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January 17, 2006

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James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Proposed 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

Dear Secretary McNulty:

Enclosed please find for filing an original and fifteen (15) copies of the Office of
Consumer Advocate's Comments in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached
Certificate of Service.

Sincerely,

Barrett C. Sheridan
Assistant Consumer Advocate

Enclosures

cc: All parties of record
David E. Screven/Law Bureau

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Proposed Rulemaking for Revision of :
Chapter 63 of Title 52 of the Pennsylvania :
Code Pertaining to Regulation of Interexchange : Docket No. L-00050170
Telecommunications Carriers and Service :

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

Philip F. McClelland
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DATED: January 17, 2006
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I. INTRODUCTION

On March 29, 2005, the Public Utility Commission (“PUC”) commenced a rulemaking to replace the regulations covering interexchange telecommunications carriers and IXC resellers (collectively “IXCs”) presently set forth in Subchapters H and I of Title 52, Chapter 63 with a new Subchapter H. (“NPRM” or “Proposed Rulemaking Order”). The PUC proposes regulations to codify the new statutory provision at Section 3018 of the Public Utility Code, as well as to mirror the deregulation at the federal level of interstate interexchange telecommunications service. While not mandatory, the PUC invites certificated IXCs to detariff their competitive interexchange services, subject to certain disclosure and notice requirements. The Commission proposes that customers of IXCs which detariff their competitive services will be subject to different consumer protections than customers of IXCs which maintain tariffs setting forth rates and rules for intrastate, interexchange service. The proposed regulations also address the offering by IXCs of non-interexchange services which may be noncompetitive. Other portions of proposed Subchapter H address the Commission’s authority over applications to offer interexchange service, to conduct audits, and to require reports from IXCs, all pursuant to Section 3018.

The Office of Consumer Advocate (“OCA”) offers the following comments in response to the PUC’s NPRM. The OCA respectfully submits that certain amendments to the proposed regulations are necessary to better codify Section 3018 and so give IXCs and consumers clear and adequate notice of the Commission’s authority preserved by Chapter 30 for the protection of customers of IXCs.

II. COMMENTS

A. Introduction

Section 3018(a) and (b) provide that intrastate interexchange services, when provided by an interexchange telecommunications carrier, are competitive and beyond the Commission's ratesetting authority. 66 Pa.C.S. § 3018(a), (b)(1). Even though the PUC may not fix the rates for interexchange services, Section 3018(b)(2) states "[a]n interexchange telecommunications carrier may file and maintain tariffs or price lists with the commission for competitive telecommunications services." 66 Pa.C.S. § 3018(b)(2). The new proposed Subchapter H regulations implement these provisions of Section 3018.

However, Section 3018(b)(3) and (d) also addresses the Commission's preserved authority over the provision of service by IXCs. Section 3018 states in key part:

(b) Rate regulation. --

(1) The commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return, operating margin or earnings for interexchange competitive services except as set for the in this chapter.

(2) An interexchange telecommunications carrier may file and maintain tariffs or price lists with the commission for competitive telecommunications services.

(3) Nothing in this chapter shall be construed to limit the authority of the commission to regulate the privacy of interexchange service and the ordering, installation, restoration and disconnection of interexchange service to customers.

(c) Reclassification....

(d) Construction – Nothing in this chapter shall be construed:

(1) To limit the authority of the commission to resolve complaints regarding the quality of interexchange telecommunications carrier services.

(2) To limit the authority of the commission to determine whether an interexchange telecommunications carrier shall be extended the privilege of operating within this Commonwealth or to order the filing of such reports, documents and information as may be necessary to monitor the market for and competitiveness of interexchange telecommunications services.

66 Pa.C.S. § 3018(b), (d) (emphasis added). Proposed Subchapter H 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). This omission should be rectified in any final regulations promulgated to codify Section 3018 and regulate IXCs.

Under the new proposed regulations, the Commission would enforce consumer complaints against IXCs only in very limited circumstances. Proposed Section 63.109 would draw a line such that the PUC will only hear those consumer complaints which concern an IXC's compliance with the PUC's added disclosure requirements for detariffed services. According to the NPRM and proposed Section 63.109, all other consumer complaints regarding intrastate interexchange services will be referred to the Office of Attorney General's Bureau of Consumer Protection. NPRM at 1, 6-7, Annex A, § 63.109. The OCA submits that the limits on the Commission's jurisdiction implied by proposed Section 63.109 are not consistent with Section 3018 and, if implemented as drafted, would contradict the legislation and may lead to confusion and harm to customers.

For the reasons set forth in these comments, the OCA submits that the Proposed Subchapter H regulations should be amended to set forth more clearly the scope of the Commission's ongoing authority to regulate IXCs. Even if intrastate interexchange services provided by an IXC are competitive and deregulated in many aspects, Chapter 30 preserves the Commission's authority over the quality and provisioning of IXC services. The final regulations must recognize these important consumer protections.

B. Subchapter H Should Be Amended to Include a Statement of Jurisdiction Over the Provision of Services by Interexchange Telecommunications Carriers

The OCA submits that the proposed regulations should be amended to affirmatively state the Commission's continued jurisdiction over the services provided by IXC's. The notice provided in footnote 2 to the NPRM that IXC's are still subject to Section 1501 is accurate but incomplete. The OCA recommends the addition of the following regulation:

63.*** Jurisdiction over the services of interexchange resellers and transporters.

(a) Services. Interexchange competitive services are still subject to regulation by the PUC pursuant to Chapter 15 and Sections 3018(b)(3) and (d)(1), 3019(b), and (d) of the Public Utility Code. The Commission retains authority to regulate the quality of interexchange competitive services provided by IXC's, pursuant to Section 1501 and Section 3018(d)(1) and Chapter 63 of the Commission's regulations. The Commission retains authority over the privacy of interexchange service and customer information pursuant to Section 3018(b)(3) and 3019(d) and related regulations. The Commission retains authority over the ordering, installation, restoration and disconnection of interexchange service to customers pursuant to Section 3018(b)(3) and Chapters 63 and 64 of the Commission's regulations.

This statement of jurisdiction over the provision of interexchange services is necessary to accurately give IXC's and consumers notice of the PUC's continued jurisdiction to protect consumers. Even though Section 3018(a) statutorily declares "[i]nterexchange services provided by interexchange telecommunications carriers shall be competitive services," Chapter 30 in general and Sections 3018 and 3019 in particular reserve to the PUC the authority to regulate the provisioning of these services. Further, the OCA submits that the Commission's authority over the provision of these competitive services does not vary based on whether the IXC chooses to maintain tariffs or detariff.

Continued Commission authority over the quality of interexchange services, including the ordering, installation, restoration and disconnection of interexchange service is an important

consumer protection. PUC general authority concerning the offering of and/or billing for interexchange service may involve both a local exchange telecommunications carrier and an IXC. Both types of telecommunications carriers are public utilities within the Commission's jurisdiction. The OCA submits that Chapter 30 properly preserves the Commission's authority to regulate the provision of interexchange service by IXCs. Consumer complaints, for example, regarding slamming may be brought against both the LEC and IXC under Section 1501. The Commission has, in the past, properly exercised its authority over the ordering and installation of IXC services in such slamming cases. Gaige v. AT&T Communications of Pennsylvania, Inc., 93 Pa.PUC 105 (1999); Rosi v. Bell Atlantic-Pennsylvania, Inc. and Sprint Communications Co., L.P., Docket No. C-00992409, Opinion and Order (Feb. 10, 2000).

The Proposed Rulemaking Order does acknowledge that IXCs still are required to provide service which is safe, adequate and reasonable pursuant to Section 1501. NPRM at 6, fn. 2, *citing* Sec. 3018(d)(1) and AT&T v. Pa. P.U.C., 568 A.2d 1362 (Cmwlth Ct. 1990). As the Commission recognizes, the AT&T case states that quoting of telephone rates to a customer is a service under Section 1501.¹ However, the extent of the PUC's continuing authority to regulate IXC services should be more clearly stated and more fully stated in the regulations.

The OCA's proposed revision is necessary to accurately advise IXCs and consumers of the scope of the Commission's authority over the services provided by IXCs. The Commission should not issue final regulations without amendment to include this important consumer protection in compliance with the language of Act 183.

¹ More recently, the Commission upheld a customer complaint against an IXC where the customer was misled by the IXC's description in 2004 of the long distance service package. O'Connor v. Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Docket No. C-20043292, Order (May 10, 2005)(Initial Decision adopted, complaint upheld, \$200 fine imposed).

C. The Commission Should Clarify and Amend Proposed Section 63.109

The last regulation in Proposed Subchapter H, Section 63.109, addresses how and when the PUC will accept and rule on consumer complaints brought against IXCs. In the case of complaints concerning intrastate interexchange services, the PUC suggests that its jurisdiction is very limited. NPRM Annex A, § 63.109(a).

The OCA submits that the Proposed Rulemaking Order could lead to customer confusion over the extent of the Commission's willingness to enforce consumer complaints against IXCs.

According to the NPRM:

IXCs that choose to cancel their tariffs and withdraw tariff supplements will be under a legal obligation to disclose to their individual customers the respective rates, terms and conditions of service as their relationship will be governed by state contract law and the applicable public disclosure requirements set forth in the state consumer protection law. Accordingly, the Commission advises consumers to contact the Pennsylvania Office of Attorney General's Bureau of Consumer Protection Division in order to learn about the protections and remedies available under their state contract and consumer protection laws.

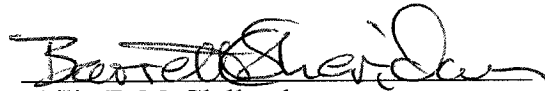
NPRM at 6-7. While state consumer protection law also applies, the OCA does not agree that customers of IXCs in Pennsylvania must rely solely on state contract law or general consumer protection law to assure the privacy of their communications or that they are only billed by the IXC of their choice. Chapter 30 preserved the Commission's authority over these areas of regulatory expertise for the benefit of consumers. *See e.g.* 66 Pa.C.S. §§ 3018(d)(1)(authority over quality of IXC services), 3019(d)(1)(privacy of customer communications). However, the NPRM proposes to "change the jurisdictional forum relating to the processing of complaints against IXCs." NPRM at 1. The OCA submits that this proposal to refer all or most consumer complaints involving IXC issues to the Bureau of Consumer Protection appears to shift regulatory authority in contradiction with the current Public Utility Code.

As explained above, the Commission should amend proposed Subchapter H to include a description of the Commission's preserved authority over the provision of intrastate interexchange service. Section 63.109(a) must be deleted or revised to eliminate the potential for confusion by customers, IXC's, or Commission staff regarding the scope of the Commission's authority to regulate the provision of service by IXC's and protect the interests of consumers, consistent with Chapter 30 and other provisions of the Public Utility Code. Neither the declaration of IXC services as competitive in Section 3018(a), nor the permissive detariffing allowed by Section 3018(b)(2), require or allow the PUC to deregulate the provision of IXC service to the extent implied by Section 63.103(a) and the Proposed Rulemaking Order.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully submits that the Commission should amend the proposed regulations set forth in the Proposed Rulemaking Order in the manner set forth above.

Respectfully submitted,



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Dated: January 17, 2006

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CERTIFICATE OF SERVICE

Re: Proposed 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

I hereby certify that I have this day served a true copy of the foregoing document,
Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance
with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and
upon the persons listed below:

Dated this 17th day of January, 2006.

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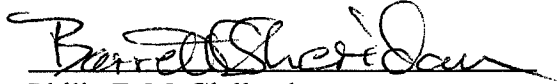
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