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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 23, 2010

Honorable James H. Cawley, Chairman
Pennsylvania Public Utility Commission
Keystone Building, 3rd Floor
400 North Street
Harrisburg, PA 17105

Re: Regulation #57-278 (IRRC #2877)
Pennsylvania Public Utility Commission
Call Recording for Telephone Companies

Dear Chairman Cawley:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. We will send a copy to the new Standing Committees when they are designated.

If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
sfh

Enclosure

cc: Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-278 (IRRC #2877)

Call Recording for Telephone Companies

December 23, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the October 9, 2010 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

Section 63.137. Service monitoring and related matters. – Statutory authority; Economic or fiscal impact; Reasonableness; Need; Possible conflict with or duplication of statutes; Implementation procedures; Clarity.

This rulemaking eliminates the prohibition placed on jurisdictional telephone utilities of recording telephone calls between customers and utility employees for any reason. Under the rulemaking, calls between telephone utility employees, customers, potential customers or applicants can be recorded if certain conditions are met. The conditions are enumerated under § 63.137(2)(iv) and the paragraphs of this subsection are quoted below:

- (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 prerecorded message that the call may be monitored or recorded for training or quality control purposes.
- (C) The prerecorded message must advise callers that they have the option to discontinue the call and to request a call back on an unrecorded line and 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.

We have four concerns. First, commentators contend that Paragraphs (A), (C), and (E) and parts of (D) are not needed and are not reasonable. They point out that other regulated utilities are allowed to record calls without having to satisfy the conditions outlined in § 63.137(2)(iv). We believe that the PUC has failed to explain the need for the conditions being placed on jurisdictional telephone utilities. We suggest that Paragraphs (A), (C) and (E) and the language pertaining to “formal or informal evidentiary purposes” found in Paragraph (D) be deleted from the final-form regulation. If the Paragraphs and language are not deleted, we request a more detailed explanation of why they are needed and why the PUC considers them to be reasonable.

Second, PUC has not quantified the costs associated with complying with the requirements of § 63.137(2)(iv). We believe the elimination of the prohibition on call recording is beneficial to the regulated community. While we understand that the recording of calls for the purpose of training or measuring and improving service quality is not mandatory, an analysis of these costs would assist this Commission in determining if the requirements are reasonable and in the public interest.

Third, what is the PUC’s statutory authority for the provision found in § 63.137(2)(iv)(D) that prohibits recorded calls from being used for formal or informal evidentiary purposes? In addition, what is meant by the phrase “formal or informal evidentiary purposes”?

Finally, under § 63.167(2)(iv)(E), recorded calls must be erased after 90 days. We ask the PUC to explain how this requirement would work in conjunction the requirement of Pennsylvania’s Wiretapping and Electronic Surveillance Control Act (18 Pa. C.S.A. § 5704(15)), which requires recordings to be destroyed within one year from the date of recording.

Facsimile Cover Sheet



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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Sherri A. DelBiondo
Regulatory Review Coordinator
Law Bureau
Agency: Pennsylvania Public Utility Commission
Phone: 2-4597
Fax: 3-3458
Date: 12/23/10
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57- 278 (IRRC #2877). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Sh DelBiondo **Date:** 12-23-10