

PENNSYLVANIA UTILITY LAW PROJECT

# 2591

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COPY

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July 31, 2008

**Hand Delivered**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> floor  
Harrisburg, PA 17120

RECEIVED

JUL 31 2008

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: Comments of the Pa Utility Law Project Regarding the Provision of Bundled Service Package Plans at a Single Monthly Rate By Local Exchange Carriers**

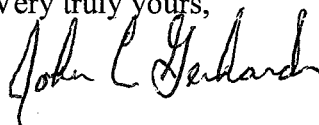
**Docket No. L-00060179**

Dear Secretary McNulty:

Enclosed, please find for filing one original (unbound) and fifteen copies (bound) of the Pennsylvania Utility Law Project's comments in the above-captioned proceeding. These comments are filed pursuant to the notice of extension of public comment period published in the *Pennsylvania Bulletin* on June 7, 2008. 38 Pa.B. 2658. All parties have been served as evidenced by the attached Certificate of Service.

Please contact me directly if you require any further information.

Very truly yours,



John C. Gerhard  
Staff Attorney

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Provision of Bundled Service Package** :  
**Plans at a Single Monthly Rate By** : **Docket No. I-0006019**  
**Local Exchange Carriers** :

**CERTIFICATE OF SERVICE**

I hereby certify that I have today served a true copy of the foregoing document upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA HAND DELIVERY**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> floor  
Harrisburg, PA 17120

**VIA FIRST CLASS MAIL & E-MAIL**

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717-236-9486, Ext. 201

Dated: July 31, 2008

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Provision of Bundled Service Package** :  
**Plans at a Single Monthly Rate By** : **Docket No. L-00060179**  
**Local Exchange Carriers** :

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**COMMENTS OF THE PENNSYLVANIA UTILITY LAW PROJECT**

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**I. INTRODUCTION**

At the Public Meeting held on June 22, 2006, the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted a Proposed Rulemaking Order in the above docket, in which the Commission requested public comments on proposed changes to Chapter 64. Specifically, the Commission solicited comments about changes to Section 64.21, which governs the separate billing obligations of telecommunications carriers offering bundled-services. See 52 Pa.Code § 64.21. The Proposed Rulemaking Order was entered on July 3, 2006 and published in the *Pennsylvania Bulletin* on March 3, 2007. 37 Pa.B. 1032. Several parties submitted comments pursuant to this Order.

Subsequently, on June 7, 2008, the Commission published in the *Pennsylvania Bulletin* a notice that the Commission was reopening the comment period for the above captioned proceeding and would accept additional public comments until July 31, 2008. 38 Pa.B. 2658. The Commission requested further comments on several points, including but not limited to: "1) Commission authority to establish consumer protection regulations for bundled service package plans under 66 Pa.C.S. § 3016 (e)(2) (relating to competitive services); 2) the status of a protected service once included in a bundled service package; and 3) detailed explanation of

industry costs and technical difficulty associated with implementation of the proposed regulations, if any.” 38 Pa.B. 2658.

The Pennsylvania Utility Law Project (“PULP”), as part of the Pennsylvania Legal Aid Network, provides statewide representation, advice, and support in energy and utility related matters on behalf of low income, residential utility customers. In this capacity, PULP routinely helps low income customers understand, access and maintain telecommunications services and products that meet their needs. This proceeding raises matters of importance to PULP’s low income constituents, and PULP thanks the Commission for the opportunity to submit these comments on their behalf.

## II. COMMENTS

PULP supports the Commission’s efforts to promote a robust, competitive environment in Pennsylvania’s telecommunications industry, while simultaneously preserving consumer protections that help low income households maintain basic telephone service. Basic service is defined as,

The transmission of messages or communications by telephone between points within a local calling area as established in the tariff of an LEC, including installation service, providing and restoring access lines, touch tone service and handling of unpaid checks as addressed in § 64.11 (relating to method of payment). The term includes charges for 911 service, telecommunications relay service and subscriber line service, but does not include premise visits for installation of new service.

52 Pa. Code § 64.2.

A balance between competition and consumer protection is what the Commission tried to strike when it waived the requirements of various sections of Chapter 64 and granted permission to local exchange carriers (“LECs”) to offer singly priced bundled service packages. *Petition of Trinsic Communications, Inc.*, Docket No. P-00052169, (Order entered Feb. 1, 2006), at 6-7; see

also 52 Pa.Code §§ 64.1 – 64.213 (Standards and billing practices for residential services). To alleviate the continued need for repetitive requests for waivers of Chapter 64 requirements, the Commission wisely chose to amend its regulations so they would reflect the procedures required in each of the waiver proceedings. *Proposed Rulemaking Order: Provision of Bundled Service Package Plans at a Single Monthly Rate By Local Exchange Carriers*, Docket No. L-00060179, (Order entered July 3, 2006), at 2. These proposed regulations merely formalize and streamline the waiver process and grant LECs permission to offer singly priced bundled service packages so long as the LECs maintain certain consumer protections associated with basic telephone service.

The Commission clearly has the legal authority to promulgate regulations governing the provision of telecommunications service, including the proposed Section 64.24. Act 183 governs the Commission's treatment of Pennsylvania telecommunications companies, including LECs. 66 Pa.C.S. §§ 3011 *et seq.* While Act 183 permits LECs to offer singly priced bundled service packages, it expressly maintains the Commission's authority to regulate the ordering, installation, suspension, termination and restoration of any telecommunications service. 66 Pa.C.S. §§ 3016(e)(2), 3019(b)(2). Act 183 also empowers the Commission to establish rules that safeguard consumer protections, 66 Pa.C.S. § 3019(b)(3), and that ensure the maintenance of universal telecommunications services. 66 Pa.C.S. § 3011(2). Therefore, PULP supports the Commission's proposed regulations for bundled service and recommends they be made final.

**A. Commission Authority.**

While Act 183 grants LECs some flexibility around the provision and pricing of singly bundled service packages, 66 Pa.C.S. § 3016(e)(2), it provides authority unequivocally to the Commission to regulate certain aspects of the LECs provision of service. Section 3019, in particular, gives the Commission the authority and duty to:

review and revise quality of service standards contained in 52 Pa. Code (relating to public utilities) that address the safety, adequacy, reliability and privacy of telecommunications services and *the ordering, installation, suspension, termination and restoration of any telecommunications service*. Any review or revision shall take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand.

66 Pa.C.S. § 3019(b)(2) (*emphasis added*).

Proposed Section 64.24 falls squarely within this ambit of regulatory authority.

Proposed Section 64.24(1) contains a prohibition against terminating basic service for nonpayment of a bundled service; this falls within the Commission's power to regulate termination of service. Proposed Section 64.24(2) requires the conversion of bundled service to basic service; this falls within the Commission's power to regulate the suspension and termination of service. The required issuance of disclosure statements in Section 64.24(3) falls within the Commission's power to regulate ordering of service. Nothing in Act 183 prohibits Section 64.24(4) from permitting LECs to offer payment agreements, and nothing in Act 183 prohibits Section 64.24(5) from requiring that customer communications meet plain language requirements. It is clear that each part of the proposed regulation is supported by unambiguous statutory authority.

Moreover, the Commission meets the requirement in Section 3019(b)(2) that "[a]ny review or revision shall take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand." The very reason the Commission proposed the regulation is to respond to a trend in the telecommunications industry of offering bundled services. *Proposed Rulemaking Order: Provision of Bundled Service Package Plans at a Single Monthly Rate By Local Exchange Carriers*, Docket No. L-00060179, (Order entered July 3, 2006), at 1. This response to technological advancements, service standards, and consumer demand is precisely the kind of consideration that Section 3019(b)(2) requires of the Commission.

Therefore, because it is clear that the Commission has legal authority to regulate the provision of singly bundled service packages and that the Commission has proceeded as a result of a developing industry trend, the promulgation of proposed Section 64.24 is appropriate.

Not only does Act 183 permit the Commission to promulgate this regulation, it affirmatively requires the Commission to maintain ongoing consumer protections in the provision of new services. Again, Section 3019 speaks directly to this issue with express language giving the Commission the power and the duty,

[s]ubject to the provisions of section 3015(e) (relating to alternative forms of regulation), to establish such additional requirements as are consistent with this chapter as the commission determines to be necessary to ensure the protection of customers.

66 Pa.C.S. § 3019(b)(3). This section makes it clear that competition, new services, and convenience to LECs are not the only factors to be considered as a result of Act 183. Consumer protections are to be given equal consideration.

Proposed Section 64.24 provides consumer protections that ensure the maintenance of basic service: it requires LECs to clearly notify customers of the consequences of nonpayment for basic service and for nonpayment of non-basic services, and it ensures basic service is maintained even if there is partial payment. Thus, by promulgating Section 64.24, the Commission is acting within its power to ensure customer protections are maintained in the provision of singly bundled service packages.

While it is clear that Act 183 permits LECs to sell singly priced bundled packages, it is also clear that it authorizes the Commission to regulate certain aspects of that provision of service and that it requires the Commission to maintain certain consumer protections. The promulgation of proposed Section 64.24 falls squarely within that regulatory authority and the Commission is correct to engage in this proceeding.

## **B. Protection of Universal Service**

Act 183 does not only charge the Commission with ensuring there is robust competition in the telecommunications industry. The General Assembly was also concerned that customers, especially low income customers, maintain basic telephone service. Accordingly, in Act 183 the General Assembly states clearly that it is the policy of the Commonwealth to,

maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network[.]

66 Pa.C.S. § 3011(2).

In addition to merely stating this policy in favor of maintaining universal service, the General Assembly empowered the Commission to enact regulations that would actually advance the policy. Section 3019(b)(3) empowers the Commission to establish the regulations necessary to ensure that customers are protected and universal service realized. With this grant of authority, Act 183 gives the Commission the power it needs to enact regulations to achieve the General Assembly's goal in Section 3011(2). Proposed Section 64.24 is an appropriate expression of this authority.

Proposed Section 64.24 includes two important protections that advance Section 3011(2)'s policy of maintaining universal service. First, Section 64.24 ensures that LECs offering singly priced bundled packages will provide customers with important notices and disclosures that fully inform the customer of the obligations under the bundled service and repercussions for nonpayment. Second, proposed Section 64.24 prohibits the termination of basic service for failure to pay for non-basic services. Rather, the regulation will require the conversion of the bundled service into basic service. Thus, proposed Section 64.24's protections directly respond to the General Assembly's concern voiced in Section 3011(2) that universal service be maintained.

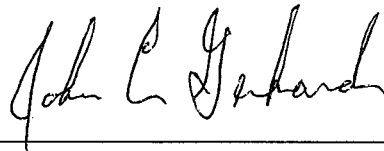


Therefore, because the maintenance of universal service is an express goal of Act 183 and because the Commission was empowered to promulgate regulations in pursuit of this goal, the Commission is correct to promulgate proposed Section 64.24.

### III. CONCLUSION

PULP supports the Commission's effort to promote a competitive telecommunications industry while simultaneously preserving customer protections. This effort is in line with the General Assembly's telecommunications policies, and the Commission has clear legal authority to promulgate regulations to advance that policy. PULP thanks the Commission for this opportunity to submit these comments and share its views on this important matter.

Respectfully submitted,



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Dated: July 31, 2008