

SILVAN B. LUTKEWITTE, III, CHAIRMAN  
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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

February 15, 2011

Honorable Robert M. Tomlinson, Majority Chairman  
Senate Consumer Protection and Professional Licensure Committee  
362 Main Capitol  
Harrisburg, PA 17120

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

Dear Senator Tomlinson:

On December 23, 2010, we delivered our comments on the above-captioned regulation to Honorable James Cawley, then Chairman, Pennsylvania Public Utility Commission. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

Sincerely,

Kim Kaufman  
Executive Director  
sfh  
Enclosure

SILVAN B. LUTKEWITTE, III, CHAIRMAN  
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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

February 15, 2011

Honorable Lisa M. Boscola, Minority Chairman  
Senate Consumer Protection and Professional Licensure Committee  
458 Main Capitol  
Harrisburg, PA 17120

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

Dear Senator Boscola:

On December 23, 2010, we delivered our comments on the above-captioned regulation to Honorable James Cawley, then Chairman, Pennsylvania Public Utility Commission. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

Sincerely,

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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

February 15, 2011

Honorable Joseph Preston, Jr., Minority Chairman  
House Consumer Affairs Committee  
202 Irvis Office Building  
Harrisburg, PA 17120

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

Dear Representative Preston:

On December 23, 2010, we delivered our comments on the above-captioned regulation to Honorable James Cawley, then Chairman, Pennsylvania Public Utility Commission. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

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## INDEPENDENT REGULATORY REVIEW COMMISSION

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

February 15, 2011

Honorable Robert W. Godshall, Majority Chairman  
House Consumer Affairs Committee  
150 Main Capitol  
Harrisburg, PA 17120

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

Dear Representative Godshall:

On December 23, 2010, we delivered our comments on the above-captioned regulation to Honorable James Cawley, then Chairman, Pennsylvania Public Utility Commission. Because the General Assembly had adjourned *sine die*, we were precluded from providing you with a copy at that time.

Enclosed is a copy of our comments. If you have any questions, please contact me.

Sincerely,

Kim Kaufman  
Executive Director  
sfh  
Enclosure

# **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.