

## Comments of the Independent Regulatory Review Commission



### Pennsylvania Public Utility Commission Regulation #57-331 (IRRC #3297)

#### **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 53, Chapter 63 and Chapter 64**

**July 23, 2021**

We submit for your consideration the following comments on the proposed rulemaking published in the March 20, 2021 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA)(71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Public Utility Commission (PUC) to respond to all comments received from us or any other source.

#### **1. Reasonableness of the regulation; Whether acceptable data is the basis of the regulation; and Possible conflict with statute.**

In the Preamble to the proposed regulation, the PUC explains that it is initiating this proposed rulemaking to respond to changes in competitive market conditions in the telecommunications industry. The proposal, in particular, is intended to address whether regulations that were temporarily waived due to Verizon's competitive reclassification warrants the elimination of certain regulations applicable to jurisdictional telecommunications carriers in both competitive and noncompetitive areas. In addition, the PUC emphasizes that this rulemaking is not "just the adjunct to their ANOPR." It is, more importantly, the PUC's responsible exercise of regulation over utilities subject to its jurisdiction and those consumers who rely on that jurisdiction. The PUC asserts that even as the telecommunications market evolves, some matters, especially those involving service and safety, remain paramount. It further explains that it "has endeavored to reduce utility reports and other burdens while still ensuring a meaningful manner of addressing regulated services in order to find the **right balance between relieving utilities of existing burdens while retaining an adequate layer of consumer protections.**" (Regulatory Analysis Form #10) (RAF) [Emphasis added].

While not all commentators agree with the PUC's approach, there is consensus that this review of the regulatory provisions of 52 Pa. Code Chapters 53 (Tariffs for Noncommon Carriers), 63 (Telephone Service) and 64 (Standards and billing practices for residential telephone service) is much needed and long overdue. Commentators expressed viewpoints ranging from the proposal does not go far enough in eliminating outdated and overly prescriptive rules to concerns that it goes too far in removing important consumer protection provisions.

The PUC explains that it is not proposing a bifurcated system of regulations that may be separately applicable to competitive and noncompetitive wire centers or geographic areas. Rather it proposes “that all retained regulations will continue to remain applicable in all areas and not in a bifurcated fashion that differentiates between competitive and noncompetitive areas.” While it approved a two-tiered regulatory structure for the Verizon competitive and noncompetitive wire centers in the *Reclassification Order*, it concludes that such an approach is not workable as a permanent, industry-wide solution.

It goes on to state that “[H]aving endeavored to balance the burdens and benefits of each regulation, and to propose amendments that reduce regulatory burdens while also factoring in the separate consideration of modernizing our regulations where we can irrespective of any competitive analyses, we believe a one-tier, even-handed approach affords our utilities relief in a fashion that is manageable for both them and our staff while erring, where necessary, on the side of consumer protection.”

Commentators assert that the PUC’s proposal, which retains a large portion of its existing regulations, makes only minor changes and “falls short of bringing about meaningful change. In this regard, some commentators argue that the proposed rulemaking does not comply with the statutory directive of Chapter 30 of the Public Utility Code. They contend that the statute requires the PUC to reexamine the scope of and necessity for its regulation of voice services, to “review and revise” its rules, “tak[ing] into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand,” and to reduce “the regulatory obligations” imposed on those telephone companies that it still regulates to levels more consistent with those imposed upon competing alternative service providers.” 66 Pa.C.S. §§ 3011(13) and 3019 (b)(2).

The PUC’s approach to “redlining” existing regulations and reinstating a number of waived regulations, they say, does not fulfill its statutory obligation as discussed above. It is their belief that the PUC must presume elimination of all its rules and justify each new rule under Act 183 of 2004.

Commentators point out that the proposal lacks data or a comparative analysis to justify increasing regulation. Moreover, they maintain that competition has evolved to the point where regulations are largely unnecessary and, in fact, harmful. They point to the continued downward trend of the incumbent local exchange carrier (ILEC’s) share of the voice market as evidence that the “regulatory resolve” to create competition has been successful. This should be the compelling factual basis needed to reduce the regulatory burdens on the ILECs. Commentators observe that even with a streamlined set of regulations, the PUC retains its statutory authority over service quality and customer interactions for regulated services under 66 Pa. C.S. § 1501.

We ask the PUC to explain the reasonableness of its approach in determining what regulations were needed and how it comports with Chapter 30 of the Public Utility Code.

In addition, the proposal contains a statement submitted by PUC Chairperson Gladys Brown Dutrieuille indicating her support for revising the regulations. Her statement also includes

additional questions to which she requests more input, including on the proposed language, as the PUC moves forward. Listed below are a few examples of the nine questions contained in the statement:

To 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?

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?

Should 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?

Commentators not only provided feedback on the proposed regulatory language, but most submitted reply comments and provided responses to the Chairperson's questions. We believe the PUC should have posed the nine questions to the regulated community, accepted comments on those questions, drafted a proposed rulemaking based on the feedback received, and then commenced the formal rulemaking process. It is unclear whether or not the PUC will be considering the responses to these questions for a future rulemaking or if they are intended to help formulate the final version of this rulemaking. If it is the latter approach, the regulated community, the designated standing committees and IRRC will not have an opportunity to comment on any changes that are the result of that feedback. We recommend that an Advance Notice of Final Rulemaking be developed and shared with commentators. This would allow the regulated community and interested parties to provide feedback on the language that may become a permanent regulation.

## **2. Determining whether the regulation is in the public interest; and Compliance with the RRA.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 p.s. § 745.5(a)).

The information contained in the Regulatory Analysis Form (RAF) is not sufficient to allow this Commission to determine if the regulation is in the public interest. RAF #15 requires the promulgating agency to identify the types and number of persons, businesses, small businesses and organizations which will be affected by the regulation. The PUC's response does not include an estimate of how many of the affected providers are small businesses. An estimate of the number of the small businesses subject to the regulation should be included in the RAF to the final-form regulation.

Also, the PUC should provide a revised response to RAF #29, which sets forth a schedule for review of the regulation, when it submits the final rulemaking.

### **Chapter 53. Tariffs for Noncommon Carriers Tariff Filing Requirements for a Local Exchange Telecommunication Company and a Competitive Telecommunications Carrier**

#### **3. Section 53.57. Definitions. — Clarity.**

*“Joint or bundled service packages”*

The PUC should adopt a definition for the term *“joint or bundled service package”* that is consistent with *“bundled service package”* contained in § 64.2 (relating to Definitions).

#### **4. Section 53.58. Offering of competitive services. — Clarity; and Possible conflict with statute.**

*Subsections (a), (b) and (c)*

Commentators suggest that revisions to these subsections should 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.” They assert that the legislature omitted the CLEC process from Section 3016 because the CLEC services are, by their nature and definition, “competitive.” If a party wants to change a service from “competitive,” it must pursue the reclassification process in Section 3016(c). Moreover, they say, nothing in Chapter 30 conditions the presumption that CLEC services are competitive on the competitive or non-competitive status of similar services in the ILEC territory.

Proposed § 53.58(a) includes a local exchange telecommunications company's “protected services” that have been declared or determined to be competitive. But, the proposed definition of *“protected service,”* under § 53.57 (relating to Definitions), states that it is a service that has not been determined to be competitive. The PUC should revise this section to make it consistent with the definition of *“protected service”* or explain why it is unnecessary to do so.

*Subsection (d)*

Proposed subsection (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. A commentator asserts that these requirements appear to mandate that every carrier will offer basic service leaving no room for variety or innovation. This, they claim, is opposite to the goal of promoting product and provider diversity in the Commonwealth. The commentator further explains that technology they use to provide these innovative and customer focused offerings comes with limitations, primarily in the number of distinct service options that their software and billing vendors can accommodate. These limitations prevent companies from converting bundled voice products to “basic service” as required in Section 62.24 of the regulation. Therefore, the commentator recommends that in paragraph (1) “stand-alone basic” be replaced with “its standard residential service product.” In paragraph (2), they suggest deleting “basic dial tone.”

Commentators representing the interests of consumers oppose the removal of the requirement for informational tariffs and price lists because it reduces the public’s access to past and current price information for competitively classified services offered by ILECs. They also assert the ability to monitor the competitiveness of the marketplace is diminished.

The PUC proposes in § 53.58(d)(2) to require carriers to 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. The PUC believes this provision will allow it and consumers to “retain reasonable access to the nontariffed provisions.” Is it the intent of the PUC for the archives to be available on carrier websites so the public has access to them? If so, the PUC should specify, in the Annex to the final rulemaking, the location of where the archive is to be housed. It should also describe how the public will access it.

We will review the PUC’s response to each of these concerns raised by commentators as part of our determination of whether or not the regulation is in the public interest.

## **Chapter 63. Telecommunications Service**

### **Subchapter A. General Provisions**

#### **5. Section 63.1. Definitions. — Clarity.**

*“Competitive wire centers” and “Non-competitive wire center”*

These terms are defined in Chapters 63 and 64, but there are wording differences between the definitions in each chapter. The PUC should make certain that the definitions for these terms are consistent with the definitions in Section 64.2.

#### **6. Section 63.15. Complaint procedures. — Clarity; and Need for the regulation.**

The PUC adds new language that will provide all telecommunications public utilities, most particularly the ILECs, the option to participate in a “warm transfer” or similar program for service and/or billing-related disputes made to the PUC’s Bureau of Consumer Services (BCS). All ILECs would have the option to establish a program under which, with customer’s consent, the BCS will be able to automatically transfer customers with service or billing complaints in real time to a live person at the local exchange carrier (LEC) by way of a dedicated toll free

number. Complaints that are not able to be resolved under this procedure will be returned to BCS for processing under other applicable regulations. The PUC states that this option promotes efficiency for both customers and ILECs.

The description provided by the PUC is a general overview of the process and does not provide sufficient detail about the implementation or technical requirements needed to participate. It does not explain how it promotes efficiency for both the customers and ILECs. Commentators characterize this option as burdensome, confusing to customers and resource-sapping. They claim it does not resolve customer issues efficiently because it is more focused on generating reports rather than promptly addressing customer's needs.

A commentator asserts that the proposed language regarding the automatic customer transfer could be interpreted as requiring every company to facilitate the automatic transfers and the web interface for coordination with the BCS. They suggest that subsections (a) and (b) be modified to confirm that the program is optional for carriers. The PUC should provide greater detail pertaining to the process and technical requirements of this section. In addition, it should also describe how the automatic customer transfer option promotes efficiency for both customers and service providers. We will review the PUC's responses to the commentators' issues as part of our determination of whether or not the regulation is in the public interest.

#### **7. Section 63.21. Directories. — Need for the regulation; Compliance with the RRA and its regulations.**

Commentators representing the telecommunications industry and its ancillary services believe the PUC should repeal the directories regulations. They state that “the traditional market is now small enough, and competitive options ubiquitous enough, that no further regulation of any sort is in the public interest.” Commentators state that the current regulations, even in their modest form, create an ongoing cost of compliance, including facing lawsuits and citations for littering for delivering directories in some jurisdictions.

The PUC acknowledges that this regulation may be obsolete for end-user consumers that receive retail services, including protected basic local exchange services in all geographic areas. However, they also note that they are aware that not all end-user consumers or regulated telecommunication services may simultaneously have broadband access to electronic directory information. The PUC proposes to amend this section to codify the temporary waivers of directory distribution and availability that were granted to ILEC and rural ILECs (RLECs) under previous orders. Based on commentator concerns, the PUC should explain in a revised Preamble and RAF to the final-form regulation how the benefits of the regulation outweigh any cost and adverse effects.

In addition, paragraph (3) reads “print directories shall be distributed to consumers who are more likely to use them.” This is nonregulatory language and it should be replaced with a clear, enforceable standard.

**8. Section 63.23. Construction and maintenance safety standards for facilities. — Clarity.**

A commentator suggests that this section be clarified to reference the most recent IEEE National Electric Safety Code rather than “safe and reasonable standards as set forth . . . .” We agree with this suggestion.

**Subchapter E. Telecommunications Quality Service Standards**

**9. Section 63.54. Record retention. — Reasonableness of the requirement.**

A commentator suggests that rather than a five-year period requirement, the PUC should adopt a three-year time frame for retaining records. The PUC should explain its rationale for the time period contained in this section and explain why it is reasonable.

**10. Section 63.57. Customer trouble reports. — Reasonableness of the requirement.**

*Subsection (b)*

A commentator requests that the PUC retain the weekend exclusion contained in this subsection. They assert that it is not reasonable to expect the carrier to dispatch technical support for an isolated report. The existing regulations recognize a threshold level of 15 reports in an exchange in order to trigger the mandatory response requirement. The PUC should explain the rationale for and the reasonableness of removing the existing weekend exclusion from this section.

**11. Section 63.58. Installation of service. — Reasonableness of the requirement.**

A commentator observes that this provision may be reasonable when a carrier has a fully-constructed network or is relying on other strategies to serve customers. For companies that are still in the construction phase of building their network, fulfilling a customer order for new service may require additional construction to the customer’s premises. A commentator asks the PUC to amend this section to account for delays in the installation of service due to construction. The existing regulations provide for this exception. As part of our consideration of whether or not this regulation is in the public interest, we will review the PUC’s response to the commentator.

**Chapter 64. Standards and Billing Practices for Residential  
Telecommunications Service**

**Subchapter B. Payment and Billing Standards**

**12. Section 64.11. Method of payment. — Clarity.**

This section appears to allow the LEC to impose both a returned check charge and a handling charge, in the event of a failed payment transaction. The PUC should clarify the intent of this provision and, if necessary, revise it to be consistent with the intent.

**13. Section 64.12. Due date for payment. — Clarity.**

Commentators recommend that this section be modified to provide for the date of transmittal for bills generated and conveyed to the consumer electronically. We agree with this recommendation.

**14. Section 64.13. Billing frequency. — Clarity.**

The section currently references “in accordance with approved rate schedule.” We agree with the commentator that suggests this section should be amended to reflect the option to detariff competitive services by adding “product guide or similar document posted on the LEC’s website” to the end of the regulation. The PUC should amend this provision to reflect the detariffing option or explain why it is unnecessary to do so.

**Subchapter C. Credit and Deposit Standards Policy**

**15. Section 64.35. Deposit requirements for existing customers. — Clarity.**

This provision, according to commentators, is subject to multiple interpretations of the process and timeline for a carrier to implement a deposit for an existing customer. The PUC should explain the intent of this section and make changes, as needed, to clarify the process and timeline.

**16. Section 64.36. Method of making deposit. — Need for regulation.**

This section specifies how the deposit will be calculated for applicants and existing customers. It also addresses methods for the applicant or customer to meet the deposit requirement.

A commentator recommends that the amount of deposit can be calculated based on the existing method, which provides that the amount of cash deposit required from an applicant may not exceed the estimated average 2-month bill for **basic service**, or based on two months of the cost for the customer’s **bundled service package**. [Emphasis added]. This suggested change, according to the commentator, would address situations where competitive carriers do not provide “basic service” and separately charged toll service.

Additionally, this same commentator urges the PUC to consider an alternate method for customers to meet the deposit requirement such as permitting customers to authorize automatic charges to their credit card to provide the vendor with payment assurance. Currently, the options for applicants and existing customers include posting a cash deposit or furnishing a written third-party guarantee. The PUC’s response to Regulatory Analysis Form (RAF) #26 states that there were no alternative regulatory provisions considered and rejected by the PUC.

The PUC should explain its rationale for and the need for Section 64.36. Should the PUC consider and reject the commentator’s suggestion, it should explain how its approach is in the public’s interest. Finally, it should provide an updated response, if appropriate, to Regulatory Analysis Form question #26, when it submits the final version of the rulemaking.



## **Subchapter E. Suspension of Service**

### **17. Section 64.61. Authorized suspension of service. — Clarity; and Protection of the public health, safety and welfare.**

A commentator states that this section should recognize the ability of the telecommunications service provider to suspend services to prevent other types of abuse, or illegal activities. We will review the PUC's response to the commentator's suggestion in our determination of whether or not the rulemaking is in the public interest.

### **18. Section 64.73. Notice when dispute pending. — Clarity.**

The PUC explains that this section needs to be simplified. It proposes the retention of Sections 64.73 (a) and (b), including their uniform applicability in all geographic areas; and the elimination of the part "except where toll usage exceeds the following usage in a billing period after the filing of the notice of dispute or informal complaint:" and, subsections (1) and (2) of Section 64.73(a). A commentator points out that the description of the amendment does not address existing subsection (3). The PUC should make the necessary edits to clarify this provision.

## **Subchapter I. Public Information; Record Maintenance**

### **19. Section 64.191. Public information. — Clarity.**

#### *Subsection (a) and (b)*

Subsections (a) and (b) refer to the "least expensive single party basic service" option and the "least expensive type of single party basic service." A commentator suggests that "basic service" should be replaced with "of service for which the applicant is eligible" in each subsection since some LECs may not provide "basic service" as contemplated in this regulation. We will review the PUC's response to the commentator's concern in our determination of whether or not the regulation is in the public interest.

#### *Subsection (f)*

Section 64.191(f)(4) refers to the "telephone directory." A commentator suggests that this provision can be deleted as it is no longer relevant given the movement away from saturation delivery of white page directories. We agree with this suggestion.

## **Subchapter J. Annual LEC Reporting Requirements**

### **20. Section 64.201. Reporting requirements. — Need for the regulation.**

#### *Subsection (b)*

The PUC proposes to rescind Section 64.201(b)(11) which requires periodic reporting of the total number of Chapter 64 disputes handled. A commentator submits that this tally is an important measure which should be retained. They assert that tracking the number of Chapter 64 disputes handled is particularly important given the PUC'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 BCS. Retaining this provision will assist in providing useful information regarding the impact of such "warm transfer" arrangements. We ask the PUC to explain the need and rationale for eliminating this periodic reporting.

A commentator states that revised Chapter 30 authorizes the Commission to address affiliate transactions, safety, adequacy, reliability, privacy, ordering, installation, suspension, termination and restoration of service. 66 Pa.C.S. §§ 3019(b)(1) and (2). They assert that several of the reporting requirements contained in this section are outside the jurisdiction of the PUC. Specifically, they request that the PUC eliminate the following reporting requirements: §§ 64.201(b)(2), 64.201(b)(4), 64.201(b)(9) and 64.201(b)(10). The PUC should explain the need for these provisions in a revised Preamble to the final-form rulemaking.

Although they request relief from these reporting requirements, the commentator for reasons discussed previously, notes that the proposal uses the term "basic service" to describe what will be reported. The commentator suggests that where "basic service" appears in § 64.201 (relating to reporting requirements), it should be replaced with "telecommunication services." The PUC should make certain that it is consistent in its use of terms throughout the text of the regulation.

## 21. Miscellaneous.

- We ask the PUC to clarify in § 53.58(d), whether "by the Commission as competitive" should be removed from the bracket and retained so that the amendment reads "**Local exchange telecommunication companies and competitive telecommunications carriers** offering services determined by the Commission as competitive **or declared as competitive . . . .**"
- In § 53.60(b), the "a" after "local exchange telecommunications companies" should be "and."
- In § 64.2 (relating to Definitions), "*competitive wire center*" reads in part ". . . services have been declared or determined to be competitive by the Commission as competitive under 66 Pa. C.S. § 3016 (relating to competitive services)." We suggest that either "to be competitive" or "as competitive" be removed.
- In § 64.11 (relating to Method of payment), the "be" after "set forth" should be deleted in the new language.