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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

CONSUMER AFFAIRS,
MAJORITY CHAIRMAN
JUDICIARY
POLICY

July 22, 2003

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

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

Dear Commission Members:

This letter constitutes our comments regarding the final form "Competitive Safeguard" regulations proposed in the Public Utility Commission's ("PUC") June 16, 2003 Final Rulemaking Order.

We recognize the significant improvement in the regulations made as a result of the round of public comments following the PUC's January 29, 2002 Rulemaking Order, and we certainly support the PUC's response to those comments by removing the definition of functional separation and the accounting requirements relating thereto.

However, we still have three significant concerns. We are troubled by the wording of two provisions added for the first time in the June 16 Order, and by the continued inclusion of one provision that the House Consumer Affairs Committee recommended removing in its June 24, 2002 letter to the PUC. We comment on each of these provisions separately:

Section 63.143(5)(i) (Disclosure of "Market Information): While the PUC added new language to respond to an IRRC recommendation, we take issue with the wording of the PUC's new provision. Particularly, the requirement that all Pennsylvania ILECs must disclose to "any competitor" "any information relating to the characteristics of the ILEC's network which would be useful to a LEC in acquiring customers or providing service to customers" must be narrowed and made more specific. The provision as worded is vague, overly broad and appears to call for the widespread and unnecessary disclosure of competitively sensitive information. This extremely broad language appears to put all ILECs at an extreme competitive disadvantage, not only to CLECs but also to cable companies and other market competitors. These burdensome and unfair requirements are completely unnecessary to respond to the concerns behind IRRC's

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recommendation. The provision also continues to assume that ILECs have a retail competitive affiliate separate from the network side of their business, while the PUC has specifically noted elsewhere in its order that Pennsylvania ILECs are not structured that way and that the PUC is not requiring such a structure. The PUC should not continue to use outdated wording from older versions of the code of conduct from a time period when it was contemplating a different corporate structure for ILECs, because this makes the regulations difficult to interpret and could lead to enforcement problems.

Section 63.143(6)(i) (Separation of Wholesale Employees): This new language is also based on the outdated concept of a “competitive local exchange affiliate,” and is therefore confusing and ambiguous. It is not clear which employees are supposed to be separated from whom. Also, this new provision repeats the exact language from section 63.143(4) of the earlier version of the regulations, but does not address IRRC’s concern on page 2 of its comments that “the regulation neither specifies the allocation factors nor prescribes the criteria for determining ‘appropriate’ factors. The final-form regulation should specify the factors or the criteria for determining allocation factors.” The language should be clarified to correct these problems and remove the reference to allocation factors.

Section 63.143(4)(i) (Definition of Cross-Subsidization): The final form regulations continue to contain the second sentence that the House Consumer Affairs Committee recommended removing, and the order does not address the substance of that recommendation, which stated:

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 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 . . . therefore should be eliminated.

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Our concerns with this provision have not been addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond Bunt, Jr.", with a stylized flourish at the end.

Raymond Bunt, Jr., Majority Chairman
Consumer Affairs Committee

RB/ab

cc: House Consumer Affairs Committee
The Honorable Terrance Fitzpatrick