

COMMONWEALTH OF PENNSYLVANIA



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May 25, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Re: Rulemaking to Comply with the Competitive
Classification of Telecommunication Retail
Services Under 66 Pa. C.S. § 3016 (a);
General Review of Regulations 52 Pa. Code:
Chapter 63 and Chapter 64
Docket No. L-2018-3001391

Dear Secretary Chiavetta:

Attached for electronic filing are the Office of Consumer Advocate's Comments in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Certificate of Service

*309689

CERTIFICATE OF SERVICE

Re: Rulemaking to Comply with the Competitive :
Classification of Telecommunication Retail : Docket No. L-2018-3001391
Services Under 66 Pa. C.S. § 3016 (a); General :
Review of Regulations 52 Pa. Code: Chapter 63 :
and Chapter 64 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments, upon parties of record in these proceedings in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 25th day of May 2021.

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Dated: May 25, 2021
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Comply with the Competitive :
Classification of Telecommunication Retail : Docket No. L-2018-3001391
Services Under 66 Pa. C.S. § 3016 (a); :
General Review of Regulations 52 Pa. Code: :
Chapter 63 and Chapter 64 :

**COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE**

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking to Comply with the Competitive
Classification of Telecommunication Retail Services
Under 66 Pa. C.S § 3016(a); General Review of
Regulations 52 Pa. Code, Chapter 63 and Chapter 64

L-2018-3001391

**COMMENTS OF
THE OFFICE OF CONSUMER ADVOCATE**

I. INTRODUCTION

The Office of Consumer Advocate (OCA) appreciates the opportunity to comment on the Public Utility Commission's (PUC or Commission) Notice of Proposed Rulemaking (NOPR) regarding certain Chapters 53, 63, and 64 regulations that apply to jurisdictional telecommunications public utilities. The OCA previously filed Comments, Reply Comments, and Supplemental Comments during the Advanced Notice of Proposed Rulemaking (ANOPR).

With the NOPR, the Commission has broadened the scope of regulations subject to review and revision to include portions of Chapter 53 which apply to telecommunications utilities, as well as Chapters 63 and 64. The NOPR proposes to eliminate some regulations as obsolete, consolidate other regulations, and preserve core consumer protections particularly for residential local exchange customers.

The OCA supports the Commission's thoughtful efforts to develop an updated, simplified body of regulations to apply to all telecommunications public utilities, to assure that the consuming public who rely upon Pennsylvania's complex, interconnected communications

network receive service which is high quality, continuous, and available on reasonable terms and conditions. NOPR at 106.

The OCA has provided preliminary replies to the questions posed the Chairman Dutrieuille's Statement. The OCA supports development of reliability standards addressing the inspection, testing, surveillance, and interference minimization in the telecommunications networks through to the meet point with the consumer's premise. Standards that address the mix of technology that is currently used to provide service, rather than scaling back regulatory protections in anticipation of future modernized, digital networks.

II. COMMENTS

A. Replies to Chairman Gladys Brown Dutrieuille's Statement

In a public statement accompanying the NOPR Chairman Dutrieuille invited replies to several questions. The OCA appreciates the Chairman's questions as they invite the interested parties to consider in part how the Commission's regulations governing telecommunications carriers might be improved. The OCA provides these responses first because they complement the OCA's comments on the specific regulatory amendments and revisions proposed in the NOPR. The OCA looks forward to further

Chairman Dutrieuille Question 1

[T]o ensure that Pennsylvania continues to have a safe, adequate, and reliable network under Sections 1501 of the Code, should Commission-approved reliability standards addressing the inspection, testing, surveillance, and interference minimization on the providers' networks, down to the consumer's Network Interface Device (NID) be developed?

OCA Answer:

Yes, there is a need for development of Commission-approved standards that address the inspection, testing, surveillance, and interference minimization on the providers' networks, through to the consumer's Network Interface Device (NID) – or other meet point between the network and customer premises. The networks providing last mile connections to consumers may be copper based with some central office power supply or fiber based. Other jurisdictional telecommunications public utilities may provide on just a portion of the connectivity for voice communications. The OCA supports development of standards which encourage and provide

information about the quality and reliability of the telecommunications networks, for the benefit of Pennsylvania consumers, businesses, and to protect public safety.

Chairman Dutrieuille Question 2

[T]o promote reasonable and adequate service, should there be a specific response time for documenting and showing the resolution of problems with service installations, trouble reports, interference, and service outage except where the consumer agrees otherwise? What should those times be? How should consumer consent to a different time be recorded?

OCA Answer:

The OCA agrees that oversight of how local exchange carriers perform in resolution of consumer trouble reports is important and should continue. In particular, the OCA agrees that local exchange carriers should be prepared to document and show how consumer trouble reports have been resolved. The OCA does not have at this time specific recommendations as to what a reasonable time for resolution of these consumer troubles should be.

Chairman Dutrieuille Question 3

[S]hould the regulations on installation, interference, trouble reports, and service outages contain a remedy for failure to perform? For example, an automatic reduction by a fixed percentage of the consumer's bill, for times when the service provider fails to meet the required or agreed upon response time? If so, what is a reasonable remedy?

OCA Answer:

The OCA supports continuation of the Chapter 63 and 64 regulations which provide for bill adjustments due to out-of-service conditions. The OCA is open to consideration of other ways to

assure that consumers do not have to pay for service quality which they do not receive.

However, some consumers may not understand that remedies provided under the Public Utility Code are cumulative; the bill adjustment may dampen consumer expectations that a particular service quality trouble warrants further scrutiny and remedy. See, 66 Pa.C.S. § 103(c). Some quality of service failures – whether a cable failure that affects multiple consumers, or a failure to timely install service due to mis-entered service orders – indicate problems which may signal the need for a change in how the utility performs. An automatic bill adjustment may have ramifications on the public interest and whether systemic service quality problems are recognized.

Chairman Dutrieuille Question 4

[S]hould there be a threshold for installations, interference, trouble reports, and service outages which requires not only notification but also a report demonstrating the problem's source and resolution? Should any issue or report provided to the FCC automatically be reported to the Commission?

OCA Answer

The OCA supports continued service quality standards which include surveillance levels and reporting requirements.

Section 504, Reports by public utilities, provides the Commission with the authority “to require any public utility to file with it a copy of any report filed by such public utility with any Federal department or regulatory body.” 66 Pa.C.S. § 504. The Commission's timely receipt of reports made by utilities to the FCC should benefit the Commission's knowledge base and the public interest.

Chairman Dutrieuille Question 5

[T] he proposed regulations understandably eliminate some subchapters in their entirety and propose to rely on Commission consumer education instead. Should a small portion of the chapter be retained that explains the matter to the consumer and should there be a provision educating the consumer about their right to contact the Commission or file an informal or formal complaint?

OCA Answer:

OCA agrees that the regulatory framework which results from this NOPR must include the obligation on the part of the telecommunications service provider and Commission staff to provide consumers with a clear description of the options and resources to resolve service quality and billing issues.

Chairman Dutrieuille Question 6

[S]ixth, the revision proposes to end any regulation of Automatic Dialing Devices, an earlier form of robocalls. Federal law and state efforts continue to try to eradicate robocalls. Should the Commission revise this subchapter to address robocalls? If so, how?

OCA Answer:

In the OCA Comments to the ANOPR, the OCA cautioned against rescission of Section 63.60 without appropriate consideration. The OCA is open to efforts to revise, rather than rescind Section 63.60. However, the OCA's base of knowledge in this area of federal and state activity is limited.

Chairman Dutrieuille Question 7

[T]he revisions in Section 63.59 address operator-assisted calls but there is no specific time-period in which a consumer can reach a live customer service representative. Should there be a specific time period, and if so, what should it be? Should there be a remedy for noncompliance?

OCA Answer:

The OCA agrees that consumers should be able to reach an operator or customer service representative for a live conversation with ease, as the first step towards obtaining needed information or resolution of a service quality concern. The OCA views the Commission's proposed standards for an agreement between the Bureau of Consumer Services and a LEC to implement a "warm transfer" process as beneficial in part because of the requirement that the transfer, with the consumer consent, of a call from BCS to the LEC should be to a live connection with a LEC customer service representative.

The OCA supports the Chairman's interest in improving the customer's ability to contact customer service representatives in other ways.

Chairman Dutrieuille Question 8

[S]hould the Section 63.63 provisions governing transmissions on traditional and fiber networks use the definition for incumbent local exchange carrier or competitive telecommunications carrier, as proposed in Section 53.57 and not an undefined term like jurisdictional telecommunications public utility? Should the scope of Section 63.63 include traditional or fiber connection both fully and partially deployed given the patchwork quilt of Pennsylvania's networks?

OCA Answer:

The OCA's Comments to the ANOPR raised the concern that consumers should receive uniform and equal service quality, such as in the area of transmission quality and maintenance, regardless of the technology used – whether copper-based or fiber, analog or digital. The OCA will continue to evaluate the changes proposed by the NOPR and how they are viewed by the providers.

B. Chapter 53 Regulations

The NOPR includes review and proposed revisions to certain Chapter 53 regulations that address tariff filing requirements for incumbent local exchange carriers and competitive local exchange carriers. NOPR at 21-27; 52 Pa. Code §§ 53.57-53.60. In the OCA Reply Comments to the ANOPR, the OCA expressed general support for updates to these provisions, but not the elimination of the basic framework. OCA Reply Comments at 8-9.

1. Section 53.57 (Definitions)

The OCA has reviewed the NOPR's proposed revisions amendments to Section 53.57 (Definitions). NOPR at 27. The OCA does not have any objections or revisions to propose to list of definitions at this time, as updated and revised by the NOPR.

2. Section 53.58 (Offering of competitive services)

The NOPR also proposes changes to Section 53.58 (Offering of competitive services). NOPR at 27-29. The OCA opposes several of these changes to Section 53.58(d).

At present, Section 53.58(d) states:

(d) CLECs and ILECs offering services classified by the Commission as competitive shall file with the Commission appropriate informational tariffs, price lists, and ministerial administrative tariff changes. These filings will become effective on 1-day's notice.

52 Pa.Code § 53.58(d). The NOPR proposes to remove the Section 53.58(d) requirement that ILECs “shall file ... appropriate informational tariffs, prices lists...” with the Commission. NOPR at 27. The OCA disagrees with this proposal. Section 3016(d)(4) permits the Commission to require that ILECs “maintain price lists with the commission applicable to its competitive services.” OCA Reply Comments re ANOPR at 9; NOPR at 23, 27-28; 66 Pa.C.S. 3016(d)(4). Because Section 3016(d)(4) is permissive, Section 53.58(d) documents the Commission’s affirmative decision to require the filing of such price lists for competitive services. The OCA submits that these price lists filed with the Commission provide an important public resource and record. OCA Reply Comments re ANOPR at 9. Specifically, the public filing of such price lists allow for assessment of the impact – if any of – of the availability of documented competitive alternatives on the LEC’s pricing of competitive services. As noted in the OCA Comments re the ANOPR, Verizon had increased the monthly dial tone line and usage prices for competitively classified residential and certain business services, mirroring Verizon’s increases to non-competitive protected local service charges. OCA Comments re ANOPR at 6-7; see NOPR at 12, fn. 11.

The OCA disagrees with the NOPR’s proposed revisions to Section 53.58(d) which would reduce public access to past and current price information for competitively classified services, offered by the ILEC and competitors in the competitive wire centers. See, NOPR at 27-28. Through revisions to Section 53.58(d), “we propose to allow an ILEC or CTC to make rates and terms of basic service available through a product guide or similar document on the carrier’s website in lieu of maintaining a price list or formal tariff on file with the Commission.” NOPR at 28. The NOPR suggests that “the carrier shall maintain an archive of rates” and other information from past product guides for four years, and shall be “obligated to provide both

current and archived documents to the Commission upon reasonable request.” Id. The OCA is concerned that rate information fleetingly available on the various websites of the ILEC and CTCs in a competitive wire center or otherwise archived and only available to the Commission diminishes the ability to monitor the competitive marketplace. See, OCA Reply Comments re ANOPR at 8-10.

The OCA does not take a position on the other changes to Sections 53.58, 53.59, and 53.60 proposed by the NOPR.

C. Chapter 63 Regulations

The scope of the NOPR includes most Subchapters from A. General Provisions through O. Abbreviated Procedures for Review and Approval of Transfer of Control for Telecommunications Public Utilities. The focus of the OCA Comments is on Subchapters A. General Provisions, B. Services and Facilities, and E. Telephone Communications Quality Service Standards. The OCA supports the NOPR’s position that all Chapter 63 regulations retained will apply in all geographical areas whether competitive or noncompetitive. NOPR at 31.

The OCA notes the NOPR’s recommended modifications to Subchapter C. Accounts and Records. The OCA addressed Subchapter C in the OCA Comments to the ANOPR. The OCA will not comment further at this time.

The NOPR recommends deletion of Subchapters D. Underground Service, F. Extended Area Service, G. Public Coin Service, H. Interexchange Telecommunications Carriers, and I. Interexchange Resellers. The OCA does not take a position on these proposed changes.

Additionally, the NOPR proposes minimal changes to Subchapter J. Confidentiality of Customer Communications and Information, to better describe that the responsibilities extend to

agents as well employees. Otherwise the Commission will retain Subchapter J. NOPR at 70. The OCA supports this approach.

The NOPR proposes to retain Subchapters K. Competitive Safeguards, L. Universal Service, M. Changing Local Service Providers, N. Local Service Provider Abandonment Process, and O. Abbreviated Procedures for Review and Approval of Transfer of Control for Telecommunications Public Utilities. NOPR at 70. The OCA supports this recommendation.

The OCA Comments will focus on select other Chapter 63 regulations which are reviewed by the NOPR. The OCA Comments and Reply re the ANOPR include other statements of position by the OCA on the importance of existing Chapter 63 regulations and how they should be improved.

1. Sec. 63.1 (Definitions)

The NOPR proposes revisions and additions to the Section 63.1 definitions. NOPR at 32. The OCA discussion below regarding Section 64.2 definitions addresses the NOPR's proposal addition of definitions for "Competitive wire center" and "Noncompetitive wire center" in both Section 63.1 and Section 64.2. The OCA has proposed edits some that the respective definitions are worded consistently.

2. Section 63.12 (Minimizing interference and inductive effects)

In the OCA Comments re the ANOPR, the OCA opposed elimination of this service quality regulation. See NOPR at 34. Currently, Section 63.12(a) requires a telecommunications public utility system "shall be so constructed as to eliminate cross-talk and noise resulting from faulty construction" The OCA expressed concern that LECs may make different decisions as to the maintenance of older networks in lower density areas.

The OCA acknowledges that the NOPR has proposed to rescind Section 63.12 and address all other relevant matters of interference under a revised Section 63.63. NOPR at 34. As

the Commission has explained in the NOPR, Section 63.12 has been worded in terms that relate more to analog service. Id. The OCA appreciates the Commission's efforts to update the provisions of Chapter 63 and address transmission concerns in revised Section 63.63. The OCA will continue to examine how these proposed regulatory changes are viewed by other interested parties, to assure that the consumer protections under these current Chapter 63 provisions are not diminished.

3. Section 63.14 (Emergency Equipment and Personnel)

The NOPR proposes to retain Section 63.14 in its entirety. NOPR at 34-35. "We believe that the retention of this regulation is essential for the provision of adequate, reliable and resilient telecommunications services under conditions of various emergency situations including but not limited to natural disasters, for all wire centers and geographic areas our jurisdictional utilities serve."

OCA supports retention of Section 63.14, without modification, to apply to all telecommunications public utilities in all areas.

4. Section 63.15 (Complaint Procedures) and Section 63.22 (Service Records)

The NOPR proposes to add a "warm transfer" option to Section 63.15 as new Section 63.15(a.). The OCA supports this modification in part because of the requirement that hand-off of a consumer call by BCS to the LEC, with the consumer's consent, is made to a live LEC operator or customer service representative.

The NOPR also proposes to retain Section 63.22, with revisions to modernize and streamline the requirements. The OCA notes with favor the NOPR's position that Section 63.22 "continues to serve a legitimate purpose by giving definition to a viable complaint process." NOPR at 35-36.

The OCA does not have objections at this time to the proposed changes.

5. Section 63.20 (Line Extensions)

The OCA supports the Commission's position that Section 63.20 should be retained, for the reasons set forth in the *Reclassification Order* which denied Verizon's request for waiver as to competitive wire centers and the NOPR. NOPR at 37.

6. Section 63.21 (Directories)

Section 63.21(a) through (e) addresses the creation, content, updating, and distribution of directories by the public utility and the quality of the individual directory listings. Subpart (a) states "When a directory is provided by the public utility, it shall be revised and reissued at sufficiently frequent intervals to avoid serious inconvenience to the public...." Subpart (b) provides "One copy of each new directory issue shall be furnished to each subscriber and one copy sent to the Commission by the issuing public utility at the time of its distribution to subscribers." 52 Pa.Code § 63.21(b).

The NOPR proposes to amend Subpart (b) to revise how updated directories shall be made available to consumers, whether in print, on-line, or a copy provided by electronic media such as a USB thumb drive. NOPR at 38-39. In effect, these amendments would incorporate conditions associated with certain current waivers of Section 63.21(b). Id.

The OCA supports the availability of directory information and distribution of updated directories in a way that meets the needs of consumers. The OCA will address in reply comments any proposed amendments to Section 63.21.

7. Section 63.23 (Construction and maintenance safety standards)

The OCA supports the Commission's proposed, limited revision to Section 63.23 to incorporate by reference the most recent edition of the Institute of Electrical and Electronic Engineers (IEEE). NOPR at 39-40. As revised, Section 63.23 will clearly articulate the

construction and maintenance safety standards that apply for the protection of workers and safety of the public. NOPR at 39. The Commission correctly recognizes the importance of applying the regulatory provisions uniformly to all jurisdictional telecommunications public utilities in all areas throughout the Commonwealth. NOPR at 40, citing OCA Comments re ANOPR at 13.

In the interval since the Commission opened the ANOPR phase, the Commission has taken jurisdiction to resolve pole attachment complaints under federal standards. Further, the FCC has taken steps to streamline and accelerate the process for other utilities or third parties to attach facilities to existing public utility poles, including those of Pennsylvania jurisdictional telecommunications public utilities. The OCA submits that these developments should put to rest any doubt that Section 63.23 is not relevant or so obvious as to not require statement as a regulation. Indeed, Section 63.23 protects the interests of cooperative associations and electric utilities that have facilities crossed by the wires and other facilities of the telecommunications public utilities.

Section 63.23, with the single revision proposed in the NOPR, should be adopted by the Commission to provide clear notice that “[o]verhead and underground public utility equipment or facilities and crossings of wire or cables of every public utility over or under the facilities of other public utilities ... shall be constructed and maintained in accordance with” the most recent IEEE National Electric Safety Code. NOPR, Annex A, Sec. 63.23 (amended).

8. Section 63.60 (Automatic Dialing Announcing Devices (ADAD))

In the OCA Comments re the ANOPR, the OCA recommended that “before the Commission grants a permanent waiver of Section 63.60 to competitively classified wire centers or otherwise rescinds Section 63.60, the Commission should review whether and how Section 63.60 protects Pennsylvania consumers from unwanted calls from such automatic dialing devices.” Section 63.60 provides consumers with certain protections from the intrusive use of ADAD which might otherwise inconvenience a consumer. Section 63.60(b) prohibits a telephone public utility from “knowingly permit an ADAD to be connected or operated over its network ...” unless certain conditions are met. Section 63.60 expressly prohibits ADAD from making calls to “emergency telephone numbers of hospitals, fire departments...” and other emergency service providers.

The NOPR’s proposed rescission of Section 63.60 should be accorded more scrutiny, as suggested by the Chairman’s Statement.

9. Section 63.63 (Transmission requirements and standards)

The OCA has addressed some of the changes proposed by the NOPR above in connection with Section 63.12 and the Chairman’s Statement, as well as the OCA Comments re the ANOPR. The OCA has encouraged the Commission to preserve the core protections of Section 63.63.

The OCA will continue to evaluate this part of the NOPR, in reviewing comments by other interested parties.

10. Section 63.64 (Metering inspections and tests)

The OCA Comments re the ANOPR supported retention of the all of Section 63.64 to apply in all geographic areas. OCA Comments re ANOPR at 26. Section 63.64(a) and (b) impose broad obligations on telephone public utilities to conduct periodic tests, inspections, and

preventative maintenance and to maintain and test performance of equipment and facilities. Section 63.64(c) to (h) require meters used to measure call duration, used to produce data for billing, etc. to be subject to periodic testing and Commission review.

The NOPR affirms the importance and public benefits of the general requirements of Section 63.64. NOPR at 62-64. The OCA agrees with the Commission's concern that periodic tests, inspections, and preventive maintenance standards are needed to guard against the potential for service outages which might affect public health and safety, such as the loss of 911/E911 calling service and impact the provision of retail services. Id.

The OCA recognizes Chairman Dutrieuille's interest in this regulation and issue and question whether Section 63.64 should be revised "to encompass the ongoing metering measurements that network owners are doing ..." The OCA does not have comments at this time on the NOPR's proposed revisions to Section 63.64 or the Chairman's question. The OCA will address these concerns in Reply Comments as warranted.

11. Section 63.65 (Safety)

OCA agrees that the first part of Sec. 63.65 should be, at a minimum, be retained in the final regulations adopted by the Commission. Thus, according to the proposed amended Section 63.65, "[a] public utility shall adopt and implement a safety program fitted to the size and type of operation and shall conform to" specific OSHA regulatory standards, as updated from time to time. NOPR, Annex A, Sec. 63.65 (amended).

D. Chapter 64 Regulations

The OCA supports the NOPR's proposed preservation of the majority of the Chapter 64 regulations, to apply in all geographical areas. This is part of the Commission's decision to not develop a bifurcated set of regulations to apply in noncompetitive wire centers or competitive wire centers.

The NOPR acknowledges the Commission’s prior grant of temporary waivers to the Verizon ILECs of some but not all Chapter 64 provisions, specific to wire centers classified as competitive in the Reclassification Order. NOPR at 70-71. In granting the temporary waivers, the Commission anticipated that “competition could provide sufficient incentives for the Verizon ILECs to satisfy reasonable customer expectations and their Product Guides could adequately address certain issues.” Id.

In the OCA Comments to the ANOPR, the OCA explained that many of the Chapter 64 regulations protect consumers by providing a framework for when and how suspension or disconnection of service may happen, with appropriate notice. For example, when consumers confront a request by the LEC to transfer their residential local exchange service from copper to fiber, Chapter 64 regulations are necessary to promote continuity of service. The OCA Comments to the ANOPR summarize consumer complaints resolved based on Chapter 64 provisions. The public benefits of the Chapter 64 regulations extend beyond just the LEC and consumer relationship.

The OCA supports the NOPR’s proposed retention of the majority of the Chapter 64 regulations, with some revisions, to apply to all LECs that provide residential local exchange service and to apply in all geographic areas.

1. Subchapter A (Preliminary Provisions)

a. Section 64.1 (Statement of purpose and policy)

The OCA supports the Commission’s proposed retention of Section 64.1 in its present form to apply uniformly to all geographic areas where telecommunications services are offered by jurisdictional telecommunications utilities. NOPR at 73; OCA Comments re ANOPR.

b. Section 64.2 (Definitions)

The Commission has proposed amendments to Section 64.2 (Definitions) to conform with Chapter 30, to replace references to “telephone” with “telecommunications,” and similar changes to update the regulatory definitions. NOPR at 72-73. The OCA supports these modifications.

The NOPR also adds a definition for “Competitive wire center” as the short-hand for the geographical area – a wire center or other area – that is defined by a local exchange telecommunications company and includes the area in which all retail telecommunications services “have been declared or determined to be competitive by the Commission as competitive under 66 Pa.C.S. § 3016 (relating to competitive services).” NOPR, Annex A. The NOPR also adds a definition for the complement, “Noncompetitive wire center” to describe the geographic areas in which a local exchange telecommunications company

The OCA supports the addition of this “Competitive wire center” definition to Section 64.1 and addition of the complementary definition of “Noncompetitive wire center” as part of the Commission’s update to Chapter 64 to account for the provisions of the current Chapter 30, consistent with certain proposed revisions to the Chapter 63 regulations. NOPR at 72-73. The OCA notes that there are slight variations in the wording of “Competitive wire centers” as proposed in amended Section 63.1 and Section 64.2.

The OCA recommends that the Commission adopt the following wording for the definition of “Competitive wire center” to be included in both Section 63.1 and 64.2.

Revised Section 63.1, “Competitive wire center” – A wire center or other geographic area that is defined and served by a local exchange telecommunications company where all of its retail telecommunications services have been **declared or** determined to be competitive by the Commission under 66 Pa.C.S. § 3016 (relating to competitive services).

The highlighted words “declared or” are additions.

Revised Section 64.2, “Competitive wire center” – A wire center or other geographic area that is defined and served by a local exchange telecommunications company where all of its retail telecommunications services have been declared or determined to be competitive by the Commission ~~as competitive~~ under 66 Pa.C.S. § 3016 (relating to competitive services).

The stricken words “as competitive” are only in the NOPR’s proposed Section 64.2 definition.

The proposed definitions of “Noncompetitive wire center” in Section 63.1 and 64.2 also include slight wording variations. The OCA recommends that the Commission adopt the following revised definitions of “Non-competitive wire center” for both Chapters 63 and 64.

Accordingly, the Section 63.1 definition should be revised as follows:

“Noncompetitive wire center. – A wire center or other geographic area that is defined and served by a local exchange telecommunications company where the jurisdictional telecommunications public utility ~~continues to offer~~ **offers to its customers** protected, retail nonprotected and noncompetitive services as defined by 66 Pa.C.S. § 3012 (relating to definitions).”

The Section 64.2 definition should be revised as follows:

“Noncompetitive wire center. – A wire center or other geographic area that is defined and served by a local exchange telecommunications company where the jurisdictional telecommunications public utility ~~continues to offer~~ **offers** protected, retail nonprotected and noncompetitive services as defined by 66 Pa.C.S. § 3012 (relating to definitions).”

The OCA submits that these slight revisions add clarity, uniformity, and should be adopted.

2. Subchapter B (Payment and Billing Standards)

a. Section 64.11 (Method of Payment)

Section 64.11 describes both the forms of payment which may be tendered and how the timing of receipt of payment may impact potential suspension or termination of service. The OCA supports retention of the Section 64.11 regulation in all geographic areas where

jurisdictional telecommunications carriers serve.¹ NOPR at 74-75. As addressed in the NOPR, Section 64.11's references to "payment by check" are but one reasonable means of making payment, with electronic payments as another option. *Id.*; see OCA Comments re ANOPR.

The OCA previously recommended that the current reference in Section 64.11 to "handling charges" related to checks returned "should be amended to refer to the 'carrier's approved tariff or Product Guide.'" OCA Comments re ANOPR. The NOPR states "we propose to revise the regulation to reference that returned check charges are to be included in the 'carrier's approved tariff, Product Guide or similar document.'" NOPR at 74. However, the actual amendment proposed by the NOPR does not accurately implement the OCA recommended amendment. See, NOPR, Annex A, Sec. 64.11.

Section 64.11 currently states in pertinent part:

When a tendered check is returned unpaid ... the LEC may treat such unpaid check as payment never made The LEC may also impose a handling charge, the amount of which shall be set forth in the carrier's approved tariff.

52 Pa. Code § 64.11. The NOPR's revised version of Section 64.11 would read in part:

When a tendered check is returned unpaid ... the LEC may treat such unpaid check as payment never made **The LEC may impose a charge for a returned check as long as the charge is set forth be in the LEC's approved tariff, Product Guide or similar document.** The LEC may also impose a handling charge, the amount of which shall be set forth in the carrier's approved tariff.

NOPR, Annex A. This revision would allow the LEC to impose *both* a returned check charge and a handling charge, in the event of a failed payment transaction. This is contrary to the OCA's proposed revision which was intended to preserve the concept of a single "handling

¹ See, Laura Dorsey v. Verizon Pennsylvania LLC, Docket Nos. F-2016-2528790, C-2016-2540864, Initial Decision of ALJ Joel H. Cheskis at 7-8, 11 (Oct. 28, 2016), Final Order (Dec. 28, 2016) (Dorsey) (LEC's compliance with Section 64.11).

charge,” with mention of a returned check charge as an example of a handling charge. OCA Comments re ANOPR.

Instead, the OCA’s proposed revision was intended to update Section 64.11 to recognize that for non-tariffed residential local exchange service, the amount of the handling charge would be disclosed in the LEC’s Product Guide or similar document – not a tariff. The NOPR appears to accept this point but the NOPR’s proposed revisions do not conform. Compare NOPR at 74; NOPR, Annex A, Section 64.11.

The Commission should adopt the following revisions to the proposed Section 64.11 language as set forth in Annex A to the NOPR:

When a tendered check is returned unpaid ... the LEC may treat such unpaid check as payment never made ~~The LEC may impose a charge for a returned check as long as the charge is set forth be in the LEC’s approved tariff, Product Guide or similar document.~~ The LEC may also impose a handling charge, the amount of which shall be set forth in the ~~earlier’s~~ LEC’s approved tariff (related to noncompetitive residential local exchange service) or the LEC’s Price List or Product Guide (related to residential local exchange service in a competitive wire center).

The OCA recommends that the Commission adopt these revisions.

- b. Sections 64.12 (Due date for payment), 64.13 (Billing frequency), and 64.14 (Billing information)

The OCA supports the NOPR proposed retention of Sections 64.12, 64.13, and 64.14 – with revisions – to apply in all service areas. NOPR at 75-76. This trio of regulations, which identify due date for payment, billing frequency, and billing information standards, implement the billing procedure and consumer protection provisions of Section 1509. *Id.* at 75; OCA Comments at 29-31. As noted by the NOPR, these regulations “provide for better billing

transparency to end-user consumers of LEC services whether such services are provided on a competitive or non-competitive basis.” NOPR at 75.

The OCA recommends that the Commission make additional revisions to Section 64.12 as detailed below. The OCA supports the NOPR’s revised Sections 64.13 and 64.14.

a. Revisions to Section 64.12 (Due date for payment)

The OCA supports the amendment of Section 64.12 to recognize that the monthly bill issued may be in the form of a paper bill or an electronic bill:

The due date for payments of monthly bill, **whether it be a paper bill or an electronic bill generated instead of a paper bill**, shall be at least 20 days from the date of the mailing by the LEC to the customer.

NOPR, Annex A, Section 64.12.

However, this revision is not complete. First, some standard is also needed to identify the start date of the “at least 20 days” until the due date for payment when the bill is generated and conveyed to the consumer electronically. Section 1509 requires that bills rendered for residential public utility service allow at least 20 days “from *the date of transmittal* of the bill for payment without incurring any late payment penalty charges therefor.” 66 Pa.C.S. § 1509 (emphasis added). The OCA recommends that the Commission adopt the following revised version of the above Section 64.12 sentence:

The due date for payments of monthly bill, **whether it be a paper bill or an electronic bill generated instead of a paper bill**, shall be at least 20 days from the date of the mailing **(if mailed) or the date of transmittal** by the LEC to the customer.

The OCA notes that Section 64.14 (a)(2) already requires the LEC to include in the bill “[t]he due date on or before which payment shall be received” 52 Pa. Code § 64.14(a).

Second, Section 64.12(2) and (3) currently describe how to identify the date when payment is received, whether remitted by mail or to the physical location of the LEC’s branch

office or an authorized payment agent. However, Section 64.12 is silent as to payments made electronically. Section 64.12 should be amended to state a convention for identifying “the date when payment is made” when remitted electronically, such as payment by credit card over the telephone, bank transfer, or the many electronic payment options available today. Just as consumers cannot control the length of time for delivery of a mailed payment, consumers may not know the utility’s internal process for receipt and posting of an electronic payment. Section 64.12(c) “Date of payment to branch office or authorized agent” could be amended:

(3) *Date of payment to branch office or authorized payment agent. made in person or electronically.* The effective date of the payment to a branch office or authorized payment agent is the date of the actual payment at that location. **The effective date of the payment made electronically to the utility is the date the consumer made the electronic payment.**

This recommended revision would account for technological developments and provide clarity.

The Commission should adopt the OCA’s proposed revisions to Section 64.12, in addition to the NOPR’s revision of the first sentence of Section 64.12 related to electronic bills.

b. Section 64.15 (Advance payments)

Section 64.15 at present permits a LEC to require advance payments for construction or temporary or short-term use. The NOPR proposes the permanent rescission of Section 64.15. NOPR at 76-78. The OCA does not oppose this.

c. Section 64.16 (Accrual of late payment charges)

The NOPR proposes to retain Section 64.16 without revision, to apply in all geographical areas of the Commonwealth. NOPR at 76-78. Section 64.16 states:

(a) A LEC is prohibited from levying or assessing a late payment charge on an overdue bill in an amount which exceeds 1.25% per month on the full unpaid and overdue balance of the bill. These charges are to be calculated only on the overdue portions of the bill. The rate, when annualized, may not exceed 15% per annum—computed by the simple interest method—and may not include previously accrued late payment charges. A late payment charge may not be assessed against an outstanding security deposit.

(b) An additional charge, fixed fee or penalty designed to recover the cost of a subsequent rebilling may not be charged.

52 Pa.Code § 64.16.

The OCA appreciates the NOPR's intent to adopt a uniform standard which promotes universal service goals, including protection of Lifeline eligible low income households. NOPR at 77-78. However, the OCA suggests that Section 64.16 requires modification to recognize that the amount of the late payment charge set by regulation should apply to tariffed residential local exchange service. The OCA recommends the following language to replace the existing Section 64.16:

(a) A LEC is prohibited from levying or assessing a late payment charge on an overdue bill in an amount which exceeds 1.25% per month on the full unpaid and overdue balance of the bill for tariffed residential local exchange service. This late payment charge rate, when annualized, may not exceed 15% per annum—computed by the simple interest method.

(b) Any late payment charge should be calculated only on the overdue portions of the bill and may not include previously accrued late payment charges. A late payment charge may not be assessed against an outstanding security deposit.

(c) An additional charge, fixed fee or penalty designed to recover the cost of a subsequent rebilling may not be charged.

The OCA suggests these revisions to find a better balance between the Section 64.1 and Section 64.16 goals of fair and equitable billing standards, and protection against application of late payment charges in an unreasonable way. However, the OCA acknowledges that Verizon or any

other LEC with pricing discretion over residential local exchange rates in competitive wire centers may fix a different late payment fee than is addressed currently in Section 64.16.

d. Sections 64.17 (Partial payments for current bills), Section 64.18 (Application of Partial Payments between past and current bills)

The NOPR proposes to retain Sections 64.17 and 64.18 without revision, to apply in all geographical areas of the Commonwealth. NOPR at 77.

The OCA supports this NOPR recommendation.

e. Section 64.19 (Rebilling)

Section 64.19(a) states a four-year limit on the issuance of a make-up bill for unbilled services resulting from the LEC's billing error. Section 64.19(b) protects the consumer by providing a remedy for over-billing, by requiring the LEC to "credit the customer's account in the amount of the overbilling, including taxes..." These two subparts protect consumers. Section 64.19(c) requires the ILEC to give the Commission notice "of rebilling affecting more than 10% of its residential customers within 90 days of the rebilling." This requirement to provide notice to the Commission of any significant rebilling activities is still needed in this age of computerized billing systems.

The NOPR proposes the permanent retention of Section 64.19 in all geographic areas. NOPR at 79. The NOPR cites the OCA Comments during the ANOPR as persuasive. *Id.*; OCA Comments re ANOPR at 33-34.

f. Section 64.20 (Transfer of account), Section 64.33 (Payment of outstanding balance)

The NOPR proposes to retain Sections 64.20 and 64.33 in all geographic areas. NOPR at 78-79. Section 64.20 addresses transfer of accounts and outstanding balances associated with discontinuance or termination to a new or existing customer, and Section 64.33(a) allows a LEC

to condition the provision of service to a new applicant upon payment of an outstanding balance “for which the applicant is legally responsible....” In addition, Section 64.33(b) prohibits a LEC from requiring an applicant for service to pay an outstanding balance incurred in another person’s name, absent a legal order determining the applicant’s obligation to pay.

The NOPR recommendation is based in part of the OCA position that these regulations protect the affordability and continuity of residential local service and provide needed guidance to a LEC’s collection practices. NOPR at 79; see OCA Comments re ANOPR.

The OCA supports the NOPR’s proposed retention of Sections 64.20 and 64.33.

g. Section 64.22 (Billing services for interexchange carriers)

The OCA does not oppose rescission of Section 64.22 as recommended by the NOPR. NOPR at 80. The Commission had previously waived Section 64.22 as to Verizon’s competitive wire centers on a temporary basis. Id.

h. Sections 64.23 (Cramming/Slamming)

The OCA supports the NOPR’s proposed permanent retention of Section 64.23 for all geographic areas. NOPR at 73, 80-81. The OCA agrees that the Section 64.23 relates to the standardized LEC response to cramming and slamming, provides important consumer protections, and is still relevant today. Id. at 73-74.

i. Section 64.24 (Provision of bundled service packages)

Section 64.24 is a newer regulation, adopted after enactment of the current Chapter 30 statutes. OCA Comments to ANOPR at 34-35. Section 64.24 “operates so that consumers who are unable to pay the full price for a bundle of services can default to a basic local exchange service and not lose connectivity.” NOPR at 81. The OCA agrees with the NOPR’s statement that Section 64.24 “serves the statutory goal of preserving universal service under 66 Pa.C.S. §

3011(2) and ... does not undermine the pricing flexibility for bundled service packages under 66 Pa.C.S. § 3016(e).” Id.

The OCA supports the NOPR’s proposed permanent retention of Section 64.24 for all geographic areas. NOPR at 80-81.

3. Subchapter C (Credit and Deposit Standards Policy)

Subchapter C is comprised of the following regulations:

- 64.31. [LEC credit and deposit policies.](#)
- 64.32. [Credit standards.](#)
- 64.33. [Payment of outstanding balance.](#)
- 64.34. [Written procedures.](#)
- 64.35. [Deposit requirements for existing customers.](#)
- 64.36. [Method of making deposit.](#)
- 64.37. [Refund of deposits.](#)
- 64.38. [Application of deposit to bills.](#)
- 64.39. [Periodic review.](#)
- 64.40. [Refund statement.](#)
- 64.41. [Interest.](#)

52 Pa.Code, Subch. C.; NOPR at 81. The NOPR recommends retention of these Subchapter C provisions.

The OCA supports the NOPR’s determination that since certain of these Subchapter C “regulations contain objective credit standards and operate in conjunction with all LEC services, in particular the ILEC’s COLR obligations (e.g. applications for the installation of service), their applicability should be uniform between competitive and non-competitive wire centers.” NOPR at 83. The NOPR took note of the OCA support for retention of Section 64.31 (LEC credit and deposit policies) and “preservation of the other Subchapter C sections in competitive and non-competitive areas, which cover credit standards, payment of outstanding balances, deposit requirements, refunds, and interest.” Id. at 83, citing OCA Comments re ANOPR at 36-37.

Based upon the comments in the ANOPR phase and “overall balance of the interests,” the NOPR favors retention of “the substantive requirement of this subchapter as is.” NOPR at 83-84.

The OCA supports this NOPR recommendation. However, the NOPR’s list of the individual sections retained does not include Section 64.33 (Payment of outstanding balance). See, NOPR at 84. This omission appears to be an inadvertent error, as it is inconsistent with the NOPR’s stated intent to retain “this subchapter as is.” NOPR at 83-84. This error should be corrected.

4. Subchapter D (Interruption and Discontinuance of Service)

Subchapter D is comprised of three sections which address temporary interruption, refunds for service interruptions, and discontinuance of service. “[I]n light of our review in the NOPR including our balancing of interests and rejection of a two-tiered regulatory structure, we propose the retention of this subchapter in its entirety in all geographic areas.” NOPR at 84.

a. Section 64.51 (Temporary Interruption)

The OCA supports the NOPR’s proposed retention of Section 64.51. NOPR at 84; OCA Comments re ANOPR at 37. This regulation allows a LEC to interrupt service to a residential customer under emergency conditions and for critical maintenance purposes. NOPR at 84. The OCA has supported preservation of the Section 64.51 requirement that the LEC provide the residential customers with notice, if possible, of temporary interruptions and limit the duration of such interruptions. OCA Comments re ANOPR at 37. The Commission notes the importance of allowing LECs the ability to interrupt service under emergency conditions and to perform critical maintenance. NOPR at 84.

b. Section 64.52 (Refunds for Service Interruptions)

Section 64.52(a) and (b) provide the general rules for calculation of an allowance in the event of an interruption of at least 24 hours and when the interruption is due to storms or other events beyond the telecommunications utility's control, respectively. NOPR at 85. The OCA supports the NOPR's proposed retention of Section 64.52, to apply in all geographic areas. *Id.* at 84, 85. The OCA agrees with the NOPR's observation that because "service interruptions have the capability of impacting end-user customers of residential telecommunications services in the same fashion whether they received such services in a competitive or noncompetitive wire centers," the same protections should extend to both customer groups. *Id.* at 85.

c. Section 64.53 (Discontinuance of Service)

Section 64.53 establishes certain customer obligations, when the customer wishes to have service discontinued, such as five days advance notice and allowing the utility access to the premises if needed to retrieve utility equipment. OCA Comments re ANOPR at 38. The NOPR proposes the retention of Section 64.53 in all geographic areas. NOPR at 84, 85. The OCA supports this recommendation.

5. Subchapter E (Suspension of Service)

Subchapter E covers suspension of service, including grounds for suspension, notice procedures prior to suspension, notice procedures after dispute filed, emergency provisions, and third-party notifications. NOPR at 86. In the ANOPR phase, the OCA Comments supported preservation of those Subchapter E regulations which the Commission had not waived in the Reclassification Order:

- Section 64.62 (Days suspension or termination of service is prohibited);
- Section 64.63(10) (Unauthorized suspension of service) relating to medical certificates;
- Section 64.71 (General notice provisions);
- Section 64.75 (Exception for suspension based on occurrences harmful to person or property);

Section 64.101 (General provision);
Section 64.102 (Postponement of suspension pending receipt of certificate);
Section 64.103 (Medical certification);
Section 64.104 (Length of postponement);
Section 64.105 (Restoration of service);
Section 64.106 (Duty of customer to pay bills);
Section 64.107 (Suspension upon expiration of medical certification);
Section 64.108 (Right of LEC to petition the Commission);
Section 64.109 (Suspension prior to expiration of medical certification); and
Section 64.111 (Third-party notification).

OCA Comments re ANOPR at 38-39; NOPR at 86-87. These are regulations which the Commission previously determined as relevant even in competitive wire centers. NOPR at 86. The OCA supports the preservation of these regulations in all geographic areas. The OCA agrees in particular with the NOPR as to importance of the Section 64.101-64.111 emergency provisions, “given the potential impacts of suspension of service on customers with serious medical conditions, throughout all geographic areas.” *Id.*

The OCA will comment further on those Subchapter E regulations which the NOPR reviews individually. See, NOPR at 87-95.

a. Section 64.61 (Authorized suspension of service)

Section 64.61 states eight separate grounds for when suspension of service is authorized. Subparts (1), (2), (5), and (8) relate to payment issues, such as nonpayment of a delinquent account, failure to post a deposit, failure to comply with a payment agreement, or for prior unpaid indebtedness. OCA Comments re ANOPR. These regulatory statements benefit both the LEC and the residential customer by providing a straightforward description of when service to a dwelling may be suspended on payment-related grounds. *Id.* Section 64.61, subparts (3), (4), (6), and (7) describe other grounds which are unrelated to payment issues, such as fraud to obtain service, or to protect the safety of a person or the integrity of the system. The OCA submits that

each of these subparts provide simple guidance as to when suspension may be allowed. Id. The OCA Comments re the ANOPR summarized specific consumer cases in which the Section 64.61 suspensions provisions were considered, in the context of the LEC's intent to migrate residential customers from a copper to a fiber-based connection.

The NOPR recommends retention of Section 64.61 to apply in all geographic areas, based upon the OCA's persuasive comments. NOPR at 89. The NOPR favors the uniform application of the authorized suspension procedures and the guidance of Section 64.61 in all geographic areas. Id. The NOPR takes particular notice of need for such uniform procedures and guidance "in matters such as the continuing transition of network connection from copper-based to fiber optic facilities thus avoiding the suspension or even the loss of vital basic local exchange services." Id.

The OCA supports adoption of the NOPR's recommendation.

b. Section 64.62 (Days suspension or termination of service is prohibited)

Section 64.62 identifies the dates when service cannot be suspended or terminated. The Commission has not previously waived this regulation. The NOPR concludes "that these dates should be controlled by regulation indicating the importance of controlling these dates." NOPR at 89. The OCA supports the NOPR's recommendation to retain and apply this regulation in all geographic areas. Id. at 87, 89.

c. Section 64.63 (Unauthorized suspension of service)

The NOPR recommends retention of all of Section 64.63 to apply in all geographic areas. NOPR at 90-91. Subpart (10) relates to the medical certificate protections in Sections 64.101 to 64.103 and has continued to apply in all geographic areas, without waiver. Id. at 90; OCA Comments re ANOPR. As identified by the OCA, the other subparts of Section 64.63 protect

“against unauthorized suspension of service for nonpayment of other telephone services or use of suspension to collect unpaid charges, from four or more years earlier.” NOPR at 90.

The NOPR recommends retention of Section 64.63 to preserve these important consumer protections and to provide for uniform standards in all geographic areas governing unauthorized suspensions for residential services. NOPR at 90.

The OCA supports the NOPR’s recommendation.

d. Section 64.71 (General notice procedures); Section 64.81 (Relating to limited notice upon noncompliance with report or order)

The NOPR proposes to retain for all geographic areas LEC’s compliance with the written notice requirement prior to suspension of service under Section 64.71 as well as the provisions of Section 64.81. NOPR at 87. Section 64.71 imposes a minimum 7-day advance, written notice requirement before the proposed suspension of service, with one exception in the event of a broken payment agreement for toll or nonbasic service. OCA Comments re ANOPR. In the event of such an exception, the LEC shall comply with Section 65.81 (relating to limited notice upon noncompliance with report or order).” NOPR at 91.

The NOPR’s recommendation will provide for uniformity of treatment of unauthorized suspensions. NOPR at 91. The OCA supports the NOPR’s recommendation to retain these provisions which are part of the interrelated consumer protections in Subchapter E. OCA Comments re ANOPR at 43.

e. Section 64.72 (Suspension notice information)

The NOPR proposes to retain Section 64.72 in all geographic areas. NOPR at 92-93. As discussed by the OCA, Section 64.72 require specific information to be included in a suspension notice, including a medical emergency notice. Id. at 92; OCA Comments re ANOPR at 43. If Section 64.72 does not apply, then the protection of consumers is diminished for residential local

exchange customers who may need clear notice of the steps to take to prevent suspension of service. NOPR at 92. In addition to the importance of the notice provisions to consumers who face a transition from a copper to fiber-based connection, the NOPR takes note of the needs of low-income residential consumers, including those eligible for Lifeline. Id.

The OCA supports the NOPR's recommendation.

f. Section 64.73 (Notice when dispute pending)

The OCA supports the NOPR's recommended retention of a modified Section 64.73 to apply in all geographic areas. NOPR at 93-94. As set forth in the OCA Comments re the ANOPR, the provisions of Section 64.73 are interrelated to other Chapter 64, Subchapter E consumer protections such as Section 64.71. OCA Comments re ANOPR.

The NOPR proposes to simplify Section 64.73(a) by elimination of the text "except where toll usage exceeds the following usage in a billing period after the filing of the notice of a dispute or informal complaint:" and then the following subsections (1) and (2). NOPR at 94. The OCA agrees with the concept of eliminating the entire exception based upon toll usage levels. However, this "except toll usage..." statement is followed by three subsections – not just subsections (1) and (2). Each of the three subsections describe different bands and periods of toll usage.

The revisions to Section 64.73 should include elimination of the text "except where toll usage exceeds the following usage in a billing period after the filing of the notice of a dispute or informal complaint:" and then subsections (1), (2), *and* (3). After these corrected revisions, the OCA submits that Section 64.73(a) -- with no mention of toll or subsections – would read:

- (a) A LEC shall not mail or deliver a notice of suspension if a notice of dispute, as defined in § 64.2 (relating to definitions), has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed suspension.

The OCA submits that this outcome appears more consistent with the intent of the NOPR's goal to simplify Section 64.73(a). The OCA requests that the Commission adopt these edits so that Section 64.73(a) is both simplified and clear.

g. Section 64.74 (Procedures upon customer contact before suspension)

Section 64.74 addresses the information that must be provided to a customer who has been issued a suspension notice but before suspension of service has taken place. OCA Comments re ANOPR at 46. The regulation addresses payment agreements and the consequences if the customer breaches the agreement. The NOPR proposes retention of Section 64.74, with minor revisions to remove mention of toll and IXC services. NOPR at 94-95. Revised Section 64.74 would apply in all geographic areas. Id. at 94.

The NOPR notes that these procedures are of material help to consumers and can substantially contribute to the avoidance of undesirable service suspensions and even terminations, as well as in a consequent reduction of informal and formal complaints that reach this Commission for adjudication and resolution. NOPR at 94. The NOPR also noted ways in which the Section 64.74 procedures before suspension contribute to the preservation of universal service.

The OCA supports this NOPR recommendation, including the minor revisions.

h. Section 64.75 (Exception for suspension based on occurrence harmful to person or property)

The NOPR states that Section 64.75 "shall be retained and uniformly apply in all geographic areas." NOPR at 95. The NOPR notes the importance of Section 64.75 which applies to exigent circumstances, that the regulation was not previously waived nor opposed during the ANOPR comment process. Id.

The OCA supports the NOPR's determination.

- i. Section 64.81 (Limited notice upon noncompliance with report or order)

The NOPR proposes that Section 64.81 be retained in its entirety and apply in all geographic areas, consistent with the Commission's reasons for retention of other Chapter 64 regulations which relate to suspension of service, notice, and consumer protections. NOPR at 95. See for example, the discussion above regarding retention of Section 64.71.

The OCA supports the NOPR's recommendation.

- j. Sections 64.101 through 64.109 (Emergency provisions) and Section 64.111 (Third Party Notification)

The NOPR states that "these regulations will remain without amendment. NOPR at 95. These regulations currently apply in both competitive and noncompetitive wire centers, without waiver. The NOPR notes "[n]o arguments have been presented to convince us that customers do not rely on these important provisions."

The OCA supports the NOPR's determination. Further, as noted in the OCA Comments re the ANOPR and above, there are other provisions of Subchapter E which support these medical certificate and other emergency protection provisions, such as with notice requirements.

6. Subchapter F (Termination of Service)

- a. Sections 64.121 (Authorized termination of service), Section 64.122 (Unauthorized termination of service when dispute pending), and Section 64.123 (Termination notice)

The NOPR recommends retention of the Section 6.121 and Section 64.122 provisions to apply in all geographic areas, based upon the OCA's analysis of the parallels between the provisions of these two sections and how Sections 64.61 and 64.63 operate to provide consumers with notice and protection. NOPR at 96-97. As noted in the OCA Comments re the ANOPR:

Section 64.121 identifies the critical timeline “[w]hen at least 10 days have passed since suspension of service, the company may terminate service for failure to pay a reconnection fee and to remedy the original grounds for suspension....” Section 64.122 restricts termination of service, unless authorized by the Commission, if there is both a notice of dispute filed and the subject of the dispute forms the grounds for termination and the customer is making a good faith effort to make certain payments.

OCA Comments re ANOPR at 47-48. These regulations are interrelated with other provisions and important consumer protections, including the need for the utility to provide notice of the medical certificate process, points acknowledged by the NOPR. *Id.*; NOPR at 96-97.

The OCA supports adoption of the NOPR recommendation to retain these regulations, based upon the OCA Comments re the ANOPR and the other reasons identified by the NOPR in support of applying such consumer protections uniformly in all geographic areas. NOPR at 96-97.

7. Subchapter G (Disputes; Informal and Formal Complaints)

a. Sections 64.151 to 64.151 (Informal complaint procedures)

Sections 64.151 (Time for filing), 64.152 (Informal complaint filing procedures) and Section 64.153 (Commission informal complaint procedures) complement Section 308(b)(1) of the Public Utility Code which allows consumers to file an informal complaint. 66 Pa.C.S. § 308(b)(1); NOPR at 98.

The NOPR agrees with the OCA that these regulations benefit consumers and provide guidance and protections in all geographic areas. NOPR at 98-99. The NOPR proposes to amend Section 64.153 (Commission informal complaint procedures) to allow LECs to set up with the Bureau of Consumer Services “a warm transfer” process, as described in the proposed amendments to Section 63.15 (Complaint procedures). NOPR at 97-99.

The OCA supports the NOPR’s recommendations, including the addition of a “warm transfer” process. The OCA notes that requirement the LEC participating in such an arrangement should make available “a live public utility operator or customer service representative” to receive the transferred consumer call from the Bureau of Consumer Services will be beneficial. The OCA is aware of consumer frustration when the consumer is unable make contact with an actual utility customer service representative to address a service or billing concern.

8. Subchapter H (Restoration of Service)

a. Section 64.181 (Restoration of service after suspension), Section 64.182 (Restoration of service after termination)

Section 64.181 requires a LEC, if service has been suspended, to “reconnect service by the end of the first full working day” after the customer has taken sufficient steps to remedy the grounds for suspension, whether payment related or based upon “[a]dequate assurances that unauthorized use or practice will ease ...” Section 64.182 states that a customer whose service has been terminated will need to reapply as an applicant.

The NOPR recommends retention of Section 64.181 to apply in all geographic areas, with certain amendments to recognize that where the rate or reconnection fee is listed may be the utility tariff or pricing guide. NOPR at 99-100. The Commission agrees with the OCA that Section 64.181 provides necessary consumer protections. Id.

The NOPR recommends rescission of Section 64.182 as unnecessary.

The OCA supports the NOPR’s recommendations as to both regulations.

9. Subchapter I (Public Information; Record Maintenance)

a. Section 64.191 (Public information)

Section 64.191 maps out the particular information and priority of information which “a LEC service representative shall provide to applicants,” whether the application is in person or by telephone, including pricing information, whether the applicant needs information about services for customers with disabilities, directory listing options, and “[t]he date service will be installed.” Section 64.191(f) requires the LEC service representative to describe for the applicant and send a confirmation letter with an itemization of the services ordered, the prices, and other information. Section 64.191(g) requires the LEC to mail the applicant a summary of the customer’s rights and responsibilities under Chapter 64.

The NOPR recommends the permanent retention of Sections 64.191(a) to (d) and 64.191(f) for all geographic areas. NOPR at 101-102. Section 64.191(e) regarding toll presubscription information would be rescinded as no longer relevant. The NOPR also proposes to amend Section 64.191(g) and so the required information would only be provided to new customers and then on request. The OCA supports these recommendations, with one modification. The present Section 64.191(f)(4) reference to the telephone directory as a resource for “a more thorough explanation and price list of services” is no longer relevant, given the movement away from saturation delivery of white pages directories. The OCA recommends rescission of this subsection.

b. Section 64.192 (Record maintenance)

The NOPR proposes to retain the Section 64.192 record retention requirements as relevant and a useful resource “when various disputes arise as well as in the resolution of informal and formal complaints.” NOPR at 102-103. Section 64.192 describes the obligation of LECs to “preserve all written and recorded disputes and complaints for 4 years...” and to make the records available for examination by the Commission and staff. Section 64.192 describes

three categories of information to be maintained regarding “disputing and complaining customers”: “(1) The payment performance (2) The number of suspensions, terminations, and reconnections of each (3) Communications to or from the disputing and complaining customers regarding matters...” which fall within the broad purview of Chapter 64.

The OCA supports the NOPR’s recommendation to retain this regulation and apply it in all geographic areas. As noted in the OCA Comments re the ANOPR, this regulation and information covered is still needed and relevant, given the use of the “warm transfer” approach to management of consumer disputes as well consumer concerns arising from the copper to fiber network transition. NOPR at 102-103; OCA Comments re ANOPR at 51.

10. Subchapter J (Annual Reporting Requirements)

a. Section 64.201 (Reporting Requirements)

The NOPR proposes to retain the Section 64.201(a) annual reporting requirement that imposes on each LEC with residential accounts the obligation to file a report providing information set forth in Section 64.201(b). NOPR at 103-104. The NOPR then divides the individual Section 64.201(b) residential account elements into two categories: those retained and those rescinded.

The NOPR proposes to rescind (b)(2)(ii), (iii), and (iv); (b)(4)(ii), (iii), and (iv); (b)(8)(ii), (iii), and (iv); (b)(9)(ii), (iii), and (iv); (b)(10)(ii), (iii), and (iv); and (b)(11) as related to non-basic and toll service data that is no longer necessary in any area. Id.

The NOPR proposes to retain the remaining reporting requirements in Section 64.201, including the previously temporarily waived subsections (b)(1) and (3) for all geographic areas. NOPR at 103-104. The NOPR notes that retention of these reporting provisions will continue to

provide useful information regarding the status and assist our understanding of changes in the residential telecommunications services market. Id. at 104.

The OCA disagrees with the NOPR's proposed rescission of Section 64.201(b)(11) which requires periodic reporting of "(11) The total number of Chapter 64 disputes handled." The OCA submits that this tally is an important measure which should be retained. The OCA submits tracking of the number of Chapter 64 disputes handled is particularly important given the Commission's proposed option for LECs to participate in a "warm transfer" arrangement to expedite receipt and resolution by the LEC of consumer complaints to the Bureau of Consumer Services. The OCA submits continuation of the Section 64.201(b)(11) reporting requirement will provide useful information to understand the impact of the such warm transfer arrangements.

The OCA does not oppose the other parts of the NOPR's recommendation regarding Section 64.201.

b. Section 64.202 (Petition for waiver)

The NOPR proposes to retain Section 64.202 to apply in all geographic areas, based in part of the continued relevance of Section 64.202 while other Chapter 64 provisions are in effect. NOPR at 104. The OCA does not oppose the NOPR's recommendation.

11. Subchapter K (General Provisions)

a. Section 64.211 (Availability of normal Commission procedures)

The NOPR recommends rescission of Section 64.211 in all geographic areas "since not having the regulation does not prevent the customer from pursuing other procedures prescribed by law." NOPR at 105. The OCA Comments re the ANOPR had recommended that the Commission retain this regulation. OCA Comments re ANOPR at 54. However, at this point, the OCA does not oppose the NOPR recommended rescission of this regulation.

b. Section 64.212 (Application for modification or exception) and Section 64.213 (Repealers)

The OCA did not previously comment on these provisions. See, OCA Comments re ANOPR. The NOPR proposes to retain Sections 64.212 and 64.213 as they currently exist, because they potentially remain useful to address waiver requests or the effect of tariff provisions that are inconsistent. NOPR at 105. The OCA does not oppose the NOPR's recommendation.

III. CONCLUSION

The Office of Consumer Advocate respectfully requests that the Public Utility Commission consider and adopt the OCA's recommendations as to the Chapter 53, 63, and 64 regulations discussed in these Comments in reply to the Notice of Proposed Rulemaking. The OCA further requests that the Commission take the affirmative actions posed by Chairman Dutrieuille's Statement and supported by the OCA's comments herein.

Respectfully Submitted,

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