

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
JOHN F. MIZNER, ESQ.
MURRAY UFBERG, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 2, 2006

Honorable Wendell Holland, Chairman
Pennsylvania Public Utility Commission
Keystone Building, 3rd Floor
400 North Street
Harrisburg, PA 17105

Re: Regulation #57-239 (IRRC #2512)
Pennsylvania Public Utility Commission
Regulation of Interexchange Carriers and Services

Dear Chairman Holland:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Robert J. Flick, Majority Chairman, House Consumer Affairs Committee
Honorable Joseph Preston, Jr., Democratic Chairman, House Consumer Affairs Committee

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Public Utility Commission Regulation #57-239 (IRRC #2512)

Regulation of Interexchange Carriers and Services

March 2, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the December 17, 2005 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. General. – Consistency with statute; Clarity.

The Office of Consumer Advocate (OCA) believes that the limits imposed on the PUC's jurisdiction over interexchange carriers (IXCs) in this regulation, especially in Section 63.109(a), are not consistent with Section 3018 of the Act. OCA requests that the regulation mention the "Commission's preserved authority over the provision of service by IXCs." 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 regulation should explicitly state which enforcement powers the PUC will retain, consistent with OCA's comments.

2. Section 63.102. Definitions. – Clarity.

The last sentence in the definition of "Interexchange facilities-based carrier" is substantive. Substantive provisions in a definition cannot be enforced. Therefore, this sentence should be removed from the definition and placed in an appropriate section of the regulation.

Also in that sentence, does the PUC intend the term "interexchange transporter" to be the same as the defined term in Section 63.112 in the PUC's existing regulations? If so, a cross-reference to that definition should be added.

3. Section 63.104. Disclosure requirements for competitive services. – Reasonableness; Clarity.

Subsection (c)

Sprint suggests that the PUC amend this section to provide flexibility for IXCs to structure their websites in a way that best allows them to give public disclosure of the information required in this subsection. We agree.

Subsection (c)(1)

This subsection mentions a “designated office.” However, the regulation does not state what a “designated office” is or how an office becomes designated. This information should be clearly set forth in the final-form regulation or the term should be deleted.

Subsection (d)

Verizon requests that the language in this subsection be amended to clarify that the provisions of this subsection apply only to the services that the IXC chooses to detariff. We agree.

4. Section 63.105. Reclassification of services. – Clarity.

In Subsection (c)(5), what are the “other factors deemed relevant by the Commission”? The PUC has indicated that the other information considered in its investigation will be part of a notice to the IXC. Therefore, this subsection can be eliminated by tying it into the notice requirement in Subsection (a).

5. Section. 63.106. Noncompetitive services and tariffs. – Clarity.

Subsection (b)

The language in this subsection is not clear. We understand that the PUC intends the 45-day notice requirement to occur prior to the filing and the PUC’s notice (under Subsection (f)(1)) will come within 14 days after the filing. The language in these subsections should be amended to clearly state the PUC’s intention.

Also, this subsection states that modifications to a tariff “shall be implemented through the filing of a tariff supplement and verified supporting documentation.” Subsection (c)(6) states that the tariff supplement and verified supporting documentation must contain “other reasonable justification or any relevant data that is requested by the Commission.”

If an IXC is the one responsible for initiating the tariff change and submitting the documentation, how will it know the other information requested by the Commission? This subsection should be broken out into a new subsection which details that other reasonable information might be requested by the PUC after initial review of the tariff.

Subsection (d)

Based on our discussion with PUC staff, the phrase “may not” should be “is not required to.”

6. Section 63.107. Applications for authority. – Clarity.

Subsection (a)

An applicant is required to indicate in its application for authority to commence service that it is requesting authorization “**as closely as possible** with § 3.551” (Emphasis added). How can one comply “as closely as possible”? This is not regulatory language and should be deleted in the final-form regulation.

Subsection (b)

This subsection indicates that the term “noncompetitive interexchange call” is defined in Section 63.102. However, this term is not defined in that section. Either the definition of the term should be added to Section 63.102 or the cross-reference in this subsection should be deleted.

Subsection (c)

The PUC has indicated that the last sentence in this subsection means that a tariff will be deemed to be just and reasonable if it is at or below the reasonable charge established by Subsection (b). The last sentence in this subsection should be amended to clearly state the PUC’s intent.

7. Section 63.108. Reporting requirements. – Clarity.

The last sentence in Subsection (c) is unclear. Is it intended to mean that the IXC should provide the required information required under Subsections (c)(1) through (5) in its annual report if it is technologically possible to collect that data? This language should be amended to clearly state the PUC’s intent.

Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



Phone: (717) 783-5419
Fax #: (717) 783-2664
E-mail: kriss@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Sherri A. DelBiondo
Regulatory Review Coordinator
Law Bureau
Agency: Pennsylvania Public Utility Commission
Phone: 2-4597
Fax: 3-3458
Date: March 2, 2006
Pages: 5

RECEIVED
2006 MAR -2 AM 8:39
INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-239 (IRRC #2512). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Sherri DelBiondo*

Date: 3-2-06
RECEIVED
2006 MAR -2 AM 8:39
INDEPENDENT REGULATORY
REVIEW COMMISSION

Fax5