

ROBERT M. TOMLINSON
6TH DISTRICT

2533

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Senate of Pennsylvania

- **SENATE BOX 203006
ROOM 362, MAIN CAPITOL BUILDING
HARRISBURG, PA 17120-3006
(717) 787-5072
FAX: (717) 772-2991**
- **2222 TRENTON ROAD, SUITE A
LEVITTOWN, PA 19056
(215) 945-2800
FAX: (215) 945-2808**
- **841 2ND STREET PIKE
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(215) 942-5157
FAX: (215) 942-5184**
- **2212 BRISTOL PIKE
BENSALEM, PA 19020
(215) 638-1784
FAX: (215) 638-1786**

rtomlinson@pasen.gov
tomlinson.pasenategop.com

October 31, 2006

Alvin Bush
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333Market Street
Harrisburg, PA 17101

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Chairman Bush and members of the Commission:

As Chairmen of the Senate Consumer Protection and Professional Licensure Committee, and the House Consumer Affairs Committee, we wanted to offer comment of the Public Utility Commission's final-form regulation on Local Exchange Carrier Filing and Reporting Requirements (57-247).

This regulation has had a great deal of public comment at the Public Utility Commission, as the Commission attempted to implement the deregulatory provisions of Act 183 of 2004.

The regulation does eliminate numerous incumbent local exchange carrier (ILEC) reports that are unnecessary in a competitive telecommunications environment.

Unfortunately, this regulation fails to completely reflect the Legislature's intention to eliminate all but nine enumerated reports by preserving two additional reports (Lifeline Tracking and Service Outage). In addition it sets precedent for additional reports not required by Act 183 of 2004.

The Legislature provided the Commission with the flexibility to require reports, in addition to those specifically preserved, by establishing a process in Section 3015(f) of the act which allows for the submission of additional reports. It requires the Commission to prove that the report is necessary to ensure that rates are Chapter 30 compliant and that the benefits of the report outweigh the expense to produce the report.

This mandate imposed was intentionally made stringent to reflect our wishes to decrease the regulatory burdens on ILECs (as set forth in the declaration of policy in Act 183.) The final-form regulation conflicts with legislative intent.

It is our belief that the regulation should be modified to conform to law. We enclose for your additional information comments that were presented to the Commission related to this topic.

Sincerely,



Robert M. Tomlinson
State Senator, 6th District

Sincerely,



Robert J. Flick
State Representative, 167th District

Cc: Public Utility Commission
Enclosure

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INDEPENDENT REGULATORY
REVIEW COMMISSION

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

**RE: FILING AND REPORTING REQUIREMENTS ON
INCUMBENT LOCAL EXCHANGE CARRIERS**

DOCKET NO. M-00041857

MAY 11, 2005

**Fran Cleaver, Esq.
Counsel and Executive Director,
Senate Consumer Protection and Professional Licensure Committee
Senator Robert Tomlinson, Chairman**

Thank you for this opportunity to offer a legislative perspective on the reporting and filing requirements provisions of Act 183 of 2004. My name is Fran Cleaver and I serve Senator Robert Tomlinson as Counsel and Executive Director of the Senate Consumer Protection & Professional Licensure Committee.

The General Assembly passes hundreds of pieces of legislation every session and, on occasion, questions arise as the new laws are being implemented. I am happy to provide my thoughts.

House Bill 30 was introduced in an effort to review the progress of the industry as required by the original Chapter 30 and decide whether those efforts should be continued or permitted to expire. The original provisions did in fact expire and the General Assembly took a clearly different direction in the passage of Act 183.

The provisions regarding required reports that are the focus of this hearing were in House Bill 30, when it was introduced in April, 2003. From that date until the signature by the Governor on November 30, 2004, the eight reports originally required in the bill remained, with the ninth report required because of the BFRR program. There were no requests for additional reports or related language to be added, either publicly or in any

of the numerous private meetings. It is of note that these meetings included the Consumer Advocate, Chairman Holland, and Counsel Pankiw, Dave Myers from the Governor's office and other representatives. I participated in the House public meetings and many of the Senate meetings. No one expressed concern that these provisions were too narrow or needed to be altered.

Act 183 makes significant changes to the manner in which the Commission has historically addressed the telecommunications industry. It is what the General Assembly intended as part of some innovative and progressive reforms and programs. For some to suggest the General Assembly did not know the full import of what they did is to ignore the length of time it took and the amount of participation of legislators in various forums. I have been told that the Senate Lobbyist disclosure forms show that \$8 million dollars were expended by the telecommunication industry to educate the General Assembly and the Governor on these issues.

In the Tentative Implementation Order which established this proceeding, the Commission has taken a number of steps to eliminate reports in accordance with the goals of the Legislature. This is certainly a positive development.

However, there appears to be some confusion about the weight of the Legislative Budget and Finance Committee report issued pursuant to House Resolution 786 that was issued. As the chairman of both the standing committee responsible for the disposition of House Bill 30 and Chairman of the Legislative Budget and Finance Committee, Senator Tomlinson wants to clear up any misunderstanding regarding his committee's report.

The LBFC report was developed while Act 183 was being considered. It is my understanding that because of the development of that study and the concerns about the amount of reporting that prior to the passage of Act 183, the Commission had been reviewing their reporting and filing requirements both internally and under the direction of House Resolution 786.

The final word on what reports are required is not contained in the LBFC report but in Act 183. HR 786 provides historical value as to what had been required but has no relevance to this proceeding. The Resolution reinforces the frustration of the House with the belief that the Commission required ILECs to file a large volume of reports and that it had to be curtailed through legislation.

Like the original Chapter 30 statute which expired at the end of 2003, Act 183 asks the incumbent local exchange carriers (ILEC) to universally deploy broadband networks in their service territories. Act 183 goes further,

providing an option for acceleration of broadband deployment, in some cases lopping a full seven years off companies' current deployment schedules. As an incentive to perform this costly and time-consuming exercise, the statute provides for regulatory relief in a number of areas, most notably the strict limitation on what reports are required of an ILEC.

In today's marketplace, the major competitors to the ILECS are unregulated at the state level. The presence of cellular and cable telecommunications services and the emergence of VOIP and WiFi (among others), has substantially diminished the traditional land based phones market share. To survive in the marketplace regulators must move to a less restrictive regulation. The days of the monopoly and monopoly regulation are gone. The General Assembly has sent a message to the Commission that they do not want to maintain status quo.

Under the original Chapter 30 legislation in 1993, the commission was directed to reduce reporting requirements on smaller ILECs. There seems to be little evidence that reduction occurred. After reviewing the reports continuing to be required, the limitation on the reports is much more direct and very specific.

The relevant sections of the statute are 3015 (e) and (f). Section 3015 (e) lists the eight reports that ILECs must continue to file with the

commission. A ninth report is filed only by those ILECs who are responsible for offering the Bona Fide Retail Request (BFRR) Program as established in Section 3014 (c) of the act.

Section 3015 (f) states that any reporting requirements over and above the nine reports enumerated (or a commission request for additional clarifying information on one of the nine reports) must be ordered by the commission after having met a two-pronged test.

The tests are:

- 1.) The report is necessary to ensure that the ILEC is charging rates that are in compliance with the statute and its alternative form of regulation; and
- 2.) The benefits to the commission of having the report substantially outweigh the expense to the ILEC of producing the report.

The Legislature retained the provisions of Section 3015 (e) and (f) eight separate times the bill was amended as it was deliberating House Bill 30. It is quite unusual for the General Assembly to dictate the manner of administration of any agency, in particular to delineate in statute what reports that agency may request. The limitation of reports relates directly to the law's Declaration of Policy which seeks a decreased regulatory burden on Pennsylvania's ILECs and offers an incentive to these companies who are

investing in a state-of-the-art broadband network in an attempt to reach every corner of this state.

From a legislative perspective, the language in Section 3015 (e) and (f) is clear: Eight and where appropriate nine reports will be filed. The commission may seek clarification on any of the nine reports. Each report and its format were identified, before it was enumerated in law. Any additional information requires the findings and order issuance procedure outlined. The eight reports should not change in any way from their pre-Act 183 form except for the Annual Report which is now limited to simply a balance sheet and income statement. (The BFRR Report is a new report made necessary by Act 183 and the only report which form may be defined by the Commission because it is a new report).

I trust this information is helpful. Thank you for the opportunity to offer comments and I look forward to working with you on this matter in the coming weeks.