

# Regulatory Analysis Form

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(1) Agency

Pennsylvania Public Utility Commission

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L-00050173/57-242

INDEPENDENT REGULATORY  
REVIEW COMMISSION

IRRC Number:

2534

(3) Short Title

Proposed Rulemaking Re: Revision to the Commission's Regulations Governing Extended Area Service.

(4) PA Code Cite

52 Pa. Code Sections §§63.71-63.77

(5) Agency Contacts & Telephone Numbers

Primary Contact: Joseph K. Witmer (Legal)

Secondary Contact: Tony Rametta (Fixed Utility Services); Sherri DelBiondo (Legal)

(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.

Section 52 Pa.Code §§63.71-73.77 establish Commission regulations governing when Extended Area Service may convert instate toll calling areas to a local call.

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

66 Pa.C.S. §501

## Regulatory Analysis Form

(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.

No.

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

The Commission is updating its EAS regulations in response to market changes and the Report and Recommendation of the Extended Area Service Task Force.

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

None.

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

Pennsylvania customers may see their local calling areas change in response to economic, demographic, and technological changes. The number of customers cannot be known at this time.

## Regulatory Analysis Form

(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 updating these rules since the changes reflect adjustments in a long-standing policy.

(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.)

Local and interexchange carriers that are subject to the Commission's jurisdiction.

(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.

The Commission engaged in a public dialogue with industry, consumers, and the general public through the Report and Recommendation of the Extended Area Task Force (EAS Task Force). There were some areas of agreement and areas of disagreement. The proposed regulations reflect the Commission's view of the best way to address EAS in a changing technological environment.

(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 should be significant savings for local and interexchange carriers because the proposed regulation replaces the current requirement of a mandatory biennial traffic study with the option to conduct a traffic study on a case-by-case or biennial basis. Additionally, the proposed regulation recognizes the claim of some carriers that there may be substantial savings for those local and interexchange carriers that exercise the option to conduct a biennial traffic study of their entire service territory.

## Regulatory Analysis Form

(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:

None.

(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.

None.

## Regulatory Analysis Form

(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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

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

Not applicable.

## Regulatory Analysis Form

(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.

Not applicable.

(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.

## Regulatory Analysis Form

(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.

Not applicable.

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

The Commission has not performed an extensive or in depth analysis of other states' legislation or regulations on EAS. However, the Commission's proposed EAS revisions should not put Pennsylvania business customers at a competitive disadvantage because the replacement of current instate toll calls with an expanded local calling territory should reduce overall telecommunications expenses for Pennsylvania businesses located in areas where the current scope of local calling does not accurately reflect economic, technological, or demographic changes.

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

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

## Regulatory Analysis Form

(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 proposed regulations should reduce record keeping by replacing the current requirement of a mandatory biennial traffic usage study with the option to conduct a traffic usage study on a case-by-case basis.

(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 be adopted as final following publication in the Pennsylvania Bulletin after review of all comments submitted to the Commission and approval by IRRC and the legislative committees.

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

After taking effect, the final regulations will be reviewed on an on-going basis and as warranted.

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

2534

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

BY \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

FEB 15 2006

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-00050173/57-242

DATE OF ADOPTION October 27, 2005

BY \_\_\_\_\_  
James J. McNulty

TITLE ( SECRETARY)

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

Bohdan R. Pankiw  
Chief Counsel

10-27-05

DATE OF APPROVAL

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

L-00050173/57-242  
Proposed Rulemaking  
Revision to Commission Regulations Governing  
Extended Area Service  
52 Pa. Code, Section 63

The Pennsylvania Public Utility Commission on October 27, 2005, adopted a proposed rulemaking order setting forth changes to regulations governing extended area service in the telecommunications industry. The contact persons are Joseph Witmer, Law Bureau, 787-3663 and Anthony Rametta, Bureau of Fixed Utility Services, 787-2359.

## **EXECUTIVE SUMMARY**

L-00050173/57-242

Proposed Rulemaking

Revising the Commission's Regulations Governing  
Extended Area Service, 52 Pa.Code, Chapter 63

Periodically the Commission reevaluates its rules governing the process for changing a customer's local calling area in order to ensure that the Commission's regulations reflect the current state of the law as well as technology and demographic changes in telecommunications services.

On April 1, 2003, the Commission created an Extended Area Service (EAS) Task Force at Docket No. M-00031703 and charged the EAS Task Force with evaluating the Commission's regulations for EAS. EAS is a technical term referring to changes in local calling areas, typically expansions, which convert local toll calls to local calls. EAS changes typically reflect technological, economic, and demographic changes in Pennsylvania's local telecommunications markets.

The Commission's Task Force was able to reach a consensus on some, though not all, draft language revising the current regulations. Staff reviewed the parties' proposals and the Commission adopted the proposed regulation reflecting areas of disagreement and agreement among the parties.

The proposed regulations accomplish a number of Commission objectives. First, the rules replace some outmoded definitions and propose new definitions. Second, the proposed regulations replace the current requirement of a mandatory biennial traffic study conducted by local and interexchange carriers with the option to conduct a traffic study on a case-by-case or biennial basis. Third, the proposed regulation transfers the responsibility for compiling customer responses to EAS Polls from industry to the Commission. This transfer was necessary given the reluctance of some competitive carriers to provide their traffic study to the incumbent, formerly monopoly, carrier that had traditionally compiled the traffic study. Fourth, the proposed regulation permits carriers to petition the Commission

to recover any revenue shortfall or cost incurred for the implementation of EAS. Taken together, the proposed revisions should provide for better management of EAS proceedings before the Pennsylvania Commission.

The contact persons for this rulemaking are Joseph K. Witmer, Law Bureau (legal), 717-787-5000, and Tony Rametta, Fixed Utility Services (FUS Telecommunications Division), 717-787-2359.

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

Public Meeting held October 27, 2005

Commissioners Present:

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman, Concurring Statement attached  
Bill Shane  
Kim Pizzingrilli  
Terrance J. Fitzpatrick

Rulemaking Re: Proposed Revision to  
Commission Regulations Governing  
Extended Area Service (EAS) at  
52 Pa.Code §§63.71-63.77

Docket No. L-00050173

Report and Recommendation of the  
Extended Area Service Task Force

Docket No. M-00031703

**PROPOSED RULEMAKING ORDER**

**BY THE COMMISSION:**

Before the Commission for disposition is a staff recommendation and proposed rulemaking prepared in response to the Commission's Secretarial Letter of April 1, 2003 at M-00031703 regarding Extended Area Service (EAS).<sup>1</sup>

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<sup>1</sup> This Secretarial Letter created the Extended Area Service (EAS) Task Force for the purpose of evaluating the Commission's regulations governing EAS as set forth at 52 Pa. Code §§ 63.71 – 63.77

## History of the Proceeding

On June 30, 1999, the Commission entered an Order at I-00940035 (*June 1999 Order*) adopting the Extended Area Service (EAS) Report of the Monitoring and Reporting/Subscribership Subcommittee (Monitoring Subcommittee) of the Universal Telephone Service Task Force.

The *June 1999 Order*, in addition to suspending the biennial traffic usage study requirement of 52 Pa.Code §§ 63.71-63.77 (the EAS Regulations), required the Monitoring Subcommittee to review the pertinent regulations for possible revisions and report its findings to the Commission.

By Secretarial Letter dated April 1, 2003 at M-00031703, the Commission created an EAS Task Force to evaluate the EAS regulations. Furthermore, the Commission separated the EAS Task Force from the Universal Telephone Service Task Force, effectively eliminating the Monitoring Subcommittee from the process. The Commission directed the EAS Task Force to focus on how to make the current regulations more reflective of the realities existing in the current marketplace. Subsequently, Commission staff convened a collaborative, including representatives of industry<sup>2</sup> and the Office of Consumer Advocate (OCA) to review and develop an EAS recommendation. During the ensuing meetings, the Task Force members conducted a section-by-section review of our existing EAS regulations.

The Task Force was able to reach a consensus on some of the proposed changes; however, it could not reach a consensus on every section of the regulations. Differing viewpoints came from the Pennsylvania Telephone Association (PTA) and the OCA. Notably, the Competitive Local Exchange Carriers (CLECs) and Interexchange Carriers

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<sup>2</sup> The industry representatives included MCI, AT&T, Verizon, the Pennsylvania Telephone Association, North Pittsburgh, D&E Communications, Sprint, and Frontier.

(IXCs) posed neither consensus nor contradictory positions. The PTA argues that the EAS regulations are no longer necessary because local and long distance competition provides customers with enough calling options to eliminate the need for a Commission-mandated extension of calling areas. Regulations are still necessary in the OCA's opinion. The OCA believes that this is particularly true for rural areas with little or no competition.

Staff reviewed the consensus language, as well as the alternative language that was proposed by the OCA and the PTA. The result of this effort, reflected in the Bureau of Fixed Utility Services (FUS) recommendation prepared in consultation with the Law Bureau, Office of Special Assistants, and Bureau of Consumer Services, is before us today.

### **Discussion**

The proposed rulemaking recognizes that regulations are still necessary but suggests some revisions that better reflect the current environment, *e.g.*, the advent of intraLATA<sup>3</sup> competition and presubscription, the recent classification of optional calling plans as competitive, and the proliferation of local telephone choice in certain local markets. Staff is particularly concerned about the cost, complexity and administrative feasibility of attempting to aggregate traffic data in highly competitive areas where multiple CLECs and IXCs exist.

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<sup>3</sup>LATA is a term of art referring to the Local Access and Transport Areas identifying the 196 local geographical areas in the US in which a local telephone company provides telecommunications services – local or long distance. The definition differentiates between “local” companies who could not provide service between LATAs and “long-distance” companies that provided service between LATAs under the Modified Final Judgment of 1984, which divested the Bell Telephone operations. The Telecommunications Act of 1996 (TA-96) allowed local companies to petition the FCC for authority to provide long-distance service under Section 271 of the TA-96. Verizon Pennsylvania, Inc., as a successor Bell Operation company, has Section 271 authority in Pennsylvania. Nevertheless, calls within a LATA are “intraLATA” calls and calls between LATAs are “interLATA” calls. The EAS regulations address conversion of intraLATA or interLATA toll calls to local calls.

Although the emergence of wireless and more recent innovations such as Voice over Internet Protocol (VoIP) provides customers with expanded choice, the relatively uneven deployment of these innovative technologies and services warrants the continuation of some form of EAS. This is particularly true for those rural areas where there is less deployment of these technologies than may be the case at a future time. Moreover, Section 3014(b)(7) of Chapter 30 grants some rural carriers a continuous suspension from certain interconnection requirements with alternative service providers under TA-96 through December 31, 2008.

Significant low-cost alternatives to traditional long distance programs are also not widely available in rural and urban areas. It appears that the unlimited statewide calling plans of some IXC's or local phone companies with long distance service affiliates continue to cost considerably more than an expanded local calling area. Finally, the continuing existence of customer complaints seeking EAS warrants continuation of a revised form of EAS regulations to provide these customers with an opportunity to obtain EAS as a remedy in appropriate circumstances.

### **Section 63.71 Definitions**

This section modifies several of the existing definitions, creates new definitions, and eliminates some outdated definitions. These proposed changes make the definitions match the nomenclature used in other existing Commission regulations and reflect market changes.

There are two proposed replacements and one new definition. "*Basic Local Calling Area*" replaces *Local Calling Area* to make it consistent with other sections of our regulations. *Customer* replaces *Subscriber* for the same reason.

There is a new definition for *Interexchange Telecommunications Carrier* for clarity. There are also new definitions of Administrative costs and Facility costs

reflecting the regulations proposal to allow the recovery of one-time and on-going EAS implementation costs including the recovery of lost revenues.

The current regulations contain definitions of *Optional Calling Plans* and *Interexchange Toll Rates*. The proposed rulemaking eliminates “*Optional Calling Plans*” and “*Interexchange Toll Rates*” due to the level of competition with interexchange carriers.

### **Section 63.72 Traffic Usage Studies**

The current regulations at Section 63.72 govern traffic usage studies. The proposed Section 63.72 regulations continue to govern traffic usage studies. However, the current requirements governing the general filing requirements for biennial studies would no longer be required.

The current Section 63.72 regulations required all local exchange carriers to conduct traffic usage studies on a biennial basis and specified the methods for measuring calling frequency for exchanges, contiguous or noncontiguous, within 16 miles of a toll center. The Commission’s *June 1999 Order* suspended this requirement. That suspension is currently in force and effect.

The proposed rulemaking for Section 63.72 eliminates the biennial traffic study. This elimination continues our process of ensuring that our regulations are consistent with Section 3015(e) of the Public Utility Code. *PUC Filing and Reporting Requirements on Local Exchange Carriers*, Docket No. M-00041857 (Order Entered October 5, 2005). The proposed regulations do provide, however, that in the course of a specific formal complaint proceeding, the presiding Administrative Law Judge may direct the local and long distance carriers serving a specific calling route to produce traffic studies. These proposed regulations are consistent with the recently enacted Chapter 30 legislation set forth at 66 Pa.C.S. §3001 et seq.

The proposed regulations also permit a local exchange carrier to undertake a voluntary biennial traffic study instead of conducting studies on a case-by-case basis. The proposed regulations do not require a study if the carrier conducted a study within the previous two years or if the route obtained EAS. The proposed regulations also eliminate detailed provisions on call measurement methodology for interLATA and intraLATA calls.

Finally, the proposed regulations require the Commission to prepare a report containing the aggregated results of traffic studies within 90 days of its receipt of the study data. The report is proprietary and filed under protective seal. Participating local exchange carriers, interexchange telecommunications carriers, petitioning customers, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate would receive the results.

The local exchange carrier has the responsibility for compiling the information and making an estimate of the increase in the charge for local service from EAS in the current regulations at Section 63.72. Under the proposed regulation at Section 63.72(e) and (f), the Commission staff assumes these responsibilities in Section 63.72(e). This revision addresses market developments that make it more appropriate for the Commission staff to do this work instead of an incumbent LEC on behalf of itself and its competitors. The appropriate Commission staff compiling the results is a witness in any proceeding and is subject to cross-examination in Section 63.72(f) of the proposed regulations.

The Commission recognizes that this is a significant change in process. The Commission expressly seeks comment on this proposal as well as any suggested language addressing this proposal.

### **Section 63.72a. Reserved.**

The current regulations at Section 63.72a govern the conduct of interLATA traffic studies. Those existing regulations require a local carrier to identify the interexchange carriers operating in its service territory based upon access charge levels from the most recent 12-month period. The existing regulations also contain detailed requirements for interexchange carrier submittals to a local exchange carrier. The existing regulations require the local exchange carrier analyze and aggregate the traffic data.

The proposed regulations revise these requirements and move them to a newly revised Section 63.72. Section 63.72a is reserved for future use.

The proposed regulations at Section 63.72 incorporate some of the detailed provisions of the current Section 63.72a. The revisions respond to market developments, EAS Task Force suggestions, the proposal to allow an ALJ to require a study in a proceeding, and an alternative that permits a local exchange carrier to conduct voluntarily a biennial traffic study in lieu of case-by-case studies.

The Commission seeks comment on these revisions, as reflected in a revised Section 63.72, given market developments in the telecommunications market including but not limited to the possible merger of local exchange carriers and interexchange telecommunications carriers.

### **Section 63.73 Customer Polls**

The existing EAS regulations at Section 63.72 govern *Optional Calling Plans*. The current regulations detail the circumstances and procedures for the implementation of *Optional Calling Plans* by a local exchange carrier based on the required, though currently suspended, biennial traffic usage study.

The current regulations require the local exchange carrier to provide a subscriber with options. The local exchange carrier must offer a subscriber the option to purchase a block of time for a flat fee or another alternative. This is required whenever the mandatory biennial traffic study shows an interexchange calling frequency of 2.00 or more calls per access line and where at least 25% of the access lines have been used for 1.00 or more calls.

The current regulations also require each traffic study interexchange carrier to provide a subscriber with an option to purchase a block of time for a flat fee and a continuing discount for calls in excess of that block of time. This is required whenever toll traffic usage studies reveal an average monthly calling frequency of more than 2.00 calls per access line from one exchange to another exchange over an interLATA route. In both cases, a local exchange carrier must notify subscribers of the existence of the required *Optional Calling Plan* within 60 days and file the requisite tariff.

The proposed regulations eliminate *Optional Calling Plan* requirements. The proposed deletion addresses the advent of competition in the interLATA and intraLATA toll calling markets in Pennsylvania. The Commission recognizes a view that *Optional Calling Plans* may retain their validity for customers that lack competitive choices or where the customers' carrier is exempt from local wireline telecommunications competition under Chapter 30 or Section 251(f) of the Telecommunications Act of 1996. *See generally* 66 Pa. C.S. § 3014(b)(7). The Commission seeks comment on this issue and suggested language addressing how the final regulations should resolve the matter.

The proposed regulation also moves the EAS poll requirements currently set forth at Section 63.74 to a revised Section 63.73. These proposed regulations provide detailed procedures governing customer polls.

The proposed regulation at Section 63.73(b) governs when a local exchange qualifies for EAS. The proposed regulation specifies that a local exchange will qualify for EAS when the route has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to the target exchange and at least 50% of the access lines in the originating exchange have been used to make 1.00 or more calls per month. The proposed regulation at Section 63.73(c) does not require a poll when customers affirmatively rejected EAS from the originating exchange to the terminating exchange during the preceding two years. Section 63.73(d) requires a carrier to implement one-way EAS without a customer poll over a qualifying route when usage standards are met and there is no increase in the local service charge for EAS. Conversely, Section 63.73(d) will require a carrier to conduct a customer poll of the originating exchange if rates will increase in order to determine whether to grant EAS.

This continues the practice set forth in Section 63.74 of the current regulations. Some members of the EAS Task Force wanted an increase in the calling frequency standard before a route qualifies for EAS. The proposed regulations reject that suggestion in light of the elimination of *Optional Calling Plans* and the absence of any valid reason to adjust the current qualifying number.

The proposed regulations at Section 63.73 eliminate the current requirements in Sections 63.74(4) and (5) addressing two-way EAS balloting. The proposed regulation eliminates the two-way balloting provisions in response to market conditions and the EAS Task Force discussions.

The proposed regulations contain detailed procedures for mailing and counting ballots in a customer poll. These detailed revisions facilitate the Commission's obligation to tally the ballot results from a customer poll.

The proposed regulations retain the current requirements of Section 63.74 that a poll is not required if one was rejected within the previous two years or if the usage standards are met but there will be no increase in the local service charge for implementing extended area service. The Commission also retains the authority to specify additional conditions for a customer poll.

The proposed regulations at Section 63.73(e) continue provisions addressing the conduct of balloting on EAS routes if there would be an increase in local service rates due to increasing the size of the local calling area. This ensures consideration of customer responses in EAS matters.

#### **Section 63.74 Cost Recovery**

The existing Section 63.74 regulations contain detailed provisions governing the conduct of one-way and two-way EAS ballots. The proposed regulations revise the one-way ballot provisions, eliminate two-way ballot provisions, and move these revisions to a new Section 63.73. The new Section 63.74 contains detailed cost recovery provisions.

Under current practice, a local exchange carrier may recover the costs to implement EAS although this typically excludes any revenue shortfall recovery. The Commission took this approach in light of the increased revenue derived from expansions in the local calling areas and the delivery of new services. However, the Commission did allow for the recovery of some implementation costs. The Commission generally viewed expansions in local calling areas as a necessary response to changed circumstances and a means of ensuring reasonable service to Pennsylvanians. *Vincent P. Golden v. Bell-Atlantic, Inc. and GTE North, Inc.*, Docket No. C-00981878 (Order entered January 24, 2001); *Warthman v. GTE North, Inc.*, Docket No. C-00924416, Slip Op., p. 7, (Order entered March 20, 1995) and *Pa. P.U.C. v. ALLTEL Pennsylvania, Inc.*, Docket Nos. P-00940801 and P-00940807 (Orders entered October 19, 1994).

The Commission does consider recovery of some EAS costs, but not lost revenue, where a carrier does not have rate groups. The Commission also prohibits the substitution of noncompetitive service revenues to recover revenues from lost competitive service. *Jeb Billet et al. v. The United Telephone Company of Pennsylvania*, Docket No. C-00014854 (Order entered April 8, 2005). The Commission had taken this approach in order to ensure compliance with longstanding Commission-approved tariff-based local rate structures for regulated or noncompetitive services. However, the Commission has approved increases in the \$2.00 range for some local exchange calling area rates when EAS is implemented. Compare *Haines Township, Milnes Township, Penn Township, and the Borough of Millheim v. Bell Atlantic-Pennsylvania, Inc.* Docket No. C-00970430, (Opinion and Order entered February 2, 2000) with *Jeb Billet*.

The proposed regulations for Section 63.74 outline a new approach to EAS cost recovery. The proposed revisions allow local exchange carriers to petition the Commission to recover revenue shortfall as well as on-going and/or one-time costs incurred to implement EAS. The petition must also propose a method for cost recovery.

The proposed regulations present a list of items for cost recovery. These are administration, facilities, and lost revenues. Any claimed cost must be prudently incurred and reasonable in amount. In situations where customers are responsible for cost recovery, customers receive notice of the LEC's cost recovery proposal and are provided an opportunity to vote in a customer poll.

The proposed regulations recognize that Section 3016(f)(1) of the Public Utility Code prohibits a local exchange telecommunications company from using revenues earned or expenses incurred in conjunction with noncompetitive service to subsidize competitive services. Previous declarations by some carriers that toll services are competitive may implicate Section 3016(f)(1) and limit the recovery of lost revenues as

reflected in the proposed Section 63.74. The Commission seeks legal analysis and policy comment and suggested language addressing this issue. This is necessary because the proposed revision may encompass compensation for competitive lost toll revenues from a surcharge or other increase in non-competitive service.

One issue that may arise if the Commission adopts the proposed cost recovery provisions concerns the interplay of cost recovery and price-cap regulated carriers. In those instances, the proposed recovery of on-going and/or one-time costs associated with the implementation of EAS routes involves the periodic annual revenue and rate increases implemented by LECs that have approved Amended Network Modernization Plans (Amended NMPs) under the new Chapter 30 law, Act 183 of 2004, P.L. 1398, 66 Pa. C.S. §§ 3011-3019. Whether the costs incurred to establish EAS routes are recovered via a surcharge in a particular affected exchange or increase a LEC's basic local exchange service rate, EAS costs will be accounted as revenues for the purpose of the LEC's calculation of the annual price stability mechanism (PSM) revenue and rate increases. *See generally* 66 Pa. C.S. § 3015(a). Therefore, over time, there is the potential for over-recovery of EAS costs if revenues from an EAS surcharge or other increase designed to cover on-going and/or one-time costs are included in the baseline used to calculate an incumbent local exchange carrier's PSM and associated rate increase opportunities.

Another issue that may arise if the Commission adopts the proposed cost recovery provisions concerns the potential incremental over-recovery of on-going and/or one-time EAS costs. Specifically, the Commission seeks comment on whether the PSM exogenous factors of LECs with the appropriate Amended NMPs can be utilized for that purpose to the extent that the Amended NMPs permit it, and whether other methods would be more appropriate and easier to follow and implement. Commenting parties are encouraged to submit appropriate and concise calculation examples that accurately explain their respective proposals. Commenting parties should also include proposed language reflecting resolution of this issue.

A further issue that could arise if the Commission adopts the proposed cost recovery provision concerns the customers responsible for cost recovery and the Public Utility Code. The proposed regulations do not address the issue of cost recovery of non-recurring and recurring EAS route costs and lost revenues from end-user customers of a LEC with an approved Amended NMP where such customers purchase “service bundles” from the LEC. These “service bundles” typically include protected (e.g., basic local exchange service), non-competitive, and competitive services, and are offered as competitively priced “service bundle packages.” *See generally* 66 Pa. C.S. § 3016(e)(2).

The Commission solicits comments on whether end-user customers with “service bundles” should shoulder the burden of the cost and lost revenue recovery for a LEC’s establishment of an EAS route in one or more exchanges in the same manner as the end-users who do not subscribe to the LEC’s “service bundles.” This is an important consideration given *inter alia* the provisions of Sections 1304 and 3016(f)(1) of the Public Utility Code. If appropriate, the Commission seeks comment on whether on-going and/or one-time EAS costs and lost revenue recovered from end-user customers with “service bundles” should be accomplished through the rates charged for the protected and non-competitive services portion of the “service bundle” when one or more EAS routes provides those customers with one or more expanded local calling areas.

The commenting parties should address this issue and provide specific language suggesting how the final regulations can address this concern with particular attention paid to the avoidance of undue and unlawful rate discrimination. *See generally* 66 Pa. C.S. § 1304.

The commenting parties should also address EAS cost and revenue recovery in situations where a rural LEC<sup>4</sup> has implemented differentiated prices for its protected and non-competitive services in a particular exchange in order to meet the presence of a local exchange services alternative provider, and the establishment of one or more EAS routes affect this particular exchange. *See generally* 66 Pa. C.S. § 3016(e)(3). The comments should propose a solution and suggested language addressing EAS cost recovery on a per-specific exchange basis, as well as rationales and methods of resolving potential undue and unlawful rate discrimination situations.

Finally, the proposed regulations would allow the recovery of lost revenues. As noted, the Commission's earlier decision in *Jeb Billet* suggests a contrary approach. *Jeb Billet*. The Commission seeks comment on whether the LEC should be compensated for lost revenues, including suggested language reflecting how the final regulations should resolve the matter.

### **Section 63.75 EAS Complaints**

The current Section 63.75 governs the conduct of subscriber polls required of a local exchange carrier based on submitted traffic usage data indicating that a route qualifies for expanded area service. The current Section 63.75 contains detailed provisions regarding Commission approval of a transmittal letter and ballot to subscribers. The current Section 63.75 also contains detailed provisions regarding the mailing, tabulation, and evaluation of results from subscriber polls.

The proposed regulation revises these Section 63.75 provisions and then moves them to a new Section 63.73. The proposed regulation at Section 63.75(a) continues the Commission's requirement to evaluate EAS complaints according to criteria set forth in

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<sup>4</sup> As the term "rural LEC" is defined in 66 Pa. C.S. § 3012 and TA-96.

Section 63.77 of the current regulations although the Section 63.77 criteria are now set forth as Section 63.76 of the proposed regulation.

The revised Section 63.75 in the proposed rulemaking is virtually identical to the existing section on EAS complaints set forth at Section 63.76. The only major revision is one that requires a customer to file a formal complaint to have EAS considered for a particular route. This revised criterion in the new Section 63.76 complaint continues to govern evaluation of EAS.

The proposed regulations for Section 63.75 do contain some new requirements. The Commission must evaluate a formal complaint using the revised evaluation criteria set forth in a revised Section 63.76 (specifying the criteria for evaluating EAS complaints). The proposed regulation continues the requirement that each local exchange carrier and interexchange telecommunications carrier shall be an indispensable party in any EAS proceeding where multiple local exchange carriers and interexchange telecommunications carriers provide service in the exchanges that are the subject of the EAS proceeding.

#### **Section 63.76 Evaluation Criteria**

The current regulation at Section 63.76 allows the filing of formal EAS Complaints. The current provisions permit the filing of a formal complaint seeking extended area service. The current regulation at Section 63.76 requires that any formal complaint be evaluated according to the criteria set forth in Section 63.77 of the existing regulation. The current regulation also provides that each affected utility shall be an indispensable party if multiple telephone utilities are involved.

The proposed regulations for Section 63.76 contain a revised version of the EAS evaluation criteria now set forth in Section 63.77. The Section 63.76 criteria determine when EAS relief is appropriate.

The proposed regulation revises the current Section 63.77(2) provisions governing cost recovery by including revenue shortfall and expense items as new considerations in addressing the revised criteria for evaluating a formal EAS complaint in Section 63.76(a)(2) of the proposed regulation. The proposed items eligible for consideration include administrative costs, facility costs, and lost revenue based on definitions set forth in Section 63.71. These revisions reflect views of the EAS Task Force that specific and detailed cost recovery allowances are necessary. The revisions also reflect the proposed cost recovery provisions in Section 63.74.

As with Section 63.74, the Commission recognizes that Section 3016(f)(1) of the Public Utility Code prohibit a local exchange telecommunications company from using revenues earned or expenses incurred in conjunction with noncompetitive service to subsidize competitive services. The declaration that toll services are competitive may implicate Section 3016(f)(1) and the recovery of lost revenues proposed by these revisions.

The Commission expressly seeks legal analysis and policy comment on this proposed revision and Section 63.74. The prohibition in Section 3016(f)(1) may limit the scope and applicability of these proposed revisions.

#### **Section 63.77. Reserved.**

The current regulation at Section 63.77 specifies the criteria used to evaluate formal complaints concerning any expansion of a local calling area. The proposed regulation revises these criteria, places this provision in a new Section 63.76, and solicits

comments on those proposed changes. The proposed regulation preserves this section for future use.

### **The Impact of Act 183, 66 Pa.C.S. §§ 3001-3019.**

The General Assembly's recent enactment of revisions to Chapter 30 of the Public Utility Code addresses the delivery of telephony to Pennsylvanians. Consistent with Section 3016(e), the proposed regulations eliminate the mandatory biennial traffic study. We tentatively conclude that no other provisions of Act 183, 66 Pa.C.S. §§ 3001-3019, limits our ability to propose these EAS regulations. However, we expressly seek comment on this tentative conclusion as well as any matter with the purview of this proposed revision to 52 Pa.Code §§ 63.71-77.

### **Conclusion**

Upon consideration, we conclude that the proposed rulemaking, as set forth in this Order, should be adopted. Our action begins the process needed to consider promulgation of revised EAS regulations that reflect the uneven development of customer choice and the deployment of telephony technology in Pennsylvania. Accordingly, under section 501 of the Public Utility Code, 66 Pa. C.S. §501, and the Commonwealth Documents Law, Act of July 31, 1968, P.L. 769, *as amended*, 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 §§63.71-63.77 as noted above and as set forth in Annex A;

**THEREFORE,**

**IT IS ORDERED:**

1. That a proposed rulemaking be opened to consider the regulations set forth in Annex A;
2. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review for fiscal impact;
3. That the Secretary shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and Legislative Standing Committees;
4. That the Secretary shall certify this Order and Annex A, and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*. The Secretary shall specify publication of the Order in accordance with 45 Pa. C.S. §727;
5. That an original and 15 copies of any comments to the proposed regulations be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. The comments should reference the docket number of the proposed rulemaking. In addition, electronic copies of the comments should be submitted to the below referenced contacts on disk in Word format and by e-mail, and submitted electronically to Cyndi Page, of the Commission's Communications Office, email address - [cypage@state.pa.us](mailto:cypage@state.pa.us), (717) 787-5722.
6. That the contact persons for this rulemaking are Joseph K. Witmer, Law Bureau, (717) 787-3663, email address - [joswitmer@state.pa.us](mailto:joswitmer@state.pa.us), and Anthony J.

Rametta, Bureau of Fixed Utility Services, (717) 787-2359, email address – arametta@state.pa.us.

7. That a copy of this Order and Annex A be served upon the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Telephone Association and all jurisdictional telecommunications utilities.

**BY THE COMMISSION,**

  
James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: October 27, 2005

ORDER ENTERED: NOV 04 2005

ANNEX A  
TITLE 52 PUBLIC UTILITIES  
PART I. PUBLIC UTILITY COMMISSION  
Subpart C. FIXED SERVICE UTILITIES  
CHAPTER 63. TELEPHONE SERVICE  
Subchapter F. EXTENDED AREA SERVICE

**§63.71. Definitions.**

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

*Administrative costs* – The costs of EAS balloting, traffic studies, consultant fees, documentation, billing and clerical costs to provide EAS for the routes added.

*Basic local calling area* – The area, consisting of one or multiple telephone exchanges consistent with the Public Utility Code and the Commission's regulations as they exist or may come to exist, and as set forth in the incumbent local exchange carrier's tariff, within which calls may be completed without having additional interexchange calling rates apply.

*Customer* – A person or entity that contracts directly with a local exchange carrier for telephone service.

*EAS – extended area service* – The expansion of a local calling area to include additional exchanges.

*Exchange* – An area served by one or more central offices which has a [unique] basic local calling area and a defined rate center from which toll distances are measured.

*Facility costs* – the costs of all leased or purchased plant, equipment, and computer software necessary to provide EAS for the routes added.

***[Full billing and collection agreement]*** — An agreement under which an interexchange carrier contracts with the local exchange carrier to bill and collect the revenues for message toll service calls placed by end users through the interexchange carrier as the presubscribed carrier.]

***Interexchange telecommunications carrier*** — A carrier, other than a local exchange carrier, authorized by the Commission to provide interexchange telephone services to the public.

***[Interexchange toll rates]***—Telephone rates, usually based in part on the length of a telephone call, which are applied to calls between exchanges that are not in the same local calling area.]

***LATA***—A local access and transport area [as] set forth in [designated by] Federal regulations [law] , 47 C.F.R. Section 53.3.

***[Local calling area]***—The area, consisting of one or multiple telephone exchanges, between which calls may be completed without having interexchange toll rates applied.]

***Local exchange carrier*** — A competitive or incumbent public utility [which] that is authorized to provide intraexchange telephone service.

***[Optional calling plan]***—A tariff provision which establishes the rate option to be offered to residential and business subscribers in exchanges which qualify for alternatives to EAS under § 63.73 (relating to optional calling plans).]

***Qualified noncontiguous exchanges***—Exchanges with toll rate centers within 16 miles of each other [which] that do not geographically border each other but [which] that meet the following criteria:

(i) The call-frequency standards between the exchanges established under [§63.74 (relating to EAS polls)] §63.73 (relating to customer polls) are met in at least one direction.

(ii) The basic local calling area of the [calling] originating exchange is contiguous to the receiving exchange.

[*Subscriber*—A person or entity which contracts directly with a telephone utility for telephone service.]

**Traffic study interexchange carriers**—The [five most active] interexchange telecommunications carriers that serve customers in the exchange for which a traffic study is conducted. [in the service territory of a local exchange carrier as determined by a biennial review of interLATA access charge levels.]

### **§63.72. Traffic usage studies.**

[A local exchange carrier shall conduct a biennial interexchange toll traffic usage study. The study shall measure traffic over both intraLATA and interLATA routes. The study shall measure the average calling frequency between contiguous exchanges and between each exchange and each noncontiguous exchange having a toll rate center within 16 miles. On intraLATA routes only, the study shall also measure the percentage of total access lines within the exchange over which the calls are placed. In measuring calling frequency, all calling classes shall be considered collectively, including those who have elected optional calling plans under § 63.73 (relating to optional calling plans). The study shall measure usage in a representative 30-day period within the 12-month period preceding the study. The

local exchange carrier shall prepare a report containing results of the study. The report is required to address only routes which equal or exceed 1.50 calls per access line per month. The report shall be filed with the Commission with a copy to the Office of Consumer Advocate on or before October 1 of each survey year. The report will be treated as proprietary and shall be filed under protective seal. The Commission and the Office of Consumer Advocate will release the results of the report, upon request, on a route specific basis to customers or customer representatives. Traffic usage data for routes with less than 1.50 calls per access line per month shall be submitted by local exchange carriers upon request by the Commission or the Office of Consumer Advocate.]

(a) A local exchange carrier and interexchange telecommunications carrier serving the originating exchange shall conduct traffic usage studies at the direction of an Administrative Law Judge in connection with a formal EAS complaint proceeding. Traffic usage studies shall be conducted according to the following:

(1) The traffic study shall measure traffic over both IntraLATA and InterLATA routes, and shall include all traffic originating from the calling exchange. The study shall measure the average calling frequency between the originating and the target exchanges.

(2) In measuring calling frequency, all classes and methods of making wireline calls including customers with optional calling plans, direct dialed tolls, calling cards (prepaid or otherwise), operator-handled, directory assistance call completion, or through text telephone (TTY/TDD), shall be considered collectively.

(3) Each local exchange carrier and interexchange telecommunications carrier that is ordered to conduct a traffic usage study shall produce a study that has the following information:

(i) The total number of presubscribed access lines served in the exchange involved.

(ii) The number of presubscribed access lines in the originating exchange that makes at least one call to the target exchange during the study month.

(iii) The total number of calls placed from the originating exchange to the target exchange.

(4) The traffic usage study shall measure calling in March or October preceding the date on which an Administrative Law Judge directs that a traffic usage study be conducted. The local exchange carriers and interexchange telecommunications carriers shall provide the results of the traffic usage studies to the Commission, or to an entity designated by the

Commission, within 60 days of the Administrative Law Judge's order that a traffic usage study be conducted.

(b) A local exchange carrier or interexchange telecommunications carrier may elect to conduct a single traffic usage study for its entire service territory instead of conducting a route-specific toll usage study in connection with an EAS proceeding. A single traffic usage study shall be conducted according to the following:

(1) The study shall be performed at least once every 24 months.

(2) The study shall measure the calling frequency in the month of March or October.

(3) The study shall measure traffic over intraLATA and interLATA routes.

(4) The study shall measure the average calling frequency between contiguous exchanges and between each exchange and each noncontiguous exchange having a toll rate center within 16 miles.

(5) The local exchange carrier or interexchange telecommunications carrier shall file the results of this study with the Commission.

(c) A local exchange carrier or interexchange telecommunications carrier that chooses to conduct a single traffic usage study as set forth in section (b) may use the results of that study to provide route specific traffic usage data in connection with an EAS complaint proceeding and is not required to perform an additional traffic usage study for the route on which EAS has been requested unless unique circumstances exist with respect to that route or unless specifically ordered to do so.

(d) A local exchange carrier or an interexchange telecommunications carrier is not required to conduct a traffic usage study for a particular exchange if a study on the same toll route has been performed within the preceding 2 years and the results of the study did not require the implementation of EAS or a customer poll for EAS, or if the local exchange carrier already has implemented EAS on that same route.

(e) The Commission staff will prepare a report for any route-specific toll usage study ordered in connection with an EAS proceeding or for any local exchange carrier or interexchange telecommunications carrier that conducts a single traffic usage study. The Commission staff report will contain the aggregated results of the studies submitted. The Commission staff will issue the report within 90 days from receipt of the study data. The Commission staff will treat the report as proprietary and will file it under protective seal. The Commission staff will

provide the results of the report to participating local exchange carriers, interexchange telecommunications carriers, petitioning customers, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate. Upon request, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate may release the aggregated results for a specific route to a customer or to a customer's legal representative.

(f) In accordance with 66 Pa.C.S. §308(g), the appropriate Commission staff shall appear as witnesses in a proceeding in order to present the compiled results of the traffic usage study or studies for the record and shall be subject to cross-examination.

**§63.72a.** [InterLATA traffic studies.] Reserved.

[(a) By January 31 of each year in which a biennial traffic study is due, each local exchange carrier will identify and formally notify the Commission of the traffic study interexchange carriers in its service territory. The identity of the traffic study interexchange carriers shall be based upon review of the access charge levels from the most recent 12-month period available. Each local exchange carrier shall concurrently notify each traffic study interexchange carrier of the following:

- (1) That the interexchange carrier's traffic will be included in the local exchange carrier's traffic study under this subchapter.
- (2) The format which the local exchange carrier will utilize in its traffic usage study.

(3) The representative month the local exchange carrier will use in its study.

(b) Each traffic study interexchange carrier shall provide the local exchange carrier with data which identifies the relevant interexchange traffic completed by the interexchange carrier and which originated in the local exchange carrier's service territory for the representative month used by the local exchange carrier. The data shall be submitted to the local exchange carrier by June 1 of each year in which a biennial traffic usage study is due. The data submitted by traffic study interexchange carriers may not include traffic for which the interexchange carrier bills through the local exchange carrier under a full billing and collection agreement.

(c) The data submitted by each traffic study interexchange carrier shall be organized consistent with the following:

(1) The data shall be in the format specified by the local exchange carrier for the traffic usage study.

(2) The data shall identify the total number of calls completed by the traffic study interexchange carrier and which originated in each exchange in the local exchange carrier's service territory for each interLATA route which requires study under § 63.72 (relating to traffic usage studies) for the representative month.

(3) The data shall identify the total number of access lines presubscribed to the traffic study interexchange carrier in each exchange for which data is submitted under paragraph (2).

(4) Data submitted by a traffic study interexchange carrier to a local exchange carrier shall be considered proprietary to the traffic study interexchange carrier and

may not be used by the local exchange carrier for a purpose other than preparing its traffic usage study.

(5) Each traffic study interexchange carrier may petition the Commission to waive the submission of a portion of the data required to be submitted under this section. Each waiver petition shall include the estimated costs of submitting the data and the relative amount of traffic which the data represents. The Commission will approve a waiver petition only if it finds that the costs to the interexchange carrier outweigh the value of the data to the traffic usage study.

(d) Upon receiving the traffic study interexchange carrier data, each local exchange carrier shall complete the following in preparing the interLATA component of the traffic usage study:

(1) Collect and analyze the traffic data for each traffic study interexchange carrier for calls completed by the interexchange carrier which are billed through the local exchange carrier under a full billing and collection agreement.

(2) Aggregate the traffic data it collects and analyzes under full billing and collection agreements with the traffic data it receives from each traffic study interexchange carrier. Each local exchange carrier shall report the aggregate interexchange carrier. Each local exchange carrier shall report the aggregate results of the interLATA traffic study to the Commission in its biennial traffic usage study filed under §63.72.]

**§63.73.** [Optional calling plans.] Customer polls.

(a) [When biennial interexchange toll traffic usage studies reveal an average monthly calling frequency of 2.00 or more calls per access line from one exchange to another and where at least 25% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange over a route for which a local exchange carrier provides toll service, a local exchange carrier shall offer one of the following rate options to each residential and business subscriber within the calling exchange:

(1) The ability to purchase for a flat fee a block of time for calls and a continuing discount for all usage exceeding the initial block of time to the receiving exchange during each billing period.

(2) Another alternative rate option approved by the Commission.

(b) When an exchange qualifies for an optional calling plan over a route served by a local exchange carrier, the local exchange carrier shall notify each residential and business subscriber within 60 days of the availability of the optional calling plan and shall provide to each subscriber a general description of the rates and benefits of the optional calling plan.

(c) When biennial interexchange toll traffic usage studies reveal an average monthly calling frequency of 2.00 or more calls per access line from one exchange to another over an interLATA route, each traffic study interexchange carrier serving the route shall offer one of the following rate options to each residential and business subscriber to whom the traffic study interexchange carrier provides toll service within the calling exchange:

(1) The ability to purchase a block of time for calls for a flat fee and a continuing discount for usage exceeding the initial block of time to the receiving exchange during each billing period.

(2) Another alternative rate option approved by the Commission.

(d) When an exchange qualifies for an optional calling plan over an interLATA route, each traffic study interexchange carrier serving the route shall notify each residential and business subscriber it serves in the exchange within 60 days of the availability of the optional calling plan and shall provide a description of the rates and benefits of the optional calling plan.

(e) A local exchange carrier and a traffic study interexchange carrier, serving a route which qualifies for an optional calling plan under a traffic usage study shall maintain in its tariff a provision which provides for establishment of an optional calling plan. The optional calling plan shall be consistent with subsection (a) or (b) and may establish flat fees to be charged for the installation of the optional calling plan.

(f) A local exchange or traffic study interexchange carrier may not terminate an optional calling plan to an exchange without express Commission approval.]

When a traffic usage study qualifies for EAS or EAS is determined to be appropriate, the local exchange carriers in the exchange or exchanges subject to extended area service shall conduct a customer poll of the originating exchange in accordance with this section, with oversight by the Commission, to determine if

the basic local calling area of the exchange should be extended. Customer polls shall be conducted using only balloting materials approved by the Commission.

(b) A route qualifies for EAS if it has an average monthly calling frequency of 5.50 or more calls per access line from an originating exchange to the target exchange, and if at least 50% of the access lines in the originating exchange have been used to make 1.00 or more calls per month to the target exchange.

(c) A poll is not required if customers have affirmatively rejected the implementation of EAS from the originating exchange to the target exchange during the preceding 2 years.

(d) A poll is not required when usage standards are met on a specific route and there will be no increase in the local service charge for extending the basic local calling area. In such cases, the local exchange carrier shall implement one-way EAS over the qualifying route.

(e) The local exchange carrier shall mail one ballot to each customer in the originating exchange. Ballots shall be preaddressed, postage prepaid postcards, returnable directly to the Commission. The Commission will tabulate the ballots. At the time the ballots are mailed, the local exchange carrier shall provide the Commission with a list of customers polled, together with their addresses and telephone numbers.

(f) The poll is valid when at least 50% of the ballots mailed to customers in a polled exchange are returned.

(g) The local exchange carrier shall implement EAS when greater than 50% of the returned ballots in a valid poll are in favor EAS.

(h) The Commission may specify additional conditions under which customer polls shall be conducted when circumstances require.

(i) A local exchange carrier or interexchange telecommunications carrier may petition the Commission for waiver of a provision of this section to address unique circumstances, such as a local exchange carrier that already has EAS from the originating exchange to the target exchange.

**§63.74. [EAS polls.] Cost recovery.**

[Whenever a traffic usage study between contiguous exchanges or between qualified noncontiguous exchanges qualifies for EAS under paragraphs (1) and (2), a subscriber poll of the calling exchange shall be conducted by the local exchange carrier serving the calling exchange to determine if the local calling area should be extended.

(1) For intraLATA routes, a route qualifies for extended area service if it has an average monthly calling frequency of 5.50 or more calls per access line from one

exchange to another and where at least 50% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange.

(2) For interLATA routes, a route qualifies for EAS if it has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to another.

(3) A subscriber request for polling will not be considered a legal pleading and will not be subject to response by a utility or another party.

(4) A poll is not required if subscribers have affirmatively rejected the implementation of EAS from the calling exchange to the receiving exchange during the preceding 2 years.

(5) Two-way balloting will not be required unless usage standards are met in both directions.

(6) If two-way balloting is required and if the same telephone utility serves each exchange, the utility shall poll subscribers in each exchange for EAS into the other exchange. If different telephone utilities serve each exchange, each utility shall poll its own subscribers.

(7) A poll is not required when usage standards are met on a specific route and there will be no increase in the local service charge for extending the local calling area of an exchange. In this instance, one-way EAS shall be implemented over the qualifying route.

(8) When usage standards are met in both directions, two-way balloting is not required if there will be no increase in the local service charge for extending the

local calling area for one of the two exchanges. If one of the two exchanges will receive an increase, than that exchange shall be polled and, if the exchange polled adopts EAS two-way EAS shall be implemented. Otherwise, one-way EAS shall be implemented on the route where there will be no increase.

(9) If circumstances require, the Commission may specify additional conditions under which polls shall be conducted.

(10) A local exchange carrier may petition the Commission for waiver of a provision of this section to address unique circumstances.]

(a) A local exchange carrier may petition the Commission to recover revenues lost and costs incurred in connection with the implementation of EAS. under the provisions of this section. beginning on the date on which EAS is implemented. To qualify for recovery, the costs must be prudently incurred and reasonable in amount. The items that may be recoverable shall include:

(1) Administrative costs.

(2) Facility costs.

(3) Lost revenues.

(b) The claim set forth in the petition shall be net of any revenue increases and cost decreases experienced as a result of the implementation of EAS.

(c) The local exchange carrier shall include the proposed method of recovery in its petition. The customer poll shall identify the rates and method utilized when the recovery shortfall is to be collected from customers.

§63.75. [Subscriber polls.] EAS Complaints.

[The following rules apply to EAS subscriber polls:

(1) Within 180 days of the submission of traffic usage data indicating that a route qualifies for EAS under §63.74 (relating to EAS polls), a local exchange carrier shall file a petition with the Commission requesting approval of a proposed transmittal letter and ballot which includes an estimate of the increase in the charge for local service to the Commission as a result of extending the local calling area. The Commission will approve a transmittal letter and ballot which shall include an estimate of the increase in the charge for local service, if any, due to the expansion of the local calling area.

(2) The local exchange carrier shall mail one approved ballot to each subscriber in the calling exchange. The local exchange carrier may tabulate the ballots itself but shall submit to the Bureau of Safety and Compliance a list of customers to be polled and their telephone numbers prior to sending out ballots. Upon completion of tabulation by a local exchange carrier, the local exchange carrier shall submit the original returned ballots to the Bureau of Safety and Compliance and shall submit a verified report to the Commission detailing the results of the poll. If the local exchange carrier does not tabulate the ballots itself, the ballots sent by the local exchange carrier to the subscribers shall be preaddressed, postage prepaid postcards to be returned to the Commission for tabulation.

(3) At least 50% of the ballots from an exchange shall be returned for a poll to be considered valid.

(4) In a valid poll, if 50% of the ballots returned from an exchange are in favor of EAS, the affected local exchange carriers shall implement EAS to the receiving exchange.

(5) In cases where interLATA EAS is implemented, telephone service between the calling exchange and the receiving exchange shall be transferred from the interexchange carriers serving the calling exchange to the local exchange carrier serving the calling exchange.

(6) In cases where the local exchange carrier is prohibited from providing service between the calling exchange and the receiving exchange by Federal antitrust consent decree restrictions and a waiver is necessary to implement EAS, the local exchange carrier shall apply for a waiver of Federal antitrust restrictions to allow it to implement EAS. The request for waiver will be made within 60 days of a Commission order or Secretarial Letter approving EAS. The Commission will file a statement affirmatively supporting the waiver application.]

The Commission will evaluate a formal complaint seeking the implementation of EAS according to the criteria in §63.76 (relating to evaluation criteria). When multiple local exchange carriers and interexchange telecommunications carriers are involved, each shall be an indispensable party to the proceeding. Local exchange carriers and interexchange telecommunications carriers shall be required to perform a traffic usage study under §63.72 when an administrative law judge concludes that a traffic usage study is necessary to determine if EAS should be implemented.

**§63.76. [EAS complaints.] Evaluation criteria.**

[A formal complaint may be filed seeking the implementation of EAS. A complaint will be evaluated according to the criteria in §63.77 (relating to evaluation criteria). If multiple telephone utilities are involved, each affected utility shall be an indispensable party to the proceeding. An administrative law judge may, as part of an initial decision, recommend the conduct of subscriber polls under §63.75 (relating to subscriber polls) to determine if EAS should be implemented. The provisions of this subchapter do not prohibit the filing of complaints seeking the implementation of EAS between noncontiguous exchanges.]

(a) The Commission will consider the following criteria when evaluating a formal complaint seeking EAS under §63.75.

(1) The amount of traffic between the originating exchange and the target exchange, as measured in accordance with the provisions of §63.72.

(2) The revenue shortfall and expense to the local exchange carrier of implementing extended area service. Revenue shortfall and expense items to be reviewed shall include:

(i) Administrative costs.

(ii) Facility costs.

(iii) Lost revenues.

(3) Cost recovery shall be net of revenue increases and cost decreases experienced by the local exchange carrier as a result of the implementation of EAS.

(4) The potential increase in local service charge due to implementation of EAS versus the current cost to customers for interexchange calls.

(5) The demographics and proximity of the exchanges involved as indicating community of interest between the originating and target exchanges.

(6) The availability of adequate and reasonably priced alternatives to EAS.

(7) The economic effect on the community when the basic local calling area is not extended.

(b) The subsection (a) criteria shall be evaluated based on the majority of the customers in the exchange under consideration for EAS.

**§63.77. [Evaluation criteria.] Reserved.**

[The Commission will consider the following criteria in evaluating EAS complaints:

- (1) The amount of toll charge traffic between the two exchanges.
- (2) The cost to the utility of implementing extended area service.
- (3) The potential increase in local service charge due to implementation of EAS versus the current cost to subscribers for interexchange toll calls.
- (4) The demography and the proximity of the exchanges as indicating community of interest.

(5) The availability of alternatives to EAS.

(6) The economic effect on the community if the local service area is not extended.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17105

Rulemaking Re: Proposed Revision to  
Commission Regulations Governing  
Extended Area Service (EAS) at 52 Pa.  
Code §§ 63.71-63.77

PUBLIC MEETING: October 27, 2005  
SEPT-2005-L-0056-REV\*  
Docket No. L-0005 0173

Report and Recommendation of the  
Extended Area Service Task Force

Docket No. M-00031703

CONCURRING STATEMENT OF VICE CHAIRMAN JAMES H. CAWLEY

Before us is the Staff recommendation for changes to this Commission's Extended Area Service (EAS) regulations, with the associated Proposed Rulemaking Order, and Annex A with the currently proposed EAS regulations. I appreciate the efforts that have been put into this matter by the various Commission Staff Bureaus and Offices, other statutory agencies, and the members of the telecommunications industry that this Commission regulates. However, the proposed regulations of an independent regulatory administrative agency such as this Commission must first reflect its existing policy that traditionally has governed its own individual case adjudications.

A. "Lost Revenue" Recovery

Existing Commission precedent strongly suggests that the Commission traditionally has not permitted local exchange carriers (LECs) implementing EAS routes to recover "lost revenues" from their customers that benefit from expanded local calling areas. For example, the Commission has not considered the recovery of "lost revenues" where the LEC in question does not have rate groups for its basic local exchange services. More recently, the Commission addressed the issue of "lost toll revenue" recovery in situations where a LEC has had its long-distance services classified as "competitive" under the pertinent provisions of the past and current version of Chapter 30, now codified at 66 Pa. C.S. §§ 3011-3019. The Commission has ruled that the potential recovery of "lost toll revenues" through EAS-related rate increases to a LEC's "non-competitive services," where the LEC's long-distance services had been classified as "competitive," would violate Chapter 30's statutory prohibition against the cross-subsidization of "competitive services" with revenues from "non-competitive services." *Jeb Billet, et al. v. The United Telephone Company of Pennsylvania, et al.*, Docket No. C-00014854, Order entered April 8, 2005, at 12-13.

Since a set of proposed Commission rules should reflect existing Commission policy, my preference would have been that references to "lost revenues" should be eliminated from the proposed rules in Annex A. However, because this issue may be of importance, especially to smaller rural incumbent LECs (ILECs) that can be called to establish EAS routes, the Commission could still solicit comments on this issue and suggested amendments to our proposed EAS regulations. These comments and suggested amendments could specifically address the issue of "lost revenue" recovery when and where EAS routes are established, and the interrelationship and reconciliation of "lost revenue" recovery mechanisms with:

1. The annual ILEC Chapter 30 price stability mechanism (PSM) revenue and rate increase submissions (66 Pa. C.S. § 3015);
2. The recovery of "lost revenues" from end-users who benefit from the EAS expansion in local calling areas and where the ILEC provides such end-users with "bundled packages of services" that can include "protected," "non-competitive," "competitive," and non-tariffed services (66 Pa. C.S. § 3016(e)); and
3. The recovery of "lost revenues" in situations where a rural ILEC may have established the differentiated pricing of its regulated services in a particular exchange under 66 Pa. C.S. § 3016(e)(3) in order to meet the competitive presence of an alternative service provider, and the same exchange is affected by the establishment of an EAS route.

**B. EAS Balloting**

The Commission could also solicit comment and suggested amendments to our proposed regulations on whether uniform guidelines should apply to the conduct of balloting activities associated with the establishment of EAS routes. These comments should address whether customer-specific EAS ballots should be proportionately weighted, e.g., by the number of access lines or accounts of the particular customer, or by some other method.

For these reasons and with this Statement I concur in the overall recommendation of the Proposed Rulemaking Order and Annex A with the proposed EAS regulations.

October 27, 2005



James H. Cawley  
James H. Cawley  
Vice Chairman



PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG, PENNSYLVANIA

WENDELL F. HOLLAND  
CHAIRMAN

April 11, 2006

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

Re: L-00050173/57-242  
Proposed Rulemaking  
Revision to Commission Regulations  
Governing Extended Area Service  
52 Pa. Code, Chapter 63

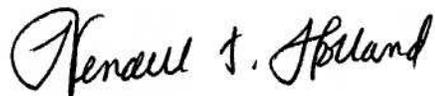
Dear Chairman McGinley:

Enclosed please find one (1) copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to set forth changes to regulations governing extended area service in the telecommunications industry. The contact persons are Joseph Witmer, Law Bureau, 787-3663 and Anthony Rametta, Bureau of Fixed Utility Services, 787-2359.

The proposal has been deposited for publication with the Legislative Reference Bureau.

Very truly yours,

A handwritten signature in black ink that reads "Wendell F. Holland". The signature is written in a cursive style with a large initial "W".

Wendell F. Holland  
Chairman

Enclosures

cc: The Honorable Robert M. Tomlinson  
The Honorable Lisa Boscola  
The Honorable Robert J. Flick  
The Honorable Joseph Preston, Jr.  
Legislative Affairs Director Perry  
Chief Counsel Pankiw  
Assistant Counsel Witmer  
Mr. Rametta  
Regulatory Coordinator DelBiondo  
Judy Bailets, Governor's Policy Office

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

RECEIVED

2006 APR 11 AM 11:08

ID Number: L-00050173/57-242

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Subject: Revision to Commission Regulations Governing  
Extended Area Service

Pennsylvania Public Utility 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>
4/11/06	Linda Basorigne	HOUSE COMMITTEE Consumer Affairs
4/11/06	Healy Rem	SENATE COMMITTEE Consumer Protection and Professional Licensure
4/11/06	Kathy Cooper	Independent Regulatory Review Commission Attorney General
		Legislative Reference Bureau