



1775 Industrial Blvd. • Lewisburg, PA 17837  
 Phone: 570-524-2231 • Fax: 570-524-5887



Pamela Polacek, Chief Legal & Regulatory Officer  
 Direct Mail: P.O. Box 129; Venetia PA 15367  
 Direct Phone: 570-724-9469 (o); 717-503-6531 (m)  
[ppolacek@ctenterprises.org](mailto:ppolacek@ctenterprises.org)

May 25, 2021

Rosemary Chiavetta, Secretary  
 Pennsylvania Public Utility Commission  
 Commonwealth Keystone Building  
 400 North Street, 2nd Floor  
 Harrisburg, PA 17120

VIA E-FILING

**RE: Rulemaking to Comply with the Competitive Classification of Telecommunications Retail Services Under 66 Pa C.S. § 3016(a); General Review of Regulations 52 Pa. Code, Chapter 53, Chapter 63 and Chapter 64; Docket No. L-2018-3001391**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission in the above-reference proceeding are the Comments of Tri-Co Connections LLC and Claverack Communications LLC. Copies of this filing are being served consistent with the attached Certificate of Service.

If you have any questions regarding this filing, please feel free to contact the undersigned. Thank you.

Very truly yours,

*Pamela C. Polacek*

By

Pamela C. Polacek

Counsel to Tri-Co Connections, LLC and  
 Claverack Communications LLC

Enclosure

c: Certificate of Service

David Screven, Esq., Law Bureau (via Email)

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

**VIA E-MAIL**

John R. Evans  
Office of Small Business Advocate  
Forum Place  
555 Walnut Street, 1st Floor  
Harrisburg, PA 17101  
[jorevan@pa.gov](mailto:jorevan@pa.gov)

Tanya McCloskey, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place - 5th Floor  
Harrisburg, PA 17101-1921  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)

Richard A. Kanaskie, Esq.  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
Harrisburg, PA 17120  
[rkanaskie@pa.gov](mailto:rkanaskie@pa.gov)

*Pamela C. Polacek*

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Pamela C. Polacek (PA ID No. 78276)

Counsel to Tri-Co Connections, LLC and  
Claverack Communications LLC

Dated this 25<sup>th</sup> day of May, 2021, in Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RULEMAKING TO COMPLY WITH THE COMPETITIVE CLASSIFICATION OF TELECOMMUNICATIONS RETAIL SERVICES UNDER 66 PA.C.S. §3016(A)	DOCKET NO. L-2018-3001391
GENERAL REVIEW OF REGULATIONS 52 PA CODE CHAPTERS 53, 63 AND 64	

**COMMENTS OF TRI-CO CONNECTIONS LLC AND CLAVERACK  
COMMUNICATIONS LLC TO NOTICE OF PROPOSED RULEMAKING ORDER**

On September 21, 2020, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued a Notice of Proposed Rulemaking Order to consider revisions to Chapters 53, 63 and 64 of the Commission's regulations.<sup>1</sup> The NOPR Order was published in the *Pennsylvania Bulletin* on April 10, 2021.<sup>2</sup> Tri-Co Connections LLC ("TCC") and Claverack Communications LLC ("CCL") hereby submit these Comments.

**I. INTRODUCTION**

TCC is a wholly-owned subsidiary of Tri-County Rural Electric Cooperative, Inc. ("Tri-County"). In 2018, Tri-County participated in the Federal Communications Commission's ("FCC") Connect America Fund II Auction seeking funding to support the construction of a fiber to the home broadband network in Tri-County's territory, which serves electric members in

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<sup>1</sup> *Rulemaking to Comply with the Competitive Classification of Telecommunications Retail Services under 66 Pa.C.S. § 3016(a); General Review of Regulations 52 Pa. Code Chapters 53, 63 and 64*, Docket No. L-2018-3001391, Notice of Proposed Rulemaking Order (entered Sept. 21, 2020) ("NOPR Order").

<sup>2</sup> 51 Pa. Bull. 1991 (Apr. 10, 2021).

Bradford, Cameron, Clinton, Lycoming, McKean, Potter and Tioga Counties. TCC was created to offer retail voice and broadband service to customers. TCC obtained its Certificates of Public Convenience from the Commission in 2018 to operate as a Competitive Local Exchange Carrier ("CLEC") and Interexchange Carrier ("IXC").<sup>3</sup> As a condition of receiving the CAF II funding, TCC also became designated as an Eligible Telecommunications Carrier ("ETC") in Pennsylvania. TCC subsequently participated in the FCC's Rural Digital Opportunity Fund ("RDOF") Auction and was awarded funding to support services in several additional census block groups. TCC's modification to its ETC designation to add the census block groups that it was awarded in the RDOF Auction is pending before the Commission. TCC began offering service to retail voice customers in the Fall of 2020, and currently serves 347 voice accounts, most of which combine the unlimited "all distance" voice service and broadband internet service at speeds of 100 MBS or 1 GIG.

CCL is a wholly-owned subsidiary of Claverack Rural Electric Cooperative, Inc. ("Claverack"). Claverack participated in the FCC's RDOF Auction seeking funding for a fiber to the home network to provide high-speed broadband service and voice service in Claverack's rural territory. Claverack/CCL was preliminarily awarded funding support for 32 census block groups in Bradford, Susquehanna and Wyoming Counties. CCL's network also will serve customers in parts of Luzerne, Lycoming and Sullivan Counties. By Order issued on April 15, 2021, the Commission granted CCL's applications for authority to provide CLEC and IXC services in the

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<sup>3</sup> *Application of Tri-Co Connections, LLC for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania as a Competitive Local Exchange Carrier in the Service Territories of: Verizon Pennsylvania LLC; Verizon North LLC; Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company; Frontier Communications of Canton, LLC; Frontier Communications of Oswayo River, LLC; North Penn Telephone Company; and Windstream Pennsylvania, LLC; Docket No. A-2018-3005309 & Application of Tri-Co Connections, LLC for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania as a Detariffed Facilities-Based Interexchange Carrier, Docket No. A-2018-3005312, Order (entered Dec. 6, 2018).*

territory.<sup>4</sup> CCL's petition to be designated as an ETC is pending before the Commission. CCL anticipates that the initial phase of the broadband network construction will be completed in mid-to-late 2022 to enable CCL to begin offering retail services by the end of 2022.

TCC and CCL are relatively new entrants into the Pennsylvania communications and broadband services markets. As such, TCC and CCL can provide input on how the existing regulations correspond with the current marketplace and technologies. Importantly, TCC and CCL can also offer the perspective of new competitive entrants that are developing terms, conditions and pricing for services in Pennsylvania. In this regard, it is important for the regulations to be easily understood and complete. The prior practice of granting incumbent carriers extensive waivers to address competitive offerings does not provide a clear roadmap for new entrants.

TCC and CCL appreciate the Commission's desire to create a level playing field for incumbent and competitive carriers; however, TCC and CCL respectfully submit that distinctions may be appropriate for certain issues, including requirements that are based on the assumption that competitive carriers will provide a "basic" level of stand-alone dial tone or local service that is distinct from their standard voice service option. In addition, TCC and CCL urge the Commission to consider whether the "level playing field" that is seeks to implement will over-regulate competitive carriers due to a perceived need to ensure that incumbent carriers fulfill their

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<sup>4</sup> *Application of Claverack Communications LLC for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania as a Competitive Local Exchange Carrier in the Service Territories of: Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company; Frontier Communications of Canton, LLC; Citizens Telecommunications of New York, Inc. d/b/a Frontier Communications of New York; The North-Eastern Pennsylvania Telephone Company; and North Penn Telephone Company, Docket No. A-2021-3024004 & Application of Claverack Communications LLC for Approval to Offer, Render, Furnish or Supply Telecommunications Services to the Public as a Detariffed Interexchange Carrier Reseller in the Commonwealth of Pennsylvania, Docket No. A-2021-3024006, Order (entered Apr. 15, 2021).*

obligations under Chapter 30. Incumbent carriers and competitive carriers are different and could be subject to different regulations. In fact, Chapter 30 creates such a distinction by defining "protected service" various services "provided by a local exchange telecommunications company unless the Commission has determined the services to be competitive."<sup>5</sup> Similarly, the Commission may need to make changes to deposit, payment and similar regulations that assume the segregation of local service from intrastate long distance, interstate long distance and the features included in the competitive carrier's standard voice service option.

In the current marketplace, customers want bundled service packages that include unlimited local and long-distance service with a set of vertical features such as voice mail, call forwarding, call waiting, etc. Many customers also want their voice bundle to be combined into a voice/broadband bundled service that includes a broadband internet connection at transmission speeds (such as TCC's 100 MBS or 1 GIG symmetrical transmission speeds). The technology that TCC uses to provide these innovated and customer-focused offerings comes with some limitations, primarily in the number of distinct service options that TCC's software and billing vendors can accommodate. As explained in the TCC's Petition for Waiver submitted on September 3, 2020, those limitations prevent TCC from converting a bundled voice product to "basic service" as required in Section 64.24 of the regulations. Nor is "basic service" as contemplated in the Commission's regulations a product that TCC desires to provide.<sup>6</sup>

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<sup>5</sup> See 66 Pa. C.S. §3012 (definition of "protected service").

<sup>6</sup> TCC currently has a "basic residential service" option for Lifeline customers that includes unlimited local and long distance calling, as well as 911 service and telecommunications relay service. The Commission's definition of "basic service" is more limited and requires only local calling, installation, providing and restoring access lines, touchtone service, handling unpaid checks, 911 service, telecommunications relay service and subscriber line service. TCC and CCL can meet their obligations as an ETC without offering the PUC's version of "basic service".

TCC and CCL respectfully submit that neither Chapter 30 nor other provisions in the Public Utility Code authorize the Commission to mandate that a competitive telecommunications carrier provide a specific product option. The Commission can adequately balance the interests of carriers and consumers through its oversight of other aspects of the termination process without requiring the carrier to "unbundle" its service package into a "basic service" offering. TCC and CCL will address this issue and others in these Comments.

## II. COMMENTS

### A. CHAPTER 53

#### 1. Section 53.57 (Definitions)

Chapters 53 and 64 use the terms "joint or bundled service package" and "bundled service package" to describe service offerings that contain multiple services at a single price; however, the definitions in each chapter are different. TCC and CCL recommend that the Commission adopt a single, consistent definition for both chapters of the Commission's regulations. TCC and CCL suggest to use the NOPR's proposed definition in Section 53.57, as modified below. Throughout these Comments, TCC and CCL's additions to the NOPR proposals are reflected in ***bold, italicized and double underlined*** font, while any deleted language is in ~~strikethrough~~ font.

(i) Service packages composed of one or more distinct categories of noncompetitive and competitive services and service options or features, inclusive of toll services, when the service packages are offered by [CLECs] ***competitive telecommunications carriers*** and [ILECs] ***local exchange telecommunications companies*** under a single rate or charge and a unified set of terms and conditions for service as defined in a tariff approved by the Commission, ***product guide or similar document***. ***Service packages may contain services of an affiliate.***

(ii) The term does not include [ILEC] ***local exchange telecommunications company*** or [CLEC] ***competitive telecommunications carrier*** tariff filings that involve simultaneous changes in rates and charges for noncompetitive services in a revenue neutral manner.

The suggested revisions incorporate two concepts. First, as the Commission has recognized, a "product guide or similar document" can be used if a carrier opts to detariff its competitive services. Second, pursuant to Section 1306(e)(2), bundled service packages may include services provided by an affiliate.<sup>7</sup>

## **2. Section 53.58 (Offering of Competitive Services).**

The NOPR modifies portions of Section 53.58 to reflect the most recent version of Chapter 30. TCC and CCL suggest further revisions to more fully reflect the revised Chapter 30, including the presumption that all services provided by a competitive local exchange carrier ("CLEC") or competitive telecommunications carrier are by definition "competitive."

The current version of Chapter 30 presumes that services provided by "alternative service providers" are provided in competition with a local exchange telecommunications carrier.<sup>8</sup> While Section 3016 provides a process for a local exchange telecommunications company (defined as an incumbent carrier) to seek the designation of services as "competitive", it does not include a comparable process for alternative services providers (e.g., CLECs). Significantly, the prior version of Chapter 30 included both ILECs and CLECs in the similar section (Section 3005-repealed). The General Assembly omitted the CLEC process from Section 3016 because the CLEC services are, by their nature and by definition in the current version of Chapter 30, "competitive." If a party wants to change a service from "competitive", it must pursue the reclassification process in Section 3016(c). Moreover, nothing in revised Chapter 30 conditions

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<sup>7</sup> 66 Pa.C.S. §3016(e)(2).

<sup>8</sup> 66 Pa.C.S. §3012.

the presumption that CLEC services are competitive on the competitive or non-competitive status of similar services in the ILEC territory.

TCC and CCL recommend that the Commission revise subsections (a), (b) and (c) to better reflect the new Chapter 30 structure, under which services offered by CLECs are presumed to be competitive. Unlike the current and proposed regulations, the new Chapter 30 does not adopt different processes for a CLEC to modify rates depending on whether the incumbent carrier offers the same services (on a competitive or non-competitive basis). Specifically, the following changes will implement this recommendation:

(a) [ILEC] ~~**A local exchange telecommunication company's protected, retail noncompetitive and retail nonprotected**~~ services that have been declared or determined to be competitive under the relevant provisions of 66 Pa.C.S. § ~~[3005]~~ **3016** (relating to competitive services), may also be offered by [CLECs] **All services offered by competitive telecommunications carriers shall be designated** as competitive services without prior competitive determination and classification by the Commission subject to this section.

(b) Under § ~~53.59~~ (relating to cost support requirements and effective filing dates for tariff filings of noncompetitive services), a [CLEC] ~~**competitive telecommunications carrier**~~ may offer services classified as noncompetitive in [an ILEC] ~~**a local exchange telecommunications company's**~~ service territory when the [CLEC] ~~**competitive telecommunications carrier**~~ has been certificated to offer service.

(~~e~~**b**) [When the Commission approves a CLEC petition under the relevant provisions of 66 Pa.C.S. § 3005 for classification of a noncompetitive service to a competitive service, the ILEC serving that petitioning CLEC's service territory and other certificated CLECs within the petitioning CLEC's service territory may offer the service approved by the Commission as a competitive service subject to this section.] **A local exchange telecommunications company and a competitive telecommunications carrier may declare retail nonprotected services that they offer to enterprise and large business customers throughout their service territories as competitive without first filing a petition with the Commission and making a demonstration of competitiveness.**

In addition, under Chapter 30, the Commission should not specify the types of voice service products offered by competitive telecommunications companies. Proposed Section 53.58(d) requires competitive telecommunications carriers to "file a price list for stand-alone basic residential service" and permits the carrier to "provide rates and terms of basic dial tone service" through a product guide. These requirements appear to dictate that every carrier will offer "basic" service that has no room for variety or innovation. This is antithetical to the goal of promoting product and provider diversity in the Commonwealth.

TCC and CCL recommend the following changes to Section 53.58(d) to better reflect the option of a competitive telecommunications carrier to determine what services it will offer:

**(1) A local exchange telecommunications company and a competitive telecommunications carrier shall file a price list for *its standard stand-alone basic-residential service product.***

**(2) A local exchange telecommunications company and a competitive telecommunications carrier may provide rates and terms of basic dial tone service available through a product guide or similar document on its website in lieu of maintaining a price list or formal tariff with the Commission. The carrier shall maintain an archive of outdated rates, terms, and conditions that were available in a product guide or similar document for a period of four years, and shall remain obligated to provide both current and archived documents to the Commission upon reasonable request.**

**3. Section 53.60 (Supporting documentation for promotional offerings, and joint or bundled service packages)**

TCC and CCL support many of the clarifications that the Commission proposes for Section 53.60. The Section 53.60 procedures are appropriate for promotional offerings and bundled service packages. TCC and CCL respectfully suggest that Section 53.60 would be an appropriate place to also address tariff filings for competitive telecommunications carriers' competitive services. Section 53.59 addresses only tariff filings for noncompetitive services. Although Section

53.58(d) confirms that tariffs do not need to be filed for competitive services, it does not address the content or effective date of supplements if the carrier elects to maintain a tariff. The requirements for tariff filings for competitive services do not appear to be addressed in any other portion of Chapter 53.

Specifically, TCC and CCL submit the following changes for the Commission's consideration:

**§ 53.60. Supporting documentation for competitive services, promotional offerings, and joint or bundled service packages[, and toll services].**

(a) Promotional offerings. [CLECs] **Competitive telecommunications carriers** and [ILECs] **local exchange telecommunication companies** are not required to provide cost support for tariff filings involving a promotional service offering for noncompetitive services so long as the promotional offering does not result in any type of price increase to customers.

(1) [ILEC] **A local exchange telecommunications company** and [CLEC] **competitive telecommunications carrier** tariff filings involving a promotional service offering for noncompetitive services will become effective on 1-day's notice. [ILECs] **Local exchange telecommunications company** and [CLECs] **competitive telecommunications carriers** shall provide a 10-day advance notice to any resellers that purchase the promotional service offering from the [ILEC] **local exchange telecommunications company** or [CLEC] **competitive telecommunications carrier** making the tariff filing.

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(3) [CLECs] **Competitive telecommunications carriers** and [ILECs] **local exchange telecommunications companies** that file promotional service offerings for noncompetitive services under this subsection shall confirm in their filing that subscribers to the promotional service offerings will be required to respond affirmatively at any time the promotional service is being offered if they wish to continue the service beyond the promotional period.

\* \* \* \* \*

(b) *Joint or bundled service packages.* [CLECs and ILECs] **Local exchange telecommunications companies and competitive telecommunications carriers** are not required to provide cost support for tariff filings involving the offering of joint or bundled service packages.

(1) When [ ILEC] **local exchange telecommunications companies offer** joint or bundled service packages that include both competitive and noncompetitive services, these service packages shall meet any applicable State law or regulation regarding cost justification, discrimination and unfair pricing in joint or bundled service package offerings, and their component competitive and noncompetitive services.

(2) The Commission may request relevant documentary support, including cost support, for tariff filings involving local exchange telecommunications companies' joint or bundled services.

(3) No filing requirements exist for the offering of joint or bundled service packages composed entirely of competitive services or those offered by competitive telecommunications carriers.

(4) Tariff supplements or changes to price lists filed for a Bundled Service Package meeting the requirements of paragraph (3) shall take effect on 1-days' notice.

[ (c) *Toll services.* CLECs and ILECs may file tariffs with changes in their rates and charges for existing noncompetitive toll services alone that can become effective on 1-day's notice. A 16-day notice period is required for the filing of a new toll service or the specific noncompetitive services defined in 66 Pa.C.S. § 3008(a) (relating to interexchange telecommunications carrier). For tariff filings and rate changes involving noncompetitive toll services, the Commission may request relevant documentary support, including cost support.]

**(c) *Competitive services. Competitive telecommunications carriers and local exchange telecommunications companies are not required to provide cost support for tariff filings involving competitive services. Tariff filings involving competitive services will become effective on 1-day's notice.***

Alternatively, tariff filings for competitive services could be addressed in a new section. Although the NOPR proposes to eliminate Section 63.104, which addresses disclosure requirements for Interexchange Carrier competitive services, this section contains a very clear and logical statement of the options for setting the terms, conditions and prices for competitive services (*i.e.*, a tariff or a product guide). Replacing "interexchange carrier" with "local exchange telecommunications company" and "competitive telecommunications carrier" will produce a new

regulation adequately addressing the process for changing the terms, conditions and prices for competitive services.

§53.61 Disclosure requirements for competitive services.

(a) A local exchange telecommunications company or a competitive telecommunications carrier may maintain tariffs and file tariff supplements with the Commission that set forth the rates, charges and service description information relating to each of its tariffed competitive services. If a local exchange telecommunications company or a competitive telecommunications carrier files a tariff or a tariff supplement with the Commission for its competitive services, it shall become effective on 1-day's notice.

(b) If a local exchange telecommunications company or a competitive telecommunications carrier chooses to detariff its competitive services, it shall make available for public inspection information concerning the rates, charges, terms and conditions for its competitive services in an easily accessible and clear and conspicuous manner at the following locations:

(1) At its principal office, if it is located within this Commonwealth, or at any local business office of the utility during regular business hours.

(2) At its web site. A local exchange telecommunications company or a competitive telecommunications carrier has the flexibility to structure and present information concerning the rates, charges, terms and conditions for its competitive services on its internet web site in any manner that it chooses, as long as the information is easily accessible to the public.

(c) A local exchange telecommunications company or a competitive telecommunications carrier shall update information concerning changes in rates, charges, terms and conditions for its detariffed competitive services either at its principal office or any local business office within 5 days and on its Internet web site no later than 48 hours after the effective date of the change so it provides the current information concerning service offerings.

(d) A local exchange telecommunications company or a competitive telecommunications carrier that chooses to detariff its competitive services shall disclose to customers their right to request information concerning the rates, charges, terms and conditions for its competitive services and shall provide contact information for this purpose.

(e) This section supersedes Chapter 53 (relating to tariffs for noncommon carriers) to the extent that Chapter 53 is inconsistent with this section.

## B. CHAPTER 63

### 1. Section 63.15 (Complaint procedure)

The NOPR includes two primary modifications to Section 63.15—(1) clarifying that both service and billing complaints are included in the regulation; and (2) adding a section regarding "automatic customer transfers" of customer complaint calls from the Commission's Bureau of Consumer Services to a carrier's customer service representative.

The Commission's Order categorizes the automatic customer transfer as an optional process for telecommunications carriers.<sup>9</sup> The new automatic customer transfer subsection could be interpreted as requiring every company to facilitate the automatic transfers and the web interface for coordination with the Bureau of Consumer Services. While TCC and CCL are interested in exploring this option and gaining a better understanding of the Commission's expectations for this type of process, the companies cannot commit to implement the automatic customer transfers or the automated electronic data interfaces at this time. TCC and CCL suggest the following modifications to subsections (a) and (b) to confirm that the program is optional for carriers:

#### **§ 63.15. Complaint procedures.**

**(a) Automatic Customer Transfer. A public utility subject to this chapter may voluntarily enter into an agreement with the Bureau of Consumer Services of the Commission to implement automatic customer transfers and/or to establish other automated electronic processes for customer complaints. Upon the receipt of a customer complaint related to service or billing, the Bureau of Consumer Services of the Commission can seek to immediately and contemporaneously transfer the customer to a public utility for resolution to address the inquiry or service complaint in the following manner:**

**(1) The transfer will occur with the customer's explicit consent.**

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<sup>9</sup> See NOPR, p. 36.

**(2) The transfer will be made to a live public utility operator or customer service representative.**

**(3) The public utility shall maintain a dedicated toll-free telephone number for the automatic customer transfer process.**

**(4) In the event that the customer inquiry or service or billing complaint cannot be resolved, it will be referred back to the Bureau of Consumer Services of the Commission for resolution in accordance with the provisions of subsection (c).**

**(5) The Bureau of Consumer Services of the Commission and participating public utilities may establish automated electronic communication links, electronic data interfaces, or appropriate web page access, for the exchange of information and data in the automatic customer transfer. These links shall be used only by authorized Commission and public utility personnel and shall safeguard the customer's personal data and billing information from public disclosure.**

**[(a)] (b) Investigations. [A] If the customer or the public utility declines to participate in automatic customer transfer resolution process set forth in subsection (a) above, the public utility shall make a full and prompt investigation of service or billing complaints made to it through the Commission by its customers or third parties. Upon receiving a service or billing complaint from a customer of a utility, the Commission will transmit a summary of the service complaint to the utility. If a service or billing complaint is resolved, the utility may terminate the investigation by submitting or transmitting a copy of the service order which identified the action taken by the utility to resolve the service or billing complaint. When complaints are referred to the public utility through the Commission, the public utility and the Commission shall work to process and resolve all complaints.**

## **2. Sections 63.20 (Line extensions) and 63.24 (Service interruptions)**

The Commission did not propose any modifications to Sections 63.20 or 63.24 in the NOPR. In reviewing Chapter 63, both sections discuss topics that should be specified in a carrier's tariff. Because competitive services can be detariffed and addressed in a product guide or similar document, TCC and CCL suggest to add "product guide or similar document" to Sections 63.20(b) and 63.24(b)(4).

### **3. Section 63.51 (Purpose)**

The NOPR proposes to update Section 63.51, which states the purpose of Subchapter E, Telecommunications Quality of Service Standards. The existing language in this section discusses "regulated simple residential or business voice grade services offered by a public utility as defined in § 63.1 (relating to definitions)." Section 63.1 does not include a definition for this term. TCC and CCL recommend that the Commission develop an appropriate definition or other changes to Section 63.51 for consideration and comment by interested parties.

### **4. Section 63.54 (Record retention)**

Section 63.54(b) of the NOPR proposes new record retention requirements for service records associated with call answering times, service complaints and trouble reports, surveillance level investigations and service outages. Specifically, the Commission proposes a five (5) year record retention requirements for these items. The NOPR suggests that Section 1509 of the Public Utility Code supports the changes to Section 63.54.<sup>10</sup>

TCC and CCL respectfully question whether Section 1509 provides an adequate basis for a five year retention period as proposed in Section 63.54(b). Section 1509 addresses billing procedures, not the various customer service issues that are to be monitored and retained in the revised Section 63.54(b).<sup>11</sup> Nor does Section 1509 specify any retention period.

TCC and CCL do not object to retaining the service records for a reasonable time period. TCC and CCL suggest that the Commission adopt a three (3) year retention period for Section

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<sup>10</sup> See NOPR Order, p. 50.

<sup>11</sup> See 66 Pa. C.S. §1509.

63.54(b). This period will be sufficient for the Commission or a customer to request prior service information if needed for any reason.

#### **5. Section 63.57 (Customer trouble reports)**

The NOPR indicates that the proposed changes to Section 63.57 are intended to provide carriers and customers with more flexibility to address customer trouble reports.<sup>12</sup> Although TCC and CCL support the incorporation of additional flexibility to meet customers' needs in all aspects of the regulations, the Commission's consolidation of current subsections (a) and (b) omitted an important exception to the performance metric for this item—namely, the exclusion for isolated weekend outages affecting fewer than 15 customers in an exchange.

Given the complexity of the advance telecommunications' networks, a customer trouble report may indicate problems on the carrier's system or it may indicate problems with the customer's owned equipment (or usage of that equipment). When an isolated complaint is received on a weekend, it is not reasonable to expect the carrier to dispatch technical support for that isolated report.<sup>13</sup> The current regulations recognize that a threshold level of 15 reports in an exchange will trigger the mandatory response requirement. TCC and CCL suggest for the Commission to retain the current weekend exclusion.

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<sup>12</sup> See *NOPR Order*, pp. 52-53.

<sup>13</sup> A carrier may market its willingness to resolve "all customer trouble within 24 hours"; however, the Commission's regulations should not require this performance measure.

(a) **A public utility shall respond to out-of-service trouble reports within 24 hours except for isolated weekend outages affecting fewer than 15 customers in an exchange or unless a different period of time is agreed to by the customer.** [A public utility shall respond to and take substantial action to clear out-of-service trouble of an emergency nature whenever the outage occurs, within 3 hours of the reported outage consistent with the needs of customers and personal safety of utility personnel.

(b) A public utility shall respond to and take substantial action to clear other out-of-service trouble, not requiring unusual repair, within 24 hours of the report, except for isolated weekend outages affecting fewer than 15 customers in an exchange or where the customer agrees to another arrangement.]

## **6. 63.58 (Installation of service)**

The NOPR Order notes that service installation, and, in particular, installation by ILECs that retain the carrier of last resort obligation, is a critical function.<sup>14</sup> TCC and CCL agree that installing service as soon as possible after a customer orders service is extremely important, especially for competitive carriers. Competitive carriers have an intrinsic business and customer service motivation to connect a new customer as soon as possible.

The current regulations in Section 63.58 may be reasonable when a carrier has a fully-constructed network or is relying on UNE or resale strategies to serve customers. TCC is in multiple-year construction program to install the necessary backbone fiber network throughout its territory. CCL hopes to begin network construction in 2022. Once the backbone networks are constructed in a particular area, fulfilling a customer order for new service may continue to require additional construction from the backbone to the customer's premises. In some situation, the customer drop will be installed underground, which will require coordination of facility locations with other utilities through the 811 PA ONE CALL process. TCC and CCL wish that every service

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<sup>14</sup> NOPR Order, pp. 54-55.

installation order could be fulfilled within five working days; however, the reality of constructing a facilities-based network makes that an unattainable goal.

The current regulations recognize that construction may delay connection of service. TCC and CCL request that the Commission include this language in the final version of Section 63.58 as follows:

**§ 63.58. Installation of service.**

(a) ~~Ninety-five percent of a public utility's primary service order installation shall be completed within 5 working days of receipt of an application [unless a later date is requested by the applicant or when construction is required]~~ **or unless the customer agrees to a later date or when construction is required.**

(b) ~~Ninety percent of a public utility's nonprimary service orders shall be completed no later than 20 days of receipt of an application unless a later date is requested by the applicant. If the utility company is unable to fill a nonprimary service order within the requisite time, the utility shall so inform the applicant and provide the applicant with the date nonprimary service will be available.]~~ **Ninety percent of a public utility's nonprimary service orders shall be completed no later than 20 days of receipt of an application unless the customer agrees to a later date or when construction is required. If the utility company is unable to fill a nonprimary service order within the requisite time, the utility shall so inform the applicant and provide the applicant with the date nonprimary service will be available.**

(c) Ninety percent of a public utility's commitments to applicants as to date of installation of service orders shall be met, except for applicant-caused delays, adverse weather conditions and other supervening causes beyond the utility company's control.

**C. CHAPTER 64**

**1. Section 64.2 (Definitions)**

The NOPR proposes various changes to the definitions applicable to Chapter 64. TCC and CCL suggest that the Commission consider additional changes to the definition of "bundled service package." As previously discussed, Section 53.57 also contains a definition of "joint or bundled service package". There appears to be no legal distinction between the packages that are addressed

in Chapter 53 and those addressed in Chapter 64. As a result, TCC and CCL recommend to adopt a consistent definition for both Chapters. TCC and CCL provided a recommended consolidation of the two definitions in the prior discussion of Section 53.57.

## **2. Section 64.12 (Due date for payment)**

The NOPR appropriately updates Section 64.12 to address electronic bills that may be generated rather than paper bills. TCC and CCL suggest that a further modification is appropriate because electronic bills will be "transmitted" to the customer, rather than being mailed. Specifically, the introductory paragraph of Section 64.12 could be modified as follows, "The due date for payment of a 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 ~~mailing~~ **the bill is issued** by the LEC to the customer."

## **3. Section 64.13 (Billing frequency)**

The Commission proposed to incorporate the potential electronic billing process in Section 64.13. TCC and CCL also suggest to incorporate the following language at the end of this regulation to reflect the option to detariff competitive services: ", product guide or similar document posted on the LEC's website."

## **4. Section 64.14 (Billing information)**

The NOPR proposes to delete subsections (b) and (d) from Section 64.14. TCC and CCL do not object to deleting those subsections. TCC and CCL suggest two additional changes to Section 64.14.

First, subsection (a) should be modified to better reflect the bundled service packages that many carriers offer. The Commission adopted Section 64.24 to address bundled service packages, which indicates that bundled service packages are exempt from Sections 64.14 (a)(4) and (5).

Because bundled service packages have become a standard product option, TCC and CCL respectfully suggest that subsection (a) should specifically incorporate the exemptions for bundled service packages. Subsection (a)(5) recognizes that toll services may not need to be itemized when it is unlimited or part of a bundled service package. Subsection (a)(4) should also recognize that the amount due for "basic service" does not need to be itemized if the customer purchases a bundled service package. The following can be added to the end of subsection (a)(4): ", unless the customer subscribes to a bundled service package."

Second, Section 64.14(c) seems unnecessary in the current telecommunications marketplace, where customers purchase "all-in" bundled service. TCC and CCL recommend to delete the existing subsection (c).

#### **5. Section 64.17 (Partial payments for current bills)**

The Commission's current regulations exempt bundled service packages from Section 64.17. Consistent with the previous discussion of billing information, TCC and CCL suggest to incorporate the carveout for bundled service packages in Section 64.17(b) by adding the following at the end: "or when the customer purchases a bundled service package."

#### **6. Section 64.18 (Application of partial payments between past and current bills)**

Like Section 64.14(a)(4) and (5) and Section 64.17, the Commission previously determined that bundled service packages would be exempt from Section 64.18. TCC and CCL suggest to incorporate this exemption into the text of Section 64.18. This could be accomplished by deleting "basic" from in front of "service" in the provision.

#### **7. Section 64.24 (Provision of bundled service packages)**

As previously discussed, bundled service packages are now a standard competitive offering to customers. In the decade since the Commission adopted Section 64.24 to address bundled

service packages, the Commonwealth has witnessed the further development of facilities-based communications competition offered through digital cable and fiber networks.

The development of facilities-based competition means that the products offered by communications carriers are no longer tethered to those that would be offered by the incumbents—competitive entrants are no longer relying primarily on unbundled network elements ("UNEs") or resale strategies to compete. Carriers like TCC and CCL will rely on networks and technologies that are designed to offer the high-speed, low latency transmissions that will spread the benefits of broadband to rural areas of the Commonwealth.

The Commission's regulations, including Section 64.24, incorporate a "basic service" product that TCC and CCL may not desire to offer. "Basic service" is defined as "[t]he transmission of messages or communications by a telephone device between points within a local calling area as established in the tariff of a LEC, including installation service, providing and restoring access lines, touch tone service and handling of unpaid checks" as well as "charges for 911 service, telecommunications relay service and subscriber line service, but does not include premises visits for installation of new service." Essentially, "basic service" appears to be an all-distance unlimited voice bundled service package stripped of its features (e.g., voice mail, call waiting, etc.) and long-distance services.

Because TCC is building its retail telecommunications and broadband business "from the ground up", it needed to work with vendors on the software and billing systems that it uses. As explained in the Petition for Waiver that TCC filed on September 3, 2020, TCC determined that technical limitations prevent it from converting a bundled service package into stand-alone basic

service.<sup>15</sup> Implementing and coordinating the computer coding for both billing and customer service provisioning are critical steps to TCC's provision of its voice service product. In the process of finalizing these arrangements, TCC's vendors had limits on the number of steps that can be included in the payment delinquency and termination process. Those limits will not facilitate TCC taking the interim step of converting the delinquent account to basic service if the customer submits a partial payment after the initial delinquency on the bundled service package payment. Due to this technical development, TCC respectfully requested that the Commission waive the requirement under Section 64.24(c)(1). TCC's waiver request remains pending, nearly 9 months after it was submitted.

TCC and CCL recognize that the Commission determined that it would not waive the "basic service" conversion process for Verizon.<sup>16</sup> In addition, the Commission considered the conversion of bundled service packages into basic service in 2009 when it adopted Section 64.24 of the regulations.<sup>17</sup> Due to the changes in the competitive landscape and markets since 2009, TCC and CCL respectfully urge the Commission to reconsider this decision and to eliminate Section 64.24(c) for all telecommunications carriers. At a minimum, the conversion to basic service should be limited to incumbent local telecommunications companies that have the obligation to offer "protected services" under Chapter 30.

First, bundled packages are competitive offerings. The Commission has the authority under Section 3019(b)(2) to establish standards for suspension and termination of service for all

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<sup>15</sup> *Petition of Tri-Co Connections LLC for Waiver of 52 Pa. Code § 64.24(c)(1)*, Docket No. P-2020-3021755, Petition filed on Sept. 3, 2020.

<sup>16</sup> NOPR Order, pp. 73-74.

<sup>17</sup> *Rulemaking re: Provision of Basic Service in Bundled Service Package Plans by Local Exchange Carriers*, Docket No. L-00060179, Final Rulemaking Order (entered Mar. 27, 2009), Final Rulemaking Order on Reconsideration (entered Dec. 23, 2009),

telecommunications services; however, the Commission must "take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand."<sup>18</sup> The intervening 11 years since the bundled service package rulemaking have witnessed the emergence of additional competitive options, especially facilities-based carriers. Facilities-based carriers have a greater incentive to work with payment-troubled customers to retain them as customers because of the substantial fixed-cost investment in the facilities-based network. If the Commission eliminates Section 64.24(c), bundled service packages will remain subject to the other regulations that address service suspension and termination. Eliminating Section 64.24(c) removes an extra step that is imposed on bundled service packages.

Second, wireline telecommunications services face even greater competition from wireless and cellular carriers. According to the Pew Research Center, 97% of Americans own a cell phone as of 2021, an increase from approximately 85% in 2009.<sup>19</sup> Consumers are accustomed to telecommunications arrangements that do not contain an interim "conversion to basic service" step prior to termination for non-payment, such as cell phones. Requiring the extra step places PUC-jurisdictional telecommunications carriers at a competitive disadvantage and is not consistent with the service expectations for the non-regulated telecommunications industry.

Third, for alternative service providers (i.e., competitive telecommunications carriers or CLECs), the current regulation mandates that the carrier offer a "basic service" product that matches the legacy offering of the incumbents. This requirement was more appropriate when competitive carriers were relying heavily on UNEs or resale facilitated by the incumbents;

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<sup>18</sup> 66 Pa. C.S. § 3019(b)(2).

<sup>19</sup> *Mobile Factsheet*, Pew Research Center (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/mobile/> (last accessed May 23, 2021).

however, as previously explained, the facilities-based networks that currently are being deployed require software and billing system designed by the competitive carrier. TCC and CCL respectfully submit that Chapter 30 does not authorize the Commission to require alternative service providers to provide a specific product to customers, especially one that mirrors the legacy incumbent product. As reauthorized and revised in 2004, Chapter 30 promotes innovation and competitive entry. The Declaration of Policy recognizes the benefits that will be produced for consumers, schools, hospitals and businesses by promoting advanced services and broadband networks.

Finally, although the Commission previously stated that it would consider requests for waiver of Section 54.24(c), a waiver process can be lengthy and does not provide the certainty that new entrants need. TCC and CCL urge the Commission to recognize the current market expectations and technology by eliminating the "conversion to basic service" step in addressing non-payment situations for bundled service packages, especially those provided by competitive telecommunications carriers.

#### **8. Section 64.32 (Credit standards)**

Section 64.32 provides multiple ways for a customer to demonstrate sufficient creditworthiness so that a deposit is not needed, including prior payment history with the carrier and prior utility payment history. Section 64.32(2) states that the customer can avoid a deposit by verifying that it owns real estate or is renting a residence under a lease of 1 year or longer; provided, however, that this option is only available if the customer does not have an unsatisfactory payment history with the carrier within the last two years. For newly-established carriers, a prior payment history for telecommunications services may not be available. TCC and CCL respectfully submit that prior unsatisfactory payments for other utility services should also be considered in whether

the subsection (2) exemption is applicable. Specifically, the following can be added at the end of subsection (2): "or as a utility customer as described in paragraph (3)."

**9. Section 64.35 (Deposit requirements for existing customers)**

Section 64.35 specifies the deposit requirements for existing customers. As currently drafted, this regulation is subject to multiple interpretations of the process and timeline for a carrier to implement a deposit for an existing account:

<b>Scenario 1</b>	<b>Scenario 2</b>
Customer 1 <sup>st</sup> late payment	Customer 1 <sup>st</sup> late payment
Written notification that further late payments will result in deposit request	Customer 2 <sup>nd</sup> late payment
Customer 2 <sup>nd</sup> late payment	Written notification that further late payments will result in deposit requirement
Request for deposit issued to customer	Customer 3 <sup>rd</sup> late payment
	Request for deposit issued to customer

TCC and CCL believe that Scenario 1 is permissible under the current regulation. If it is not, then TCC and CCL respectfully request that the Commission modify Section 64.35 to confirm that the deposit request can be issued after the second late payment, as long as the notice is issued between the 1<sup>st</sup> and 2<sup>nd</sup> late payments.

**10. Section 64.36 (Method of making deposit)**

Section 64.36 specifies how the deposit will be calculated for existing and new customers. The regulation also addresses methods for the applicant or customer to meet the deposit requirement. TCC and CCL suggest two modifications to this section.

First, TCC and CCL recommend that the amount of the deposit can be calculated based on the existing method or based on two months of the cost for the customer's bundled service package. This is consistent with TCC and CCL's prior comments regarding situations where competitive carriers do not provide "basic service" and separately-charged toll service.

Second, TCC and CCL urge the Commission to consider an alternate method for customers to meet the deposit requirement. Specifically, in many industries customers are willing to authorize automatic charges to their credit card to provide the vendor with payment assurance. In the spirit of modernization, TCC and CCL recommend that the Commission add this option to the regulation.

**§ 64.36. Method of making deposit.**

[An] A LEC's request for deposit may be satisfied by one of the following:

(1) *Posting a cash deposit.* The following conditions apply:

(i) *Applicants.* The amount of cash deposit required from an applicant may not exceed the estimated average 2-month bill for basic service plus the average 2-month toll charges for existing residential customers in the applicant's exchange during the immediately preceding 12-month period *or two months of service charges for a bundled service package.* Deposits may be adjusted to maintain a level equal to the estimated average 2-month bill. No more than one half of the deposit amount may be required prior to the providing of service by the utility with the balance of the deposit due no less than 30 days from the initial deposit payment.

(ii) *Existing customers.* The amount of a cash deposit required from an existing customer may not exceed the customer's average 2-month bill, including toll charges, during the preceding 12-month period *or two months of service charges for a bundled service package.* Deposits may be adjusted to maintain a level equal to the average 2-month bill. The deposit shall be paid within 20 days of the request for deposit.

(2) *Furnishing a written third-party guarantee.* Another customer who has met or can meet the credit standards of § 64.32 (relating to credit standards) may furnish a written guarantee to secure payment in an amount equal to the cash deposit required from the applicant or customer. The guarantor shall be discharged when the applicant or customer meets the terms and conditions of § 64.37 (relating to refund of deposits).

*(3) Authorizing monthly automatic payments to a credit card. The LEC may offer applicants and existing customers the option to authorize automatic monthly bill payments via a credit card charge.*

### **11. Section 64.37 (Refund of deposits)**

Section 64.37 discusses when a cash deposit will be returned to a customer. The LEC must return the deposit "[a]fter a customer has paid bills for service for 12 consecutive months without having service suspended or terminated and without having paid bills subsequent to the due date on more than two occasions . . .".

In effect, Section 64.37 establishes a standard for the deposit to be returned that is more lenient than the standard for imposing the deposit in Section 64.36. Section 64.36 authorizes the LEC to request the deposit once two late payments are made. Section 64.37 enables the LEC to continue the deposit only if three late payments are made in the 12-month period. TCC and CCL respectfully submit that the standard to maintain a deposit should be equivalent to the standard to impose the deposit—if two late payments occur, then the deposit should not be refunded. Section 64.37(2) should be modified to require the return of the deposit "[a]fter a customer has paid bills for service for 12 consecutive months without having service suspended or terminated and without having paid bills subsequent to the due date on more than ~~two occasions~~ one occasion . . .".

### **12. Section 64.38 (Application of deposit to bills)**

Section 64.38 allows the customer to elect for the deposit to be applied to reduce the bills for service rather than receiving a cash refund. TCC and CCL view the application of the deposit as a bill credit to offset charges as the most efficient method for both the carrier and the customer to facilitate the return of cash deposits. TCC and CCL suggest to modify Section 64.38 provide carriers with the option to return a deposit via bill credit. The changes to implement this recommendation are as follows:

Once the conditions in Section 64.37 have been satisfied, the LEC shall apply the deposit to reduce future bills for service or issue a cash refund to the customer, as specified in the LEC's tariff, product guide or similar document on the LEC's website. The customer may elect to have a deposit applied to reduce bills for [telephone] telecommunications service instead of a cash refund.

### **13. Section 64.53 (Discontinuance of service)**

Many of the current technologies require the carrier to install equipment in the customer's premises to receive service. The current regulation addressing the customer's obligations to provide notice and be responsible for charges until service is discontinued do not reference the customer's obligation to return the carrier's equipment. TCC and CCL suggest to update Section 64.53 to address the potential fees if equipment is not returned in good condition.

A customer who wishes to have service discontinued shall give at least 5 days oral or written notice to the ~~telephone company~~ LEC, specifying the date on which it is desired that service be discontinued. The customer shall retain responsibility for service and equipment charges until the day and time on which service is requested to be discontinued. The customer also shall be responsible for any charges, fees or penalties for failing to return the equipment in good working condition, as specified in the LEC's tariff, product guide or similar document. If the customer fails to provide the LEC with proper notice or access to the premises, the customer shall continue to be responsible for equipment and service rendered.

### **14. Section 64.61 (Authorized suspension of service)**

In today's environment, the telecommunications system is occasionally used for abusive, illegal or fraudulent activity. In those instances of abuse, LEC's should have the option to suspend or terminate service to a dwelling. Section 64.61(7) permits suspension for violations of tariff provisions that threaten the safety of a person or the integrity of the service delivery system. TCC and CCL recommend that this section also recognize the ability to suspend service to prevent other types of abusive or illegal activities. Specifically, Section 64.61(7) can be revised as follows:

Violation of tariff provisions on file with the Commission so as to threaten the safety of a person or the integrity of the service delivery system of the LEC, *or to otherwise threaten, intimidate or harass a person or engage in other illegal activity.*

#### **15. Section 64.63 (Unauthorized suspension of service)**

Similar to current Sections 64.14, 64.17 and 64.18 discussed previously, Section 64.63 contains provisions that the Commission has previously determined to waive for bundled service packages. Specifically, subsection (1) and (2) are not applicable to bundled service packages. Consistent with TCC and CCL's prior comments that bundled service packages should be addressed in the primary regulations rather than a separate regulation declaring certain items inapplicable, TCC and CCL suggest to add ", except where the LEC offers only bundled service packages" at the end of subsection (1) and "and the service is not a bundled service package" at the end of subsection (2).

#### **16. Section 64.123 (Termination notice)**

One of the Commission's goals for the NOPR is to update the regulations for current markets and practices. TCC and CCL suggest two changes to Section 64.123 to modernize the regulation.

First, the regulation states that the termination notice "shall be mailed to the customer's billing address". TCC and CCL recommend to revise this requirement to state that the notice shall be mailed "or transmitted" to the customer. This will reflect the electronic delivery of notices and other communications that is standard in today's industry.

Second, subsection (1) requires the termination notice to include "[t]he amount past due for basic service which the customer shall pay to avoid the termination of basic service." As

previously discussed, competitive carriers may not provide the "basic service" as referenced in this subsection. TCC and CCL recommend to delete "basic" in the two instances where it occurs in this subsection.

#### **17. Section 64.153 (Commission informal complaint process)**

The NOPR incorporates new requirements in Section 64.153 regarding the automatic customer transfer process between a carrier and the Commission's Bureau of Consumer Services. TCC and CCL previously addressed this issue in the comments regarding Section 63.15. TCC and CCL also question whether the new process should be specified in both Chapter 63 and Chapter 64, or whether a single reference is more appropriate.

#### **18. Section 64.191 (Public information)**

Section 64.191 specifies certain information that must be disclosed to applicants for residential service. Subsections (a) and (b) reference the "least expensive single party basic service" and the "least expensive type of single party basic service." As previously discussed, some LECs may not provide "basic service" as contemplated in this regulation. TCC and CCL suggest to modify these references to "the least expensive type of service for which the applicant is eligible."

#### **19. Section 64.201 (Reporting requirements)**

The NOPR proposes several modifications to the periodic reporting requirements for LECs. TCC and CCL support the Commission's goal to minimize the reporting obligations for competitive carriers. TCC and CCL respectfully suggest that additional modifications are necessary to meet the Commission's goal.

Revised Chapter 30 authorizes the Commission to address affiliate transactions, safety, adequacy, reliability, privacy, ordering, installation, suspension, termination and restoration of service.<sup>20</sup> Several of the reporting requirements in Section 64.201 do not implicate the areas over which the Commission retains jurisdiction—namely, the average residential customer bill per month (subsection (b)(2)), the average overdue residential customer bill per month (subsection (b)(4)), gross write-offs of uncollectible residential accounts (subsection (b)(9)) and net write-offs of uncollectible residential accounts (subsection (b)(10)). TCC and CCL urge the Commission to reduce the regulatory burden on carriers by eliminating the enumerated unnecessary reporting requirements.

In addition, although the NOPR proposes to reduce the burden on LECs to report various sub-categories of revenues for residential service, the NOPR uses the term "basic service" to describe what will be reported. Consistent with the prior discussion of competitive carriers' ability to offer services that are not "basic service" as defined in the regulations, TCC and CCL encourage the Commission to modify the remaining portions of Section 64.201 to replace "basic service" with "telecommunications service".

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<sup>20</sup> 66 Pa. C.S. § 3019(b)(1) and (2).

### III. CONCLUSION

Pennsylvania is on the cusp of a new phase of telecommunications deployment and competition. TCC, CCL and other carriers are developing advanced broadband networks to bring new services and innovation to rural areas of the Commonwealth. The Commission's effort to modernize, streamline and simplify its regulations is an important part of moving Pennsylvania into the next phase of competition. TCC and CCL appreciate the opportunity to provide input and encourage the Commission to modify its proposed regulations consistent with the foregoing comments.

Respectfully submitted,

*Pamela C. Polacek*

By \_\_\_\_\_

Pamela C. Polacek (PA ID. No. 78276)  
Chief Legal and Regulatory Officer  
C&T Enterprises, Inc.  
P.O. Box 129  
Venetia, PA 15367  
Phone: (570) 724-9469; (717) 503-6531(c)  
ppolacek@ctenterprises.org

Counsel to Tri-Co Connections LLC and Claverack  
Communications LLC.

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