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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

June 24, 2002

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Pennsylvania Public Utility Commission
James J. McNulty, Secretary
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Rulemaking Re Generic Competitive Safeguards Under 66 Pa. C.S. §§ 3005(b) and 3005(g)(2),
Docket No. L-00990141

Dear Secretary McNulty:

This letter constitutes our comments regarding the "Competitive Safeguard" regulations proposed in the Commission's January 29, 2002 Rulemaking Order (published at Pa. Bulletin, Vol. 32, No. 16, April 20, 2002).

There are two substantive parts to the Commission's proposed regulations. Section 63.143 addresses the functional separation of incumbent local exchange carriers ("ILECs") having more than one million lines. Section 63.144 contains a Code of Conduct regulating behavior, largely applicable to ILECs, but parts of which are also applicable to competitive local exchange carriers ("CLECs"). We comment on each section separately.

Section 63.143 (Functional Separation): We do not take issue with the Commission's definition of "functional separation" (section 63.143(1)). We understand the Commission has conducted detailed evidentiary proceedings and determined that the level of functional separation described in the definition is appropriate. Moreover, it apparently will not cause undue expense or disruption. We agree with the Commission's conclusion that the imposition of a functionally separate wholesale organization should not "require any significant changes". (January 29, 2002 Order p. 12).

However, we do have very serious concerns about certain accounting-related provisions of this section, specifically sections 63.143(2), (4) and (7). These provisions are vaguely worded and appear to be a carry-over from the rejected attempt at Structural Separation. We have reviewed the Comments of the parties and find that these accounting requirements would provide no information that would advance the Commission's goals of promoting competition or preventing discrimination, and thus serve no useful purpose. It could be very expensive to implement them, depending on how they are interpreted. Burdening Pennsylvania businesses with such an expense would be contrary to the Commission's rejection of expensive reorganization

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requirements designed to "fix a problem that has not been shown to exist." These proposed accounting requirements fail a "cost benefit" analysis and should be eliminated.

We also disagree with the requirements of section 63.143(8), requiring an audit every calendar year paid for by the audited company. This is directly contrary to the Motion of Commissioner Fitzpatrick that rejected an earlier draft of these regulations and decided to remove the obligation . . . for an ILEC to retain a consultant annually to verify the ILEC's compliance with the Code of Conduct. We believe it would be sufficient for the Commission to order such review on an as-needed basis. This provision should be removed or scaled back substantially to state only that a compliance audit may be conducted as needed (but no more than once every two years).

Section 63.144 (Code of Conduct): This portion of the draft regulations seems to provide generally sensible "competitive safeguards" in the form of a Code of Conduct for the industry.

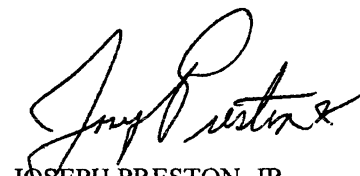
We recommend one substantive change to this section, which is to eliminate the second sentence of proposed section 63.144(4)(i). The second sentence speaks in terms of a "competitive local exchange affiliate, division or other corporate subunit," an unnecessarily confusing concept that stems from prior structural separation discussion, but 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 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.

Thank you for the opportunity to comment on these proposed regulations. Please contact us if you require clarification or additional information.

Sincerely,


DENNIS M. O'BRIEN, Chairman
Consumer Affairs Committee

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JOSEPH PRESTON, JR.
Consumer Affairs Committee

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