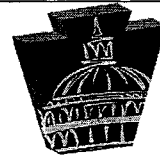


Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

2009 SEP 28 A 10:55

RECEIVED
IRRC

2877

IRRC Number:

(1) Agency:

Pennsylvania Public Utility Commission

(2) Agency Number: L-2009-2123673

Identification Number: 57-278

(3) 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

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

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

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

Secondary Contact: Melissa Derr at mderr@state.pa.us, Bureau of Fixed Utility Services, 717-783-6171 (FAX 717-787-4750); Tawana Dean at tadean@state.ps.us, 717-425-7564 (FAX 717-787-6641)

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

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Same as (5).

(All Comments will appear on IRRC'S website)

(7) 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

Regulatory Analysis Form

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

Currently, jurisdictional telephone utilities are prohibited by regulation 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 *Proposed Rulemaking Order* entered April 19, 2010, opens a comment period for proposed regulations to establish regulatory conditions consistent with the blanket waiver under which jurisdictional telephone utilities could record customer communications for training and quality of service purposes. The rulemaking also would make ministerial edits (*i.e.*, changing “employe” to “employee”) for consistency within Section 63.137.

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

- | | |
|---|--|
| A. The date by which the agency must receive public comments: | 30 days after publication in <i>Pa. B.</i> |
| B. The date or dates on which public meetings or hearings will be held: | N.A. |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | late 2010 |
| D. The expected effective date of the final-form regulation: | mid 2011 |
| E. The date by which compliance with the final-form regulation will be required: | Permissive; affected entities will opt-in as they desire |
| F. The date by which required permits, licenses or other approvals must be obtained: | N.A. |

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

Review will be provided as needed.

SECTION II: STATEMENT OF NEED

(11) 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.

Regulatory Analysis Form

Sections 501, 504, 2203(12), 2205, and 2208 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 2203(12), 2205 and 2208; 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 proposed 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.

(12) 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? If yes, cite the specific law, case or regulation as well as, any deadlines for action. NO

(13) 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 not only increase efficiency in industry operations but also will facilitate the entry and participation of competitors in the telecommunications market by allowing each to standardize operations throughout its national service territories. 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-into the blanket waiver process since July 2009. The PA PUC has not seen any problems or customer complaints arise. The telephone utilities have not requested any alterations to the terms of the blanket waiver other than to make it permanent as a regulation. Thus, it appears that the terms of the *Blanket Waiver Order* have provided the telecommunications industry with a workable tool to balance any concerns relative to quality of customer service, employee education, and privacy. The purpose of this proposed rulemaking is to develop and to codify these standards for Pennsylvania's jurisdictional telecommunications market. There are over 200 regulated telephone entities with a combined total of over a million of 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. 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.

Regulatory Analysis Form

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.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

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.

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

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

(16) 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 proposed change in the regulation does not impose any burdens on a jurisdictional telephone utility. They may elect to operate pursuant to the proposed change in the regulation if they want to start recording customer contact calls.

SECTION III: COST AND IMPACT ANALYSIS

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

The Commission anticipates that savings will result. If the existing regulation is changed to permit recording for calls between customers and utility employees for training and quality of service purposes, regulated telephone utilities would not have to file opt-in letters under the blanket waiver established by Commission order and effective through mid-2012. This would 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 wish to commence

Regulatory Analysis Form

recording calls for quality or service and training purposes would need to request express waivers of the regulatory prohibition on call recording. This which 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 would be more readily available and uniformly applied, meaning that regulated entities would 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 the lower the cost of servicing their customers. The Commission cannot quantify a dollar value for this anticipated savings.

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

Local governments would not be affected by this rulemaking.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. 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 evaluation each petition and possibly having to participating in myriad waiver proceeding. It would also save the PA PUC the cost of conducting such a proceeding. The PA PUC 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 PA PUC 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 PA PUC 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

Regulatory Analysis Form

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 it will take 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.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
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

Regulatory Analysis Form

Total Revenue Losses	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

(20a) 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; pre-rulemaking activities		\$4,600	\$5,600	\$2,000

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

The rulemaking process will entail probably 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.

(22) 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) have 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.

(23) 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 operate using *ad hoc* waivers or a temporary blanket waiver 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 temporary blanket waiver established by Commission order 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.

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

Regulatory Analysis Form

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.

(25) 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 should 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.

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

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

(27) 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.

(28) 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 proposed regulation is in place, there will be no greater burdens on minorities, elderly, small businesses, or farmers than exist currently under the temporary blanket waiver. To the extent that such customers have 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 could be recorded for quality of service and/or training purposes and be given the option of requesting a call back from outside the call recording system.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED
IRRC
2010 SEP 28 A 10:55

DO NOT WRITE IN THIS SPACE

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

Angela Elliott

BY _____
(DEPUTY ATTORNEY GENERAL)

SEP 02 2010

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 April 15, 2010

Rosemary Chiavetta

BY _____
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

4/15/2010
DATE OF APPROVAL

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

L-2009-2123673/57-278
Proposed 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 April 15, 2010, adopted a proposed 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.

RECEIVED
2010 SEP - 7 AM 10:01
PAPUC
LAW BUREAU

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

Public Meeting held April 15, 2010

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert F. Powelson
Wayne E. Gardner

Proposed 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-2009-2123673

PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

On July 29, 2009, at Docket No. M-2008-2074891 (*Blanket Waiver Order*), the Pennsylvania Public Utility Commission adopted a blanket partial waiver of the call recording prohibition at 52 Pa. Code § 63.137(2) relating to telephone companies.¹ By this order, we issue for comment proposed regulations that would modify the regulatory prohibition against call recording by telephone companies and would establish regulatory conditions under which telephone companies may record customer communications. Additionally, we shall propose the ministerial edit of changing “employe” to “employee” throughout Section 63.137.

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

Section 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 service representatives 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). The remainder of section 63.137(2) explains, in several subparts, the types of service evaluation and monitoring of customer telephone calls a telephone company may perform in the provision of service to its customers. No other jurisdictional utility industry is subject to similar customer or call-center call-recording prohibitions under our regulations.

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. The Tentative Order proposed a process whereby a telephone company may petition the Commission for a one-year partial waiver of section 63.137(2) and up to two one-year extensions,

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.

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 the only comments, emphatically asserting that continued requirement of individual petitions with a one-year limitation and two renewals would not be consistent with a “blanket” waiver. PTA suggested the Commission handle this matter as it handled a similar matter in *Rulemaking re: Provision of Bundled Service Package Plans*, Docket No. L-00060179 (July 3, 2006) (*BSP Rulemaking Order*), in which the Commission established conditions under which a blanket waiver was granted related to 52 Pa. Code § 64.21. Companies were required to agree to comply with the specific conditions in order to qualify for the automatic waiver.

By order entered July 29, 2009, we found merit in the PTA’s comments and adopted a blanket partial waiver of section 63.137(2) permitting call recording under certain circumstances. Specifically, the *Blanket Waiver Order* permits telephone companies to record customer calls for quality of service and training purposes subject to the following terms and conditions:³

- A carrier seeking to operate pursuant to the *Blanket Waiver Order* is required to file notice with the Secretary of the Commission, with a copy to the Commission’s Bureau of Consumer Services, of its intent to do so prior to commencing such operations, giving at least thirty (30) days notice to the Commission, and must also provide its customers with a bill insert (or make an equivalent customer contact)

³ Telephone companies may still petition individually for a partial temporary waiver of Section 63.137(2).

explaining the call recording process and the opt-out process to customers at least thirty (30) days before commencing call recording operations.

- A carrier with a pre-existing waiver that had not commenced actual recording of customer 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 calls without a previously granted specific waiver or pursuant to the *Blanket Waiver Order* had twenty (20) days to come into compliance with that order or had to discontinue call recording.
- Telephone companies must 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.
- Recorded telephone calls may be used solely for the purpose of training or measuring and improving service quality.
- Recorded calls must be erased after a ninety (90)-day (or shorter) retention period.
- All other provisions of 52 Pa. Code § 63.137 remain in full force and effect.

When we established terms and conditions for a 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. This order commences that proceeding.

Existing Waivers

Eight (8) petitioning local exchange carriers (petitioning LECs) received waivers allowing them to record, for training and quality of service purposes, customer calls to their call centers.⁴ Additionally, several telephone companies have provided notice that they have opted to operate pursuant to the *Blanket Waiver Order*. The modifications to section 63.137(2) proposed herein are consistent with the waivers granted to the petitioning LECs and to telephone companies operating pursuant to the *Blanket Waiver Order* and would require no further action on their part to remain in compliance.

Discussion

Currently, section 63.137(2) prohibits all telephone companies except those with specific waivers and those operating pursuant to the *Blanket Waiver Order* from recording customer contact calls. The strikingly similar arguments presented by the petitioning LECs and by PTA in support of a blanket waiver, coupled with the differences in the specific features and permissions requested by those petitioning LECs, lead us to conclude that this Commission should institute a generic rulemaking on this matter. Among other arguments supporting a change in the regulations, the petitioning LECs noted that telephone companies are the only class of jurisdictional utilities

⁴ Verizon Pennsylvania Inc. and Verizon North Inc. (Verizon LECs) were granted partial waivers at Docket No. P-00072333 (December 20, 2007). Full Service Computing Co. and Full Service Network LP (Full Service LECs) were granted partial waivers at Docket No. P-2008-2020446 (May 5, 2008). Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company, and D&E Systems, Inc., were granted partial waivers of at Docket No. P-2008-2051138 (September 23, 2008).

prohibited from recording calls for any purpose including 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.

Throughout our individual waiver and the blanket waiver deliberations, we have consistently rejected the use of the calls recorded for “evidentiary” purposes. We propose to continue to do so, because we believe that permitting calls, taped under the mantle of training and quality service improvement purposes and then used for an evidentiary purpose, may violate Pennsylvania’s Wiretap Act. (*Wiretapping and Electronic Surveillance Control Act*, 18 Pa.C.S. §§ 5701-5704). None of the petitioning LECs that were granted partial waivers of section 63.137(2) have been granted permission to use the recorded calls for evidentiary purposes, and the *Blanket Waiver Order* is consistent on this point. We see no reason to change our position here on this matter in the context of a proposed rulemaking. Accordingly, the proposed revisions to existing regulations are also consistent on this point.

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).

On a going-forward basis, we propose changes to section 63.137(2) as set forth in the attached annex. These changes are consistent with the analysis underlying the *Blanket Waiver Order*. It is expressly noted that the modifications proposed herein to section 63.137(2) would neither enlarge nor limit, in any way, a jurisdictional utility'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.

In addition to the substantive changes proposed herein, we also intend to address an inconsistency within Section 63.137. Both "employe" and "employee" are used in various places in Section 63.137. In an effort to provide consistency, we propose to change the spelling of "employe" to "employee" to reflect the generally accepted form of the term.

Conclusion

The use of a regulation to address the recording of customer calls for all telephone companies not only will increase efficiency in industry operations but also will facilitate the entry and participation of competitors in the telecommunications market by allowing

each to standardize operations throughout its national service territories. Additionally, various telephone companies in the Commonwealth have had the ability to record customer contact calls since late 2007 pursuant either to specific waivers or to the blanket waiver process, and we have not seen any problems or customer complaints arise. The blanket waiver process has been in place since late July 2009. The telephone companies have not requested any alterations to the terms of the blanket waiver. Thus, it appears that the terms of the *Blanket Waiver Order* have provided the telecommunications industry with a workable tool to balance any concerns relative to quality of customer service, employee education, and privacy. The purpose of this proposed rulemaking is to develop and to codify these standards for Pennsylvania's telecommunications market. We anticipate and appreciate industry comments on this proposed rulemaking.

Accordingly, pursuant to Sections 501, 504, 2203(12), 2205, and 2208 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 2203(12), 2205 and 2208; 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, we are proposing to amend our regulations as set forth in Annex A, attached hereto;
THEREFORE,

IT IS ORDERED:

1. That a rulemaking docket shall be opened to amend the regulations at 52 Pa. Code § 63.137(2) (relating to service monitoring and related matters) as 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 of fiscal impact.

3. That the Secretary shall submit this Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

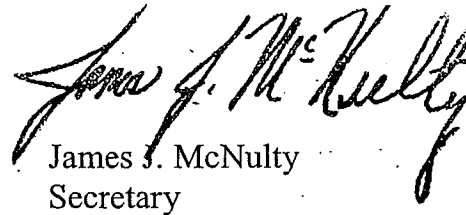
4. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That persons may either eFile or file an original and fifteen (15) copies of written comments referencing the docket number of the proposed regulations within forty-five (45) days of publication of notice of this order in the *Pennsylvania Bulletin*. Instructions for eFiling may be found at <http://www.puc.state.pa.us/efiling/default.aspx>. A paper original accompanied by the e-confirmation page or a cover letter with the eFiling Confirmation Number must be provided to the Secretary of the Commission within three days of an eFiling being submitted. If not eFiling, then the original and the requisite number of copies must be filed with the Pennsylvania Public Utility Commission, Attn.: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. To facilitate posting, all filed comments also should be forwarded via electronic mail, in Word or Word-compatible format, to Tawana Dean at tadean@state.pa.us; Melissa Derr at mderr@state.pa.us; Louise Fink Smith at finksmith@state.pa.us; and Cyndi Page at cypage@state.pa.us.

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 Proposed Rulemaking are Tawana Dean at tadean@state.pa.us, Bureau of Consumer Services; Melissa Derr at mderr@state.pa.us, Bureau of Fixed Utility Services; and Louise Fink Smith at finksmith@state.pa.us, Law Bureau.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 15, 2010

ORDER ENTERED: **April 19, 2010**

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.

* * * * *

(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 below. 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] employee 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 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.

* * * * *

EXECUTIVE SUMMARY

L-2009-2123673
Proposed Rulemaking

Re: Amending the Prohibition against Customer Contact Call Recording by
Jurisdictional Telephone Utilities
and Making Ministerial Edits
at 52 PA. Code § 63.137

This Proposed 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 utilities do not have such a restriction and are able to record calls for the 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.

The instant *Proposed Rulemaking Order* entered on April 19, 2010 at Docket No. L-2009-2123673 proposes 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 would make the ministerial edit of changing “employe” to “employee.”

This *Proposed 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-into 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 Tawana Dean, Bureau of Consumer Services, tadean@state.pa.us, 717-425-7564, and Melissa Derr, Bureau of Fixed Utility Services, mderr@state.pa.us, 717-783-6171. The contact person for legal aspects is Louise Fink Smith, Law Bureau, finksmith@state.pa.us, 717-787-8866.



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

JAMES H. CAWLEY
CHAIRMAN

September 28, 2010

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

Re: L-2009-2123673/57-278
Proposed 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 Coccodrilli:

Enclosed please find one copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the Commission is submitting today a copy of the proposed rulemaking and regulatory analysis form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to establish 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.

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

Very truly yours,

A handwritten signature in black ink that reads "James H. Cawley". The signature is written in a cursive style with a long, sweeping underline.

James H. Cawley
Chairman

Enclosures

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

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.
- 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>9/28/10</u>	<u>Wendy Shearer</u>	<u>HOUSE COMMITTEE</u> (Preston) Consumer Affairs
<u>9/28/10</u>	<u>Mary Walmer</u>	<u>SENATE COMMITTEE</u> (Tomlinson) Consumer Protection and Professional Licensure
<u>9/28/10</u>	<u>K Cooper</u>	Independent Regulatory Review Commission Attorney General
<u>9/28/10</u>	<u>n. nichols</u>	Legislative Reference Bureau

RECEIVED
IRRC
2010 SEP 28 A 10:55