

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 2512.

(1) Agency

Pennsylvania Public Utility Commission

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

L-00050170/57-239

(3) Short Title

Regulation of Interexchange Carriers and Service

(4) PA Code Cite

52 Pa. Code §§ 63.101 - 63.109

(5) Agency Contacts & Telephone Numbers

Primary Contact: David E. Screven, Law Bureau 717-787-2126
(legal)

Secondary Contact: Rhonda Staver, Bureau of Fixed Utility
Services, 717-787-7703 (technical)

(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.

This final rulemaking codifies the provisions of Act 183 related to interexchange telecommunications carriers. The final rulemaking eliminates regulations that require interexchange telecommunications carriers to file tariffs or price lists for intrastate competitive services and establishes a permissive detariffing policy for the statutory categories of competitive services offered by interexchange telecommunications carriers.

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

66 Pa. C.S. §§ 501, 3018

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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.

Yes. Act 183, P.L. 1398, 66 Pa. C.S. 3018

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

IXCs have been operating in an increasingly competitive economic environment and continuing to require IXCs to file tariffs for their competitive services is a regulatory burden that could impede the operation of a competitive intrastate, interexchange market in Pennsylvania. In particular, the rulemaking eliminates regulations that require interexchange telecommunications carriers to file tariffs for intrastate competitive services and establishes a permissive detariffing policy for the statutory categories of competitive services offered by interexchange telecommunications carriers.

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

Not applicable.

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

The public will benefit from this rulemaking because tariffs have become increasingly unnecessary in a substantially competitive market --if a consumer is of the opinion that the rates of a particular IXC are unreasonable, the consumer can simply switch to a competing provider that offers better rates to them. Additionally, tariffs may have the effect of impeding competition and market efficiency since the carrier can only charge the consumer the rate set forth in the tariff.

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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 person or entity will be adversely affected by this regulation. In short, the regulations simply ensure the viability of a competitive intrastate interexchange market in Pennsylvania.

(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.)

All interexchange telecommunications carriers under the Commission's jurisdiction will be required to comply with the regulation. There are approximately six hundred jurisdictional interexchange telecommunications carriers certificated to do business in Pennsylvania that will be subject to this rulemaking.

(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.

Not applicable.

(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.

There may be implementation and training costs incurred by jurisdictional utilities in relation to these provisions. However, such costs are expected to be minimal.

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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.

Not applicable.

(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.

The Commission will not incur any incremental costs if interexchange telecommunications carriers choose to detariff their competitive services.

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

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

Not measurable at this time.

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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

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

The benefits of the regulation to the competitiveness and operation of the interexchange telecommunications market outweigh any associated costs.

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

Not applicable.

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

Not applicable.

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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. The Federal Communications Commission recently adopted a mandatory detariffing under which it no longer requires nondominant interstate, domestic, interexchange carriers to file tariffs for their interstate, domestic interexchange services.

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

Comparable regulations with other states were not found. However, the rulemaking should not put Pennsylvania at a competitive disadvantage with other states.

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

Yes. The existing regulations regarding jurisdictional interexchange telecommunications carriers must be revised in order to be consistent with the provisions of Act 183 related to interexchange telecommunications carriers.

(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.

Yes. The rulemaking has lessened the reporting requirements for jurisdictional interexchange telecommunications carriers.

(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.

Not applicable.

(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 become effective upon publication in the Pennsylvania Bulletin following review by the standing committees and the Independent Regulatory Review Commission.

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

The regulation will be reviewed on an ongoing basis after it becomes effective.

**FACE SHEET
FOR FILING DOCUMENTS
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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL _____

Check if applicable
Copy not approved. Objections attached

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

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00050170/57-239

DATE OF ADOPTION August 8, 2007

BY James J. McNulty
James J. McNulty

TITLE Secy
(SECRETARY)

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

BY Brian R. Pankiw
Brian R. Pankiw
Chief Counsel

8-8-07
DATE OF APPROVAL

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

L-00050170/57-239
Final Rulemaking
Revision of Chapter 63 of Title 52 of the PA Code
Pertaining to Regulation of Interexchange Telecommunications
Carriers and Services
52 Pa. Code, Chapter 63

The Pennsylvania Public Utility Commission on August 8, 2007, adopted a final rulemaking order which sets forth provisions of Act 183, which enacts an amended version of original Chapter 30 providing for regulatory reform of the telephone industry in Pennsylvania. The contact persons are David Screven, Law Bureau, 787-2126, and Rhonda Staver, Bureau of Fixed Utility Services, 787-7703.

EXECUTIVE SUMMARY

L-00050170/57-239

Final Rulemaking

Re: Regulation of Interexchange Carriers and Services

52 Pa. Code Sections 63.101-63.109

Pursuant to 66 Pa. C.S. Section 3018, jurisdictional interexchange telecommunications carriers have been excused from the traditional obligation to file tariffs, tariff supplements, or tariff revisions that contained the rates, provisions, rules and regulations governing the offering of their respective competitive services. This rulemaking eliminates regulations that require IXCs to file tariffs for intrastate competitive services and establishes a permissive detariffing policy for the statutory categories of competitive services offered by IXCs.

The regulations ensure that the intrastate, interexchange market more closely resembles a traditional unregulated market. IXCs are required to disclose to the public information about the rates, terms and conditions of all of their respective competitive services at their business location during regular business hours and at their Internet websites.

The contact persons are David E. Screven, Law Bureau (legal) 717-787-2126 and Rhonda Staver, Bureau of Fixed Utility Services (technical) 717-787-7703.

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

Public Meeting held August 8, 2007

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Terrance J. Fitzpatrick
Tyrone J. Christy
Kim Pizzingrilli

**Final Rulemaking for Revision of
Chapter 63 of Title 52 of the Pennsylvania Code
Pertaining to Regulation of Interexchange
Telecommunications Carriers And Service**

Docket No. L-00050170

FINAL RULEMAKING ORDER

BY THE COMMISSION:

Introduction

By Order entered March 29, 2005 at the above-captioned docket, the Commission issued a proposed rulemaking order that sought to codify the provisions of the new Chapter 30 that were related to interexchange telecommunications carriers (IXCs). In particular, the proposed rulemaking order no longer requires IXCs to file tariffs for intrastate competitive services and establishes a permissive detariffing policy for the statutory categories of competitive services offered by IXCs. Additionally, the proposed rulemaking clarifies various terms, imposes a new public notice requirement on IXCs, and changes the jurisdictional forum relating to the processing of consumer complaints against IXCs. The Commission requested comments on the proposed regulations from participants in the intrastate, interexchange market and other interested parties. This order addresses the comments to the Commission's proposed regulations and sets forth final regulations relating to interexchange telecommunications carriers.

Background

By Order entered September 20, 1991, at L-00900054, this Commission finalized regulations that codified our view that interexchange resellers are public utilities subject to our jurisdiction under Pennsylvania state law and modified the definition of "interexchange carrier" to include the subgroup of interexchange resellers.¹ See 22 Pa. Bulletin 1554. The regulations were codified at 52 Pa. Code §§63.111-63.118, and became effective April 4, 1992.

On July 8, 1993, the General Assembly enacted the original Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§3001-3009, which, among other things, modified and streamlined our procedures related to the regulation of IXCs. The original Chapter 30 included a provision that gave us the option of requiring IXCs to file tariffs or price lists for their competitive services.² See 66 Pa. C.S. §3008(b).

On December 28, 1993, we entered an Order at L-00940099 prescribing interim guidelines for the regulation of IXCs under the original Chapter 30. Despite the fact that we had been granted the option to discontinue the tariff filing requirement for competitive services offered by IXCs, we directed all jurisdictional IXCs to continue to submit tariffs for all of their services until further notice.

Subsequently, we determined that it was necessary that our interim guidelines regarding the regulation of IXCs under the original Chapter 30 be permanently established in the context of a proposed rulemaking. Accordingly, by a Declaratory

¹ Historically, we had declined to exercise jurisdiction over resellers of intrastate, interexchange telephone services as public utilities. The Commission had initially determined that resellers were not public utilities as defined in 66 Pa. C.S. §102 because they did not own or operate facilities or equipment utilized to transmit messages. Nevertheless, the Commission determined that its initial view and interpretation of the statutory term "equipment and facilities" was too narrow. See 22 Pa. Bulletin 1554. As a result, the Commission promulgated regulations so as to clarify and codify the policy that resellers of interexchange telephone services are subject to Commission jurisdiction as public utilities. *Id.* The above-mentioned regulations were codified at 52 Pa. Code §§63.111-63.118.

²Cf. 66 Pa. C.S. §1302.

Order entered January 10, 1995, we adopted a revised set of interim guidelines and initiated a comprehensive rulemaking at the same L-docket proposing regulations to be codified at 52 Pa. Code §§63.101-63.107. The proposed regulations were published in the *Pennsylvania Bulletin* on April 15, 1995. *See 25 Pa.B.* 1418.

By an Order entered April 29, 1997, we promulgated final regulations to implement and codify the effect of the original Chapter 30 on our procedures related to the regulation of IXCs. *See 27 Pa.B.* 3217. The regulations contained streamlined procedures applicable to the statutory categories of existing competitive services, new competitive services and noncompetitive services. The regulations also established procedures related to reclassification of services offered by IXCs. Nevertheless, the final regulations did not definitively prohibit IXCs from continuing to file tariffs or tariff supplements for their competitive services. 52 Pa. Code §§63.103 and 63.104.

On December 1, 2004, Act 183, P.L. 1398, 66 Pa. C.S. §§3011, *et. seq.* (“Act 183” or “new Chapter 30”) became effective. Act 183 enacted an amended version of the original Chapter 30 which had provided for the regulatory reform of the telephone industry in Pennsylvania and had expired pursuant to a sunset provision. In particular, Act 183 addressed specifically regulation of IXC intrastate services and operations. However, unlike the previous version of Chapter 30, Act 183 initiated a permissive detariffing policy for the competitive services of IXCs. *See 66 Pa. C.S. § 3018(b)(2)*. Essentially, IXCs have been excused from the traditional obligation to file tariffs, tariff supplements, or tariff revisions that contained the rates, provisions, rules and regulations governing the offering of their respective competitive services.

The Commission’s proposed rulemaking order revised our existing regulations related to IXCs in order to be consistent with the provisions of the new Chapter 30. The notice requesting comments from interested parties on the proposed rules was published December 17, 2005, at 35 *Pa.B.* 6777. Comments were received from Sprint Nextel

Corporation (“Sprint”), Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance); NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions); Verizon Select Services Inc. and MCI Communications Services, Inc. (hereinafter collectively referred to as “Verizon”), the Pennsylvania Office of Consumer Advocate (OCA), Independent Regulatory Review Commission (IRRC) and the Pennsylvania Office of Attorney General (OAG). Verizon and the OCA filed reply comments.

Comments

Sprint Nextel Corporation

Sprint stated that it supports the Commission’s rulemaking and its adoption of rules that give IXC’s the option of discontinuing the filing of tariffs for their services. Specifically, Sprint sought clarification regarding proposed Section 63.104(c)(2). This subsection embodies the public notice requirements for IXC’s that post information concerning their interexchange services on their internet websites. Sprint stated that IXC’s should be allowed flexibility in how they structure their websites to comply with this requirement. Sprint noted that it would not want to post the rates, terms, and conditions for its Pennsylvania intrastate services on its existing interstate terms and conditions website section. Rather, Sprint proposed that it would post a Pennsylvania-specific price list or rate schedule on its existing tariff website that hosts rates, terms, and conditions applicable to services that are offered in the state. Sprint further states that the document would be posted on the same web page as the state tariffs. Sprint asserts that its proposal comports with the intent of the rule and that the rule, as written, gives it the flexibility to proceed in this manner.

Bell Atlantic Communications, Inc., et al

Verizon states that it supports the Commission's initiative to move towards deregulation of IXC's as it believes that the competitive marketplace, rather than the regulation, should guide the conduct of IXC's. Verizon further states that the proposed detariffing regulations are an appropriate acknowledgment of this reality. Nevertheless, Verizon suggests that the Commission clarify its proposed regulations so that they do not create any new or additional obligations on IXC's, which Verizon suggests may be at odds with the deregulatory emphasis of the proposed regulations. Verizon proposes several modifications to the proposed regulations.

Verizon states that proposed Section 63.101 should be clarified so that it is consistent with the statements made in the Commission's Order that the regulations are intended to "more closely resemble a traditional unregulated market." See Proposed Rulemaking Order at 5. Verizon asserts it is necessary that this statement be incorporated so that the new regulations are "interpreted in a manner consistent with the Commission's will and that the changes do in fact promote the Commission's goal of deregulation in a market that the Commission has recognized is 'an increasingly competitive' one." Verizon Comments at 2. Accordingly, Verizon proposes that the following sentence be added to proposed Section 63.101: "The policy of this subchapter is to codify provisions that more closely resemble a traditional unregulated market."

Verizon further states that there are portions of the proposed regulations that could be misconstrued as creating new and additional obligations that are inconsistent with the Commission's de-regulatory intent and the will of the Pennsylvania Legislature. Verizon suggests that the following revision be made to proposed section 63.102: Delete in its entirety the definition for the phrase "Clear and conspicuous manner." Verizon asserts that this definition is unnecessary and introduces the unintended possibility of an additional and wholly subjective review process by the Commission staff. Verizon

further asserts that it would hardly be a move toward deregulation if the Commission unintentionally assigned to Commission staff the obligation to determine whether “information” no longer subject to a tariffing obligation and constituting private contract terms was “plain language.” Additionally, Verizon states that the possibility that IXCs could be subjected to a new layer of review, one that would apply vague and subjective standards, completely undermines the deregulatory impetus behind these modifications. Furthermore, Verizon suggests that any such new and additional regulations could well be at odds with Act 183, which enumerates and expressly limits the power of this Commission to regulate IXCs. *See* 66 Pa. C.S. § 3018(b)(1). In the alternative, Verizon suggests that if the Commission is not willing to delete this definition, then the Commission should at least clarify that in adopting this provision, it is not creating new and additional obligations for IXCs, or new and additional responsibilities for the Commission staff.

Verizon also proposes that the Commission make the following modifications to proposed Section 63.104: Insert the word “tariffed” before the word “competitive” in the first sentence of subpart (b) (“An interexchange telecommunications carrier may maintain tariffs and file tariff supplements with the Commission that set forth the rates, charges, and service description information relating to each of its *tariffed* competitive services.”). Verizon states that this change merely clarifies that competitive services do not automatically need to be tariffed.

Additionally, Verizon proposes the elimination of the phrase “in an easily accessible and clear and conspicuous manner” subpart (c). The revised subsection would look like this: (“If an interexchange telecommunications carrier chooses to detariff its competitive services, it shall make available for public inspection information concerning the rates, charges, terms and conditions for its competitive services [delete phrase] at the following locations:”) Verizon asserts that this change clarifies that these deregulatory modifications do not introduce a new and additional authority to inspect IXC publicly

posted language pertaining to detariffed competitive services. Furthermore, Verizon asserts that standards such as “easily accessible,” “clear,” and in a “conspicuous manner” introduce uncertainty, chill deregulation, and could be read to provide for the micromanagement of detariffed competitive services.

Verizon also proposes to replace “subpart (d)” with “subpart (3); insert the word “detariffed” before the phrase “competitive services”; insert the word “either” before the phrase “principal office,”; replace the word “and” with the word “or” after the phrase “principal office.” The revised subsection would appear like this: (“An interexchange telecommunications carrier shall update information concerning changes in rates, charges, terms and conditions for its “*detariffed*” competitive services “*either*” at its principal office “*or*” [*delete “and”*] its Internet website no later than 48 hours after the effective date of the change so it provides the current information concerning service offerings.”). Verizon asserts that these changes clarify that the obligations contained in this subpart apply only to those competitive services that the IXC chooses to detariff, and that they are not new and additional obligations for competitive services that an IXC chooses to continue to tariff. Furthermore, the suggested changes recognize that this subpart’s updating requirement is an extremely broad one that not only encompasses rates, but also each and every term and condition associated with the provisioning of IXC service. Given the competitiveness of the IXC market, it is sufficient for an IXC to update the information either at its principal office or on the Internet. Verizon states that requiring both of these obligations would be unnecessary and burdensome.

Finally, Verizon proposes re-labeling subparts (e) and (f) and (d) and (e) consistent with the recommended changes above.

Office of Consumer Advocate

The OCA states that certain amendments to the proposed regulations are necessary to better codify Section 3018 and so give IXC's and consumers clear and adequate notice of the Commission's authority preserved by Chapter 30 for the protection of customers of IXC's. The OCA notes that under the proposed regulations, the Commission would enforce consumer complaints against IXC's only in very limited circumstances. The OCA states that proposed Section 63.109 would draw a line such that the Commission only will hear those consumer complaints which concern an IXC's compliance with the Commission newly added disclosure requirements for detariffed services. All other consumer complaints regarding intrastate interexchange services will be referred to the Office of Attorney General's Bureau of Consumer Protection. The OCA states that the proposed Subchapter H omits any mention of the Commission's preserved authority over the provision of service by IXC's, including customer privacy, ordering, installation, restoration and disconnection, as well as the quality of service provided by IXC's to Pennsylvania consumers. 66 Pa. C.S. § 3018(b)(3), (d)(1). The OCA suggests that the Commission should rectify this omission in any final form regulations it promulgates in order to affirmatively state the scope of its ongoing authority to regulate the services of IXC's and its jurisdiction to hear consumer complaints on these issues.

Independent Regulatory Review Commission

IRRC notes that the OCA comments indicate that the limits the Commission has established over its jurisdiction over IXC's in the proposed regulations are not consistent with 66 Pa. C.S § 3018. IRRC states it agrees with the OCA that the Commission does have the authority to exercise jurisdiction over IXC's. However, IRRC notes that the Commission is well within its powers to decide which areas it will not exercise jurisdiction in order to promote competition. Nevertheless, IRRC states that the final

form regulation should explicitly state which enforcement powers the Commission will retain, consistent with the OCA's comment.

Next, IRRC states that the last sentence in the definition of "interexchange facilities-based carriers" is substantive. IRRC notes that substantive provisions in a definition cannot be enforced. IRRC suggests that the sentence should be removed from the definition and placed in an appropriate section of the regulation.

Additionally, IRRC questions whether the Commission intends the term "interexchange transporter" to be the same as the defined term in Section 63.112 of the Commission's existing regulations. IRRC notes if that is the case, the Commission should add a cross-reference to the definition.

IRRC takes note of Sprint's comments that IXC's should be allowed the flexibility to structure their websites in a way that best allows them to give the public disclosure of information. IRRC agrees that proposed Section 63.104(c) should be amended to allow for such flexibility. Additionally, IRRC states that proposed subsection 63.104(c)(1) mentions a "designated office;" however, the regulations do not state what a "designated office" is or how an office becomes designated. IRRC suggests that this information should be clearly set forth in the final form regulation or the term should be deleted. IRRC also agrees with Verizon's comments that the language in proposed subsection 63.104(d) should be amended to clarify that the provisions of this subsection apply only to the services that an IXC chooses to detariff.

IRRC commented on what are the "other factors deemed relevant by the Commission" in a reclassification proceeding. IRRC further questions how will an IXC know or become aware of these other relevant factors. Similarly, IRRC also states that the language in proposed subsection 63.106(b) is unclear. IRRC states that the language in this subsection should be amended to state clearly the Commission's intention. IRRC

questions as to how will an IXC know the “other reasonable justification or any relevant data that is requested by the Commission” in order to modify its tariff. IRRC suggests that this subsection should be broken out into a new section that details that other reasonable information might be requested by the Commission after initial review of the tariff. IRRC further notes that based upon its discussion with Commission staff, the phrase “may not” in proposed subsection 63.106(d) will be replaced with the phrase “is not required to.”

Furthermore, IRRC suggests that the phrase “as closely as possible” should be deleted from proposed subsection 63.107(a). IRRC notes that the term “noncompetitive interexchange call” is not defined anywhere in the proposed regulations. IRRC suggests that either the definition of the term be added to proposed Section 63.102 or the cross-reference in this subsection should be deleted. IRRC also suggests that the last sentence in proposed subsection 63.106(c) should be amended to state clearly the Commission’s intention that a tariff will be deemed to be just and reasonable if it is at or below the reasonable charge established by proposed subsection 63.106(b)

Finally, IRRC states that the last sentence in proposed subsection 63.108(c) is unclear and suggests that the subsection should be amended to state clearly the Commission’s intent.

Pennsylvania Office of Attorney General

The OAG states that in proposed section 63.102, the definitions of “interexchange reseller carrier” and “interexchange facilities-based carrier” contain the phrase “interexchange transporter.” The OAG questions if the term “interexchange transporter” should be separately defined in the proposed regulations.

The OAG notes that Section 63.105 provides that the Commission may reclassify interexchange services of an interexchange telecommunications carrier as noncompetitive after an appropriate hearing. However, the statutory and regulatory definitions of “interexchange telecommunication carrier” exclude local exchange telecommunication companies authorized to provide interexchange services. The OAG states that by using the term “interexchange services” without qualification in section 63.105(a), the regulation appears to include those interexchange services provided by local exchange telecommunications companies and appears to violate 66 Pa. C.S.A. §3018(c), which applies only to interexchange telecommunication carriers.

The OAG further notes that Section 63.107(b) states that “rates for noncompetitive services provided for in the proposed tariff may not exceed the reasonable charge for a noncompetitive interexchange call as defined in §63.102 relating to definitions.” However, a definition for “noncompetitive interexchange call” does not appear in section 63.102. The OAG states that Section 63.107(b) should be further clarified.

Reply Comments

Bell Atlantic Communications, Inc., et al

Verizon took exception to the OCA’s comments. Verizon asserts that the Commission should reject the proposals of the OCA to continue to regulate aspects of IXC services. Verizon states that the OCA’s proposed language increases, rather than lessens, regulation. Verizon further asserts that the OCA’s position is inconsistent with the highly competitive state of the IXC market, and the Commission’s recognition that the IXC market should be guided by competition, not regulatory oversight. Verizon argues that Section 3018 does not require the Commission to exercise jurisdiction where it is not necessary. In direct contravention to the OCA’s position, Verizon concludes that

the proposed regulations are entirely consistent with the law and do not need to be expanded or clarified.

Office of Consumer Advocate

The OCA states that Sprint's plan to meet the notice and disclosure requirements set forth in the proposed regulations is reasonable. However, the OCA opposes Verizon's proposed revisions, which they assert reflects greater degree of deregulation and reduction in Commission authority over IXCs. The OCA further asserts that Verizon's revisions to the proposed regulations are inconsistent with Chapter 30, which expressly preserved the Commission's authority to regulate the provisioning, quality and privacy of IXC services. The OCA states that it opposes Verizon's proposed revision to Section 63.101 of the new regulations. The OCA states that the Commission should reject the broader language requested by Verizon because it is not supported by the language of the General Assembly as stated in Chapter 30. The OCA continues to assert that the Commission should promulgate final form regulations that affirm the Commission's on-going jurisdiction and authority to regulate the provision of service by IXCs for the protection of consumers.

The OCA is also opposed to Verizon's proposed revisions to Sections 63.104(c) and (d) of the new regulations. The OCA states that the General Assembly's prohibition against rate setting for interexchange services does not equate to complete deregulation. The OCA notes that the Commission's proposed regulations requiring disclosure of the rates, terms and conditions of competitive services is entirely within the Commission's continuing authority to regulate the provision and quality of service provided by IXCs, pursuant to 66 Pa. C.S. §§ 1501 and 3018(b)(2),(3). The OCA argues that proposed Section 63.104 properly advises IXCs of the standard to be met in conveying such information regarding detariffed services to the public. Finally, the OCA takes exception to Verizon's request to allow an IXC to update its information either at the principal

office or on its website. The OCA notes that 66 Pa. C.S. § 3018(b)(2) preserves a role for the Commission in assuring the price list information for detariffed services is available to the public. The OCA asserts that requiring IXCs to update in a timely manner the information available to the public at two locations benefits consumers by assuring there is consistency and accuracy of information. The OCA states that the Commission should reject Verizon's proposed revision to Section 63.104(c) and (d) as the subsections are reasonable and proper to protect consumers.

Discussion

Based upon our review of the received comments, we shall modify various portions of the proposed regulations. We shall present and discuss each section for which we received comments from the parties.

Section 63.101

We note Verizon's suggestion that we clarify proposed Section 63.101 so that it is consistent with the statements made in the Commission's Order that the regulations are intended to "more closely resemble a traditional unregulated market." *See* Proposed Rulemaking Order at 5. Verizon suggested that the following sentence be added to proposed Section 63.101: "The policy of this subchapter is to codify provisions that more closely resemble a traditional unregulated market."

Chapter 30 clearly indicates that the intrastate interexchange services market is competitive. However, we believe that the language that Verizon proposes we incorporate into the new regulations is unnecessary. We believe that it is only necessary that we adopt regulations that reflect and promote the rationale of the increasingly competitive nature of the intrastate interexchange telecommunications market. Accordingly, we shall not incorporate Verizon's language into proposed Section 63.101.

Section 63.102

The OAG noted that in proposed section 63.102, the definitions of “interexchange reseller carrier” and “interexchange facilities-based carrier” contain the term “interexchange transporter.” The OAG questioned whether the term “interexchange transporter” should be separately defined in the proposed regulations. We note the term “interexchange transporter” is an archaic term. Accordingly, we will simply delete the term from the final form regulations.

Verizon stated that there are portions of the proposed regulations that could be misconstrued as creating new and additional obligations that are inconsistent with the Commission’s de-regulatory intent and the will of the Pennsylvania Legislature. Verizon suggested deleting in its entirety the definition for the phrase “Clear and conspicuous manner” from the proposed section 63.102. Verizon asserted that this definition is unnecessary and introduces the unintended possibility of an additional and wholly subjective review process by the Commission staff. Verizon further asserted that it would hardly be a move toward deregulation if the Commission unintentionally assigned to Commission staff the obligation to determine whether “information” no longer subject to a tariffing obligation and constituting private contract terms was “plain language.” Additionally, Verizon stated that the possibility that IXCs could be subjected to a new layer of review, one that would apply vague and subjective standards, completely undermines the deregulatory impetus behind these modifications. Furthermore, Verizon suggested that any such new and additional regulations could well be at odds with Act 183, which enumerates and expressly limits the power of this Commission to regulate IXCs. *See* 66 Pa. C.S. § 3018(b)(1). In the alternative, Verizon suggests that if the Commission is not willing to delete this definition, then the Commission should at least clarify that in adopting this provision, it is not creating new and additional obligations for IXCs, or new and additional responsibilities for the Commission staff.

We do not agree with Verizon's assertions. A plain language review does not necessarily undermine the deregulatory impetus for the intrastate, interexchange telecommunications market. We note that the Commission has previously adopted a "plain language" policy statement that set forth guidelines for written material provided to residential customers by public utilities. *See* 52 Pa. Code § 69.251. The Commission recognizes the need for carriers to provide information regarding their services in a format that is "easy to understand." Furthermore, this information is critical in order to allow consumers to make comparisons among various services offered by the carrier and services offered by other carriers. Moreover, we note that the Federal Communications Commission requires interstate interexchange carriers to include information that is "easy to understand" and encouraged the carriers to work with the FCC's Consumer Information Bureau to develop appropriate formats for the required disclosures. Accordingly, the Commission does not believe that it is onerous to include a provision in the proposed regulations that require IXCs to provide information to consumers that is "clear and conspicuous" or that is in an easy to understand format. We encourage IXCs to work with the Commission's Bureau of Consumer Services so that it can review any written material provided to residential customers by IXCs regarding their services.

IRRC stated that the last sentence in the definition of "interexchange facilities-based carriers" is substantive. IRRC notes that substantive provisions in a definition cannot be enforced. IRRC suggests that the sentence should be removed from the definition and placed in an appropriate section of the regulation. We agree with IRRC and will delete the last sentence from the definitional section of the proposed regulations and place it within the appropriate subsection.

Additionally, IRRC questioned whether the Commission intends the term "interexchange transporter" to be the same as the defined term in Section 63.112 of the Commission's existing regulations. IRRC notes if that is the case, the Commission should add a cross-reference to the definition. As mentioned above, we note that the term

“interexchange transporter” is an archaic term of the telecommunications industry and will delete it from the final form regulations.

Section 63.103

In light of the OAG’s comments regarding the term “interexchange transporter” and our response to the OAG’s comment as noted above, the Commission also deletes the term “interexchange transporter” from the caption of this section and from the body of this section in order to provide uniformity to the final regulations. Additionally, in order to provide consistency with the definitional section, the Commission adds the term “carriers” to the caption of this section and to the body of this section.

Section 63.104

Verizon also proposed that the Commission make the following modifications to proposed Section 63.104: Insert the word “tariffed” before the word “competitive” in the first sentence of subpart (b) (“An interexchange telecommunications carrier may maintain tariffs and file tariff supplements with the Commission that set forth the rates, charges, and service description information relating to each of its *tariffed* competitive services.”). Verizon stated that this change merely clarifies that competitive services do not automatically need to be tariffed. We agree with this clarification and adopt it.

Additionally, Verizon proposed the elimination of the phrase “in an easily accessible and clear and conspicuous manner” subpart (c). The revised subsection would look like this: (“If an interexchange telecommunications carrier chooses to detariff its competitive services, it shall make available for public inspection information concerning the rates, charges, terms and conditions for its competitive services [delete phrase] at the following locations:”) Verizon asserted that this change clarifies that these deregulatory modifications do not introduce a new and additional authority to inspect IXC publicly posted language pertaining to detariffed competitive services. Furthermore, Verizon

asserted that standards such as “easily accessible,” “clear,” and in a “conspicuous manner” introduce uncertainty, chill deregulation, and could be read to provide for the micromanagement of detariffed competitive services. As we mentioned above, requiring some sort of “plain language” review is not diametrically opposed to the deregulatory impetus behind these regulations. We recognize the need for carriers to provide information regarding their services in a format which “easy to understand” and, accordingly, decline to adopt Verizon’s suggested revisions regarding the subsection.

Verizon also proposed to replace “subpart (d)” with “subpart (3)”; insert the word “detariffed” before the phrase “competitive services”; insert the word “either” before the phrase “principal office,”; replace the word “and” with the word “or” after the phrase “principal office.” The revised subsection would appear like this: (“An interexchange telecommunications carrier shall update information concerning changes in rates, charges, terms and conditions for its “*detariffed*” competitive services “*either*” at its principal office “*or*” [*delete “and”*] its Internet website no later than 48 hours after the effective date of the change so it provides the current information concerning service offerings.”).

Verizon asserts that these changes clarify that the obligations contained in this subpart apply only to those competitive services that the IXC chooses to detariff, and that they are not new and additional obligations for competitive services that an IXC chooses to continue to tariff. IRRC also agreed with Verizon’s comments that the language in proposed subsection 63.104(d) should be amended to clarify that the provisions of this subsection apply only to the services that an IXC chooses to detariff. We agree with Verizon’s clarification and adopt it but will not re-designate the subparts.

Furthermore, Verizon suggested that its changes recognize that this subpart’s updating requirement is an extremely broad one that not only encompasses rates, but also each term and condition associated with the provisioning of IXC service. Given the

competitiveness of the IXC market, Verizon asserted that it is sufficient for an IXC to update the information either at its principal office or on the Internet. Verizon states that requiring both of these obligations would be unnecessary and burdensome.

The OCA opposed Verizon's proposed revisions to Sections 63.104(c) and (d) of the new regulations. The OCA stated that the General Assembly's prohibition against rate setting for interexchange services does not equate to complete deregulation. The OCA noted that the Commission's proposed regulations requiring disclosure of the rates, terms and conditions of competitive services is entirely within the Commission's continuing authority to regulate the provision and quality of service provided by IXCs, pursuant to 66 Pa. C.S. §§ 1501 and 3018(b)(2),(3). Finally, the OCA took exception to Verizon's request to allow an IXC to update its information either at the principal office or on its website. The OCA noted that 66 Pa. C.S. § 3018(b)(2) preserves a role for the Commission in assuring the price list information for detariffed services is available to the public. The OCA further asserted that requiring IXCs to update in a timely manner the information available to the public at two locations benefits consumers by assuring there is consistency and accuracy of information. The OCA states that the Commission should reject Verizon's proposed revision to Section 63.104(c) and (d) as the subsections are reasonable and proper to protect consumers.

We agree with the OCA and oppose Verizon's rationale. We determined that it is in the public interest that IXCs make available to the public information on current rates, terms and conditions for the detariffed competitive services in a timely manner and in at least one business location during regular business hours. In addition, the Commission required IXCs that have established Internet websites to post that same information online and to update the information regularly. Consumers should have continuous access to information and we believe that an IXC should provide such information on its Internet website and at its principal office or at a local business office.

Finally, Verizon proposes re-labeling subparts (e) and (f) and (d) and (e) consistent with the recommended changes above. We will not make these revisions to the proposed regulations as we find them unnecessary.

Sprint also submitted comments regarding this section. Specifically, Sprint sought clarification regarding proposed Section 63.104(c)(2). Sprint stated that IXC's should be allowed flexibility in how they structure their websites to comply with this requirement. Sprint noted that it would not want to post the rates, terms, and conditions for its Pennsylvania intrastate services on its existing interstate terms and conditions website section. Rather, Sprint proposed that it would post a Pennsylvania-specific price list or rate scheduled on its existing tariff website that hosts rates, terms, and conditions applicable to services that are offered in the state. Sprint further states that the document would be posted on the same web page as the state tariffs. Sprint asserts that its proposal comports with the intent of the rule and that the rule, as written, gives it the flexibility to proceed in this manner. IRRC took note of Sprint's comments that IXC's should be allowed the flexibility to structure their websites in a way that best allows them to give the public disclosure of information. IRRC agreed that proposed Section 63.104(c) should be amended to allow for such flexibility.

We determined that the public information locations should contain information on a carrier's current rates, terms and conditions for all their detariffed intrastate competitive interexchange services. However, the Commission did not require that public disclosure of this information be provided in any particular manner, except that the information must be posted on the websites of those IXC's that currently maintain them over the Internet. Therefore, we are not opposed to Sprint's manner of presenting its information concerning its detariffed intrastate competitive services on its website. We agree with Sprint and the IRRC that IXC's should have the flexibility to present the information on their websites in any manner that they choose, as long as the information is easily accessible to the public.

IRRC also stated that this proposed subsection mentions a “designated office;” however, the regulations do not state what a “designated office” is or how an office becomes designated. IRRC suggested that this information should be clearly set forth in the final form regulation or the term should be deleted. We shall delete the term “designated office” from the final form regulations.

Section 63.105

The OAG noted that Section 63.105 provides that the Commission may reclassify interexchange services of an interexchange telecommunications carrier as noncompetitive after an appropriate hearing. However, the statutory and regulatory definitions of “interexchange telecommunication carrier” exclude local exchange telecommunication companies authorized to provide interexchange services. The OAG stated that by using the term “interexchange services” without qualification in section 63.105(a), the regulation appears to include those interexchange services provided by local exchange telecommunications companies and appears to violate 66 Pa. C.S.A. §3018(c), which applies only to interexchange telecommunication carriers.

The Commission agrees with the OAG’s comment and will insert the language “reclassify the services of an interexchange telecommunications carrier as a noncompetitive service” after the word ‘hearing’ in 63.105(a). We believe that the insertion of this qualifying language addresses the OAG’s concern.

IRRC questioned how will an IXC know the “other factors deemed relevant by the Commission” in a reclassification proceeding. We initially suggested to IRRC that the Commission would inform the IXC of the other relevant factors it would consider in the notice initiating the reclassification proceeding. However, upon further reflection, it is more likely that the Commission will present this information to the IXC during the course of the reclassification proceeding through data requests rather than through the notice initiating the reclassification proceeding. Accordingly, we will strike 63.105(c)(5)

from the final form regulations and will indicate that the Commission may possibly inform the IXC of the factors it deems relevant in the notice initiating the reclassification proceeding.

Section 63.106

IRRC stated that the language in proposed subsection 63.106(b) is unclear. IRRC questioned the purpose of the 45-day notice requirement for the tariff in the subsection if the Commission makes a decision on the tariff within 14 days. IRRC stated that the language should be amended to state clearly the Commission's intention. We agree with IRRC that this subsection should be clarified so that it indicates the 45-day notice requirement occurs prior to the filing of the tariff and the Commission's notice will come within 14 days after the filing of the tariff.

IRRC commented as to how an IXC will know the "other reasonable justification or any relevant data that is requested by the Commission" in order to modify its tariff. IRRC suggests that this subsection should be broken out into a new section that details the other reasonable information that might be requested by the Commission after initial review of the tariff. We disagree with IRRC's suggestion that we need to detail the other reasonable information the Commission might request from an IXC in order to modify its tariff in the regulations. The information requested from an IXC may vary on a case-by-case basis and it would be imprudent to attempt to establish an exhaustive list in the regulations. Nevertheless, Commission Staff will promptly advise the IXC about any additional relevant data or supporting documentation it must provide in order to modify its tariff after Staff's initial review of the tariff supplement.

IRRC further noted that based upon its discussion with Commission staff, the phrase "may not" in proposed subsection 63.106(d) will be replaced with the phrase "is not required to."

Section 63.107

IRRC suggested that the phrase “as closely as possible” should be deleted from proposed subsection 63.107(a). We agree with IRRC’s comment and will delete the term “as closely as possible” from the final form regulations.

IRRC notes that the term “noncompetitive interexchange call” is not defined anywhere in the proposed regulations. IRRC suggests that either the definition of the term be added to proposed Section 63.102 or the cross-reference in this subsection should be deleted. The OAG noted this same discrepancy and suggested that subsection 63.107(b) should be further clarified by including a definition for “noncompetitive interexchange call” within section 63.102. We agree with IRRC’s and the OAG’s comments and will rectify this discrepancy by deleting the cross-reference set forth in this subsection.

We note that our Staff does make a distinction between a facilities-based IXC and a reseller IXC. IXC providers can be resellers, facilities-based or mixed. A competitive IXC applicant must apply for separate and distinct authority to provide IXC reseller services or IXC facilities-based services. The Secretary’s Bureau designates a different folder number and issues a separate certificate of public convenience for each type of authority requested by the applicant. Accordingly, we will delete the last sentence of subsection 63.107(a) from the final form regulations.

IRRC also suggests that the last sentence in proposed subsection 63.107(c) should be amended to state clearly the Commission’s intention that a tariff will be deemed to be just and reasonable if it is at or below the reasonable charge as established by proposed subsection 63.107(b). We agree with IRRC’s comment and will amend the subsection to clearly express this intention.

Section 63.108

IRRC states that the last sentence in proposed subsection 63.108(c) is unclear. IRRC suggests that the subsection should be amended to state clearly the Commission's intention that the IXC should provide the required information in its annual report if it is technologically possible to collect the data. We agree with IRRC's comment and will clarify this subsection.

Section 63.109

The OCA expressed concerns regarding proposed Section 63.109. The OCA notes that under the proposed regulations, the Commission would enforce consumer complaints against IXCs only in very limited circumstances. Specifically, this proposed section draws a line such that the Commission only will hear those consumer complaints that concern an IXC's compliance with the Commission's newly added disclosure requirements for detariffed services. All other consumer complaints regarding intrastate interexchange services will be referred to the Office of Attorney General's Bureau of Consumer Protection. The OCA states that the proposed Subchapter H generally omits any mention of the Commission's preserved authority over the provision of service by IXCs, including customer privacy, ordering, installation, restoration and disconnection, as well as the quality of service provided by IXCs to Pennsylvania consumers. 66 Pa. C.S. § 3018(b)(3), (d)(1). The OCA suggests that the Commission should rectify this omission in any final form regulations it promulgates in order to affirmatively state the scope of its ongoing authority to regulate the services of IXCs and its jurisdiction to hear consumer complaints on these issues.

Additionally, IRRC took note of the OCA's comments regarding the Commission's jurisdiction over IXCs in the proposed regulations. IRRC stated that it

agrees somewhat with the OCA that the Commission does have the authority to exercise jurisdiction over IXCs. However, IRRC noted that the Commission is well within its powers to decide which areas it will not exercise jurisdiction in order to promote competition. Nevertheless, IRRC stated that the final form regulation should explicitly state which enforcement powers the Commission will retain, consistent with the OCA's comment.

However, Verizon asserted that the Commission should reject the proposals of the OCA to continue to regulate aspects of IXC services. Verizon stated that the OCA's proposed language increases, rather than lessens, regulation. Verizon further argued that Section 3018 does not require the Commission to exercise jurisdiction where it is not necessary. In direct contravention to the OCA's position, Verizon concluded that the proposed regulations are entirely consistent with the law and do not need to be expanded or clarified.

The OCA believes that Verizon's proposed revisions reflect a greater degree of deregulation and reduction in Commission authority over IXCs, which it believes are inconsistent with Chapter 30. The OCA states that the Commission should reject the broader language requested by Verizon because it is not supported by the language of the General Assembly as stated in Chapter 30, which expressly preserved the Commission's authority to regulate the provisioning, quality and privacy of IXC services. The OCA asserted that the Commission should promulgate final form regulations that affirm the Commission's on-going jurisdiction and authority to regulate the provision of service by IXCs for the protection of consumers.

We agree with the OCA's and IRRC's observations. The proposed regulations do not reference the fact that the Commission continues to have authority over the provision of service by IXCs, including customer privacy, ordering, installation, restoration and disconnection, as well as the quality of service provided by IXCs to Pennsylvania consumers. *See* 66 Pa. C.S. § 3018(b)(3), (d)(1). Noting this omission, we will revise the

proposed regulations so that the Commission's preserved authority over provisioning, quality and privacy of IXC services by IXCs is included within the proposed regulations.

Conclusion

Accordingly, under Sections 501, 1501 and 3018 of the Public Utility Code, 66 Pa. C.S § 501, § 1501 and § 3018, and the Commonwealth Documents Law, 45 P.S. §§ 1201, et seq., and regulations promulgated thereunder at 1 Pa. Code §§ 7.1-7.4, we amend the regulations at 52 Pa. Code Chapter 63 as noted above and as set forth in Annex A;

THEREFORE,

IT IS ORDERED:

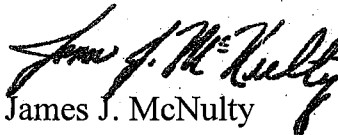
1. That the regulations of the Commission at 52 Pa. Code are amended by adding §§ 63.101-63.109 to read as set forth in Annex A.
2. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to form and legality.
3. That the Secretary shall submit a copy of this order, together with Annex A, to the Governor's Office of Budget for review of fiscal impact.
4. That the Secretary shall submit this order and Annex A for formal review by the designated standing committees of both Houses of the General Assembly, and for formal review and approval by the Independent Regulatory Review Commission.

5. That the Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

6. That this Final Rulemaking shall be come effective upon publication in the Pennsylvania Bulletin.

7. The contact persons for this matter are David E. Screven, Law Bureau, (717) 787-2126, Rhonda Staver, Bureau of Fixed Utility Services, (717) 787-7703 and Sherri DelBiondo, Regulatory Review Coordinator, (717) 772-4597. -

BY THE COMMISSION


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 8, 2007

ORDER ENTERED: **AUG 13 2007**

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter H. [INTEREXCHANGE TELECOMMUNICATIONS CARRIERS]
INTEREXCHANGE CARRIERS

(Editor's Note: The Commission is proposing to delete the current version of §§ 63.101--63.107, which appear at 52 Pa. Code pages 63-42, 63-43 and 63-47--63-52, serial pages (246484), (246485) and (232271)--(232276), and replace them with the sections that follow.)

§ 63.101. Statement of purpose and policy.

On December 1, 2004, the General Assembly enacted sections 3011--3019 of the code (relating to alternative form of regulation of telecommunications services), which provided for the regulatory reform of the telephone industry in this Commonwealth. Sections 3018 and 3019(b) of the code (relating to interexchange telecommunications carrier; and additional powers and duties) have significant effect on the future regulation by the Commission of intraState interexchange telecommunications carriers, which include ~~interexchange transporters and interexchange resellers~~. The purpose of this subchapter is to codify the application of Chapter 30 of the code (relating to alternative form of regulation of telecommunication services) to intraState, interexchange telecommunications carriers and to codify the modification of procedures to address the application of Chapter 30 of the code.

§ 63.102. Definitions.

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

Clear and conspicuous manner--Information that is legible, stated in plain language and printed in 10-point type or larger.

Code--The Public Utility Code, 66 Pa.C.S. §§ 101--3316.

Competitive services--Interexchange services other than noncompetitive services.

Interexchange facilities-based carrier--A person or entity whose facilities carry intraState interexchange service on a wholesale or retail basis through line, wire, cable, microwave, radio wave, satellite or other analogous facilities owned or operated by it. An interexchange transporter may also provide interexchange services as a reseller.

Interexchange reseller carrier--A person or entity which directly or indirectly acquires intraState interexchange service capacity and establishes rates to sell interexchange service through the use of technology to a residential or nonresidential subscriber or consumer and who is not an interexchange transporter.

Interexchange services--The transmission of interLATA or intraLATA toll messages or data outside the local calling area.

Interexchange telecommunications carrier--

(i) A public utility, including both interexchange reseller carrier and interexchange facilities-based carrier, as those terms are defined in this section, authorized by the Commission to provide intraState interexchange service on a wholesale or retail basis.

(ii) The term does not include a local exchange telecommunications company authorized by the Commission to provide intraState, interexchange services.

Noncompetitive services--The term only includes those interexchange services or business activities that have been determined expressly by the Commission to be noncompetitive under § 63.105 (relating to reclassification of services).

§ 63.103. Jurisdiction of interexchange resellers RESELLER CARRIERS and transporters.

Under the definition of "public utility" in section 102 of the code (relating to definitions), a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transmitting intraState interexchange services is subject to Commission jurisdiction as a public utility. Interexchange resellers RESELLER CARRIERS and interexchange transporters own or operate equipment or facilities utilized for the transmission of interexchange services and therefore, under the statutory definition of "public utility," are jurisdictional.

§ 63.104. Disclosure requirements for competitive services.

(a) All services, new or existing, offered by interexchange telecommunications carriers are deemed competitive.

(b) An interexchange telecommunications carrier may maintain tariffs and file tariff supplements with the Commission that set forth the rates, charges and service description

telecommunications carrier files a tariff or a tariff supplement with the Commission for its competitive services, it shall become effective on 1-day's notice.

(c) If an interexchange telecommunications carrier chooses to detariff its competitive services, it shall make available for public inspection information concerning the rates, charges, terms and conditions for its competitive services in an easily accessible and clear and conspicuous manner at the following locations:

(1) At the interexchange telecommunications carrier's principal office, if it is located within this Commonwealth, or the designated office AT ANY LOCAL BUSINESS OFFICE of the utility during regular business hours.

(2) At the website of the interexchange telecommunications carrier. AN INTEREXCHANGE TELECOMMUNICATIONS CARRIER HAS THE FLEXIBILITY TO STRUCTURE AND PRESENT INFORMATION CONCERNING THE RATES, CHARGES, TERMS AND CONDITIONS FOR ITS COMPETITIVE SERVICES ON ITS INTERNET WEBSITE IN ANY MANNER THAT IT CHOOSES, AS LONG AS THE INFORMATION IS EASILY ACCESSIBLE TO THE PUBLIC.

(d) An interexchange telecommunications carrier shall update information concerning changes in rates, charges, terms and conditions for its DETARIFFED competitive services EITHER at its principal office OR ANY LOCAL BUSINESS OFFICE WITHIN 5 DAYS and ON its Internet website no later than 48 hours after the effective date of the change so it provides the current information concerning service offerings.

(e) An interexchange telecommunications carrier that chooses to detariff its competitive services shall disclose to customers their right to request information concerning the rates, charges, terms and conditions for its competitive services and shall provide contact information for this purpose.

(f) This section supersedes Chapter 53 (relating to tariffs for noncommon carriers) to the extent that Chapter 53 is inconsistent with this section.

§ 63.105. Reclassification of services.

(a) The Commission has authority, under section 3018(c) of the code (relating to interexchange telecommunications carrier), after notice and an opportunity for a hearing, to reclassify interexchange services as a noncompetitive service. THE SERVICES OF AN INTEREXCHANGE TELECOMMUNICATIONS CARRIER AS A NONCOMPETITIVE SERVICE.

(b) The Commission will review whether a competitive service should be reclassified as a noncompetitive service within the scope of a Commission investigation conducted

under section 331(a) of the code (relating to powers of commission and administrative law judges), or upon consideration of a complaint filed under section 701 of the code (relating to complaints). THE NOTICE TO THE INTEREXCHANGE TELECOMMUNICATIONS CARRIER MAY CONTAIN THE INFORMATION DEEMED RELEVANT BY THE COMMISSION IN HOLDING A RECLASSIFICATION PROCEEDING.

(c) When reviewing whether a service should be reclassified, the Commission will consider the following factors ALL RELEVANT INFORMATION SUBMITTED TO IT, INCLUDING THE FOLLOWING FACTORS:

(1) The ease of entry by potential competitors into the market for the specific service at issue.

(2) The presence of other existing interexchange telecommunications carriers in the market for the specific service at issue.

(3) The ability of other interexchange telecommunications carriers to offer the service at competitive prices, terms and conditions.

(4) The availability of like or substitute service alternatives in the relevant geographic area for the service at issue.

~~(5) Other factors deemed relevant by the Commission.~~

§ 63.106. Noncompetitive services and tariffs.

(a) A noncompetitive service, as defined in § 63.102 (relating to definitions), offered by an interexchange telecommunications carrier shall be included in a tariff filed in compliance with sections 1302 and 1303 of the Code (relating to tariff filing and inspection; and adherence to tariffs).

(b) Modifications to the rates, terms or conditions of the noncompetitive service set forth in the interexchange carrier's tariff shall be implemented through the filing of a tariff supplement and verified supporting documentation. The interexchange telecommunications carrier shall serve the tariff supplement on the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's Office of Trial Staff. The interexchange telecommunications carrier shall provide notice to the customer of the proposed change to the noncompetitive service within 45 days of the filing 45 DAYS PRIOR TO THE FILING OF THE TARIFF SUPPLEMENT WITH THE COMMISSION.

(c) The tariff supplement and verified supporting documentation must contain the following information:

(1) An indication on each page of the tariff supplement that the page pertains to the noncompetitive service.

(2) A description of the noncompetitive service.

(3) The rates proposed for the noncompetitive service.

(4) Supporting data justifying the proposed rates for the noncompetitive service.

(5) An executive overview summarizing the reason for the filing which includes relevant information regarding the safety, adequacy, reliability and privacy considerations related to the proposed service.

(6) Other reasonable justification or any relevant data that is requested by the Commission AFTER ITS INITIAL REVIEW.

(d) The interexchange telecommunications carrier ~~may not~~ IS NOT REQUIRED TO submit cost justification, cost-of-service or revenue data relating to the proposed change as directed in subsection (c)(4) if ONE OF the following applies:

(1) The proposed change does not purport to increase an existing rate or surcharge.

(2) The proposed change to the noncompetitive service is designed to make the rates, terms or conditions for that service comparable to the rates, terms and conditions that have been approved by several other State commissions.

(e) The noncompetitive service tariff supplement shall be filed to become effective on 16-days' notice by the interexchange telecommunications carrier.

(f) Review of noncompetitive service tariff supplements shall be conducted consistent with the following procedures:

(1) Within 14 days of the date of filing OF THE TARIFF SUPPLEMENT WITH THE COMMISSION, the Commission will issue a notice allowing the tariff supplement to become effective or issue a report ~~which~~ THAT explains why the tariff supplement may not become effective without modification. The report must identify modifications which would eliminate inadequacies in the tariff supplement. The Commission will deliver or transmit the notice or report to the filing interexchange telecommunications carrier at the time of issuance.

(2) When the Commission issues a notice allowing the tariff supplement to go into effect, the tariff supplement shall become effective, without modification, 16 days after the filing date. If the Commission does not issue a notice or report on the tariff supplement within the 14-day period, the tariff supplement will go into effect by operation of law at the end of the 16-days' notice period.

(3) When the Commission prohibits a tariff supplement from going into effect and issues a report addressing the inadequacies in the tariff supplement, the tariff supplement shall be suspended pending consideration of the tariff supplement under paragraphs (4) and (5).

(4) The filing interexchange telecommunications carrier may file a response to the suspension of the carrier's tariff supplement. The response shall be filed within 7 days of the issuance of the report.

(5) In the alternative, the interexchange telecommunications carrier may withdraw the tariff supplement and file a new tariff supplement which adopts the modifications addressed in the report or which reflects a version of the tariff supplement that has been agreed to by the carrier and the Commission. When a modified tariff supplement is filed, the modified tariff supplement shall become effective on 1-day's notice.

(g) An interexchange telecommunications carrier requesting rate decreases for its existing noncompetitive services shall be permitted to put them into effect at the end of the specified 16-day notice period without further review or approval by the Commission.

(h) An interexchange telecommunications carrier requesting changes in the terms and conditions of its existing noncompetitive services, when the changes do not result in any rate changes, shall be permitted to put them into effect at the end of the specified 16-day notice period without further review or approval by the Commission.

(i) This section supersedes Chapter 53 (relating to tariffs for noncommon carriers) to the extent that Chapter 53 is inconsistent with this section.

§ 63.107. Applications for authority.

(a) An applicant shall specifically indicate in the application for authority to commence service that it is requesting authorization to provide interexchange services to the public and comply as closely as possible with § 3.551 (relating to official forms). ~~The Commission may not make a distinction between certificates of public convenience for interexchange facilities-based carriers and interexchange reseller carriers.~~

(b) If an applicant is offering noncompetitive services to the public, it shall attach a proposed tariff to its application containing the proposed rates of the noncompetitive

services and the rules and policies under which the interexchange telecommunications carrier intends to provide its service. Rates for noncompetitive services provided for in the proposed tariff may not exceed the reasonable charge for a noncompetitive interexchange call as defined in § 63.102 (relating to definitions).

(c) In addition to review of the general evidentiary criteria applicable to interexchange telecommunications carrier application proceedings, the Commission will review the proposed tariff to determine if it complies with subsection (b). The Commission will grant applications only upon a finding that the proposed tariff complies with subsection (b). If the proposed tariff ~~complies with subsection (b)~~, CONTAINS RATES FOR NONCOMPETITIVE SERVICES THAT DO NOT EXCEED THE REASONABLE CHARGE FOR A NONCOMPETITIVE INTEREXCHANGE CALL, the Commission will presume that the rates for the noncompetitive services contained in the tariff are just and reasonable.

(d) Upon the grant of an application for authority to commence interexchange service, the applicant proposing to offer noncompetitive services shall file an initial tariff with the Commission for its noncompetitive services only. The initial tariff must contain the same rates, rules and policies for the noncompetitive services as set forth in the proposed tariff reviewed by the Commission. The initial tariff must become effective immediately upon filing. Initial tariffs must comply with §§ 53.1--53.10 and 53.21--53.26 (relating to filing regulations; and form and contents of tariffs).

(e) Upon the grant of an application for authority to commence interexchange service, a new interexchange telecommunications carrier may file or maintain with the Commission tariffs containing the rates, terms and conditions for its competitive services. If the new interexchange telecommunications carrier files a tariff with the Commission, the tariff shall become effective on 1-day's notice.

(f) If a new interexchange telecommunications carrier chooses to detariff its competitive services, the information regarding the rates, terms and conditions for its competitive services shall be made available at the public disclosure locations established in § 63.104(c) (relating to disclosure requirements for competitive services). The new carrier shall post the information at the public disclosure locations within 48 hours of the date that its application to commence interexchange service has been approved by the Commission.

(g) This section supersedes Chapter 53 (relating to tariffs for noncommon carriers) to the extent that Chapter 53 is inconsistent with this section.

§ 63.108. Reporting requirements.

(a) Interexchange telecommunications carriers shall file affiliated interest and affiliated transaction agreements with the Commission unless the agreements involve services declared to be competitive. The filings constitute notice to the Commission only. The Commission may use the filings to audit the accounting and reporting systems of interexchange telecommunications carriers for transactions with their affiliates.

(b) On or before May 31 of a calendar year, a certificated interexchange telecommunications carrier, as defined in § 63.102 (relating to definitions), shall file with the Commission an annual report for the preceding calendar year. The annual report shall be filed with the Commission's Bureau of Fixed Utility Services.

(c) The annual report must contain aggregate total revenue and traffic volume data measured in minutes of use for the carrier's intraState operations during the preceding calendar year.

(D) THE INTEREXCHANGE TELECOMMUNICATIONS CARRIER SHALL PROVIDE DISAGGREGATED INFORMATION IN ITS ANNUAL REPORT IF IT IS TECHNOLOGICALLY FEASIBLE FOR THE INTEREXCHANGE TELECOMMUNICATIONS CARRIER TO COLLECT THE DATA. Subject to data availability, some SOME examples of the information that shall be disaggregated in the carrier's major service categories are:

(1) Message toll service (MTS) and associated services including operator assisted and calling card services.

(2) Services corresponding to outbound Wide Area Telecommunications Services (WATS).

(3) Services corresponding to inbound WATS or "800" type services.

(4) Private line or dedicated communication path services.

(5) Dedicated network type services, including virtual network type services.

§ 63.109. Enforcement.

(a) For the purpose of enforcement of consumer complaints regarding competitive services, the Commission will have jurisdiction to enforce consumer complaints that involve violations of the applicable public notice requirements established in this subchapter. THE COMMISSION WILL HAVE JURISDICTION TO ENFORCE CONSUMER COMPLAINTS REGARDING THE PROVISIONING OF SERVICE BY INTEREXCHANGE TELECOMMUNICATIONS CARRIERS, INCLUDING

CUSTOMER PRIVACY, ORDERING, INSTALLATION, RESTORATION AND DISCONNECTION, AS WELL AS THE QUALITY OF SERVICE ISSUES. Other consumer complaints, including those complaints involving violations that fall under the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1--209-6), will be referred by the Commission's Bureau of Consumer Services to the Office of Attorney General's Bureau of Consumer Protection.

(b) For the purpose of enforcement of consumer complaints related to noncompetitive services, the Commission will utilize the dispute and informal complaint procedures prescribed for residential billing disputes under Chapter 64 (relating to standards and billing practices for residential telephone service). The Bureau of Consumer Services will have primary jurisdiction over informal complaints arising under this subchapter for designated noncompetitive services.

Subchapter I. [INTEREXCHANGE RESELLERS] (Reserved)

(Editor's Note: The Commission is proposing to delete the current version of §§ 63.111--63.118, which appear at 52 Pa. Code pages 63-52--63-57, serial pages (232276) to (232280) and (244387).)

§ 63.111. (Reserved).

§ 63.112. (Reserved).

§ 63.112a. (Reserved).

§§ 63.113--63.118. (Reserved).

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

WENDELL F. HOLLAND
CHAIRMAN

October 18, 2007

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

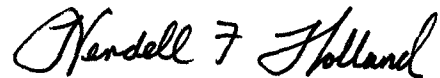
Re: L-00050170/57-239
Final Rulemaking
Regulation of Interexchange Telecommunications
Carriers and Services
52 Pa. Code Chapter 63

Dear Chairman McGinley:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on December 7, 2005, submitted a copy of the Notice of Proposed Rulemaking to the House Committee on Consumer Affairs, the Senate Committee on Consumer Protection and Professional Licensure and to the Independent Regulatory Review Commission (IRRC). This notice was published at 35 *Pa.B.* 6777, on December 17, 2005. In compliance with Section 745.5(b.1) copies of all comments received were provided to your Commission and the Committees.

In preparing this final form rulemaking, the Public Utility Commission has considered all comments received from the Committees, IRRC and the public.

Very truly yours,

A handwritten signature in cursive script that reads "Wendell F. Holland".

Wendell F. Holland
Chairman

Enclosures

cc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Joseph Preston, Jr.
Legislative Affairs Director Perry
Chief Counsel Pankiw
Regulatory Coordinator DeBiondo
Assistant Counsel Screven
Ms. Staver
Judy Bailets, Governor's Policy Office

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00050170/57-239

Subject: Revision of Chapter 63 of Title 52 of the PA Code
Pertaining to Regulation of Interexchange Tele-
Communications Carriers and Services

Pennsylvania Public Utility Commission


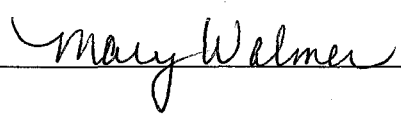

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REVIEW COMMISSION

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>
10-18-07		<u>HOUSE COMMITTEE</u> Consumer Affairs
10/18/07		<u>SENATE COMMITTEE</u> Consumer Protection and Professional Licensure
10/18/07		Independent Regulatory Review Commission
		Attorney General
		Legislative Reference