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June 27, 2006

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INDEPENDENT REGULATORY
RENEWAL COMMISSION

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

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

Dear Secretary McNulty:

Four months after Act 183 of 2004 became law, the Public Utility Commission ("PUC" or "Commission") commenced the above-captioned rulemaking for the purpose of codifying the new statutory provisions at Section 3018, 66 Pa.C.S. § 3018, concerning intrastate interexchange telecommunications carriers ("IXCs"). Section 3018(a) and (b) marked a change in law by classifying IXC services as competitive and exempt from the PUC's rate-setting authority. The PUC stated that it intended to change existing regulations to reflect this change in law. Primarily, the proposed regulations no longer require IXCs to tariff their services at the PUC. In the Proposed Rulemaking Order, however, the PUC also proposed to "change the jurisdictional forum relating to the processing of consumer complaints against IXCs." Proposed Rulemaking Order, 35 Pa.B. 6777 (Dec. 17, 2005). The OCA files this letter in the nature of additional comments to emphasize the legal issues relating to the removal of regulatory authority for IXC services.

The Office of Consumer Advocate ("OCA") filed comments with the Commission on January 17, 2006 and reply comments on February 1, 2006. In those comments, OCA noted that the proposed regulations did not accurately reflect Section 3018(d) that preserved the PUC's authority over the provisioning, quality and privacy of IXC services. OCA Comments at 2-7; OCA Reply Comments at 1-7. Further, OCA identified a conflict between the

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the Proposed Rulemaking Order, which reminded IXCs that they are still subject to regulation under Section 1501, and proposed Section 63.109, which would direct most consumer complaints against IXCs to the Office of Attorney General's Bureau of Consumer Protection for enforcement. OCA Comments at 6-7. OCA proposed specific additions and amendments to the proposed regulations to provide IXCs with notice of the PUC's ongoing jurisdiction pursuant to Chapter 15, as preserved by Section 3018(d) and portions of Section 3019, to continue to regulate IXCs concerning the provisioning, quality and privacy of IXC services. *Id.* at 4-7.

On March 2, 2006, the Independent Regulatory Review Commission ("IRRC") issued Comments regarding the PUC's proposed rulemaking and the positions of other Commenters. With regard to the OCA's request that the Commission clarify the regulations, IRRC stated:

We agree with the OCA that the PUC does have the authority to exercise jurisdiction over IXCs. However, we also believe that the PUC is well within its powers to decide which areas it will not exercise that jurisdiction in order to promote competition. The final-form regulations should explicitly state which enforcement powers the PUC will retain, consistent with the OCA Comments.

IRRC Comments at 1. The OCA is concerned by the IRRC Comments and offers this letter in reply.

The OCA respectfully submits that the General Assembly has not delegated to the PUC the power to choose whether to exercise the jurisdiction and authority given to the PUC by statute. By definition, IXCs are public utilities "authorized by the commission to provide interexchange services." 66 Pa.C.S. § 3012. As to how the PUC shall regulate IXCs, the General Assembly set forth the requisite, basic policy choices in Section 3018. Tosto v. Pa. Nursing Home Loan Agency, 331 A.2d 198, 202 (Pa. 1975) ("Tosto"). Through Sections 3018(a) and (b), the General Assembly has declared all present IXC services as "competitive" and lifted the PUC's authority to require tariffing of these competitive IXC services. 66 Pa.C.S. §3018(a), (b)(1). Whether or not the IXC maintains tariffs or price lists, the General Assembly affirmatively stated, "[n]othing in this chapter shall be construed to limit the authority of the commission to regulate the privacy of interexchange service and ordering, installation, restoration and disconnection of interexchange service to customers." 66 Pa.C.S. §3018(b)(3). Section 3018(d) further provides that nothing in Chapter 30 shall be construed "[t]o limit the authority of the commission to resolve complaints regarding the quality of interexchange telecommunications carrier service." Section 3019(b) also spells out the PUC's retained powers and duties over IXCs and other telecommunications carriers. 66 Pa.C.S. §3019(b). Thus, the Commission's duty and authority to regulate the provision of utility service by IXCs under Chapter 15 is unchanged by Act 183 of 2004. OCA Comments at 4-7.

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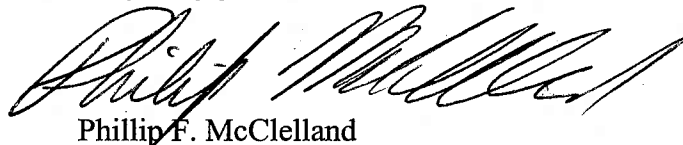
The General Assembly's declaration of the PUC's ongoing authority to regulate IXC providers and services is a restriction or constraint on the PUC's policymaking discretion. Tosto; *see also*, William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269, 291 (Pa. 1975). Respectfully, the OCA disagrees with IRRC's suggestion that the PUC may choose not to accept certain consumer complaints concerning IXCs and thereby decline to enforce its statutory jurisdiction and authority. No administrative officer or body, exercising discretion conferred by the legislature, is vested with the power to abrogate the statute law of the Commonwealth, or to grant to individuals an exemption from the general operation of law. The PUC may not, through regulations or otherwise, abrogate the provisions of Section 3018 and 3019 and deny consumers the protection of public utility law. Commonwealth v. A.M. Byers Co., 31 A.2d 530, 532 (Pa. 1943)(Department of Revenue lacked authority to exempt a corporation from a certain tax, where it was the intent of Legislature to tax all manufacturing corporations). In the "Bessie 8" pipeline case, the PUC attempted to make "Bessie 8" a public utility based upon its interpretation of the public interest. Bethlehem Steel Corp. v. Pa. Public Utility Commission, 713 A.2d 1110, 1115 (Pa. 1998). The Pennsylvania Supreme Court rejected the PUC's policy argument, stating "[i]t is for the legislature, not the PUC or this court to determine what business activity comes within the purview of the PUC." *Id.* Since the General Assembly has clearly decided that the quality, provisioning, installation, privacy, etc. of services provided by IXCs are still to be regulated by the PUC, OCA submits that the PUC may not adopt regulations or practices which contradict or contract the Commission's statutory jurisdiction and authority.

As set forth in the OCA Comments and Reply Comments, the OCA requests that the Commission accurately implement the full language of Sections 3018 and 3019. The PUC may not revise its jurisdiction through administrative action. It is for the General Assembly to determine the scope of the PUC's authority to serve the residents of the Commonwealth. The PUC cannot eliminate the legislative protections set forth in Public Utility Code by relegating IXC customers to the more general protection of the Unfair Trade Practices and Consumer Protection Law. Among other protections lost, this provision would appear to eliminate the privacy protections in PUC regulations of 52 Pa. Code §63.131. For the reasons set forth above, the OCA submits that the Commission may not, through proposed Section 63.109 or any other revised regulation, deny consumers access to the PUC as a forum for complaints against IXCs or the other protections of public utility law preserved by Chapter 30, as enacted by Act 183 of 2004.

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The OCA has served a copy of this letter on all other parties which filed comments in this rulemaking proceeding and the Independent Regulatory Review Commission as evidenced by the enclosed certificate of service.

Very truly yours,



Phillip F. McClelland
Senior Assistant Consumer Advocate
PA Attorney I.D. # 23165

cc. David Screven
Certificate of Service

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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 Letter to Secretary McNulty, 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 27th day of June, 2006.

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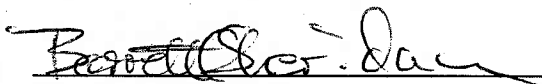
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