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November 23, 2010

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

In re: Elimination of 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

Dear Secretary Chiavetta:

Attached please find the Comments to the Proposed Rulemaking Order Entered April 19,
2010 of the Pennsylvania Telephone Association which are being electronically filed today.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By:



Jennifer M. Caron

cc: Tawana Dean (via email)
Melissa Derr (via email)
Louise Fink Smith (via email)
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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Elimination of Call Recording Prohibition :
In 52 Pa. Code § 63.137 and Establishment : Docket No. L-2009-2123673
Of Regulations to Govern Call Recording :
For Telephone Companies :

COMMENTS TO THE PROPOSED RULEMAKING
ORDER ENTERED APRIL 19, 2010 OF THE
PENNSYLVANIA TELEPHONE ASSOCIATION

I. INTRODUCTION

On April 19, 2010, the Commission entered an Order adopted at its Public Meeting of April 15, 2010, opening a rulemaking proceeding to adopt regulations establishing regulatory conditions under which telephone companies are permitted to record customer communications for training and quality assurance purposes. The Order invites interested parties to submit comments on the proposed regulations set forth in Annex A to the Order.

The Pennsylvania Telephone Association (“PTA”)¹ is pleased to have the opportunity to comment on the Proposed Rulemaking Order at Docket No. L-2009-2123673. PTA’s Comments are presented in response to the Commission’s invitation and without prejudice to any position PTA might take in any subsequent proceeding or proceedings involving these or any other matters.

II. GENERAL COMMENTS

The proposed regulations seek to amend Section 63.137 to remove the prohibition against call recording by telephone companies and to establish certain parameters within which telephone companies are permitted to record calls. While PTA appreciates and commends the Commission for its proposed permanent, industry-wide removal of the call recording prohibition, after reviewing the proposed regulations, PTA has concerns regarding the proposed conditions to be imposed on telephone companies.

No other jurisdictional utility or business is hindered, restricted or regulated to the extent the proposed regulations provide for telephone companies. Moreover, because other types of

¹ The PTA is the state's oldest trade organization for the local exchange carrier industry. PTA represents more than 30 telecommunications companies that provide a full array of services over wire line networks. PTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities.

Pennsylvania public utilities are not similarly prohibited, they have the freedom to utilize call recording programs without complying with a strict regulatory framework, which streamlines costs and ultimately benefits consumers. PTA maintains that there would be no harm to the customers if the proposed conditions were eliminated since the public is accustomed to calling various other establishments and being informed that their call may be recorded for quality and/or training purposes. For example, the following utilities provide a simple prerecorded message:

PP&L (1-800-342-5775, "recorded for quality assurance"); UGI (1-800-652-0550, "recorded for quality assurance"); Comcast (1-800-266-2278, "for quality or training purposes call may be monitored or recorded"); PA American Water (1-800-565-7292, "monitored or recorded for quality assurance purposes"); AT&T Wireless (1-800-288-2747, "monitored or recorded for quality assurance"); PUC's Bureau of Consumer Services (1-800-692-7380 "to ensure quality service this call may be monitored or recorded").

Although the Commission recognizes that other jurisdictional utilities are not subject to the same prohibitions or conditions with respect to call recording, it provides no rationale or justification as to the reason for singling out and treating telephone companies differently than all other jurisdictional utilities with respect to call recording. It is not clear to PTA why the disparate treatment of telephone companies must carry over into the proposed regulations. The Commission's assumption that it is a "workable tool" because no problems were noted by the telephone companies currently operating under either the partial or blanket waivers does not warrant the perpetuation of such disparate treatment. Based on this disparity in regulation, PTA believes that the proposed regulations, if implemented, do not result in a "uniform approach" and do not "establish consistency in utility regulations," which is contrary to the Commission's intended goal.

Again, the PTA commends the Commission for its proposed regulation to remove the prohibition against call recording. However, the PTA suggests that this Commission reconsider the stringent requirements and arbitrary conditions it proposes to place upon telephone companies in Pennsylvania. PTA believes that the prohibition should be removed in its entirety as the proposed parameters and regulatory requirements will be unreasonable, unnecessary and often times impractical for telephone companies to implement. The removal of the proposed parameters would be beneficial to all telephone companies, including those companies who have already implemented call recording procedures under either the partial or blanket waivers. As PTA articulated in its comments to this Commission submitted on January 5, 2009, at Docket No. M-2008-2074891, addressing call recording in an industry-wide manner should result in *less* cumbersome regulatory requirements, not more cumbersome requirements. The PTA believes the Commission should address the permanent removal of the call recording prohibition as it has done for all other jurisdictional utilities, and eliminate any extraneous conditions placed upon the telephone companies in their call recording activities.

III. SPECIFIC COMMENTS

In the alternative, if the Commission is unwilling to eliminate all of the proposed conditions to be imposed on telephone companies, PTA provides comments to the specific proposed regulations.

A. Proposed Changes To Regulation Section 63.137(2)

(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.**

PTA Comment:

PTA applauds the Commission for granting telephone companies the permission to record conversations between telephone companies and customers, potential customers or applicants and believes this should be the extent of the regulation regarding call recording so as to avoid perpetuating the discrimination against telephone companies.

B. Proposed Changes To Regulation Sections 63.137(2)(i)(ii) and (iii)

PTA Comment:

PTA does not have any objection to the proposed ministerial edit of changing “employe” to “employee” throughout Section 63.137(2).

C. Proposed Regulation Section 63.137(2)(iv)(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.

PTA Comment:

The proposed regulation would place an unnecessary and costly burden on the telephone companies, which burden is not imposed on any other jurisdictional utility. Moreover, it is unclear what the “opt-out process” entails, but PTA believes that the imposition of providing an opt-out process does not achieve a balance between customer privacy interests and the business interests of the telephone companies. At a minimum, PTA suggests the regulation should be revised to eliminate any requirement of an opt-out process, and simply require current customers be provided with bill inserts to notify them that their call to the utility may be recorded for training and quality purposes.

D. Proposed Regulation Section 63.137(2)(iv)(B)

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

...

(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.

PTA Comment:

The proposed regulation is consistent with the treatment of all other jurisdiction utilities and similar businesses. If a condition must be placed on telephone companies in their practice of call recording, this condition is acceptable to the PTA as it would not, consistent with the underlying purpose of Act 183,² place telephone companies in a more burdensome position with respect to call recording than are other entities undertaking call recording.

E. Proposed Regulation Section 63.137(2)(iv)(C)

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

...

² See 66. Pa. C.S. §§ 3011-3019.

(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.

PTA Comment:

The proposed regulation would place an impractical and time-consuming burden on telephone companies, which is not imposed on any other jurisdictional utility. The Commission is inhibiting the ability of telephone companies to streamline and reduce costs, a benefit enjoyed by all other jurisdictional utilities. The proposed regulation at Section 63.137(2)(iv)(B), if implemented, provides sufficient notice to the customer that the conversation may be recorded for training and quality of services purposes. It affords callers the option to discontinue the call should they desire to avoid the monitoring or recording of their call.

Furthermore, customers of telephone companies would not be harmed by implementation of a procedure to record customer calls to call center representatives without giving them an option to hang up and be called back. Pennsylvania consumers today are accustomed to calling various customer service centers from banks, to retail establishments, credit card companies, doctor offices and non-telecommunications utilities and being informed by a simple voice message that their call may be monitored or recorded, as discussed *supra*. They are not accustomed to being providing an additional option to hang up and be called back. No other entity is required to provide that type of option to customers, which PTA believes to be an excessive measure. The recording alone, without any additional options, serves as adequate means to protect the privacy interests of consumers, while still recognizing and honoring the business interests of the telephone companies. As such, the PTA believes this proposed regulation should be altogether eliminated.

F. Proposed Regulation Section 63.137(2)(iv)(D)

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

...

(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.

PTA Comment:

Telephone companies, along with other entities, have the duty and obligation themselves to interpret and comply with all state and federal laws, including the Wiretapping and Electronic

Surveillance Control Act (“Wire Tap Act”). This proposed regulation should be eliminated since it is not the Commission who is charged with interpreting or enforcing the Wire Tap Act, which the Commission is concerned “may” be violated if telephone companies use call recording for evidentiary purposes.³ PTA suggests the Commission will be exceeding the scope of their jurisdiction by regulating the telephone companies’ compliance with a federal law. No other jurisdictional utilities have the Commission regulating, monitoring or scrutinizing their interpretation and compliance with the Wire Tap Act. The onus of complying with any state or federal law, including the Wire Tap Act, lies with the telephone company and, as such, this proposed regulation is unnecessary.

The Commission, in its Order entered July 29, 2009 in Docket No. M-2008-2074891, recognized that “other utilities, as well as other businesses including this Commission, routinely record calls for service quality purposes within the bounds of applicable laws concerning wiretaps and trap and trace devices.”⁴ Obviously, these other utilities are conducting their recording techniques without the Commission regulating the manner in which they record calls. The telephone companies will continue to fully comply with the applicable laws concerning wiretaps and trap and trace devices in their call recording activities without the need for a Commission regulation directing them to do so.

G. Proposed Regulation Section 63.137(2)(iv)(E)

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

...

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

PTA Comment:

Subsection (iv)(E) of the proposed regulation would require all recordings to be erased after 90 days.⁵ However, the PTA believes that there are instances of legitimate business purposes where it would be necessary to retain certain recordings for longer than 90 days, such as when the recording could be used for evidentiary purposes or when the call recording can be used as an exemplary training instrument.

This issue of using the recording for evidentiary purposes is discussed above with respect to Section 63.137(2)(iv)(D). Regarding use of a call as an exemplary training purpose, the proposed regulation does not provide sufficient time to pursue the training and quality service

³ Interestingly, the Commission does not state affirmatively that the action of using the information for other than training and quality controls purposes violates the Wire Tap Act, but merely states that it “may.”

⁴ *Guidelines for Waiver of the Call Recording Prohibition at 52 Pa. Code § 63.137(2) Pending Rulemaking*, Docket No. M-2008-2074891, order entered July 29, 2009, at page 4.

⁵ PTA notes that the retention period provided for under the Wire Tap Act is one year, not a mere 90 days.

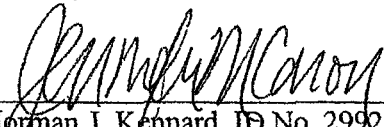
lessons and programs sought to be implemented by PTA members. The Commission in its Order entered September 23, 2008, in Docket No. P-2008-2051138, has suggested that there are adequate alternatives to retaining, such as the dialogue being transcribed and reenacted. However, dialogue transcription does not achieve the same level of enhancement of customer service techniques. Reading a transcribed dialogue is not as meaningful as listening to and learning from the original live conversation, and does not capture the true context and circumstance of the original phone call, including tone of voice and other audible cues used by both parties. Thus, without an adequate retention period of certain calls for legitimate business purposes, the effectiveness of call recording techniques will be stifled.

IV. CONCLUSION

PTA thanks the Commission for the opportunity to comment on these proposed regulations. In summary, the PTA believes that the Commission should grant telephone companies the same latitude it affords all other jurisdictional utilities in their call recording practices.

WHEREFORE, Pennsylvania Telephone Association submits these Comments to the Public Utility Commission's Proposed Rulemaking Order entered April 19, 2010.

Respectfully submitted,

By 
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