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June 17, 2004

Honorable Terrance J. Fitzpatrick, Chairman  
Pennsylvania Public Utility Commission  
Keystone Building, 3rd Floor  
400 North Street  
Harrisburg, PA 17105

Re: Regulation #57-232 (IRRC #2393)  
Pennsylvania Public Utility Commission  
Establishing Local Service Provider Abandonment Process for Jurisdictional  
Telecommunication Companies

Dear Chairman Fitzpatrick:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director  
wbg  
Enclosure

cc: Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional  
Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and  
Professional Licensure Committee  
Honorable Robert J. Flick, Majority Chairman, House Consumer Affairs Committee  
Honorable Joseph Preston, Jr., Democratic Chairman, House Consumer Affairs  
Committee

# **Comments of the Independent Regulatory Review Commission**

**on**

## **Pennsylvania Public Utility Commission Regulation #57-232 (IRRC #2393)**

### **Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunications Companies**

**June 17, 2004**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Pennsylvania Public Utility Commission (PUC) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on May 18, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

The section designations differ between the original version submitted by the PUC and the version published by the Legislative Reference Bureau in the *Pennsylvania Bulletin*. These comments use the section numbering published in the *Pennsylvania Bulletin*.

#### **1. Subchapter N. Local Service Provider Abandonment Process. – Feasibility.**

This regulation assigns responsibilities to local service providers (LSPs), network service providers (NSPs), local service resellers and wholesale customers involved in the abandonment of service process. It requires the abandoning LSP to perform multiple functions over a period of several months in conjunction with the other affected parties.

LSPs typically abandon service because of poor financial health. While the regulation provides protections under the best case scenario, it would appear further protection of the end-use-customer is needed if that process breaks down. The final-form regulation should include provisions to reassign functions of the abandoning LSP if it fails to, or is unable to, perform its required duties.

#### **2. Agreements between NSPs and LSPs. – Implementation procedures; Economic impact; Reasonableness.**

The time frames and requirements in the regulation may differ from existing agreements between an LSP and an NSP. Under these regulations, the PUC may order a time extension that was not in the interconnection agreement. If nonpayment is involved, the extension would be costly to the NSP. The regulation should address how implementation of the new regulatory requirements will affect existing and future interconnection agreements and whether the regulation supersedes existing agreements.

### **3. Section 63.302. Definitions. – Clarity.**

*Telephone service, local service, service and telecommunications service*

This proposed rulemaking uses these terms throughout the regulation. Only the term “local service” is defined. The defined term “local service” should be used throughout the regulation.

*LSP – Local Service Provider*

We have two concerns. First, this definition includes the undefined terms “unbundled network elements (with or without platform)” and “nonjurisdictional services.” The final-form regulation should include definitions of these terms.

Second, the terms “NLSP” (new local service provider) and “OLSP” (old local service provider) should have stand alone definitions so that they can easily be found by the reader.

*NSP – Network Service Provider*

This definition includes the term “carrier.” This term should be defined in the final-form regulation.

### **4. Section 63.303. NSP embargo process. – Reasonableness; Clarity.**

*Subsection (a)*

Paragraph (1) uses the date the bill is “rendered” as the trigger for the 30-day period. Is this the date sent, date postmarked, date of the bill or date received? The regulation should specify the beginning of the 30-day period.

Under Paragraphs (2), (3) and (4), an NSP may embargo services if the wholesale customer: fails to abide by the terms of a PUC approved interconnection agreement; fails to comply with the terms of a payment agreement; or fails to comply with a PUC order.

Initiation of an embargo allows an NSP to refuse to process local service change requests or initiate new local service requests. Who makes the determination that the wholesale customer has failed to abide by the agreements? What remedy does the wholesale customer have if they disagree?

*Subsection (c)*

Paragraph (1) requires 10 days notice prior to initiation of an embargo. Is this sufficient time for the wholesale customer to evaluate and respond to the NSP embargo notice to avoid the provisions in Section 63.304(a)?

Paragraph (2) lists information required in an embargo notice. However, it does not require a reason for the embargo or a breakdown of the amount owed. Without this information it may be difficult for the wholesale customer to evaluate the embargo notice and respond to it. Therefore, the regulation should require this information.

**5. Section 63.304. NSP termination process for wholesale customers. – Reasonableness; Clarity.**

*Subsection (a)*

Paragraph (3) requires a “properly filed dispute.” We have three questions. First, who makes the determination that the dispute is properly filed? If the determination is made by the NSP, the regulation should specify how this determination can be appealed.

Second, if a dispute was properly filed, how will the wholesale customer be notified?

Third, if a dispute was not properly filed, how will the wholesale customer be notified and what opportunity will the wholesale customer be given to correct the filing?

**6. Section 63.305. Initiation of abandonment. – Clarity.**

There are two concerns.

First, if the wholesale customer submits a properly filed dispute, there would be no need to initiate the abandonment of service. Therefore, the opening paragraph should end with the phrase “unless a properly filed dispute is filed under Section 63.304(a)(3)” or similar language.

Second, Paragraph (3) deals with voluntary abandonment, but only requires the 90-day notice to the PUC “...when financial or operational data indicates there is a likelihood that the LSP may not be able to provide service...” The 90-day notice should always be required. For example, if the LSP simply elects to exit a market area, but is otherwise in sound operational and financial condition, notice to the PUC should still be required.

**7. Section 63.306. Abandoning LSP obligation for abandonment. – Economic impact; Reasonableness; Clarity.**

*Subsection (a)*

This subsection requires the abandoning LSP to make a “good faith effort to secure an acquiring carrier to serve the customers it plans to abandon.” The term “acquiring carrier” is not defined and should be replaced by an appropriate defined term such as “acquiring LSP.”

*Subsection (b)*

The example in Paragraph (13) uses the terms “UNE-P (x carrier), resale (y carrier), UNE-L (x carrier) and Full Facilities.” It is not clear what these terms mean. They should be explained within the example or defined.

Paragraph (17) requires “details of a transfer of assets or control that requires Commission approval.” A cross reference to the provisions that describe the “transfer of assets or control” that require PUC approval should be added.

Paragraph (22) refers to “default LSP provisions.” The final-form regulation should provide a citation to these provisions in Section 63.310.

Paragraph (22) also requires customer service records to be provided “...28 days prior to the exit date....” Should this state “...at least 28 days prior to the exit date....”?

*Subsection (c)*

Paragraph (1) requires compliance with the “National Emergency Numbering Association’s (NENA) standards.” A more specific reference is needed to indicate where these standards can be found and which specific standards must be met.

*Subsection (e)*

Paragraph (1) uses the term “acquiring carrier” which is not defined. Should this be “acquiring LSP”?

The second requirement of Paragraph (2) states that the abandoning LSP must direct customers to choose a service provider “to replace the service it has been providing.” While basic dial tone service would need to be replaced, a customer would be free to add or delete other services. The notice to the customer should include this flexibility in acquiring new service.

Paragraph (4) lists the information required in the customer notice. This list should include who customers should contact if the customer encounters problems with the transfer of service, such as the program manager appointed under Section 63.307, or the PUC.

Subparagraph (4)(i) requires “A printed teaser....” What specifically qualifies as a “teaser”?

Subparagraph (4)(vii) requires the abandoning LSP to provide their customers with “A list of alternative LSPs, including contact numbers and addresses, that serve the customer’s area.” In order to be competitively fair, this list should include all available alternative LSPs. How can an abandoning LSP obtain a comprehensive list of alternative LSPs that serve the area being abandoned?

**8. Section 63.307. Abandonment process management. – Protection of the public safety.**

Subsection (b) lists the parties to whom the program manager is accountable in the abandonment. Why doesn’t this list include the customers? Related to our comment on Paragraph 63.306(e)(4), who would customers contact if they are experiencing problems during the transition?

**9. Section 63.309. Acquiring LSP provisions and obligations. – Protection of the public welfare; Clarity.**

The notice to customers does not include the provision in Paragraph 63.301(a)(4) to “ensure customers have...the opportunity to select a new LSP of their choice.” This provision should be included in this notice so that customers are aware that the transfer of their service to the acquiring LSP does not affect their right to select a different LSP of their choice.

*Subsection (a)*

This subsection requires the acquiring LSP to send notice to customers of the pending changes 60 days in advance of the exit date. We note that the abandoning LSP must also send notice under Section 63.306(e)(1) in the same time frame. Multiple notices may be confusing to the customer, especially if the acquiring LSP notice arrives before the abandoning LSP notice. Therefore, these notices should be combined into one notice sent by the abandoning LSP.

*Subsection (c)*

This subsection states the change of the customer's local service provider won't be considered slamming. A cross reference to the slamming provision under 52 Pa Code § 64.23(b) should be added.

*Subsection (d)*

If the abandoning LSP either refuses or is unable to pay the carrier change charges under this subsection, can the acquiring LSP then bill the customer for those charges?

*Subsection (e)*

This subsection includes the phrase "unable to provide" as it relates to an acquiring carrier providing service to a customer. This provision is broad. For example, would these circumstances be limited to processing and capacity problems, or could the credit history of the customer also be a reason the acquiring LSP is unable to provide service? The regulation 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. Furthermore, given the requirement placed on NSPs to serve as the default LSP under Section 63.310, the PUC should explain why this provision is reasonable to a default NSP.

Subsection (e) also requires the abandoning LSP to continue to provide service if the acquiring carriers cannot and the customer is unable to select another carrier. What happens if the abandoning LSP discontinues service anyway?

**10. Section 63.310. NSP obligations to serve as the default LSP. – Economic impact; Clarity.**

In the public comments submitted on this regulation, an NSP and an LSP oppose this section. The LSP is concerned that NSPs will gain customers that the LSPs should get a chance to acquire. The NSP is concerned that they will be forced to accept customers they would otherwise reject. The PUC should explain the need for this section in a competitive market.

Related to our concern with Subsection 63.309(e), what customers will the NSP be required to serve and under what circumstances? For example, if the acquiring LSP is permitted to reject customers who are not paying their bills, would the NSP also be allowed the same option?

**11. Other Miscellaneous Clarity Issues.**

- a. Should Subsection 63.301(a)(2) state “...under any of the following circumstances:....”?
- b. In the definition of “Abandoning LSP” in Section 63.302, why is the phrase “in a service area” needed?
- c. The title of Paragraph 63.306(d)(2) should be “NANPA abandonment notice” to be consistent with the format of Paragraph (1).
- d. Subsection 63.308(a) mentions the PUC’s website. The website address should also be included.

### Facsimile Cover Sheet

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Administrative Officer



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**To:** Sherri A. DelBiondo  
Regulatory Review Coordinator  
Law Bureau  
**Agency:** Pennsylvania Public Utility Commission  
**Phone:** 2-4597  
**Fax:** 3-3458  
**Date:** June 17, 2004  
**Pages:** 8

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-232 (IRRC #2393). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

**Accepted by:** Amanda A. Seaman **Date:** 6/17/04

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