

Regulatory Analysis Form

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(1) Agency

Public Utility Commission

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

L-00030163/57-230

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PUBLIC UTILITY COMMISSION
IRRC Number: 2394

(3) Short Title

Notice of Proposed Rulemaking Re: Changing Local Service Providers

(4) PA Code Cite

52 Pa. Code §§63.191-402

(5) Agency Contacts & Telephone Numbers

Primary Contact: M. J. Frymoyer 3-1628

Secondary Contact: Louise Fink Smith 7-8866

(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 proposed regulation establishes rules, procedures, and standards to ensure that consumers are able to migrate between local telephone service providers without confusion, delay or interruption of their basic telephone service.

(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?

With the opening of the local telephone service market to competition, telephone customers have been faced with delay and sometimes interruption of local telephone service when they attempt to change from one local telephone service provider to another. Further, when the customer calls to report problems with obtaining service or switching service, the customer is often referred from one service provider to another as no service provider has been willing to take responsibility for resolving the customer's dilemma.

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

Too often customers lose their basic telephone service as they await being transferred to a new local service provider of their choice. 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, wanting to take advantage of telephone competition and switch local service providers 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 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 4 collaborative sessions to discuss the issues addressed in this proposed rulemaking. Active participants were: Allegiance Telecom of PA, Inc.; AT&T Communications of Pennsylvania, Inc. (AT&T); ATX - CoreComm (ATX); Choice One Communications of PA, Inc. (Choice One); CTSI/Commonwealth Telephone; Denver & Ephrata Telephone & Telegraph (D&E); MCIWorldcom Network Services, Inc. (MCI); Metropolitan Telecommunications (MetTel); North Pittsburgh Telephone Company (NPT); Sprint/United Telephone Company; Verizon Pennsylvania, Inc. (Verizon PA) and Verizon North, Inc.; XO Communications (XO); Z-tel Communications (Z-tel); the Pennsylvania Telephone Association (PTA); the Pennsylvania Cable Television Association (PCTA); the Public Utility Law Project (PULP); NeuStar; the Office of Consumer Advocate (OCA); and the Office of Small Business Advocate (OSBA). Staff from the Commission's Bureau of Consumer Services (BCS), Bureau of Fixed Utility Services (FUS), Law Bureau, Office of Trial Staff (OTS), Office of Administrative Law Judge (OALJ), and Office of Communications

(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/Q*					
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/Q*					
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 a customer makes the decision to switch from one local service provider to another. 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 the change of service providers.

(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. The Commission believes that problems associated with changing local service providers could provide a barrier to local telephone competition as consumers would be less inclined to leave their incumbent providers for fear that they will encounter great difficulty in making the transition from one company to another.

(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 to fill voids that the developing competitive local service market demands.

(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 all customers of local telephone service, including small business customers. This is especially important because lack of telephone service for even brief periods can adversely impact the financial well being of small businesses. In addition, it is important that small businesses be able to retain their telephone numbers when changing from one telephone company to another and this regulation clearly specifies that consumers must be able to retain their telephone numbers when they change local service providers.

(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)

2394

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

BY *Andrew W. Ellsatt*
(DEPUTY ATTORNEY GENERAL)

JAN 30 2004
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-00030163/57-230

DATE OF ADOPTION October 2, 2003

BY *James J. McNulty*
James J. McNulty

TITLE SECRETARY
(SECRETARY)

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

BY *Bohdan R. Pankiw*
Bohdan R. Pankiw
Chief Counsel

10-3-03
DATE OF APPROVAL

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

L-00030163/57-230
Proposed Rulemaking
Changing Local Service Providers
52 Pa. Code, Chapter 63

The Pennsylvania Public Utility Commission on October 2, 2003, adopted a proposed rulemaking order which sets forth regulations establishing an orderly process for customer migration between local service providers within the telecommunications industry. The contact persons are Louise Fink Smith, Law Bureau, 787-8866 and M. J. (Holly) Frymoyer, Bureau of Consumer Services, 783-1628.

EXECUTIVE SUMMARY
L-00030163/57-230
Proposed Rulemaking
Re: Changing Local Service Providers
52 Pa. Code §§63.191-402

The advent of competition in the local telephone market in Pennsylvania has created situations that the Commission's current regulations do not address. Specifically, consumers have encountered a variety of problems when they attempt to change local service providers (LSPs) in the new competitive market. In April 2002, recognizing the need for both short-term and long-run solutions to problems associated with migrating local phone service, the Commission approved Interim Guidelines addressing the issues raised by the changes. Later in 2002, the Commission held collaborative sessions that involved telecommunications carriers and other interested parties in discussions of the issues. Two of the collaborative groups focused on issues related to changing local service providers and quality of service. The participants in these two groups agreed to combine the issues into one rulemaking. The collaborative participants addressed proposals for regulations and proposed solutions to the problems created by the changing telecommunications marketplace.

By Order entered on October 3, 2003 at Docket No. L-00030163, 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 a regulation to establish general rules, procedures, and standards to ensure that customers can migrate from one LSP to another without confusion, delay, or interruption of their basic telephone service.

The proposed regulation applies to all LSPs and network service providers (NSPs) operating in Pennsylvania. It does not apply to mass migrations of customers brought about by the selling or transferring of a customer base of one LSP to another. It does not apply to a LSP that has properly proceeded with the abandonment of service to its

customer base and does not apply to Digital Subscriber Line migration or to line sharing/splitting arrangements.

The proposed regulation recognizes the right of a telephone customer to migrate from one LSP to another and addresses the responsibilities of old LSPs, new LSPs and NSPs throughout the migration process. The old and new LSPs are to work together to minimize or avoid problems associated with migrating a customer's account. The Commission will establish an industry work group to develop and update migration guidelines that LSPs and NSPs are to follow to facilitate migration of a customer's local telephone service.

Prospective new LSPs will need verified authorization from a customer to obtain the customer's service information from the current LSP. The current LSP is to provide specific customer service information within a specified timeframe to the prospective new LSP when the customer has indicated a desire to switch LSPs. The prospective new LSP may not process a change in LSPs for a customer who has a local service provider freeze in effect. All LSPs are to provide various methods for customers to lift or remove local service provider freezes.

An old LSP may not refuse to port a customer's telephone number to a new LSP unless the old LSP has terminated or discontinued service for that number prior to the migration request. In addition, an old LSP must issue a final bill within 42 days to any customer who has requested to switch service providers and the old LSP must stop billing the customer for any recurring charges as of the date of the change to the new LSP.

LSPs and NSPs are to follow specific procedures when pre-existing service at a location prevents a new LSP from reusing the existing telephone facilities to serve a new customer. If the problem cannot be resolved, the new LSP is to inform the consumer of various options for obtaining service including paying for the installation of new facilities.

In the event of a migration dispute between LSPs or between a LSP and a NSP, the Commission will make available a non-adversarial, expedited dispute process within the Commission to address the dispute and suggest a resolution.

The contact persons are M. J. (Holly) Frymoyer, Bureau of Consumer Services (technical), (717) 783-1628; Lenora Best, Bureau of Consumer Services (technical), (717) 783-9090; and Louise Fink Smith, Law Bureau (legal), (717) 787-8866.

PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 2, 2003

Commissioners Present:

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

Proposed Rulemaking –
Changing Local Service Providers

L-00030163

Proposed Rulemaking

BY THE COMMISSION:

This proposed rulemaking order is intended to promulgate regulations to establish an orderly process for customer migration between local service providers (LSPs).¹ The proposed regulations, contemplating codification as a new subchapter in 52 Pa. Code Chapter 63, are attached as Annex A.

Procedural Background

Since the advent of competitive local exchange carriers (CLECs) in the Pennsylvania market, there have been numerous situations when the Commission's regulations did not address circumstances involving more than one LSP. Those regulations were developed in large measure prior to the emergence of multiple LSPs and network service providers (NSPs)² in the local service market. Recognizing the need for

¹ As used throughout this proceeding, "local service provider" or "LSP" refers to a company, such as a local exchange carrier, 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.

² As used throughout this proceeding, "network service provider" or "NSP" refers to a service provider that interacts with LSPs and provides some or all of the facilities and equipment components needed to make up a

both short-term and long-run solutions, this Commission decided to seek voluntary industry compliance with interim guidelines in the short-term and to develop revised regulations for the long-run.

At Public Meeting on December 4, 2001, we issued four tentative orders for public comment regarding interim guidelines for jurisdictional LSPs. These tentative orders were designed to establish interim guidelines for Changing LSPs (M-00011582, base folder), Quality of Service (QoS) (F0002)³, Customer Information (F0003), and Termination and Abandonment of Local Service (F0004), pending the approval of final regulations. After a public comment period, we entered final orders at those dockets on April 23, 2002, approving Interim Guidelines.

As the first step in the rulemaking process, we issued notices on December 4, 2001, announcing the commencement of four corresponding local telephone competition collaboratives to develop proposals for regulations to address the four areas of concern. Notice was sent to all telecommunications carriers and other interested entities in the Commonwealth and published in the *Pennsylvania Bulletin*. The collaborative meetings began in June 2002.⁴ Active parties included Allegiance Telecom of PA, Inc.; AT&T Communications of Pennsylvania, Inc. (AT&T); ATX - CoreComm (ATX); Choice One Communications of PA, Inc. (Choice One); CTSI/Commonwealth Telephone; Denver & Ephrata Telephone & Telegraph (D&E); MCIWorldcom Network Services, Inc. (MCI); Metropolitan Telecommunications (MetTel); North Pittsburgh Telephone Company (NPT); Sprint/United Telephone Company; Verizon Pennsylvania, Inc. (Verizon PA) and Verizon North, Inc.; XO Communications (XO); Z-tel Communications (Z-tel); the

customer's telecommunications service. A NSP may also be called an underlying carrier and is generally invisible to customers. A NSP may also operate as a LSP.

³ "QoS" as used in M-00011582, F0002, and M-00011585 refers to *how* transactions between service providers are structured rather than to measures of the quantity or character of services provided to wholesale or retail customers. A proceeding is pending at Docket No. P-00021985 to address quality of service in terms of the measures or standards of services provided to customers as mandated by *other* provisions of 52 Pa. Code Chapter 63.

⁴ During 2002, the Changing LSPs/ QoS collaboratives met on June 3, July 15, and August 8.

Pennsylvania Telephone Association (PTA); the Pennsylvania Cable Television Association (PCTA); the Public Utility Law Project (PULP); NeuStar; the Office of Consumer Advocate (OCA); and the Office of Small Business Advocate (OSBA). Staff from the Commission's Bureau of Consumer Services (BCS), Bureau of Fixed Utility Services (FUS), Law Bureau, Office of Trial Staff (OTS), Office of Administrative Law Judge (OALJ), and Office of Communications also participated.

Parties were invited to make presentations and voice concerns at a number of collaborative sessions and to submit written comments. The parties were advised that the Commission did not want the provisions of the interim guidelines to be viewed as necessary elements for the proposed rulemakings. The parties were free to use what they wanted from the interim guidelines, but they were also free to propose regulations and topics not covered by the interim guidelines. The Commission invited the parties to submit proposed regulatory language for consideration. Noting this latitude, the parties, nonetheless, preferred to use the interim guidelines as a starting point for the proposed regulations.

Most of the parties participated in more than one collaborative; many participated in all. During the multi-collaborative process, it became apparent that several of the topics under consideration could have been addressed in more than one of the collaboratives. Since there was also substantial overlap in terms of issues and proposals in the Changing LSPs collaborative (Docket No. M-00011583) and the QoS collaborative (Docket No. M-00011585), these two collaboratives were combined to result in the instant rulemaking. It was further agreed that the various customer information issues should be consolidated with and addressed by the Customer Information collaborative (Docket No. M-00011584) and resulting rulemaking. The parties also agreed that transfers of customer base issues should be consolidated with and addressed by the Abandonment collaborative (Docket No. M-00011586) and resulting rulemaking.

Discussion

It should be noted that while every position espoused by each of the parties, whether in comments or in public collaborative sessions, may not be expressly detailed herein, each submittal was duly considered in the preparation of this Order and Annex A. Any position not expressly adopted herein is rejected without prejudice to future consideration as the parties request or the Commission deems appropriate.

Subchapter M. CHANGING LOCAL SERVICE PROVIDERS

§63.191. Statement of purpose and policy.

These proposed regulations have been drafted to recognize significant changes in the provision of local telephone service and the emergence of multiple LSPs in the local service market.

§63.192. Definitions.

Positions of the Parties

(1) **Local Service:** One aspect of the definition of “*Local Service*” caused concern when it was determined that the Commission’s historical expectation is that LSPs provide two free directory assistance calls per month for residential service. One LSP noted that it provides only one free directory assistance call per month, pursuant to tariff provisions. Other LSPs had no provisions for free directory assistance calls.

(2) **Local Service Provider:** The PCTA also raised concerns that “*LSP*” might be applied to its members in an attempt to subject them to the jurisdiction of the Commission.

Disposition

(1) **Local Service:** The requirement of two free directory assistance calls per month for residential accounts is long standing in the Commonwealth. We see no basis

or justification for changing the requirement in this proceeding. Non-conforming LSPs should bring their existing tariffs and practices into conformity with these existing requirements.

(2) **Local Service Provider:** Cable companies operating as cable companies are, *per se*, not subject to Commission jurisdiction. Entities that provide local exchange service do, however, come under the Commission's jurisdiction for the provision of local exchange service. The fact that such an entity is also a cable television company, or engaged in some other non-jurisdictional enterprise, does not insulate it from Commission regulation of those activities which are jurisdictional activities.

MIGRATION

§63.201. General migration standards.

§63.202. Migration responsibilities of new LSPs (NLSPs) and NSPs.

Migration⁵ is the movement of a customer from one LSP to another LSP at the same service location, frequently reusing the same facilities as were providing the old service to provide the new service. This requires coordination between service providers to ensure that there are no unplanned or unexpected out-of-service conditions.

Positions of the Parties

The parties generally agreed that the regulations should apply to all LSPs and NSPs and to all customers,⁶ but there was also a general consensus that there are situations or services when there should be exceptions. The parties asserted that voice grade services should be the primary focus of the proposed regulations, but agreed that the proposed regulations could be applied to products and services other than basic

⁵ Relocation, on the other hand, involves a change in location and typically does not involve reuse of the same facilities. When a relocating customer is also changing LSPs, these proposed regulations may provide guidance for the coordination of the move and change in LSPs to ensure there are no unplanned or unexpected out-of-service conditions.

⁶ The parties agreed that the definition of "small business" would be addressed by the customer information collaborative at M-00011584.

service. Further agreement reflected that application of the proposed regulations to digital subscriber lines (DSL)⁷ should be deferred.

The group discussed how timeframes for migrating lines could depend on the numbers of lines, the availability of facilities, or the number of service providers involved. The necessity of tying intervals to the quantity and types of service being ordered was recognized as being a matter best left to the migration guidelines.⁸ Finally, the vast majority of the parties agreed that the holding of facilities may not be used as a collection tool or to retain a customer. PTA reserved judgment for its further consideration.

Disposition

We agree that the proposed regulations should apply to all LSPs, all NSPs, and all customers. A particular listing of products and services risks being outdated before it can be adopted. It is our intention to look to the purpose of the communication in determining the applicability of the regulations rather than to try to itemize a specific listing of included or excluded products and services. We also agree to defer application of the proposed regulations to DSL, but recognize that the parties may, however, continue to explore application of the migration guidelines to DSL.

We agree that timelines should be addressed in the migration guidelines rather than codified. We also agree that an old LSP (OLSP) may not refuse to allow reuse of otherwise-available facilities on the basis of termination or discontinuation of service.

§63.203(a). Migration guidelines.

Positions of the Parties

The parties want specificity and marketplace compliance in terms of processes and procedures for coordination of migrations and communications among themselves.

⁷ A dedicated, high-speed always-on service, frequently used in the context of “aDSL” or “xDSL.”

⁸ See discussion of migration guidelines at §63.203(a), below.

Verizon PA suggested that the Commission adapt New York's migration guidelines for operation in Pennsylvania. Some parties expressed concerns about using the New York migration guidelines as a template for Pennsylvania without certain significant revisions. The New York market is different in a number of aspects from the Pennsylvania market. For example, New York has provisions for a provider of last resort (PLR). Further, the parties noted that the regulatory framework in New York allows New York regulations to give effect to such a document setting out business rules and to obligate service providers to abide by it while allowing it to be changed over time without rulemakings.

A significant discussion arose regarding how the concept of migration guidelines could be formulated and used in Pennsylvania as a document subject to frequent changes yet still be binding on the parties and new market entrants. Noting that some processes and procedures would need continual updating or revisions, some parties suggested that items covered by regulation should not be included in the migration guidelines. In this context, they were concerned that codified processes and procedures might not be sufficiently responsive to changing conditions if a rulemaking was required each time business rule changes were contemplated.

Interested parties developed draft migration guidelines for Pennsylvania, based on the New York model. All parties had the option of participating in the process to develop the draft migration guidelines for Pennsylvania. Recognizing that working from a common format could be beneficial to service providers and customers, the parties agreed to explore the possibility of using the draft migration guidelines as a reference for formulating business rules for Pennsylvania.

The PTA is, however, not yet ready to endorse migration guidelines on behalf of the rural and small incumbent local exchange carriers (ILECs), especially those with continuing Section 251(f)(1) exemptions or Section 251(f)(2) suspensions.⁹

⁹ Of the Telecommunications Act of 1996, as codified at 47 U.S.C. §§251(f)(1) and 251(f)(2).

Disposition

The parties wish to have a set of obligatory business rules for local service transactions between service providers. We believe that establishing a relatively uniform set of procedures for local service transactions between service providers, even among competitive service providers, is appropriate.¹⁰ We shall designate that these business rules, presently and as they may be modified by consensus from time to time, shall be applicable to all local service transactions between service providers. Accordingly, the proposed regulations make provisions for the use of migration guidelines to establish the business rules governing local service transactions between the service providers.

The cooperative development of migration guidelines for Pennsylvania is already underway.¹¹ These proposed regulations are not intended to restrict service providers from agreeing to workable processes and procedures as may be reached through an open, industry-wide, consensus process under the regulatory umbrella of Commission oversight. While the migration guidelines will supplement the proposed regulations, adoption of the migration guidelines need not be delayed until this rulemaking concludes. We shall post the migration guidelines on our website to ensure that they are available to all interested entities.

The PTA raises a valid point about the applicability of the migration guidelines to some of its members. We recognize that the rural and small ILECs in the Commonwealth are not as far along in adapting to competition as are the larger ILECs. Many of the requirements of the migration guidelines will require a certain level of experience with competition which the rural and small ILECs do not yet have. Under the

¹⁰ There already exists a pattern for such cooperative "rules of the road," *e.g.*, as in terms of dialing parity.

¹¹ The Law Bureau will provide the Commission oversight for the migration guidelines, which the parties have requested.

auspices of an industry work group,¹² the migration guidelines can be tailored for the rural and small ILECs as competition comes into their service territories.

§63.203(b). & §63.203(c). Industry work group.

Positions of the Parties

The parties requested a mechanism to ensure that service providers would be able to participate in updates and revisions to the migration guidelines. The parties felt that there should also be a process for having the Commission approve or adopt the consensus provisions and resolve matters where there was no consensus. Commission approval would ensure that all service providers would be motivated to operate pursuant to any updates and revisions.

Disposition

We agree that service providers with a desire to operate in the local market and other interested entities should be given public notice and an opportunity to participate in a Commission-sponsored industry work group convened to finalize Pennsylvania migration guidelines and keep them up-to-date.¹³ To the extent that the group agrees upon processes and procedures (and subsequent revisions thereto) and they are adopted by the Commission, the processes and procedures (and revisions) will become part of the Pennsylvania migration guidelines. The Pennsylvania migration guidelines, initially and as they are adjusted from time to time, should be identified and adopted by Secretarial Letter or Commission order.

¹² See discussion of industry work group §63.203(b) & (c), below.

¹³ We shall issue a Secretarial Letter to advise the parties that the Law Bureau will provide the Commission oversight for the migration guidelines and industry work group. Many of the parties in the collaboratives also participate in the Pennsylvania Carrier Work Group (PA CWG), which with its subgroups, is an established, effective, non-adversarial forum for operational discussions between service providers, statutory advocates and staff. We suggest that the industry work group operate as a subgroup of the PA CWG. To date, the PA CWG has focused primarily on implementing the PA Carrier-to-Carrier Guidelines (C2C Guidelines) and the PA Performance Assurance Plan (PA PAP) adopted in *PMO II*, Docket No. M-0011468 to address the quality of Verizon PA's wholesale service (including resale) to CLECs. While the primary industry input to the PA CWG is presently from Verizon PA and CLECs operating within Verizon PA's service territory, participation is not limited to those entities, and topics are not be limited to Verizon PA/CLEC matters.

§63.204. Standards for the exchange of customer service information.

Positions of the Parties

The parties who are also active in New York proposed that the practices used there be adapted to Pennsylvania. This raised concerns about recognizing the privacy of customer records and the allocation of burdens for assuring a customer had given a prospective new LSP (NLSP) authority to access the customer's service records.

Disposition

This matter was not addressed by the Interim Guidelines, but the collaborative spent a considerable amount of time focused on the various alternatives that could have been advanced to the proposed regulations. Ultimately, the consensus was reached to recognize the impracticalities and burdens on the OLSP of requiring an OLSP to see proof of a prospective NLSP's right to access a customer's service records. The proposed regulations establish that a prospective NLSP is not to request access to a customer's service records from another LSP without verified authority to do so. If a prospective NLSP violates this provision, the customer may bring a complaint to the Commission.

§63.205. Removal or lifting of LSPFs.

A local service provider freeze (LSPF) is a designation elected by a customer that restricts a third party's ability to change the customer's choice of preferred LSP. A customer with a LSPF must take steps to lift the LSPF by advising the customer's preferred LSP of the customer's intention to change LSPs. The Commission, in an Order entered on June 20, 2002, at Docket No. M-00021592, directed Verizon PA to address the possibility of implementing a web page as a freeze-lifting option. Further, Verizon PA was to address this issue as part of the Changing LSPs collaborative.

Positions of the Parties

Verizon PA presented information on its web-based option for lifting LSPFs and committed to a Fall 2002 launch. According to Verizon PA, the webpage would be available to Verizon PA customers 24 hours a day/7days a week using a secure access process. Flow-through requests to lift LSPFs will be effective in 24 hours or less. Manual lifting of a LSPF will require 48 hours and will be designed as next day manual fallout. Customers will not be able to lift a LSPF on resold local services (or to initiate a LSPF) using the webpage. Verizon PA wishes to prohibit third parties from using the webpage to lift a customer's LSPF. Verizon PA further argued that any requirements imposed on it for providing LSPF-lifting mechanisms should also be imposed on other LSPs. Verizon PA noted that it does not proactively market LSPFs and estimates that it has approximately 20,000 customers with LSPFs.

Other parties questioned why someone other than the customer should be prohibited from using the Verizon PA website, with the customer's permission, to lift a LSPF. The OCA and other parties believe that Verizon PA should extend its business hours for customers to lift LSPFs. One LSP favored use of a ".wav" file¹⁴ to document a customer request to lift a LSPF.

MCI, MetTel and AT&T do not offer LSPFs. Other companies were reluctant to divulge their marketing practices as to LSPFs. Some parties believe that the Commission should continue to allow service providers to offer LSPFs. Other parties urged that, until all of a LSP's customers had access to 24/7 freeze lifting mechanisms, the LSP should be precluded from offering LSPFs. Some parties felt that the best prevention of slamming would be certain and swift penalties.

¹⁴ A ".wav" file uses a format developed by Microsoft which allows the storage of content with no pre-processing other than formatting the content. For example, a .wav file may be used to record a conversation containing a third-party verification of a customer's request to have a LSPF lifted. The .wav file may be emailed, stored and played audibly.

Another issue was the identification of the presence of a LSPF in the customer service record (CSR). The LSPs who are CLECs wanted LSPF information to be clearly identified as such in customer records for use in discussions with prospective customers.

Disposition

Verizon PA initiated its website freeze lifting mechanism in December 2002. Verizon PA also agreed to identify the LSPF information on the CSRs. We believe that the website, which provides “24/7” access to Verizon PA customers, and their designees, to lift LSPFs is sufficient, in conjunction with normal business office operation. If tighter intervals, monitoring, or further procedures become an issue for service providers working with Verizon PA, the PA CWG is an available forum for further discussions.¹⁵

LSPs offering LSPFs shall provide appropriate customer access, as may be defined by this Commission or the Federal Communications Commission (FCC),¹⁶ to their customers for lifting LSPFs. Disputes between LSPs as to the appropriateness of customer access to the OLSP for lifting LSPFs or the speed with which the OLSP lifts the freeze may be referred to the Commission. If a LSP chooses to offer LSPFs, its CSRs will have to clearly divulge the presence of LSPFs.

We recognize the seeming validity of Verizon PA’s argument that freeze lifting mechanisms should be reciprocal, but with so few other LSPs offering LSPFs, we do not perceive a need to adopt stringent rules at this time for LSPs not offering freezes.

As to who may lift a LSPF, we note that migration of “frozen” service requires affirmative action by the customer to lift the LSPF. It is clear under the FCC regulations

¹⁵ We shall issue a Secretarial Letter to close the proceeding at *PUC v. Verizon PA, Inc.*, Docket No. M-00021592.

¹⁶ The FCC regulations are at 47 CFR §§64.1100 through 64.1195, changing long distance carriers. 47 CFR §64.1190(b) extends the FCC requirements to LSPs.

that a customer can delegate authority to a third party to place and lift freezes on service.¹⁷ The controversy is whether a customer could make such a delegation to a prospective NLSP. At this point, we believe that status as a prospective NLSP should not preclude an entity from exercising an explicit delegation of freeze-lifting authority from its prospective customers. Under appropriately documented circumstances, a customer should be able to choose to delegate such authority to a prospective NLSP. Such a delegation must expressly state that it is a delegation of authority to lift a LSPF. Documentation of such authority will, however, be extremely important. The question of whether a prospective NLSP actually had the customer's authority is a matter that should not trouble the OLSP. It will be the prospective NLSP who is at risk if it cannot prove the existence of authority.

We agree that the best deterrent to slamming is sure and swift recourse against the slamming service provider. Slamming is a serious violation of our statute and regulations, as well as of federal regulations. Violations or fraud in freeze-lifting matters will be considered even more egregious than other slamming violations. A LSP that violates freeze-lifting procedures or slams frozen service will be penalized. Penalties up to and including one thousand dollars per day may be levied. (66 Pa. C.S. §3301).

§63.206. Porting Telephone Numbers.¹⁸

Positions of the Parties

Based on the FCC rules regarding porting, most of the parties agreed that customers could port their number up until the time of termination or discontinuation of service. The PTA disagreed with this position.

¹⁷ 47 CFR §64.1100(h) defines "subscriber" to include "any person contractually or otherwise lawfully authorized to represent" the party "responsible for payment of the telephone bill." *See also* 47 CFR §64.1190(e), procedures for lifting preferred carrier freezes.

¹⁸ The participants agreed that a customer has the right to know about number portability. Getting this information to a customer is an aspect of consumer education and information, which has been consolidated in the Customer Information collaborative (M-00011584) and subsequent rulemaking.

Disposition

The proposed regulations clarify and document the long-standing position of this Commission that termination of service by an OLSP or prior discontinuation of service by a customer are the only reasons for the OLSP to refuse to allow number porting upon an otherwise-appropriate request to do so. The telephone number may not be held hostage to retain a customer or because of a dispute between a customer and the OLSP.

§63.207. Discontinuance of Billing.**Positions of the Parties**

This was not an area of significant disagreement among the parties. All recognized the need to avoid overlapping or incorrect billing.

Disposition

The proposed regulations would establish a 42-day outside limit for the OLSP to render a final bill to a customer who has migrated service to another LSP.

§63.208. Carrier-to-carrier guidelines and performance assurance plans.

As noted in footnote 13 above, Verizon PA is subject to the PA Guidelines (containing metrics) and the PA PAP (providing for remedies). To the extent that the metrics and remedies call for a more explicit or a higher level of performance for Verizon PA's wholesale and resale performance, they shall establish Verizon PA's minimum obligations in the event of a conflict with the proposed regulations or the migration guidelines. Presently, Verizon PA is the only service provider with specific metrics and remedies.

INTERFERING STATIONS

§63.301. - §63.304. Duties of Service Providers.

Positions of the Parties

The issue of interfering stations received considerable attention during the collaborative process. An interfering station condition is the presence of pre-existing service that prevents the reuse of existing telephone facilities by a NLSP to serve a new customer at a location where the former customer has not notified the OLSP to disconnect the telephone service. Participating service providers acknowledged that the Commission's experiences in this area are reflective of day-to-day problems encountered by LSPs.

Verizon PA and MCI presented information on the procedure they use to deal with an interfering station and the results of a trial run in Pennsylvania.¹⁹ Verizon PA and MCI stated that the procedure worked in the instances when it was applied. Their procedure requires NLSPs to contact landlords, do property deed searches, and contact taxing authorities in an attempt to verify the standing of an applicant to have service connected at a location in question if there is existing service in place.

The majority of other parties did not want to require the prospective NLSP to make such contacts or perform such searches. A majority of the other LSPs characterized the Verizon PA-MCI process as too burdensome on the prospective NLSP and as going beyond a utility's traditional role in the application process. Consumer representatives preferred to retain traditional limits on utility requirements in processing applications. Some parties opined that contacting landlords and searching deed records could present confidentiality issues or expose the prospective NLSPs to liability for mistakes.

¹⁹ MCI was the only LSP to agree to participate in the trial.

Disposition

The purpose of this aspect of the proposed regulations is to provide an orderly approach to resolving the dilemma of interfering stations. We have attempted to apportion the responsibilities among the OLSPs, the NLSPs, the NSPs, and the applicants without placing any undue hardships or risks on any of the entities involved.

DISPUTES

§63.401. Consumer complaint procedures.

Positions of the Parties

The parties were somewhat split on this subject. Some wanted extensive customer protections while others believed that a dissatisfied customer's best recourse was the ability to switch service providers in the event of a dispute.

Disposition

We did not specifically address residential and non-residential disputes in this collaborative. Non-residential disputes were discussed extensively in the Customer Information collaborative.²⁰ The customer complaint issues addressed herein were raised in part to ensure that procedures for resolving complaints were delineated. The proposed regulations strike a balance between customer protection and customer choice in a competitive market.

²⁰ The parties agreed that it would be beneficial to have an informal, non-adversarial dispute resolution process for resolving disputes between non-residential customers and service providers that would not require legal representation. To this end, a mini-collaborative was formed as an adjunct to this collaborative and to the customer information collaborative involving interested LSPs, the OSBA, the OALJ, the Law Bureau, the BCS, and the Office of Communications. After exploring numerous options, the mini-collaborative concluded that the existing mediation process in the OALJ will achieve many of the objectives. We see the potential value to customers, service providers, and this Commission of an informal, non-adversarial dispute resolution process for business customers. We also believe that our existing mediation process in the OALJ can serve this function.

§63.402. Expedited dispute process.

Positions of the Parties

The parties agreed that there should be a dispute resolution process for disputes between service providers that would be non-adversarial and would not require legal representation. It was suggested that the Commission pursue a time-sensitive process similar to one operating in New York, where a third-party (*e.g.*, the New York Public Service Commission) attempts to resolve issues between the parties.

Disposition

We shall establish an expedited dispute process and designate contacts within the Commission to assist the service providers in determining a workable solution to problems as they may arise. This process should result in an informal staff review of the situation within two (2) business days of the submission of the problem, contact with the other service providers involved in the controversy, and a suggested, non-binding resolution of the situation consistent with 52 Pa. Code §1.96. This process will not be a prerequisite to access to the Commission's alternate or formal dispute resolution processes.

Other Areas of Discussion

These matters were raised in the collaboratives but were not included in the proposed rulemaking for the following reasons.

Review of Chapter 63: The OCA sponsored a presentation by Rowland Curry to a combined session of all collaboratives calling for updating retail service quality regulations. Mr. Curry noted problems with the current service quality regulations and made recommendations for correcting these problems. Most of his recommendations addressed the development of new standards to measure the quality of

telecommunications service provided to customers rather than the procedures for coordination between service providers. After discussion, the parties agreed that the OCA issues went beyond the intent of this rulemaking. In response to this consensus, the OCA filed a petition for review of Chapter 63, which has been docketed at *Petition for Review of Chapter 63*, Docket No. P-00021985.

Repair: This matter was addressed in the Interim Guidelines but is not included in the proposed regulations because there appeared to be no need for regulation to address the issue. The parties agreed that a LSP should not shift the burden of dealing with NSPs to the customer. Customers should not be burdened with solving the maintenance and repair problems after they have notified their LSPs about a problem beyond the NID. We agree. If further clarification of this matter is required, we shall address it when the matter arises.

Line & Circuit Information: It was suggested that customers should have access to their line and circuit information. After discussion, the parties agreed that providing customers with line and circuit identification information would be impractical, burdensome, and confusing and could result in unintended consequences if future migrations are predicated upon customers being able to reproduce the information. The parties agreed that establishing record retention requirements should be part of the business rules.

We agree that there should be certain standardized records maintained to facilitate an orderly migration or restoral of service. However, codifying a particular technology for such retention may have a counter-productive effect in a world of rapidly changing technology. Accordingly, each LSP and NSP should maintain, in an exchangeable format, accurate and reliable line and circuit identification information. The details of such information shall be addressed in the migration guidelines.

Slamming: The OCA and the Public Utility Law Project (PULP) believe that the Commission should elect to administer the FCC's anti-slamming rules. The OCA also suggested that the proposed regulations recognize the FCC's anti-slamming rules and identify specific provisions within the FCC rules for Commission enforcement.

We have previously decided that it is neither necessary nor practical to elect to administer the FCC's anti-slamming rules. Accordingly, we shall not assume primacy over the FCC's rules. Further, we see no need to identify specific regulations within the FCC rules for Commission enforcement. As we stated in our March 23, 2001 Secretarial Letter, we expect all LSPs to adhere to the FCC's rules, and we intend to enforce our regulations as they pertain to local service. This statement of expectation and intention does not require express incorporation in the proposed regulations; it is the underpinning of an orderly market. LSPs are expected to adhere to the FCC's anti-slamming rules²¹ and the Commission's regulations and requirements²².

Differences between Migration of Service and Termination and Discontinuation of Service: Recently, a CLEC in its capacity as an OLSP requested Commission approval of a tariff establishing charges to NLSPs for migration of customer service. In our order suspending the tariff, we directed the Changing LSPs collaborative to address whether there were significant differences between migrations of service and terminations or discontinuations of service.²³ The collaborative noted that while migrations might require more coordination and higher priority work²⁴ than pure terminations or discontinuations, they had no proposed regulations on this issue.

²¹ See generally 47 CFR §§64.1100–64.1195.

²² See generally 52 Pa. Code Chapter 64 and Secretarial Letter of March 23, 2001, which have been applied in practice to local service for residential and business customers.

²³ See *Choice One Communications of Pennsylvania, Inc.*, Docket No. R-00027409 (June 27, 2002). The CLEC withdrew its filing on August 7, 2002.

²⁴ For example, migrations may involve more coordination among service providers, immediate reuse of facilities, number porting and hot cuts, which are generally not required in pure disconnects.

Conclusion

Accordingly, pursuant to sections 501 and 1501 of the Public Utility Code, 66 PA. C.S. §§501 and 1501; to 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, we are considering adoption of the proposed regulations regarding migration of telecommunications service and interfering stations, as set forth in Annex A: **THEREFORE**,

IT IS ORDERED:

1. That this docket be opened to consider the proposed regulations set forth in Annex A.
2. That the Secretary shall submit this Order and Annex A to the Office of Attorney General, for review as to form and legality, and to the Governor's Budget Office, for review of fiscal impact.
3. That the Secretary shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

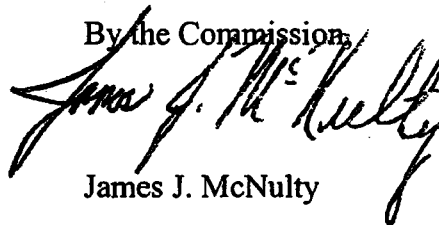
5. That an original and 15 copies of any comments referencing the docket number of the proposed regulations be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. In addition, one copy in electronic format (Microsoft Word® 2002 or readable equivalent) on diskette shall be provided to the Secretary and a second copy on diskette shall be provided to the attention of Louise Fink Smith, Esq., at the same mailing address.

6. That the contact persons for this rulemaking are M. J. (Holly) Frymoyer, Bureau of Consumer Services, 717-783-1628 (technical), and Louise Fink Smith, Assistant Counsel, Law Bureau, 717-787-8866 (legal). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, 717-772-4597.

7. That a copy of this Order and Annex A shall be served upon the Pennsylvania Telephone Association, the Telecommunications Resellers Association, the Pennsylvania Cable Television Association, the Public Utility Law Project, all jurisdictional telecommunications utilities in the Commonwealth, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of the Small Business Advocate.

8. That the Changing Local Service Providers collaborative at Docket No. M-00011583 and the Quality of Service collaborative at Docket No. M-00011585 shall both be marked closed with the reference that the rulemaking for both collaboratives has been consolidated at this docket.

By the Commission,

A handwritten signature in black ink, appearing to read "James J. McNulty", written over the typed name below.

James J. McNulty

Seal

Date adopted: October 2, 2003

Date entered: **OCT 03 2003**

ANNEX A

TITLE 52. PUBLIC UTILITIES
PART 1. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 63. TELEPHONE SERVICE
Subchapter M. CHANGING LOCAL SERVICE PROVIDERS

§63.191. Statement of purpose and policy.

(a) The purpose of this subchapter is to establish general rules, procedures, and standards governing the migration of customers between local service providers (LSPs), including porting telephone numbers, resolving interfering stations, exchanging customer records and the transition of billing accounts. The primary objective of this subchapter is to establish standards to ensure that customers can migrate from one LSP to another LSP without confusion, delay, or interruption to their basic service.

(b) This subchapter applies to:

(1) LSPs and network service providers (NSPs) for migration of customers between LSPs.

(2) LSPs and NSPs when interfering station conditions are encountered.

(c) This subchapter does not apply to:

(1) Mass migrations of customers brought about by the selling or transferring of a customer base of one LSP to another.

(2) A LSP that has properly proceeded with the abandonment of service to its customer base.

(3) Digital Subscriber Line migration.

(4) Line sharing/splitting arrangements.

(d) To the extent that other regulations do not address circumstances as described in subsection (c), this subchapter may provide guidance for such transactions.

§63.192. Definitions.

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

Applicant – A person who applies for telephone service, other than a transfer of service from one dwelling to another within the service area of the LSP or a reinstatement of service following a discontinuation or termination. The term does not apply to a customer who is subject to special contractual arrangements and has otherwise agreed to different conditions of service that do not contradict Commission rules or regulations.

Commission review – Includes informal or formal review, evaluation or adjudication, staff-level review, or alternate dispute resolution.

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

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

Digital subscriber line – DSL – A dedicated, high-speed, always-on service, frequently used in the context of “aDSL” or “xDSL.”

Discontinuation of service – The temporary or permanent cessation of service upon the request of a customer.

Freeze – A designation elected by a customer that restricts a third party’s ability to change a customer’s choice of preferred service providers.

Interfering station – Pre-existing service that prevents the reuse of existing telephone facilities by a new LSP to serve a new customer at a location where the prior customer did not notify the previous LSP to disconnect the telephone service. The previous LSP and the new LSP may be the same company.

Letter of authorization – LOA – Sometimes used in a general sense as the data or record indicating that the customer has authorized the new LSP to act as the customer’s agent. Also used to indicate a specific document signed by a customer granting a new LSP the authority to act as the customer’s agent.

Line sharing – The sharing of facilities by a LSP and a NSP in the provision of voice and data services to a given location over the same facilities.

Line splitting – The sharing of facilities by two LSPs, where neither is the NSP, in the provision of voice and data services to a given location over the same facilities.

Local service – Telecommunications service within a customer’s local calling area. Local service includes the customer’s local calling plan, dial tone line, touch-tone, and directory assistance calls allowed without additional charge. It 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 confirmation – LSC – Documentation issued by the NSP to inform the LSP of the confirmed scheduled completion date for work affecting specific telecommunications service activities such as unbundled loop connections.

Local service provider – LSP – 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. NLSP indicates “new” LSP, and OLSP indicates “old” LSP. A LSP may also provide other telecommunications services, as well as non-jurisdictional services.

Local service provider freeze – LSPF – A designation elected by a customer that restricts a third party’s ability to change a customer’s choice of preferred LSP.

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

Local service request – LSR – Document issued by LSPs to NSPs to arrange for installation of, change in, or disconnection of services. The LSR is sent by a LSP to a NSP, for example, to request the activation of number portability, the installation of an unbundled loop facility, or the disconnection of loop facilities and migration of a number. The NSP uses the LSR to create the internal directives, for example, a service order, to cause the work to be performed as ordered.

LSP-to-LSP End User Migration Guidelines – Migration Guidelines – A documentation of processes and procedures that establish general business rules, privacy protocols and general procedures governing the migration of end users (customers)

between LSPs. The Migration Guidelines were developed by consensus among telecommunications industry participants and associations, statutory advocates and the Commission. The Guidelines will be amended from time to time as industry practices change.

Migration – The movement of a customer from one LSP to another LSP at the same service location.

Network service provider – NSP – A carrier that interacts with LSPs and provides the facilities and equipment components needed to make up a customer’s telecommunications service. A network service provider may also be referred to as an underlying carrier. A network service provider may also be a LSP.

Preferred service provider – The company chosen by a customer to provide particular telecommunications services. A preferred service provider is sometimes referred to as a “preferred carrier.”

Porting – The process that allows customers to keep their telephone numbers when changing LSPs.

Service Provider – A generic term to include LSPs and NSPs.

Termination of service – Permanent cessation of service after a suspension without the consent of the customer.

MIGRATION

§63.201. General migration standards.

(a) A customer has the right to migrate from one LSP to another LSP.

(b) The NLSP shall communicate and explain to the customer the migration process and the migration timetable for various services, when applicable.

(c) The OLSP has the right to protect itself from potential loss as permissible by Commission regulations and by its lawful tariff in instances where Commission regulations do not address a situation.

(d) The OLSP and the NLSP shall work together in good faith to minimize or avoid problems associated with migrating the customer's account.

(e) The OLSP may not prohibit the NLSP from reusing facilities that are no longer needed by the OLSP to provide service to the migrating customer or other customer. If the OLSP has a conflict over the use of the facilities, it shall be resolved using the interfering station procedure.

(f) Each LSP shall ensure that its 9-1-1 and Directory Listings/White Pages databases are accurate, accessible and updated as appropriate.

(g) Each LSP and NSP shall maintain a company contact and escalation list for use in resolving migration problems and interfering station conditions. LSPs and NSPs shall exchange their lists with each other and provide copies to the Commission. The lists shall be updated as necessary to ensure that the information is current and accurate.

§63.202. Migration responsibilities of NLSPs and NSPs.

(a) The prospective NLSP shall communicate and explain the migration process and the migration timetable for various services, when applicable, to the customer.

(b) The prospective NLSP shall be responsible for coordinating the migration of the customer's local service with its NSP, if any, and with the OLSP.

(c) The prospective NLSP shall provide the LSR information to affected service providers, as applicable.

(d) The NSP shall issue a LSC or rejection within 5 working days from the date it receives a valid LSR from the prospective NLSP.

(e) The NLSP shall be responsible for coordinating a customer's service restoration that may become necessary due to problems with the migration.

§63.203. Migration guidelines and industry work group.

(a) In addition to compliance with this subchapter, LSPs and NSPs shall follow the Migration Guidelines developed and updated by a telecommunications industry work group as a baseline set of principles, responsibilities and ground rules to facilitate migration of customer service.

(b) The Commission shall establish an industry work group to be responsible for creating and updating the Migration Guidelines and addressing issues associated with LSP migrations as industry practices change.

(c) To the extent that the industry work group cannot agree on the details of the Migration Guidelines, the industry work group may request Commission review.

§63.204. Standards for the exchange of customer service information.

(a) Prospective NLSPs may not acquire CSRs without a verified customer authorization. The prospective NLSP shall use one of the following verification procedures and shall retain the authorization and verification for 2 years:

(1) A LOA from the customer of record to review the customer's account.

(2) A third-party verification of the customer's consent.

(3) A recording verifying permission from the customer.

(4) Oral authorization documented with appropriate retained documentation.

(5) Additional procedures as may be authorized by the FCC or this Commission.

(b) The prospective NLSP shall indicate to the customer's current LSP that it has a verified authorization for access to the CSR. The NLSP is not required to provide a copy of the authorization or verification to the current LSP.

(c) A current LSP may not contact a customer to retain or keep that customer as a result of a request from another LSP for the customer's CSR.

(d) When a prospective NLSP has verified authorization from the customer to switch the customer's LSP, the prospective NLSP shall request the customer's network serving arrangements and a CSR from the OLSP. The prospective NLSP is not required to provide proof to the OLSP of the authorization or verification at the time of migration. The prospective NLSP shall use one of the following types of verification and shall retain the authorization and verification for 2 years:

- (1) An LOA from the customer to switch LSPs.
- (2) A third-party verification of the customer's request.
- (3) An electronic verification of the customer's request to switch LSPs that contains unique identifying information.
- (4) Additional procedures as may be authorized by the FCC or this Commission.

(e) A customer's current LSP shall provide the following information when the CSR is requested to migrate a customer's service:

- (1) Billing telephone number and working telephone number.
- (2) Complete customer billing name and address.
- (3) Complete service address, including floor, suite unit and any other unique identifying information.
- (4) 9-1-1/E-9-1-1 information.
- (5) Directory listing information, including address, listing type and all other pertinent information.
- (6) Preferred service providers for interLATA, intraLATA, local basic service and other services.
- (7) Provider freeze status by interLATA toll, intraLATA toll, local basic service and other services.
- (8) Listing of all vertical services (for example, custom calling, hunting, and the like) to which the customer currently subscribes.

(9) Listing of all optional services (for example, 900 blocking, toll blocking, remote call forwarding, off-premise extensions, and the like) to which the customer currently subscribes.

(10) Tracking number or transaction number (for example, purchase order number).

(11) Service configuration information (for example, resale, UNE-P, unbundled loop).

(12) Identification of NSPs.

(13) Identification of any line sharing/line splitting on the migrating customer's line.

(f) Timetable for providing CSRs, minimum requirements:

(1) As of _____, (Editor's Note: The blank refers to the date of publication of final form regulation), OLSPs shall provide 80% of requested CSRs within 48 hours.

(2) After _____, (Editor's Note: The blank refers to the date 6 months after date of publication of final form regulation), OLSPs shall provide 80% of requested CSRs within 24 hours.

(3) After _____, (Editor's Note: The blank refers to the date 1 year after date of publication of final form regulation), OLSPs shall provide 80% of requested CSRs the same day if the request is made by noon of that day, or by noon the next day if requested after noon.

§63.205. Removal or lifting of LSPFs.

(a) The prospective NLSP may not process a change in LSP if the customer does not remove an existing LSPF at the time of application. The prospective NLSP shall inform the applicant of the following at the time of application:

(1) If the applicant has a LSPF, the LSPF must be removed before the OLSP may process the prospective NLSP's request for a change of the customer's LSP.

(2) The applicant or appropriate agent shall contact the OLSP to have a LSPF lifted before an order to migrate the service may be processed.

(3) A prospective NLSP may not authorize the removal of an applicant's LSPF.

(b) When the prospective NLSP is also seeking to provide other services, (for example, inter-exchange, intraLATA, interLATA, interstate, or international toll) covered by freezes, authorizations to lift the freezes may be transmitted in one process, if the applicant expressly requests that each freeze be lifted. The prospective NLSP shall inform the applicant of the distinctions among the services and of the requirement that service may not be migrated unless the customer expressly lifts each freeze.

(c) LSPs shall provide various methods to customers for lifting LSPFs, as required by the Commission or the FCC.

§63.206. Porting telephone numbers.

An OLSP may not refuse an otherwise valid request to port a number to a NLSP unless the number is for service that has been terminated or discontinued pursuant to Chapter 64 for residential customers or consistent with the LSP's lawful tariff for other customer classes.

§63.207. Discontinuance of billing.

- (a) LSPs shall minimize overlap in billing during the migration between LSPs.
- (b) Upon notification from the prospective NLSP that the customer has requested to migrate service to the prospective NLSP, the customer's OLSP shall, within 42 days, issue the customer a final bill for services rendered.
- (c) Once the customer has paid the charges on the final bill, the OLSP shall immediately remove the customer from its billing system and discontinue billing.
- (d) The OLSP shall stop billing the customer for any recurring charges as of the date of the change to the NLSP.
- (e) This subchapter does not affect a customer's debtor/consumer rights or a LSP's creditor's remedies, as may be otherwise permitted by law.

§63.208. Carrier-to-carrier guidelines and performance assurance plans.

For a LSP or NSP subject to state or federal carrier-to-carrier guidelines or performance assurance plans, if the carrier-to-carrier guidelines or performance assurance

plan provide a more explicit or a narrower window for performance, the carrier-to-carrier guidelines or performance assurance plan shall control for that LSP or NSP.

INTERFERING STATIONS

§63.301. Duties of OLSPs and NSPs when an interfering station condition is identified.

(a) The OLSP or NSP shall inform the prospective NLSP of an interfering station condition by the end of the next working day after the OLSP or NSP identifies that an interfering station condition exists.

(b) The OLSP or NSP shall review the LSR information with the prospective NLSP to determine possible errors:

(1) Upon confirmation that the LSR information is correct, the OLSP or NSP shall inform the prospective NLSP that the LSR is cancelled because there is pre-existing service at the service location.

(2) If the LSR information is incorrect, the OLSP or NSP shall correct the information and continue with the installation.

§63.302. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.

(a) The prospective NLSP shall notify the applicant that there is pre-existing service at the service location within 1 business day of the date it receives notice of the interfering station condition. The prospective NLSP shall contact the applicant by telephone, email, first class mail or in person to request that the applicant verify the address at the service location.

(b) If the applicant fails to respond to the notice within 5 days, the prospective NLSP may cancel the application.

(c) If the applicant informs the prospective NLSP that the address is incorrect, the prospective NLSP shall correct the information on the application and submit a new LSR.

(d) The prospective NLSP shall provide the new service installation date.

(e) If the applicant verifies that the address is correct, the prospective NLSP shall explain that new service is not able to be installed using the same facilities due to pre-existing service at the address and request the applicant to provide proof of ownership or right of occupancy.

(f) If the applicant provides proof of ownership or right of occupancy, the prospective NLSP shall advise the applicant of the following options. The applicant may:

(1) Authorize the prospective NLSP to contact the OLSP to confirm abandoned service.

(2) Attempt to resolve the interfering station condition with the customer of record.

(3) Arrange for the installation of new facilities.

(i) If inside wiring is required, the applicant shall provide proof of installation before the prospective NLSP is able to proceed with the LSR.

(ii) If new facilities (for example, outside wiring or a network interface device (NID) are required, the prospective NLSP shall advise the

applicant that the applicant shall pay for the installation of the new facilities pursuant to lawful tariff rates and that the installation may take longer than five days.

(4) Cancel the application.

§63.303. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing service is provided by the OLSP and the applicant has shown proof of ownership or right of occupancy.

(a) Within 3 business days of such notification, the OLSP shall issue a termination notice to the customer of record in the OLSP's billing system. The notice of termination shall state the reason for termination, date of termination and what the customer of record is required to do to prevent termination. The termination date shall be 7 days from the date of mailing of the notice by first class mail.

(b) If there is no contact from the customer of record, the OLSP shall remove the customer from billing and take appropriate action to release the facilities to the prospective NLSP.

(c) If the OLSP is contacted by the customer of record who does not agree to the termination of service, the OLSP shall notify the prospective NLSP of the inability of the OLSP to release the facilities to be used by the prospective NLSP.

§63.304. Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.

(a) The prospective NLSP shall contact the applicant and explain that the pre-existing customer will not agree to the termination of service and that the prospective NLSP is not able to use the existing facilities.

(b) The prospective NLSP shall inform the applicant of the following options:

(1) The applicant may pursue any disputes between co-tenants, owners and occupants before an appropriate forum for such remedy. The prospective NLSP shall inform the applicant that neither the prospective NLSP, the OLSP nor the Commission is responsible for or available to resolve private disputes between customers and applicants.

(2) If inside wiring is required, the applicant shall provide proof of installation before the prospective NLSP is able to proceed with the LSR.

(3) If new facilities (for example, outside wiring or a NID) are required, the prospective NLSP shall advise the applicant that the applicant shall pay for the installation of the new facilities pursuant to lawful tariff rates and that the installation may take longer than 5 days.

DISPUTES

§63.401. Consumer complaint procedures.

(a) Records of complaints. A service provider covered by or operating pursuant to these regulations shall preserve written or recorded complaints showing the name and address of the subscriber or complainant, the date and character of the complaint, the

action taken and the date of final disposition. Records of complaints for residential customers shall be kept in accordance with 52 Pa. Code §64.192 (relating to record maintenance).

(b) Commission review. If a customer or applicant expresses dissatisfaction with the service provider's decision or explanation, the service provider shall inform the customer or applicant of the right to have the dispute considered and reviewed by the Commission and shall provide the name, address and telephone number of the appropriate Commission Bureau. This subsection shall be read in conjunction with §64.141- §64.182 for residential service.

(c) Investigations. Upon receiving a complaint covered by this subchapter from an applicant, customer or third party, the Commission will transmit a summary of the complaint to the service provider. When complaints are referred to the service provider through the Commission, the service provider and the Commission shall work to process and resolve the complaints. A service provider shall make a full and prompt investigation of complaints made to it through the Commission by the applicant, customer or third party.

(d) Resolutions. If a complaint is resolved between the service provider and the complaining party, the service provider shall advise the Commission and submit a copy of the service order or other documentation of satisfaction which identifies the action taken by the service provider to resolve the complaint. The service provider may not consider the complaint closed until the Commission advises the service provider that the Commission has closed the complaint.

§63.402. Expedited dispute process.

(a) The Commission will provide a non-adversarial, expedited dispute process to address migration disputes. The Commission will designate contact persons through which LSPs and NSPs may request expedited resolution for alleged problems between service providers or compliance with the Commission's regulations and the Migration Guidelines pertaining to the migration of customer service.

(b) A LSP or NSP that has a dispute under this subchapter with another LSP which cannot be resolved between the entities may refer the dispute to the expedited dispute process for a suggested resolution in a non-adversarial context.

(c) The Commission designee will review the dispute within two working days of the date the dispute was received, attempt to contact the involved entities, and suggest a non-binding resolution of the dispute, consistent with 52 Pa. Code §1.96.

(d) If the expedited dispute process fails to resolve the dispute, the parties may resort to the Commission's alternate dispute or formal dispute resolution processes.

(e) The expedited dispute process is neither mandatory nor a prerequisite to the Commission's alternate or formal dispute resolution processes.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA

TERRANCE J. FITZPATRICK
CHAIRMAN

March 18, 2004

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

Re: L-00030163/57-230
Proposed Rulemaking
Changing Local Service Providers
52 Pa. Code Chapter 63

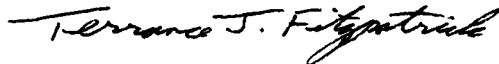
Dear Chairman McGinley:

Enclosed please find one (1) copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to establish an orderly process for customer migration between local service providers within the telecommunications industry. The contact persons are Louise Fink Smith, Law Bureau, 787-8866 and M. J. (Holly) Frymoyer, Bureau of Consumer Services, 783-1628.

The proposal has been deposited for publication with the
Legislative Reference Bureau.

Very truly yours,



Terrance J. Fitzpatrick
Chairman

Enclosures

pc: 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
Assistant Counsel Fink Smith
Ms. Frymoyer
Regulatory Coordinator DelBiondo
Donna Cooper, Governor's Policy Office

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00030163/57-230

Subject: Changing Local Service Providers

Pennsylvania Public Utility Commission

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>3/18/04</u>	<u>Luide C. Grabowski</u>	<u>HOUSE COMMITTEE</u> Consumer Affairs
<u>3/18/04</u>	<u>Blay Walmer</u>	<u>SENATE COMMITTEE</u> Consumer Protection and Professional Licensure
<u>3/18/04</u>	<u>E. Page</u>	Independent Regulatory Review Commission
<u> </u>	<u> </u>	Attorney General
<u> </u>	<u> </u>	Legislative Reference Bureau

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MARCH 18 2004
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