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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 #57-230 (IRRC #2394)  
Pennsylvania Public Utility Commission  
Changing Local Service Providers

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

sfn

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 #57-230 (IRRC #2394)

### Changing Local Service Providers

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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.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. Section 63.191. Statement of purpose and policy. - Clarity.**

This subsection states that the purpose of this rulemaking is to “establish general rules, procedures and standards governing the migration of customers between LSPs.” The final-form rulemaking should specify that the regulation applies to both residential and business customers.

#### **2. Section 63.192. Definitions. - Clarity.**

*Telephone service, local service, local basic service, service, vertical service, optional services 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.

*Facilities and telephone facilities*

Similar to the comment above, this proposed regulation uses the terms “facilities” and “telephone facilities.” One term should be defined and used consistently.

*LSC – Local service confirmation*

This definition includes the term “unbundled loop connections.” The final-form regulation should define this term.

*LOA – Letter of authorization*

This definition contains two parts. The first part of this definition states the following: “Sometimes used in a general sense as the data or record indicating that the customer has authorized the new local service provider (NLSP) to act as the customer’s agent.” The phrase

“Sometimes used in general sense” is vague and ambiguous. Therefore, it should be deleted from the final-form regulation. In addition the phrase, “The term is used to indicate” that begins the second part of the definition should be deleted.

*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, Paragraph (i) which explains the terms “NLSP” (new local service provider) and “OLSP” (old local service provider) should be deleted. These terms are defined separately in this section.

*LSP-to-LSP end user migration guidelines or migration guidelines*

Subsections (i) and (ii) of this definition explain how the migration guidelines will be developed and state that they will be amended from time to time. These provisions are substantive because they require certain parties to take action. Substantive provisions in a definition are not enforceable. In addition, they are not needed in the definition because Section 63.203, relating to migration guidelines and industry work group, contains these provisions. Therefore, these subsections should be deleted.

*NSP – Network Service Provider*

This definition includes the term “carrier.” Clarity would be improved if this term were defined in the final-form regulation.

**3. Section 63.201. General migration standard. - Clarity; Reasonableness.**

*Subsection (b)*

This subsection states that a NLSP shall communicate certain information to the customer, “when applicable.” We have two questions. First, under what circumstances would an NLSP not have to communicate that information to the customer? Second, what specific information is required to be communicated and explained?

*Subsection (c)*

This subsection states, in part, “The OLSP has the right to protect itself from potential loss as permissible by Commission regulations.” The final-form rulemaking should provide a citation to the applicable regulations. In addition, how can an OLSP protect itself from loss?

*Subsection (e)*

This subsection references the “interfering station procedure.” The final-form regulation should include a citation to Sections 63.211 to 63.214.

*Subsection (f)*

This subsection states that “Each LSP shall ensure that its 9-1-1 and Directory Listings/White Pages databases are accurate, accessible and updated as appropriate.” We have two questions. First, if an LSP does not have its own “facilities,” can it maintain accurate databases of the required information? If not, we recommend that this provision be amended to identify the actual party that maintains the database.

Second, the phrase “as appropriate” is unclear. When should a database be updated?

**4. Section 63.202. Migration responsibilities of the NLSPs and the NSPs. - Clarity; Reasonableness; Need.**

This section lists four responsibilities for NLSPs and one responsibility for NSPs. OLSPs are also involved in the migration process. This section of the final-form regulation should list the responsibilities of an OLSP when a migration occurs.

*Subsection (a)*

This subsection repeats the requirements contained in Subsection 63.201(b), relating to general migration standards. Therefore, this subsection should be deleted from the final-form regulation.

*Subsection (b)*

This subsection states the following: “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.” How can a prospective NLSP be responsible for coordinating a migration that depends on the cooperation of the OLSP?

*Subsection (e)*

This subsection includes the phrase “working days.” This phrase is not defined. To improve clarity, the final-form regulation should use the phrase “business days.”

**5. Section 63.203. Migration Guidelines and industry work group. - Noncompliance with Commonwealth Documents Law**

This section attempts to incorporate as yet undeveloped guidelines and enforce them against LSPs and NSPs. These guidelines, however, will constitute a statement of policy, not a regulation. Regulations have the force of law, and establish binding norms of general applicability and future effect. As such, they must be promulgated in compliance with the Commonwealth Documents Law. *DER v. Rushton Mining Co.*, 591 A.2d 1168 (Pa. Cmwlth. 1991), *allocatur denied*, 600 A.2d 541 (Pa. 1991).

In contrast, statements of policy are not binding on the agency, and may be challenged by regulated parties on a case-by-case basis. If the PUC wants to have enforceable migration standards, the standards should be published as a new proposed regulation, in compliance with the Commonwealth Documents Law.

**6. Section 63.204. Standards for the exchange of customer service information. - Clarity; Reasonableness; Need.**

The phrase “customer service information” is used in the title of this section, but is not defined in this proposed rulemaking. Does “customer service information” differ from the defined term “customer service record”? For clarity, the final-form regulation should either use the defined term or a definition of “customer service information” should be added.

A commentator expressed concern with the potential for abuse of consumer confidentiality under this section. What guarantees are there that confidential consumer information will be protected?

*Subsections (a) and (d)*

These subsections include the phrase “Additional procedures as may be authorized by the FCC or the Commission.” We have two questions regarding this phrase. First, how will the

additional procedures be developed and communicated to the affected parties? Second, why aren't the additional prospective procedures from the PUC included in this rulemaking?

In addition, these subsections include a two-year recordkeeping requirement. What is the reason for keeping these records for two years?

*Subsection (a)*

The terms "third-party verification," "recording verifying permission" and "appropriate retained documentation" are used in this subsection. For clarity, the final-form regulation should explain or define these terms.

*Subsection (c)*

Under this subsection, a current LSP is prohibited from contacting a customer to retain or keep that customer as a result of a request for a customer service record (CSR). We have three questions. First, why is this protection needed? Second, when does this prohibition expire so the LSP can attempt to regain that customer? Third, what constitutes contact? For example, would a current LSP's typical advertising practices, such as including new rate information in billing notices or phone solicitation be considered "contact"?

*Subsection (d)*

We have two concerns with this subsection. First, it states that when a prospective NLSP has verified authorization to switch a customer's LSP, the NLSP shall request the customer's "network servicing arrangements and a CSR from the OLSP." The term "network serving arrangements" is not clear. For clarity, the final-form regulation should either define this term or explain within this subsection what specific information is required.

Second, this subsection states that a prospective NLSP is not required to provide proof that it has verified authorization for the migration. Since prospective NLSPs are not required to show that they have obtained authorization to migrate a customer, how will the consumer and the OLSP be protected from illegal business activities such as "slamming"? "Slamming" is defined in Section 64.2 as the unauthorized changing of a customer's telecommunications provider, whether for local exchange service, intraLATA toll or interLATA toll.

*Subsection (e)*

We have three concerns with this subsection.

First, it requires 13 pieces of information when a CSR is requested. Is this information typically part of a CSR? If so, why is it necessary to list each piece of information separately? If this information is not typically found in a CSR, we recommend that those pieces of information should be included in the definition of CSR in Section 63.192 of this rulemaking. If this approach is adopted, this subsection could be deleted.

Second, do any of the 13 pieces of information comprise what is referred to as "network serving arrangements" referenced in Subsection (d)? If not, Subsection (e) should also require the OLSP to provide "network serving arrangements" to the prospective NLSP.

Third, the terms "interLATA," "intraLATA," "UNE-P" and "unbundled loop" should be defined.

*Subsection (f)*

This subsection provides timetables for OLSPs to provide CSRs to prospective NLSPs. We have three concerns.

First, Subsection (d) requires prospective NLSPs to request CSRs and “customer’s network serving arrangements” from OLSPs. Must OLSPs provide a “customer’s network serving arrangements” using the same timetable? If so, Subsection (f) should be amended to reflect that fact.

Second, under Paragraphs (1) and (2), CSRs are required to be provided within 48 and 24 hours respectively. What is the reason for establishing the timetables in hours instead of days?

Third, Paragraph (3), uses the word “day.” Is it the PUC’s intent to interpret the meaning of “day” as a calendar day or a business day. The final-form regulation should make this distinction.

**7. Section 63.205. Removal or lifting of LSPFs. - Clarity; Reasonableness; Need; Conflict with Federal Regulations.**

A commentator has alleged that these regulations conflict with Federal Communication Commission (FCC) regulations on the topic of anti-slamming found at Title 47 CFR 64.1130. The PUC should explain how these regulations are consistent with FCC regulations.

*Subsection (a)*

This subsection establishes the procedures for lifting a local service provider freeze (LSPF). We have two concerns with this section.

First, it is unclear who can authorize the lifting of a LSPF. Paragraph (2) states that an applicant or “appropriate agent” shall contact the OLSP to have a freeze lifted. However, it is not clear who can be an “appropriate agent.” This term should be explained or defined in the regulation.

Second, there is an inconsistency between Paragraph (3) and the Preamble. Paragraph (3) states that a prospective NLSP may not authorize the removal of an applicant’s LSPF. However, the Preamble states, “...that status as a prospective NLSP should not preclude an entity from exercising an explicit delegation of freeze-lifting authority from its prospective customers.” Consumers who have established LSPFs should be protected from NLSPs who may attempt to circumvent the customer’s established LSPF. The final-form regulation should clearly establish who can lift an LSPF and, if that authority can be delegated, the specific consumer protections required before delegating that authority.

*Subsection (c)*

This subsection states that LSPs shall provide various methods to customers for lifting LSPFs, as required by the PUC or the FCC. Those methods are not specified. The final-form regulation should include the methods or provide a reference to where those methods can be found.

**8. Section 63.207. Discontinuance of billing. - Reasonableness.**

Subsection (b) requires a customer’s OLSP to issue a final bill within 42 days of receiving notification from the prospective NLSP that the customer has requested to migrate service. Commentators believe that the trigger for final billing is inappropriate because in their

experience many requests are never processed. Why is the final bill required upon request to change service rather than after the migration is final?

**9. Section 63.211. Duties of OLSPs and NSPs when an interfering station condition is identified. - Clarity; Reasonableness; Need.**

*Subsections (a) and (b)*

These subsections require either the OLSP or the NSP to perform certain duties. The final-form regulation should establish parameters that would clearly indicate when either the OLSP or the NSP must perform the required duty.

*Subsection (b)*

Under Subsection (b), a commentator questioned the authority of an OLSP to review local service requests (LSRs). What is the need for an OLSP to review LSR requests?

Paragraph (2) requires an OLSP or the NSP to correct an incorrect LSR. Why is the responsibility placed on the OLSP or the NSP to correct this information?

**10. Section 63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified. - Clarity.**

Subsections (c) and (d) are directly related and should be merged into a single subsection. Likewise, Subsections (e) and (f) should be merged.

**11. Section 63.213. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where the existing service is provided by the OLSP and the applicant has shown proof of ownership or right of occupancy. - Reasonableness.**

*Subsection (a)*

Under this subsection, timeframes for an OLSP to notify and terminate service are established. The termination date is seven days from the date of mailing of the notice by first class mail. Is this a reasonable timeframe for a customer of record to respond to a termination notice?

*Subsection (b)*

This subsection requires the OLSP to remove the customer of record from billing and to release the facilities to the prospective NLSP when the customer of record does not respond to the termination notice. What is the reason for removing the customer of record from billing?

**12. Section 63.221. Consumer complaint procedures. - Clarity.**

The title of this section includes the word “consumer.” That term is not defined and it is not used anywhere in this section except the title. The PUC should amend the title of this section to “Customer complaint procedures.”

*Subsection (b)*

This subsection references Sections 64.141—64.182. Should this reference be amended to Sections 64.131—64.182?

*Subsection (c)*

This subsection refers to an applicant, customer or third party. Who is a “third party” and when would it have standing to file a complaint?

*Subsections (c) and (d)*

These subsections require the PUC and the service provider to perform certain actions, but do not indicate the timeframes for performing these actions. The final-form regulation should provide timeframes that indicate when either the PUC or a service provider must perform the required duty.

**13. Section 63.222. Expedited dispute process. - Clarity.**

*Subsection (a)*

This subsection states that the PUC will designate contact persons through which LSPs and NSPs may request expedited resolutions. We have two questions. First, can a customer or applicant file a complaint under this section? Second, are the “contact persons” PUC employees?

*Subsection (d)*

This subsection refers to the PUC’s alternate dispute or formal dispute resolution processes. Is this reference to the procedures under Subchapter G. *Disputes; Informal and Formal Complaints*? The final-form regulation should include a cross reference to the processes to be used.



### Facsimile Cover Sheet

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**To:** Sherri A. DelBiondo  
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Law Bureau  
**Agency:** Pennsylvania Public Utility Commission  
**Phone:** 2-4597  
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**Date:** June 17, 2004  
**Pages:** 9

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-230 (IRRC #2394). 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:** *Amelia P. Seaman* **Date:** *6/17/04*

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