

Regulatory Analysis Form

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(1) Agency

Pennsylvania Public Utility Commission

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L-00070188/57-260

INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 2673

(3) Short Title

Rulemaking to Amend Chapter 63 Regulations so as to Streamline Procedures for Commission Review of Transfer of Control and Affiliate Filings for Telecommunications Carriers

(4) PA Code Cite

52 Pa. Code Secs. 63.321-63.326

(5) Agency Contacts & Telephone Numbers

Primary Contact: Joseph K. Witmer, (717) 787-3663
Secondary Contact: Frank W. Wilmarth, (717) 772-8841

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted
 Final Policy Statement

(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.

This proposed rulemaking creates a three-tier process for Commission review and action on mergers and stock transactions in the telecommunications industry. There is no express timeline governing Commission review and approval of mergers and stock transactions under Sections 1102 and 1103(a) of the Public Utility Code. Consequently, all transactions are open-ended because the Public Utility Code does not impose any express deadlines for review and approval. Level 3 (a Pennsylvania certified Competitive Local Exchange Carrier) asked the Commission to develop a streamlined review and approval process because carriers need to be able to respond quickly to technological change and fluidity in corporate structures in the current telecommunications industry. The open-ended Commission review is not responsive to these conditions in their view.

The proposed regulation would establish a three-tier timeline for all Commission review and approvals for mergers and stock transactions for telecommunications public utilities. Mergers or stock transactions that do not affect rates or conditions of service would be reviewed and approved within 30 days as a *pro forma transaction* provided the utility files with the Commission no later than 30 days before the expected closing date. Mergers or stock transactions that affect rates or conditions of service would be reviewed and approved within 60 days as a *General Rule transaction* provided the utility files no later than 60 days before the closing date. The current "open ended" review and approval process would be limited only to mergers or stock transactions that are complex, controversial or raise difficult questions.

The Commission retains the discretion to “reclassify” a *pro forma* transaction as a *General Rule* transaction or open-ended transaction, and vice versa. Complex, controversial or difficult transactions remain subject to the Public Utility Code as an “open ended” proceeding. The proposed regulations treat all other transactions as a *pro forma transaction* or *General Rule transaction* with considerably shorter review and approval timelines. This should free up industry resources to provide better services and free up Commission resources to focus on more complex transactions.

Any reclassification or other action would be subject to direct appeal to and disposition by the Commission. The filing requirements are the same regardless of the transaction so that any reclassification will not require the utility to spend more money filing more documents. The proposed regulation should reduce the time and expense for securing Commission review and approval under the Public Utility Code for the vast majority of *pro forma* or *General Rule* mergers or stock transactions that form the bulk of the Commission’s work in this area.

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

66 Pa.C.S. § 1102 (obtaining a Certificate of Public Convenience approving a merger or stock transaction affecting control of a telecommunications public utility), 1103(a) (authority to impose conditions on a Certificate of Public Convenience issued under 1102(a)).

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(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.

The proposed regulations are not mandated by any federal or state law. The proposed regulations authorize the Commission to complete review and approval of a telecommunications public utility merger or stock transaction in a more timely fashion. The Public Utility Code does not impose any timeline for review and approval. This makes Commission review and approval more predictable.

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

The proposed regulation addresses the real need for a more predictable and timely review and approval period for Commission disposition of mergers and stock transactions under the Public Utility Code. Right now, the Public Utility Code and the Commission's regulations impose no specific timeline for review and approval. This regulation does that in a way that is "competitively neutral" to incumbent and competitive carriers alike. This is different than the initial request to limit abbreviated review to "competitive" carriers only. This reflects the incumbent carriers' request for an abbreviated review and approval period as well.

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

The general welfare risk associated with nonregulation of a timeline for Commission review and approval of mergers and stock transactions under the Public Utility Code is continuing unpredictability to industry, particularly in an industry with rapid technological and corporate change. The increased cost associated with this unpredictability is a negative detriment to the general welfare. This regulation provides more predictability and, in turn, enhances the general welfare with the regulation compared to having no regulation.

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

The proposed regulations will benefit all Pennsylvanians, industry and consumer alike. Industry will have a predictable and known process for Commission review and approval of mergers and stock transactions under the Public Utility Code. This predictability, in turn, allows certificated Pennsylvania carriers to respond to rapid technological and corporate change in the telecommunications industry. The predictability and ability to respond to change benefits Pennsylvania consumers because telecommunications providers can serve them better.

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 persons, groups or entities will be adversely affected by these proposed regulations.

(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.)

All Pennsylvania telecommunications providers, incumbent or competitor alike, will have to file the required documentation and obtain Commission approval under one of the three tiers in this three-tiered review and approval for any merger or stock transaction under the Public Utility Code.

(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 proposed regulations resulted from a Commission review and solicitation from initial comments and replies to comments filed by Level 3 (the Petitioner seeking the issuance of regulations limited to competitors), Verizon Communications, and the Pennsylvania Telephone Association. However, the petition was not subject to formal publication in the *Pennsylvania Bulletin* so the proposed regulation contains a Comment and Reply Comment period to more fully consider any issues with the proposed regulations.

(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.

This proposed regulation should reduce costs for Commission review and approval of mergers and stock transactions in a carrier's Pennsylvania operation. The implementation of a proposed three-tier review and approval process under the Public Utility Code provides more predictability, certainty, and uniformity compared to the present. There are no timelines for review and approval of any merger or stock transactions because the Public Utility Code establishes no timeline in Sections 1102 and 1103(a).

Consequently, mergers and stock transactions are subject to the same open-ended review and approval period regardless of whether the transaction is really routine (like a name change), may not involve rates or conditions or service (like transfers of customers), or is more controversial or complex (like major interstate mergers like the merger of AT&T and SBC, Inc.). This regulation makes distinctions between transactions. The distinctions reduce industry cost for securing regulatory approval. The savings for any given applicant cannot be quantified. The savings will vary depending on the carrier, their services, and the market's response to their proposed mergers or stock transactions. Those factors cannot be quantified.

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(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.

The proposed regulations impose no requirements on local governments.

(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.

The proposed regulations impose no additional requirements on state government so no additional costs are imposed.

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(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
SAVINGS:	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Regulated Community	n/a	n/a	n/a	n/a	n/a	n/a
Local Government	n/a	n/a	n/a	n/a	n/a	n/a
State Government	n/a	n/a	n/a	n/a	n/a	n/a
Total Savings	n/a	n/a	n/a	n/a	n/a	n/a
COSTS:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	n/a	n/a	n/a	n/a	n/a	n/a
State Government	n/a	n/a	n/a	n/a	n/a	n/a
Total Costs	n/a	n/a	n/a	n/a	n/a	n/a
REVENUE LOSSES:	0	0	0	0	0	0
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

The proposed regulations will not impose additional costs on the governmental entities identified above. See Questions 18 and 19.

The proposed regulations will not result in any additional costs for the regulated community. The proposed regulations may actually result in savings to the regulated community. See Question 17 above.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

See explanation in Question 21.

Program	FY -3	FY -2	FY -1	Current FY
n/a	n/a	n/a	n/a	n/a

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

See explanations in Questions 17 - 20. The proposed regulations will not impose costs on the regulated community and may actually result in savings. The anticipated savings are hard to quantify since they will occur on a carrier-by-carrier basis.

The proposed regulations will not impose costs on local government. Therefore, local government will not be affected by the proposed regulations.

In regard to state government, the proposed regulation will not impose additional costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Other nonregulatory alternatives could not be considered. Sections 1102 and 1103(a) of the Public Utility Code require issuance of a Certificate of Public Convenience, with conditions as appropriate, for any merger or stock transaction within the scope of the Public Utility Code.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

See Question 22 above.

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(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.

The proposed regulations are modeled on the Federal Communications Commission's Regulations (FCC). However, the FCC regulations are limited to "competitive" carriers and have additional regulations that address rate and conditions of service impact. The proposed regulations adopt a federal timeline but make it equally applicable to incumbent and competitive carriers alike. The proposed regulations also reflect transactions that impact rate and conditions because Pennsylvania does not have the additional regulations that exist at the FCC on rates and conditions of service. Finally, the proposed regulations require additional information filings addressing how the transaction will affirmatively benefit the public in a substantial way. This is required by the Pennsylvania judicial standard for review and approval of Commission actions on mergers or stock transactions in Pennsylvania.

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

The proposed regulations reflect regulations considered and adopted in other states. The proposed regulations do not put Pennsylvania at a competitive disadvantage. The proposed regulations provide a competitive advantage compared to other states because the regulations apply equally to incumbent and competitive carriers. The proposed regulations also provide a competitive advantage compared to states that lack regulations that provide for accelerated review and approval depending on the nature of the merger or stock transactions.

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

The proposed regulations will benefit the promulgating agency and the regulated community. The proposed regulations will provide timelines for review and approval of routine and general transactions. The abbreviated regulatory review and approval timelines will free up Commission and industry resources for other more substantial concerns or mergers and stock transactions.

The proposed rulemaking does not affect any other existing PUC regulation not specifically addressed by this PUC order.

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

No public hearings or informational meetings are planned to be held in regard to these proposed regulations. The Commission does provide a Comment and Reply Comment period so that the Commission has a better record because the proposed regulation will implement time-lines for review and approval in place of the existing open-ended review and approval period.

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(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.

At present, companies that file for review and approval provide much of the required information in different times and manners. This regulation requires the applicant to submit all the necessary information in one filing compared to the current practice of initial filings, supplemental filings, and follow-up filings. This should reduce industry cost for submission for review and approval as well as the time the Commission devotes to review and approval. This is particularly true for *pro forma* and *General Rule* transactions.

(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.

The purpose of the proposed rulemaking is to establish a unified review and approval process for Commission consideration of mergers and stock transactions for telecommunications public utilities in Pennsylvania.

The proposed regulation contains specific provisions addressing filings by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Commission's Office of Trial Staff (OTS) as advocate with statutory authority to intervene and participate in any Commission consideration of a merger or stock transaction. Unlike other party filings, a filing by these parties would transform an application into a more extended proceeding for review and approval. This possibility structures in consideration of consumer, small business, and general public welfare considerations and indirectly benefits those constituencies.

(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 effective date of the proposed regulations will be the date of publication of the final regulations in the *Pennsylvania Bulletin*.

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

A schedule for continual review of the proposed regulations is unnecessary as they were written to establish timelines for Commission review and approval of mergers and stock transactions for telecommunications public utilities.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

BY *Amy M. Elliott*
(DEPUTY ATTORNEY GENERAL)

NOV 20 2007

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-00070188/57-260

DATE OF ADOPTION September 27, 2007

BY *James J. McNulty*

James J. McNulty

TITLE *Secy*
(SECRETARY)

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

BY *Bohdan R. Pankiw*
Bohdan R. Pankiw
Chief Counsel

9-27-07
DATE OF APPROVAL

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

L-00070188/57-260
Proposed Rulemaking
Rulemaking to Streamline Procedures for Review
of Transfer of Control and Affiliate Filings for
Telecommunications Carriers
52 Pa. Code, Chapter 63

The Pennsylvania Public Utility Commission on September 27, 2007, adopted a proposed rulemaking order which sets forth amendments to Chapter 63 in order to streamline transfer of control and affiliate filings by telecommunications carriers. The contact person is Joseph Witmer, Law Bureau, 787-3663.

EXECUTIVE SUMMARY

L-00070188/57-260

Rulemaking to Amend Chapter 63 Regulations so as to Streamline Procedures for Commission Review of Transfer of Control and Affiliate Filings for Telecommunications Carriers.

52 Pa. Code, Sections 63.321 – 63.326

On October 19, 2007, the Pennsylvania Public Utility Commission (Commission or PUC) entered an order initiating a rulemaking aimed at streamlining the review and approval process for mergers and stock transactions under Sections 1102 and 1103(a) of the Public Utility Code (*The October Rulemaking Order*). The *October Rulemaking Order* also proposed regulations implementing the affiliate transaction provisions of 66 Pa.C.S. §§ 3001, et seq (Chapter 30).

The *October Rulemaking Order* responded to the Petition of Level 3, a Pennsylvania Competitive Local Exchange Carrier (CLEC), seeking abbreviated review of CLEC applications seeking Commission approval under Sections 1102 and 1103(a). The October Rulemaking Order also addressed comments of Verizon, Inc. (Verizon) and the Pennsylvania Telephone Association (PTA) seeking similar streamlined review for incumbent local exchange carriers (ILECs).

The Commission initiated the rulemaking because of concerns about the current review and approval process given the pace of technological and corporate change in the telecommunications industry. Currently, the Commission reviews applications seeking approval of acquisitions, diminutions in control, mergers, stock sales or transfers, and transfers of assets or control of a telecommunications public utility as transactions involving issuance of a certificate of a public convenience under Sections 1102 and 1103 of the Public Utility Code.

The Public Utility Code provisions do not require a decision by a date certain. Although the Commission is generally able to review and approve most transactions in a reasonable period of time, the increase in their number and the rapid pace of technological change in the telecommunications market warrants consideration of another approach. The Commission is considering the feasibility of shortening the review and approval period to something much less than the current 6-to-9 month period.

The proposed regulations establish a three-tier timeline for Commission review and approvals for mergers and stock transactions for telecommunications public utilities.

Mergers or stock transactions that do not affect rates or conditions of service would be reviewed and approved within 30 days as *pro forma transactions* provided the utility files with the Commission no later than 30 days before the expected closing date. This includes customer transfers.

Mergers or stock transactions that affect rates or conditions of service would be reviewed and approved within 60 days as *General Rule transactions* provided the utility files no later than 60 days before the closing date. This includes transfers of customers that involve rates or changes in conditions of service.

The “open ended” review and approval process, currently applied to all review and approvals for any transaction regardless of its complex or routine nature, will be confined to mergers or stock transactions that are complex, controversial or raise difficult questions. The Commission retains the discretion to “reclassify” a *pro forma* transaction as a *General Rule* transaction or open-ended transaction, and vice versa.

The proposed regulation also removes a transaction from the 60-day general rule if a statutory advocate (the Office of Consumer Advocate, the Office of Small Business

Advocate, or the Office of Trial Staff) file a formal protest, the filing involves a major acquisition or merger between firms with substantial market shares, or where the filing raises novel or important issues. The filing of a general comment or formal protest by persons other than a statutory advocate does not typically reclassify a transaction.

Under the proposed regulations, the applicant files information identical to that sought by the FCC regardless of the nature of the transaction. There are additional Pennsylvania-specific filing requirements which reflect Pennsylvania law and Commission practice. These include the obligation to show the general public benefit in a transaction as required by judicial precedent, appending diagrams illustrating the applicant's organizational structure before and after the transaction to facilitate faster staff review, and confirming that the applicant is complying with Commission rules and regulations. An applicant must keep the Commission informed of any developments while approval is pending, particularly the actions of other state or federal regulators.

Finally, the proposed regulation at Section 63.326 implements the minimal affiliate filing requirements under Section 2101(a) of the Public Utility Code for telecommunications public utilities in Chapter 30 of the Public Utility Code at Sections 3019(b)(1) and 3016(f)(1).

The contact person for this proposed rulemaking is Joseph K. Witmer, Esq. (717) 787-3663.

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

Public Meeting held September 27, 2007

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Tyrone J. Christy, Statement attached
Kim Pizzingrilli

Petition of Level 3 Communications, LLC
To Amend the Public Utility Commission
Regulations to Streamline Transfer of Control and
Affiliate Filing Requirements for Competitive Carriers

Docket No. P-00062222

Rulemaking to Amend Chapter 63 Regulations so as to

Docket No. L-00070188

Streamline Procedures for Commission Review of
Transfer of Control and Affiliate Filings for
Telecommunications Carriers

PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

Before the Commission for disposition is a Petition by Level 3 Communications, LLC ("Level 3 Petition"). The Level 3 Petition seeks revision to the Commission's rules and procedures governing the transfer of control and affiliate filing requirements under 66 Pa.C.S. § 1102(a)(3) and 1103, including the issuance of a Certificate of Public Convenience evidencing Commission approval. The Commission's regulations governing these transfers are set out as application filing requirements in sections 5.1, 5.11 and 5.43 of our regulations, 52 Pa. Code §§ 5.1, 5.11, and 5.43. Those regulations

were recently revised although acquisitions, mergers, and transfers of control or assets were not addressed in detail. Moreover, there has been considerable change in the technology and marketplace for public utility service involving communications. Indeed, the telecommunications industry continues to undergo rapid changes both for incumbent carriers and new competitors, and there appears to be need to update our regulations to allow for more rapid review of proposed transactions, provided that the public interest remains protected. Under these circumstances, we agree that a review and possible revision of our procedures for transfers of control and affiliate transactions is appropriate.

The Level 3 Petition was filed on May 31, 2006. Level 3 provided copies to the Office of Consumer Advocate (OCA), Office of Trial Staff (OTS), and the Office of Small Business Advocate (OSBA) consistent with Section 5.41(c) of the Commission's regulations. Level 3 also provided a copy to Verizon Pennsylvania Inc. (Verizon) and the Pennsylvania Telephone Association (PTA) as persons affected, consistent with Section 5.41(c).

The Level 3 Petition asks the Commission to initiate a rulemaking to streamline the administrative process by which certificated competitive carriers may complete transfers of control and affiliate transactions. The Level 3 petition proposes revisions to the Commission's current review and approval process that allegedly impose unnecessary and burdensome requirements on non-dominant, competitive carriers. Level 3 contends that the public interest in a competitive environment does not require strict scrutiny of non-dominant carriers' transactions as they do not wield control over bottleneck facilities, possess market power, or exercise control over local exchange bottleneck facilities.

Level 3 contends that comments or protests are rarely filed with respect to non-dominant carrier transactions. Level 3 also contends that a 3 to 6-month process for securing regulatory approval or a 6-month process following referral to an Administrative Law Judge is untenable in an era of real-time transactions. Level 3 concludes that

revisions are necessary because non-dominant carriers facing important commercial needs have no procedural means to avoid these protracted review periods and notes that even with the proposed revisions the Commission would still retain discretion over the administrative process.

Verizon and PTA filed response comments that support revision of our regulatory procedures governing transfers of control and affiliate transactions. However, both entities contend that any revision apply equally to incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs), including Level 3.

Verizon disputes the Level 3 assertion that any abbreviated procedures should only apply to CLECs because they are non-dominant carriers. Verizon notes that the Federal Communication Commission's (FCC) recent order, *Streamlining Measures for Section 214 Authorizations*, CC Docket No. 01-150 (March 21, 2002) (*Streamlined Regulation Order*) did not prohibit ILEC use of the federal streamlined procedures. Verizon also notes that in today's telecommunications environment, traditional monopoly wireline services are only one portion of the total market. Verizon agrees with Level 3 that our transfer approval processes have not changed in response to technological change, including the proliferation of wireless communications and voice over internet protocol (VoIP) service. Verizon also filed a Motion for Admission *Pro Hac Vice* of Leigh A. Hyer, Esquire.

The PTA filed comments *nunc pro tunc*. The PTA stated that it had expected the Commission to publish the Level 3 Petition, in the *Pennsylvania Bulletin*, for comment.

The PTA's comments agree with Verizon that a streamlined procedure should be applied to all carriers given the proliferation of wireless service, cable company plans to provide communications services, and satellite competition. The PTA notes, in particular, that CLECs currently service over 23% of all wireline access lines in

Pennsylvania. PTA argues that such concentration is sufficient to warrant a close examination of the Level 3 request for differential treatment of "non-dominant" service providers in Pennsylvania. Finally, the PTA claims that Chapter 30 warrants a streamlined approval process for all carriers given Section 3011(13)'s goal of reducing regulation on incumbent carriers' similar to that imposed on competitive carriers.

The Commission's last action addressing these issues focused on utility stock transfers reflected in our adoption on October 24, 1994 of a Policy Statement under Section 1102(a), 66 Pa.C.S. § 1102(a), at 52 Pa. Code § 69.901. Although this non-binding policy statement proved useful in the intervening years in addressing the transactions that require Commission approval, we agree that the evolution of utility regulation since 1994, including the recently re-enacted Chapter 30 of the Public Utility Code, warrants a re-examination of our procedures regarding the nature, extent and rapidity of the Commission's approval process.

Upon consideration, we agree that examination of our rules and procedures should include acquisitions, diminution in control, mergers, stock sales or transfers, and transfers of assets or control of a telecommunications public utility, requiring a certificate of public convenience. We also agree that it is necessary to examine affiliate filing requirements.

Consequently, we issue this Proposed Rulemaking Order and seek Comments on our proposed revisions.

Summary of Rulemaking.

The current Commission practice reviews applications seeking approval of acquisitions, diminutions in control, mergers, stock sales or transfers, and transfers of assets or control of a telecommunications public utility as transactions involving issuance of a certificate of a public convenience under Sections 1102 and 1103 of the Public

Utility Code. Our approval lacks a specific mandate for a decision by a date certain. Although the Commission is proficient at reviewing and approving most of these transactions in a reasonable period of time, the increase in their number and the rapid pace of technological change in the telecommunications market warrants serious consideration of whether it is feasible to shorten the Commission's review and approval period for issuing a certificate of public convenience for most transactions to less than the current 6-to-9 month period Level 3 laments in their pleadings.

The proposed regulation retains the discretion to subject some transactions to the traditional review procedures currently associated with Sections 1102 and 1103 applications. However, the proposed regulation would make this traditional review procedures an exception instead of the general rule.

The proposed regulation would create a general rule for review and approval within a 60-day period for the vast majority of applications seeking approval for transactions under sections 1102(a)(3) and 1103 of the Public Utility Code involving acquisitions, diminutions in control, mergers, stock sales or transfers, transfers of assets or control of a telecommunications public utility. This general rule commits the Commission to completing review and approval within 60 days of publication in the *Pennsylvania Bulletin*. This general rule would apply to most transactions that also involve changes in conditions of service or rates.

The Commission also proposes to create an even more rapid 30-day review and approval process for *pro forma* transactions. *Pro forma* transactions are those transactions that do not involve changes in conditions of service or rates and those that do not reduce an applicant's control by more than 10%. The filing would be made 30 days before closing and Commission approval would issue no more than 30-days after filing or posting on the Commission website.

This proposed regulation establishes a strong presumption in favor of the 60-day general rule given the significant changes in the telecommunications industry and regulation since 1994. For that reason, a reclassification of a transaction from the 60-day general rule would occur only in very limited circumstances. Reclassification is limited because reclassification of a transaction means either a *pro forma* review period (30 days) or the current traditional review and approval process, which may be considerably longer than 60 days.

A transaction will be removed from the 60-day general rule proposed herein if a statutory advocate files a formal protest, the filing involves a major acquisition or merger between firms with substantial market shares, and where the filing raises novel or important issues. The filing of a general comment or formal protest by persons other than a statutory advocate would not, in most instances, reclassify a transaction. Of course, the Commission retains the discretion to decide otherwise depending on the circumstances.

Moreover, the Commission also reserves the discretion to reclassify transactions in those circumstances where the more extensive review period has competitive impact. In such instances, the Commission prefers to keep the formal protest within the abbreviated 60-day general rule or the shorter *pro forma* review period to minimize competitive impact, the consumption of scarce resources, and the use of our process for purposes other than addressing the merits of a transaction and determining if the transaction is in the public interest.

Pro forma transactions are transactions that require a certificate of public convenience but are seamless to the customer and do not involve any change in conditions of service or rates as well as transactions that do not reduce an applicant's ownership by more than 10%. The Commission expects that the vast majority of these types of transactions will concern transfers of customer bases, name changes, or *de minimus* changes in utility stock transfers that do not dilute the controlling interest, and

other similarly routine but not complex transactions. In those cases, the applicant will file for approval 30 days before closing a transaction. The Commission will review the transaction within 30 days after the applicant's notice and issue a Secretarial Letter approving the transaction.

The Commission did consider the alternative of allowing a telecommunications public utility to file for approval 30 days *after* the transaction as at the FCC. The Commission tentatively rejects that approach because it creates a narrow exception to the Commission's long-standing rule that *nunc pro tunc* filings for approval after a closing do not comply with the Public Utility Code. Those *nunc pro tunc* filings in the past could, and did, result in penalties. By allowing a filing after a closing, the Commission effectively endorses filings that violate precedent without a compelling reason to do so.

Other transactions, including transfers of a customer base that will result in a change in conditions of service or rates as well as transactions that reduce an applicant's control by more than 10%, will be subject to the 60-day general review and approval period. This provides the Commission with the time needed to examine a transaction's impact and to ensure that appropriate information and customer responses are factored into the Commission's deliberation. This also allows a transaction to proceed apace even if there are some general comments filed that object to the transaction because of changes in the conditions of service or rates. On the other hand, there may be times when a more detailed analysis is appropriate. This 60-day general rule period allows the Commission time to consider both alternatives far better than a 30-day *pro forma* review period. The 30-day *pro forma* review period is reserved for transfers of customers that do not involve changes in conditions of service or rates as well as a transaction that does not reduce an applicant's control by more than 10%.

Under the proposed regulations, the applicant files information identical to that sought by the FCC regardless of the nature of the transaction. There are additional

Pennsylvania-specific filing requirements which reflect Pennsylvania law and Commission practice. These include the obligation to detail the general public benefit in a transaction, appending diagrams illustrating the applicant's organizational structure before and after the transaction, and confirming that the applicant is complying with Commission rules and regulations. An applicant is also required to keep the Commission informed about federal developments by filing copies of information provided to the FCC and the DOJ.

Importantly, the proposed regulation requires the filing of the same information regardless of the review and approval period. That way, if the Commission would have to reclassify a transaction, the applicant would not experience more delay because of new information filing requirements or incur additional cost to compile new information.

Discussion

The Commission is undertaking this rulemaking because it has been several years since the last revision. Our Section 69.901 *Utility Stock Transfer Policy Statement* was issued in 1994. The time since then has brought significant changes to the Commission's jurisdiction and responsibilities, as well as within the utility industry itself. The Commission agrees that the intervening time, changes in technology, and legislative enactments warrant examination of our current rules and practices. The Commission also agrees that streamlining our rules on transfers of control and affiliate filing requirements should be considered.

Level 3 provided a copy of the Level 3 Petition to the Office of Consumer Protection (OCA), Office of Small Business Advocate (OSBA), and the Office of Trial Staff (OTS) consistent with Section 5.41(b) of the Commission's recently revised procedural rules. The statutory advocates filed no response to the Level 3 Petition.

The comments received to date, however, reflect considerable disagreement with the *scope* of the Level 3 Petition even though there is agreement on the need for *substantive revisions*. The Level 3 Petition seeks revisions in our regulations for competitors but not for incumbents. The Verizon and PTA Comments, on the other hand, support revisions for all providers.

The Reply Comments of Level 3, Verizon, and the PTA demonstrate disagreement in other areas as well. The parties disagree on the intent of Chapter 30 and the impact of the FCC's March 21, 2002 *Streamlined Regulation Order*. The parties also disagree on the meaning and measurement of competition. They further disagree on what role competition should play in determining the scope and content of the Commission's review and approval of transfers of control and affiliated interest requirements.

We agree with Level 3, Verizon, and the PTA that the Commission should address this request to revise our rules and streamline procedures governing the transfers of control and affiliate filing requirements. However, to date, we have limited comment from others.

Upon consideration of comments received to date, we conclude that a proposed rulemaking is appropriate. However, we also want to solicit input from others. Other parties may have different suggestions or subjects that should be included in the proposed rulemaking. Of course, any comments should contain proposed text as well.

Our "Annex A" proposed regulation, attached, reflects our tentative agreement with the Level 3 Petition proposing a shortened but uniform period of time governing transfers of control and affiliate filing requirements. Unlike the Level 3 Petition, however, we also agree with Verizon and the PTA that the requirements should apply equally to incumbent and competitive carriers.

In addition, Annex A incorporates provisions of the FCC's *Streamlined Order* with due regard for Pennsylvania law and policies. Annex A reflects our conclusion that an abbreviated 60-day review process is appropriate in most circumstances, and that a shorter 30-day review period is appropriate in certain other circumstances where (1) the transaction is seamless to the customer and does not involve any change in conditions of service or rates, and (2) the transaction does not reduce an applicant's ownership by more than 10%. Those transactions that do involve changes in conditions of service or rates, as well as transactions involving a reduction in the applicant's control of more than 10%, would get a longer review period with approval coming 60 days after filing.

Nevertheless, these proposed rules would retain the traditional and more extensive review where (1) a protest is filed by a statutory advocate, (2) the filing involves a major acquisition or merger between firms with substantial market shares, (3) the filing raises novel or important issues, and (4) the Commission, in its sole discretion, determines that the traditional review is necessary to protect the public interest.

Given the limited comments received to date, we are discussing our tentative conclusions in order to explain why Annex A deviates from the suggestions provided to date. We also provide a more detailed discussion to better inform parties that may wish to submit comments to this proposed rulemaking.

Extended Discussion of Annex A.

Section 63.321. Purpose. This provision details the types of transactions for which a telecommunications public utility can ask for approval from the Commission. This provision reflects the Commission's statutory authority to issue certificate of public convenience evidence the type of transactions in this section.

Section 63.322. *Definitions.* The definitions for “Affiliated Interest,” “Formal Complaint,” “Formal Investigation,” “Formal Proceeding,” “Incumbent Local Exchange Carrier,” “Informal Complaint,” “Informal Investigation,” “Informal Proceeding,” “Party,” “Pennsylvania Counsel,” “Person,” “Staff,” “Statutory Advocate,” and “Verification” reflect definitions contained in the Public Utility Code or the Commission’s existing regulations at 52 Pa. Code §§ 1.1, 3.1 and 5.1, *et seq.* These are not new definitions.

The definitions for “controlling interest” and “diminution in control” are modified versions of definitions set out in the Commission’s Policy Statement on Utility Stock Transfers at 52 Pa.Code § 69.901. These are not new definitions either.

The definitions for “Carrier,” “Certificated Carrier,” and “Competitive Carrier” reflect existing state and federal law. The proposed definitions reflect the evolving legal classification and regulatory structures for telecommunications service and information service in particular.

The definitions for “Dominant Market Power,” the “Herfindahl-Hirschman Index” (“HHI”), and “Predominant Market Presence” reflect current merger guidelines of the FCC and the DOJ. The “Dominant Market Power” and “HHI” definitions reflect DOJ guidelines on vertical mergers. The “Predominant Market Presence” definition reflects current DOJ merger guidelines on non-vertical mergers.

This approach reflects the view that vertical or non-vertical jurisdictional merger review under sections 1102(a) and 1103 of the Public Utility Code would benefit by federal law. This approach also reflects the real differences between any service provided by an incumbent compared to a competitor and, equally important, differences

between “any service” provided by one competitive carrier or public utility compared to another competitor.¹

The definition of “*pro forma*” transactions reflects the FCC’s *Streamlined Regulation Order* and the Commission Policy Statement on Utility Stock Transfers. There is a new provision addressing diminutions of the controlling interest of stock based on the 10% rule followed at the FCC. This definition encompasses mundane and repetitive transactions that require a certificate of public convenience but do not involve changes in conditions of service or rates.

Section 63.323. Applicability. The proposed regulation formalizes the scope of relief sought in the Level 3 Petition as well as the Comments and Reply Comments of Level 3, Verizon, and the PTA. This provision is consistent with the Commission’s authority to issue a certificate of public convenience granting an application to approve an acquisition, diminution in control, mergers, stock sales or transfers, and transfers of assets or control of a telecommunications public utility under Sections 1102(a) and 1103 and Chapter 30 of the Public Utility Code.

Section 63.324. Requirements for a telecommunications public utility seeking approval of a general rule transaction under 66 Pa.C.S. §§ 1102(a)(3) and 1103. This proposed Section addresses filings seeking approval for the acquisitions, diminutions in control, mergers, stock sales or transfers, and transfers of assets or control of a telecommunications public utility for which Level 3 seeks a different regulatory structure. This provision establishes the 60-day general rule in which Commission review and approval will be completed within 60-days of publication in the *Pennsylvania Bulletin*.

¹ *Streamlined Regulation Order*, paragraph 28. The FCC carefully distinguishes between applicants that are not dominant with regard to “any service” compared to those that are dominant in one service and not another. This approach apparently reflects federal definitions of service set out in 47 USC 153.

Section 63.324. General Rule Transaction. The proposed regulation incorporates the parties' suggestion that Commission review mirror federal review by the FCC and DOJ. The Commission will complete review and approval of a transaction within 60-days notice of publication in the *Pennsylvania Bulletin*. This reduces the current review and approval period.

This is modeled on the FCC practice of dating the FCC's review period from posting at the FCC. In this case, however, web posting is not legal notice. The Commission concluded because these kinds of transactions involve changes in conditions of service or rates, legal notice is preferable because it provides for a quicker review on transactions with issues that are typically of concern to the public: conditions of service and rates.

Section 63.324(a)(1)-(7). The proposed regulation lists the transactions eligible for review under the 60-day general rule. The list is greater than that proposed by the parties. More transactions are included so the Commission can refocus scarce resources on complex, novel, or controversial transactions.

Section 63.324(a)(3) includes any dilution in control greater than 10%. This addresses situations in recent mergers in which there was a significant dilution in a public utility's ownership of stock in the merged or spun-off entity even if there was no loss of control. In those instances, stock ownership was diluted but it never fell below a 51% ownership. In these situations, dilution in voting percentage transfers utility property by reducing but not changing public utility control. These kinds of transactions are included within the regulation because they are transfers of assets even if control is retained.

Currently, utility stock transfers in excess of 20% are addressed in the Commission's *Policy Statement on Utility Stock Transfers*, 52 Pa. Code § 69.901 (*Control Policy Statement*). However, a policy statement is not a binding regulation.

Moreover, the earlier *Control Policy Statement* uses a 20% threshold compared to the 10% threshold used by the DOJ and the FCC.

The proposed regulation includes telecommunications utility stock transfers within the scope of the regulation as opposed to the 20% reflected in the non-binding Policy Statement. The 10% threshold is based on the 10% relied on by the FCC in the *Streamlined Regulation Order*² and cited by Level 3 in their petition. The proposal also reflects similar decisions by other state regulators on affiliate transactions as well.³

Given these considerations, the Commission tentatively concludes that a 10% threshold is consistent with federal law and practice in other states. The Commission also tentatively concludes that use of a uniform standard may be appropriate here because it enhances regulatory predictability and uniformity.

The Commission recognizes that the definition of “affiliated interest” in Sections 1102(a)(4) and 2101 in the Public Utility Code rely on a 5% threshold. The *Utility Stock Transfer Policy Statement* uses a 20% threshold. Given this difference in the treatment of threshold percentages, the Commission seeks comment on whether or not the Commission could, and should, implement a uniform 10% threshold for telecommunications transactions.

Section 63.324(a)(4) reflects Verizon’s suggestion that any transaction requiring issuance of a certificate of public convenience under sections 1102(a)(3) and 1103 be included within the general rule. Section 63.324(a)(5) incorporates the *Utility Stock Transfer Policy Statement* as well.

² *Streamlined Regulation Order*, paragraph 30 and n. 65.

³ *In the Matter of the Review of Chapter 4901:1-6, Ohio Administrative Code*, Case No. 06-1345-TP-ORD (June 6, 2007), Proposed Rule 4901:1-6-09(D) Affiliate Transactions, p. 48.

Section 63.324(a)(6) brings transfers of a limited class of customer base within the general rule. The class consists only of customer base transfers that contain a change in conditions of service or rates. Otherwise, a transfer of a customer base is treated as a *pro forma* transfer under Section 63.325.

The Commission takes this approach for several reasons. First, the Commission is often concerned with transfers of customer base from a customer impact and education perspective, particularly when there is a change in conditions of service or rates. Although the Commission does not regulate every rate involved in every transfer of a customer base, a service provider's change inevitably triggers a considerable amount of customer inquiries that could be reduced by transparent information.

Our approach is consistent with the FCC's *Streamlined Regulation Order*. The FCC concluded that review of transfers of control that did not involve an acquisition of control, which in Pennsylvania's case includes a transfer of a customer base, should be abbreviated. The FCC no longer treats these kinds of transfers as a "discontinuance of service" but, instead, treats them like a transfer of control.

Our approach also reflects the FCC's concern that transfers of control not be used to circumvent conditions of service or attempt to do indirectly that which cannot be done directly.⁴ Customers must be aware of a customer base transfer. However, the filing of a customer comment which is not a formal protest should not automatically remove a transaction from the general rule. That would occur if every negative general comment filed by a customer were treated as a formal protest, regardless of the transaction.

The proposed regulation differentiates between general comments, formal protests that reclassify a general rule transaction, and formal protests that may, but do not automatically, warrant reclassification. General comments should not delay review or

⁴ *Streamlined Regulation Order*, paragraphs 51 and 52.

reclassify a general rule transaction. Formal protests by a statutory advocate would automatically reclassify a general transaction to either traditional review or, when appropriate, the even shorter-term *pro forma review*. Formal protests by others could, but will not automatically, reclassify a transaction.

Formal protests trigger formal administrative proceedings. In turn, this results in traditional review under the Public Utility Code. By keeping a transaction within the general rule even if there is a formal protest, the Commission can more quickly ascertain the nature of the protest and whether the protest warrants traditional review or a 60-day review. Of course, Section 63.324(a)(7) codifies the Commission's discretion when a formal protest warrants reclassification as being in the public interest.

Unlike our proposal, the FCC includes all transfers of customer base within the *pro forma* rule. The FCC does not differentiate between transfers of control where there are changes in conditions of service or rates and where there is no such change. The FCC took this approach because the FCC identified "other means to track and contact carriers" regarding such transfers.

The Commission lacks other means to track and contact carriers regarding such transfers, particularly when they involve a transfer of a customer base. For that reason, the Commission's proposed regulation differentiates between transfers of a customer base involving a change in conditions or rates and those that do not. For those that do not involve changes, the proposed regulation takes the FCC approach and subjects the transaction to *pro forma* review. For those that involve changes, the proposed regulation deviates from the FCC rule but still provides an abbreviated review period. The proposed regulation takes this approach because, in the case of transfers with no changes, the transaction is seamless to the customer.

The Commission agrees with Verizon that seamless transfers requiring a certificate of public convenience without substantive changes should not be subjected to our standard review procedures. The Commission agrees with Verizon that such transactions should be subject only to some kind of *pro forma* review.

Section 63.324(a)(7) contains a provision that allows the Commission to implement the 60-day rule for other transactions. This allows the Commission to apply this provision to transactions that arise in the future and that do not require the time and resources of an extended proceeding. This also includes *pro forma* transactions that staff or the Commission reclassified as a general transaction after more closely reviewing the filing.

Section 63.324(b). Reclassification of a general rule transaction. This provision addresses reclassification of a general rule transaction when reclassification is appropriate. There are three issues here.

Section 63.324(b) plainly states that reclassification would favor reclassification to a *pro forma* classification. The purpose of the proposed regulation is to shorten review not lengthen it unless there is a good reason for doing otherwise. Section 63.324(b)(1)-(3) governs the new “trigger date” for review if a transaction is reclassified. In all instances, the “trigger date” would be the date the Commission informs the applicant of a reclassification. Importantly, these provisions also provide an applicant with a right of appeal directly to the Commission mirroring procedures at Section 5.44 of our rules for delegated authority if staff makes a reclassification decision and the applicant disagrees.

Section 63.324(c). Notification requirements for general rule transactions . The proposed regulation contains a revised version of proposals presented by Level 3, Verizon, and the PTA. In some instances, the Commission agrees with Verizon while in others the Commission agrees with Level 3.

Section 63.324(c) establishes that a filing must be submitted no later than 60 days before the closing of any transaction. The Commission agrees with Verizon on the need for a viable period to trigger review. The Commission also recognizes that an applicant seeks approval on or right at the closing, not significantly after. By allowing a filing to occur 45, 30, or 15 days before a closing, the 60-day review period would extend beyond the closing. This seems counter to what the applicants seek and for that reason the proposed regulation contains a “trigger date” for filing 60 days *before* closing a transaction. That way, barring some unforeseen event, an applicant will have Commission approval on or shortly near the anticipated closing date that drove the filing in the first place.

Sections 63.324(c)(1) through (4) reflect the suggestion of Level 3 and Verizon that a simultaneous filing be made at the time that any filing is made with the FCC or the DOJ. This makes sense from a consistency perspective although the Commission seeks comment on the proposal.

The provision also implements additional notification requirements on updating filings different from those proposed by Level 3 and Verizon in three instances. The Commission requires the applicant to provide notice to the statutory advocates as well as the Commission.

That is because Pennsylvania, unlike the FCC, has autonomous institutions legally charged with representing the interests of discrete customer classes or the public interest. Consequently, notification to those advocates when a filing is made with the Commission seems advisable so that the concerns they might have are quickly presented and not presented very late in a proceeding and then only after they learn about a transaction.

Section 63.324(c)(1)-(3) requires notification if there are other federal or state proceedings involved. Section 63.324(c)(4) requires simultaneous notification of any filing made by a party in response to regulatory action by other state or federal regulators at the suggestion of others. This provision keeps the proceeding in Pennsylvania informed about the transaction's progress before other regulatory bodies. Depending on developments in those jurisdictions, the Commission may conclude that reclassification of a transaction from this subchapter is appropriate as a matter of public interest. An updated information filing requirement makes it easier for the Commission to conduct abbreviated review while staying informed of developments.

Section 63.324(c)(5) requires notification if the Commission requires it in response to a request. The first would be at the request of a statutory advocate. The second would be at the request of another telecommunications public utility. The third and fourth are at the request of staff or a person or party with a stake in the transaction other than mere curiosity.

These provisions collectively allow simultaneous notification when a party does not file a protest or delay a proceeding but wants to keep abreast about a transaction. This provision provides an alternative to a formal adjudicatory proceeding in response to every protest, particularly if there is a desire just for updates.

This would include cases where reclassification is not in the public interest, particularly when there is competitive impact. This also reduces the temptation to misuse traditional review. Consequently, we propose this viable and less expensive way of keeping a proceeding on track without reclassifying a transaction to accommodate every

formal protest and general objection, particularly when doing so invites concessions that are later removed in response to antitrust concerns of other regulators like the DOJ.⁵

Section 63.324(d). Contents of Notification for General Rule Transactions. This provision details the filing requirements for abbreviated review. The proposed regulation is more extensive than that proposed by Level 3, Verizon, or the PTA. It incorporates the filing requirements in sections 5.14 of the Commission's Rules of Administrative Practice and Procedure, which promotes regulatory consistency.

This provision reflects the more detailed information requirements the FCC imposed on applicants for streamlined review in the *Streamlined Regulation Order*.⁶ The Commission's review of the *Streamlined Regulation Order* identified significant information requirements beyond those identified by Level 3, Verizon, and the PTA. The Commission agrees that regulatory uniformity and predictability warrants requiring at a minimum the same information required by the FCC because it expedites review.

Section 63.324(c)(11) contains a list of affirmative benefits that an applicant must describe to the Commission. This requirement facilitates the Commission's compliance with the obligation under Pennsylvania law, set out in *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972), requiring that a transaction under Section 1102 demonstrate an affirmative public benefit. This provision also allows the Commission to effectively determine what, if any, conditions may be appropriate under Section 1103 in order to meet this requirement.

⁵ *Telephone Company in Pennsylvania Eliminates Provisions Restricting Competition to Address Justice Department Concerns, Procompetitive Changes to Rural Incumbent Telephone Company's Settlements with New Entrants Will Deter Misuse of Regulatory Challenges and Benefit Rural Pennsylvania Telephone Customers*, United States Department of Justice, Antitrust Division, Press Release 07-448, June 25, 2007 (*Pennsylvania Telco Release*).

⁶ 52 Pa. Code § 5.14(a); *Streamlined Regulation Order*, paragraphs 16 and 17.

Section 63.324(e). Continuing Obligations for Notification of General Rule Transactions. This provision reflects the Commission's agreeing with Verizon that updates are necessary and appropriate. This proposed revision also supplements the Verizon suggestions by including notice of orders or subsequent actions by the FCC or DOJ. This approach maximizes information that should be provided to the Commission given the abbreviated review compared to the standard review procedures.

Section 63.324(f). Commission Publication of General Rule Transactions. This provision incorporates current publication requirements for applications under Section 5.14 of the Commission's Rules of Administrative Practice and Procedure. The provision requires notice to consumers for transfers of a customer base .

Sections 63.324(f)(1)-(2) establish the minimum publication requirements. The rules would draw a distinction between a general comment and a formal protest following notice to the public. This distinction allows the Commission to consider whether simultaneous notice under Section 63.324(c) may be a better approach. This distinction also allows the Commission to consider some pleadings more in the nature of a general comment than a formal protest, particularly if that means an adjudicatory proceeding and traditional review.

Moreover, Section 63.324(f)(2)(ii) provides that even if the pleading is a formal protest, it will not necessarily reclassify a transaction and result in an adjudicatory proceeding and traditional review. Depending on the circumstances, the formal proceeding could be abbreviated. However, in instances where the statutory advocate files a formal protest, Section 63.324(f)(2)(iii) recognizes that the legal authority of those advocates warrants a more considered approach that would most likely require formal proceedings and a reclassification to accommodate that.

Section 63.324(g). Telecommunications public utility notice to customers.

Section 63.324(g)(1) requires the applicant to prepare and distribute a public notice with the approval of the Commission's Bureau of Consumer Services (BCS). BCS' involvement is appropriate because the transaction involves changes in conditions of service or rates, items of probable interest to customers. Moreover, BCS' involvement makes it more probable that a notice would be understandable to consumers. That, in turn, should encourage general comments as opposed to formal protests.

Sections 63.324(g)(2)(i)-(iv) take an approach to pleadings in response to a telecommunications public utility's notice similar to that taken in response to a Commission publication of a transaction. The regulation distinguishes between a general comment that does not involve a formal protest and formal protests.

Section 63.324(g)(2)(ii) provides that a general comment would not reclassify a transaction nor constitute a formal protest. Section 63.324(g)(2)(iii)-(iv) distinguishes between formal protests filed by a statutory advocate, which would probably require reclassification and a more formal adjudicatory proceedings, and the formal protests of others that might not.

Section 63.324(h). Commission Review of Transactions Subject to the General Rule. This provision formalizes the Commission's discretionary authority under Sections 1102(a)(3) and 1103 of the Public Utility Code, particularly regarding the imposition of conditions for approval of the transactions when such conditions are in the public interest. Discretion on the matter of conditions would also be consistent with due process because parties have notice and an opportunity to be heard notwithstanding the abbreviated review period.

Section 63.324(i). Formal Protests to a General Rule Transaction. This provision allows the filing of a formal protest. The filing requirements are set out in the Commission's Rule of Practice and Procedure.

Section 63.324(j). Reclassification of a Transaction from the General Rule. This provision recognizes that some transactions may have to be reclassified from the general rule and reclassified as a *pro forma* transaction or a transaction subject to traditional review under Sections 1102 and 1103. This provision recognizes that there are cases where a general comment or formal protest should warrant reclassification and traditional review. This also ensures that the mere filing of a general comment by a consumer is not tantamount to a formal protest requiring traditional review.

Section 63.324(j)(1) reflects the fact that the formal protest of a statutory advocate will usually result in reclassification but a formal protest by others could, but would not automatically, result in a reclassification. Section 63.324(j)(2)-(3) provide that major acquisitions by and mergers between telecommunications firms with substantial market share or those raising novel or important issues are likely candidates for reclassification. And, finally, subsection (j)(4) provides that the Commission may determine that a given application should be reclassified to provide for a more extensive traditional review when, in its sole discretion, it is necessary to protect the public interest.

Section 63.324(k). Commission Approval for a General Rule Transaction. This provision establishes the 60-day review and approval period for general rule transaction triggered by publication in the *Pennsylvania Bulletin*. This reflects the concern of Level 3, Verizon, and the PTA that review beyond the federal time period must be reduced.

This provision is consistent with the approach taken in the FCC's *Streamlined Regulation Order*. Although the petitioners requested abbreviated review within 15 days after filing, the proposal rejects that suggestion. The *Streamline Regulation Order* proposed a 60-day review period for dominant carriers but adopted a uniform 30-day

review period. The public is allowed to file comments and replies within the 30-day period. Comments and replies are not the same thing as a formal protest. For that reason, the Commission proposes a review period longer than that adopted by the FCC.

Moreover, the proposed regulation is consistent with the *Streamlined Regulation Order* which dates the review period from the time an application is posted for comment. The FCC does not use the application's filing day as the trigger for FCC review.⁷ The proposed regulation established a 60-day review period dating from public notice in the *Pennsylvania Bulletin* in the way the FCC triggers review from posting at the FCC.⁸

The *Streamlined Regulation Order* established a 30-day review period for non-dominant carriers but retained a 60-day review period for dominant carriers. Level 3 wants a 15-day review period but only for competitors. Verizon wants an identical review and approval period.

Given these considerations, the 60-day period will apply equally to all carriers, incumbent or competitive. This period provides a less-costly alternative to a 6 to 9-month process if there is a formal protest. Finally, this gives the Commission a reasonable review period to address any formal protests and to conduct a more thorough analysis. This includes consideration of any conditions needed to meet the *City of York* standard and analysis of restrictions on market entry.

Section 63.324(1). *Limitations on general rule transactions*. This concluding provision addresses bankruptcy and the possible misuse of *pro forma* transactions.

Section 63.325(1)(1) excludes bankruptcy proceedings from *pro forma* treatment. Bankruptcy filing requirements are addressed in the Commission's regulations at

⁷ *Streamlined Regulation Order*, paragraph 22.

⁸ *Streamlined Regulation Order*, paragraph 19.

Sections 1.61 and 1.62. The Commission sees no compelling reason to revisit that provision at this time. Section 63.325(1)(2) prohibits a carrier or public utility from using this *pro forma* provision to circumvent existing obligations consistent with the FCC's *Streamlined Regulation Order*.⁹

Section 63.325. Requirements for a telecommunications public utility seeking Commission approval of a pro forma transaction subject to 66 Pa.C.S. § 1102(a)(3) and 1103. This provision addresses *pro forma* changes when a carrier or public utility undergoes restructurings that also require a certificate of public convenience. This provision reflects Verizon's suggestions on the matter as well as the *Streamlined Regulation Order* and more recent concerns with transfers of a customer base.

Section 63.325(a). *Pro forma transactions.* This provision provides that *pro forma* review and approval would apply to a transaction that does not involve changes in conditions of service or rates as well as transactions which do not reduce an applicant's control by more than 10%. Since there is no rate change or service conditions involved, the general public interest in these kinds of transactions is usually far less than a transaction involving rates or conditions of service.

Section 63.325(b). *Reclassification of a pro forma transaction.* This provision mirrors the Section 63.324(b) provision addressing reclassification of a general rule transaction. In this provision, as there, reclassification can result in two possibilities. In this case, however, the results can be either a general rule classification or a traditional review and approval.

This provision requires a reclassification to be in writing. This provision also provides that any reclassification in writing by staff has a right of appeal using procedures for an appeal of staff in Section 5.44 of our rules. This appeal, unlike a

⁹ *Streamlined Regulation Order*, paragraph 52.

Section 5.44 appeal however, operates independent of delegation although, like Section 5.44, the process would be identical.

Section 63.325(c). *Notification Requirements for Pro forma Transactions.* This provision mirrors the provision in Section 63.324(c) for notification in general rule transactions. The reasoning here is similar to the reasoning there. A simultaneous notice requirement to the Commission and the statutory advocates or others constitutes a cost-effective way to keep informed while keeping a transaction on track. This should minimize the use of formal protests to reclassify a transaction just to stay informed or, possibly, misuse this process notwithstanding any competitive impact. This provision allows the Commission to keep a concerned party informed by means other than being a party to traditional review in a formal adjudicatory proceeding.

Section 63.325(d). *Content of notification for pro forma transaction.* This provision also mirrors the Section 63.324(d) provision addressing the filing requirements for a general rule transaction. This provision provides the same detailed list of filing information that a telecommunications public utility must submit when seeking Commission approval. This list reflects current federal requirements and information the Commission needs to help make a finding that a transaction will affirmatively benefit the public in some substantial way as required by Pennsylvania law. Finally, the list reflects staff information needs that greatly facilitate a prompt and cost-effective review.

Section 63.325(e). *Continuing obligations for notification of pro forma transactions.* This provision also mirrors Section 63.325(e) provisions for general rule transactions. This provision essentially requires an applicant to keep the Commission informed about subsequent developments in other jurisdictions on the transaction if those developments related to the transaction pending at the Commission.

Section 63.325(f). *Commission publication of pro forma transaction.* This provision addresses Commission publication about these transactions. However, the publication requirements are markedly different from those for the general rule in Section 63.324(f) because *pro forma* transactions are more mundane and involve no changes in conditions of service or rates that might be of interest to the general public.

Section 63.325(f)(1)-(3) does not require publication in the *Pennsylvania Bulletin* nor a formal protest period. The Secretary has the discretion, not the obligation, to post a transaction on the Commission's website. Depending on the circumstances, the Secretary can solicit general comments but not formal protests unless the Commission determines otherwise for good cause shown. Typically, these kinds of transactions do not involve pressing issues of general public interest.

However, there may be exceptions. In those cases, Section 63.325(f)(4) allows the Commission to exercise discretion and treat a *pro forma* transaction like a general rule transaction when it comes to publication. A *pro forma* transaction subject to general rule publication requirements will have to be published in the *Pennsylvania Bulletin* and solicit general comments or formal protests, in addition to any other requirements.

Section 63.325(f)(4)(i)-(iii) creates the same three categories of pleadings in response to a publication as in the provisions for a general rule transaction. There are general comments, formal protests that may not reclassify a transaction, and formal protests that will reclassify a transaction. General comments would not reclassify a transaction or constitute a formal protest because they are, typically, concerns of the public not related to rates or changes in conditions of service. Formal protests by a statutory advocate would reclassify a transaction and would constitute a formal protest given the statutory advocate's distinct legal authority and constituency representation obligations. Formal protests by entities other than the statutory advocates could, but in most cases would not, constitute a formal protest. The fact that it is a formal protest does

not mean the transaction will be reclassified unless the Commission determines otherwise for good cause shown.

Section 63.325(g). *Telecommunications public utility notice to customers.* This provision addresses information the applicant provides to the public. Since these transactions do not involve changes in service conditions or rates, the regulation authorizes the applicant to prepare and distribute a notice to the customers. But, as with notice for a general rule transaction in Section 63.324(g), the applicant must provide notice before the Commission approves the transaction unless that is not practical. This approach ensures that the Commission and the public are informed about a transaction in a way that does not undermine the abbreviated review and approval goals of this rulemaking.

Section 63.325(h). *Commission Review of pro forma transactions.* This provision formalizes the Commission's discretionary authority under Sections 1102(a)(3) and 1103 of the Public Utility Code, particularly regarding the imposition of conditions when they are needed to justify approving a transaction as in the public interest. Conditions are consistent with due process. The parties expressly have notice and an opportunity to be heard notwithstanding the abbreviated review period.

Section 63.325(i). *Protests to a Transaction Subject to the General Rule.* This provision allows the filing of a formal protest. The filing requirements are set out in the Commission's Rule of Practice and Procedure.

Section 63.325(j). *Removal of a transaction as a pro forma transaction.* This provision recognizes that some transactions may have to be reclassified from a *pro forma* transaction into either a general rule transaction or a transaction subject to traditional review under Sections 1102 and 1103. This provision recognizes that there are cases where a general comment or formal protest might warrant reclassification into traditional

review. Conversely, this ensures that the filing of a general comment is not tantamount to a formal protest.

Section 63.325(j)(1) reflects the fact that the formal protest of a statutory advocate will usually result in reclassification but a formal protest by others could, but would not automatically, result in a reclassification. Section 63.325(j)(2)-(3) provide that major acquisitions by and mergers between telecommunications firms with substantial market share or those raising novel or important issues are likely candidates for reclassification. Section 63.325(j)(4) codifies the Commission's discretion to reclassify a transaction when doing so is in the public interest. And, finally, subsection (j)(4) provides that the Commission may determine that a given application should be reclassified to provide for a more extensive traditional review when, in its sole discretion, it is necessary to protect the public interest.

Section 63.325(k). *Commission approval for a pro forma transaction.* This provision establishes the 30-day review and approval period for *pro forma* transaction following filing with the Commission or posting on the Commission's website, whichever is longer. This responds to the concern of Level 3, Verizon, and the PTA that review beyond the federal period must be reduced.

This provision tracks the approach taken in the FCC's *Streamlined Regulation Order*. Although the petitioners requested review within 15 days after filing, the proposal rejects that suggestion. The *Streamline Regulation Order* proposed a 60-day review period for dominant carriers but adopted a uniform 30-day review.

The FCC allows the public to file comments and replies within the 30-day period. Comments and replies are not the same thing as a formal protest. For that reason, the Commission proposes a review period longer than that adopted by the FCC. Unlike the

FCC, moreover, the proposed regulation does not distinguish between “dominant” and “non-dominant” applicants but provides the same filing options to all applicants.

The proposed regulation tracks with the *Streamlined Regulation Order*. The FCC dates the review period from the time an application is posted for comment and the FCC does not use the application’s filing day as the trigger for FCC review.¹⁰

The proposed regulation established a 30-day review period dating from filing with the Commission (unlike the FCC) or posting on the website (like the FCC but not yet available at the Commission as at the FCC). This is similar to the way the FCC triggers review from posting at the FCC.¹¹

The *Streamlined Regulation Order* established a 30-day review period for non-dominant carriers but retained a 60-day review period for dominant carriers. Level 3 wants a 15-day review period but only for competitors. Verizon wants an identical review and approval period.

The proposed regulation adopts Verizon’s regulatory parity suggestion regardless of a carrier’s “dominant” or “non-dominant” role in the market. This is consistent with the FCC’s *Streamlined Regulation Order*.¹²

This also reflects real differences between CLECs and incumbent carriers in Pennsylvania markets.¹³ There are real differences between “non-dominant” CLECs as well. Non-dominant CLECs with a predominant market presence in related markets, like markets for access to internet transmission backbones, occupy a position in Pennsylvania markets that is very different than a non-dominant CLEC with no transmission backbone.

¹⁰ *Streamlined Regulation Order*, paragraph 22.

¹¹ *Streamlined Regulation Order*, paragraph 19.

¹² *Streamlined Regulation Order*, paragraph 21.

¹³ *Pennsylvania Telco Release*, Department of Justice Release 07-448, June 25, 2007.

The 30-day review and approval period is substantially shorter than the traditional rule for acquisitions, diminution in control, mergers, stock sales and transfers, transfers of assets or control of a telecommunications public utility, and utility stock transfers. The 30-day review period accommodates the differences between incumbents and CLECs as well as differences between CLECs. An ILEC traditionally has a more extensive presence in their service territory compared to new CLEC entrants. By the same token, however, a reseller CLEC without access to a corporate affiliate's assets, like an internet transmission backbone or a long-standing wireline operation, is not in the same market position as a CLEC with access to those assets. The proposed "equality of review and approval" regulation reflects those situations.

This regulation treats all applicants equally since all telecommunications public utilities could benefit from a general review and approval period, a *pro forma* review and approval period, and traditional review and approval. This is a marked improvement over subjecting all transactions to traditional review.

Given these considerations, we conclude that a 30-day period should be equally available to all telecommunications public utilities, incumbent or competitive. This period provides a less-costly alternative to traditional review and approval which can allegedly take 6-to-9 months to complete, particularly if there are formal protests.

Sections 63.325(k)(1)-(3) address the mechanics of approval. Section 63.325(k)(1) provides that the Commission will issue a Secretarial Letter or order approving a transaction. Section 63.325(k)(2) recognizes that staff may need to extend a review period, reclassify a transaction, or take other action deemed appropriate to the circumstances. Section 63.325(k)(3) provides that final staff action shall be taken in writing and subject to an appeal of staff which shall be stated in the writing informing the applicant of the decision.

Section 63.325(1). *Limitations on pro forma transactions.* This concluding provision addresses bankruptcy and the possible misuse of *pro forma* transactions.

Section 63.325(1)(1) excludes bankruptcy proceedings from *pro forma* treatment. Bankruptcy filing requirements are addressed in the Commission's regulations at sections 1.61 and 1.62. The Commission sees no compelling reason to revisit that provision at this time.

Section 63.325(1)(2) prohibits a carrier or public utility from using this *pro forma* provision to abandon existing conditions of service, like payment dates and penalty provisions, or embed a rate change in an otherwise seamless transaction. This is consistent with the FCC's *Streamlined Regulation Order*.¹⁴

Section 63.326. Approval of contracts between a carrier or public utility and an affiliated interest under sections 2101(a) and 3019(b) and 3106(f)(1) of Chapter 30.

This provision reflects Level 3's request to codify the limited affiliated interest review and approval authority of the Commission under Chapter 30 of the Public Utility Code. Level 3 and Verizon agree on this point.

This provision, however, reflects our agreement with the comments although the provision reiterates the Commission's authority to monitor and prohibit the use of noncompetitive services to subsidize competitive services under Section 3016(f)(1). This provision reflects the discretion the Commission has to conduct the necessary reviews, audits or other necessary action so long as the Commission does so consistent with due process. As with Section 63.324, the Commission would exercise this discretionary authority only upon notice and opportunity to be heard.

¹⁴ *Streamlined Regulation Order*, paragraph 52.

Additional Issues

The FCC's *Streamlined Order* addressed other issues not discussed heretofore that may warrant resolution in this rulemaking.

The first issue is the FCC's distinction between "presumptively streamlined" matters involving CLECs and "eligible for streamlining" matters involving incumbent carriers even though both are subject to a 30-day review and approval period. In particular, the Commission seeks comment on whether the list set forth in paragraph 28 of the *Streamlined Order* should be the basis for distinguishing between "presumptively streamlined" and "eligible for streamlined" treatment in Pennsylvania.

The second issue is whether there should be an opportunity to provide comments and reply comments in response to an application. The FCC permits this in its regulations. The Commission's regulations anticipate a protest period which includes an opportunity to file a general comment that would not constitute a formal protest and would not reclassify a transaction.

The Commission seeks comment on whether the regulation should incorporate a comment and reply comment period within the 60-day review period for a general rule and *pro forma* transaction. The Commission is particularly interested in comments on whether, and how, a comment and reply period could substitute for the filing of a formal protest or objection consistent with Pennsylvania law. This approach minimizes the need for a full-blown formal administrative adjudication but is also responsive to due process and formal protests in an efficient manner.

The third issue is Commission review and approval. The proposed general rule completes review and approval within 60 days for most transactions under

sections 1102(a)(3) and 1103. General rule transactions require prior approval within a 60-day period dating from publication in the *Pennsylvania Bulletin*. *Pro forma* review is completed within 60 days, but notice is not required until 30 days before the transaction is completed. The Commission retains discretion to reclassify any transaction as well.

One way to accomplish review or reclassification is to charge staff with reviewing and addressing the transaction or making any reclassification decisions. Staff would issue a Secretarial letter on any final staff decision. A staff decision would be expressly subject to appeal mirroring the procedures set out in Section 5.44 of our regulations, even though there is no delegation of Commission authority, so that an applicant can appeal a staff action and thereby ensure final action by the Commission at Public Meeting.

A second option is for staff to conduct a review and prepare a recommendation for disposition at Public Meeting regardless if the transaction is traditional, general, or *pro forma*. This requires a detailed level of oversight for many transactions that may not necessarily warrant such oversight.

Another concern is transactions involving less than 2% of the nation's subscribers or, in Pennsylvania's case, every carrier except Verizon. The FCC's *Streamlined Regulation Order* subjects those transactions to abbreviated review unless the transaction involves service areas adjacent to each other. Neither Level 3, PTA, nor Verizon addressed rural carrier issues. The Commission seeks comment on whether, and how, rural carrier transactions could be treated under the regulation.

Finally, the Commission recognizes that there may be other issues or suggestions beyond those set out in this Order and Annex A. The Commission encourages comment on any other appropriate issue. The Commission asks that members of the public providing any comment also provide proposed language as well.

Due to the complexities of a rulemaking addressing transfers of control and affiliate filing requirements, particularly in light of Chapter 30, interested members of the public will be given 60 days from the date of publication of Annex A in the *Pennsylvania Bulletin* to file comments. The Commission is committed to considering revisions in a timely fashion. Since the comment period is a generous one, extensions of time will not be granted absent compelling reasons.

Procedural Issues.

This proceeding arose as a petition for rulemaking under 52 Pa. Code. §§ 1.5, 5.11 and 5.43 of our Rules of Administrative Practice and Procedure. The Level 3 Petition was not published in the *Pennsylvania Bulletin* although the Commission did receive some comments and replies on the Level 3 Petition. Verizon also filed a motion seeking the *pro haec vice* admission of Attorney Leigh A. Hyer, Esquire.

Additionally, the Commission received numerous updates on decisions from other jurisdictions from Level 3. There were decisions from Louisiana, North Carolina, Minnesota, Ohio and Texas. In June 2007, Level 3 provided a press release indicating that Level 3's network and transmission backbone is so extensive that Pennsylvania selected Level 3 as the exclusive network provider for Wall Street West, a Federal and Pennsylvania-funded initiative to provide back-up systems to New York City's financial institutions.¹⁵

We will grant Verizon's motion for admission *pro haec vice* pursuant to Section 1.22(b) of our regulations. The Commission will also incorporate all pleadings and filings to date into the record of this rulemaking proceeding.

Accordingly, under Sections 501, 1102-03, 2101-07, and 3019 of the Public Utility Code, 66 Pa. C.S. §§502, 1102-03, 2101-07 and 3019; the Commonwealth Documents Law, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); and Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; the Commission proposes adopting the regulations set forth in Annex A, attached hereto; **THEREFORE,**

¹⁵ Level 3 Selected as Exclusive Network Provider for the Commonwealth of Pennsylvania's "Wall Street West," Level 3: Broomfield, CO, (June 7, 2007).

IT IS ORDERED:

1. That the Motion for Admission *pro haec vice* of Ms. Leigh A. Hyer, Esquire, is granted.
2. That the pleadings and filings filed to date on the Level 3 Petition are incorporated into the record of this proceeding.
3. That a rulemaking proceeding is hereby initiated at this docket to consider the adoption of new regulations appearing as Subchapter O, sections 63.321 through 63.326 of Title 52 of the Pennsylvania Code.
4. That the Secretary shall submit this Order and Annex A to the Office of the Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
5. That the Secretary shall certify this Order and Annex A for review and comments to the Independent Regulatory Review Commission and Legislative Standing Committees.
6. That the Secretary shall certify this Order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
7. That interested parties shall have 60 days from the date of publication in the *Pennsylvania Bulletin* of the Notice of Proposed rulemaking to file written Comments and Replies to comments 30 days after filing written comments.

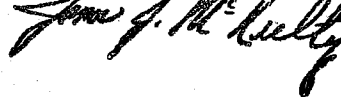
8. That parties filing comments or reply comments should, where appropriate, include a numerical reference to the proposed regulation(s) as set forth in Annex A, should include proposed language for revision, and should provide a clear explanation for the recommendation.

9. That interested parties should file an original plus 15 copies of each comment and reply comment to the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg PA 17105-3265. Comments should be filed in Word format and mailed electronically to joswitmer@state.pa.us.

10. That a copy of this Order and Annex A shall be served on all certificated telephone utilities subject to the Commission's jurisdiction.

11. That the Commission's contact person on this matter is Assistant Counsel Joseph K. Witmer, (717) 787-3663.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: September 27, 2007

ORDER ENTERED: **OCT 19 2007**

ANNEX A

Title 52. Public Utilities Part I. Public Utility Commission Subpart C. Fixed Service Utilities Chapter 63. Telephone Service

Subchapter O. Abbreviated filing procedures for a telecommunications public utility seeking Commission approval under sections 1102(a) and 1103 of the public utility code for an acquisition, diminution in control, merger, stock sales or transfers, transfer of assets or transfer of control of a telecommunications public utility requiring a certificate of public convenience under 66 Pa.C.S. § 1102(a)(3) or approval of a contract between public utilities and affiliates.

§ 63.321. Purpose.

This regulation establishes a cost-effective review and approval periods that abbreviate the traditional time for approving transactions involving an acquisition, diminution in control, merger, stock sales or transfers, transfer of assets or transfer of control of a telecommunications public utility requiring a certificate of public convenience under 66 Pa.C.S. § 1102(a)(3) or approval of a contract between public utilities and affiliates.

§ 63.322. Definitions.

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

Affiliated interest – An entity associated with a public utility as set forth in 66 Pa.C.S. § 2101(a).

Carrier – An entity defined as a public utility by 66 Pa.C.S. 102 or defined as a public utility by 66 Pa.C.S. § 102 and certificated by the Commission pursuant to 66 Pa.C.S. § 1102(a).

Competitive carrier - An entity that provides information service or telecommunications service as defined by 47 U.S.C. §153, or an alternative service provider as defined by 66 Pa.C.S. § 3012 including a certificated carrier under 66 Pa.C.S. § 1102(a).

Controlling interest – An interest, held by a person or group acting in concert, which enables the beneficial holder or holders to control 10% or more of the voting interest in the telecommunications public utility or its parent, regardless of the

remoteness of the holder or holders or the transaction. A contingent right may not be included.

Diminution of control – A reduction in the controlling interest of 10% or more held by a person or group acting in concert, which reduces the beneficial holder or holders ability to control a telecommunications public utility through the voting interest in the telecommunications public utility or its parent, regardless of the remoteness of the holder or holders or the transaction. A contingent right may not be included.

Dominant market power – A carrier that has or will have a moderately concentrated or concentrated market using the Herfindal-Hirschman Index (HHI) utilized by the United States Department of Justice Antitrust Division in any service following Commission approval of a merger under 66 Pa.C.S. § 1102(a) or as otherwise alleged or documented by a party or the Commission in a proceeding seeking Commission approval under 66 Pa.C.S. 1102(a).

Formal complaint – The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereinafter amended.

Formal investigation – The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereinafter amended.

Formal proceeding – The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereinafter amended.

Herfindahl-Hirschman Index – The commonly accepted measure of market concentration utilized by the United States Department of Justice in which market concentration is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers.

Incumbent local exchange carrier – A local exchange carrier as defined in 47 U.S.C. § 153(26) or a local exchange telecommunications company as defined by 66 Pa.C.S. § 3012 including a certificated carrier under 66 Pa.C.S. § 1102(a).

Informal complaint – The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereinafter amended.

Informal investigation – The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereinafter amended.

Informal proceeding – The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereinafter amended.

Party - The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereinafter amended.

Pennsylvania legal counsel - The attorney of record appearing before the Commission as required by sections 1.21 and 1.22 of the Commission's rules of practice & procedure or hereinafter amended.

Person - The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereinafter amended.

Predominant market presence - A utility that could or would possess market power in any service following approval of a Commission merger under 66 Pa.C.S. § 1102(a) using the non-horizontal merger guidelines of the U.S. Department of Justice Antitrust Division or as otherwise alleged or documented by a party or the Commission in a proceeding seeking Commission approval under 66 Pa.C.S. § 1102(a).

Pro forma transaction - A transaction that is seamless to the customer and does not result in a change in rates or conditions of service which, taken together with all previous internal corporate restructurings, does not change the telecommunications public utility's controlling interest, or result in a diminution of control greater than 10%.

Staff - The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereafter amended.

Statutory Advocate - The term as defined in section 1.8 of the Commission's rules of practice & procedure or hereafter amended.

Telecommunications public utility - An entity that provides information service or telecommunications service as defined by 47 U.S.C. § 153 or 66 Pa.C.S. § 3012 or as a carrier.

Verification - The term as defined in section 1.8 of the Commission's rules of practice & procedure or as hereafter amended.

63.323. Applicability.

This subchapter shall apply to a telecommunications public utility seeking Commission approval for an acquisition, diminution in control, merger, stock sales or transfers, transfer of assets or transfer of control of a telecommunications public utility requiring a certificate of public convenience under 66 Pa.C.S. § 1102(a)(3) or approval of a contract between public utilities and affiliates.

§ 63.324. Requirements for a telecommunications public utility seeking Commission approval of a general rule transaction subject to 66 Pa.C.S. § 1102(a)(3) and 1103.

(a) General rule transactions. The following transactions of a telecommunications public involving a change in conditions of service or rates that seeks Commission approval for acquisition, diminution in control, merger, stock sales or transfers, transfer of assets or transfer of control of a telecommunications public utility shall require notification to the Commission and approval by the Commission as a general rule transaction:

(1) A transaction resulting in the transfer of 10% or more of the assets of a carrier.

(2) A transaction resulting in the transfer of 10% or more of the direct or indirect control of a carrier.

(3) A transaction resulting in the diminution of 10% or more in the control of a carrier.

(4) A transaction requiring a certificate of public convenience issued pursuant to 66 Pa.C.S. § 1102(a).

(5) A transaction subject to evaluation under the statement of policy on transfer of control, 52 Pa. Code § 69.901.

(6) A transaction that transfers the customer base of a telecommunications public utility or carrier and involves a change in conditions of service or rates.

(7) A transaction subjected to this subchapter by decision of the Commission, including a transaction no longer classified as a *pro forma* transaction by the Commission.

(b) Reclassification of a general rule transaction. When a telecommunications public utility seeks review and approval of a transaction as a general rule transaction and the Commission reclassifies the general rule transaction, the transaction shall be subject to the requirements of a *pro forma* transaction set forth at Section 63.325 of the rules unless determined otherwise for good cause shown.

(1) Review of a general rule transaction reclassified as a *pro forma* transaction. The 30-day review and approval period for a general rule transaction reclassified as a *pro forma* transaction shall begin on the date that the

telecommunications public utility is notified in writing that the general rule transaction is reclassified.

(2) *Review of a general rule transaction reclassified as other than a pro forma transaction.* The review and approval of a general rule transaction not reclassified as a *pro forma* transaction shall begin on the date that the telecommunications public utility is notified in writing that the transaction is reclassified. A transaction classified under this section shall be reviewed within the time governing review and approval under Sections 1102 and 1103 of the Public Utility Code.

(3) *Right of appeal for reclassification of a transaction.* When a telecommunications public utility is notified in writing by staff that a general rule transaction will be reclassified, the determination shall be subject to appeal as an appeal from an action of staff. The provisions governing an appeal shall be those governing appeals from an action of staff under Section 5.44 of the rules of practice and procedure. The writing shall inform the telecommunications public utility of the right of appeal.

(c) *Notification requirements for general rule transactions .* Notification shall be filed with the Commission on the date of filing with a federal regulatory agency seeking federal approval of a general rule transaction or no later than 60 days prior to the closing of a transaction subject to this subchapter, whichever is longer. The telecommunications public utility filing the notification shall comply with the Commission's rules of practice and procedure governing applications. A telecommunications public utility shall provide an updated copy to the Commission and the statutory advocates of filings in the following circumstances:

(1) *Filing with the Federal Communications Commission (FCC) of an application seeking approval of the transaction (FCC application).*

(2) *Filing of a notice with the United States Department of Justice (DOJ) pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (HSR Filing).*

(3) *Filing by a telecommunications public utility of a pleading responding to a formal or informal complaint, investigation, or proceeding undertaken by the FCC or the DOJ or other state or federal regulatory agency involving the transaction.*

(4) *Filing required by the Commission from a telecommunications public utility in response to a notification by the Commission that simultaneous notification is appropriate to protect the public interest.*

(5) *Filing required by the Commission from a carrier in response to a request by any of the following:*

- (i) A request by a statutory advocate.
- (ii) A request by a carrier with a certificate of public convenience obtained under Section 1102(a) for a copy.
- (iii) A request by the Commission or staff for a copy .
- (iv) A request by a person or party for a copy.

(d) Content of notification for general rule transactions . In addition to the information required by section 5.12 of the Commission's rules of practice and procedure, a general rule transaction shall contain the following information:

(1) The name, address, and telephone number of each party or applicant to the transaction.

(2) The government, state, or territory under the laws of which each corporate or partnership applicant to the transaction is organized.

(3) The name, title, post office address, and telephone number of the officer or contact point, including Pennsylvania legal counsel, to whom correspondence concerning the transaction is to be addressed.

(4) The name, address, citizenship, and principal place of business any person, party, or entity that directly or indirectly owns more than 10% of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest 1%).

(5) A summary description of the transaction.

(6) A description of the geographic areas subject to the transactions and what services are provided in the geographic area;

(7) A verified statement as to how the transaction fits into one or more of the categories subject to the general rule for notification.

(8) Identification of other transactions related to the transaction.

(9) A verified statement whether the transaction warrants special consideration because either party to the transaction is facing imminent business failure.

(10) Identification of a separately filed waiver request sought in conjunction with the transaction.

(11) A verified statement showing:

(i) How the transaction will serve the public interest, convenience, and necessity.

(ii) A description of the general and specific affirmative public benefit to Pennsylvania and Pennsylvania consumers warranting approval of the transaction.

(iii) Additional information that may be necessary to address the effect of the transaction on dominant market power or predominant market presence.

(12) A verified statement affirming that the utility is in compliance with Commission obligations and filings.

(13) A verified statement affirming that customers received notice.

(14) A verified statement containing a copy of any Pennsylvania utility certificates held by the telecommunications public utility.

(15) A verified statement on the effect of the transaction on existing Pennsylvania tariffs. If applicable or in response to a request from staff, a telecommunications public utility shall provide a red-line document identifying changes in existing Pennsylvania tariffs before and after the transaction for which the telecommunications public utility seeks approval from the Commission.

(16) A verified statement on the transaction's effect on the existing affiliate interest agreements of the utility.

(17) A verified statement establishing that no state or federal regulatory agency is expected to undertake an informal or formal investigation, complaint, or proceeding relating to the transaction.

(18) A verified statement that no state or federal regulatory undertaking is appropriate regarding the transaction because the telecommunications public utility lacks dominant market power or predominant market presence.

(19) Organizational charts showing the effect on the applicant's organization before and after the transaction.

(20) A copy of the application filed at the FCC or a notice filed with the DOJ, if any.

(e) Continuing obligations for notification of general rule transactions. When a Commission or federal proceeding related to the general rule transaction is pending, the telecommunications public utility to the transaction shall file with the Commission copies of all procedural motions, public responses to discovery, and orders or other actions addressing or terminating the proceeding. The telecommunications public utility shall supplement the notification filing with any FCC or DOJ public notice issued concerning the transaction.

(f) Commission publication of general rule transactions.

(1) The Secretary shall publish notice of a general rule transaction in the Pennsylvania Bulletin under sections 5.14(a) and (b) of the Commission's rules of practice and procedure and, as directed by the Secretary, require additional publication in a newspaper of general circulation serving the geographic territory affected by the general rule transaction unless the Commission determines otherwise for good cause shown.

(2) Any notice shall contain a 15-day general comment period and a formal protest period established under section 5.14(d) of the Commission's rules of practice & procedure, unless the Commission determines otherwise for good cause shown.

(i) A general comment addressing the general rule transaction involving a change in conditions of service or rates shall not constitute a formal protest under section 5.14 of the Commission's rules of practice and procedure nor reclassify the general rule transaction, unless the Commission determines otherwise for good cause shown.

(ii) A formal protest objecting to the general rule transaction involving a change in conditions of service or rates shall constitute a formal protest under section 5.14 of the Commission rules of practice and procedure and may reclassify the general rule transaction, unless the Commission determines otherwise for good cause shown.

(iii) A formal protest objecting to a general rule transaction involving a change in conditions of service or rates by a statutory advocate shall constitute a formal protest under section 5.14 of the Commission's rules of practice and procedure and shall reclassify a general rule transaction as a *pro forma* transaction or a transaction subject to the review and approval for transactions under Sections 1102 and 1103 of the Public Utility Code, unless the Commission determines otherwise for good cause shown.

(g) Telecommunications public utility notice to customers.

(1) General rule transactions involving a change in conditions of service or rates. A telecommunications public utility shall prepare and distribute notice to the customers of a general rule transaction involving a change in conditions of service or rates with the approval of the Commission's Bureau of Consumer Services. Notice to the customers shall occur prior to Commission approval unless circumstances make distribution prior to approval impractical or unnecessary.

(2) Transfers of customer base subject to the general rule.

(i) A transaction transferring a customer base involving a change in conditions of service or rates shall require additional notice to the customer base prepared with the approval of the Commission's Bureau of Consumer Services.

(ii) A general comment addressing the transfer of a customer base involving a change in conditions of service or rates shall not constitute a formal protest under section 5.14 of the Commission's rules of practice and procedure nor reclassify the general rule transaction, unless the Commission determines otherwise for good cause shown.

(iii) A formal protest objecting to transfer of a customer base involving a change in conditions of service or rates shall constitute a formal protest under section 5.14 of the Commission's rules of practice and procedure and may reclassify the general rule transaction, unless the Commission determines otherwise for good cause shown.

(iv) A formal protest objecting to a general rule transaction involving a change in conditions of service or rates by a statutory advocate shall constitute a formal protest under section 5.14 of the Commission's rules of practice and procedure and shall reclassify a general rule transaction as either as a *pro forma* transaction or a transaction subject to the review and approval for transactions under sections 1102 and 1103 of the Public Utility Code.

(h) Commission review of transactions subject to the general rule. The Commission retains the discretion to make inquiries and, after notice and opportunity to be heard, take action to protect the public interest, including the imposition of conditions on approval of the transaction when deemed necessary or proper under 66 Pa.C.S. § 1103 and to establish affirmative public benefit as required by Pennsylvania law.

(i) Formal protests to a general rule transaction. A protest filed to a transaction subject to the general rule shall comply with the Commission's rules of practice and procedure.

(j) *Reclassification of a transaction from the general rule.* The Commission shall reclassify a general rule transaction in the following circumstances:

(1) The filing of a formal protest by a statutory advocate or the filing of a formal protest warranting reclassification for good cause shown, including competitive impact.

(2) The filing involves a major acquisition or merger between telecommunications firms with substantial market shares.

(3) The filing involves an acquisition, merger or other transaction that raises novel or important issues.

(4) The Commission determines that reclassification is necessary to protect the public interest.

(k) *Commission approval for a general rule transaction.* A transaction subject to this subchapter shall be deemed to be in the public interest and approved in law and fact 60 days after public notice in the *Pennsylvania Bulletin* unless the Commission determines otherwise for good cause shown.

(1) The Commission will issue a Secretarial letter or order approving a general rule transaction and issue a certificate of public convenience authorizing the transaction pursuant to sections 1102(a) and 1103 of the Public Utility Code, 66 Pa.C.S. §§ 1102(a) and 1103.

(2) The Commission or staff may extend the review and approval period, reject the filing or transaction, remove a transaction from the general transaction rule, or take other action deemed appropriate to protect the public interest.

(3) A staff action shall be in writing and inform the telecommunications public utility of the right of appeal. An appeal from an action of staff shall be governed by the procedures governing appeals from an action of staff under Section 5.44 of the Commission's rules of practice and procedure.

(l) *Limitations on general rule transactions.*

(1) *Bankruptcy proceedings.* General rule transactions related to bankruptcy remain subject to sections 1.61 and 1.62 of the Commission's rules of practice and procedure.

(2) *Scope of general rule transactions.* A general rule transaction may not operate to permit a telecommunications public utility to circumvent an obligation by

doing or refraining from doing anything that a telecommunications public utility must do or cannot do.

Section 63.325 Requirements for a telecommunications public utility seeking Commission approval of a *pro forma* transaction subject to 66 Pa.C.S. § 1102(a)(3) and 1103.

(a) *Pro forma transactions.* The following transactions of a telecommunications public utility not involving a change in conditions of service or rates that seeks Commission approval for acquisition, diminution in control, merger, stock sales or transfers, transfer of assets or transfer of control of a telecommunications public utility shall require notification to the Commission and approval by the Commission as a *pro forma* transaction:

(1) A transaction resulting in the transfer of less than 10% of the assets of a carrier.

(2) A transaction resulting in the transfer of less than 10% of the direct or indirect control of a carrier.

(3) A transaction resulting in the diminution of less than 10% in the control of a carrier.

(4) A transaction requiring a certificate of public convenience issued pursuant to 66 Pa.C.S. § 1102(a).

(5) A transaction subject to evaluation under the statement of policy on transfer of control, 52 Pa. Code § 69.901.

(6) A transaction that transfers the customer base of a telecommunications public utility and does not involve a change in conditions of service or rates.

(7) A transaction subjected to this subchapter by decision of the Commission, including a general rule transaction reclassified as a *pro forma* transaction.

(b) *Reclassification of a pro forma transaction.* When a telecommunications public utility seeks review and approval of a transaction as a *pro forma* transaction and the Commission reclassifies the *pro forma* transaction, the *pro forma* transaction shall be subject to the requirements of a general rule transaction set forth at Section 63.324 unless the Commission determines otherwise for good cause shown.

(1) Review of a pro forma transaction reclassified as a general rule transaction. The 60-day review and approval period for a *pro forma* transaction reclassified as a general rule transaction shall begin on the date that the telecommunications public utility is notified in writing that the *pro forma* transaction is reclassified.

(2) Review of a pro forma transaction reclassified as other than a general rule transaction. The review and approval of a *pro forma* transaction reclassified as other than a general rule transaction shall begin on the date that the telecommunications public utility is notified in writing that the *pro forma* transaction is reclassified but not as a general rule transaction. A *pro forma* transaction reclassified under this section shall be reviewed within the period governing review and approval under Section 1102 and 1103 of the Public Utility Code.

(3) Right of appeal for reclassification of a pro forma transaction. When a telecommunications public utility is notified in writing by staff that a *pro forma* transaction will be reclassified, the determination shall be subject to appeal as an appeal from an action of staff. The provisions governing an appeal shall be those governing appeals from an action of staff under Section 5.44 of the Commission's rules of practice and procedure. The writing shall inform the telecommunications public utility of the right of appeal.

(c) Notification requirements for pro forma transactions. Notification of a *pro forma* transaction shall be filed with the Commission on the date of filing with a federal regulatory agency seeking federal approval of a *pro forma* transaction or no later than 30 days prior to the closing of a *pro forma* transaction subject to this subchapter, whichever is longer. The utility filing the notification shall comply with the Commission's rules of practice and procedure governing applications. A telecommunications public utility shall provide an updated copy to the Commission and the statutory advocates of filings in the following circumstances:

(1) Filing with the Federal Communications Commission (FCC) of an application seeking approval of the transaction (FCC application).

(2) Filing of a notice with the United States Department of Justice (DOJ) pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (HSR Filing).

(3) Filing by a telecommunications public utility of a pleading responding to a formal or informal complaint, investigation, or proceeding undertaken by the FCC or the DOJ or other state or federal regulatory agency involving the transaction.

(4) Filing required by the Commission from a telecommunications public utility in response to a notification by the Commission that simultaneous notification is appropriate to protect the public interest.

(5) Filing required by the Commission from a carrier in response to a request by any of the following:

(i) A request by a statutory advocate.

(ii) A request by a carrier with a certificate of public convenience obtained under Section 1102(a) for a copy.

(iii) A request by the Commission or staff for a copy.

(iv) A request by a person or party for a copy.

(d) Content of notification for pro forma transactions . In addition to the information required by section 5.12 of the Commission's rules of practice and procedure, a pro forma transaction shall contain the following information:

(1) The name, address, and telephone number of each party or applicant to the transaction.

(2) The government, state, or territory under the laws of which each corporate or partnership applicant to the transaction is organized.

(3) The name, title, post office address, and telephone number of the officer or contact point, including Pennsylvania legal counsel, to whom correspondence concerning the transaction is to be addressed.

(4) The name, address, citizenship, and principal place of business any person, party, or entity that directly or indirectly owns more than 10% of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest 1%).

(5) A summary description of the transaction.

(6) A description of the geographic areas subject to the transactions and what services are provided in the geographic area;

(7) A verified statement as to how the transaction fits into one or more of the categories subject to the pro forma rule.

(8) Identification of other transactions related to the transaction.

(9) A verified statement whether the transaction warrants special consideration because either party to the transaction is facing imminent business failure.

(10) Identification of a separately filed waiver request sought in conjunction with the transaction.

(11) A verified statement showing:

(i) How the transaction will serve the public interest, convenience, and necessity.

(ii) A description of the general and specific affirmative public benefit to Pennsylvania and Pennsylvania consumers warranting approval of the transaction.

(iii) Additional information that may be necessary to address the effect of the transaction on dominant market power or predominant market presence.

(12) A verified statement affirming that the utility is in compliance with Commission obligations and filings.

(13) A verified statement affirming that customers received or will receive notice.

(14) A verified statement containing a copy of any Pennsylvania utility certificates held by the telecommunications public utility.

(15) A verified statement on the effect of the transaction on existing Pennsylvania tariffs. When applicable or in response to a request from staff, a telecommunications public utility shall provide a red-line document identifying changes in existing Pennsylvania tariffs before and after the transaction for which the utility seeks approval from the Commission.

(16) A verified statement on the effect of the transaction on the existing affiliate interest agreements of the utility.

(17) A verified statement establishing that no state or federal regulatory agency is expected to undertake an informal or formal investigation, complaint, or proceeding relating to the transaction.

(18) A verified statement that no state or federal regulatory undertaking is appropriate regarding the transaction because the carrier lacks dominant market power or predominant market presence.

(19) Organizational charts showing the effect on the applicant's organization before and after the transaction.

(20) A copy of the application filed at the FCC or a notice filed with the DOJ, if any.

(e) Continuing obligations for notification of pro forma transactions. When a Commission or federal proceeding related to the *pro forma* transaction is pending, a telecommunications public utility seeking approval of a *pro forma* transaction shall file with the Commission copies of all procedural motions, public responses to discovery, and orders or other actions addressing or terminating the proceeding. The telecommunications public utility shall supplement the notification filing with any FCC or DOJ public notice issued concerning the transaction.

(f) Commission publication of pro forma transactions.

(1) The Secretary may publish notice of a pro forma transaction in the Pennsylvania Bulletin. The Secretary may post notice of the pro forma transaction on the Commission's website, unless the Commission determines otherwise for good cause shown.

(2) A notice posted on the Commission website may contain a general comment period established according to section 5.14(d) of the Commission's rules of practice.

(3) There shall be no formal protest period under section 5.14(d) of the Commission's rules of practice & procedure, unless the Commission determines otherwise for good cause shown.

(4) A pro forma transaction subject to publication in the Pennsylvania Bulletin, in addition to any additional publication or posting on the Commission's website, shall be subject to a general comment period and a formal protest period established under section 5.14(d) of the Commission's rules of practice & procedure, unless the Commission determines otherwise for good cause shown.

(i) A general comment addressing a transaction not involving a change in conditions of service or rates shall not constitute a formal protest under section 5.14 of the Commission's rules of practice and procedure nor reclassify the general rule transaction, unless the Commission determines otherwise for good cause shown.

(ii) A formal protest objecting to a transaction not involving a change in conditions of service or rates shall constitute a formal protest under section

5.14 of the Commission rules of practice and procedure and may reclassify the general rule transaction, unless the Commission determines otherwise for good cause shown.

(iii) A formal protest objecting to a transaction not involving a change in conditions of service or rates by a statutory advocate shall constitute a formal protest under section 5.14 of the Commission's rules of practice and procedure and shall reclassify a general rule transaction either as a general rule transaction or as a transaction subject to the review and approval for transactions under sections 1102 and 1103 of the Public Utility Code.

(g) Telecommunications public utility notice to customers.

(1) Pro forma transactions not involving a change in conditions of service or rates. A telecommunications carrier shall prepare and distribute notice of a pro forma transaction not involving a change in conditions of service or rates to the customers of a telecommunications carrier. Notice and distribution may also be required for transactions that do not reduce an applicant's control by more than 10%. Notice shall be distributed prior to Commission approval of a pro forma transaction unless the circumstances make distribution prior to approval impractical or unnecessary.

(2) Notice of pro forma transfers of customer base.

(i) A pro forma transaction transferring a customer base not involving a change in conditions of service or rates or not reducing an applicant's control by more than 10% shall not require additional notice to the customer base beyond the general notice in this subchapter.

(ii) A general comment addressing the transfer of a customer base not involving a change in conditions of service or rates shall not constitute a formal protest under section 5.14 of the Commission's rules of practice and procedure nor reclassify the pro forma transaction, unless the Commission determines otherwise for good cause shown.

(iii) A formal protest objecting to transfer of a customer base not involving a change in conditions of service or rates shall constitute a formal protest under section 5.14 of the Commission rules of practice and procedure but may not reclassify the pro forma transaction, unless the Commission determines otherwise for good cause shown.

(h) Commission review of pro forma transactions. The Commission retains the discretion to make inquiries and, after notice and opportunity to be heard, take action to protect the public interest, including the imposition of conditions on approval of the

transaction when deemed necessary or proper under 66 Pa.C.S. § 1103 and to establish affirmative public benefit as required by Pennsylvania law.

(i) Formal protests to a pro forma transaction. A protest filed to a transaction subject to the general rule shall comply with the Commission's rules of practice and procedure.

(j) Removal of a transaction as a pro forma transaction. The Commission shall remove a transaction as a pro forma transaction and reclassify the transaction in the following circumstances:

(1) The filing of a protest by a statutory advocate or the filing of a formal protest warranting reclassification for good cause shown, including competitive impact.

(2) The filing involves a major acquisition or merger between telecommunications firms with substantial market shares.

(3) The filing involves an acquisition, merger or other transaction that raises novel or important issues.

(4) The Commission determines that reclassification is necessary to protect the public interest.

(k) Commission approval for a pro forma transaction. A transaction subject to this subchapter shall be deemed to be in the public interest and approved in law and fact 30 days after filing with the Commission or posting on the Commission's website, whichever is longer, unless the Commission determines otherwise for good cause shown.

(1) The Commission will issue a Secretarial letter or order approving a pro forma transaction and issue a certificate of public convenience authorizing the transaction pursuant to sections 1102(a) and 1103 of the Public Utility Code, 66 Pa.C.S. §§ 1102(a) and 1103.

(2) The Commission or staff may extend the consideration period, reject the filing or transaction, remove a transaction from the pro forma rule, or take other action deemed appropriate to protect the public interest.

(3) A staff action shall be in writing and inform the telecommunications public utility of the right of appeal. An appeal from an action of staff shall be governed by the procedures governing appeals from an action of staff under Section 5.44 of the Commission's rules of practice and procedure.

(1) *Limitations on pro forma transactions.*

(1) *Bankruptcy proceedings.* Pro forma changes related to bankruptcy remain subject to sections 1.61 and 1.63 of the Commission's rules of practice and procedure.

(2) *Scope on pro forma transactions.* A pro forma transaction may not operate to permit a telecommunications public utility to abandon a condition of service or rate. A pro forma transaction may not operate to permit a telecommunications public utility to circumvent an obligation by doing or refraining from doing anything that a telecommunications public utility must do or cannot do.

§ 63.326. Approval of contracts between a carrier or public utility and an affiliated interest under sections 2101(a), 3019(b)(1) and 3016(f)(1).

(a) A written or oral contract or transaction between a telecommunications utility and an affiliated interest is governed by 66 Pa.C.S. § 3019(b)(1) and 66 Pa.C.S. § 3016(f)(1). A written or oral contract between a telecommunications utility and an affiliate requires approval by the Commission and may not violate the prohibition against subsidization of competitive services by noncompetitive services.

(b) *Written contract or transaction.* The carrier or public utility shall file a copy and written summary of a written contract or transaction between a carrier or public utility and an affiliated interest with the Commission. A written contract or transaction shall remain subject to examination, audit, or other action to ensure compliance with 66 Pa.C.S. § 3016(f)(1) and other applicable sections of the Public Utility Code.

(c) *Oral contract or transaction.* The filing of a written summary of an oral contract or transaction shall be deemed compliant with this subchapter. An oral contract or transaction shall remain subject to examination, auditing, or other action to ensure compliance with 66 Pa.C.S. § 3016(f)(1) and other applicable sections of the Public Utility Code.

(d) *Retention of contract or transaction.* A public utility or carrier shall retain and make available copies or summaries of the contract or transaction and shall file the copies or summaries at the request of the Commission.

(e) *Commission discretion.* The Commission retains discretion to make inquiries, audits and other investigations and, after notice and opportunity to be heard, take action to protect the public interest.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

PETITION OF LEVEL 3
COMMUNICATIONS, LLC TO AMEND
COMMISSION REGULATIONS TO
STREAMLINE TRANSFER OF CONTROL
AND AFFILIATE FILING REQUIREMENTS
FOR COMPETITIVE CARRIERS

PUBLIC MEETING -
SEPTEMBER 27, 2007
SEPT-2007-L-0077*
DOCKET NO: P-00062222

RULEMAKING TO AMEND CHAPTER 63
REGULATIONS SO AS TO STREAMLINE
PROCEDURES FOR COMMISSION REVIEW
OF TRANSFER OF CONTROL AND AFFILIATE
FILINGS FOR TELECOMMUNICATIONS CARRIERS

DOCKET NO. L-0007_0188

STATEMENT OF COMMISSIONER TYRONE J. CHRISTY

Before the Commission for consideration is Law Bureau's recommendation to grant, in part, the Level 3 petition regarding amending our regulations to streamline the transfer of control and affiliate filing requirements for competitive telecommunications carriers. The Law Bureau recommends that the Commission issue a Notice of Proposed Rulemaking to amend Chapter 63 of the Commission's regulations to streamline procedures for the review of transfers of control and affiliated filings for all telecommunications carriers.

I am pleased that the Commission is granting this petition to permit a comprehensive examination of our current procedures to review and approve transfers of control and affiliated filings for all telecommunications carriers. I believe that the commencement of a notice of proposed rulemaking in this matter moves the discussion in the right direction by examining our current procedures and possibly modifying them to provide options for adequate review and analysis of both simple and complex matters while providing proper safeguards and protecting the public interest. In doing so, it may permit this Commission to develop a process that will provide the necessary, but expedited, regulatory approvals to keep pace with the rapid changes in the telecommunications marketplace.

I look forward to reviewing the comments submitted in response to the notice of proposed rulemaking so that this Commission can determine whether streamlined, yet comprehensive, procedures are appropriate to approve these types of transactions for all telecommunications carriers.

9-27-07

DATE



TYRONE J. CHRISTY, COMMISSIONER



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

WENDELL F. HOLLAND
CHAIRMAN

January 30, 2008

The Honorable Arthur Coccodrilli
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Re: L-00070188/57-260
Proposed Rulemaking
To Streamline Procedures for Review of Transfer of
Control and Affiliate filings for Telecommunications
Carriers
52 Pa. Code, Chapter 63

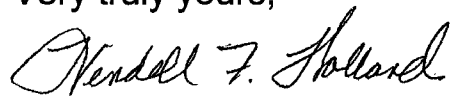
Dear Chairman Coccodrilli:

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 amendments to Chapter 63 in order to streamline transfer of control and affiliate filing by telecommunications carriers. The contact person is Joseph Witmer, Law Bureau, 787-3663.

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

Very truly yours,



Wendell F. Holland
Chairman

Enclosures

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

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00070188/57-260

Subject: Rulemaking to Streamline Procedures for Review of
Transfer of Control and Affiliate Filings for
Telecommunications Carriers

Pennsylvania Public Utility Commission

TYPE OF REGULATION


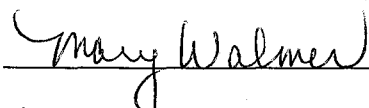
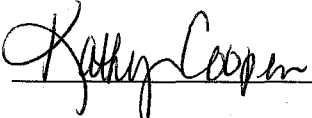
- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

INDEPENDENT REGULATORY
REVIEW COMMISSION

2008 JAN 30 PM 5:02

RECEIVED

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
1/30/08		HOUSE COMMITTEE (Preston) Consumer Affairs
1/30/08		SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure
1/30/08		Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau