

The PUC delivered final form regulation #2877 on April 3, 2012. On May 11, 2012, the PUC delivered a revised RAF #8 and revised page 12 of the Preamble with corrected citations. Nothing else in the regulation has been changed.

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRRC's website)

(1) Agency:

Pennsylvania Public Utility Commission

(2) Agency Number:

Identification Number: L-2009-2123673/57-278

IRRC Number: 2877

2012 MAY 11 PM 2: 28

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(3) PA Code Cite: PA Code Cite: 52 Pa. Code § 63.137

(4) Short Title:

Elimination of the Call Recording Prohibition in 52 Pa. Code § 63.137 and Establishment of Regulations to Govern Call Recording for Telephone Companies

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Louise Fink Smith at finksmith@pa.gov, Law Bureau, 717-787-8866 (FAX 717-783-3458)

Secondary Contacts: Melissa Derr at mderr@pa.gov, Bureau of Technical Utility Services, 717-783-6171 (FAX 717-787-4750); Sheila Brown at sheibrown@pa.gov, Bureau of Consumer Services, 717-425-7564 (FAX 717-787-6641)

All at: Pennsylvania Public Utility Commission, PO Box 3265, Harrisburg, PA 17120

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Currently, regulation prohibits jurisdictional telephone utilities from recording telephone calls between customer and utility employees for any reason. There is no similar prohibition affecting other jurisdictional utilities. On July 29, 2009, at M-2008-2074891, the Commission adopted a blanket partial waiver of the call recording prohibition at 52 Pa. Code § 63.137(2) relating to jurisdictional telephone utilities. The instant *Rulemaking Order* entered March 15, 2012, establishes regulatory conditions under which jurisdictional telephone utilities may record customer communications for training and quality of service purposes. The rulemaking also makes ministerial edits (*i.e.*, changing "employe" to "employee") for consistency within Section 63.137.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Pennsylvania's *Wiretapping and Electronic Surveillance Control Act*, 18 Pa.C.S. §§ 5701-5704, permits the recording of calls between entities and their customers for quality of service and training purposes.

Sections 501 and 504 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 504; Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated there under at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and Section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated there under at 4 Pa. Code §§ 7.231-7.234 provide further authority.

Further, the rulemaking expressly mandates that the modifications of Section 63.137(2) would neither enlarge nor limit, in any way, a regulated entity's obligations or a customer's protections pursuant either to Pennsylvania's *Wiretapping and Electronic Surveillance Control Act*, 18 Pa.C.S. §§ 5701-5704, or to any applicable federal statutes or regulations.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? NO

Are there any relevant state or federal court decisions? NO

If yes, cite the specific law, case or regulation as well as, any deadlines for action.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The promulgation of a regulation rather than the use of *ad hoc* waivers or a temporary blanket waiver that the regulated entity has to renew yearly for a maximum of three years to address the recording of customer calls for jurisdictional telephone utilities will increase efficiency in industry operations and facilitate the entry and participation of new competitors in the telecommunications market by allowing each to standardize operations throughout its national service territories. Further, most of the jurisdictional telephone utilities operate on a multi-state basis and service customer calls at some call centers located outside Pennsylvania. These calls centers are typically set up to record calls, regardless of the location of the customer.

Additionally, eight telephone utilities in the Commonwealth have had the ability to record customer contact calls starting in 2007 pursuant to specific *ad hoc* waivers. Other companies have been able to opt-in to the blanket waiver process since July 2009. The PA PUC has not seen any problems or customer complaints arise. The rulemaking develops and codifies call recording standards for Pennsylvania's jurisdictional telecommunications market. There are over 200 regulated telephone entities with a combined total of over a million customers that would be affected.

No other jurisdictional utility is restricted by Commission regulation from recording telephone calls between utility employees and customers of the utility for training and quality of service purposes.

The Commission will benefit from the change in the regulation in several areas. There will be greater parity between the regulations that apply to jurisdictional telephone utilities and the regulations that apply to other jurisdictional utilities. There will be fewer customer complaints as a result of improved service quality and better employee training.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No scientific data, studies, or references are used to justify this regulation. The Commission has, however, granted similar relief to eight (8) jurisdictional telephone utilities and has granted a blanket waiver of the regulation. To date, there have been no issues or controversies surrounding utility operation under the individual waivers or the blanket waiver. Similarly, all other jurisdictional utilities may record calls between customers and utility employees for training and quality of service purposes, and no issues have arisen that would indicate a need for prohibiting or restricting by regulation such activity.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

The Commission does not anticipate an adverse impact of the changed regulation.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Jurisdictional telephone utilities can continue to operate as they currently do and need not record any customer contact calls if they do not wish to avail themselves of the opportunity to record calls under the changed regulation. The change in the regulation does not impose any burdens on a jurisdictional telephone utility. They may elect to operate pursuant to the change in the regulation if they want to start recording customer contact calls.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Commission anticipates that savings will result. With the change to permit recording for calls between customers and utility employees for training and quality of service purposes, regulated telephone utilities will not have to file opt-in letters under the blanket waiver established by Commission order and effective through mid-2012. This will save them an estimated five (5) hours of professional staff time (estimated at \$100 per hour) and five (5) hours of clerical staff time (estimated at \$50 per hour) for a total of \$750 per opt-in request. If the existing regulation is not changed before the blanket waiver expires, jurisdictional telephone utilities that are recording calls or that wish to commence recording calls for quality or service and training purposes will need to request express waivers of the regulatory prohibition on call recording. This would entail an estimated ten (10) hours of professional staff time (estimated at \$100 per hour) and five (5) hours of clerical staff time (estimated at \$50 per hour) for a total of \$1250 per waiver filing.

As a regulation, the provisions for recording customer contact calls will be more readily available and uniformly applied, meaning that regulated entities will need to expend less time and effort researching the law on recording calls between employees and customers in Pennsylvania on this point.

The Commission anticipates that jurisdictional telephone utilities that record calls for quality of service and training purposes pursuant to the proposed change in Section 63.137 will be able to provide better service to their customers and thereby reduce the incidence rate of customer complaints and lower the cost of servicing their customers. The Commission cannot quantify a dollar value for this anticipated savings.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Local governments would not be affected by this rulemaking.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Commission anticipates that savings will result. There are in excess of 200 regulated entities that could opt-in under the blanket waiver or request an individual waiver. If the ability to record customer contact calls is covered by regulation, the jurisdictional telephone utilities will no longer need to request waivers or opt-in to the temporary blanket waiver from the prohibition against recording such calls. This will save the statutory advocates (OCA, OSBA, and OTS) the cost of evaluating each petition and possibly having to participate in myriad waiver proceedings. It would also save the Commission the cost of conducting such proceedings. The Commission estimates that each statutory advocate spends approximately ten (10) hours professional staff time reviewing and filing a no-objection answer in a Section 63.137(2) waiver request proceeding and that the Commission staff spend approximately forty (40) hours professional staff time and twenty (20) hours clerical staff time reviewing, preparing, processing, adopting, entering, and serving a Section 63.137(2) waiver. Average professional time is estimated to be \$50.00 per hour for a cost of \$2000 and average clerical staff time is estimated to be \$25.00 per hour for a cost of \$500.00 making the estimated total cost to the Commission of a Section 63.137(2) waiver \$2500.00.

Currently, Jurisdictional telephone utilities may opt-in to a temporary blanket waiver provision that was established by Commission order. This blanket waiver is scheduled to expire in 2012 and imposes limitations on call recording that may not be necessary if the matter is addressed by a change in the existing regulation. Handling an opt-in filing entails approximately 5 hours clerical staff time for an estimated cost of \$125 per opt-in.

Additionally, the Commission anticipates that jurisdictional telephone utilities that record calls for quality of service and training purposes pursuant to the proposed change in Section 63.137 will be able to provide better service to their customers and thereby reduce the incidence rate of customer complaints filed with the Commission. The Commission cannot quantify a dollar value for this anticipated savings.

It is estimated that the rulemaking by the time it is finalized will have taken a total of 100 hours of professional time at an average cost of \$50 per hour and ten (10) hours of clerical time at an average cost of \$25 per hour for a total cost of \$5,250 to process the rulemaking

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community		\$750/opt-in or \$1250/filing	\$1250+/ Filing	\$1250+/ filing	\$1250+/ filing	\$1250+/ Filing
Local Government	0	0	0	0	0	0
State Government		\$125/opt-in or \$2500/filing	\$2500+/ filing	\$2500+/ filing	\$2500+/ filing	\$2500+/ Filing
Total Savings		∑ cost times filings	∑ cost times filings	∑ cost times filings	∑ cost times filings	∑ cost times filings
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	\$5,250	0	0	0	0	0
Total Costs	\$5,250					
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Review and order processing of <i>ad hoc</i> waiver & opt-in requests; blanket waiver;	\$4,600	\$5,600	\$2,000	

pre-rulemaking activities				

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The rulemaking process will ultimately entail approximately 100 hours of professional staff time and 10 hours of clerical staff time for a total cost of \$5,250. If only 4 requests for waivers are filed, the Commission and statutory advocates will have expended more addressing the waivers than they would in having a regulation implemented.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Eight jurisdictional telephone utilities (two Verizon companies, two Full Service companies, and four Denver & Ephrata companies) requested the eight (8) waivers (three (3) orders) granted so far. Several other companies have requested to opt-in to the temporary blanket waiver provision. Additionally, the Pennsylvania Telephone Association has requested that the matter be addressed on an industry-wide basis.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The alternative is to continue operating under *ad hoc* waivers or temporary blanket waivers established by Commission order. *Ad hoc* waivers can result in inconsistent regulation of similarly situated entities, and a temporary blanket waiver established by Commission order is difficult for regulated entities to find and follow. Additionally, the current temporary blanket waiver does not reflect the full input and participation of the regulated community and its customers. Further, when the temporary blanket waiver established by Commission order expires in 2012, jurisdictional telephone utilities that have opted-in will have to revert to operations pursuant to the existing regulation or request *ad hoc* waivers.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Pennsylvania's *Wiretapping and Electronic Surveillance Control Act*, 18 Pa.C.S. §§ 5701-5704, permits the recording of customer contact calls for quality of service and training purposes.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

This change in regulation would allow Pennsylvania to compete more favorably than it does presently for call center work. Jurisdictional telephone utilities would no longer be prohibited from recording customer contact calls for quality of service and training purposes. Many other states do not have regulations prohibiting the recording of customer contact calls for quality of service and training purposes.

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

This regulation will not affect any other regulations of the PA PUC or other state agencies.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional legal, accounting, consulting procedures, reporting, recordkeeping, or paperwork will be required to implement the regulation other than the rulemaking itself.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Once the regulation is in place, there will be no change in operations that affect minorities, elderly, small businesses, or farmers than exist currently under the temporary blanket waiver. These are precisely the same operations that affect all customers. To the extent that any customer has reason to contact the affected regulated entities, the regulation will not affect any provisions for ease of access. Customers making such contacts will be advised that the call may be recorded for quality of service and/or training purposes.

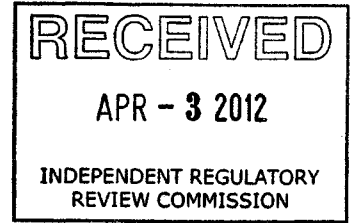
(26) Include a schedule for review of the regulation including:

- | | |
|--|--|
| A. The date by which the agency must receive public comments: | <u> n/a </u> |
| B. The date or dates on which public meetings or hearings will be held: | <u> n/a </u> |
| C. The date of promulgation of the proposed regulation as a final-form regulation: | <u>March 15, 2012</u> |
| D. The expected effective date of the final-form regulation: | <u>3rd qtr 2012</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Permissive; affected entities will avail themselves of the provisions of the reg as they desire</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>NA</u> |

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

Review will be provided as needed and if complaints arise.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**



DO NOT WRITE IN THIS SPACE

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

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-2009-2123673/57-278

DATE OF ADOPTION March 15, 2012

BY *Rosemary Chiavetta*
Rosemary Chiavetta

TITLE *Secy*
(SECRETARY)

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

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

3-15-2012
DATE OF APPROVAL

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

L-2009-2123673/57-278
Final Rulemaking
Elimination of the Call Recording Prohibition and
Establishment of Regulations to Govern Call Recording
for Telephone Companies
52 Pa. Code, Chapter 63

The Pennsylvania Public Utility Commission on March 15, 2012, adopted a final rulemaking order which establishes regulatory conditions under which telephone companies may record customer communications for training and quality of service purposes. The contact person is Louise Fink Smith, Law Bureau, 787-8866.

EXECUTIVE SUMMARY

L-2009-2123673/57-278

Final Rulemaking

Elimination of the Call Recording Prohibition and Establishment of Regulations to Govern Call Recording for Telephone Companies 52 Pa. Code § 63.137

This Final Rulemaking was prompted by requests in 2007-2008 from eight (8) local exchange carriers (LECs) requesting waivers of 52 Pa. Code § 63.137 to allow them to record telephone calls between their customers and employees for training and quality of service purposes. Currently, pursuant to section 63.137, telecommunications carriers cannot record customer contact calls for any reason. Other jurisdictional utilities do not have such a restriction and are able to record calls for training and quality of service purposes. The eight LECs were granted individual waivers, and the Commission established terms and conditions for a temporary blanket waiver of section 63.137 (2) in a *Blanket Waiver Order* at Docket No. M-2008-2074891.

O April 19, 2010, the Commission entered a *Proposed Rulemaking Order* at Docket No. L-2009-2123673, which proposed to amend section 63.137 to remove the prohibition against call recording and to establish parameters for permitting call recording of customer contact calls for training and quality of service purposes. Additionally, the rulemaking proposed the ministerial edit of changing “employe” to “employee.” After comments from individual jurisdictional telecommunications utilities, a statewide telecommunications organization, and IRRC, a final rulemaking order was entered on March 15, 2012. The *Final Rulemaking Order* reflects the comments filed in this matter.

This *Final Rulemaking Order* seeks to benefit every LEC by allowing uniformity across multistate service territories and establishing consistency in utility regulation. The jurisdictional utilities affected by the regulation will benefit from the regulation as they will know what is expected of them if they choose to record calls. The regulations are designed to help the utility improve training methods and quality of service provided to customers by their employees. Better trained utility employees and improved quality of service benefits utility customers. The regulations are not financially or unduly burdensome upon the jurisdictional utilities because the utilities can continue to operate without choosing to record calls. Furthermore, the utilities operating pursuant to the individual waivers and under the blanket waiver have not noted any problems with the terms of those waivers that would be codified as regulations under the proposed rulemaking. Utilities that have not requested a waiver or opted-in to the blanket waiver will be saved the time and expense of such a request.

The Commission will benefit from a more uniform approach to the methods that all utilities may use to improve quality of service and to ensure adequate employee training. Additionally, it will save time and money by eliminating the need to process individual requests for waivers or for opting into the blanket waiver.

The contact persons for technical aspects of this rulemaking are Sheila Brown, Bureau of Consumer Services, sheibrown@pa.gov, 717-425-7564, and Melissa Derr, Bureau of Technical Utility Services, mderr@pa.gov, 717-783-6171. The contact person for legal aspects is Louise Fink Smith, Law Bureau, finksmith@pa.gov, 717-787-8866.

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

Public Meeting held March 15, 2012

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Rulemaking: Elimination of the Call Recording
Prohibition in 52 Pa. Code § 63.137 and Establishment
of Regulations to Govern Call Recording for
Telephone Companies

Docket No. L-2009-21236

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FINAL RULEMAKING ORDER

BY THE COMMISSION:

On April 19, 2010, we issued for comment a proposed rulemaking relative to the regulatory prohibition against call recording at 52 Pa. Code § 63.137(2) relating to telephone companies¹ and to establish regulatory conditions under which telephone companies may record customer contact communications. Comments have been received. This order eliminates the language in section 63.137(2) relating to the prohibition of call recording applicable to jurisdictional telephone companies, adds “recording” to section 63.137(1) relating to compliance with state and federal laws, and makes the ministerial edit of changing “employe” to “employee” throughout section 63.137. This order is effective upon publication in the *Pennsylvania Bulletin*.

¹ The term “telephone company” as defined at 52 Pa Code § 63.132 incorporates all jurisdictional telephone companies: *Telephone company*—A public utility which provides regulated telecommunication services subject to Commission jurisdiction.

Background

52 Pa. Code § 63.137(2)

Section 63.137(2) was promulgated in an effort to balance customer privacy interests with the business interests of the telephone companies.² To establish this balance, telephone company call center supervisors are allowed to monitor communications between customers and utility company service representatives (*i.e.*, customer contact calls) through “live” or “real-time” listening in, but calls may not be recorded. Substantively, section 63.137(2) provides, in relevant part, as follows:

(2) *Service evaluation and monitoring.* The telephone company may evaluate and monitor those aspects of its operations, including customer communications, necessary for the provision of service to its customers. **The recording of conversations is prohibited.**

52 Pa. Code § 63.137(2) (emphasis added). No other jurisdictional utility industry is subject to similar customer contact or call-center call-recording prohibitions under our regulations. Section 63.137(2)(iii) relating to administrative monitoring sets the parameters for monitoring existing customer contact calls and employee-to-employee calls for quality of service provided to customers. This process is currently limited to live monitoring by the absolute prohibition in section 63.137(2).

Subsections 63.137(2)(i) and (ii) explain the processes of service evaluation and maintenance monitoring of customer-to-customer telephone calls that a telephone company has been able to perform in the provision of service to its customers. Under section 63.137(2), these calls may not be recorded. No other jurisdictional utility has similar access to customer-to-customer calls or transactions by virtue of the service it renders. The proposed rulemaking did not propose that these calls could be recorded.

² The provisions of section 63.137(2) were issued pursuant to 66 Pa. C.S. §§ 501 & 1501 and were adopted July 24, 1992, effective September 23, 1992, 22 *Pa.B.* 3892.

Eight (8) local exchange carriers (LECs) petitioned for and received waivers of section 63.137(2).³ The individual waivers allow them to record, for training and quality of service purposes, customer calls to their call centers. On November 20, 2008, we entered a tentative order at Docket No. M-2008-2074891 soliciting comments on proposed guidelines for a blanket waiver to avoid addressing such waiver requests on a piecemeal basis in the future. *Guidelines for Temporary Waiver of the Call Recording Prohibition Set Forth at 52 Pa. Code § 63.137(2)*, M-2008-2074891 (November 20, 2008) (*Tentative Order*). The *Tentative Order* proposed a process whereby a telephone company could petition the Commission for a one-year partial waiver of section 63.137(2) and up to two one-year extensions, subject to proposed uniform terms and conditions applicable to operations under the temporary partial waiver.

The *Tentative Order* provided notice to the public, in general, and to the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Office of Trial Staff (OTS), in particular. The Pennsylvania Telephone Association (PTA) filed comments asserting that continued requirement of individual petitions with a one-year limitation and two renewals would not be consistent with a “blanket” waiver.

By order entered July 29, 2009, at Docket No. M-2008-2074891, we adopted a blanket partial waiver of section 63.137(2) thereby permitting customer contact call recording under certain circumstances. *Guidelines for Waiver of the Call Recording Prohibition at 52 Pa. Code § 63.137(2) Pending Rulemaking*, M-2008-2074891 (July 29, 2009). (*Blanket Waiver Order*). Specifically, the *Blanket Waiver Order* permits telephone companies to record customer contact calls for quality of service and training purposes subject to the following terms and conditions:

³ The eight petitioning LECS are: Verizon Pennsylvania Inc. and Verizon North Inc., (Verizon LECs) Docket No. P-00072333 (December 20, 2007); Full Service Computing Co. and Full Service Network LP (Full Service LECs), Docket No. P-2008-2020446 (May 5, 2008); and Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company, and D&E Systems, Inc., Docket No. P-2008-2051138 (September 23, 2008).

- File notice with the Commission, and copy the Bureau of Consumer Services, giving thirty (30) days notice;
- Provide customers with a bill insert (or equivalent information) explaining the call recording process and the opt-out process to customers thirty (30) days before commencing call recording operations;
- Provide a pre-recorded message to the effect that the call may be monitored or recorded for training or quality control purposes. The pre-recorded message must advise callers that they have the option to discontinue the call and to request a call back from an unrecorded line and must also provide instructions on how to request a call back prior to any aspect of the call being recorded;
- Use recorded calls solely for the purpose of training or measuring and improving service quality;
- Erase recorded calls after a ninety (90)-day (or shorter) retention period.

Under the *Blanket Waiver Order*, all other provisions of 52 Pa. Code § 63.137 remain in full force and effect. A number of telephone companies have since provided notice that they were opting to operate pursuant to the *Blanket Waiver Order*.

A carrier with a pre-existing waiver that had not commenced actual recording of customer contact calls pursuant to the pre-existing waiver could only subsequently commence call recording pursuant to the *Blanket Waiver Order* terms and conditions. A carrier that had commenced call recording of customer contact calls without a previously granted specific waiver or pursuant to the *Blanket Waiver Order* (*i.e.*, a carrier that was recording customer contact calls contrary to section 63.137(2)) had twenty (20) days to come into compliance with that order or to discontinue call recording.

Pursuant to the *Blanket Waiver Order*, telephone companies are also permitted to petition individually for a partial temporary waiver of section 63.137(2) if they wish to request other terms than those in the *Blanket Waiver Order*. Only one such waiver request has been received.

When we established terms and conditions for temporary partial waiver of section 63.137(2) in the *Blanket Waiver Order*, we noted that we would take under consideration at another docket the matter of opening a rulemaking to eliminate the call recording prohibition.

Proposed Rulemaking Order

Our April 19, 2010 order at this docket commenced that further proceeding. In particular, the April 19, 2010 proposed rulemaking order would have permitted the recording of customer contact calls subject to the following terms and conditions:

63.137(2)(a)(iv) *Call recording*. A telephone company may record calls by employees to or from customers, potential customers, or applicants only under the following circumstances:

(A) A telephone company shall give notice to its customers with a bill insert or equivalent customer contact explaining the call recording process and the opt-out process at least 30 days before commencing call recording or to new customers at the time service commences.

(B) A telephone company shall provide callers calling a company telephone number equipped to record customer or prospective customer calls with a pre-recorded message that the call may be monitored or recorded for training or quality control purposes.

(C) The pre-recorded message shall advise callers that they have the option to discontinue the call and to request a call back on an unrecorded line and shall provide instructions on how to request a call back prior to any aspect of the call being recorded.

(D) Recorded telephone calls shall be used solely for the purpose of training or measuring and improving service quality and may not be used for formal or informal evidentiary purposes.

(E) Recorded calls shall be erased after a 90-day or shorter retention period.

On September 28, 2010, the order was provided to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review as to fiscal impact. At the same time, it was also provided to the Legislative Standing Committees and the Independent Regulatory Review Commission (IRRC) for review. The order was published on October 9, 2010, in the *Pennsylvania Bulletin*, at 40 *Pa.B.* 5819. A public comment period was established.

The Verizon LECs filed comments at this docket supporting elimination of the call recording prohibition. PTA, on behalf of its members, also filed comments at this docket in support of elimination of the call recording prohibition. These comments are available at www.puc.state.pa.us. IRRC also submitted comments. IRRC's comments are available at www.irrc.state.pa.us. The comment period concluded November 23, 2011.

In addition to the substantive changes, we also addressed a grammatical inconsistency in the proposed rulemaking order. Both "employe" and "employee" are used in various places in section 63.137. We proposed to change the spelling of "employe" to "employee" to reflect the generally accepted form of the term and to promote consistency throughout section 63.137.

Wiretap Act

In reviewing this matter it is essential to consider the pertinent provisions of Pennsylvania's Wiretap Act, *Wiretapping and Electronic Surveillance Control Act*, 18 Pa. C.S. §§ 5701-5704. The Wiretap Act provides, in pertinent part, that:

It shall not be unlawful and no prior court approval shall be required under this chapter for:

* * *

(6) Personnel of any public utility to record telephone conversations with utility customers or the general public relating to receiving and dispatching of emergency and service calls provided there is, during such recording, a periodic warning which indicates to the parties to the conversation that the call is being recorded.

* * *

(15) The personnel of a business engaged in telephone marketing or telephone customer service by means of wire, oral or electronic communication to intercept such marketing or customer service communications where such interception is made for the sole purpose of training, quality control or monitoring by the business, provided that one party involved in the communications has consented to such intercept. Any communications recorded pursuant to this paragraph may only be used by the business for the purpose of training or quality control. Unless otherwise required by Federal or State law, communications recorded pursuant to this paragraph shall be destroyed within one year from the date of recording.

18 Pa. C.S. §§ 5704(6) and (15). Because the Pennsylvania Wiretap Act is more stringent than the federal act, we have omitted discussion of the federal law.

Comments to the Proposed Rulemaking Order

Verizon LECs

The Verizon LECs would have the Commission eliminate the call recording prohibition without imposing any conditions. They assert that the Wiretap Act provides sufficient protection to parties participating in customer contact calls that might be recorded relative to the retention and use of such calls. Verizon at 7 and 10. They assert that Chapter 30, in particular 66 Pa .C.S. § 3011(13), mandates the elimination of existing conditions and prevents the imposition of new conditions because competitive alternative service providers are not subject to any conditions. Verizon at 5.

The Verizon LECs assert that conditions are unnecessary and that recording customer contact calls will improve service. Verizon at 6. They assert that the Commission has already waived some of the proposed conditions, namely the opt-out and call-back process, relative to call analysis software⁴ that Verizon had proposed using. Verizon at 7 – 8. The Verizon LECs assert that the opt-out process would exacerbate call-waiting times and that the bill insert provision would be unreasonably burdensome. Verizon at 9 – 10.

⁴ As noted above, in addition to asking for and being granted a individual waiver of section 63.137(2), the Verizon LECs requested and was granted a further specific waiver from its individual waiver and the *Blanket Waiver Order*. This second Verizon waiver goes to the Verizon LECs' use of the Nexidia program. The Nexidia program:

[M]echanically scans the contents of a random sample of recorded calls (approximately six (6) calls per call-taker per day) and looks for key words and other “clues” related to quality of service and customer’s satisfaction. Nexidia software then analyzes this data and produces reports and recommendations regarding effective and efficient communication. Calls will not be linked to individual call-takers [or callers]. Verizon supervisors will not listen to recorded customer calls, although a person with the requisite authorization may listen to calls. Program data and analytics will be managed by Verizon, and access will be limited to dedicated quality subject matter experts within the particular areas that are identified for remedial action.

The Nexidia process does not result in recorded calls that would be routinely listened to by Verizon LEC personnel. The *Verizon Nexidia* order was limited in its application to programs such as Nexidia which are mechanical word search programs; the *Verizon Nexidia* order was not applicable to routine call recording for service quality and training purposes contemplated in the *Blanket Waiver Order*. Verizon Pet. at ¶¶ 4 and 9-10 in *Pet. of Verizon, et al.*, P-2010-2196242 (October 21, 2010) (*Verizon Nexidia*).

PTA

PTA supports the elimination of the prohibition applicable only to telephone companies asserting that the elimination will avoid perpetuating the discrimination against telephone companies. PTA at 3 and 5. PTA opposes, as unnecessary and costly, an obligatory bill insert or other form of customer contact 30 days before a telephone company begins recording customer contact calls. PTA also asserts that the proposed “opt-out” process that would allow customers to conduct telephone company business over unrecorded lines is “unclear” and will not strike a balance between customer privacy interests and telephone company interests. PTA has no objections to the recorded message before a call is recorded. PTA at 4. PTA believes that the regulation need not address evidentiary uses or length of retention of recorded customer contact calls because the state and federal wiretap laws are adequate protection in this regard. PTA at 5-7. PTA has no objection to change from “employe” to “employee.” PTA at 3.

IRRC

IRRC raised four points. First, IRRC commented that if the proposed conditions in (A), (C), (E), and parts of (D) are retained, then the Commission should provide a more detailed explanation of why they are needed and why they are reasonable. Second, IRRC asserts that the costs of the conditions have not been quantified and justified. Third, IRRC queries the prohibition on evidentiary use. Finally, IRRC questions the proposed 90-day time frame when the Wiretap Act provides for a year-long retention. IRRC at 2.

Discussion and Resolution

This action continues the process of eliminating the call recording provision in section 63.137(2). We are persuaded by the comments from the Verizon LECs, PTA, and IRRC to not adopt the proposed provisions of subsections 63.137(2)(iv)(A), (B), (C), (D), and (E) in the final regulation. The change addresses IRRC's concerns and also addresses PTA's concerns and the substance of Verizon's concerns.

Among other arguments supporting the elimination of the section 63.137(2) prohibition on call recording, the most pressing argument is that telephone companies are the only class of jurisdictional utilities prohibited from recording customer contact calls for training and measuring and improving service quality. Other utilities, as well as other businesses and this Commission, routinely record calls for service quality purposes within the bounds of applicable laws concerning wiretaps and trap and trace devices. Further, the provisions of the Wiretap Act address the concerns that these eliminated proposals were initially included to address. The addition of "recording" to the itemized list in section 63.137(1) recognizes that any recording of calls by a jurisdictional telephone company must be consistent with state and federal law.

It is expressly noted that the modifications promulgated herein to section 63.137(2) neither enlarge nor limit, in any way, a jurisdictional utility's obligations or a customer's protections pursuant either to the Wiretap Act or to any applicable state or federal statutes or regulations.

The elimination of the prohibition in section 63.137(2) will increase efficiency in industry operations and facilitate the entry and participation of competitors in the telecommunications market by allowing each to standardize operations throughout its national service territories. Additionally, in the time since telephone companies in the Commonwealth have had the ability to record customer contact calls either pursuant to

specific individual petition or to the *Blanket Waiver Order*, we have not seen any problems or customer complaints arise.

The regulatory changes to section 63.137(2) to be adopted herein are consistent with the waivers granted to the petitioning LECs and to telephone companies operating pursuant to the *Blanket Waiver Order* and will require no further notice to the Commission or customers to remain in compliance. We shall issue an order at the *Blanket Waiver Order* docket rescinding the blanket waiver after the regulatory changes promulgated herein become final.

To the extent that the PTA or the Verizon LECs' comments may have suggested further revisions to section 63.137, we have chosen not to change the provisions of sections 63.137(3) – (6). These sections refer to compliance with other laws and appropriate authorization in circumstances where service observing, call monitoring, or call recording is permitted. Further, we have chosen not to change the provisions of sections 63.137(2)(i) relating to service evaluation, 63.137(2)(ii) relating to maintenance monitoring, and 63.137(2)(iii) relating to administrative monitoring. The existing sections 63.137(2)(i) and (ii) address telephone company access to customer-to-customer calls for telephone company purposes. Section 63.137(iii) in the existing regulations addresses telephone company access to customer contact calls as well as employee-to-employee calls. Not all companies will commence recording of customer contact calls, some companies will continue to perform service evaluation and maintenance and administrative monitoring without recording calls, and this rulemaking does not address employee-to-employee calls. Therefore, the provisions of sections 63.137(2)(i), (ii), and (iii) are still essential to protect the public interest.

Accordingly, the final changes to section 63.137 relative to the call recording prohibition are set forth in Annex A to the order. This reflects a modification from the

proposal in the April 19, 2011 order, consistent with the comments filed in response thereto.

In addition to the substantive changes, we also propose to eliminate a grammatical inconsistency in the proposed rulemaking order. Both “employe” and “employee” are used in various places in section 63.137. We proposed to conform the spelling of “employe” to “employee” to reflect the generally accepted and standard form of the term and to promote consistency throughout section 63.137. There are no objections to this change. Further, this change will provide for more consistent, complete, and efficient use of electronic database tools for research relative to our regulations. It is not logical to expect the owners of the various databases to program their research engines to look for “employe” if someone has requested a search for “employee.” Accordingly, this ministerial change to section 63.137 as proposed in our April 19, 2011 order is carried forward to the final rule as set forth in Annex A to this order.

The changes to section 63.137 reflected Annex A of this order shall be effective upon publication in the *Pennsylvania Bulletin*.

Conclusion

Accordingly, pursuant to sections 501 and 504 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 504; sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated there under at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); sections 745.5 and 745.7 of the Regulatory Review Act, 71 P.S. §§ 745.5 and 745.7; and section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated there under at 4 Pa. Code §§ 7.231-7.234, we are adopting the final regulations set forth in Annex A, attached hereto; **THEREFORE,**

IT IS ORDERED:

1. That the Commission hereby adopts the final regulations set forth in Annex A.
2. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review for fiscal impact.
3. That the Secretary shall submit this Order and Annex A for review by the Legislative Standing Committees, and for review and approval by the Independent Regulatory Review Commission.
4. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. That the regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*. Thereafter, an order shall be issued at Docket No. M-2008-2074891 rescinding the terms of the blanket waiver.
6. That a copy of this Order and Annex A shall be served on the Pennsylvania Telephone Association, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff and a copy of this Order and Annex A shall be posted on the Commission's website.
7. That the contact persons for this matter are Sheila Brown at sheibrown@pa.gov, Bureau of Consumer Services; Melissa Derr at mderr@pa.gov, Bureau of Technical Utility Services; and Louise Fink Smith at finksmith@pa.gov, Law Bureau. Alternate formats of this document are available to persons with disabilities and

may be obtained by contacting Sherri Delbiondo, Regulatory Coordinator, Law Bureau,
(717) 772-4597, sdelbiondo@pa.gov.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 15, 2012

ORDER ENTERED: March 15, 2012

ANNEX A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 63. TELEPHONE SERVICE
Subchapter J. CONFIDENTIALITY OF CUSTOMER COMMUNICATIONS
AND INFORMATION.

§ 63.137. Service monitoring and related matters.

This section sets forth procedures for service evaluation and monitoring; use of pen registers and trap and trace devices; and responses to government requests for assistance in conducting wiretap, pen register, trap and trace and other types of investigations.

(1) *Compliance with State and Federal laws.* The telephone company shall comply with State and Federal laws regulating the RECORDING, interception, disclosure or use of customer communications and the use of pen registers and trap and trace devices. ALL OTHER RECORDING OF CONVERSATIONS IS PROHIBITED.

(2) *Service evaluation and monitoring.* The telephone company may evaluate and monitor those aspects of its operations, including customer communications, necessary for the provision of service to its customers. ~~The recording of conversations between telephone company employees and customers, potential customers, or applicants is [prohibited] permitted only as provided in this paragraph. All other recording of conversations is prohibited.~~

(i) *Service evaluation.* A telephone company may engage in the sampling of customer communications by telephone company [employee] employees or automated equipment to measure service quality. This sampling of customer communications shall be kept to the minimum needed to measure service quality. Service evaluation facilities may not have monitoring access points outside official evaluation quarters. Entry to evaluation quarters shall be strictly controlled. During periods when evaluation quarters are not in use or when otherwise considered appropriate, the quarters shall be securely locked or the equipment rendered inoperative or accessible only by authorized personnel. Access to service evaluation documents that contain individual [employee] employee-customer contact information shall be closely guarded to protect the customer's privacy.

(ii) *Maintenance monitoring.* A telephone company may engage in the monitoring of telephone company facilities by an [employee] employee entering the circuit to listen and carry out tests to determine whether noise, "cross-talk," improper amplification, reproduction or other problems may exist. This includes the mandatory routines covered by equipment test lists, tracing of circuits for corrective action and other similar

activities. The monitoring may not interfere with the voice or data information being carried.

(iii) *Administrative monitoring.* A telephone company may engage in the monitoring of telephone company [employee] employee contacts with customers and with other [employees] employees which have a direct bearing on the quality of service provided to customers. The monitoring equipment shall be secure at all times and only used by authorized persons. The monitoring may be performed from a remote location. When the equipment is in a remote location and is not in use, it shall be secured or made inoperative or accessible only by authorized personnel.

~~—(iv) *Call recording.* A telephone company may record calls by employees to or from customers, potential customers, or applicants only under the following circumstances:~~

~~—(A) A telephone company shall give notice to its customers with a bill insert or equivalent customer contact explaining the call recording process and the opt-out process at least 30 days before commencing call recording or to new customers at the time service commences.~~

~~—(B) A telephone company shall provide callers calling a company telephone number equipped to record customer or prospective customer calls with a pre-recorded message that the call may be monitored or recorded for training or quality control purposes.~~

~~—(C) The pre-recorded message must advise callers that they have the option to discontinue the call and to request a call back on an unrecorded line and shall provide instructions on how to request a call back prior to any aspect of the call being recorded.~~

~~—(D) Recorded telephone calls shall be used solely for the purpose of training or measuring and improving service quality and may not be used for formal or informal evidentiary purposes.~~

~~—(E) Recorded calls shall be erased after a 90-day or shorter retention period.~~

* * * * *

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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
400 NORTH STREET
HARRISBURG, PA 17120

ROBERT F. POWELSON
CHAIRMAN

April 3, 2012

The Honorable Silvan B. Lutkewitte, III
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Re: L-2009-2123673/57-278, Final Rulemaking Elimination of the Call Recording
Prohibition and Establishment of Regulations to Govern Call Recording
for Telephone Companies, 52 Pa. Code, Chapter 63

Dear Chairman Lutkewitte:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on September 28, 2010, submitted a copy of the Notice of Proposed Rulemaking to the House Consumer Affairs Committee, the Senate Consumer Protection and Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). This notice was published at 41 *Pa.B.* 5819 on October 9, 2010. The Commission also provided the Committees and IRRC with copies of all comments received in compliance with Section 745.5(b.1).

In preparing this final form rulemaking, the Commission has considered all comments received from the Committees, IRRC and the public.

Very truly yours,

A handwritten signature in black ink that reads "Robert F. Powelson".

Robert F. Powelson
Chairman

Enclosures

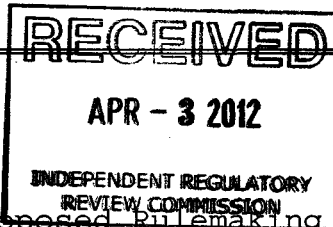
pc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Joseph Preston, Jr.
Legislative Affairs Director Perry
Chief Counsel Pankiw
Assistant Counsel Fink Smith
Regulatory Coordinator DelBiondo

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-2009-2123673/57-278

Subject: Proposed Rulemaking re Elimination of the Call
Recording Prohibition and Establishment of
Regulations to Govern Call Recording

Pennsylvania Public Utility Commission



TYPE OF REGULATION

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

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
<u>4/3/12</u>	<u>[Signature]</u>	<u>HOUSE COMMITTEE (Godshall)</u> Consumer Affairs
<u>4/3/12</u>	<u>[Signature]</u>	<u>SENATE COMMITTEE (Tomlinson)</u> Consumer Protection and Professional Licensure
<u>4/3/12</u>	<u>[Signature]</u>	Independent Regulatory Review Commission Attorney General
<u> </u>	<u> </u>	Legislative Reference Bureau

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Public Meeting held March 15, 2012

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

2012 MAY 11 PM 2:24

RECEIVED
IRRC

Rulemaking: Elimination of the Call
Recording Prohibition in 52 Pa. Code § 63.137
and Establishment of Regulations to Govern
Call Recording for Telephone Companies

Docket Number
L-2009-2123673

ERRATA NOTICE

This is to advise all parties of record that the Final Rulemaking Order entered on March 15, 2012, in the above-captioned telecommunications proceeding contains an extraneous reference on Page 12 to natural gas statutes.

The inapplicable citation cites to 66 Pa. C.S. §§ 2203, 2205, and 2208, relating to natural gas competition. As this was not the primary citation for authority for the rulemaking, no substitute citation is required. Please find the corrected page attached for your records.

The Final Rulemaking Order on the PA PUC website will be corrected as indicated above.

proposal in the April 19, 2011 order, consistent with the comments filed in response thereto.

In addition to the substantive changes, we also propose to eliminate a grammatical inconsistency in the proposed rulemaking order. Both “employe” and “employee” are used in various places in section 63.137. We proposed to conform the spelling of “employe” to “employee” to reflect the generally accepted and standard form of the term and to promote consistency throughout section 63.137. There are no objections to this change. Further, this change will provide for more consistent, complete, and efficient use of electronic database tools for research relative to our regulations. It is not logical to expect the owners of the various databases to program their research engines to look for “employe” if someone has requested a search for “employee.” Accordingly, this ministerial change to section 63.137 as proposed in our April 19, 2011 order is carried forward to the final rule as set forth in Annex A to this order.

The changes to section 63.137 reflected Annex A of this order shall be effective upon publication in the *Pennsylvania Bulletin*.

Conclusion

Accordingly, pursuant to sections 501 and 504 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 504; sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated there under at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. § 732.204(b); sections 745.5 and 745.7 of the Regulatory Review Act, 71 P.S. §§ 745.5 and 745.7; and section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated there under at 4 Pa. Code §§ 7.231-7.234, we are adopting the final regulations set forth in Annex A, attached hereto; **THEREFORE,**