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

July 6, 2006

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

Re: Regulation #57-242 (IRRC #2534)
Pennsylvania Public Utility Commission
Extended Area Service

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

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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 #57-242 (IRRC #2534)

Extended Area Service

July 6, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the April 22, 2006 *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. Section 63.71. Definitions. – Clarity.

Commentators have suggested that a definition for “Lost revenue” be added to this section. We agree and suggest the PUC define this term in the final-form regulation.

2. Section 63.72. Traffic usage studies. – Reasonableness; Clarity.

The terms “EAS complaint proceeding,” “EAS proceeding” and “proceeding” are used interchangeably throughout this section. The PUC should define “EAS Complaint Proceeding” or “EAS Proceeding” and use that term consistently.

Subsection (a)(4)

This subsection requires that the results of a traffic usage study be provided to the PUC or “an entity designated by the Commission.” PUC staff has indicated that, in most instances, the Incumbent Local Exchange Carrier (ILEC) would be the designated entity. This should be clearly stated in the final-form regulation.

Also, this subsection requires that the traffic usage study “measure calling in March or October preceding the date on which an administrative law judge directs that a traffic usage study be conducted.” Commentators have questioned the validity of measuring the preceding March or October traffic in every instance. We request that the PUC explain the basis for requiring data from the preceding March or October.

Subsection (c)

This subsection provides that an additional traffic usage study need not be conducted unless “unique circumstances” exist. What unique circumstances would require an additional traffic usages study?

Subsection (e)

This subsection is filled with sentences that start “The Commission staff will....” It would be clearer if each of the tasks that the PUC staff will perform were enumerated.

3. Section 63.73. Customer polls. – Reasonableness; Clarity.

Under the proposed regulation, it is unclear if a formal complaint is the only way to initiate an EAS proceeding. Office of Consumer Advocate (OCA) suggests that the PUC create an alternative informal petition procedure. Has the PUC considered such a procedure? The final-form regulation should clearly set forth the procedures for initiating an EAS proceeding.

Subsections (f) and (g)

Under these subsections, only 25% of customers in an area need to vote affirmatively in order to prompt EAS. How did the PUC determine that this is the most appropriate percentage?

Subsection (h)

This subsection states “The Commission may specify additional conditions....” What are these additional conditions? How will notification of these additional conditions be given?

4. Section 63.74. Cost recovery. – Consistency with statute; Reasonableness; Clarity.

Pennsylvania Telephone Association (PTA) asserts that a Chapter 30 plan supersedes other inconsistent provisions or laws of the Commonwealth. PTA also states that the EAS cost and revenue recovery in this section is already provided for in the ILEC’s Chapter 30 Plans because of the allowance of counting exogeneous events as part of cost and revenue recovery. The PUC should explain how cost recovery in Chapter 30 plans ties in with the provisions of this regulation.

Subsection (a)

This subsection contains the phrase, “...the costs must be prudently incurred and reasonable in amount.” What criteria are used to determine if costs were prudently incurred and reasonable?

Subsection (a)(3)

This subsection appears to be inconsistent with 66 P.S. §§ 1301 and 3016(f)(1). We question whether the PUC has the statutory authority to allow recovery of revenues lost through competitive services via an increase in its rates for noncompetitive services. The same concern also applies to Section 63.76(a)(2)(iii).

5. Section 63.76. Evaluation criteria. – Reasonableness; Clarity.

Subsection (a)(3)

OCA asserts that this is not an evaluation criterion and would be more appropriate if it were removed and placed in Section 63.74. We agree and suggest that the PUC make this change.

Subsection (a)(6)

This subsection contains the phrase “adequate and reasonably priced.” What criteria are used to determine if alternatives to EAS are “adequate and reasonably priced”?

Facsimile Cover Sheet

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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: July 6, 2006
Pages: 4

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-242 (IRRC #2534). 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: 7-6-06

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