

Regulatory Analysis Form

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(1) Agency

Public Utility Commission

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

L-00030165/57-232

2015 MAR 10

IRRC Number: 2393

(3) Short Title

Rulemaking Re Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunication Companies

(4) PA Code Cite

52 Pa. Code §§63.301-310

(5) Agency Contacts & Telephone Numbers

Primary Contact: Wayne Williams 7-7137

Secondary Contact: Terrence J. Buda 3-3459

(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 regulation establishes rules, procedures, and standards to provide for an orderly process when a local service provider exits the market.

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

Sections 501 and 1501 of the Public Utility Code, 66 PA. C.S. §§501 and 1501; sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, as amended, 45 P.S. §§1201 - 1202, and the associated regulations at 1 Pa. Code §§7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, Act of October 15, 1980, P.L. 950, as amended, 71 P.S. 732.204(b); section 745.5 of the Regulatory Review Act, Act of June 25, 1982, P.L. 633, as amended, 71 P.S. §745.5; section 612 of the Administrative Code of April 9, 1929, P.L. 177, as amended, 71 P.S. §232, and the associated regulations at 4 Pa. Code §7.231-7.234.

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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.

No.

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

The advent of competition in the local telephone market in Pennsylvania has created situations that the Commission's current regulations do not address. Although a public utility must seek prior approval to abandon service, the Commission's rules under Chapters 63 and 64 do not cover abandonment of utility services nor do they address the notification of the end-use customers.

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

Customers will lose their basic telephone service if the local service provider fails to pay the underlying network service provider for the service it resells to its end-use customers. When this happens, the customer loses the ability to contact 9-1-1 in case an emergency situation should arise. Further, a customer who loses basic service, even temporarily, loses the ability to contact work, school, health facilities and other important services.

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

Any telephone customer, residential or business, who subscribed for service with the local service provider exiting the market will benefit from this regulation.

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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 one.

(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.)

Any telephone company that provides local service or acts as an underlying carrier within Pennsylvania must comply with the regulation. Currently there are 200 local service providers approved for service within the Commonwealth and an unknown number of providers operating with provisional authority.

(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 Public Utility Commission held a series of 3 collaborative sessions to discuss the issues addressed in this final order adopting regulation. Active participants included AT&T Communications of Pennsylvania, Inc. (AT&T); ATX - CoreComm (ATX); CTSI/Commonwealth Telephone (CTSI); Choice One Communications of PA, Inc. (Choice One); MCIWorldcom Network Services, Inc. (MCI); Metropolitan Telecommunications (MetTel); North Pittsburgh Telephone Company (NPT); Sprint/United Telephone Company (Sprint); Verizon Pennsylvania Inc. and Verizon North, Inc. (Verizon PA); Z-Tel Communications (Z Tel); the Pennsylvania Telephone Association (PTA); the Pennsylvania Cable Television Association (PCTA); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); and the Pennsylvania Utility Law Project (PULP). Staff from the Commission's Bureau of Consumer Services (BCS), Bureau of Fixed Utility Services (FUS), Law Bureau, Office of Trial Staff (OTS), and Office of Communications also participated.

(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.

Many of the entities that will be covered by this regulation were extensively involved in the development of this regulation as they participated in collaborative sessions held to discuss the issues addressed by the regulation. As a result of this involvement, any costs to the regulated community have been minimized and the opportunity for potential savings has been maximized.

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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.

No additional costs or savings.

(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.

Although the regulation could initially increase the Commission's regulatory costs, an estimate of these costs cannot be made at this time. On the other hand, the regulation could reduce the Commission's expenses in the long run by reducing the number of consumer complaints it handles at both the informal and formal level about the matters covered by the regulation. Again, an estimate of the savings cannot be made at this time.

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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	N/O*					
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/O*					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

The fiscal costs are not subject to a reasonable estimate and thus they are N/Q (not quantifiable).

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

Program	FY -3	FY -2	FY -1	Current FY
N/A				

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

The regulation will set forth uniform procedures for local service providers to follow when they exit the market. The result will be to curtail the costs that the Commission's Bureau of Consumer Services and local service providers have faced as they dealt with problems arising from the lack of consistent procedures regarding abandonment.

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

The past history of not regulating these issues has resulted in the loss of local telephone service to consumers as well as a high volume of consumer complaints to both companies and to the Commission.

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

There are no alternative regulatory schemes that were considered.

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(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.

No.

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

The regulation is similar to regulations promulgated in New York. The proposed regulation will put Pennsylvania on a par with that state. It will not put Pennsylvania at a competitive disadvantage with other states. In the contrary, the regulation should give a competitive advantage to the Commonwealth.

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

The regulation will supplement the existing regulations that do not address these issues.

(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.

The regulation applies to local service providers that provide local service to residential or business customers.

(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 be effective upon final publication in the Pennsylvania Bulletin.

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

The regulation will be reviewed on an ongoing basis.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

2393

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00030165/57-232

DATE OF ADOPTION September 10, 2004

BY James J. McNulty

James J. McNulty

TITLE (SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY Bohdan R. Pankiw
Bohdan R. Pankiw
Chief Counsel

9-10-04
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00030165/57-232
Final Rulemaking
Establishing Local Service Provider Abandonment
Process for Jurisdictional Telecommunication Companies
52 Pa. Code, Chapter 63

The Pennsylvania Public Utility Commission on September 10, 2004, adopted a final rulemaking order establishing an orderly process to follow when a local service provider abandons local telephone service. The contact persons are Wayne Williams, Bureau of Consumer Services, 787-7137 and Terrence J. Buda, Law Bureau, 787-5755.

EXECUTIVE SUMMARY
L-00030165/57-232
Final Rulemaking Order
Rulemaking Re Establishing Local Service Provider
Abandonment Process for Jurisdictional
Telecommunications Companies
52 Pa. Code §§63.301-310

The advent of competition in the local telephone market in Pennsylvania has created situations that the Commission's current regulations do not address. To comply with certain aspects of the Telecommunications Act of 1996, the Commission implemented a streamlined application process to modify traditional entry procedures applicable to telecommunications carriers. Specifically, the Commission's telecommunication procedures allow new entrants to commence service upon filing and service of the application, which must contain an interim tariff. These entry procedures apply to all carriers whether they are facilities-based, interconnected or reseller competitive local exchange carriers (CLECs). CLECs that are not facilities-based and rely either completely or partially for their underlying service on the incumbent local exchange carrier (ILEC) are considered resellers. If the CLEC fails to pay the underlying ILEC for the service it resells to its end-use customers, the CLEC's wholesale telephone service will be terminated. This results in the termination of dial tone service to the end-use customer – effectively a de facto abandonment of service by the CLEC. Although a public utility must seek prior approval to abandon service, the Commission's rules under Chapters 63 and 64 do not cover abandonment of utility services nor do they address the notification of the end-use customers.

In April 2002, recognizing the need for both short-term and long-run solutions to problems associated with de facto abandonment, the Commission approved Interim Guidelines addressing the issues raised by this regulatory oversight. Later in 2002, the Commission held collaborative sessions that involved telecommunications carriers and other interested parties in discussions of the issues. The collaborative participants addressed proposals for regulations and proposed solutions to the problems created by the changing telecommunications marketplace.

By Order entered on December 23, 2003 at Docket No. L-00030165, the Commission adopted a Proposed Rulemaking Order to amend 52 Pa. Code §63, consistent with the order and recommendations of the collaborative participants, the Bureau of Consumer Services and the Law Bureau. The intent of the proposed rulemaking is to promulgate regulations to establish general rules, procedures, and standards to provide for an orderly process when a local service provider exits the market. By Order entered September 16, 2004, the Commission adopted a Final Rulemaking Order.

The final regulations apply to all local service providers (LSPs) and network service providers (NSPs) operating in Pennsylvania. The final regulations will provide for an orderly process when a NSP intends to terminate service to a LSP, when the Commission has issued an order to revoke a LSP's certificate of public convenience and when a LSP has filed an application to abandon a certificate of public convenience for the provision of local service. In particular, the regulations will ensure that customers do not lose service when their LSP exits the market and customers are provided ample notice and the opportunity to select a new LSP of their choice. Moreover, the regulations will ensure that an abandoning LSP provides sufficient network information so that customers are able to be migrated seamlessly and also that an abandoning LSP coordinates with 9-1-1 service providers and the North American Numbering Plan Administrator. Finally, the regulations apply to a LSP that provides local service to residential or business customers.

The contact persons are Wayne Williams (717) 787-7137 and Joan Smith (717) 783-8841 in the Bureau of Consumer Services, and Terrence J. Buda in the Law Bureau (717) 783-3459.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265**

Public Meeting held September 10, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland

Rulemaking Re Establishing Local Service Provider L-00030165
Abandonment Process for Jurisdictional
Telecommunication Companies

FINAL RULEMAKING ORDER

BY THE COMMISSION:

On December 23, 2003, the Commission entered a Proposed Rulemaking Order to promulgate a regulation to establish general rules, procedures, and standards to provide for an orderly process when a local service provider exits the market. The proposed regulation applies to all local service providers (LSPs) and network service providers (NSPs) operating in Pennsylvania. The proposed regulation will provide for an orderly process when a NSP intends to terminate service to a LSP, when the Commission has issued an order to revoke a LSP's certificate of public convenience, and when a LSP has filed an application to abandon a certificate of public convenience for the provision of local service.

The December 23, 2003 Order was published April 3, 2004 at 34 Pa. B. 1795. The Commission received written comments from the Independent Regulatory Review Commission (IRRC), MCI WorldCom Network Services, Inc. (MCI), AT&T Communications of Pennsylvania, LLC. (AT&T) and Verizon

Pennsylvania Inc. (Verizon). This Final Rulemaking Order discusses the comments and sets forth, in Annex A, regulations.

General Comments of Feasibility, Implementation Procedures, Economic Impact and Reasonableness

IRRC provided comments about some general aspects of the proposed regulations that were not identified with particular sections. We shall address these comments here. IRRC commented that the proposed regulations require the abandoning LSP to perform multiple functions over a period of several months. They commented that further protection of the end-use customer is needed if that process breaks down and that the final-form regulation should include provisions to reassign functions if the abandoning LSP is unable to, or fails to, perform its required duties.

The final-form regulations address IRRC's concerns by dramatically shortening the required timeframe in which a NSP is required to notify the LSP in advance of the termination date. This timeframe had been shortened from 110 days to 45 days. This shortened timeframe should enable a LSP to perform its required duties more quickly, thus providing for a more feasible process. At the same time, we think that we have struck a reasonable balance of protections for the LSP through dispute provisions and have maintained a 20 day period for end-user customers to shop for a new LSP.

IRRC's comment to include provisions in the regulations to reassign functions in the event the abandoning carrier is unable to, or fails to, perform its required duties is a more difficult issue to address in formal regulations. The Commission is promulgating these regulations precisely because some LSPs have abandoned service without providing customer notice. The final-form regulations are meant to send the message that such irresponsible actions to exit the market are not acceptable and to lay out a reasonable process to exit the market. All too frequently the Commission, with the assistance of the NSP, has had to serve in the backup role and notify customers when the abandoning LSP failed to do so. We do not view this to be the proper role of the Commission or the NSP. At the same time, the Commission does not believe there exists another entity that should be required to notify customers because the abandoning carrier has failed to do so. Finally, we believe that to incorporate a backup provision into the regulation may inadvertently invite its use which would be in conflict with sending the message that it is the abandoning carrier's responsibility to exit the market in a responsible manner. We have, however, incorporated provisions into the final-form regulations for the NSP to extend the wholesale customer's termination date should the Commission determine that a significant number of end-user customers have yet to select a new LSP by the scheduled abandoning carrier's exit date. We will continue to be vigilant to make sure that customers are notified when a LSP abandons services.

A second general comment from IRRC about the proposed regulations noted that the regulation should address how implementation of the new regulatory requirements will affect existing and future interconnection agreements and whether the regulations

supercede existing agreements. In our view, the overlap in interconnection agreement provisions and the content of the final-form regulations occurs in four general areas: payment default provisions, bill dispute provisions, dispute rights with the Commission, and the advance notice time period that is required for a NSP to terminate a LSP's service. Our review of interconnection agreements revealed that the more recent interconnection agreements have payment default notice provisions, bill dispute provisions and provisions for a NSP to seek the Commission's intervention to resolve a dispute. In preparing the final-form regulations, we have strived to strike a balance between incorporating reasonable provisions of interconnection agreements where they exist and making sure that the regulations provide basic provisions for adequate notice of billing disputes and payment defaults, reasonable time periods to resolve the issues, and the timely filing of disputes with the Commission. We reiterate the message contained in the proposed regulations that it is our desire that the entities seek to resolve their differences and incorporate whatever provisions they feel are necessary into their interconnection or other agreements and only seek the Commission's involvement in dispute resolution as a last resort. We have included what we view as basic provisions to resolve differences in the regulations to foster resolution between the entities so that if the Commission is asked to resolve disputes we can facilitate a quick resolution knowing that the basic processes have already taken place.

In our review of the interconnection agreements as to the time period accorded from the NSP notice of termination to the termination date, we note that the regulations require 45 days advance notice whereas the interconnection agreements typically contain

a 30-day notice period. We have developed the 45-day requirement allowing for up to 10 days after NSP notification for the abandoning LSP to develop and file their abandonment plan with the PUC and develop their customer notice, allowing up to five days for the notice of abandonment to reach end-user customers, allowing up to 20 days for end-user customers to shop and choose a new LSP, and allowing up to 10 days for customer migration to the new LSP. As noted above, we have dramatically reduced the overall time period from 110 days to 45 days but do not believe less than 45 days allows adequate time for these necessary events to take place.

In general, we note that where provisions of interconnection or other agreements are inconsistent with the regulatory requirements in the final-form regulations, the provisions of regulations supercede the existing agreements, if such regulations are not inconsistent with the provisions of Telecommunications Act of 1996 (TA-96). 47 U.S.C. section 261 (b). Certainly some interconnection agreements have additional provisions that go beyond those contained in the regulations and we view them as accepted upon Commission approval of the agreements.

Section 63.301. Statement of Purpose and Policy

We received comments on this section from IRRC and Verizon. We have also made minor wording revisions to add clarity or to reflect changes made in other parts of the Annex. Under §(a)(1) of the Purpose, we eliminated the reference to embargo consistent with our removal of any reference to embargo in the Annex. In §(a)(2), we

adopted IRRC's comment and added the words "any of" to specify that the regulations apply to any of the circumstances noted under (i)-(iii). Under §(a)(2)(i), we substituted the word "interconnection" for "service" to clarify that the NSP is intending to terminate a LSP's interconnection agreement rather than a service agreement.

Based on Verizon's comments, we deleted §(3) that read to "Ensure that customers do not lose service when their LSP exits the market." This revision is accompanied by another revision recommended by Verizon to new §(3) whereby we added language stating "and thereby not lose local service when the LSP exits their market." These revisions reflect our approach to abandonment whereby we seek to provide customers advance notice of abandonment and an opportunity to select another LSP. In some cases, customers may receive a second notice if they have not responded to a first notice. However, absent a customer responding to an abandonment notice and selecting a new LSP, we cannot ensure that the abandoning LSP will maintain service indefinitely and that unresponsive end-user customers will never lose local service. Under subsection (b), Application, we have revised (2) to clarify that the subsection applies to wholesale "local" service versus the more generic "telephone" service as recommended by IRRC. We have also eliminated the reference to "embargo" and added clarifying language that the NSP is terminating the LSP's service "for breach of an interconnection agreement."

Section 63.302. Definitions

We have made several changes to this section based on comments by IRRC, Verizon and our own efforts to add clarity to the regulations. IRRC noted that the

definition of Local Service Provider included undefined terms such as “unbundled network elements” and recommended that these terms be defined in the final-form regulations. In response to IRRC’s comments we have added definitions for “UNE (unbundled network element), UNE-L (local loop) and UNE-P (UNE-platform). Based on our own analysis, we have added definitions for the terms “Full Facilities,” “Interconnection Agreement,” “NANPA,” “Preferred Carrier Freeze” and “Resale” to add clarity for terms used in the regulations.

Comments provided by Verizon were the basis for deleting two definitions of terms that were used and defined in the proposed regulations but do not appear in the final-form regulation. We have deleted the definition of “Default LSP” consistent with removing the default LSP provisions and we have deleted the definition of “Embargo” as the embargo provisions that were in the proposed regulations were replaced by “Pre-Termination Provisions” that do not refer to the term embargo.

The definitions that appear in the final-form regulations also contain several revisions based on comments from the parties. IRRC questioned whether the phrase “in a service area” was needed in the definition of abandoning LSP. We concluded that the phrase was not necessary and removed it from the definition. IRRC also commented that the definition of “NSP-Network Service Provider” contains the undefined term “carrier.” We have replaced the term “carrier” with “telecommunications provider” in the definition of NSP and removed the term “carrier” from the final-form regulations.

IRRC commented that the terms “NLSP (new local service provider),” and “OLSP (old local service provider)” that appeared under the definition of “LSP-local service

provider” should have stand alone definitions. We addressed IRRC’s comments by deleting this reference under the definition of LSP. The term “OLSP” was only used in this definition but not elsewhere in the regulation and therefore was unnecessary. We chose to delete the term “NLSP” and replace it with “new LSP,” thereby eliminating an abbreviation that could potentially be confused with NSP (network service provider). We believe that the term “new LSP” will be understood in the context of the regulation which generally addresses the need for customers to find another or new LSP to replace their abandoning LSP.

A final comment on the definition of LSP that was provided by IRRC pertained to the term “nonjurisdictional services” being undefined. Upon review, we determined that the entire sentence that contained the term “nonjurisdictional services” was unnecessary and did not add clarity in the context of this regulation and we therefore deleted “§(ii) A LSP may also provide other telecommunication services, as well as nonjurisdiction services.”

Verizon commented that the definition of acquiring LSP should specify that the acquiring LSP “voluntarily” undertakes to provide local service. Therefore we have inserted the word “voluntarily” into the definitions of acquiring LSP as suggested.

Finally, IRRC commented that we should be consistent in the use of “Local Service” which is defined in the regulation. We have adopted their comment and deleted the use of “Telephone Service” and “Telecommunications Service” where local service is appropriate.

§63.303 NSP Embargo Process

We received very significant, substantive comments about the NSP Embargo Process in the proposed regulations. These comments led us to re-evaluate the need for, and form of, the embargo process that was designed to precede the NSP issuing a termination notice to a LSP (wholesale customer).

We realize there are very important issues in this pre-termination process, among them fairness, due process, potential financial exposure for the NSP as well as due consideration for the customers who may ultimately be impacted. Among the significant, substantive comments were those filed by Verizon, AT&T, MCI and IRRC. Verizon commented that we should not require an embargo process per se, but in its place maintain the ability of the Commission to extend the NSP's termination date for the LSP if necessary. AT&T commented that the 10-day embargo notice is too short and the rules should defer to the interconnection agreements for dispute and notice provisions. MCI also noted that the embargo period is too short and that we should require that a 30-day embargo period precede the delivery of a termination notice from the NSP. IRRC also commented that the 10-day embargo period is short. IRRC, in general comments, also noted that the time frames and requirements in the proposed regulations may differ from existing agreements between the LSP and NSP and questioned how implementation of the regulations will affect interconnection agreements.

We examined several interconnection agreements filed with the Commission over the past few years to determine if and how they addressed pre-termination embargo provisions, payment defaults, dispute rights and termination notice periods. Our review

determined that embargo provisions were not typically contained in the interconnection agreements. We noted that recent interconnection agreements contain more developed pre-termination billing dispute resolution and NSP payment default provisions including general dispute provisions. However, the provisions lacked the degree of consistency among agreements that would have enabled the Commission to defer to the agreements in lieu of regulatory provisions or to incorporate a set of basic provisions in the regulations that would always be consistent with all existing interconnection agreements. At the same time, we are interested in the NSPs and LSPs having basic, reasonable provisions to identify and potentially resolve differences among themselves prior to seeking the Commission's intervention to resolve disputes or impacting the service provided to customers.

Our resolution to the comments provided about the proposed embargo process and our review of pre-termination processes in interconnection agreements is twofold. First, we will not incorporate an embargo process in the final-form regulations as initially proposed. Doing so may be perceived as adding a whole new set of pre-termination provisions that are not currently an agreed upon part of the process. Second, we will replace the proposed NSP Embargo Process with Pre-Termination Provisions containing Wholesale Customer Billing Dispute Resolution and NSP Payment Default Resolution Processes. These processes should provide reasonable due process provisions for handling the types of circumstances that are likely to give rise to NSPs serving LSPs with termination notices and requests for dispute resolution before the Commission.

While we have deleted the NSP Embargo Process from the final-form regulations, we have maintained many of the specific provisions of the embargo process in the two new pre-termination processes we have replaced the embargo process with. We have also considered many of the comments provided in response to the proposed embargo process, as well as some of the pertinent comments to §63.304, NSP Termination process for wholesale customers, as applicable to the new pre-termination processes.

Wholesale Customer Billing Dispute Resolution Process

For the new section §63.303 (a) we accord wholesale customers the opportunity to dispute NSP charges prior to the NSP terminating service. As we noted above, most interconnection agreements contain such provisions. Our new language in §(a) contains the provision that “a wholesale customer is obligated to pay amounts not under complaint or dispute” so that filing a dispute on a portion of charges does not become grounds for not meeting the payment obligation of charges unrelated to the dispute. Provisions (1) and (2) are consistent with language contained in the proposed regulation at §§(c)(i) and (c)(ii) pertaining to the use of written notices being sent to the NSP’s designee. Provision (3) responds to IRRC’s comment to the proposed regulations at §§63.303 (c)(2) that a notice should require a breakdown of the amount owed. Provision (4) language requiring the NSP to provide the wholesale customer with a written acknowledgement of the wholesale customer’s written billing dispute responds to IRRC’s comments to the proposed regulations at §63.304 (a) as to how a wholesale customer will be notified of a properly filed dispute with the NSP. Provision (5) responds to comments from IRRC and MCI that 10 days to respond to an embargo notice is too short of a time frame. Therefore

we have provided for 30 calendar days to resolve the dispute. We have also provided that the NSP shall not pursue termination during the resolution period for the disputed amounts similar to language contained in the proposed regulations at §63.304 (a)(3). Provision (6) in the billing dispute resolution process accords dispute rights with the Commission after the NSP and wholesale customer have attempted to resolve the dispute. The Commission dispute rights respond to IRRC's comments to §63.303 (a) in the proposed regulations where IRRC asks what remedy does the wholesale customer have if they disagree with the NSP that the interconnection agreement terms have not been upheld by the wholesale customer.

In their comments to §63.304 (a), IRRC asked how parties are to know if the dispute was properly filed and if not, what opportunities exist to correct the filing. We believe that §(a)(1) requiring a written dispute notice from the wholesale customer and §(a) (4) requiring the NSP to provide the wholesale customer with a written acknowledgement of receipt of the dispute notice accord the parties the opportunity to raise issues about the adequacy of the notices.

New provision (7) in the billing dispute resolution process is included in the final-form regulations so that disputes are timely filed with the Commission. We believe these disputes should generally precede the time when customers receive abandonment notices to prevent potential customer confusion and unnecessary migrations. Provision (8) prohibits the NSP from terminating the wholesale customer's service for matters contained in a dispute before the Commission. This language is similar to that in the proposed regulations at §§63.304 (a)(3).

We deleted §63.303 (a), Authorized reasons for a NSP to embargo service, because we are no longer requiring a NSP embargo process. However, much of the content of this section will be transferred to §63.304 (a), Authorized reasons for a NSP to terminate service.

NSP Payment Default Resolution Process

The second pre-termination process we added to the final-form regulations in place of the embargo process is the NSP Payment Default Resolution Process. Our review of several interconnection agreements revealed that most agreements contained such provisions. We included this section to ensure that the parties are aware of payment defaults and seek to engage in a reasonable process to resolve them prior to the NSP terminating the wholesale customer's service or filing a complaint with the Commission to resolve a payment default dispute. The provisions in §(b)(1-2) are similar to those contained in the proposed regulations in §63.303 (c)(1-2) but we have substituted the words "payment default" or "default notice" for the words "embargo" or "embargo notice." In response to IRRC's question in their comments to §63.303 (a) as to who makes the determination that the wholesale customer has failed to abide by the agreement, we note that the NSP makes that initial determination and communicates that by providing the wholesale customer with a written notice of payment default.

We have revised the language in §(2)(i) to note that the payment default notice shall contain the specific accounts and invoices that are in default consistent with IRRC comments to §63.303 (c) in the proposed regulations pertaining to the embargo notice requiring a breakdown of the amount owed. We have added provisions in §(2)(ii) and

(iii) in response to IRRC and MCI's comments that a notice should include the exact reason for the NSP's notification and any possible ways of curing the default. Provision (iv) is the same as that contained in the proposed regulations at §63.303 (c)(2)(iii) with the exception that we deleted the reference to "embargo issuing."

New provision (3) responds to comments from IRRC and MCI that 10 days to respond to an embargo notice is too short of a time frame. Therefore, we have provided for 30 calendar days to resolve the payment default. The language in provision (4) requiring the wholesale customer to provide the NSP with written confirmation of receipt of the NSP's payment default notice is intended to ensure that both parties are aware of the payment default situation and the need to take action to resolve the problem in a timely manner.

Based on our earlier discussion about deleting the embargo process we have eliminated proposed §63.303 (b), Unauthorized reasons for a NSP to embargo service and (c), Embargo notification provisions. The content of these subsections will be transferred, where applicable, to §63.304 (a), Authorized reasons for a NSP to terminate service and §63.304 (c), Termination notice provisions.

§63.304 NSP Termination Process for Wholesale Customers

In their comments, MCI noted that they were not clear whether the termination process is different from the embargo process. The embargo process in the proposed regulations was a pre-termination process that after 10 days led into the termination process. In the proposed regulations we advanced §63.303 (a), Authorized reasons for a NSP to embargo service and (b), Unauthorized reasons for a NSP to embargo services as

major parts of the overall NSP embargo process. To the extent that the embargo process preceded and led into the termination process, the authorized and unauthorized reasons for embargoing services applied to termination as well. In the final-form regulations we eliminated the embargo process per se and substituted two new pre-termination processes. However, we believe that the authorized and unauthorized reasons that formerly were applied to embargoes should now apply to the NSP termination, and therefore, we have transferred the provisions that appeared in §63.303 (a) and (b) of the proposed regulations into §63.304 NSP termination process for wholesale customers. In response to MCI's comment, the pre-termination (formerly embargo) and termination processes should now be distinct.

In §63.304 (a) we adopted language formerly in §63.303 (a). In §63.304 (a) (1) we added language in response to IRRC's comment to §63.303 (a) that we should clarify when the 30-day period begins. We have specified that the period begins 30 days after the "date of the bill." We also respond to IRRC's comment to §63.305 about not initiating abandonment when a dispute has been filed by adding language restricting termination if the bill has been disputed in accordance with §63.303 (a) or (b).

The provisions in §63.304 (a) (2) were transferred from § 63.303 (a) (2) of the proposed regulations with the addition of clarifying language recommended by Verizon about "other governing" agreements provided that such agreements have been approved by the Commission. The remaining provisions in §63.304 (a) (3 & 4) are transferred from §63.303 (a) (3 & 4) of the proposed regulations.

The provisions in §63.304 (b) (1-4) are transferred from §63.303 (b) (1-4) of the proposed regulations with the language in §(b) being revised to apply to unauthorized reasons for a NSP to “terminate” service rather than “embargo” service. We deleted §63.303 (b) (5) because similar language now appears in §63.303 (a).

We have expanded §63.304 to include new language in §(c), Termination notice provisions, and incorporate language from §63.304 (b), Termination notice from the proposed regulations. In §(c) (1) we have directed that a NSP shall provide a wholesale customer with a written notice at least 45 calendar days prior to the termination date. In subsection (c) (2-4) we have transferred language from §63.303 (c) (i-iii) pertaining to sending an “embargo” notice and modified the language to now pertain to sending the “termination” notice. In subsection (c) (2) we have substituted the words “interconnection or other governing” for “service” agreement based on comments from Verizon. We eliminated the subheading (b), Termination notice from the proposed regulations and renumbered subsection (b) (1) to be (c) (5). We adopted the same language that was in the proposed regulations at §63.304 (b) (1) (i-iv) under the final-form regulations at §63.304 (c) (5) (i-iv) that pertains to the information to be included in a termination notice. The provision that was in §63.304 (b) (2) about the Commission being provided with a copy of the termination notice is now at §63.304 (c) (4).

We deleted proposed §63.304 (a), Termination process initiation, because we have included similar language noting when a NSP is authorized and not authorized to terminate a wholesale customer’s service under §63.304 (a)(5) and (8). Language noting

that termination cannot proceed if the grounds for the termination are disputed with the NSP or the Commission is contained in §63.303 (a)(5) and (8).

§63.305 Initiation of Abandonment

We have revised wording in the opening sentence of the section to clarify that the LSP shall initiate abandonment of service when a “LSP receives a notice from the NSP” of a termination of a LSP’s service. In response to comments from IRRC and MCI, we note that the NSP’s termination shall be consistent with the dispute provisions contained in §63.303. We have also added language to address the situation where a LSP has applied to the Commission to abandon “some or all of a LSP’s local service customers.” This language allows for situations involving a partial abandonment where a LSP may wish to cease serving some customers but not others. AT&T comments that the reference to “some” of its local customers should be deleted because the rules could be construed to apply when the LSP is not abandoning the market, but rather is simply managing its products by terminating certain offerings that may be replaced with improved or newer products. We want to clarify that the rules apply to abandonment as defined in §63.302 where a LSP will cease to provide local service to existing customers. If AT&T, in managing its products and offerings, will cease to provide local service to some or all of its customers, then these rules apply.

In §63.305 (1)(i), we clarify that the LSP “is a wholesale customer” of the NSP. We have also added language that the NSP notice to the LSP should be provided electronically and by first class mail “unless other methods of delivery have been agreed

to as part of the interconnection or other governing agreement between the NSP and LSP” consistent with comments provided by Verizon. We also note that the notice should be provided in not less than “45” calendar days in advance of the scheduled termination consistent with shortening our overall time frame for abandonment. In §63.305 (1)(ii), we clarify language that the Commission may require an extension of the LPS’s termination date until the LSP’s customers “have been properly notified.” We have also revised the time period that a LSP shall file an application with the Commission from 90 days to 35 days consistent with shortening our overall time frame. IRRC comments that the LSP should file an application to abandon service whether or not “financial or operational data indicates there is a likelihood that the LSP may be unable to provide service to some or all of its customers.” In response to IRRC’s comment, we have deleted this qualifying language at the end of §63.305 (3).

§63.306. Abandoning LSP Obligations for Abandonment

AT&T comments that this entire section of the regulations should be deleted and instead the Commission should rely on the Federal Communication Commission’s (FCC) streamlined process. We disagree with AT&T on the lack of need for the provisions in this section and note that the FCC’s streamlined process only pertains to situations in which customers will be transferred to an acquiring LSP. While we are hopeful that abandoning LSP’s will seek to make arrangements with an acquiring LSP, we cannot be certain that this will always be the case.

In §63.306 (a) we have substituted “LSP” for the word “carrier” as requested by IRRC. In subsection (b) we changed the time when an abandoning LSP must file an

abandonment plan with the Commission from 90 to 35 calendar days in advance of abandoning service consistent with our overall reduction in the abandonment time frame. We have substituted the word “facilitate” for “ensure” in subsection (b)(3) as an abandoning LSP may not be able to ensure continuation of service when customers do not respond to abandonment notices and select a new LSP.

In §63.306 (b)(5), we revised the language to provide the Commission a list of customers that will be abandoned rather than a plan to do so at a later date. The revision is consistent with shortening the overall time frame for abandonment. In subsection (b)(6), we deleted references to “a draft of” the notice that is “an initial letter” to be sent to customers thereby leaving the requirement to provide the Commission with “the notice that is to be sent to customers.” With the overall shortened abandonment time frame, the customers will be receiving one termination notice unless the Commission requires a second notice subject to the provisions at new §63.310 (b).

In §63.306 (b)(7) we have deleted language requiring “a plan for follow-up notification arrangements...” for a second notice to be filed with the abandonment plan. However, we do have language in new §63.110 (b) about the LSP sending a second notice after consultation with the Commission if such notice is needed. We have inserted new language in subsection(b)(7) to require the abandoning LSP to include in their abandonment plan to be filed with the Commission “the beginning and ending dates for the period in which customers are to shop and select a new LSP (customer choice period).” We further specify that “customers shall be allowed up to 20 calendar days after receiving a customer notice of abandonment to shop and select a new LSP.” It is

important for the Commission to be aware of the customer shopping and selection period in the event customers contact the PUC's call center with questions about the abandonment. We have also used this section to specify that customers are to have 20 calendar days to shop for a new LSP, consistent with the customer shopping time frame in the proposed regulations.

In §63.306 (b)(8) we added new language requiring the abandoning LSP to include in their abandonment plan "the beginning and ending dates of the customer migration period." We also included language specifying that the customer migration period falls between the customer choice period and the exit date. The language at subsection (8) enabled us to delete the former (9) from the final-form regulations that required "a date when customers shall select a carrier" because that is contained in (7) as the ending date for the customer shopping period.

We have responded to IRRC's comments to §63.306 (b)(13) by providing definitions in §63.302 of UNE, UNE-P, UNE-L, Full Facilities and Resale. We clarified in subsection (b)(14) that we want the abandonment plan to contain a "list" of customer "names and contact information" when the abandoning LSP is the only provider of facilities. "Based on IRRC's comments we substituted "LSP" for "carrier." In subsection (b)(15) we specified that the number of customers impacted refers to impacted by the abandonment. We deleted language in (b)(15) requiring customer service record (CSR) information. As requested in comments by IRRC, we added a reference to the provisions that describe the transfer of assets or control. We also revised the numbering in subsection (b) (16-21) on the final-form regulations.

Based on comments by Verizon and IRRC that are addressed in §63.310, we deleted the NSP obligations to serve as the default LSP at (b)(22). We also note that IRRC's comment to §63.306 (b)(22) is no longer applicable with the deletion of (b)(22).

In §63.306 (c)(1) we have used "New LSP" instead of NSLP as discussed in §63.302 pertaining to the definition of LSP. In response to IRRC's comments about a more specific reference to NENA standards we have specified that we are referring to "recommended data standards for service providers going out of business."

In response to comments from IRRC we revised the title of §63.306(d)(2) to "NANPA abandonment notice" to be consistent with the format of paragraph (1). Verizon provided comments and suggested improved wording for §63.306 (d)(2) which we adopted. The revised wording also negated the need for subsections (d)(2)(i) and (ii). In order to be consistent with our revised overall abandonment time frame we substituted "35" days for "66" days as the minimum time that NANPA shall be provided with notice of number resources to be released.

Consistent with comments from IRRC, we deleted the word "carrier" and substituted "LSP" to refer to the abandoning LSP in §63.306 (e)(1). We also substituted "30 calendar" days prior to the exit date for "60" days as the required time to notify customers about the abandonment. In subsection (e)(2) we specify that the abandoning LSP shall provide customers with a list of "all" services that will no longer be provided as of the exit date. In response to comments by IRRC, customers will be directed to "obtain whatever services they wish to have going forward" rather than "replace the services" that

the abandoning LSP has been providing. IRRC points out that the wording should leave customers free to add or delete services from those they have been receiving.

In response to comments from Verizon and our removal of the default provisions at §63.310, we have removed language at subsection (e)(3) regarding automatically transferring customers to a default carrier. We have inserted new language at (e)(3) to direct the abandoning LSP to “lift all existing preferred carrier freezes on the services to be abandoned” so that customers with freezes do not encounter any barriers to changing their LSP.

We have made several revisions to subsection (e)(4) for clarity. In response to a comment by IRRC, we have replaced the word “teaser” with “message” on the envelope and notice. In subsection (e)(4)(ii) we require that the customer notice “list other services provided by the LSP that will no longer be provided upon abandonment of local service.” In subsection (e)(4)(iv), a statement to customers shall direct customers to select another LSP on or before a specific date 10 calendar days prior to the exit date rather than 30 days prior. The revised period is consistent with our reduction in the overall abandonment time frame.

We have deleted proposed subsection (e)(4)(vii) that required the abandoning LSP to provide customers with a list of alternative LSPs that serve customers in their area. IRRC questioned how such a list could be obtained and noted that in order to be competitively fair the list should be all inclusive. MCI questioned the availability of a current, reliable and accurate list and suggested that the Commission maintain such a data base. Upon review we determined that while the Commission has information about

what LSPs have been certificated to serve in Pennsylvania and the areas they are certificated to serve in, we do not have current information as to where they are actually serving or accepting new customers for local service. Therefore we conclude that providing such a list is not feasible. As an alternative to providing a list to customers, we have added language to subsection (4)(v) that customers shall be notified that they can “check their telephone directory...” for information about LSPs serving their area. In subsection (e)(4)(vii) we have responded to IRRC’s comments by adding language that customers can contact the abandoning LSP if they have questions, need more information “or have a problem with changing your services.”

We have added new language at subsection (e)(4)(ix) that “customers who have preferred carrier freezes on their accounts shall be directed to contact their new LSP to arrange for new preferred carrier freezes if they wish to have this protection going forward.”

§63.307 Abandonment Process Management

In §63.307 (b)(3), Verizon commented that we should delete the reference to default LSP. We have adopted that change consistent with removing the NSP obligation to serve as the default LSP at proposed §63.310. Based on IRRC’s comment asking why customers do not appear in the list of the parties that the program manger should be accountable to, we have added “abandoning LSP’s customers” to subsection (b)(3).

§63.308. Commission Consideration and Action.

IRRC commented that the Commission’s website address should be included at §63.308(a). We accept IRRC’s comments and will add the Commission’s website

address to this section. We also deleted the word “default” from section §63.308(b) because we eliminated proposed §63.310 NSP obligations to serve as the default LSP. Therefore, any reference to default LSP will be eliminated in the final-form regulations and annex. For a full explanation of why we eliminated the default LSP provisions, see the discussion under §63.310, NSP obligations to serve as the default LSP of this order.

§63.309. Acquiring LSP Provisions and Obligations.

We received comments from IRRC, AT&T and Verizon regarding the acquiring LSP provisions and obligations. IRRC comments that the Commission should include a provision in the customer notice that would make customers aware of their right to choose either the acquiring LSP or select another LSP of their choice. We have added new language in the final-form regulations at §63.306(e)(4) which directs the abandoning LSP to include a statement in the customer notice that customers may “select any LSP that serves their area or take no action and their service will be transferred to the acquiring LSP.” IRRC also comments that multiple notices may be confusing especially if customers receive the acquiring LSP’s notice before receiving the abandoning LSP’s notice. IRRC suggests that we combine the two customer notices into one notice and have the abandoning LSP send the notice. We have adopted IRRC’s comments and have merged the notice provisions for the acquiring LSP and the abandoning LSP into joint notice provisions in the final-form regulations (*See §63.306 (e)(4)(vi)*). We believe that a joint notice from the abandoning LSP and the acquiring LSP will decrease customer confusion about the abandonment and transfer of the local service. As a result of these changes, we have eliminated §63.309(a) and (b) from the final-form regulations.

In regard to §63.309(c), IRRC comments that the Pennsylvania slamming provisions at 52 Pa Code §64.23(b) should be cross referenced in this section. We have adopted IRRC's comments and added the following language to this section " This provision does not relieve the abandoning LSP of any requirements imposed by the Federal Communications Commission's (FCC) anti-slamming rules or state rules at 52 Pa Code §64.23(b)." In addition, we have added the words "customer has not selected another LSP during the 20 day customer choice period" to further clarify what is not considered slamming under the final-form regulations.

AT&T comments that §63.309(d) pertaining to carrier change charges is contrary to the FCC requirements and that it should be changed to reflect the FCC rules. We agree with AT&T's comments and have eliminated this section in the final-form regulations. With the elimination of §63.309(d) from the final-form regulations, abandoning LSPs will not be required to pay the carrier change charges. Under the FCC rules,¹ the acquiring LSP is responsible for the carrier change charges associated with the transfer of customers. IRRC asks whether an acquiring LSP can bill customers for carrier change charges if that abandoning LSP refuses or is unable to pay these charges. In response to IRRC's question, the FCC rules are clear that these charges are to be paid by the acquiring carrier (LSP), not customers.

IRRC comments that §63.309(e) should specify the circumstances under which an acquiring LSP would be permitted to make the determination that it is unable or unwilling to provide service. We wish to clarify that the purpose of this section is to ensure that the

¹ 47 U.S.C. §64.1120(3)(iii)

Commission has an opportunity to intervene on the customer's behalf before the abandoning LSP's exit date should the migration of customers from the abandoning LSP to the acquiring LSP take longer than anticipated for some unforeseen reason. At this stage of the abandonment process, the acquiring LSP has already agreed to transfer customers, through a business arrangement with the abandoning LSP. However, the transfer of customers from one LSP to another LSP can be difficult depending on the LSP service arrangements. For example, if the abandoning LSP provides service through a resale arrangement, then the acquiring LSP must also have an interconnection agreement with the same NSP so it can transfer the abandoning LSP's customers. This would delay the transfer of customers. The acquiring LSP may also encounter problems with the processing of customers' records which can also impede the migration of an abandoning LSP's customers. The customer's credit history should not affect the migration of customers with this type of business arrangement. We are simply directing the acquiring LSP to make the Commission aware of any migration problems, (processing or technical) early on so the customer or the Commission may address them in a timely manner. For these reasons stated above, we changed the word "migrate" to "provide" for clarity in the final-form regulations.

AT&T objects to the provision in §63.309(e) that would require the abandoning LSP to continue providing service for an unspecified period of time when customers haven't selected another LSP or the acquiring LSP backs out of providing service. AT&T believes that it is unreasonable to expect a failing LSP to maintain active service indefinitely. The Commission has no interest in requiring an abandoning LSP to maintain active service indefinitely or in prolonging the abandonment process when it is

unreasonable. In recognition of the complex nature of migrating local telephone service, the final-form regulation will give the Commission some flexibility to address special situations or circumstances within a reasonable time frame. IRRC asks what happens if the abandoning LSP discontinues service anyway. If the abandoning LSP discontinues services before a customer is able to select a new LSP, then the Commission will attempt to assist the customer with finding a new LSP or suggest alternative arrangements for telephone service.

§63.310 NSP Obligations to Serve as the Default LSP

Several parties either objected to or questioned the need for the NSP to serve as the default LSP when the abandoning LSP has been serving as a reseller. AT&T comments that this section should be stricken in its entirety and there should be no presumption under which customers are “transferred back” to the ILEC before going to someone else. AT&T notes that all carriers that are active in the market should receive an equal shot at winning the abandoning CLEC’s customers. AT&T comments that the ILEC should not obtain an additional marketing benefit through these rules.

Verizon also comments that network service providers such as Verizon should not be default LSPs in abandonment situations. In Verizon’s view, to automatically assign a subset of customers to the NSP is antithetical to the workings of a competitive market and the free choice that underlines this market. Verizon also cites financial reasons as to why they and other NSPs do not want to serve as the default LSP. They note that forced transfers deprive the NSPs of any ability to access the creditworthiness of such customers and forces NSPs to accept customers they would otherwise not accept. In Verizon’s

experience, may of the customers who leave Verizon for CLECs, or who attempt to come back to Verizon from CLECs, often do so because they are payment troubled.

In their comments, IRRRC notes, as we have above, that a NSP and a LSP oppose the default LSP provisions in the proposed regulations. IRRRC notes that the PUC should explain the need for this section in a competitive market. IRRRC also questions that if an acquiring LSP is permitted to reject customers who are not paying their bills, would the NSP serving as the default LSP also be allowed to reject payment-troubled customers.

We are persuaded by the comments of the parties and will delete proposed §63.310, NSP obligations to serve as the default LSP. It is not our intent to provide any LSP with a competitive advantage over another. However, we are concerned that abandonments do not leave large numbers of customers without local service. To accomplish this objective, we will rely on provisions at §63.305 (1)(ii) that “the Commission may require a NSP to extend a LSP’s termination date until the LSP’s customers have been properly notified.” This provision will be used by the Commission if progress reports from the abandoning LSP, as required by new §63.310, indicate that a large number of customers have not migrated to a new LSP as the scheduled exit date approaches. We will also rely on the option contained in new §63.310 for a second abandonment notice to be sent and may use the provision in §63.305 (1)(ii) to extend the termination date to provide time for the second notice to reach customers, enable them to choose another LSP and allow sufficient time for migration prior to the abandoning LSPs exit date so customers do not experience the loss of local service.

§63.311. Abandoning LSP Follow-up Obligations.

Verizon provides suggested language changes for proposed section §63.311(b) that would delete the words “or default service with a NSP” and replace these words with, “by another LSP.” Verizon also suggests that we delete the word “service” and replace it with “second.” We accept Verizon’s proposed language changes for this section, which is now new §63.310. We added the word “abandonment” after the word “second” for further clarity. In addition, we substituted the words “after consultation with the Commission” for the words “30 days before the exit date” to give the Commission more flexibility in addressing different circumstances. The resulting language reads “the second abandonment notice shall be sent after consultation with the Commission.”

AT&T comments that the provision for a second notice should be deleted because it is unnecessary and costly. The company believes that the requirement for multiple notifications impose a significant burden on the abandoning LSP. We disagree with AT&T’s assertion that this provision is unnecessary because we believe that customer notification is critical. Selectively requiring an abandoning LSP to send more than one notice will increase the likelihood of customers choosing a new LSP and avoiding the loss of their local service.

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 general rules, procedures, and standards to provide for an orderly process when a local service provider exits the market at 52 Pa. Code §§ 63.301-63.310 should be approved as set forth in Annex A, attached hereto;

THEREFORE,

IT IS ORDERED:

1. That the regulations at 52 Pa. Code Chapter 63 are hereby amended 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, The North American Numbering Plan Administrator, National Emergency Numbering 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: September 10, 2004

ORDER ENTERED: September 16, 2004

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter N: LOCAL SERVICE PROVIDER ABANDONMENT PROCESS

§ 63.301. Statement of purpose and policy.

(a) Purpose. The purpose of this subchapter is to:

(1) Provide for an orderly process when a NSP intends to embargo and terminate service to a LSP.

(2) Provide for an orderly process when a LSP seeks to stop the provision of existing service to residential and business customers under ANY OF the following circumstances:

(i) A NSP that provides part or all of the services necessary to provide local service is intending to terminate a LSP's INTERCONNECTION service agreement.

(ii) The Commission has issued an order to revoke a LSP's certificate of public convenience.

(iii) A LSP has filed an application to abandon a certificate of public convenience for the provision of local service.

~~(3) Ensure that customers do not lose service when their LSP exits the market.~~

~~(4) (3) Ensure that customers are provided ample notice and the opportunity to select a new LSP of their choice AND THEREBY NOT LOSE LOCAL SERVICE WHEN THE LSP EXITS THEIR MARKET.~~

~~(5)~~ (4) Coordinate information flow and activities through a project management team.

~~(6)~~ (5) Ensure that an abandoning LSP provides sufficient network information so that customers are able to be migrated seamlessly.

~~(7)~~ (6) Ensure that an abandoning LSP coordinates with 9-1-1 service providers and the North American Numbering Plan Administrator.

(b) Application.

(1) This subchapter applies to a LSP that provides local service to residential or business customers.

(2) This subchapter applies to a NSP that provides wholesale LOCAL ~~telephone~~ service to a LSP and intends to ~~embargo or terminate the LSP's service~~ FOR BREACH OF AN INTERCONNECTION AGREEMENT.

§ 63.302. Definitions.

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

Abandon--To cease providing local service to existing customers. The term does not include discontinuance as a result of a customer's request or a temporary change in the provision of service that may arise from maintenance, repair or failure of a LSP's equipment or facilities.

Abandoning LSP--A LSP that seeks to abandon providing local service to existing customers ~~in a service area~~.

Acquiring LSP--A LSP that VOLUNTARILY undertakes to provide local service to customers of the abandoning LSP after the abandoning LSP is permitted to alter or abandon providing local service.

CSR--Customer service record--Documentation indicating the customer's name, address, contact telephone number, quantity of lines, services, features and other information associated with a customer account.

Customer--The end-user recipient of telephone service provided by a LSP.

Default LSP--A NSP that assumes responsibility for the provision of local service when an abandoning LSP is a reseller of that NSP's service.

Embargo--The pretermination process in which a NSP refuses to process local service change requests or initiate new local service requests because the LSP that is reselling the NSP's services or buying the NSP's unbundled network elements (UNE) or unbundled network elements with platform (UNE-P) facilities is delinquent in paying for those services or facilities.

Exit date--The date upon which an abandoning LSP intends to cease providing telecommunications service.

FULL FACILITIES – TERM USED WHEN THE LSP HAS ALL THE SERVICES AND EQUIPMENT (THAT IS, CENTRAL OFFICE SWITCHES, LOCAL LOOPS, TRUNK LINES, AND THE LIKE) NECESSARY TO PROVIDE TELEPHONIC COMMUNICATIONS BETWEEN TELEPHONES CONNECTED TO IT OR TO OTHER CENTRAL OFFICES.

INTERCONNECTION AGREEMENT – AN AGREEMENT TO INTERCONNECT DIRECTLY OR INDIRECTLY WITH THE FACILITIES AND EQUIPMENT OF OTHER TELECOMMUNICATIONS CARRIERS.

LSP--Local service provider--A company, such as a local exchange carrier (LEC), that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods of providing local service to a customer.

(i) NLSP indicates "new" LSP, and OLSP indicates "old" LSP.

~~(ii) A LSP may also provide other telecommunications services, as well as nonjurisdictional services.~~

Local service--Telecommunications service within a customer's local calling area.

(i) The term includes the customer's local calling plan, dial tone line, touch-tone and directory assistance calls allowed without additional charge.

(ii) The term also includes services covered by the Federal Line Cost Charge, Pennsylvania Relay Surcharge, Federal Universal Service Fund Surcharge, Local Number Portability Surcharge, Public Safety Emergency Telephone Act (9-1-1) Fee and applicable Federal and State taxes.

Local service reseller--A LSP that resells another company's wholesale telephone services to provide local service to customers.

NANPA – NORTH AMERICAN NUMBERING PLAN ADMINISTRATION. --
HOLDS OVERALL RESPONSIBILITY FOR THE NEUTRAL ADMINISTRATION OF
NORTH AMERICAN TELEPHONE NUMBERING RESOURCES, SUBJECT TO
DIRECTIVES FROM REGULATORY AUTHORITIES IN THE COUNTRIES THAT
SHARE THE NORTH AMERICAN TELEPHONE NUMBERING RESOURCES.
NANPA'S RESPONSIBILITIES INCLUDE ASSIGNMENT OF TELEPHONE
NUMBERING RESOURCES, AND, IN THE U.S. AND ITS TERRITORIES,
COORDINATION OF AREA CODE RELIEF PLANNING AND COLLECTION OF
UTILIZATION AND FORECAST DATA.

NSP--Network service provider--~~A carrier~~ TELECOMMUNICATIONS PROVIDER
that interacts with LSPs and provides the facilities and equipment components needed to
make up a customer's telecommunications service. A NSP may be referred to as an
underlying carrier, and may also be a LSP.

PREFERRED CARRIER FREEZE – A DESIGNATION ELECTED BY A
CUSTOMER THAT RESTRICTS A THIRD PARTY'S ABILITY TO CHANGE A

CUSTOMER'S CHOICE OF PREFERRED TELECOMMUNICATION SERVICE PROVIDER.

RESALE – TERM USED WHEN A LSP DOES NOT HAVE ITS OWN FACILITIES, BUT PURCHASES TELECOMMUNICATIONS SERVICES AT WHOLESALE RATES TO SELL TO THE PUBLIC. TYPICALLY, THE TELECOMMUNICATIONS SERVICES ARE PURCHASED FROM A NSP.

UNE - UNBUNDLED NETWORK ELEMENT – VARIOUS PHYSICAL AND FUNCTIONAL PARTS OF A NSP'S INFRASTRUCTURE THAT MAY BE LEASED TO ANOTHER LSP. THESE COMPONENTS INCLUDE SUCH THINGS AS LOCAL SWITCHING, LOCAL LOOPS, INTEROFFICE TRANSMISSION FACILITIES, SIGNALING AND CALL-RELATED DATABASES, OPERATOR SERVICES, DIRECTORY ASSISTANCE, AND THE LIKE.

UNE - L - LOCAL LOOP – THE TELEPHONE LINE (COPPER OR FIBER), THAT RUNS FROM THE LOCAL TELEPHONE COMPANY TO A CUSTOMER'S PREMISE. A LSP MAY OWN A LOCAL SWITCH AND LEASE THE LOCAL LOOP FROM THE NSP.

UNE - P - UNE-PLATFORM – A COMBINATION OF UNBUNDLED NETWORK ELEMENTS THAT FACILITATES END-TO-END SERVICE DELIVERY. A TYPICAL ARRANGEMENT INCLUDES AT LEAST A LOCAL LOOP AND SWITCHING.

Wholesale customer--A LSP that provides local service by resale or by unbundled network elements (with or without platform).

§ 63.303. NSP embargo process- PRE-TERMINATION PROVISIONS.

(a) Authorized reasons for a NSP to embargo service: A NSP may embargo service to a wholesale customer for the following reasons:

~~—(1) Failure of the wholesale customer to pay an undisputed delinquent amount for services necessary to provide customers with local service when that amount remains unpaid for 30 calendar days or more after the bill is rendered.~~

~~—(2) Failure of the wholesale customer to abide by the terms and conditions of a Commission approved interconnection agreement related to the provision of local service.~~

~~—(3) Failure of the wholesale customer to comply with the terms of a payment agreement related to the provision of local service.~~

~~—(4) Failure of the wholesale customer to comply with a Commission order related to the provision of local service.~~

~~—(b) Unauthorized reasons for a NSP to embargo service. Unless specifically authorized by the Commission, a NSP may not embargo service for the following reasons:~~

~~—(1) Failure of a wholesale customer to pay a charge unrelated to the provision of local service, for example, a charge for a LSP's own directory advertising in a NSP's yellow pages directory.~~

~~—(2) Failure of a wholesale customer to pay a charge that was not previously billed prior to the due date of the current bill.~~

~~—(3) Failure of a wholesale customer to pay a charge that is under a payment agreement prior to the date of payment set forth in the agreement.~~

~~—(4) Failure of a wholesale customer to pay a charge that is at issue in a complaint before the Commission unless an embargo is specifically authorized by the Commission.~~

~~—(5) Failure of a wholesale customer to pay a charge when there is an open complaint or dispute with a NSP about the accuracy or correctness of the charge. A wholesale customer is obligated to pay amounts not under complaint or dispute.~~

~~—(c) Embargo notification provisions.~~

~~—(1) At least 10 days prior to the initiation of an embargo, a NSP shall issue a written notice of embargo to the wholesale customer using the following procedures:~~

~~—(i) A NSP shall send the embargo notice by first class mail unless other methods of delivery have been agreed to as part of the service agreement or are provided for in an applicable tariff.~~

~~—(ii) A NSP shall address the embargo notice to the wholesale customer's designee.~~

~~—(iii) A NSP shall send a copy of the embargo notice to the Secretary of the Commission and to the Commission's Bureau of Consumer Services.~~

~~—(2) The embargo notice to a wholesale customer shall include the following:~~

~~—(i) The date that the embargo shall begin. The beginning date given for the embargo may not be less than 10 days from the date the notice is mailed or otherwise delivered.~~

~~—(ii) The amount owed which forms the grounds for the embargo.~~

~~—(iii) The embargo issuing NSP's contact information to be used by a wholesale customer for payment of the NSP's bill.~~

~~—(iv) A statement that if the bill is not paid or other acceptable arrangements are not made prior to the embargo date, the embargo shall commence on that date and a termination notice shall be issued.~~

(A) WHOLESALE CUSTOMER BILLING DISPUTE RESOLUTION PROCESS.

WHOLESALE CUSTOMERS SHALL HAVE THE OPPORTUNITY TO DISPUTE CHARGES FOR THE PROVISION OF SERVICE WITH THE NSP. A WHOLESALE CUSTOMER IS OBLIGATED TO PAY AMOUNTS NOT UNDER COMPLAINT OR DISPUTE.

(1) WHEN DISPUTING NSP CHARGES, THE WHOLESALE CUSTOMER SHALL PROVIDE THE NSP WITH A WRITTEN DISPUTE NOTICE UNLESS OTHER METHODS OF DELIVERY HAVE BEEN AGREED TO AS PART OF AN INTERCONNECTION OR OTHER GOVERNING AGREEMENT.

- (2) THE DISPUTE NOTICE SHALL BE ADDRESSED TO THE NSP'S DESIGNEE.
- (3) THE DISPUTE NOTICE SHALL PROVIDE THE NSP WITH THE AMOUNTS THAT FORM THE GROUNDS FOR THE DISPUTE AS WELL AS THE SPECIFIC ACCOUNTS AND BILLS THAT ARE BEING DISPUTED.
- (4) WITHIN FIVE CALENDAR DAYS OF RECEIVING A WRITTEN DISPUTE NOTICE FROM A WHOLESALE CUSTOMER, THE NSP SHALL PROVIDE WRITTEN ACKNOWLEDGEMENT OF THE RECEIPT OF SUCH NOTICE TO THE WHOLESALE CUSTOMER'S CONTACT.
- (5) UPON RECEIVING A DISPUTE NOTICE FROM A WHOLESALE CUSTOMER, THE NSP AND THE WHOLESALE CUSTOMER SHALL MAKE A GOOD FAITH EFFORT TO RESOLVE THE DISPUTE WITHIN 30 CALENDAR DAYS UNLESS A LONGER DISPUTE RESOLUTION PERIOD IS PROVIDED FOR IN AN INTERCONNECTION OR OTHER GOVERNING AGREEMENT. DURING THIS DISPUTE RESOLUTION PERIOD, THE NSP MAY NOT PURSUE TERMINATION OF THE WHOLESALE CUSTOMER'S SERVICE UNLESS IT IS BASED ON OTHER INDEBTEDNESS THAT IS NOT DISPUTED.
- (6) IF RESOLUTION OF THE DISPUTE IS NOT ACHIEVED TO THE SATISFACTION OF THE NSP AND THE WHOLESALE CUSTOMER AT THE CONCLUSION OF THE DISPUTE RESOLUTION PERIOD, EITHER PARTY MAY FILE A COMPLAINT WITH THE COMMISSION TO RESOLVE THE DISPUTE.
- (7) THE NSP AND THE WHOLESALE CUSTOMER SHALL SEEK TO FILE A COMPLAINT WITH THE COMMISSION TO RESOLVE A BILLING DISPUTE PRIOR TO THE TIME WHEN RETAIL CUSTOMERS ARE TO BE NOTIFIED OF THE PENDING ABANDONMENT.
- (8) THE NSP MAY NOT PURSUE TERMINATION OF THE WHOLESALE CUSTOMER'S SERVICE WHILE A COMPLAINT TO RESOLVE THE DISPUTE IS

PENDING WITH THE COMMISSION UNLESS THE TERMINATION IS BASED ON OTHER INDEBTEDNESS THAT IS NOT DISPUTED.

(B) NSP PAYMENT DEFAULT RESOLUTION PROCESS.

(1) PRIOR TO A NSP ISSUING A TERMINATION NOTICE TO A WHOLESALE CUSTOMER FOR A PAYMENT DEFAULT, THE NSP SHALL:

(I) PROVIDE THE WHOLESALE CUSTOMER WITH A WRITTEN NOTICE OF PAYMENT DEFAULT.

(II) SEND THE DEFAULT NOTICE BY FIRST CLASS MAIL UNLESS OTHER METHODS OF DELIVERY HAVE BEEN AGREED TO AS A PART OF THE INTERCONNECTION OR OTHER GOVERNING AGREEMENT OR ARE PROVIDED FOR IN AN APPLICABLE TARIFF.

(III) ADDRESS THE DEFAULT NOTICE TO THE WHOLESALE CUSTOMER'S DESIGNEE.

(IV) SEND A COPY OF THE DEFAULT NOTICE TO THE SECRETARY OF THE COMMISSION AND TO THE COMMISSION'S BUREAU OF CONSUMER SERVICES.

(2) THE DEFAULT NOTICE TO A WHOLESALE CUSTOMER SHALL INCLUDE THE FOLLOWING:

(I) THE AMOUNT OWED THAT FORMS THE GROUNDS FOR THE PAYMENT DEFAULT AS WELL AS THE SPECIFIC ACCOUNTS AND INVOICES THAT ARE IN DEFAULT.

(II) A STATEMENT OF THE TERMS OF THE INTERCONNECTION OR OTHER GOVERNING AGREEMENT THAT FORMS THE GROUNDS FOR THE NSP'S NOTIFICATION OF PAYMENT DEFAULT.

(III) AVAILABLE METHODS THE WHOLESALE CUSTOMER MAY USE TO CURE THE PAYMENT DEFAULT.

(IV) THE NSP'S CONTACT INFORMATION TO BE USED BY THE WHOLESALE CUSTOMER FOR PAYMENT OF THE NSP'S BILL.

(3) ALLOW AT LEAST 30 CALENDAR DAYS FROM THE DATE OF THE DEFAULT NOTICE FOR RESOLUTION OF THE PAYMENT DEFAULT PRIOR TO ISSUING A TERMINATION NOTICE. IF INTERCONNECTION OR OTHER GOVERNING AGREEMENTS BETWEEN THE NSP AND THE WHOLESALE CUSTOMER ALLOW FOR A LONGER DISPUTE RESOLUTION PERIOD PRIOR TO THE NSP ISSUING A TERMINATION NOTICE, THE TIME PERIODS IN THE AGREEMENT SHALL GOVERN.

(4) WITHIN FIVE CALENDAR DAYS OF RECEIVING A WRITTEN NOTICE OF PAYMENT DEFAULT, THE WHOLESALE CUSTOMER SHALL PROVIDE WRITTEN ACKNOWLEDGEMENT OF THE RECEIPT OF SUCH NOTICE TO THE NSP'S CONTACT.

§ 63.304. NSP termination process for wholesale customers.

~~(a) Termination process initiation.~~

~~(1) A NSP may initiate the termination process if a wholesale customer has not made payment in full or entered into a mutually acceptable written agreement for payment of outstanding debt by the embargo start date posted on the embargo notice.~~

~~(2) A NSP may not initiate the termination process for delinquent indebtedness which is the subject of an open dispute with the NSP or a pending complaint with the Commission filed by a wholesale customer.~~

~~(3) If during the termination process a wholesale customer initiates a properly filed dispute with a NSP or with the Commission, the NSP shall suspend the termination process unless it is based on other indebtedness that is not disputed.~~

(A) AUTHORIZED REASONS FOR A NSP TO TERMINATE SERVICE. A NSP MAY TERMINATE SERVICE TO A WHOLESALE CUSTOMER FOR ONE OR MORE OF THE FOLLOWING REASONS:

(1) FAILURE OF THE WHOLESALE CUSTOMER TO PAY AN UNDISPUTED DELINQUENT AMOUNT FOR SERVICES NECESSARY TO PROVIDE CUSTOMERS WITH LOCAL SERVICE WHEN THAT AMOUNT REMAINS UNPAID FOR 30 CALENDAR DAYS OR MORE AFTER THE DATE OF THE BILL UNLESS THE BILL HAS BEEN DISPUTED IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN §63.303(A) OR §63.303(B), ABOVE.

(2) FAILURE OF THE WHOLESALE CUSTOMER TO ABIDE BY THE TERMS AND CONDITIONS OF AN INTERCONNECTION OR OTHER GOVERNING AGREEMENT RELATED TO THE PROVISION OF LOCAL SERVICE THAT HAS BEEN APPROVED BY THE COMMISSION.

(3) FAILURE OF THE WHOLESALE CUSTOMER TO COMPLY WITH THE TERMS OF A PAYMENT AGREEMENT RELATED TO THE PROVISION OF LOCAL SERVICE.

(4) FAILURE OF THE WHOLESALE CUSTOMER TO COMPLY WITH A COMMISSION ORDER RELATED TO THE PROVISION OF LOCAL SERVICE.

(B) UNAUTHORIZED REASONS FOR A NSP TO TERMINATE SERVICE. UNLESS SPECIFICALLY AUTHORIZED BY THE COMMISSION, A NSP MAY NOT TERMINATE SERVICE FOR THE FOLLOWING REASONS:

(1) FAILURE OF A WHOLESALE CUSTOMER TO PAY A CHARGE UNRELATED TO THE PROVISION OF LOCAL SERVICE, FOR EXAMPLE, A CHARGE FOR A LSP'S OWN DIRECTORY ADVERTISING IN A NSP'S YELLOW PAGES DIRECTORY.

(2) FAILURE OF A WHOLESALE CUSTOMER TO PAY A CHARGE THAT WAS NOT PREVIOUSLY BILLED PRIOR TO THE DUE DATE OF THE CURRENT BILL.

(3) FAILURE OF A WHOLESALE CUSTOMER TO PAY A CHARGE THAT IS UNDER A PAYMENT AGREEMENT PRIOR TO THE DATE OF PAYMENT SET FORTH IN THE AGREEMENT.

(4) FAILURE OF A WHOLESALE CUSTOMER TO PAY A CHARGE THAT IS AT ISSUE IN A COMPLAINT BEFORE THE COMMISSION UNLESS TERMINATION IS SPECIFICALLY AUTHORIZED BY THE COMMISSION.

~~(b)~~(C) Termination notice PROVISIONS.

(1) A NSP SHALL PROVIDE A WHOLESALE CUSTOMER WITH A WRITTEN TERMINATION NOTICE AT LEAST 45 CALENDAR DAYS PRIOR TO THE DATE THAT THE NSP INTENDS TO CEASE PROVIDING THE SERVICE THAT ENABLES THE WHOLESALE CUSTOMER TO SERVE END-USER CUSTOMERS.

(2) A NSP SHALL SEND THE TERMINATION NOTICE BY FIRST CLASS MAIL UNLESS OTHER METHODS OF DELIVERY HAVE BEEN AGREED TO AS PART OF THE INTERCONNECTION OR OTHER GOVERNING AGREEMENT OR ARE PROVIDED FOR IN AN APPLICABLE TARIFF.

(3) A NSP SHALL ADDRESS THE TERMINATION NOTICE TO THE WHOLESALE CUSTOMER'S DESIGNEE.

(4) A NSP SHALL SEND A COPY OF THE TERMINATION NOTICE TO THE SECRETARY OF THE COMMISSION, TO THE COMMISSION'S BUREAU OF CONSUMER SERVICES AND THE LAW BUREAU.

~~(4)~~(5) A termination notice from a NSP to a wholesale customer shall include the following:

(i) The date of the notification and reason for termination.

(ii) The date services shall be terminated unless payment is received or other mutually acceptable arrangements are made.

(iii) The amount owed, if applicable.

(iv) A contact telephone number and name for the NSP.

(2) A NSP shall provide a copy of the notice to the Commission's Secretary's Bureau, Bureau of Consumer Services and Law Bureau.

§ 63.305. Initiation of abandonment.

A LSP shall initiate abandonment of service when a LSP RECEIVES A NOTICE FROM THE NSP ~~initiates the~~ OF A termination of a LSP's service CONSISTENT WITH THE PRE-TERMINATION DISPUTE PROVISIONS IN §63.303, when the Commission issues an order to revoke a LSP's certificate of public convenience or when a LSP has made proper application to the Commission to abandon SOME OR ALL OF A LSP'S LOCAL service CUSTOMERS.

(1) NSP initiation.

(i) A NSP that intends to terminate the service of a LSP that IS A WHOLESALE CUSTOMER AND serves residential or business customers shall provide prior notice to the LSP and the Commission electronically and by first class mail UNLESS OTHER METHODS OF DELIVERY HAVE BEEN AGREED TO AS PART OF THE INTERCONNECTION OR OTHER GOVERNING AGREEMENT BETWEEN THE NSP AND THE LSP, NOT LESS THAN 45 ~~140~~ calendar days in advance of the scheduled termination.

(ii) The Commission may require a NSP to extend a LSP's termination date until the LSP'S ~~properly notifies its customers~~ HAVE BEEN PROPERLY NOTIFIED.

(2) Commission initiation. The Commission may initiate the abandonment of a LSP's service through the issuance of a Commission order that revokes the LSP's certificate of public convenience.

(3) LSP initiation. A LSP may initiate the voluntary abandonment of some or all of its local service customers by filing with the Commission an application to abandon service to some or all of its existing customers. A LSP shall file an application to abandon service not less than 35 ~~90~~ calendar days prior to the EXIT date ~~when financial or~~

operational data indicates there is likelihood that the LSP may be unable to provide service to some or all of its customers.-

§ 63.306. Abandoning LSP obligations for abandonment.

(a) General. Upon receiving a termination notice from a NSP, or upon receiving a Commission order notifying a LSP of an effective date for revoking its certificate of public convenience, or upon a LSP's voluntary filing of an application to abandon service, the abandoning LSP shall make a good faith effort to secure an acquiring carrier LSP to serve the customers it plans to abandon.

(b) Abandonment plan. The abandoning LSP shall file an abandonment plan with the Commission not less than ~~90~~ 35 calendar days in advance of abandoning service. The abandonment plan shall contain the following information:

(1) An identification of the telecommunications services, either facilities-based or through resale, to be abandoned or curtailed in the associated service territory.

(2) An explanation of reasons for the abandonment of service.

(3) A detailed outline of the procedures a LSP shall use to ~~ensure~~ FACILITATE continuation of service for its affected customers. The abandoning LSP shall demonstrate that the abandonment will not deprive the public of necessary telecommunications services.

(4) The notices required by this section.

(5) A ~~plan for an abandoning LSP to provide a~~ list of current customers THAT WILL BE ABANDONED ~~to the Commission within 60 calendar days prior to the exit date.~~

(6) THE ABANDONMENT NOTICE THAT IS ~~an initial letter~~ to be sent to customers.

(7) A ~~plan for follow up notification arrangements for example, a second letter, phone calls, bill inserts, e mail, and the like.~~ THE BEGINNING AND ENDING DATES FOR THE PERIOD IN WHICH CUSTOMERS ARE TO SHOP AND SELECT A NEW LSP

(CUSTOMER CHOICE PERIOD). CUSTOMERS SHALL BE ALLOWED UP TO 20 CALENDAR DAYS AFTER RECEIVING A CUSTOMER NOTICE OF ABANDONMENT TO SHOP AND SELECT A NEW LSP.

(8) THE BEGINNING AND ENDING DATES FOR THE CUSTOMER MIGRATION PERIOD WHEN THE BUSINESS ARRANGEMENTS ARE TO BE COMPLETED FOR THE TRANSFER OF SERVICE TO THE NEW LSP. THE CUSTOMER MIGRATION PERIOD SHALL IMMEDIATELY FOLLOW THE CUSTOMER CHOICE PERIOD, ALLOW 10 CALENDAR DAYS FOR MIGRATION, AND IMMEDIATELY PRECEDE THE EXIT DATE.

~~(8)~~(9) A proposed exit date. If the abandonment is initiated by termination by a NSP or by Commission order, the PROPOSED exit date may not be later than the termination date provided by the NSP or the date the certificate of public convenience is to be revoked.

~~(9) A date when customers shall select a carrier.~~

(10) Contact names and telephone numbers for a LSP's program manager, the regulatory contact and other pertinent contacts, for example, the contact for customer service records (CSR) or provisioning contacts.

(11) IF APPLICABLE, the arrangements made for an acquiring carrier.

(12) The procedures to be taken with the North American Numbering Plan Administrators (NANPA) to transfer NXX codes or thousand number blocks (if applicable) while preserving number portability for numbers within the code.

(13) The name of the NSP and the current customer serving arrangements, for example, UNE-P (x-carrier), resale (y-carrier), UNE-L (x-carrier) or Full Facilities.

(14) An LIST identification of customers NAMES AND CONTACT INFORMATION when the abandoning carrier LSP is the only provider of facilities to a customer or group of customers.

- (15) The number of customers TO BE impacted BY THE ABANDONMENT.
- ~~(16) The format of the CSRs, a statement of what data elements are in the CSRs and a statement of how the CSRs will be made available to other carriers.~~
- (17) (16) the details of a transfer of assets or control that requires Commission approval PURSUANT TO 66 PA.C.S. § 1102 (A)(3).
- ~~(18) (17) A request to modify or cancel tariffs.~~
- (19) (18) A plan for processing customer deposits, credits and termination liabilities or penalties.
- (20) (19) A plan for unlocking the E-9-1-1 records.
- (21) (20) A plan for maintaining toll-free telephone access to an abandoning LSP's call center (including customer service and billing records) so that a customer is able to contact the LSP to inquire about or dispute final bills and refunds.
- ~~(22) When the default LSP provisions apply, a plan for providing the default LSP with the CSRs of customers who will be migrated to each default carrier. The CSRs shall be provided to the default LSP in electronic format 28 days prior to the exit date so that the default LSP shall notify the migrating customers of the terms and conditions of service.~~
- (c) Transfer of customers' 9-1-1/E-9-1-1 records.
- (1) Transfers to a NEW NLSP. An abandoning LSP shall unlock all of its telephone numbers in the 9-1-1/E-9-1-1 records to provide a NEW NLSP with access to the abandoning LSP's customers' 9-1-1/E-9-1-1 records. The abandoning LSP shall unlock the 9-1-1/E-9-1-1 records in compliance with the National Emergency Numbering Association's (NENA) RECOMMENDED DATA standards FOR SERVICE PROVIDERS GOING OUT OF BUSINESS.
- (2) Transfers after abandonment. An abandoning LSP shall submit a letter to the appropriate 9-1-1/E-9-1-1 service provider authorizing the 9-1-1/E-9-1-1 service provider

to unlock remaining 9-1-1/E-9-1-1 records after the LSP has abandoned the market. The abandoning LSP shall provide this letter at least 30 days prior to abandoning the market.

(d) Notification to the industry and NANPA.

(1) Industry abandonment notice. An abandoning LSP shall provide written notice to:

(i) Telecommunications corporations providing the abandoning LSP with essential facilities or services or UNEs that affect the abandoning LSP's customers.

(ii) Telecommunications corporations providing the abandoning LSP with resold telecommunications services, if resold service is part of the telecommunications services provided to the abandoning LSP's affected customers.

(2) NANPA ABANDONMENT NOTICE. An abandoning LSP WHICH HAS NXX OR THOUSAND BLOCK NUMBER RESOURCES FROM THE NANPA shall provide written notice to: THE NANPA IDENTIFYING AND AUTHORIZING THE RELEASE OF ALL OF ITS USED AND UNUSED NUMBER RESOURCES TO AN ACQUIRING CARRIER, OTHER LSPS OR THE NANPA, AS APPLICABLE. WHEN NUMBER RESOURCES ARE TO BE RELEASED TO AN ACQUIRING CARRIER, THE NOTICE TO THE NANPA SHALL BE PROVIDED NOT LESS THAN 35 DAYS PRIOR TO THE ABANDONING LSP'S EXIT DATE.

~~(i) The NANPA, when applicable, authorizing the release of all assigned telephone numbers to other telecommunications companies and releasing all unassigned telephone numbers to the number administrator.~~

~~(ii) The NANPA, authorizing the release of all assigned telephone numbers to the succeeding carriers not less than 66 days prior to the abandonment.~~

(3) The notice shall include identification of all working telephone numbers assigned to the customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers shall be available for reassignment.

(4) The abandoning LSP shall authorize the release of each individually assigned customer telephone number to the subsequent provider selected by the customer. The abandoning LSP may not abandon NXX codes or thousand block numbers if a number within the relevant range of numbers has not been completely ported.

(e) Abandoning LSP notification to customers.

(1) The abandoning LSP (and acquiring carrier LSP if applicable) shall notify customers by letter not less than 30 ~~60~~ CALENDAR days in advance of the exit date.

(2) The abandoning LSP shall provide customers with a list of ALL the services (FOR EXAMPLE, local basic, regional toll, long distance toll) that the abandoning LSP is currently providing to the customer THAT WILL NO LONGER BE PROVIDED AS OF THE EXIT DATE. The abandoning LSP shall direct customers to choose a NEW LSP service provider to OBTAIN WHATEVER SERVICES THEY WISH TO HAVE GOING FORWARD ~~replace the service that it has been providing.~~

(3) THE ABANDONING LSP SHALL LIFT ALL EXISTING PREFERRED CARRIER FREEZES ON THE SERVICES TO BE ABANDONED. ~~If applicable, the abandoning LSP shall notify customers that if they do not act to obtain service from another LSP, the abandoning LSP shall automatically transfer them to a default carrier for local service provision.~~

(4) The notice of pending abandonment of service to residential and business customers shall contain the following:

(i) A printed MESSAGE ~~teaser~~ on the envelope and the notice containing the words "Important Notice, Loss of Local Telephone Service" printed in bold letters with a font size of at least 14 points, conspicuously displayed on the front of the envelope to attract the attention of the reader.

(ii) A statement on the notice: "At this time, (LSP name) provides you with local telephone service, (LIST OTHER SERVICES PROVIDED BY THE LSP THAT WILL NO LONGER BE PROVIDED UPON ABANDONMENT OF LOCAL SERVICE)."

(iii) A statement on the notice: "As of (the exit date) (LSP name) will no longer provide your local telephone service and you must take action."

(iv) A statement on the notice: "To prevent the loss of your local telephone service, you must select another local telephone service provider on or before (list a specific date 10 30 calendar days prior to the exit date). If you act by this date there will be enough time for the new local service provider you choose to start your new service before your current service ends."

(v) A statement on the notice: "Please remember that customers may choose the provider of their local telecommunications TELEPHONE service. You may select any company that is offering service in your area." CUSTOMERS SHALL BE NOTIFIED THAT THEY CAN CHECK THEIR TELEPHONE DIRECTORY YELLOW PAGES UNDER "TELEPHONE SERVICE PROVIDERS" OR IN THE FRONT OF THE DIRECTORY UNDER THE HEADING OF "OTHER LOCAL PHONE COMPANIES" FOR INFORMATION ABOUT LSPS SERVING THEIR AREA.

(VI) IF THE ABANDONING LSP HAS ARRANGED FOR AN ACQUIRING LSP TO SERVE CUSTOMERS, THEN THE ABANDONING LSP CUSTOMER NOTICE PROVISIONS SHALL REFLECT THESE ARRANGEMENTS. SPECIFICALLY, THE WRITTEN NOTICE TO CUSTOMERS SHALL BE A JOINT NOTICE FROM THE ABANDONING AND ACQUIRING LSPS. THE JOINT NOTICE SHALL BE SENT TO CUSTOMERS IN AN ENVELOPE FROM THE ABANDONING LSP. THE JOINT NOTICE SHALL INFORM CUSTOMERS THAT THEY MAY SELECT ANY LSP THAT SERVES THEIR AREA BY (DATE OF THE END OF CUSTOMER CHOICE PERIOD) OR THEY MAY TAKE NO ACTION AND THEIR SERVICE WILL BE TRANSFERRED TO THE ACQUIRING LSP NO LATER THAN (EXIT DATE). THE JOINT NOTICE SHALL ALSO INCLUDE INFORMATION ABOUT THE ACQUIRING LSP'S RATES AND TERMS AND CONDITIONS OF SERVICE.

(~~vi~~)(VII) A statement on the notice: "This is an important notice (the word "important" in bold) about the loss of your local telephone service. If you have any questions, or need

more information; OR HAVE PROBLEMS WITH CHANGING YOUR SERVICES,
contact (LSP contact information including a toll-free telephone number)."

(vii) A list of alternative LSPs, including contact numbers and addresses, that serve the
customer's area.

(viii) Information to customers outlining the procedure for obtaining refunds of credits
and deposits, obtaining final bills and addressing questions or complaints.

(IX) CUSTOMERS WHO HAD PREFERRED CARRIER FREEZES ON THEIR
ACCOUNTS SHALL BE DIRECTED TO CONTACT THEIR NEW LSP TO
ARRANGE FOR NEW PREFERRED CARRIER FREEZES IF THEY WISH TO HAVE
THIS PROTECTION GOING FORWARD.

§ 63.307. Abandonment process management.

(a) The abandoning LSP shall appoint a program manager to coordinate the abandonment process. The program manager shall be selected from the abandoning LSP or, if applicable, the acquiring LSP.

(b) The program manager shall be accountable to each of the parties involved in the abandonment. The individual parties involved in the migration may be:

(1) The abandoning LSP.

(2) The acquiring LSP.

(3) The ~~default LSP~~ ABANDONING LSP'S CUSTOMERS.

(4) The Commission.

(c) The parties involved in the abandonment shall appoint a project manager who will work with the program manager to ensure that the abandonment process flows in a seamless manner.

§ 63.308. Commission consideration and action.

(a) The Commission will post information of an impending abandonment on its website AT WWW.PUC.STATE.PA.US under "Local Service Telephone Provider Abandonment Notification."

(b) If necessary, Commission staff may establish an industry conference call to address potential problem areas and procedures with the abandoning LSP, as well as with the acquiring, ~~default~~ or other LSPs as applicable.

§ 63.309. Acquiring LSP provisions and obligations.

~~(a) An acquiring LSP shall notify customers by letter of the pending change of service providers 60 days in advance of the exit date.~~

~~—(b) An acquiring LSP shall notify customers in writing of its rates and terms and conditions of service 60 days in advance of the exit date.~~

—(e) (A) An abandoning LSP and acquiring LSP may change the customer's local service provider without being considered to have engaged in slamming if the CUSTOMER HAS NOT SELECTED ANOTHER LSP DURING THE 20 DAY CUSTOMER CHOICE PERIOD AND THE acquiring LSP does not change a customer's preferred interexchange carrier designation without the customer's authorization. THIS PROVISION DOES NOT RELIEVE THE ABANDONING LSP OR THE ACQUIRING LSP OF ANY REQUIREMENTS IMPOSED BY THE FEDERAL COMMUNICATIONS COMMISSION'S (FCC) ANTI-SLAMMING RULES OR STATE RULES AT 52 PA CODE § 64.23(B).

~~—(d) An abandoning LSP shall reimburse the new provider (customer selected, acquiring carrier or default carrier) for the carrier change charges. The provision in this subsection does not relieve telecommunications providers of any requirements imposed by the Federal Communications Commission (FCC), including FCC anti-slamming rules and 47 CFR 63.71 (relating to procedures for discontinuance, reduction or impairment of services by domestic carriers).~~

—(e) (B) If an acquiring LSP determines that it will be unable to provide MIGRATE service to a customer by the abandoning LSP's exit date, the acquiring LSP shall notify the Commission, the customer and the abandoning LSP within 24 hours of the determination. If the customer is unable to select another available LSP, the abandoning LSP shall continue to provide service until the date on which a LSP is able to provide service or a date ordered by the Commission, whichever is earlier.

§ 63.310. NSP obligations to serve as the default LSP.

~~—(a) *Default LSP.* When the following conditions are met, a NSP becomes the default LSP and shall continue to provide local service to customers who will not be served by an acquiring LSP and who have not selected another LSP:~~

~~—(1) An abandoning LSP serves its customers through resale using the facilities of a NSP.~~

~~—(2) There is no acquiring LSP or an acquiring LSP is not acquiring all customers from the abandoning LSP.~~

~~—(3) One or more customers have not chosen a new LSP within the selection period.~~

~~—(b) Notification to customers.~~

~~—(1) A default LSP shall send a letter to customers who will be switched from an abandoning LSP to the default LSP 20 days prior to the exit date.~~

~~—(2) The 20-day letter shall advise the customers that their service is being switched on a specific date and notify customers of the rates and terms and conditions of service.~~

~~—(c) Notification and service to customers with outstanding balances.~~

~~—(1) When a customer being switched to a default LSP has an outstanding balance for local service with the default LSP from a service period within the last four years, the default LSP shall provide provisional local service for at least 30 days from the exit date.~~

~~—(2) A default LSP shall notify a customer that the customer has an outstanding balance, the amount of the balance and the time period over which the balance accrued.~~

~~—(3) A default LSP shall inform a customer that the default carrier is obligated to provide local service only until (list a specific date that is 30 calendar days from the exit date) unless the customer pays the outstanding local service balance or makes a payment arrangement.~~

~~—(4) Information shall be contained in the 20-day letter regarding how a customer may contact a default provider to make payment or enter into a payment arrangement.~~

~~—(5) A customer who, upon notification of the customer's outstanding balance for local service, fails to make payment or enter into a payment arrangement for the outstanding~~

~~balance may be subject to suspension and termination action by a default LSP after expiration of the 30 day provisional local service period.~~

§ 63.311 63.310. Abandoning LSP follow-up obligations.

(a) An abandoning LSP shall track the progress of migrations and provide Commission staff with progress reports on the number of customers that have and have not migrated to a new LSP. The frequency of the updates will vary with the magnitude of the mass migration and will be determined by the Commission on a case by case basis.

(b) An abandoning LSP shall send a second abandonment notice to a customer who is not subject to acquisition BY ~~or default service with a NSP~~ ANOTHER LSP and has not taken action to select a new LSP. The ~~service~~ SECOND ABANDONMENT notice shall be sent AFTER CONSULTATION WITH THE COMMISSION ~~30 days before the exit date~~. The form of the second notice is left to the discretion of the abandoning LSP and may be the following:

(1) First class mail.

(2) A telephone call.

(3) A bill insert.

(4) Any other means of direct contact with the customer.



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

October 15, 2004

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

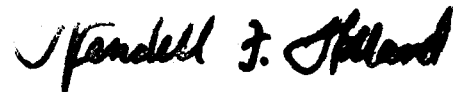
Re: L-00030165/57-232
Final Rulemaking
Establishing Local Service Provider Abandonment
Process for Jurisdictional Telecommunication Companies
52 Pa. Code Chapter 63

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 March 18, 2004, 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 34 Pa.B. 1795, on April 3, 2004. In compliance with Section 745.5(b.1) copies of all comments received were provided to your Commission and the Committees.

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,

A handwritten signature in black ink that reads "Wendell F. Holland". The signature is written in a cursive, slightly slanted style.

Wendell F. Holland
Chairman

Enclosures

cc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert J. Flick
The Honorable Joseph Preston, Jr.
Legislative Affairs Director Perry
Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel Buda
Mr. Williams
Donna Cooper, Governor's Policy Office

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00030165/57-232

Subject: Local Service Provider Abandonment Process for
Jurisdictional Telecommunication Companies

Pennsylvania Public Utility Commission

2393

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
<u>10/15/04</u>	<u>Michele Warren</u>	<u>HOUSE COMMITTEE</u> Consumer Affairs
<u>10/15/04</u>	<u>Mary Walmer</u>	<u>SENATE COMMITTEE</u> Consumer Protection and Professional Licensure
<u>10/15/04</u>	<u>Steph J. Hoffman</u>	Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau