that throughout the competitive safeguards, the specific provisions use either "may" or "shall" when stating the requirements of each section. OCA offers that the final regulation should use "shall" instead of "may" as the word "shall" is more mandatory in nature. We note that the word "may" is always used before the word "not" throughout the competitive safeguards. This change was made by the Legislative Reference Bureau before the proposed regulation was published in the *Pennsylvania Bulletin* to be consistent with their rule that "may" is used whenever expressing a directive in the negative, and the word "shall" is used whenever the directive is expressed

in the affirmative. The regulation's use of the words "shall" and "may" are consistent with this directive from the Legislative Reference Bureau, and, therefore, no change is necessary.

The other general comment we wish to address is one made by both Sen. Fumo and Rep. Tulli that the Code of Conduct adopted in the Global Order entered September 30, 1999, at P-00991648 and P-00991649, is superior to the Code of Conduct adopted in the present proceeding and should be adopted in place of the Code of Conduct proposed herein. Rep. Tulli Comments at 2-3; Sen. Fumo Reply Comments at 1-2. As we stated in our Proposed Rulemaking Order, the regulations we proposed in the instant proceeding "are modeled, in part, after similar provisions contained in the 'Code of Conduct' adopted for Verizon-PA in the Global Order . . . ." *Rulemaking Re Generic Competitive Safeguards Under 66 Pa. C.S. §§ 3005(b) and 3005(g)(2)*, Dkt. No. M-00960799, at 15 (Proposed Rulemaking Order, entered January 29, 2002) (hereinafter *Proposed Rulemaking Order*). Therefore, many of the provisions are the same or very similar. On the other hand, the Global version only applied to Verizon-PA, whereas the Code of Conduct adopted herein applies to all LECs unless otherwise noted, and so by its very nature must take into account a broader range of issues than if it were directed at only Verizon-PA. In any event, as will be discussed in greater detail below, we have adopted in this Order several changes to the regulations that will bring them more into conformity with the Global version.

Moreover, the touchstone for a Code of Conduct is the market conditions that exist in the telecommunications industry. Market conditions could change that would result in the Code being revisited at a later date. We, therefore, retain our authority to make changes as appropriate to the competitive safeguards approved today to reflect these changing market conditions.

Section 63.141. Statement of purpose and policy.

Three concerns were expressed in the comments relating to this particular section of the Code of Conduct. First, in regard to Subsection (c), IRRC asks what other codes of conduct besides the Code of Conduct adopted in the Global Order for Verizon-PA are applicable to telecommunications carriers, and it suggests that these codes should be identified in this regulation. OCA, on the other hand, submits that this subsection "should be deleted or modified so that other codes of conduct applicable to any LECs are **not** replaced or superseded unless such provisions are inconsistent with the new safeguards." OCA Comments at 4 (emphasis in original). Sprint, in its reply comments, urges rejection of OCA's claim that the rulemaking should not eliminate "other existing competitive safeguards" unless inconsistent because it does not identify them. Sprint Reply Comments at 1-2. *Accord*, OSBA Reply Comments at 6 ("[f]or efficiency and to avoid confusion these regulations should supercede any code of conduct that is currently in place").

As there is only one Commission-imposed code of conduct currently in effect relating to the telecommunications industry – the one approved in the Global Order applicable only to Verizon-PA -- the Commission agrees with IRRC and believes the best approach is to specifically refer to that code of conduct as being superseded so that there is no ambiguity on the issue. We continue to believe that having more than one code of conduct in effect would be confusing and make compliance and enforcement more difficult.

The other comments relating to this section come from AT&T and XO. AT&T suggests that the statement of policy portion of the regulation should recognize the inclusion of a provider-of-last-resort function ("POLR") as part of the ILEC's wholesale

function, at least on a transitional basis if not a permanent basis.[1] AT&T Comments at 13-14. XO argues that the statement of policy should make the regulation expressly applicable to ILEC affiliates and subsidiaries that provide competitive and non-competitive telecommunications services. XO Comments at 4-5.

For the reasons discussed below, we are withdrawing from the final regulation that portion of the proposed regulation dealing with functional separation and accounting/auditing safeguards, and, therefore, comments regarding the POLR issue become moot and no further discussion is necessary. As for the statement of policy encompassing an ILEC's affiliates and subsidiaries, the definitions of both ILECs and CLECs in the instant regulation already incorporate "affiliates, subsidiaries, divisions or other corporate subunits" so it is not necessary to make XO's suggested change.

Section 63.142. Definitions.

Several of the comments address various definitions contained in the regulation. For example, OCA asserts that definitions for ILECs, CLECs, and LECs do not recognize the diverse nature of telecommunications services, including data services such as access to e-mail or the Internet, which such carriers currently provide to customers. OCA Comments at 5-6. *Accord*, OSBA Reply Comments at 6. Both Sprint and PCTA object to the expansion of these definitions to include data local exchange carriers ("DLECs"). PCTA's position is that the Federal Communications Commission ("FCC") has specifically ruled that data services are not telecommunications services. PCTA Reply Brief at 2. Sprint's reply comments also address the FCC's on-going effort to classify broadband services, and further argue that OCA's attempt to define CLECs to include DLECs is unnecessary as state jurisdictional LECs providing jurisdictional data services are already deemed CLECs, and those LECs that provide interstate data services cannot

[1] XO actually also addresses the POLR function but does so in the context of amending section 63.142, the definitions section (as does AT&T), by asking whether the contemplated "wholesale operating unit" should encompass any retail services that may be akin to the POLR function. As discussed in the text above, however, with the elimination of the functional separation portion of the regulation, a POLR definition becomes moot.

be regulated by the Commission. Sprint Reply Brief at 2-4. We agree with Sprint that there is no further need to include "data services" within the definitions of ILECs, CLECs, or LECs as those services are already included in the definition of CLECs. *Letter-Petition of BlueStar Networks, Inc. for Waiver of Certain Tariff Requirements Pertaining to Voice-grade Service*, Docket No. A-310862 (Final Order entered August 17, 2000).

IRRC suggests that the acronym "ILEC" should replace the word "incumbent" in the definition for "competitive service" to be consistent with other references to ILECs in this regulation. IRRC Comments at 1. We agree that this change should be made and have incorporated it in the final regulation.

Both PTA and Verizon submit that the second sentence of the definition for an ILEC, which makes clear that the term includes any of the ILEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service, should be deleted. The PTA, in particular, contends the language is unnecessary and may create confusion in the application of the code of conduct. PTA Comments at 6. Neither party contends, however, that the same language that appears in the definition of CLECs should be removed. In any event, we disagree with this suggestion as we believe it is appropriate to include this language in both definitions. The Commission wants to deter LECs from creating new entities within their business organization for the purpose of avoiding any of the safeguards created in the Code of Conduct. As drafted, any such potential loophole is closed.

IRRC, Verizon, and Sprint each object to the definition of telecommunications services as departing from the definition used in Chapter 30 of the Public Utility Code. IRRC Comments at 1; Verizon Comments at 17; Sprint Comments at 2-3. Specifically, they complain that the proposed definition includes the words "signaling" and "data" which are not included in the statutory definition of "telecommunications services" at

66 Pa. C.S. § 3002. We agree with this suggestion and will delete these references from the final-form regulation so that the definition is the same as what appears in Chapter 30.

IRRC and OCA also suggest that clarity would be aided if the terms "wholesale functions" and "retail services" are defined in the regulation. IRRC Comments at 1; OCA Comments at 6-8. However, these terms are used almost exclusively in section 63.143 of the proposed regulation, which as we discuss below, is being withdrawn from the final-form regulation. Therefore, these terms do not need to be defined in the final regulation.[2]

Verizon recommends that the definition for "market price" should be eliminated; however, it offers no rationale or explanation for this particular suggestion. No other party raised objections to this definition. We believe the definition is useful and see no reason to delete it from the final-form regulation.

Finally, on our own motion, the Commission has amended the definition of "CLECs" to make clear that it includes CLECs who have received provisional authority to operate in the state. This change closes a potential loophole that may have exempted CLECs with only provisional authority from being bound by the Code of Conduct.

Section 63.143. Accounting and audit procedures for large ILECs.

This section of the regulation was the most contentious among the parties. Generally, most comments fall into two camps: either they support the proposed procedures, often with the caveat that the Commission needs to impose full functional separation on an ILEC serving more than one million access lines, or the procedures are viewed as serving no useful purpose and would be costly to implement. Typical of the

[2] For the same reason, we are withdrawing the definition of "subscription activities" from the final-form regulation as that term was only used in the proposed section 63.143, which itself is being withdrawn from the final-form regulation.

first camp were comments filed by XO, AT&T, the OCA, Full Service, and Sprint, while the second camp included comments filed by IRRC, Verizon, and the House Committee.

In regard to the type of functional separation imposed in the regulation on ILECs that serve more than one million access lines, AT&T, XO, and Full Service each argue that the Commission has taken a step backwards in its decision not to impose full functional separation on ILECs with over one million access lines. AT&T Comments at 2-5; XO Comments at 2-4; Full Service at 1-5. In making its case, AT&T argues that without full functional separation, many of the rules imposed in this section of the regulation "are internally unsound and have no practical effect or meaning." AT&T Comments at 4. Verizon in its Reply Comments states that the Commission has already rejected a wholesale/retail split of Verizon-PA's internal operations, and that to impose such a split now would be so onerous and burdensome as to equate to full structural separation. Verizon Reply Comments at 3-4. In sum, Verizon claims that imposing full functional separation would require a complete restructuring of its retail business and would duplicate resources, create inefficiencies, and add unnecessary costs to its doing business in the state. *Id.* at 22-31.

In focusing on the actual accounting rules proposed in our initial rulemaking order, IRRC, Verizon, and the House Committee each addresses the same concern -- that these accounting rules will serve no useful purpose and could impose significant expenses to implement. IRRC Comments at 2-3; Verizon Comments at 2-15; Verizon Reply Comments at 22-31; House Committee Comments at 1-2. As noted above, even AT&T acknowledges in its comments that these rules will have no practical effect when applied to the type of wholesale/retail structure permitted by the originally-proposed section 63.143 for ILECs with over one million access lines. The similar comments from a wide range of participants that include the state's largest ILEC and CLEC, IRRC, and legislators questioning the soundness and practical effect of the proposed accounting and auditing rules in a situation where full functional separation is no longer part of the

equation, coupled with the anticipated costs to impose these rules on large ILECs, have caused the Commission to re-examine the validity of imposing such requirements in the context of this rulemaking.

When the accounting rules were first being devised, the Commission was considering full functional separation where the ILEC's retail and wholesale operations would be split into different divisions within the ILEC's corporate structure. Under this scenario, the accounting rules that were proposed in section 63.143 would have provided a workable, useful tool to ensure that the ILEC's wholesale operations were providing the same services on a non-discriminatory basis to both the ILEC's retail division and to CLECs. When the Commission's approach evolved into permitting the ILEC to create a separate wholesale unit that deals only with CLECs while at the same time allowing the ILEC's retail and wholesale operations to be part of the same business organization without splitting them into separate divisions, the continuing usefulness of the proposed accounting rules became suspect.[3]

Verizon recognized as much when it stated in its comments that:

> . . . the provisions on "Accounting and audit procedures for large ILECs" . . . appear . . . to be carried over from the previously-rejected attempt to structurally separate Verizon PA. . . . In directing preparation of these regulations, the Commission unequivocally rejected expensive reorganization requirements designed to "fix a problem that has not been shown to exist." Yet, the regulations retain . . . unnecessary "accounting" requirements that could be interpreted to require the very same type of expensive system changes that the Commission found were not warranted [when it rejected structural and then full functional separation of Verizon-PA.]

Verizon Comments at 2. IRRC and the House Committee referenced the same problems in their respective comments. The purpose of the accounting rules is to ensure that the

[3] In our Proposed Rulemaking Order at this docket, we went to great lengths in explaining why we believed full functional separation is unnecessary at this time. *Proposed Rulemaking Order* at 10-12. No evidence has been presented to the Commission since then that would have us reconsider this decision, and we also note for the record that no other state commission or the FCC has imposed either full functional separation or structural separation to date on any regional Bell operating company as an appropriate market power remedy in any local exchange market.

ILEC does not discriminate in its dealings with CLECs when compared to its dealings with its own retail operations. By setting up a separate wholesale organization within the ILEC that only deals with CLECs and has no interaction with the ILEC's own retail operations, however, the ability to determine whether the ILEC is discriminating against the CLECs through the use of these accounting rules is no longer possible.

Moreover, where, as here, the ILEC's retail and wholesale operations are not separated and the wholesale services purchased from the ILEC by CLECs that are needed to provide retail local service are at rates that have been approved by the Commission, a discrimination charge based on rates is not legally possible.[4] That is because where the ILEC's operations are not separated, the ILEC does not have to account for these same wholesale services at the same prices charged to CLECs. These costs are instead blended into the total cost of providing the retail service to the ILEC's customers. As such, these individual costs become both unnecessary and, at the very least, very difficult if not impossible to break out in a way that allows for a fair and reasonable comparison with the charges paid by CLECs for the same wholesale services.

In addition to the issues raised as to the usefulness of the accounting rules where full functional separation is not mandated and as to the costliness to implement these rules, the Commission is also troubled by the fact that the procedure set up in the proposed regulation basically involves a "one-size-fits-all" approach. That is to say, the regulation originally proposed has the unintended consequence of favoring the approach Verizon-PA has adopted of creating a wholesale operating unit that deals only with CLECs for any ILEC that reaches one million access lines through internal growth and/or by merger. Obviously, other ILECs may believe it is more beneficial, from a business standpoint, to create separate wholesale and retail divisions or even separate affiliates for their local service business. We, therefore, have concluded that the better approach is not

[4] The potential for non-rate discrimination in provision of wholesale services by Verizon is addressed in the Commission's extensive performance metrics and remedies standards. *See Joint Petition of NEXTLINK Pennsylvania, Inc., et al.*, Dkt. No. P-00991643 (Order entered December 31, 1999), and subsequent related orders.

to adopt accounting rules that are not useful or cost effective in every case in which they are to apply, and instead to rely on our general authority under: (1) 66 Pa. C.S. §§ 504-506 to obtain reports and inspect records of public utilities, (2) 66 Pa. C.S. § 3009(b)(1) to audit the accounting and reporting systems of LECs and their transactions with affiliates, and (3) 66 Pa. C.S. § 516 to conduct audits, to aid in the enforcement of the Code of Conduct as finally approved herein.[5]

In summary, the proposed accounting rules only make practical sense for large ILECs that separate their retail and wholesale operations into different divisions or affiliates. In this type of situation, the proposed accounting rules could be applied to determine if the ILEC is engaged in discriminatory or unfair practices vis-à-vis how it is treating CLECs. At present, however, there are no large ILECs with over one million access lines other than Verizon; and, therefore, there is no existing large ILEC that has separated its wholesale and retail operations into different divisions or affiliates. In addition, for the reasons stated in our earlier Proposed Rulemaking Order, we are not prepared to require Verizon at this time to adopt this type of organizational structure.

After considering all the comments filed on this important issue, we are not prepared at this time to impose accounting rules that may be appropriate only in future circumstances when a large ILEC adopts a full functional separation or structural separation approach. Nor are we prepared to encourage or require, through this rulemaking, all ILECs that reach one million access lines in the future to adopt Verizon-PA's present business structure for their own wholesale and retail operations. We will remove the accounting rules, therefore, as being both unnecessary and too costly to implement when compared with the anticipated benefits if they were put into force. We will instead rely on the enforcement of the Code of Conduct promulgated herein as the

[5] The Commission also clearly has the ability and authority to require ILECs serving over one million access lines to provide affected competitive services through a separate corporate affiliate if the instant competitive safeguards are not sufficient in an individual case to protect against unfair competition and to ensure nondiscriminatory access to the ILEC's services and facilities. 66 Pa. C.S. § 3005(h).

best means to protect against discriminatory and unfair competitive practices that were the subject of concern in Chapter 30 of the Public Utility Code.

Old Section 63.144. New Section 63.143. Code of Conduct.

Paragraph (1) addresses nondiscrimination and is divided into two subparts. Subparagraph (1)(i) in the proposed regulation states that "an ILEC may not give itself . . . or any CLEC any preference or advantage over any other CLEC . . . unless expressly permitted by State or Federal law."[6] Several commenters raise issues relating to Subparagraph (1)(i). First, IRRC, AT&T and XO each complain about the proposed exception, "unless expressly permitted by state or federal law," as ambiguous, which may lead to misinterpretation and increased litigation to resolve disputes. IRRC Comments at 3; AT&T Comments at 21; XO Comments at 9-10. IRRC also notes that the comparable language in the code of conduct adopted for the electric industry, this exception does not exist. *See* 52 Pa. Code § 54.122(1). To avoid any vagueness or confusion, IRRC suggests that the final-form regulation should expressly reference the state and federal laws that allow an ILEC to give itself a preference or the exception should be eliminated. In making its argument, XO states that the exception should only be available if the language is further qualified to make clear that express prior approval from the Commission is necessary before any such preference is given to the ILEC's own retail operations.

After carefully considering these comments, we agree that this exception to the rule has the potential to lead to significant litigation and may ultimately result in the provision becoming unenforceable as the qualifying language will swallow the rule. Reinforcing this conclusion, we find persuasive the fact that this Commission did not

[6] On our own motion, we are changing the phrase "local exchange affiliate, division or other corporate subunit" to read "local exchange affiliate or division or other corporate subunit that performs that function" to eliminate any potential ambiguity with the original phrase as to whether it was intending to connote an obligation to create a local exchange affiliate. We want to make clear that the phrase is intended to address the function, not the corporate structure. For consistency purposes, this change will be made throughout this section whenever the original phrase is used.

include a similar exception in a nearly identical rule adopted for the electric industry as cited by IRRC,[7] and that the Global Code of Conduct did not contain this exception in its comparable Rule No. 1. We, therefore, will remove this language from the final regulation.

The other comment to this subparagraph is offered by Verizon, which suggests that the word "unreasonable" should be added before "preference."[8] In making this argument, Verizon states that this change would be consistent with the general obligation under the federal Telecommunications Act at 47 U.S.C. § 251 to provide "reasonable and nondiscriminatory" services to CLECs. Verizon Comments at 15. For the same reasons we are deleting the exception language in the same subparagraph, we decline to accept this proposal. We believe adding such a qualifier would result in increased litigation to determine what is reasonable, and we note that both the Global Code of Conduct and electric code of conduct do not contain this qualifying language.

Subparagraph (1)(ii) addresses tying arrangements. The proposed regulation provides that "an ILEC may not condition the sale . . . of any noncompetitive service on the purchase, lease or use of any other goods or services offered by the ILEC or on a direct or indirect commitment not to deal with any CLEC." Consistent with the antitrust laws, the provision does permit such bundling where the ILEC offers, on an individual basis, the noncompetitive service offered in the bundle. Several parties offer comments to this subparagraph.

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[7] In the Proposed Rulemaking Order, we specifically stated that the regulations in the instant proceeding were being modeled in part from the previously-adopted electric code of conduct provisions. *Proposed Rulemaking Order* at 15 n.22.

[8] We wish to emphasize that in prohibiting an ILEC from giving itself a "preference or advantage," this language is not intended to mandate that an ILEC, for example, must provide an identical form of access to its operations support systems for both its retail operations and for CLECs. However, it may constitute a violation of this subparagraph if the Commission found that the quality of service provided to CLECs was discriminatory when compared to the quality of service an ILEC provides itself.

First, both IRRC and Sprint submit that the phrase, "direct or indirect commitment" is vague and should be changed or further defined. IRRC Comments at 3; Sprint Comments at 4. Sprint suggests that the phrase should be rewritten as a "written or oral commitment." We agree that clarity would be aided by changing this phrase but believe it would best be accomplished by modifying Sprint's suggested language to read "written or oral agreement" as it is ultimately the entering into an agreement that should be prohibited by the final regulation.

Both Sprint and PTA submit that parity dictates the second sentence should be changed so that it refers to "LECs" instead of only "ILECs," and Sprint further suggests another sentence being added to prohibit "LECs" from conditioning the sale of "any noncompetitive service on a written or oral commitment not to deal with any other LEC." Sprint Comments at 3-5; PTA Comments at 8. As to the first suggestion, we decline to accept changing "ILECs" to "LECs" in the second sentence because tying/bundling arrangements only have an anticompetitive effect under the antitrust laws if the party imposing the tie has market power in the tying product market. As we previously recognized in our Proposed Rulemaking Order, CLECs do not have market power, and, therefore, imposing this restriction on them would not be consistent with this country's competition policy as defined by the antitrust laws.

As to Sprint's other suggestion, however, it attempts to address a loophole in the originally-proposed first sentence that only addresses such arrangements when undertaken by ILECs. We agree that this type of behavior, whether by ILECs or CLECs, to elicit agreements among competitors not to deal with other LECs is generally considered to be anticompetitive and serves no valid business purpose other than to restrain trade. We, therefore, agree that the final regulation should incorporate this proposed change offered by Sprint to close this perceived loophole in the Code of Conduct with the minor adjustment to change "commitment" to "communication" to be consistent with Sprint's suggestion for the prior sentence that we adopted above.

Both AT&T and XO also raise concerns as to whether the proposed language in this subparagraph achieves the same result as the existing Rule No. 9 in the Global Code of Conduct applicable only to Verizon-PA that provides that "[a]ny incumbent local exchange company that bundles its services must provide the same opportunity at the same terms to competitors."[9] AT&T Comments at 22; XO Comments at 10. In an effort to address this issue more fully, AT&T suggests, in its words, "a more practical and straightforward manner that focuses directly on the potential for cross-subsidization between competitive and non-competitive services in a bundled service package." AT&T Comments at 22. Specifically, AT&T offers the following amendment to this subparagraph:

> An ILEC shall offer to CLECs for resale any bundled competitive and noncompetitive services it provides to end-users at the same price it offers such bundled services to end-users less the wholesale discount approved by the Commission and shall make the unbundled network elements associated with those services available to CLECs as may be required by applicable law.

AT&T Comments at 7-8 of Attached Redlined Version of Code of Conduct.

We agree that this additional language, with a small clarifying change, eliminates the ambiguity that existed with the original Rule No. 9 in the Global Code of Conduct while at the same time addressing the potential for cross-subsidization between competitive and noncompetitive services that is the focus of concern within section 3005(g)(2) of the Public Utility Code. We, therefore, will incorporate this language as a new Subparagraph (1)(iii) in the final regulation, which at the same time addresses the concern that the competitive safeguard contained in Rule No. 9 of the Global Code of Conduct was absent in the instant Code of Conduct.

Finally, we address briefly OCA's concern that this subparagraph should specifically provide that ILECs cannot discriminate in the provisioning of unbundled

[9] The Commission also assumes that Sen. Fumo and Rep. Tulli support this change since they both advocate returning to the Global Code of Conduct.

network elements to CLECs. OCA Comments at 8. We believe this issue is already addressed in Subparagraph (1)(i), which provides that an "ILEC may not give itself . . . any preferences . . . over any other CLEC in the preordering, ordering, provisioning, or repair and maintenance of any . . . **network elements** . . ." (Emphasis added.) We, therefore, do not believe it needs to be further addressed in Subparagraph (1)(ii), which focuses more directly on tying arrangements and refusals to deal.

Paragraph (2) is intended to proscribe certain types of employee conduct when LEC employees are dealing directly with end-user customers. The only comments offered to this paragraph came from Verizon where its suggested changes would correct what it characterized as "unintentional typos." Verizon Comments at 16. The first change would be to add the word "falsely" before "disparage" in Subparagraph (2)(i). The other change would be to add "retail" before "services" where that word is used in Subparagraph 2(ii).

In examining these suggestions, we can assure Verizon and all parties that the Commission's original language did not contain "unintentional typos" in this paragraph. Rather, we believe the language as originally articulated in the Proposed Rulemaking Order is correct, and we see no reason to adopt the suggested changes now offered by Verizon. In making this determination, we particularly wish to note that we see no added benefit to including "falsely" before "disparage" in Subparagraph 2(i). The word "disparage" itself has a negative connotation, generally meaning to belittle or to slight something, and we see little distinction in allowing a competitor to disparage another competitor's product or service as long as it is "truthful" in the words of Verizon. If what Verizon is trying to assert is that a competitor should be allowed, in appropriate circumstances, to advertise differences between its services and that of a competitor's in a truthful manner, then of course that is permitted under this regulation. What is restricted, however, is the manner in which the company accomplishes that goal. A company should be able to provide comparison information without resorting to the use of any

disparaging or belittling comments gratuitously directed at its competitor to win the business of the targeted customer.

Paragraph (3) addresses corporate advertising and marketing and is divided into four subparts. Subparagraph (3)(i) prohibits LECs from engaging in "false or deceptive advertising." There were three different comments filed directed at this provision of the regulation. Both Sprint and PTA take the position that this restriction and the rest of the paragraph infringes on the First Amendment right of free speech under the United States Constitution,[10] OCA suggests that the state Unfair Trade Practices and Consumer Protection Law ("UTPCPL") should be referenced in this subparagraph because it deals directly with this issue, and Verizon argues that the restriction should not be limited just to advertising. Sprint Comments at 5-6; PTA Comments at 8-9; OCA Comments at 9-11; Verizon Comments at 16.

We strongly disagree that this provision violates the First Amendment as it parallels existing federal and state laws that prohibit unfair methods of competition, including engaging in false or deceptive advertising -- laws that have not been found to be in violation of the First Amendment's right to free speech. 15 U.S.C. § 45; 73 P.S. §§ 201-1-201-9.2. The general rule in commercial speech cases is that only false, deceptive or misleading advertising may be prohibited. *Bates v. State Bar*, 433 U.S. 350 (1977). Based on the United States Supreme Court holding in *Bates* and its progeny, it is clear that false or misleading advertising, if engaged in by LECs, would not enjoy any

[10] Another suggestion offered by Sprint in its comments is that the words "to customers" should be added after "advertising" to make it consistent with the electric industry's code of conduct at 52 Pa. Code § 54.122(3). We decline to accept this suggestion as both too limiting in scope and too ambiguous in meaning. To be effective, the provision needs to cover both actual and potential customers; therefore, the phrase adds nothing to the regulation.

First Amendment protection. Therefore, it is entirely appropriate for the Commission to impose the type of restriction that is contained in Subparagraph 3(i).[11]

As far as OCA's suggestion to reference the state's UTPCPL as part of the regulation, we must decline for the reasons provided by Sprint and PTA in their respective reply comments. In short, the insertion of this reference into the regulation could be interpreted as an attempt to expand the Commission's statutory authority to include bringing actions under the UTPCPL, which authority is currently within the exclusive jurisdiction of the state Attorney General's Office. We see no reason to insert this type of confusion into our regulatory process without any countervailing benefit created by taking this step.

We also decline to include Verizon's suggested change to add the phrase "or other false or deceptive statements" after "advertising" in this subparagraph. While we do not disagree with the concept raised by Verizon's language, we believe the word "advertising" is sufficiently broad to cover most, if not all, statements that a LEC would make in the context of soliciting existing or potential customers to buy its services; and, for that reason, we do not believe that the additional phrase adds anything of value to the regulation.

Finally, the other major comments to this paragraph are directed at Subparagraph (3)(iv). Verizon, Sprint, and PTA argue that "other services" is too vague and overbroad as drafted, and PTA also submits that the provision should apply to all LECs and not just ILECs and should be limited to situations where a competitive service is contingent upon

[11] Similarly, we do not believe the remaining provisions of this paragraph are in violation of the First Amendment as these provisions do not involve any prior restraints on speech and, further, consistent with *Bates*, Subparagraphs (ii) and (iii) provide an adequate remedy to the restrictions imposed by not imposing a complete ban on the making of these types of statements, but rather allowing the statement if it can be presented in a way that is not deceptive or is otherwise truthful. In such cases, the preferred remedy is not a complete prohibition but a requirement of disclaimers or explanation to ensure that the consumer is not misled. *Bates*, 433 U.S. at 384. In the present case, that test is met by the inclusion of language that allows such statements to be made if they "can be factually substantiated."

taking a noncompetitive service. Verizon Comments at 16; Sprint Comments at 7; PTA Comments at 11. Verizon suggests adding the phrase, "except as allowed by the provisions of section 63.144(1)(ii) [section 63.143(1)(ii) as revised in the final regulation] or as required by technical limitations" at the end of the sentence to correct this problem. PCTA, on the other hand, disagrees with PTA's suggestion that Subparagraph (3)(iv) should be expanded to include application to all LECs as being inconsistent with the purpose and policy behind Chapter 30. PCTA Reply Comments at 2.

While we agree clarifying language would be helpful to avoid the situation where an ILEC is prohibited from telling a customer, for example, that the continuation of Caller ID is contingent upon subscribing to dial tone service, we believe the language suggested by Verizon is itself too vague by its use of the phrase "technical limitations" and too confusing in its attempt to refer back to the tie-in provision of Subparagraph (1)(ii). Instead, the final regulation includes language that addresses this problem in a clear and concise manner. As to PTA's arguments, as we have previously discussed, some types of conduct only raise competitive concerns if engaged in by a party with market power. That is the case with the competitive safeguard described in Subparagraph (3)(iv) as the proscribed conduct is akin to a tying arrangement; therefore, its applicability is limited to ILECs only. As to PTA's concern that the safeguard should be limited to situations where a competitive service is contingent upon taking a noncompetitive service, we believe the additional language added in the final regulation addresses PTA's concern and no further changes are necessary.

Paragraph (4) prohibits cross subsidization by prohibiting ILECs from using "revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services." This language comes right out of section 3005(g)(2) itself. No party quibbles over this first sentence of Paragraph (4). The dispute is over the next two sentences in the regulation. Three parties, Verizon, PTA, and the House Committee, each recommend that these last two sentences should be

eliminated as being overbroad or unnecessary with the elimination of structural separation. Verizon Comments at 16-17; PTA Comments at 12; House Committee Comments at 2. In their place, Verizon offers a new sentence that basically states that an ILEC shall comply with all applicable laws relating to the pricing of services and the transfer of assets. Verizon Comments, Exhibit A, at 4.

AT&T and PCTA, on the other hand, support the last two sentences as drafted in the proposed regulation because they allegedly provide clear and concise standards to determine whether an ILEC has violated the cross subsidization prohibition. AT&T Comments at 22-23; PCTA Reply Comments at 4-5. *See also* XO Comments at 10-11 in support of the regulation as drafted. They both reject Verizon's proposed language as providing no substance to the general rule other than an allegedly ambiguous reference to complying with existing laws.

In weighing our options, the Commission believes the better approach is to adopt the language as originally proposed as it provides a clearer, more easily-applied measure for determining whether an illegal cross subsidization has occurred than simply stating that an ILEC shall comply with all applicable laws, which it must do in any event. To only adopt the first sentence would add nothing to the prohibition contained in the statute as the exact same language already appears in section 3005(g)(2), as noted above. The real value to the regulation is in fact the additional language as it gives meaning to the cross-subsidization standard incorporated into the first sentence of Paragraph (4) by providing a clear standard by which claims of cross subsidization can be evaluated.

At the same time, the further standards in these sentences, which are designed to prohibit cross subsidization of competitive services by noncompetitive services, should not be read as requiring any ILEC to alter its corporate structure to comply with these standards. Whether cross subsidization is actually occurring will be a factual matter to be

addressed at a hearing wherein the burden of proof would be on the party alleging cross subsidization.

Paragraph (5) provides competitive safeguards that address information sharing and disclosure. The only major comment offered by the parties was that the regulation needed to incorporate Rule No. 3 of the Global Code of Conduct. IRRC Comments at 3; AT&T Comments at 9; XO Comments at 11; Full Service Comments at 21; MCI Reply Comments at 3; Sen. Fumo Comments; Rep. Tulli Comments. As restated by AT&T for the purposes of this rulemaking, this rule provides that "[a]n ILEC shall simultaneously make available to any competitor any market information not in the public domain that is supplied to the ILEC's competitive local exchange affiliate, division, or other corporate sub-unit." AT&T Comments at 9 of Attached Redlined Version of Code of Conduct. AT&T also suggests that the term "market information" be defined in this provision.

After carefully weighing the substantial support for this addition to the regulation, we agree that inclusion will be of benefit and, therefore, will include the language in the final-form regulation. We will also include the definitional language for "market information" with certain clarifying changes to ensure that it only covers non-customer specific market information received by the ILEC's wholesale network organization that is then supplied to the ILEC's retail unit.[12] The only other comment of note was a suggestion by Verizon to add language to ensure that the provisions in this paragraph be construed consistently with federal law. We do not agree that this change is necessary, however, and believe that such amendments, without referencing the precise laws in question, actually make the provisions more open to interpretation.

[12] If an ILEC, for example, is going to add remote terminals in certain central offices, this information should be supplied to the CLECs at the same time the ILEC's retail organization learns of the change. Order processing information obtained by the ILEC's wholesale organization from its retail organization for a specific customer, on the other hand, should not be covered by this definition.

New Paragraph (6) entitled, "Sharing of Employees and Facilities" is incorporated into the final regulation to address certain loopholes created by the removal of the accounting and audits procedures that were contained in the old section 63.143. This provision, with a few minor modifications, is the same as Rule No. 4 in the Global Code of Conduct that is currently in effect as to Verizon, and its inclusion in the final regulation was advocated by XO, AT&T, Full Service, MCI, Sen. Fumo, and Rep. Tulli in their respectively filed comments. XO Comments at 6; AT&T Comments at 18; Full Service Comments at 18-19; MCI Reply Comments at 3; Sen. Fumo Comments; Rep. Tulli Comments. Old Paragraph (6) will now become Paragraph (7) and there are no changes to this provision.

Old Section 63.145. New Section 63.144. Remedies.

This paragraph addresses remedies available for violations of the Code of Conduct.[13] Four parties filed comments relating to the remedies section. IRRC states that Subsection (a) should cite the specific sections of the Public Utility Code that apply, XO states that this section should incorporate remedies already provided by Chapter 30 of the Public Utility Code, AT&T suggests that Subsection (b) should be broadened to make clear that all remedies are available to an aggrieved party, and PTA submits that language should be added to make clear that the "Code of Conduct may not be construed as giving rise to any civil remedy." IRRC Comments at 3; XO Comments at 11; AT&T Comments at 23-24; PTA Comments at 13. Both AT&T and XO also suggest that the Commission will need to take a more active policing role upon the adoption of this regulation and AT&T even recommends that the Commission should reorganize itself to include an enforcement division. AT&T Comments at 24; XO Comments at 11-12.

[13] The final regulation states that a party may use the Commission's *Interim Guidelines for Abbreviated Dispute Resolution Process* or "any successor Commission alternative dispute resolution process" to adjudicate violations of the Code of Conduct. While not yet finalized, we believe, for the sake of completeness, we need to state for the record that this Commission approved a Tentative Order at its November 7, 2002 Public Meeting at Docket No. M-00021685 requesting comments on revisions to its Abbreviated Dispute Resolution Process. Any changes to our dispute resolution process arising from this other proceeding would automatically be implemented for purposes of applying the remedies provision of the Code of Conduct.

We will address each of these issues in turn. We agree with IRRC that clarity would be added if we include the specific cite under which a party may file a complaint with the Commission, and the final regulation reflects this change. As for both XO and AT&T advocating the inclusion of language that affirms the Commission will consider all available remedies, including those provided by Chapter 30, to address violations under this regulation, we do not believe that such language is necessary.

As we stated in the Proposed Rulemaking Order, we always have the ability and authority to adopt new safeguards as the need arises, and likewise, we have the authority to impose remedies permitted by the Public Utility Code when appropriate. *Proposed Rulemaking Order* at 12. Under Chapter 30, for example, the Commission has the authority to reclassify competitive services as noncompetitive services; and, for LECs serving over one million access lines, the Commission may require that a competitive service be provided through a separate subsidiary if its finds a substantial possibility that the provision of the service on a non-separated basis will result in unfair competition. 66 Pa. C.S. §§ 3005(d) & (h). None of these potential remedies are affected by the language in the final regulation, and we see no reason why the regulation needs to be amended to expressly refer to these types of statutory provisions. These remedies exist and are available to the Commission when the right circumstances arise under any complaint filed with us or initiated by our own prosecutory staff.

As to PTA's concern that the Code of Conduct should state that it not be construed as giving rise to any civil remedy, we do not believe this change is necessary. As it now stands, many of the provisions in the Code of Conduct are akin to violations that are enforceable under other state or federal laws. For example, certain tie-in arrangements may be challenged under the federal antitrust laws as well, and misleading advertising claims may be brought under state or federal consumer protection laws. We are reluctant to include language in the Code of Conduct that could have a potential chilling effect on

the ability to bring actions under other laws that may be violated by conduct that is also proscribed by the same Code of Conduct.

Finally, we do not believe AT&T's suggestion that the Commission should create an enforcement division to handle complaints under the Code of Conduct is necessary or appropriate in a rulemaking proceeding. Such a decision, if necessary in the future, is more appropriate as an internal operations/management decision and should not be made through a regulation.

Conclusion

Accordingly, under sections 501, 1501, and 3001-3009 of the Public Utility Code, 66 Pa. C.S. §§ 501, 1501, and 3001-3009; sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, 45 P.S. §§ 1201 and 1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and section 612 of The Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.251-7.235, we find that the regulations establishing a code of conduct for the telecommunications industry at 52 Pa. Code §§ 63.141-63.144 should be approved as set forth in Annex A, attached hereto; **THEREFORE,**

IT IS ORDERED:

1. That 52 Pa. Code Chapter 63 is hereby adopted as set forth in Annex A hereto.

2. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin.*

3. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for approval as to legality.

4. That the Secretary shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. That the Secretary shall submit this Order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

6. That a copy of this Order and Annex A shall be served upon the Pennsylvania Telephone Association, the Pennsylvania Cable & Telecommunications Association, all jurisdictional telecommunications utilities, the Office of Trial Staff, the Office of Consumer Advocate, and the Small Business Advocate.

7. That the final regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 12, 2003

ORDER ENTERED: JUN 16 2003

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting August 21, 2003

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr.
Glen R. Thomas, Dissenting Statement attached
Kim Pizzingrilli, Dissenting - Statement attached

Rulemaking Re Generic Competitive
Safeguards Under 66 Pa. C.S. §§ 3005(b) and 3005(g)(2) L-00990141

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration is the Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Clarification and Reconsideration ("Petition") relative to our Final Rulemaking Order entered June 16, 2003, in the above-captioned proceeding.

History of the Proceeding

On January 29, 2002, the Commission entered a Proposed Rulemaking Order that solicited comments from jurisdictional telecommunications utilities and other interested parties regarding proposed generic competitive safeguards mandated by Chapter 30 of the Public Utility Code and other applicable law. On June 16, 2003, after receiving comments from a number of parties and the Independent Regulatory Review Commission ("IRRC"), the Commission entered a Final Rulemaking Order in the proceeding.

The final regulations establish competitive safeguards in furtherance of Chapter 30's mandate to encourage and promote competition in the provision of telecommunications products and services throughout Pennsylvania. The competitive safeguards are intended to prevent discriminatory access to the services and facilities provided by incumbent local exchange carriers ("ILECs") to competitive local exchange carriers ("CLECs"), to prevent ILECs from unlawfully cross subsidizing competitive services from noncompetitive services, and to prevent all local exchange carriers from engaging in unfair competition practices.

Discussion

Legal Standard

Section 703 of the Public Utility Code ("Code"), 66 Pa. C.S. § 703, relating to rehearings and rescission and amendment of orders, establishes a party's right to seek relief following the entry of final decisions. Further, such requests for relief must be consistent with section 5.572 of our regulations, 52 Pa. Code § 5.572, relating to petitions for relief following a final decision. Consistent with section 703(g) of the Code, section 5.572 of our regulations, and judicial and administrative precedent, the standards for a petition for relief following a final decision were set forth in *Duick v. PG&W*, 56 Pa. P.U.C. 553 (December 17, 1985) ("*Duick*").

Duick held that petitions for reconsideration under section 703(g) may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. (*Duick*, at 559.) The Commonwealth Court in *AT&T v. Pa. PUC*, 568 A.2d 1362 (Pa. Cmwlth. Ct. 1990), further elucidated the standards for rehearing, reconsideration, revision, or rescission.

Petition for Reconsideration

By their Petition filed July 2, 2003, Verizon Pennsylvania Inc. and Verizon North Inc. (collectively "Verizon") request that this Commission clarify or reconsider certain portions of its June 16, 2003 Order adopting final competitive safeguards regulations at 52 Pa. Code §§63.141-144 for the telecommunications industry ("Code of Conduct").

In its Petition, Verizon raises concerns about three provisions contained in the final Code of Conduct that Verizon alleges are drafted for entities that are structurally separated, rather than for a company with a "separate wholesale unit that deals only with CLECs," as is the case with Verizon's own operations. Verizon Petition at 3. The first provision that it contests is section 63.143(5)(i), relating to preventing an ILEC from gaining a competitive advantage by withholding "market information" from CLECs. Verizon contends that this provision, which applies to all ILECs, "was written in terms of a company that had a separate 'competitive' affiliate." *Id.* Verizon, in its Petition, suggests that the Commission has simply adopted "outdated wording from the original code" and recommends its deletion from the new Code of Conduct. *Id.* at 4. Verizon also argues that the definition of "market information" is too broad and could include highly sensitive competitive market information or marketing plans. *Id.* at 5.

The second provision that Verizon raises a concern about is section 63.143(6)(i), arguing that the provision is "outdated and confusing" and contending that the provision fails to specify "the allocation factors" or define "retail" and "wholesale" as suggested by IRRC in its original comments. *Id.* at 8-9. Verizon offers in its Petition suggested language changes to correct the alleged deficiencies.

The last provision that Verizon cites in its Petition is section 63.143(4)(i), the cross-subsidization provision, arguing that the Commission failed to remove the last two sentences of this provision as Verizon suggested in its original comments. Verizon

complains that these sentences do not add clarity to the cross-subsidization provision and expresses concerns that this additional language conflicts with current federal rules on affiliate pricing. *Id.* at 10-11.

Answers to Verizon's Petition were filed within the ten-day answer period provided by 52 Pa. Code § 5.572(e) by the Office of Consumer Advocate and the Pennsylvania Cable & Telecommunications Association opposing the Petition and by the Pennsylvania Telephone Association ("PTA") and Sprint Communications Company, L.P./The United Telephone Company of Pennsylvania (collectively "Sprint") supporting the Petition. ATX Communications, Inc. (formerly Corecomm/ATX, Inc.) filed comments after the ten-day notice period in opposition to Verizon's Petition; these comments will be deemed timely filed and duly considered by this Commission.

Finally, by letter dated July 22, 2003, the House Consumer Affairs Committee ("House Committee") provided comments to IRRC regarding the final-form regulation, raising three concerns similar to those in Verizon's present Petition. On that same day, in its own letter to IRRC, the Commission advised IRRC of its intent to withdraw the Final Rulemaking Order so as to consider the issues raised in Verizon's Petition.

Resolution

In regard to what is meant by "market information" in section 63.143(5)(i), Verizon, the PTA, Sprint, and the House Committee have convinced us that we should exercise our discretion to reconsider the Final Rulemaking Order entered June 16, 2003, at this docket in order to eliminate a potential ambiguity. We also agree with Verizon, the PTA, Sprint, and the House Committee that section 63.143(6)(i) added new language to the Code of Conduct that was confusing and ambiguous, and that we should exercise our discretion to reconsider this provision as well. Finally, after careful consideration of the arguments presented, we again agree with Verizon, the PTA, Sprint, and the House Committee that the last two sentences in section 63.143(4)(i) are not necessary, and that

we should exercise our discretion to reconsider this provision by eliminating the unnecessary language.

Section 63.143(5)(i) – Information Sharing

Verizon, the PTA, Sprint, and the House Committee are concerned that the definition of "market information" is too broad and could include highly sensitive and proprietary marketing information. The final regulation does attempt to address this concern by defining "market information" as "any information relating to the characteristics of the ILEC's network which would be useful to a LEC [local exchange carrier] in acquiring customers or providing service to customers." This language is consistent with the type of network information suggested in Verizon's proposed change in its Petition.

Upon further review, we agree with Verizon that there is potential for ambiguity in the present language of our Final Rulemaking Order, and we believe Verizon's proposed language removes the potential ambiguity. We, therefore, adopt Verizon's proposed changes to clarify our intent that only network-type information not in the public domain be included within its meaning.[1] We also note that Verizon did not have an opportunity to address this provision in its filed comments because the provision was added in the final version after receiving comments from IRRC which noted the absence of this competitive safeguard in the proposed-form regulation. IRRC Comments at 3.

Verizon's other contention is that section 63.143(5)(i) is written in terms of a company that has a separate competitive affiliate, which does not apply to Verizon's organizational structure. In approving the final-form regulation, the Commission added the phrase "or other corporate subunit that performs that function" as an all-encompassing catch-all so as to include ILECs, such as Verizon, that do not create

[1] In adopting the language proposed by Verizon, however, we have deleted the use of the word "any" in several places as unnecessary and consistent with the Legislative Reference Bureau's practice of routinely eliminating the word "any" in proposed and final regulations.

separate divisions or affiliates to provide local exchange services. Without this language, the competitive safeguard would have a loophole that ILECs could use to avoid its application to them. It is the ILEC's responsibility to ensure compliance with this regulation even if it does not create a separate retail division or affiliate for its local exchange services. We, therefore, will keep this phrase in the final-form regulation.

Section 63.143(6)(i) – Sharing of Employees and Facilities

The language in section 63.143(6)(i) is intended to prevent an ILEC from using its wholesale employees and facilities to support its competitive local exchange services, a retail function. We have given careful consideration to the concerns raised by Verizon, the PTA, Sprint, and the House Committee regarding section 63.143(6)(i), and have concluded that the proposed changes offered by Verizon eliminate potentially confusing and ambiguous language contained in the Final Rulemaking Order.

The intent of this provision is to prevent an ILEC's wholesale employees from crossing over to its retail operations -- to prevent inappropriate information sharing between the wholesale and retail operations. We agree with Verizon that the reference to an ILEC's "competitive local exchange affiliate or division or other corporate subunit that performs that function" could be construed to mean that an ILEC is required to create such an affiliate, division, or subunit. This problem can be avoided simply by referring to the "retail portion of the ILEC's business," which is what we do in the revised final-form regulation attached hereto as Annex A.[2]

We also agree that the provision concerning transparent allocation of shared facilities is problematic. While a proper allocation of costs is clearly needed for the purpose of setting rates, this rulemaking is not the appropriate vehicle for addressing the

[2] We further agree with Verizon's understanding of the term "physically separated" in the context of this rulemaking. Physical separation under this regulation should mean that there must be some form of physical separation restricting the employees' ability to have contact with each other, but that so long as there is sufficient physical separation (e.g., sound proof wall), the language would not preclude employees from being in the same building or same floor.

issue. Further, as IRRC previously noted in its comments, this provision does not specifically identify allocation factors nor does it prescribe the criteria for determining "appropriate factors." Accordingly, we adopt a modified version of Verizon's proposed language to address the concerns expressed herein.

Section 63.143(4)(i) – Definition of Cross Subsidization

Verizon argues that the last two sentences of this section provide an unworkable definition of cross subsidization, and that the language conflicts with current federal rules of affiliate pricing. Verizon also asserts that the House Committee correctly noted that the first sentence of this section clearly states the intended prohibition. The PTA and Sprint support Verizon on this issue as well.

Upon further review of this language, we agree with Verizon, the PTA, Sprint, and the House Committee. The purpose of this provision is to prevent cross subsidization between competitive and noncompetitive services. The first sentence of this provision states this explicitly and succinctly. There is no need for the additional language which attempted to further clarify the first sentence, but, in effect, has caused further debate. Accordingly, we will modify section 63.143(4)(i) so that only the first sentence remains in the final-form regulation.

Based on our review of the instant Petition, we conclude that the Petition should be granted in part and denied in part, applying the criteria for a grant of reconsideration as set forth in *Duick*; **THEREFORE,**

IT IS ORDERED:

1. That the Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Clarification and Reconsideration relative to our Final Rulemaking Order entered June 16, 2003, at L-00990141 is hereby granted in part and denied in part for the reasons stated in this Order.

2. That 52 Pa. Code §§ 63.141-144, adopted at this docket by Order entered June 16, 2003, are hereby amended as set forth in this Order and a new Annex A setting forth the entire final-form regulation as attached hereto.

3. That the Secretary shall certify this Order, the Final Rulemaking Order entered June 16, 2003 at this docket, and Annex A attached hereto and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. That the Secretary shall submit this Order, the Final Rulemaking Order entered June 16, 2003 at this docket, and Annex A attached hereto to the Office of Attorney General for approval as to legality.

5. That the Secretary shall submit this Order, the Final Rulemaking Order entered June 16, 2003 at this docket, and Annex A attached hereto to the Governor's Budget Office for review of fiscal impact.

6. That the Secretary shall submit this Order, the Final Rulemaking Order entered June 16, 2003 at this docket, and Annex A attached hereto for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

7. That a copy of this Order and Annex A attached hereto shall be served upon the Pennsylvania Telephone Association, the Pennsylvania Cable & Telecommunications Association, all jurisdictional telecommunications utilities, the Office of Trial Staff, the Office of Consumer Advocate, and the Small Business Advocate.

8. That the final regulations embodied in Annex A attached hereto shall become effective upon publication in the *Pennsylvania Bulletin*.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 21, 2003

ORDER ENTERED: SEP 0 4 2003

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Rulemaking Re: Generic Competitive Safeguards Under 66 Pa. C.S. §§3005(b) and 3005(g)(2) -- Petition of Verizon Pennsylvania Inc. and Verizon North Inc. For Clarification and Reconsideration of Final Rulemaking Order

Public Meeting August 21, 2003
AUG-2003-LAW-088*
Docket No. L-00990141

DISSENTING STATEMENT OF COMMISSIONER GLEN R. THOMAS

This matter involves a Petition of Verizon Pennsylvania Inc. (Verizon PA) and Verizon North Inc. (Verizon North) (collectively, Verizon) for Clarification and Reconsideration relative to our Final Rulemaking Order entered June 16, 2003 (Order). In its Petition, Verizon requests this Commission to clarify or reconsider three sections of our Order. Those sections are: 1) Section 63.143(5)(i) Information Sharing and disclosure; 2) Section 63.143(6)(i) Sharing of Employees and Facilities; and 3) Section 63.143(4)(i) Cross subsidization.

I agree with Staff's recommendation. It is not in the best interest of the Commonwealth, the competitive marketplace or this Commission to grant Verizon's Petition for Clarification and Reconsideration in its entirety since doing so would not be good policy or good precedent. Consequently, I must disagree with the majority on adopting Verizon's revisions for Section of 63.143(6)(i), with some modification, and Section 63.143(4)(i).

Section 63.143(6)(i) Sharing of Employees and Facilities

The proposed Final Rulemaking language is:

> ILEC employees or agents who are responsible for the processing of a CLEC order or service of the operating support system on behalf of a CLEC, may not be shared with the competitive local exchange affiliate or division or other corporate subunit that performs that function, and shall have offices physically separated. The competitive local exchange affiliate or division or other corporate subunit that performs that function shall have its own direct line of management, and any shared facilities shall be fully and transparently allocated between the ILEC and its competitive local exchange affiliate or division or corporate subunit that performs that function.

Verizon contends that this is new language added by the Commission and finds it confusing and ambiguous. The majority agrees and adopts a modified version of Verizon's proposal:

> The ILEC's wholesale employees who are responsible for the processing of a CLEC order or service of the operating support system on behalf of a CLEC may not be shared with the retail portion of the ILEC's business, shall have offices physically separated[1] from the ILEC's retail employees and shall have their own direct line of management.

The majority agrees with Verizon that the reference to an ILEC's "competitive local exchange affiliate or division or other corporate subunit that performs that function" could be construed to mean that Verizon is required to create such an affiliate, division or subunit.

I disagree. In changing the language to the version proposed by the majority the Commission is being inconsistent on how the wholesale and retail portions are represented. In other portions of the regulations, the wholesale and retail portions are referred to as "the ILEC and/or the ILEC's competitive local exchange affiliate or division or other corporate subunit that performs functions on behalf of a CLEC." Moreover, Verizon PA's proposal only addresses sharing of wholesale employees who are responsible for the processing of CLEC orders or service of the operating support system on behalf of a CLEC and does not address the concept of sharing between competitive and noncompetitive enterprises within the company. Finally, the majority in adopting the revisions omits the term "agents" which was previously included in the language. It is important to include language that makes the Code of Conduct applicable to all possible scenarios including those individuals who may be hired by the company but are not employees. For these reasons, I must disagree with the majority on this revision.

Section 63.143(4)(i) Cross Subsidization

The majority agrees with Verizon in the deletion of the last two sentences of Section 63.143(4)(i) Cross subsidization. I disagree with the majority's decision.

Section 63.143(4)(i) as proposed in the final rulemaking provides:

> An ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any

[1] The majority also agrees with Verizon's understanding of the term "physically separated" in the context of this rulemaking. Physical separation under this regulation should mean that there must be some form of physical separation restricting the employees' ability to have contact with each other, but that so long as there is sufficient physical separation (e.g. sound proof wall) the language would not preclude employees from being in the same building or same floor.

> competitive services. An ILEC may not provide any assets, goods or services to its competitive local exchange affiliate, or division or other corporate subunit performing that performs that function at a price below the ILEC's cost, market price or tariffed rate for the goods or services, whichever, is higher. An ILEC may not purchase any assets, goods or services from its competitive affiliate or division or other corporate subunit that performs that function at a price above the market price or tariffed rate for the goods or services.

In *Duick v. PG&W*, 56 Pa. PUC 553 (1985), the Commission held that petitions for reconsideration under section 703(g) may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. *Id.* at 559.

Verizon's Petition simply does not meet this standard. Verizon PA has argued for the deletion of the last two sentences with proposed replacement language [2] during the informal comment portion of this rulemaking[3] as well as the formal comment portion at the proposed rulemaking stage. The Commission received comments to the proposed rulemaking from Verizon PA, Inc. and Verizon North , the Pennsylvania Telephone Association (PTA) as well as comments from the Chairman and a Member of the Consumer Affairs Committee. The PTA stated that the second sentence should be deleted on the basis that it lacks relevance, was overly broad and there is no justification for its inclusion in the rulemaking. (PTA Comments, p.12) Verizon and the House Committee Comments regarding the second sentence state:

> The second sentence speaks in terms of a "competitive local exchange affiliate, division or other corporate subunit," an necessarily confusing concept that stems from prior structural separation discussion, but that makes no sense under the functional separation adopted by the Commission. The real prohibition that the Commission intends to impose is what is clearly stated in the first sentence, that "an ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive service." The second paragraph does not address any activity that would prevent such cross subsidization. Rather, it seems to address affiliated interest issues, but it is inconsistent with the requirements of the Public Utility Code regarding affiliated interests. Section 66 Pa. C.S. §2102(c) already addresses the limits

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[2] In its response, Verizon PA suggested deleting the last two sentences of the cross subsidization section and offered the following replacement language: "An ILEC shall comply with all applicable state and federal rules governing the pricing of services and asset transfers provided between ILECs and their affiliates."

[3] In September 2001, the Commission distributed a copy of the draft Code of Conduct for interested parties' informal review and comment.

> on prices and services provided among affiliated ILEC companies. It would be highly confusing, if not impossible, to comply with two sets of affiliated interest requirements, and there is no reason to impose different requirements here. All but the first sentence of proposed section 63.144(4)(i) therefore should be eliminated.

Verizon PA and Verizon North May 20, 2002 Comments, pp. 16-17 and House Committee June 24, 2002 Letter.

The Commission has previously considered and rejected the requested edit. In our June 16, 2003 Order we stated that after consideration of the issue the better approach was to adopt the language as originally proposed as it provided a clearer, more easily-applied measure for determining whether an illegal cross subsidization has occurred rather than the alternative language proposed by Verizon. In addition, we stated that the real value to the regulation is the additional language as it gives meaning to the cross subsidization standard incorporated into the first sentence by providing a clear standard by which claims of cross subsidization can be evaluated. This Commission voted unanimously to include this provision. Consequently, Verizon has failed to raise any new and novel arguments not previously heard or to prove that the Commission overlooked or failed to address its considerations. Rather, after consideration of the arguments, the Commission disagreed with the proposed edit. It would be bad precedent to grant the petition for reconsideration when the requesting party has failed to satisfy the standard for reconsideration.

Beyond the disturbing procedural precedent set by the motion, prohibition of cross subsidization is a very important concept in providing for a viable competitive market. The legislature itself recognized the potential impact and significance of cross subsidization and enacted Chapter 30 with a provision prohibiting cross subsidization. 66 Pa.C.S.A. §§ 3005(g)(2). Section 3005(g)(2) states:

> A local exchange telecommunications company may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services. The commission shall establish regulations which must be followed by local exchange telecommunications companies for the purposes of allocating costs for accounting and rate making among telephone services in order to prevent subsidization or support for competitive services

66 Pa. C.S.A. §3005(g)(2).

When comparing the language in our Final Rulemaking Order and in the statute, it is clear that the last two sentences in Section 63.143(4)(i) should not be deleted. The first sentence in the section is the exact language from Section 3005(g)(2) of Chapter 30, 66 Pa.C.S.A. §3005(g)(2) and establishes that a local exchange telecommunications company may not cross subsidize. The last two sentences explain in more detail what

cross subsidization means and what activity is prohibited, in accordance with the legislative directive in section 3005(g)(2) which states that "The commission shall establish regulations" applicable to LECs for the purpose of "allocating costs for accounting and ratemaking purposes to prevent cross subsidization or support for competitive services." 66 Pa. C.S.A. §3005(g)(2). As we noted on page 21 of our Final Rulemaking Order:

> To only adopt the first sentence [of subsection 63.143(4)] would add nothing to the prohibition contained in the statute as the exact same language already appears in section 3005(g)(2).... The real value to the regulation is in fact the additional language as it gives meaning to the cross-subsidization standard incorporated into the first sentence of Paragraph (4) by providing a clear standard by which claims of cross subsidization can be evaluated.

Rulemaking Re: Generic Competitive Safeguards Under 66 Pa.C.S.A. §§ 3005(b) and 3005(g)(2), Final Order, June 16, 2003, p.21.

This Commission has long recognized the need to ensure a level playing field in the competitive marketplace. In our *Global Order*[4], the Commission noted that some parties to the proceeding provide both retail services directly to local service customers and wholesale services to other telecommunications carriers competing for those same local service customers. Consequently, the Commission recognized the need for a "Code of Conduct" (Code). Both of the two Petitions filed by parties to the proceeding proposed a version setting forth rules to ensure fair and nondiscriminatory treatment of telecommunications carriers when they seek to purchase wholesale services from an ILEC in order to provide retail services to end-users in competition with the ILEC as part of the issue of functional/structural separation. *Global Order*, p. 215. In 1999, as part of its *Global Order*, the Commission established a Code of Conduct which included a provision that addressed the sale or the purchase of good or services, by the incumbent local exchange company to its competitive local exchange affiliate or division as well as cross subsidy. *Id.*, Appendix C, paragraph 2. Specifically, Paragraph 2 states:

> No incumbent local exchange company shall provide any goods or services to its competitive local exchange affiliate or division below cost or market price, nor shall the company purchase goods or services from the competitive affiliate or division at a price above market, and not transaction between the two entities shall involve an anti-competitive cross-subsidy.

Id., Appendix C, Para. 2. Accordingly, Verizon PA has been obligated to comply with the Code of Conduct since 1999.

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[4] *Joint Petition of Nextlink Pennsylvania, Inc., et al,)*,P-00991648,P-00991649, September 30, 1999 (Global Order) *affirmed Bell-Atlantic-Pennsylvania, Inc. v. Pa. PUC*, 763 A.2d 440 (Pa. Cmwlth. 2000).

In the *Global Order* the Commission directed commencement of a proceeding to develop a record for the Commission to implement structural separation. On April 27, 2000 we issued our Order Instituting Structural Separation Proceeding. The proceeding was assigned to the Office of Administrative Law Judge. On January 26, 2001, the Administrative Law Judge issued a Recommended Decision in which he recommended,*inter alia*, that Verizon be directed to commence a one year transition period to create a separate retail affiliate for retail services within thirty days of the entry of the Commission's Order.

On April 11, 2001 the Commission adopted an order in which it considered an effective and less costly means of structural separation because "full" structural separation would require implementation costs which could be substantial and that the parties convincingly argued that even with the implementation of structural separation of Verizon's wholesale and retail arms, no less regulatory oversight than that currently prevailing would be required to ensure compliance. *RE: Structural Separation of Bell Atlantic-Pennsylvania, Inc*[5]*. Retail and Wholesale Operations*, April 11, 2001 at pp.22-23. (*Functional Structural Separation Order*). In that Order the Commission offered Verizon the option of accepting the following proposed resolution:

> "In lieu of the further litigation that would likely follow from choosing a single structural separation model, we shall present Verizon with the following options: a) accept the terms of a functional/structural separation and further conditions set forth herein, or b) accept the possibility of full structural separation of all retail and wholesale operations upon our further review and consideration of the record in this matter. Acceptance of these terms and conditions will both terminate Verizon's numerous state and federal court challenges to the *Global Order* and, provided that all terms and conditions set forth herein are executed in good faith, (emphasis added) should create the conditions necessary to all local telephone competition to flourish. "

Id , p. 31

One of those conditions was the resumption of a competitive safeguards rulemaking to formulate a comprehensive Code of Conduct. In the *Functional Structural Separation Order* we agreed to enter the record from the structural separation proceeding into the Code of Conduct rulemaking to ensure consistency, to take official notice of the structural separation proceeding in the context of the Code of Conduct rulemaking and to reopen the Code of Conduct rulemaking. *Id.* at p. 34-35. We also noted that "until completion of the final rulemaking in the Competitive Safeguards Proceeding, we expect Verizon to fully comply with the interim Code of Conduct set forth in the *Global Order*." *Id.* at p. 35.

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[5] On August 1, 2000, Bell Atlantic-Pennsylvania, Inc.'s corporate name was changed to Verizon Pennsylvania Inc.

The *Functional Structural Separation Order* stated that Verizon PA was to notify the Commission on or before April 20, 2001 whether it would accept and be bound by the structural separation terms and conditions contained in the Order. *Id.* at p. 42. On April 20, 2001 Verizon PA notified the Commission that "it accepts the terms and conditions contained in the April 11 Order, based upon our understanding of that Order as written, and consistent with the requirements imposed by state and federal law." *Verizon's April 20, 2001 Letter, Re: Strucutral Separation of Verizon Pennsylvania Inc.'s Retail and Wholesale Operations*, Docket No. M-00001353.

One of the conditions which Verizon PA accepted in the *Global Order* Code of Conduct was language addressing cross subsidization as well as the sale and the purchase of goods or services between the incumbent local exchange carrier and affiliate or division. *See, Global Order,* Appendix C, Para. 2. Having accepted the conditions, Verizon PA should be required to abide by the agreement they made in *Functional Structural Separation Order* in lieu of full structural separation. In addition, the concept and the supporting rationale set forth above are as appropriate today as it was several years ago. Moreover, the need for clear rules to prevent cross subsidization does not evaporate if the company chooses to maintain competitive and noncompetitive enterprises within a single corporate unit.

For the reasons stated above, I respectfully dissent from the motion of the majority.

8/21/03
Date

Glen Thomas
GLEN R. THOMAS
Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

RULEMAKING RE GENERIC COMPETITIVE SAFEGUARDS UNDER 66 PA.C.S. §§ 3005(b) AND 3005(g)(2)

PUBLIC MEETING
AUGUST 21, 2003
AUG-2003-LAW-0088*
Docket No. L-00990141

STATEMENT OF COMMISSIONER KIM PIZZINGRILLI

Currently before the Commission is a Petition of Verizon Pennsylvania Inc. and Verizon North Inc. (Verizon) for Clarification and Reconsideration of our June 16, 2003 Order approving a final-form regulation to establish competitive safeguards in furtherance of Chapter 30's mandate to encourage and promote competition in the telecommunications industry in Pennsylvania. In its Petition, Verizon requests that the Commission reconsider the language of three sections of the regulations: § 63.143(5)(i), § 63.143(6)(i), and § 63.143(4)(i). Staff recommends accepting Verizon's position regarding § 63.143(5)(i) but rejects Verizon's position regarding § 63.143(6)(i) and § 63.143(4)(i).

In the final-form regulations adopted on June 16, 2003, the Commission made substantial revisions to address comments and concerns raised regarding the proposed rulemaking. Both § 63.143(5)(i) and § 63.143(6)(i) included new language in the final-form regulation and they are appropriately addressed in Verizon's petition. The third section, § 63.143(4)(i) includes similar language as originally included in the proposed rulemaking. Verizon is raising the same arguments with respect to this section as it did earlier in the process. The Commission set forth its standard for reconsidering orders in Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553, 559 (1982). Accordingly, discretion to reconsider final orders should be granted when "new and novel arguments, not previously heard, or considerations [are raised] which appear to have been overlooked or not addressed by the Commission." Id.

I agree with the staff recommendation and Verizon's petition that Section 63.143(5)(i) should be clarified. I disagree with the staff recommendation regarding Section 63.143(6)(i) regarding sharing of employees and agree with Verizon that amendments to this section are appropriate. I would adopt a modified version of Verizon's proposed language as follows:

> "The ILEC's wholesale employees who are responsible for the processing of a CLEC order or service of the operating support system on behalf of a CLEC may not be shared with the retail portion of the ILEC's business, shall have offices physically separated from the ILEC's retail employees and shall have their own direct line of management."

Section 63.143(4)(i) sets forth provisions relating to cross subsidization. This language as adopted in our June 16, 2003 Order is substantially the same language as adopted in our proposed rulemaking order. Verizon's Petition for Reconsideration raises no new or novel argument regarding this section which convince me that revisions are necessary. Therefore, I cannot support revising this section at this time in accordance with Verizon's Petition for Reconsideration.

August 21, 2003
DATE

KIM PIZZINGRILLI, COMMISSIONER

ANNEX A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
SUBPART C. FIXED SERVICE UTILITIES
CHAPTER 63. TELEPHONE SERVICE

Subchapter K. COMPETITIVE SAFEGUARDS

§ 63.141. Statement of purpose and policy.

(a) This subchapter establishes competitive safeguards to:

(1) Assure the provision of adequate and nondiscriminatory access by ILECs to CLECS for all services and facilities ILECs are obligated to provide CLECs under any applicable Federal or State law.

(2) Prevent the unlawful cross subsidization or support for competitive services from noncompetitive services by ILECs.

(3) Prevent LECs from engaging in unfair competition.

(b) These competitive safeguards are intended to promote the Commonwealth's policy of establishing and maintaining an effective and vibrant competitive market for all telecommunications services.

(c) The code of conduct contained in § 63.143 ~~§ 63.144~~ (relating to code of conduct) supersedes and replaces THE CODE OF CONDUCT ADOPTED BY COMMISSION ORDER ENTERED SEPTEMBER 30, 1999 AT P-00991648, ET AL. ~~any other codes of conduct applicable to any LEC.~~

§ 63.142. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

CLEC -- Competitive local exchange carrier –

(i) A telecommunications company that has been certificated OR GIVEN PROVISIONAL AUTHORITY by the Commission as a CLEC under the Commission's procedures implementing the Telecommunications Act of 1996, the act of February 8, 1996 (Pub. L. No. 104-104, 110 Stat. 56), or under the relevant provisions in 66 Pa. C.S. § 3009(a) (relating to additional powers and duties), and its successors and assigns.

(ii) The term includes any of the CLEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service.

Competitive service -- A service or business activity offered by an ILEC ~~incumbent~~ or CLEC that has been classified as competitive by the Commission under the relevant provisions of 66 Pa. C.S. § 3005 (relating to competitive services).

ILEC -- Incumbent local exchange carrier –

(i) A telecommunications company deemed to be an ILEC under section 101(h) of the Telecommunications Act of 1996 (47 U.S.C. § 251(h)), and its successors and assigns.

(ii) The term includes any of the ILEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service.

LEC -- Local exchange carrier -- A local telephone company that provides telecommunications service within a specified service area. LECs encompass both ILECs and CLECs.

Market price -- Prices set at market-determined rates.

Noncompetitive service -- Any protected telephone service as defined in 66 Pa. C.S. § 3002 (relating to definitions), or a service that has been determined by the Commission as not a competitive service.

~~**Subscription activities** -- The activities conducted by an ILEC to formalize the acquisition of a customer or to maintain the provision of a customer's telecommunications services. The activities shall include all conduct relating to the provision of information to prospective customers regarding the ILEC's services and the enrollment of individuals or businesses as customers.~~

Telecommunications service -- A utility service, involving the transmission of ~~signaling, data and~~ messages, which is subject to the Commission's jurisdiction.

~~**§ 63.143. Accounting and audit procedures for large ILECs.**~~

~~Any ILEC with more than 1 million access lines shall maintain a functionally separate wholesale organization (the "wholesale operating unit") and shall be subject to the following requirements:~~

~~(1) The wholesale operating unit of the ILEC shall consist of employees and other resources necessary to perform the following wholesale functions: preordering, ordering~~

~~and the processing and transmission of instructions to field forces for the provisioning of services, network elements (as defined under section 3(19) of the Communications Act of 1934 (47 U.S.C.A. § 153(29)), or facilities to CLECs necessary to provide competitive or noncompetitive services to consumers.~~

~~(2) The wholesale operating unit of the ILEC shall have its own direct line of management and shall keep separate accounting and business records which shall be subject to review by the Commission in accordance with 66 Pa. C.S. § 506 (relating to inspection of facilities and records). The ILEC shall keep its separate accounting and business records, and other books, memoranda, and documents that support the entries in the separate records so as to be able to furnish readily full information as to any item included in any of those records.~~

~~(3) The wholesale operating unit of the ILEC may not engage in any marketing, sales, advertising or subscription activities directed at retail customers.~~

~~(4) Employees or agents of the ILEC's wholesale operating unit may not be shared with any of the ILEC's other operations. The costs associated with any shared resources shall be fully allocated and accounted for between the ILEC's wholesale operating unit and its other relevant operations based on the proportionate use of those facilities. The costs of any other employees, assets and other resources associated with performing the wholesale functions described in paragraph (1) shall be allocated using appropriate allocation factors.~~

~~(5) Any employee of the ILEC wholesale operating unit may transfer to the ILEC's other operations, provided the transfer is not used as a means to circumvent this subchapter. An employee of the ILEC wholesale operating unit may not provide information to the ILEC's retail operations that it would otherwise be precluded from having under this subchapter.~~

~~(6) An employee or agent of the ILEC wholesale operating unit may not promote any retail service of the ILEC or any other LEC's retail services. The referrals made by employees or agents of the ILEC's wholesale operating unit shall identify all available providers of service on an equal and nondiscriminatory basis.~~

~~(7) The ILEC shall maintain contemporaneous records documenting all tariffed and nontariffed transactions between its wholesale operating unit and its other operations. The records shall be available for public inspection during normal business hours.~~

~~(8) An independent compliance review may be conducted every calendar year to ascertain and verify the ILEC's compliance with this subchapter as directed by the Commission on an as-needed basis.~~

~~(i) The ILEC will retain, subject to Commission approval, an independent consultant to conduct this compliance review.~~

~~(ii) The ILEC shall select the independent consultant through a competitive bid process.~~

~~(iii) To help ensure the objectivity of the results, Commission staff will monitor the ILEC's consultant selection process, the scope of the compliance review, the progress of the consultant's work, and the report preparation process.~~

~~(iv) An original and ten copies of the final report as well as an electronic version will be submitted to the Commission by March 31, following the calendar year covered in the report.~~

~~(v) The consultant's final report, to include recommendations for change when necessary, will be made available for public inspection during normal business hours.~~

~~(9) Nothing in this section prohibits the ILEC from providing any competitive service through a separate corporate division or affiliate; however, the competitive safeguards imposed by this subchapter will continue to be fully applicable to the ILEC and its division or affiliate.~~

§ 63.143 ~~63.144~~. Code of conduct.

All LECs, unless otherwise noted, shall comply with the following requirements:

(1) *Nondiscrimination.*

(i) An ILEC may not give itself, including any local exchange affiliate~~,~~ OR division or other corporate subunit THAT PERFORMS THAT FUNCTION, or any CLEC any preference or advantage over any other CLEC in the preordering, ordering, provisioning, or repair and maintenance of any goods, services, network elements (as

defined under section 3(29) of the Communications Act of 1934 (47 U.S.C.A. § 153(29)), or facilities ~~unless expressly permitted by State or Federal law~~.

(ii) An ILEC may not condition the sale, lease or use of any noncompetitive service on the purchase, lease or use of any other goods or services offered by the ILEC or on a WRITTEN OR ORAL AGREEMENT ~~direct or indirect commitment~~ not to deal with any CLEC. IN ADDITION, A LEC MAY NOT CONDITION THE SALE, LEASE OR USE OF ANY NONCOMPETITIVE SERVICE ON A WRITTEN OR ORAL AGREEMENT NOT TO DEAL WITH ANY OTHER LEC. Nothing in this paragraph prohibits an ILEC from bundling noncompetitive services with other noncompetitive services or with competitive services so long as the ILEC continues to offer any noncompetitive service contained in the bundle on an individual basis.

(iii) AN ILEC SHALL OFFER TO CLECS FOR RESALE ANY BUNDLED COMPETITIVE AND NONCOMPETITIVE SERVICES IT PROVIDES TO END-USERS AT THE SAME PRICE IT OFFERS SUCH BUNDLED SERVICES TO END-USERS LESS ANY APPLICABLE WHOLESALE DISCOUNT APPROVED BY THE COMMISSION, AND SHALL MAKE THE UNBUNDLED NETWORK ELEMENTS ASSOCIATED WITH THOSE SERVICES AVAILABLE TO CLECS AS MAY BE REQUIRED BY ANY APPLICABLE STATE OR FEDERAL LAW.

(2) *Employee conduct.*

(i) A ~~An~~ LEC employee, while engaged in the installation of equipment or the rendering of services to any end-user on behalf of a competitor, may not disparage the service of the competitor or promote any service of the LEC to the end-user.

(ii) A ~~An~~ LEC employee, while processing an order for the repair or restoration of service or engaged in the actual repair or restoration of service on behalf of a competitor, may not either directly or indirectly represent to any end-user that the repair or restoration of service would have occurred sooner if the end-user had obtained service from the LEC.

(3) *Corporate advertising and marketing.*

(i) A ~~An~~ LEC may not engage in false or deceptive advertising with respect to the offering of any telecommunications service in this Commonwealth.

(ii) A ~~An~~ LEC may not state or imply that the services provided by the LEC are inherently superior when purchased from the LEC unless the statement can be factually substantiated.

(iii) A ~~An~~ LEC may not state or imply that the services rendered by a competitor may not be reliably rendered or ARE ~~is~~ otherwise of a substandard nature unless the statement can be factually substantiated.

(iv) An ILEC may not state or imply that the continuation of any REQUESTED service from the ILEC is contingent upon taking other services offered by the ILEC

THAT ARE NOT TECHNICALLY NECESSARY TO PROVIDE THE REQUESTED SERVICE.

(4) *Cross subsidization.*

(i) An ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services. ~~An ILEC may not provide any assets, goods or services to its competitive local exchange affiliate, division or other corporate subunit at a price below the ILEC's cost, market price or tariffed rate for the goods or services, whichever is higher. An ILEC may not purchase any assets, goods or services from its competitive affiliate, division or other corporate subunit at a price above the market price or tariffed rate for the goods or services.~~

(5) *Information sharing and disclosure.*

(i) AN ILEC SHALL SIMULTANEOUSLY MAKE AVAILABLE TO CLECS NETWORK INFORMATION NOT IN THE PUBLIC DOMAIN THAT IS USED FOR SALES PURPOSES BY THE ILEC OR THE ILEC'S COMPETITIVE LOCAL EXCHANGE AFFILIATE OR DIVISION OR OTHER CORPORATE SUBUNIT THAT PERFORMS THAT FUNCTION. THE TERM NETWORK INFORMATION MEANS INFORMATION CONCERNING THE AVAILABILITY OF UNBUNDLED NETWORK ELEMENTS OR INFORMATION NECESSARY FOR INTERCONNECTION TO THE ILEC'S NETWORK. NETWORK INFORMATION DOES NOT INCLUDE INFORMATION OBTAINED DURING THE PROCESSING OF AN ORDER OR SERVICE ON BEHALF OF THE ILEC OR THE ILEC'S

COMPETITIVE LOCAL EXCHANGE AFFILIATE OR DIVISION OR OTHER CORPORATE SUBUNIT THAT PERFORMS THAT FUNCTION.

(ii)~~(i)~~ An ILEC's employees, including its wholesale employees, shall use CLEC proprietary information (that is not otherwise available to the ILEC) received in the preordering, ordering, provisioning, billing, maintenance or repairing of any telecommunications services provided to the CLEC solely for the purpose of providing the services to the CLEC. ILEC employees may not disclose the CLEC proprietary information to other employees engaged in the marketing or sales of retail telecommunications services unless the CLEC provides prior written consent to the disclosure. This provision does not restrict the use of aggregated CLEC data in a manner that does not disclose proprietary information of any particular CLEC.

(iii)~~(ii)~~ Subject to customer privacy or confidentiality constraints, A ~~an~~ LEC employee may not disclose, directly or indirectly, any customer proprietary information to the LEC's affiliated or nonaffiliated entities unless authorized by the customer under § 63.135 (relating to customer information).

(6) *SHARING OF EMPLOYEES AND FACILITIES.*

(i) THE ILEC'S WHOLESALE EMPLOYEES WHO ARE RESPONSIBLE FOR THE PROCESSING OF A CLEC ORDER OR SERVICE OF THE OPERATING SUPPORT SYSTEM ON BEHALF OF A CLEC MAY NOT BE SHARED WITH THE RETAIL PORTION OF THE ILEC'S BUSINESS, SHALL HAVE OFFICES

PHYSICALLY SEPARATED FROM THE ILEC'S RETAIL EMPLOYEES AND SHALL HAVE THEIR OWN DIRECT LINE OF MANAGEMENT.

(7)~~(6)~~ *Adoption and dissemination.*

(i) Every LEC shall formally adopt and implement the applicable code of conduct provisions as company policy or modify its existing company policy as needed to be consistent with the applicable code of conduct provisions. Every LEC shall also disseminate the applicable code of conduct provisions to its employees and take appropriate steps to train and instruct its employees in their content and application.

§ 63.144 ~~§ 63.145~~. Remedies.

(a) A violation of this subchapter allegedly harming a party may be adjudicated using the Commission's *Interim Guidelines for Abbreviated Dispute Resolution Process*, at Docket Nos. P-00991648 and P-00991649, which were published at 30 Pa.B. 3808 (July 28, 2000), or any successor Commission alternative dispute resolution process, to resolve the dispute. This action, however, does not preclude or limit additional available remedies or civil action, including the filing of a complaint concerning the dispute or alleged violations with the Commission UNDER 66 PA. C.S. § 701 (RELATING TO COMPLAINTS) AND § 5.21(a) (RELATING TO FORMAL COMPLAINTS GENERALLY) ~~under relevant provisions of 66 Pa. C.S. (relating to the Public Utility Code)~~.

(b) The Commission may also, when appropriate, impose penalties under 66 Pa. C.S. § 3301 (relating to civil penalties for violations) or refer violations of the code of conduct provisions in this subchapter to the Pennsylvania Office of Attorney General, the Federal Communications Commission or the United States Department of Justice.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA

TERRANCE J. FITZPATRICK
CHAIRMAN

September 19, 2003

The Honorable John R. McGinley, Jr.
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Re: L-00990141/57-224
Final Rulemaking (Resubmission)
Generic Competitive Safeguards
Under 66 Pa. C.S. §§3005(b) and 3005(g)(2)
52 Pa. Code Chapter 63

Dear Chairman McGinley:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on April 8, 2002, submitted a copy of the Notice of Proposed Rulemaking to the House Committee on Consumer Affairs, the Senate Committee on Consumer Protection and Professional Licensure and to the Independent Regulatory Review Commission (IRRC). This notice was published at 32 Pa.B. 1986, on April 20, 2002. In compliance with Section 745.5(b.1) copies of all comments received were provided to your Commission and the Committees. An earlier final rulemaking at this docket was withdrawn July 22, 2003.

In preparing this final form rulemaking, the Public Utility Commission has considered all comments received from the Committees, IRRC and the public.

Very truly yours,

Terrance J. Fitzpatrick

Terrance J. Fitzpatrick
Chairman

Enclosures

pc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Raymond Bunt, Jr.
The Honorable Joseph Preston, Jr.
Legislative Affairs Director Perry
Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel Hisiro
Ms. Cooper

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00990141/57-224

Subject: Generic Competitive Safeguards Under 66 Pa. C.S. §§3005(b) and 3005(g)(2)

Pennsylvania Public Utility Commission

TYPE OF REGULATION

_____ Proposed Regulation

_____ Final Regulation with Notice of Proposed Rulemaking Omitted.

__X__ Final Regulation

_____ 120-day Emergency Certification of the Attorney General

_____ 120-day Emergency Certification of the Governor

FILING OF REPORT

Date	Signature	Designation
9/19/03	Pat Amy A. Bassart	HOUSE COMMITTEE Consumer Affairs
9/19/03	Pat Megan Megan Allompton	SENATE COMMITTEE Consumer Protection and Professional Licensure
9/19/03	Elena Rajan	Independent Regulatory Review Commission
_____	_____	Attorney General
_____	_____	Legislative Reference Bureau

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