

Suzan DeBusk Paiva  
Assistant General Counsel  
Pennsylvania

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INDEPENDENT REGULATORY  
REVIEW COMMISSION



1717 Arch Street, 10W  
Philadelphia, PA 19103

Tel: (215) 466-4755  
Fax: (215) 563-2658  
Suzan.D.Paiva@Verizon.com

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April 9, 2008

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**VIA UPS OVERNIGHT**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building54  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**RE: Regulations to Streamline Transfer of Control and  
Affiliate Filing Requirements for Competitive Carriers  
Docket No. L-00070188/57-26**

Dear Mr. McNulty:

Enclosed please find an original and Fifteen (15) copies of the Comments of Verizon Pennsylvania Inc., Verizon North Inc. and MCI metro Access Transmission Services LLC in the above-named matter.

Please do not hesitate to contact me if you have any questions regarding this matter.

Very truly yours,

  
Suzan D. Paiva

SDP/slb  
Enclosure

**Via E-Mail and UPS Delivery**

cc: Joseph K. Witmer, Esquire  
Certificate of Service

**CERTIFICATE OF SERVICE**

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon Pennsylvania Inc.'s, Verizon North Inc.'s and MCImetro Access Transmission Services LLC's Comments, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 9<sup>th</sup> day of April, 2008.

**VIA E-MAIL and UPS DELIVERY**

Daniel P. Delaney, Esq.  
Kirkpatrick & Lockhart Nicholson  
Graham LLP  
17 North Second Street, 18<sup>th</sup> Floor  
Harrisburg, PA 17101-1507

Sharon E. Webb, Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

Robert V. Eckenrod, Esq.  
Office of Trial Staff  
Pennsylvania Public Utility  
Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Joel H. Cheskis, Esq.  
Barrett Sheridan, Esq.  
Office of Consumer Advocate  
Forum Place, 5<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101-1923

Norman Kennard, Esq.  
Kennard Law Office LLC  
116 Pine Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101

Alan Kohler, Esquire  
Deanne O'Dell, Esquire  
Wolf, Block, Schorr & Solis-Cohen  
213 Market Street, 9<sup>th</sup> Floor  
P.O. Box 865  
Harrisburg, PA 17101-1236



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Suzan D. Paiva, Esq.  
Verizon Pennsylvania Inc.  
1717 Arch Street, Floor 10  
Philadelphia, PA 19103  
Ph: (215) 466-4755  
Fax: (215) 563-2658  
Email: Suzan.D.Paiva@verizon.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking to Amend Chapter 63 Regulations : Docket No. L-00070188  
So as to Streamline Procedures for Commission :  
Review of Transfer of Control and Affiliate :  
Filings for Telecommunications Carriers :

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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**COMMENTS OF VERIZON**

By Order entered October 19, 2007 and published in the Pennsylvania Bulletin on February 9, 2008, the Commission initiated this rulemaking aimed at streamlining the review and approval process for mergers and other transactions requiring the issuance of a certificate of public convenience under 66 Pa. C.S. § 1102 involving telecommunications carriers.

The Commission initiated this rulemaking in response to a petition filed by Level 3 Communications (“Level 3”), which had attached two and one half pages of proposed regulations intended to streamline Commission approval of certain transactions relating to transfers of assets or control for competitive local exchange carriers (“CLECs”). Both Verizon<sup>1</sup> and the Pennsylvania Telephone Association (“PTA”) filed comments generally supporting the concept of a streamlined procedure as set forth in Level 3’s proposed regulations, but disagreeing with Level 3’s proposal that the streamlined procedure should be limited to CLECs. The Commission agreed with all of these parties that it should initiate a rulemaking to explore a more streamlined procedure for telecommunications applications, and agreed with Verizon and PTA that the procedure should apply equally to all telecommunications carriers.

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<sup>1</sup> These Comments are filed on behalf of Verizon Pennsylvania Inc. (“Verizon PA”), Verizon North Inc. (“Verizon North”) and MCImetro Access Transmission Services LLC (collectively “Verizon”).

The Commission's October 19, 2007 Order seeks comments on proposed regulations to be promulgated for the purpose of streamlining the application procedure and applicable to all telecommunications carriers. Noting that presently Commission approval "lacks a specific mandate for a decision by a date certain," the Commission proposed to explore "whether it is feasible to shorten the Commission's review and approval period for issuing a certificate of public convenience for most transactions." (10/19/07 Order at 5). The Commission proposed a three-tiered process. The simplest applications that do not involve a change in rates or service conditions would be subject to an abbreviated 30-day staff review and would be deemed approved after 30 days unless the Commission orders otherwise. Most applications would be subject to a 60-day staff review, and similarly would be deemed approved after 60 days unless the Commission orders otherwise. The Commission retains the discretion, however, to reclassify applications among the categories and exempt the most complex or customer-affecting transactions from the streamlined procedures and to handle them in the same manner as they are handled today.

Verizon supports the Commission's goal of providing for a simpler, quicker and more certain process to obtain certificates of public convenience for transfers of assets or control for regulated telecommunications carriers. Verizon also supports the three-tiered procedure, under which the simplest transactions would be deemed approved in 30 days, most transactions would be deemed approved in 60 days, and the Commission retains discretion to exempt particular significant and complex matters from the streamlined procedure.

While Verizon supports the Commission's goal and its general concept for achieving it, Verizon recommends that the proposed regulations be considerably simplified and clarified in order better to achieve what the Commission intended. Verizon's recommended changes to the proposed regulations are attached hereto Exhibit A (clean version with Verizon changes) and Exhibit B (redlined version with Verizon changes). The reasons for the recommended changes are described below.

**A. Verizon Supports The Commission's Decision To Adopt A Streamlined Process For Certain Telecommunications Applications**

As it stated in its previous comments in this matter, Verizon strongly supports the Commission's efforts to streamline its process for approving applications under 66 Pa. C. S. §1102 (a)(3) to provide shorter approval times, less costly and cumbersome procedures and more certainty as to when approval will issue. It is imperative in today's highly competitive telecommunications market that the Commission ensure that regulatory requirements do not place those entities subject to the Commission's jurisdiction at a competitive disadvantage as compared to their unregulated competitors.

Presently, a public utility must obtain a certificate of public convenience from this Commission before acquiring or transferring utility property (via sale, stock transfer, sale of assets, consolidation, merger or otherwise), regardless of how simple or uncontested the transaction may be.<sup>2</sup> The Commission's current procedure for reviewing and approving such transactions includes a detailed application, a lengthy review period and public notice, and Level 3 has asserted generally take 3-6 months to complete. Further, when the application is filed, there is no deadline for Commission action and no certainty for the parties to the transaction as to when a decision may issue. As Level 3 correctly

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<sup>2</sup> The statute does contain some limited exemptions. 66 Pa. C.S. § 11-2(a)(3)(i)-(iv).

pointed out in its original petition, the current requirements “were established prior to the advent of local competition, when a single local exchange carrier was the exclusive provider.”<sup>3</sup> That is no longer the case today.

The traditional telephone “public utilities” that continue to be regulated by this Commission now face robust competition from alternative service providers, including wireless, cable and VoIP providers, that are not regulated by this Commission. The communications industry is in the midst of a radical transformation that is providing customers of every type, whether business or consumer, an ever increasing array of communications options, while forcing traditional wireline service providers to meet new competitive challenges. New technologies enable various providers to offer services using their existing platforms. These technologies are leading to the convergence of what had once been disparate services, and have opened up the communications market to entities as different in their history and original orientation as Comcast, Google, and eBay. These entities are free to merge and transfer assets without the time-consuming procedure and uncertain timetable of obtaining a certificate of public convenience that applies to regulated “public utilities.” Unregulated alternative service providers can close transactions quickly without burdensome regulatory approval procedures. In order to compete effectively, wireline telecommunications providers should have access to streamlined procedures.

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<sup>3</sup> Level 3 Petition at 2-3.

**B. The Regulations Must Be Considerably Shortened And Simplified To Achieve Their Intended Goal And Comport With The Spirit Of A Streamlined Procedure**

While Verizon applauds the Commission for undertaking the task of updating its regulations to adopt a streamlined process for approving transactions under § 1102(a)(3) given “the rapid pace of technological change in the telecommunications market,” (10/19/07 Order at 5), the proposed rules published by the Commission are, respectfully, far longer and more complicated than they need to be. Rather than provide for “more rapid review of proposed transactions,” the complexity of the rules may inadvertently slow down the process by introducing ambiguity and by adding new and potentially onerous substantive requirements that do not exist under the current rules governing approval of affected transactions. In an effort to simplify and streamline the proposed regulations, while still adhering to their purpose as expressed in the Commission’s Proposed Rulemaking Order, Verizon has attached to these Comments its requested changes to the proposed rules (*see* Exhibit A (clean version with Verizon changes) and Exhibit B (redlined version with Verizon changes)).

Many of Verizon’s proposed changes seek simply to reduce the overall complexity of the regulations, remove some repetitive provisions, and clarify certain areas of ambiguity. For example, in proposed § 63.324(a), Verizon suggests that, rather than try to enumerate a list of transactions that might qualify as “general rule transactions,” the Commission merely refer to the transactions covered by 66 Pa. C.S. § 1102(a)(3) or (4) and preserve its right to reclassify particular transactions as *pro forma* applications or as falling outside the scope of the streamlined procedure “for good

cause.”<sup>4</sup> Verizon also seeks to simplify the filing requirements, particularly for *pro forma* applications, to eliminate unnecessary complexity. Verizon also suggests deleting certain unnecessary definitions and adding definitions from Act 183 and the Public Utility Code, which may then be used to simplify the text (such as “telecommunications service,” “telecommunications carrier” and “public utility”). Additionally, to add more certainty on the comment schedule, Verizon suggests that specific time frames be stated in §§ 63.342(f)(2) and 63.325(f)(2). Verizon also suggests that the regulations make clear that only website posting is required for *pro forma* applications. § 63.325(f)(1).

Other Verizon comments, however, are more substantive in nature. *First*, Verizon objects to a rule that would require the application to contain a “description of the general and specific affirmative public benefit to Pennsylvania and Pennsylvania consumers warranting approval of the transaction.” *See* Proposed § 63.324(d)(9)(ii). This appears to be an attempt to incorporate the standard adopted by the Pennsylvania Supreme Court in *City of York v. PUC*, 449 Pa. 136, 295 A.2d 825 (1972), which requires the Commission in approving a merger to find that it will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. But the *City of York* standard does not require proof of specific benefits to “consumers” as a class for approval of a merger. It simply requires the Commission to

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<sup>4</sup> As a practical matter, most or all of the transactions requiring approval under § 1102(a)(3) would be included in the Commission’s specific list of “acquisitions, diminution in control, mergers, stock sales or transfers, and transfers of assets or control.” (10/19/07 Order at 4). To make the regulations simpler and to avoid questions as to whether a particular application falls within the Commission’s specific list, the Commission should eliminate the enumerated list of transaction types and instead make clear that the streamlined process generally applicable to any telecommunications transaction subject to § 1102(a)(3). This appears to have been the Commission’s intent already. (10/19/07 Order at 14)(“Section 63.324 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.”) Moreover, it would seem logical to make transactions under § 1102(a)(4) eligible for the streamline process as well, with the Commission retaining the right to exempt them if necessary.



find that the merger “will affirmatively benefit the *public*.” *City of York*, 449 Pa. at 143, 295 A.2d at 829 (emphasis added). Indeed, many transactions falling within the scope of § 1102 provide benefits to other segments of the “public,” such as businesses, and are not intended to, nor do they, affect the interests of “consumers” at all. Nonetheless, these transactions affirmatively benefit the “public.” Requiring every single transaction to demonstrate a specific benefit for “consumers” as a special segment of the public impermissibly expands this Commission’s authority under §§ 1102 and 1103 and the reach of *City of York*. It is also affirmatively *harmful* because it would discourage beneficial transactions by creating opportunities to demand unnecessary and costly consumer-specific concessions as the “price” for transactions that otherwise have no effect on consumers’ interests.<sup>5</sup> Further, the *City of York* standard applies to mergers, but it does not necessarily apply to every single type of transaction that might come before the Commission under § 1102(a)(3).<sup>6</sup> The point of the regulations is to simplify and streamline the process, not to add substantive hurdles and obligations that do not exist under the present procedure.<sup>7</sup> Verizon instead proposes that the regulations more closely track the statutory language by requiring the applicant to state “how the transaction is necessary or proper for the service, accommodation, convenience, or safety of the public as required by 66 Pa. C.S. § 1103.”

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<sup>5</sup> See, e.g., *Popowsky v. PUC*, 937 A.2d 1040 (Pa. 2007).

<sup>6</sup> See, e.g., *Chester Water Authority v. Pennsylvania Pub. Util. Comm’n*, 581 Pa. 640, 643, 868 A.2d 384, 386 (Pa. 2005) (“[t]here are several variations in the Commission’s interpretation of Section 1103.”)

<sup>7</sup> Similarly, the regulations could be read to impose customer notice requirements beyond those currently required for the filing of certain types of applications under § 1102(a). Instead, the regulations should make clear that they are not altering existing notice requirements, but should not suggest that they are adding new ones. See 63.324(c)(13); 63.324(g); 63.325(c)(13); 63.325(g).

*Second*, Verizon proposes to eliminate the presumption in proposed § 63.324(f)(2) that any protest by a “statutory advocate” would automatically take a transaction out of the streamlined process without any further action by the Commission. Instead, the Commission should resolve those issues on a case-by-case basis based on the facts presented by the statutory advocate. Otherwise, the statutory advocates would have incentives to lodge frivolous challenges to transactions and thwart the benefits of the streamlined procedures this rulemaking seeks to implement. Indeed, Verizon suggests that no one factor should *automatically* remove a transaction from the general rule, but rather that the Commission consider certain enumerated factors (such as the contents of a filed protest, the number of customers impacted, the presence of new or novel issues or other factors that may impact the public interest) and decide whether to remove a particular transaction from the streamlined procedure on a case-by-case basis.<sup>8</sup> Further, to ensure certainty for the applicants over which process and timetable will apply, the Commission should make that decision within a specifically enumerated number of days of filing (twenty-five for a general rule application and fifteen for a pro forma application).

**C. The Proposed Regulations Regarding Affiliate Transactions Is Contrary To Act 183, Unnecessary And Should Be Deleted**

Pursuant to the clear terms of 66 Pa. C.S. § 3019(b)(1), “[a] telecommunications carrier shall file affiliated interest and affiliated transaction agreements *unless* such

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<sup>8</sup> With respect to the factors set forth in section 63.324(j) that the Commission may consider in removing an application from the general rule, Verizon submits that it is more accurate and more helpful for the Commission to consider “the number of customers located in Pennsylvania that may be impacted by the transaction,” rather than whether the “filing involves a major acquisition or merger between telecommunications firms with substantial market shares.” Given that “major” and “substantial” are not precisely defined, these terms inject ambiguity and uncertainty. Moreover, even firms with “substantial market shares” may enter into transactions that *minimally* impact customers.

agreements involve services declared to be competitive. The filings shall constitute notice to the commission only and *shall not require approval by the commission.*" (Emphasis added).

The Commission's proposed regulations significantly altered the original regulations proposed by Level 3 on this point. Directly contrary to Level 3's original statement that a CLEC affiliated interest transaction "does not require approval by the Commission," the proposed regulations now say that any "written or oral contract between a telecommunications utility and an affiliate requires approval by the Commission" (Proposed § 63.326(a)). The proposed regulations further require — without regard to whether the services involved are competitive or noncompetitive — that a carrier "shall file" both a copy of the contract and a "written summary," and "shall" file a written summary of an oral contract. (Proposed § 63.326(b) and (c)).

These proposed requirements violate the limitations on this Commission's authority set forth in 66 Pa. C.S. § 3019(b)(1) and are beyond the powers and duties retained to this Commission under Act 183. Under the plain language of that statute, the Commission may *only* require affiliated interest transactions to be filed if they involve noncompetitive services. It may not require the filing of affiliated interest agreements involving only competitive services. Further, even the agreement must be filed under the above standard, the filing constitutes "notice" only and "shall not require approval by the commission." 66 Pa. C.S. § 3019(b)(1). In the face of these clear statutory pronouncements, the proposed regulations cannot stand as drafted.

In fact, given that the provisions of 66 Pa. C.S. § 3019(b)(1) are quite clear with regard to the requirements for affiliated transactions under Act 183, there is no need for

the Commission to enact regulations on this subject at all, and the proposed Section 63.326 should be deleted in its entirety. In its marked-up version of the proposed regulations attached hereto, Verizon has deleted this section. If the Commission determines that it must address affiliated interest requirements in these regulations – which it should not – then it must track the statutory language and may not exceed the authority provided by Act 183.

**D. The Commission Should Convene A Collaborative For Interested Industry Members To Refine The Wording Of The Proposed Regulations**


Verizon understands that interested representatives of the telecommunications industry in Pennsylvania generally support the Commission's initiative to open a rulemaking intended to streamline procedures and provide a shorter and more certain timeframe for approval of applications for stock and asset transfers and changes in control of telecommunications carriers. While Verizon has attached to these Comments its recommendations as to how the proposed regulations should be shortened and simplified, it is willing to work with interested parties and the Commission to refine and finalize the appropriate language for these regulations. If the Commission determines – as it should – that the proposed regulations should be revised, then the Commission should convene a collaborative for interested parties to attempt to come to agreement on the final language of the regulations.

The development of streamlined filing procedures is an important issue to the industry and should be completed as quickly and efficiently as possible. So as not to delay the process unduly, the Commission should set a deadline of approximately 90 days for the members of the collaborative to report back with the results of their discussions and any proposed regulatory language they may have agreed to.

## CONCLUSION

For the foregoing reasons, Verizon strongly supports the Commission's efforts to adopt a streamlined procedure for applications under § 1102(a) and generally supports the concept behind the Commission's proposed regulations. Verizon respectfully suggests that the proposed regulations be considerably simplified and clarified in order better to achieve what the Commission intended, as set forth in Attachments A and B to these comments.

Respectfully submitted,

  
Leigh A. Hyer (Atty ID No. 204714)  
Suzan D. Paiva (Atty ID No. 53853)  
Verizon  
1717 Arch Street, 10W  
Philadelphia, PA 19103  
Telephone: 215-466-4755  
Facsimile: 215-563-2658  
E-mail:  
[Leigh.A.Hyer@verizon.com](mailto:Leigh.A.Hyer@verizon.com)  
[Suzan.D.Paiva@verizon.com](mailto:Suzan.D.Paiva@verizon.com)

Counsel for Verizon

Dated: April 9, 2008

**Subpart C. Fixed Service Utilities**  
**Chapter 63. Telephone Service**

**Subchapter O. Streamlined filing procedures for telecommunications carriers seeking certificates of public convenience under sections 1102(a)(3) or (4) of the public utility code.**

**§ 63.321. Purpose.**

This regulation establishes a streamlined filing and approval process to abbreviate the time required and to provide more certainty to the industry regarding expected timeframes for Commission approval of transactions requiring a certificate of public convenience under 66 Pa.C.S. § 1102(a)(3) or (4) involving public utilities that offer telecommunications services.

**§ 63.322. Definitions.**

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

*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 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 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.

*Public utility* – The term as defined in 66 Pa. C.S. § 102.

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

*Telecommunications carrier* – The term as defined in 66 Pa. C.S. § 3012.

*Telecommunications service* – The term as defined in 66 Pa. C.S. § 3012.

**63.323. Applicability.**

This subchapter shall apply to all filings made by a telecommunications carrier seeking a certificate of public convenience pursuant to 66 Pa.C.S. § 1102(a)(3) or (4), unless the Commission for good cause and as set forth herein determines that an application should not be subject to the streamlined procedures of this subchapter.

**§ 63.324. General rule applications.**

(a) *General rule applications.* Any application by a telecommunications carrier for a certificate of public convenience pursuant to 66 Pa. C.S. § 1102(a)(3) or (4) shall be subject to the procedures for a general rule application, unless such application qualifies as a *pro forma* application under section 63.325 of this subchapter or the Commission for good cause and as set forth herein determines that it should not be subject to the streamlined procedures of this subchapter.

(b) *Reclassification of a general rule application.*

(1) The Commission may reclassify an application filed as a general rule application to a *pro forma* application. Following such reclassification, the application shall be subject to the requirements of a *pro forma* application set forth at Section 63.325 of the rules. The 30-day review and approval period for a general rule application reclassified as a *pro forma* application shall begin on the date that the telecommunications public utility is notified in writing that the general rule application is reclassified.

(2) The Commission may determine for good cause that an application filed as a general rule application should not be governed by the streamlined procedures of this subchapter. The review and approval of a general rule application that the Commission determines is not subject to these streamlined procedures shall begin on the date that the telecommunications carrier is notified in writing that the application is reclassified. An application removed from the applicability of this subchapter shall be reviewed within the time and under the procedures governing review and approval under Sections 1102 and 1103 of the Public Utility Code.

(i) The Commission must act to remove a general rule application from the streamlined procedures of this subchapter within twenty-five days of the filing of the application, or the application shall be treated as a general rule application.

(ii) *Right of appeal for reclassification of an application.* When a telecommunications carrier is notified in writing by staff that a general rule application will be removed from the streamlined procedures of this subchapter, 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 carrier of the right of appeal.

(c) *Filing requirements for general rule application.* When a telecommunications carrier enters into a transaction for which it will require a certificate of public convenience pursuant to 66 Pa. C.S. § 1102(a)(3) or (4), it shall notify the Commission of the transaction and file its application for a certificate of public convenience on the date of the first filing with a federal regulatory agency seeking approval of the transaction or no later than 60 days prior to the closing of a transaction, whichever is longer. The applicant shall comply with the Commission's

rules of practice and procedure governing applications and shall serve the application on the statutory advocates.

(d) *Content of a general rule application.* In addition to the information required by section 5.12 of the Commission's rules of practice and procedure, the notification of a general rule application filed pursuant to subsection (c) 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 if the applicant is represented by 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 regulated by the Commission are provided in the geographic area.

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

(8) Identification of any separately filed waiver request sought from this Commission in conjunction with the transaction.

(9) A statement describing how the transaction is necessary or proper for the service, accommodation, convenience, or safety of the public as required by 66 Pa. C.S. § 1103.

(10) A statement affirming that the utility is in compliance with Commission regulations and filing obligations.

(11) A copy of any application filed at the Federal Communications Commission or a notice filed with the United States Department of Justice relating to the transaction, if any.

(12) A verification pursuant to 52 Pa. Code § 1.36.

(e) *Continuing filing obligations for general rule applications.* When a concurrent Commission or federal proceeding related to transaction that is the subject of the general rule application is pending, the applicant shall file with the Commission and serve on the statutory



advocates copies of all procedural motions, public responses to discovery, and orders or other actions addressing or terminating the proceeding. The applicant shall supplement the application with any Federal Communications Commission or United States Department of Justice public notice issued concerning the transaction subsequent to the filing with this Commission.

(f) *Commission publication of general rule application.*

(1) Within 10 days of the filing of a general rule application, the Secretary shall cause to be published notice of the application in the *Pennsylvania Bulletin* under sections 5.14(a) and (b) of the Commission's rules of practice and procedure, unless the Commission determines that such publication is not required. The Secretary may require additional publication in a newspaper of general circulation serving the geographic territory affected by the general rule application, but is not required to do so.

(2) Any comments or formal protests to a general rule application shall be filed within 10 days of publication in the *Pennsylvania Bulletin* and shall be served upon counsel for the applicant by hand delivery or overnight mail. Any reply to such comment or protest shall be filed within 10 days of the filing of such comment or protest. No further pleadings shall be allowed, except by leave of the Commission upon good cause shown.

(i) A general comment shall not constitute a formal protest under section 5.14 of the Commission's rules of practice and procedure nor shall it provide grounds to remove the general rule application from the streamlined procedures of this subchapter.

(ii) A formal protest objecting to the general rule application shall constitute a formal protest under section 5.14 of the Commission rules of practice and procedure and the Commission may rely upon it as grounds to reclassify the general rule application as set forth in subsection 63.324(j).

(g) *Telecommunications public utility notice to customers.* If the general rule application involves a change in rates or conditions of service or the transfer of a customer base involving a change in rates or conditions of service, the applicants shall provide such notice to the affected customers as may be required by Commission regulations. Evidence of the provision of any required notice must be filed with the Commission before a certificate of public convenience will issue.

(h) *Commission review of applications 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 application, when appropriate and authorized by 66 Pa.C.S. § 1103.

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

(j) *Reclassification of an application from the general rule.* The Commission may consider the following factors in determining whether a general rule application should be removed from the streamlined procedures set forth in this subchapter:

- (1) The filing and contents of a formal protest.
- (2) The number of customers located in Pennsylvania that may be impacted by the transaction.
- (3) Whether the filing involves an acquisition, merger or other transaction that raises novel or important issues.
- (4) Whether reclassification is necessary to protect the public interest.

(k) *Commission approval for a general rule application.* A general rule application subject to this subchapter shall be deemed to be in the public interest and approved in law and fact 60 days after filing of the application, unless on or before that date the Commission enters an order determining otherwise for good cause shown.

(1) If the application is deemed approved, the Commission shall issue a Secretarial letter or order approving a general rule application 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 within 10 days of the date on which the application is deemed approved.

(2) The Commission or staff for good cause may reject the filing or transaction, remove an application from the general rule, or take other action deemed appropriate to protect the public interest and permitted by applicable law.

(3) A staff action shall be in writing and inform the applicant 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 general rule applications.*

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

**Section 63.325** *Pro forma applications.*

(a) *Pro forma applications.* An application by a telecommunications carrier seeking a certificate of public convenience pursuant to 66 Pa. C.S. § 11-2(a)(3) or (4) shall qualify as a *pro forma* application if it meets the following conditions:

- (1) The transaction will not result in a change in conditions of service or rates.

(2) The transaction will result in the transfer of less than 10% of the assets of a public utility.

(3) The transaction will result in the transfer of less than 10% of the direct or indirect control of a public utility.

(4) The transaction will result in the diminution of less than 10% in the control of a public utility.

(5) The transaction transfers the customer base of a telecommunications carrier but does not involve a change in conditions of service or rates.

(6) The transaction has been subjected to this subchapter by decision of the Commission, including a general rule application reclassified as a *pro forma* application.

(b) *Reclassification of a pro forma application.* The Commission may reclassify an application filed as a *pro forma* application to a general rule application subject to Section 63.324 of this subchapter or may remove it from the streamlined procedures of this subchapter. The Commission must act to reclassify or remove a *pro forma* application within fifteen days of the filing of the application, or the application shall be treated as a *pro forma* application

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

(2) *Review of a pro forma application reclassified as other than a general rule application.* The review and approval of a *pro forma* application removed from the streamlined procedures of this subchapter shall begin on the date that the applicant is notified in writing that the *pro forma* application is so reclassified. A *pro forma* application removed from the streamlined procedures of this subchapter 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 application.* When an applicant is notified in writing by staff that a *pro forma* application 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) *Requirements for pro forma applications.* When a telecommunications carrier enters into a transaction for which it will require a certificate of public convenience pursuant to 66 Pa. C.S. § 1102(a)(3) or (4) and that transaction qualifies for a *pro forma* application under these rules, the telecommunications carrier shall notify the Commission of the transaction and file its application for a certificate of public convenience on the date of filing with a federal regulatory agency seeking federal approval of the transaction or no later than 30 days prior to the

closing of a *pro forma* transaction subject to this subchapter, whichever is longer. The applicant shall comply with the Commission's rules of practice and procedure governing applications and shall serve a copy on the statutory advocates.

(d) *Content of pro forma applications.* In addition to the information required by section 5.12 of the Commission's rules of practice and procedure, a *pro forma* application shall contain the same information required for a general rule application pursuant to subsection 63.324(d) above. The application shall also conspicuously state on its front page that it is being filed as a *pro forma* application under these regulations.

(f) *Commission publication of pro forma applications.*

(1) Within 5 days of the filing of the *pro forma* application, the Secretary shall post notice of the *pro forma* application on the Commission's website. Publication of notice in the *Pennsylvania Bulletin* or in any newspaper shall not be required. Further publication requirements may be imposed only if the application is timely reclassified.

(2) A notice posted on the Commission website shall contain a general comment period established according to section 5.14(d) of the Commission's rules of practice. Any such comments must be filed within 5 days of the posting of the notice on the Commission website and shall be served upon counsel for the applicant by hand delivery or overnight mail. Any reply to such comment shall be filed within 5 days of the filing of such comment. No further pleadings shall be allowed, except by leave of the Commission upon good cause shown.

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

(g) *Telecommunications public utility notice to customers.* No separate notice to customers of a *pro forma* transaction shall be required, but the telecommunications carrier is not relieved of the obligation to provide any notice required by other Commission regulations that may be applicable to the transaction.

(h) *Commission review of pro forma applications.* 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, as appropriate and authorized by 66 Pa.C.S. § 1103.

(k) *Commission approval for a pro forma application.* A *pro forma* application subject to this subchapter shall be deemed to be in the public interest and approved in law and fact within 30 days after filing of the application, unless on or before that date the Commission enters an order determining otherwise for good cause shown.

(1) If a *pro forma* application is deemed approved, the Commission shall issue a Secretarial letter or order approving a *pro forma* application 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 within 10 days of the date on which the application is deemed approved.

(2) The Commission or staff may for good cause reject the filing or transaction, remove an application from the *pro forma* rule, or take other action deemed appropriate to protect the public interest and permitted by applicable law.

(3) A staff action shall be in writing and inform applicant 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 applications.*

(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 applications.* A *pro forma* application may not operate to permit a telecommunications public utility to abandon a condition of service or rate.

**Subpart C. Fixed Service Utilities**  
**Chapter 63. Telephone Service**

**Subchapter O. ~~Streamlined Abbreviated filing procedures for for a telecommunications public utility seeking Commission approval telecommunications carriers seeking certificates of public convenience under sections 1102(a)(3) or (4) 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 streamlined filing and a cost-effective review and approval periods process that to abbreviate the traditional time required and to provide more certainty to the industry regarding expected timeframes for Commission for approval of filing 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 (4) or approval of a contract between public utilities and affiliates involving public utilities that offer telecommunications services.

**§ 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%.~~

~~*Public utility*—The term as defined in 66 Pa. C.S. § 102.~~

~~*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 carrier*—The term as defined in 66 Pa. C.S. § 3012.~~

~~*Telecommunications service*—The term as defined in 66 Pa. C.S. § 3012.~~

~~*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 all filings made by a telecommunications carrier public utility seeking a certificate of public convenience 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 pursuant to 66 Pa.C.S. § 1102(a)(3) or (4), unless the Commission for good cause and as set forth herein determines that an application should not be subject to the streamlined procedures of this subchapter or approval of a contract between public utilities and affiliates.

### **§ 63.324.      **Requirements for General rule applications 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 applications transactions. Any application by a telecommunications carrier for a certificate of public convenience pursuant to 66 Pa. C.S. § 1102(a)(3) or (4) shall be subject to the procedures for a general rule application, unless such application qualifies as a pro



~~forma application under section 63.325 of this subchapter or the Commission for good cause and as set forth herein determines that it should not be subject to the streamlined procedures of this subchapter. 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 application transaction.~~

~~(1) The Commission may reclassify an application filed as When a telecommunications public utility seeks review and approval of a transaction as a general rule application transaction and the Commission reclassifies the general rule transaction, to a *pro forma* application. Following such reclassification, the transaction application shall be subject to the requirements of a *pro forma* transaction application 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 application reclassified as a *pro forma* transaction application shall begin on the date that the telecommunications public utility is notified in writing that the general rule transaction application is reclassified.~~

~~(2) *Review of a general rule transaction reclassified as other than a pro forma transaction.* The Commission may determine for good cause that an application filed as a~~

general rule application should not be governed by the streamlined procedures of this subchapter. The review and approval of a general rule application that the Commission determines is transaction not reclassified as a pro forma transaction not subject to these streamlined procedures shall begin on the date that the telecommunications carrier public utility is notified in writing that the transaction application is reclassified. An transaction application classified under removed from the applicability of this section subchapter shall be reviewed within the time and under the procedures governing review and approval under Sections 1102 and 1103 of the Public Utility Code.

(i) The Commission must act to remove a general rule application from the streamlined procedures of this subchapter within twenty-five days of the filing of the application, or the application shall be treated as a general rule application.

(3ii) Right of appeal for reclassification of an transaction application. When a telecommunications public utility carrier is notified in writing by staff that a general rule application transaction will be removed from reclassified the streamlined procedures of this subchapter, 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 carrier public utility of the right of appeal.

(c) Notification Filing requirements for general rule application transactions. When a telecommunications carrier enters into a transaction for which it will require a certificate of public convenience pursuant to 66 Pa. C.S. § 1102(a)(3) or (4), it shall notify Notification shall be filed with the Commission of the transaction and file its application for a certificate of public convenience on the date of the first filing with a federal regulatory agency seeking federal approval of the 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 applicant telecommunications public utility filing the notification shall comply with the Commission's rules of practice and procedure governing applications and shall serve the application on the statutory advocates. 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 a notification for general rule application transactions.~~ In addition to the information required by section 5.12 of the Commission's rules of practice and procedure, the notification of a general rule application filed pursuant to subsection (c) 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 if the applicant is represented by 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 regulated by the Commission 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.~~

~~(79) A verified statement whether the transaction warrants special consideration because either party to the transaction is facing imminent business failure.~~

~~(810) Identification of any separately filed waiver request sought from this Commission in conjunction with the transaction.~~

~~(91)~~ A ~~verified-statement~~ describing showing:

~~(i)~~ How the transaction is necessary or proper for the service, accommodation, convenience, or safety of the public as required by 66 Pa. C.S. § 1103 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.

~~(102)~~ A ~~verified-statement~~ affirming that the utility is in compliance with Commission regulations obligations and filing obligations.

~~(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.

~~(1120)~~ A copy of any the application filed at the Federal Communications Commission or a notice filed with the United States Department of Justice relating to the transaction, if any.

~~(12)~~ A verification pursuant to 52 Pa. Code § 1.36.

(e) *Continuing filing obligations for notification of general rule application transactions.* When a concurrent Commission or federal proceeding related to transaction that is the subject of the general rule application transaction is pending, the applicant telecommunications public utility to the transaction shall file with the Commission and serve on the statutory advocates copies of all procedural motions, public responses to discovery, and orders or other actions addressing or terminating the proceeding. The applicant telecommunications public utility shall supplement the notification filing with application with any Federal Communications Commission or United States Department of Justice public notice issued concerning the transaction subsequent to the filing with this Commission.

(f) *Commission publication of general rule application transactions.*

(1) Within 10 days of the filing of a general rule application, ~~t~~The Secretary shall cause to be published notice of a general rule the application transaction in the *Pennsylvania Bulletin* under sections 5.14(a) and (b) of the Commission's rules of practice and procedure, unless the Commission determines that such publication is not required. ~~and, as directed by t~~The Secretary may; require additional publication in a newspaper of general circulation serving the geographic territory affected by the general rule transaction application, but is not required to do so unless the Commission determines otherwise for good cause shown.

(2) Any notice shall contain a 15-day general ~~Any~~ comments period and a or formal protests to a general rule application shall be filed within 10 days of publication in the *Pennsylvania Bulletin* and shall be served upon counsel for the applicant by hand delivery or overnight mail. Any reply to such comment or protest shall be filed within 10 days of the filing of such comment or 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. No further pleadings shall be allowed, except by leave of the Commission upon 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 shall it provide grounds to reclassify remove the general rule transaction application from the streamlined procedures of this subchapter, unless the Commission determines otherwise for good cause shown.

(ii) A formal protest objecting to the general rule application ~~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 the Commission may rely upon it as grounds to reclassify the general rule transaction application as set forth in , unless the Commission determines otherwise for good cause shown subsection 63.324(j).

(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. If the general rule application involves*

~~(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 rates or 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 the transferring of a customer base involving a change in rates or conditions of service or rates, the applicants shall provide such require additional notice to the affected customers base prepared with the approval of the Commission's Bureau of Consumer Services as may be required by Commission regulations. Evidence of the provision of any required notice must be filed with the Commission before a certificate of public convenience will issue.~~

~~(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 a 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 transaction applications 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 application, when appropriate and authorized by 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~~ application.* A protest filed to a ~~transaction~~ subject to the general rule application shall comply with the Commission's rules of practice and procedure.

(j) *Reclassification of an ~~application-transaction~~ from the general rule.* The Commission may consider the following factors in determining whether shall reclassify a general rule application should be removed from the streamlined procedures set forth in this subchapter~~transaction in the following circumstances:~~

(1) The filing and contents 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 number of customers located in Pennsylvania that may be impacted by the transaction~~filing involves a major acquisition or merger between telecommunications firms with substantial market shares.~~

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

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

(k) *Commission approval for a general rule ~~application~~ transaction.* A general rule application~~transaction~~ subject to this subchapter shall be deemed to be in the public interest and approved in law and fact 60 days after filing of the application~~public notice in the Pennsylvania Bulletin~~, unless on or before that date the Commission enters an order determining~~es~~ otherwise for good cause shown.

(1) If the application is deemed approved, ~~t~~The Commission shall~~will~~ issue a Secretarial letter or order approving a general rule ~~transaction~~application 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 within 10 days of the date on which the application is deemed approved.

(2) The Commission or staff for good cause may ~~extend the review and approval period,~~ reject the filing or transaction, remove an ~~transaction~~application from the general ~~transaction~~-rule, or take other action deemed appropriate to protect the public interest and permitted by applicable law.

(3) A staff action shall be in writing and inform the ~~applicant~~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 ~~application~~ transactions.*

(1) *Bankruptcy proceedings.* General rule ~~transactions~~applications 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 Pro forma applications*~~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 application*~~transactions.~~ An application by The following ~~transactions of a telecommunications carrier seeking a certificate of public convenience pursuant to 66 Pa. C.S. § 11-2(a)(3) or (4) 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 shall qualify as a pro forma application if it meets the following condition~~transaction:

(1) The transaction will not result in a change in conditions of service or rates.

(2) TheA transaction will resulting in the transfer of less than 10% of the assets of a public utility~~carrier.~~

(3) TheA transaction will resulting in the transfer of less than 10% of the direct or indirect control of a public utility~~carrier.~~

(4) TheA transaction will resulting in the diminution of less than 10% in the control of a public utility~~carrier.~~

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

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

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

(8) TheA transaction has been subjected to this subchapter by decision of the Commission, including a general rule application~~transaction~~ reclassified as a *pro forma application*~~transaction.~~



(b) Reclassification of a pro forma transaction application. The Commission may reclassify an application filed ~~When a telecommunications public utility seeks review and approval of a transaction as a pro forma application to transaction and the Commission reclassifies the pro forma transaction, the pro forma transaction shall be subject to the requirements of a general rule application subject to transaction set forth at Section 63.324 of this subchapter or may remove it from the streamlined procedures of this subchapter unless the Commission determines otherwise for good cause shown. The Commission must act to reclassify or remove a pro forma application within fifteen days of the filing of the application, or the application shall be treated as a pro forma application~~

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

(2) Review of a pro forma transaction application reclassified as other than a general rule transaction application. The review and approval of a pro forma transaction application removed from the reclassified as streamlined procedures other than a general rule transaction of this subchapter shall begin on the date that the applicant the telecommunications public utility is notified in writing that the pro forma transaction application is so reclassified but not as a general rule transaction. A pro forma transaction application reclassified removed from the streamlined procedures of this subchapter 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 application. When an applicant telecommunications public utility is notified in writing by staff that a pro forma transaction application 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 application transactions. When a telecommunications carrier enters into a transaction for which it will require a certificate of public convenience pursuant to 66 Pa. C.S. § 1102(a)(3) or (4) and that transaction qualifies for a pro forma application under these rules, the telecommunications carrier shall notify the Commission of the transaction and file its application for a certificate of public convenience ~~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 the 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 applicant utility filing the notification shall comply with the Commission's rules of practice and procedure governing applications and shall serve a copy on the statutory advocates. 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 application transactions.* In addition to the information required by section 5.12 of the Commission's rules of practice and procedure, a *pro forma transaction application* shall contain the same information required for a general rule application pursuant to subsection 63.324(d) above. The application shall also conspicuously state on its front page that it is being filed as a *pro forma* application under these regulations.~~

~~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 applications.*

(1) Within 5 days of the filing of the *pro forma* application. The Secretary may publish notice of a *pro forma* transaction in the *Pennsylvania Bulletin*. The Secretary shall may post notice of the *pro forma* transaction application on the Commission's website. Publication of notice in the *Pennsylvania Bulletin* or in any newspaper shall not be required, unless the Commission determines otherwise for good cause shown. Further publication requirements may be imposed only if the application is timely reclassified.

(2) A notice posted on the Commission website shall may contain a general comment period established according to section 5.14(d) of the Commission's rules of practice. Any such comments must be filed within 5 days of the posting of the notice on the Commission website and shall be served upon counsel for the applicant by hand delivery or overnight mail. Any reply to such comment shall be filed within 5 days of the filing of such comment. No further pleadings shall be allowed, except by leave of the Commission upon good cause shown.

(3) There shall be no formal protest period under section 5.14(d) of the Commission's rules of practice & and 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.* No separate notice to customers of a *pro forma* transaction shall be required, but the telecommunications carrier is not relieved of the obligation to provide any notice required by other Commission regulations that may be applicable to the transaction~~

~~—————(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 transaction applications.*~~ 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, as appropriate and authorized by 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 application transaction.*~~ A *pro forma application* transaction subject to this subchapter shall be deemed to be in the public interest and approved in law and fact within 30 days after filing of the application, unless on or before that date the Commission enters and order determining otherwise for good cause shown with the Commission or posting on the Commission's website, whichever is longer, unless the Commission determines otherwise for good cause shown.

(1) If a *pro forma* application is deemed approved, the Commission shall will issue a Secretarial letter or order approving a *pro forma transaction application* 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 within 10 days of the date on which the application is deemed approved.

(2) The Commission or staff may for good cause extend the consideration period, reject the filing or transaction, remove an *transaction application* from the *pro forma* rule, or take other action deemed appropriate to protect the public interest and permitted by applicable law.

(3) A staff action shall be in writing and inform applicantthe 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 applicationtransactions.*

(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 applicationtransactions.* A *pro forma* transaction application 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.~~