RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 59]

[L-00960116]

Meter Tests

The Pennsylvania Public Utility Commission (Commission) adopted a final rulemaking to modify regulation of gas meter tests under petitions filed by the Pennsylvania Gas Association. The proposed amendments correct a typographical error in the present regulations, increase by 4 years the time between tests of residential gas meters and allow for two alternative testing methods. The two new methods will permit a regulated gas utility to choose to adopt a program of random testing based on a statistical sampling or a variable interval model. The contact person is Rhonda L. Daviston, Assistant Counsel, Law Bureau, (717) 787-6166.

Public Meeting held
February 6, 1997

Commissioners present: John M. Quain, Chairperson; Lisa Crutchfield, Vice Chairperson; John Hanger; David W. Rolka; Robert K. Bloom

Final Rulemaking Order

This matter is before the Commission at the initiation of the Pennsylvania Gas Association (PGA). The PGA filed several petitions with the Commission seeking modification of the regulations governing meter tests, 52 Pa. Code § 59.21. Under those petitions, the Commission promulgated a proposed rulemaking by order entered April 2, 1996. Comments were submitted by the PGA and the Independent Regulatory Review Commission (IRRC).

After reviewing the IRRC comments, Commission staff met with representatives of the PGA and IRRC. These meetings were most helpful in drafting modifications to the gas meter testing regulations. The following rulemaking has extensive reworking of the regulation in order to give the section greater clarity. In addition, the new and improved § 59.21 required that the definition section be revised to accommodate the changes.

The first modification, 52 Pa. Code § 59.21(b) and (c), adds the term "class" before each designation as a means to clearly identify each class of gas meter. In addition, the Commission made minor revisions in the language in subsection (c) for the purpose of removing archaic language.

The same rationale is behind the modification of terms used to define the testing years. "preceding year" was changed to "first immediately preceding year"; "next preceding year" converted to "second immediately preceding year"; and "second preceding year" became "third immediately preceding year." The terms were changed to more accurately reflect the time periods that are being defined. These are terms of art that have led to much confusion. These changes were in response to IRRC's comment # 4 that the entire schedule was confusing. The Commission agrees and has amended this section, as well as § 59.1, to eliminate the confusion.

Based on the same comment, we also added the "Less than" to the headings Fast Meter and Slow Meter Ratio. This change gives the table more clarity.

Paragraph (4) was added to accommodate the new statistical and variable interval testing programs. This paragraph clearly states the intention that one and only one testing program be used in any given year. The purpose of this paragraph and its concomitant paragraphs under statistical and variable interval sampling paragraphs, in § 59.21(d)(6) and (e)(7) respectively, is to prevent a utility from jumping between testing programs.

As stated in our Proposed Rulemaking Order, the residential gas meter extended testing schedule will be lengthened by 4 years. This additional 4 years allows a reduction in the utility's economic outlay without compromising safety for the public or utility customer. The change made in the Class B schedule, 6 to 7 years, was done to correct an earlier typographical error.

The new programs proposed under this rulemaking underwent extensive rewriting. There are no substantive changes, but rather, the language was changed to more accurately state the testing models envisioned by the gas industry and Commission staff.

The cooperation extended by the representatives of the PGA and IRRC was very helpful in writing the new regulations. The Commission wishes to extend its sincere appreciation to those who worked to develop what it believes is a clear and effective gas meter testing regulation.

Accordingly, under section 501 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 501, sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2, the Commission amends its regulations at 52 Pa. Code §§ 59.1 and 59.21 to read as set forth in Annex A; *Therefore,*

It Is Ordered:

1. That the regulations of the Pennsylvania Public Utility Commission, 52 Pa. Code Chapter 59, are amended by amending §§ 59.1 and 59.21 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. That the Secretary shall submit a copy of this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. That the Secretary shall submit this order and Annex A for review by the designated standing Committees of both Houses of the General Assembly, and for formal review and approval by the Independent Regulatory Review Commission.

4. That the Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

5. That these amendments are effective August 4, 1997.

6. The PGA shall be served a copy of this order.

By the Commission,

JOHN G. ALFORD,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 2790 (June 7, 1997).)

Fiscal Note: Fiscal Note 57-172 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITY SERVICES

CHAPTER 59. GAS SERVICE

GENERAL PROVISIONS

§ 59.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

First immediately preceding year—The calendar year immediately preceding the testing year.

* * * * *

Second immediately preceding year—The calendar year immediately preceding the first immediately preceding year.

* * * * *

Testing year—The calendar year for which a public utility seeks to apply an extended test schedule.

Third immediately preceding year—The calendar year immediately preceding the second immediately preceding year.

* * * * *

§ 59.21. Meter tests.

* * * * *

(b) *Standard test schedule for Class A, Class B and Class C Meters.* Unless otherwise provided by this section, each public utility shall make and record tests of *Class* A, *Class* B and *Class* C meters on the following schedule:

Class	*Test Period (Years)*
A	8
B	5
C	2

(c) *Extended test schedule for Class A, Class B or Class C meters.* A public utility may depart from the requirements of subsection (b) for Class A, Class B or Class C meters in a testing year, and instead make and record tests using one of the test periods prescribed in paragraph (5), if the following requirements are met:

(1) At the end of the first immediately preceding year, not less than 98% of the meters of that class in service had been removed within whichever is the greater of 2 years plus the test period prescribed therefor in subsection (b), or the test year permitted for that class of meter for that year by paragraph (5); and, as to a meter of that class not so removed, the premises where it was located were visited and a written notice requesting an appointment for meter change was either left at the premises or posted to the mailing address of the customer as it appears in the public utility's files. Meters removed under this paragraph shall be tested and included in the calculations under paragraph (2) unless a meter was permanently retired from service or damaged by factors other than normal age or wear such as tampering or damage beyond the control of the public utility.

(2) The slow meter ratios and fast meter ratios of the meter class for the second immediately preceding year and the third immediately preceding year fall below the maximum percentages prescribed in paragraph (5). Any conflict between the test periods prescribed in paragraph (5) shall be resolved by using the shortest applicable test period.

(3) On or before March 1 of each testing year, the public utility submits to the Commission a report showing both in absolute numbers and in percentages the facts prescribed in paragraphs (1) and (2).

(4) For each year in which a public utility uses the extended test schedule in this subsection, the public utility may not remove or test any meters of the same class using the statistical sampling program in subsection (d) or the variable interval program in subsection (e).

(5) Subject to the qualifications prescribed in paragraphs (1)—(4), a public utility may make and record tests of Class A, Class B or Class C meters on the following schedule:

Test Results from Second Immediately Preceding Year		*Test Results from Third Immediately Preceding Year*		*Testing Year's Permitted Test Period (Years)*
CLASS A METERS				
Slow Meter Ratio Less Than (%)	*Fast Meter Ratio Less Than (%)*	*Slow Meter Ratio Less Than (%)*	*Fast Meter Ratio Less Than (%)*	
10	10	12	12	14
8	8	10	10	16
6	6	8	8	18
4	4	6	6	20
CLASS B METERS				
Slow Meter Ratio Less Than (%)	*Fast Meter Ratio Less Than (%)*	*Slow Meter Ratio Less Than (%)*	*Fast Meter Ratio Less Than (%)*	
10	10	12	12	6
8	8	10	10	7
6	6	8	8	8
4	4	6	6	10
CLASS C METERS				
Slow Meter Ratio Less Than (%)	*Fast Meter Ratio Less Than (%)*	*Slow Meter Ratio Less Than (%)*	*Fast Meter Ratio Less Than (%)*	
8	8	10	10	3
6	6	8	8	4
4	4	6	6	5

(d) *Statistical sampling for Class A, Class B or Class C meters.* A public utility may depart from the requirements of subsection (b) for Class A, Class B or Class C meters, and instead make and record tests of Class A, Class B or Class C meters under a statistical sampling program, if the following requirements are met:

(1) Meters shall be divided into groups in accordance with ANSI Spec, B109.1 Part IV Sec. 4.3.2.1 or its successor. A detailed description of the composition of each group of meters, such as year set, manufacturer, case type and diaphragm material, shall be provided in the annual report to the Commission.

(2) Sufficient meters shall be tested annually to insure a 90% confidence level that the meter groups are performing within accuracy limits.

(3) For a group to remain in service, at least 80% of the meters in the sample test shall meet the accuracy limits of 98% average accuracy (2% slow) and 102% average accuracy (2% fast). If a group of meters does not meet the performance standards, corrective action shall be taken. The corrective action may consist of removing the entire group from service within 4 years or, if the group consists of one or more subgroups, implementing a selective meter removal program to improve the accuracy of the group to within acceptable limits. The selective removal program may be as follows:

(i) If test results indicate one or more subgroups do not meet the performance standards, the subgroup shall be identified and removed within 4 years.

(ii) Once identified as a group or subgroup not meeting the performance standards and during the removal process, that group or subgroup shall be removed from the sampling plan.

(4) The statistical sampling schedule shall be in accordance with the provisions of ANSI Spec. B109.1 Part IV Sec. 4.3.2.1 or its successor.

(5) A utility electing the statistical sampling program shall remain on that program for at least 4 years.

(6) For each year in which a public utility uses the statistical sampling approach in this subsection, the public utility may not remove or test any meters of the same class using the extended test schedules in subsection (c) or the variable interval program in subsection (e).

(e) *Variable interval testing for Class A, Class B or Class C meters*. A public utility may depart from the requirements of subsection (b) for Class A, Class B or Class C meters, and instead make and record tests of the Class A, Class B or Class C meters under a variable interval program, if the following requirements are met:

(1) Meters shall be divided into groups in accordance with ANSI B109.1 Part IV Sec. 4.3.2.2 or its successor. A detailed description of the composition of each group of meters, such as year set, manufacturer, case type and diaphragm material, shall be provided in the annual report to the Commission.

(2) The number of meters to be removed in any year will be determined from the test results of the second immediately preceding year's incoming meters. Meters removed under this paragraph shall be tested and included in the calculations under paragraph (3) unless a meter was damaged by factors other than normal age or wear such as tampering or damage beyond the control of the utility.

(3) Except as provided in paragraphs (4) and (5), the ratio (r) of the number of meters in a test group to be removed to those in service in that test group shall be determined by the formula (r = .02 + .3d) where (d) is the ratio of meters which have an average accuracy of less than 98% or more than 102% as reported to the nearest 1/2%, to the total number of meters tested in the group during the second immediately preceding year.

(4) Meters removed in a test group in excess of the ratio (r) as described in paragraph (3) shall be credited towards the ratio (r) for a better performing test group.

(5) A utility may petition the Commission for an Accelerated Retirement Program (ARP) for a specific meter type that the utility may desire to purge from its system. Meters removed in an ARP in excess of the ratio (r) as described in paragraph (3) may be credited towards the ratio (r) for any other test group regardless of performance.

(6) A utility electing the variable interval plan shall remain on that plan for at least 4 years.

(7) For each year in which a public utility uses the variable interval approach in this subsection, the public utility may not remove or test any meters of the same class using the extended test schedules in subsection (c) or the statistical sampling program in subsection (d).

(f) ***

(g) ***

(h) ***

(i) ***

(j) ***

(k) ***

(l) ***

(m) ***

(n) ***

(o) ***

[Pa.B. Doc. No. 97-1077. Filed for public inspection July 3, 1997, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION
[52 PA. CODE CH. 63]

[L-940099]

Interexchange Carriers

The Pennsylvania Public Utility Commission (Commission) on April 24, 1997, adopted an order to promulgate final regulations to implement and codify the effect of Chapter 30 of the Public Utility Code on Commission procedures related to regulation of interexchange carriers. The regulations contain streamlined procedures applicable to the statutory categories of existing competitive services, new competitive services and noncompetitive services. The regulations also establish procedures related to reclassification of service and annual reporting requirements. The contact person is Terrence J. Buda, Assistant Counsel, Law Bureau (717) 787-5755.

Executive Summary

The Commission on April 29, 1997, entered a final rulemaking order to implement and codify the effect of 66 Pa. Code Chapter 30 (relating to alternative form of regulation of telecommunications services) on Commission procedures related to regulations of interexchange carriers. The regulations contain new streamlined procedures applicable to the statutory categories of existing competitive services, new competitive services and noncompetitive services. The regulations also establish procedures related to reclassification of service and annual reporting requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 5, 1997, the Commission submitted a copy of the final rulemaking, which was published as proposed at 25 Pa.B. 1418 (April 15, 1995) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of House Committee Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Commission has considered comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the House Committee on Consumer Affairs on May 26, 1997, were approved by the Senate Committee on Consumer Protection and Professional Licensure on May 13, 1997, and were approved by IRRC on May 22, 1997, in accordance with section 5(c) of the Regulatory Review Act.

Public Meeting held
April 24, 1997

Commissioners present: John M. Quain, Chairperson; John Hanger; David W. Rolka, Consurring in result; Robert K. Bloom

Final Rulemaking Order

By the Commission:

A. *Introduction*

1. *Procedural History*

On January 10, 1995, this Commission entered a Declaratory Order in the instant proceeding. The Declaratory Order adopted a set of Interim Guidelines for the regulation of interexchange carriers (IXCs) under 66 Pa.C.S. Chapter 30 and proposed certain regulations on the same subject area to be codified at 52 Pa. Code § 63.101 et seq.[1]

The proposed regulations were published in the *Pennsylvania Bulletin* on April 15, 1995, 25 Pa.B. 1418, with a 30-day comment period that ended on or about May 15, 1995.

The Commission received comments on the proposed regulations from AT&T Communications of Pennsylvania, Inc. (AT&T), MCI Telecommunications Corporation (MCI). In addition, the Commission received letter commentaries on the proposed regulations from the Honorable David R. Wright, member, Pennsylvania House of Representatives, dated June 5, 1995, and from the Honorable Kathrynann W. Durham, member, Pennsylvania House of Representatives, also dated June 5, 1995. The Commission also received comments from IRRC, dated June 14, 1995.

2. *Interim Guidelines and Related Commission Actions on IXC Regulation*

The January 10, 1995, Interim Guidelines for the regulation of IXCs under 66 Pa.C.S. Chapter 30 contained the following directives:

A. *Existing Competitive IXC Services*

1. Except as determined otherwise by the Commission, IXCs shall file informational tariffs with the Commission for their competitive services.

2. Changes for existing competitive services may be filed on one day's notice. Such changes shall become effective as filed, without further action of the Commission. The filing shall indicate that the changes are for an existing competitive service.

3. IXCs shall not be permitted to deaverage standard Message Toll Service rates unless authorized to do so by the Commission.

B. *IXC Service to Aggregator Telephones*

1. An IXC may file an operator assisted or calling card services, tariff to become effective on 14 days notice. If the tariff filing purports to increase any rates and/or surcharges associated with the offered operator assisted or calling card services, the IXC will include a detailed explanation and adequate justification for the requested change in rates and/or surcharges.

2. Within 10 working days of the filing, the Office of Special Assistants will conduct a review of the filing and either (a) approve the tariff as filed, or (b) issue a memorandum stating why the tariff should be modified or rejected altogether. The Office of Special Assistants will serve the IXC in question with a copy of its memorandum within the 10 working day review period using all reasonable means including but not limited to facsimile transmission equipment.

3. The IXC will have 7 days to respond to the Office of Special Assistants memorandum in the event that the IXC does not agree with the memorandum assessment that the IXC tariff filing should be modified or rejected. The IXC's response should be filed with the Commission within the 7-day period and a copy of the response should be independently forwarded on a timely basis to the Office of Special Assistants.

4. Upon receipt of the IXC's response, the Office of Special Assistants will present this matter for the Commission's consideration during the Commission's next available Public Meeting. The IXC tariff filing will be deemed suspended until the Commission formally rules on the matter.

5. In the event that the IXC agrees with the Office of Special Assistants' original assessment, the IXC will file the appropriate tariff supplements in order to effectuate the modified tariff filing, to become effective upon 1 day's notice.

C. *New IXC Services*

1. New IXC services will be deemed to be competitive unless the Commission later finds that the particular IXC service is noncompetitive in accordance with the provisions of 66 Pa.C.S. § 3008(c) (relating to interexchange telecommunications and carrier) and further guidance hereinafter contained in this Order.

2. A new IXC service is one that has not been previously offered by the IXC that is filing the service and which is not an adjunct to or modification of an existing service.

3. IXCs may file new services to become effective on 14 days notice to the Commission.

4. The initial filing shall clearly indicate that the filed tariffs are for a new IXC service.

[1] Previous actions of the Commission of general applicability to the regulation of IXCs have included the issuance of the first set of interim guidelines for the regulation of IXCs under Chapter 30 with our December 28, 1993, Order at Docket No. M-00930496, and the issuance of our December 28, 1993, *Declaratory Order Regarding Interpretation of Regulations Governing Interexchange Resellers*, at Docket No. M-00930494.

5. As part of a new service filing, the IXC shall submit information, duly verified, regarding the safety, adequacy, reliability and privacy of the service.

6. Within 10 working days of the filing, the Office of Special Assistants will conduct a review of the filing and either (a) approve the tariff as filed, or (b) issue a memorandum stating why the tariff should be modified or rejected altogether. The Office of Special Assistants will serve the IXC in question with a copy of its memorandum within the 10 working day review period using all reasonable means including but not limited to facsimile transmission equipment.

7. The IXC will have 7 days to respond to the Office of Special Assistants memorandum in the event that the IXC does not agree with the memorandum assessment that the IXC tariff filing should be modified or rejected. The IXC's response should be filed with the Commission within the 7-day period and a copy of the response should be independently forwarded on a timely basis to the Office of Special Assistants.

8. Upon receipt of the IXC's response, the Office of Special Assistants will present this matter for the Commission's consideration during the Commission's next available Public Meeting. The IXC tariff filing will be deemed suspended until the Commission formally rules on the matter.

9. In the event that the IXC agrees with the Office of Special Assistants' original assessment, the IXC will file the appropriate tariff supplements in order to effectuate the modified tariff filing, to become effective upon 1 day's notice.

D. *Reclassification of IXC Services*

1. For good cause shown, the Commission may institute an investigation of the competitiveness of a service provided by an IXC under the premises of 66 Pa.C.S. § 3008(c), the related provisions of this Order and established procedures of practice and procedure before the Commission. Such investigation will be performed either within the scope of a Commission investigation conducted under 66 Pa.C.S. § 331(a) (relating to powers of commission and administrative law judges) or upon consideration of a complaint filed under 66 Pa.C.S. § 701 (relating to complaints).

2. In conducting such an investigation the Commission may consider:

a. Evidence of ease of market entry in the relevant IXC service market;

b. The presence of other telecommunications carriers in the relevant IXC service market;

c. The ability of competitor telecommunications carriers to offer the service at competitive prices, terms and conditions;

d. The availability of like or substitute telecommunications services in the relevant geographic area; and

e. Any other factors deemed relevant by the Commission.

3. If, after notice and hearing, the Commission finds that the IXC service is not competitive, the Commission may reclassify the service as noncompetitive. If an IXC believes that a service reclassified as noncompetitive has become competitive, it may petition the Commission to reclassify the service anew as competitive under the applicable standards contained herein.

E. *IXC Annual Reporting Requirements*

1. On or before May 31 of each calendar year, IXCs operating or otherwise conducting business activities in the Commonwealth of Pennsylvania shall submit on a proprietary basis to the Commission's Office of Special Assistants an annual report for the preceding calendar year.

2. This annual report shall contain aggregate total revenue and traffic volume data in minutes of use (MOUs) of the IXC's intrastate operations during the preceding calendar year. In addition, to the extent that such data are available, they should be disaggregated in the following broad service categories:

a. Services corresponding to the ordinary Message Toll Service (MTS), inclusive of operator assisted and calling card services.

b. Services corresponding to outbound Wide Area Telecommunications Services (outbound WATS).

c. Services corresponding to inbound WATS or "800" type services.

d. Private line or dedicated communication path services.

e. Dedicated network type services inclusive of virtual network type services.

3. On or before May 31 of each calendar year, AT&T Communications of Pennsylvania, Inc., is required to furnish to the Commission's Office of Special Assistants a copy of its annual report for the preceding calendar year that is filed with the Federal Communications Commission (FCC), until such time as the FCC discontinues its requirement for such annual report, or its required provision to this Commission is deemed unnecessary by a future Commission Order. The AT&T filing with this Commission will be in the public domain to the extent that the corresponding filing with the FCC is also in the public domain.

Re: Interexchange Carrier Regulation Under Chapter 30 of the Public Utility Code, Declaratory Order entered on January 10, 1995, Annex A.

Since the implementation of its Interim Guidelines for the regulation of IXCs under Chapter 30, this Commission and its staff have processed and are processing numerous IXC tariff filings. Certain actions that we have already taken in respect to certain IXC tariff filings have further clarified the implementation of our Interim Guidelines, and have accorded the requisite flexibility to our IXC regulation under 66 Pa.C.S. Chapter 30. On March 31, 1995, we entered an Order in *Pennsylvania Public Utility Commission v. AT&T Communications of Pennsylvania, Inc.*, Docket No. M-00940503F0095, which disposed of an AT&T tariff filing that implemented toll rate discounts for intraLATA calls that originate from end-user customers within the service territory of Bell Atlantic-Pennsylvania, Inc. (Bell Atlantic-Pa. or Bell). In permitting the AT&T tariff to go into effect, we observed that:

Simply determining that the AT&T Supplement deaverages some rates does not bind the Commission. The Commission can approve the AT&T Supplement without hearings or an investigation and with the full understanding that this Supplement may fit the technical definition of rate deaveraging. The Chapter 30 law authorizes the Commission to allow deaveraging.

We went on to note that:

What would cause great concern and should require a much stronger review would be the increase of rates in one customer class or geographic area to make up revenue losses resulting from the decrease in rates for some other customer class or geographic area. AT&T has not attempted in this instance to make up a potential revenue loss for intraLATA toll calls of Bell Atlantic-Pa. customers by increasing its [AT&T's] rates to customers in the service territories of other local exchange telephone companies.

Pennsylvania Public Utility Commission v. AT&T Communications of Pennsylvania, Inc., Docket No. M-00940503F0095, Order entered March 31, 1995, at 6.

Since the adoption of the Interim Guidelines, we have formulated more flexible criteria for the evaluation of rate changes that involve what we originally defined in the Interim Guidelines and in our Proposed Rules as noncompetitive IXC services under the premises of 66 Pa.C.S. § 3008(a)(1). In deciding on an AT&T proposed surcharge increase for operator dialed calling cards, we stated:

We must observe that AT&T is seeking to adjust its intrastate surcharge for operator dialed calling card calls to the corresponding interstate level. AT&T's interstate surcharge for operator dialed calling card calls has been reviewed and approved by the Federal Communications Commission (FCC). In addition, no complaints have been filed against AT&T's proposed increase to its intrastate surcharge level that is the subject of the instant proceeding. Furthermore, AT&T's alignment of its intrastate and interstate surcharge levels for this particular service will prevent customer confusion that is created by multiple jurisdictional pricing structures and will lead to greater efficiencies for AT&T's operations.

Similarly, our Interim Guidelines for the regulation of IXCs under the provisions of the Chapter 30 law, do not clearly require AT&T to justify its proposed rate change with cost-of-service information.

* * *

It appears that AT&T has provided sufficient justification for its proposed increase in the surcharge that is applicable for operator dialed calling card calls. Thus, AT&T's proposed tariff filing will be permitted to become effective as filed. Furthermore, any unresolved legal and/or technical issues, including a final determination on whether the AT&T service at issue here and/or any other related services are competitive, should be assigned for examination, resolution and final disposition in our rule making regarding the future regulation of IXCs under the Chapter 30 law in Docket No. L-00940099[.]

Pennsylvania Public Utility Commission v. AT&T Communications of Pennsylvania, Inc., Docket No. R-00953364, Order entered June 8, 1995, at 6.

We took similar action in regards to certain proposed surcharge increases for the various Sprint Communications Company LP (Sprint) FONCARD calling card services products. We stated that:

Under our new approach for evaluating this type of IXC rate changes for noncompetitive services, we will not adhere to a strict cost-justification standard of review for IXC calling card services and products and the associated rate change proposals...

* * *

In the instant filing, Sprint wishes to align the surcharge levels for FONCARD calling card calls that are made within the parameters of Sprint's various long-distance services. We believe that such a surcharge alignment will assist Sprint to attain necessary administrative efficiencies in the offering of its FONCARD calling card service products. Furthermore, the surcharge levels proposed by Sprint for its FONCARD calling card service products will approximate the surcharge levels for generally similar calling card service products of other IXCs such as AT&T.

Pennsylvania Public Utility Commission v. Sprint Communications Company, L.P., Docket No. R-00953388, Order entered June 9, 1995, at 4.

It should be pointed out that our actions have significantly lessened the burden of review of IXC noncompetitive service tariff filings and associated rate changes by the responsible staff bureaus of the Commission. Noncompetitive rate and surcharge decreases that are proposed by the IXCs for their noncompetitive services are approved as routine matters, while proposed rate and surcharge increases that fulfill the flexible evaluation criteria enumerated above, are approved within the abbreviated review time frames contained in the Interim Guidelines.

3. *Other Commission Actions*

Since the time that our IXC 66 Pa.C.S. Chapter 30 Interim Guidelines were adopted and we commenced the promulgation of the associated regulations, the telecommunications industry has been undergoing a dramatic change both within our nation and within Pennsylvania. On October 4, 1995, we introduced local exchange competition in Pennsylvania through the certification of the first four competitive local exchange carriers (CLECs) at the Application of MFS Intelenet of Pennsylvania, Inc. et al., proceeding at Docket No. A-310203F0002 et al. (MFS I). On December 14, 1995, with our Order at Docket No. I-00940034, we have moved to establish intra-LATA toll "1+" dialing parity—or "1+" intraLATA toll presubscription— and increased intraLATA toll services competition within this Commonwealth. In that Order we observed and ordered that:

We agree with the ALJ recommendation that LECs should have some pricing flexibility to react to the marketplace in an intraLATA presubscription environment. The ALJ, at Ordering Paragraph No. 8 of the R.D. [Recommended Decision], recommends that the Commission establish procedures for expedited review and approval of LEC's proposed tariff changes. We believe that the procedures established by this Commission relative to the review and approval of IXC services at Docket Nos. M-00930496 and L-00940099 are appropriate and, as such, they will be utilized in our review of intraLATA toll tariffs. We keep in mind that the underlying cost of service/cost allocation methodology should be consistent with this Opinion and Order and the findings in our Universal Service Investigation.

* * *

[T]o provide the local exchange carriers pricing flexibility to meet competitive pressures in a presubscribed intraLATA environment, the procedures established by this Commission relative to the review and approval of IXC services at Docket Nos. M-00930496 and L-0094009 are appropriate and should be used consistent with this Opinion and Order and the findings in the Universal Service Investigation.

Investigation Into IntraLATA Interconnection Arrangements, Docket No. I-00940034, Order entered December

14, 1995, at 18 and Ordering ¶9, at 22 (hereinafter referenced as the Presubscription Order).

The Federal Telecommunications Act of 1996 (Federal Act or Act) was enacted into law on February 8, 1996. This Commission has proceeded to implement various directives of the Federal Act, including the adoption of more flexible market entry procedures for telecommunications carriers under our jurisdiction, and adjudicating various proceedings related to various issues of competition and interconnection in the local exchange services markets. In addition, we have made various pronouncements in our Orders in a number of proceedings that address the implementation of the Federal Act. *See generally, In re Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, Order entered June 3, 1996; Order on Reconsideration entered September 9, 1996 (hereinafter referenced as the *Implementation Order*).

For example, in our June 3, 1996, *Implementation Order* we removed the restriction regarding the joint marketing of CLEC local and toll services that had originally been put in place with our October 4, 1995, Order in the MFS I proceeding at Docket No. A-310203F0002 et al. We characteristically stated that:

As to "joint package" marketing restrictions, in our October 4, 1995, order at A-310203,F.002 we stated that, "Upon the grant of co-carrier status pursuant to this Opinion and Order, MFS [and other CLECs] shall be subject to the same restrictions on interLATA toll service packaging . . . applicable to the other LECs in Pennsylvania absent a specific waiver." Such a marketing restriction was designed to obviate the advantages of CLEC "joint marketing" activities for local, intraLATA and interLATA toll services, since certain ILECs, including Bell, were prohibited from providing interLATA toll services.

The purpose of past imposition of marketing restrictions on LEC long distance reseller affiliates was to decrease any competitive advantage over other long distance carriers an LEC affiliated reseller had with the LEC's customers—particularly since in a monopoly setting the LEC completely controls the presubscription interexchange (PIC) process and has the ability to influence consumer decisions through incomplete or inaccurate disclosure. Upon further review, it appears to us that such a concern becomes less significant as local competition develops. Furthermore, we must keep in mind that in a competitive environment our objective is to decrease regulation for all carriers rather than impose existing requirements on new carriers, except where the requirements are imposed by statute or remain necessary to the public interest.

Of course, we have a desire to treat all carriers competing in a given market fairly. However, pertaining to marketing restrictions, such an objective can be achieved by eliminating any relevant marketing restrictions on an LEC or its affiliate at the time a competing local carrier or carriers enters the LEC's service territory. Such an approach is consistent with both principles of fairness and our desire to reduce regulation where appropriate. Accordingly, we will adopt such an approach in the future and will not impose mandatory restrictions on CLECs entering LEC service territories.

Implementation Order entered June 3, 1996, at 21-22, and Ordering ¶¶2, 3 at 51, footnote omitted.

In the same *Implementation Order*, however, we maintained certain restrictions on the joint marketing of services by a CLEC that is also a provider of interLATA services in accordance with the relevant provisions of section 271(e)(1) of the Federal Act that provides as follows:

Until a Bell operating company is authorized under subsection (d) to provide interLATA services in an in-region state, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5% of the Nation's presubscribed access lines may not jointly market in the State telephone exchange service obtained from such company under section 251(c)(4) with interLATA services offered by that telecommunications carrier.

Implementation Order entered June 3, 1996, at 22-23.

We have reaffirmed our willingness to provide pricing flexibility for the toll services of incumbent local exchange carriers (ILECs) once intraLATA toll "1+" dialing parity is implemented, even if the ILEC toll services are not classified as competitive under the relevant provisions of 66 Pa.C.S. Chapter 30. In our Order disposing of the 66 Pa.C.S. Chapter 30 petition for alternative regulation and network modernization by Commonwealth Telephone Company, we stated the following:

Upon consideration of the record in this proceeding, we note that CTC correctly points out that in the IntraLATA Presubscription Order at Docket No. I-00940034 (Order issued December 14, 1995) the Commission stated that the procedures for review and approval of interexchange services at Docket Numbers M-930496 and L-940099 will be used for the review of LEC intraLATA toll Tariffs (Order, p. 18). These abbreviated procedures should be adopted for intraLATA toll filings that CTC may file once intraLATA presubscription becomes effective on July 1, 1997. The IntraLATA Presubscription Order did not adopt these abbreviated procedures for other LEC filings such as intraLATA private line or local vertical services, as CTC has proposed in its Plan. One day notice of tariff filings for intraLATA private line and local vertical services is expressly rejected unless and until such services are designated as competitive.

Petition of Commonwealth Telephone Company for an Alternative Regulation and Network Modernization Plan, et al., Docket Nos. P-00961024 & P-00961081, Order entered January 17, 1997, at 175 (hereinafter referenced as the *Commonwealth Ch. 30 Order*).[2]

It should be noted that on February 19, 1997, AT&T filed a Petition for Clarification of our Commonwealth Chapter 30 Order. AT&T's Petition, which is still pending before the Commission, seeks clarification on the exact parameters under which Commonwealth Telephone Company (CTC) will be permitted to change its intraLATA toll service rates under the procedures that apply to IXC tariff changes in the instant Dockets. CTC filed its Answer to AT&T's Petition on March 3, 1997.

B. *Rulemaking Issues & Associated Comments*

The major commenting parties to the instantly proposed rulemaking were AT&T and MCI. Their comments, as well as the comments of other interested parties and those of IRRC are discussed below on the basis of major issues that are present in this rulemaking.

[2] Our January 24, 1997, Order at Docket No. A-310203F0002 Application of MFS Intelenet of Pennsylvania, Inc., et al. and Docket No. I-00940034, Investigation Into IntraLATA Interconnection Arrangements, extended the original "1+" intraLATA toll dialing parity implementation deadline for LECs with more than 250,000 access lines to July 31, 1997. The originally mandated deadline of "1+" intraLATA toll dialing parity implementation for LECs with less than 250,000 access lines is on December 31, 1997, and remains unchanged.

1. *Definition of "Service to Aggregator Telephones"*

AT&T, MCI, IRRC and commenting Legislators, have urged the Commission to change its proposed definition of "Service to Aggregator Telephones." AT&T argues that the definition at proposed 52 Pa. Code § 63.102 should not include operator and calling card services offered by facilities-based, long-distance carriers. AT&T offers the following argument in support of its position:

To be consistent with the intent of the Legislature and the statutory language, the PUC should adopt the statutory definition of service to "aggregator telephones" in the regulations and clarify that the definition does not extend to generally applicable operator and calling card services provided by facilities-based carriers (or as the PUC has referred to them, "interexchange transporters," 52 Pa. Code § 63.112).

* * *

The definition offered by AT&T would allow the PUC to continue its regulation of AOS [Alternative Operator Service] rates (because they apply directly to transient telephones) without burdening facilities-based carriers with unnecessary regulation of highly competitive, voluntary services. Because the rates filed by AT&T and other carriers are market-driven, their levels will be controlled by competitive forces, requiring no further regulatory oversight. If the Commission so chooses, the rates of the facilities-based carriers can continue to be used as the basis for a "cap," without inappropriately characterizing them as "noncompetitive," "service to aggregator telephones."

The PUC should also exclude "prepaid debit cards" from its definition of "interexchange service to aggregator telephones." This type of payment method for long distance calling is perhaps the most competitive of all; every telecommunications carrier appears to be offering them and they can be purchased at convenience or grocery stores. Competition will assure that prices for this long distance calling payment method will be competitive (if one carrier's rates are too high, customer's can easily switch to another provider)...

Again, the PUC Order acknowledged that prepaid debit cards are highly competitive (25 Pa.B. 1425), but concluded that they should be characterized as "noncompetitive" service to aggregator telephones apparently because the surcharge for this service will affect the AOS "rate cap." But, if the service as offered by facilities-based carriers is generally available (as it is), highly competitive (as it is), and not confined to use at aggregator telephones (as it is not) then it should not be declared noncompetitive merely because the Commission has an interest in regulating the rates of other providers of the service (AOS's).

AT&T Comments at 5-7, emphasis in the original.

MCI generally echoes AT&T's comments and IRRC offers the following discussion:

AT&T. . . and MCI. . . claim that the criteria for noncompetitive service do not apply to operator and credit card services offered by facilities-based companies such as their own. They argue that the intent of Act 67 [Chapter 30] was to allow the PUC to regulate "Alternative Operator Services" (AOS) provided at aggregator telephones. The FCC and PUC use the term "operator service providers" (OSP) for the companies that provide these services. OSPs operate as resellers who control access to interexchange service via aggregator telephone. AT&T and MCI also claim that there is no reason to regulate their credit card services since they are highly competitive.

Representatives Kathrynann Durham and David R. Wright, Chair and Minority Chair of the House Consumer Affairs Committee, support AT&T and MCI's position. Representative Wright was the sponsor of the legislation which became Act 67 and claims that the legislative intent is clear. He declares that the intent of Section 3008(a) of Act 67 was to continue PUC regulation of OSPs. Representative Wright adds: "The intent clearly was not to further regulate facilities-based interexchange carriers especially in areas of card and operator rates." We find merit in the Legislator's position since even the PUC admits that the services provided by facilities-based carriers exist in a highly competitive market. A major goal of Act 67 was to allow competition to regulate prices for interexchange services rather than the PUC.

Even though the services provided by AT&T and MCI exist in a highly competitive market, the statutory arguments offered by AT&T and MCI are not convincing given the mandates and broad authority set forth for the PUC in Act 67. As it is currently written, we believe that Act 67 provides the PUC with broad authority to regulate any type of interexchange service to an "aggregator telephone" as a "noncompetitive service." Section 3008(a) of Act 67 does not delineate between providers of the interexchange service. Act 67 contains no distinction between services provided by an OSP, a reseller or a facilities-based carrier such as AT&T. Hence, we believe the PUC has the statutory authority to regulate interexchange service to an aggregator telephone as a noncompetitive service when it is provided by OSPs or any other entity including a facilities-based carrier. However, Act 67 does not mandate that the PUC exercise this authority. Act 67 also gives the PUC the discretion to determine that services provided by interexchange carriers are "competitive" and that the rates for these services do not need to be regulated. Section 3002 of Act 67 defines "competitive service" as "[a] service or business activity determined to be competitive under this chapter or any telecommunications service determined by the commission [PUC] to be competitive under this chapter."

On the question of the competitive nature of services to aggregator telephones, the PUC in its preamble to the proposed rulemaking cites limitations on competition between the various types of credit or debit card and operator services provided by facilities-based companies. We understand the PUC's interest in protecting consumers. However, this goal needs to be balanced against the costs of regulating services which the PUC admits are offered in a highly competitive market. The PUC appears to be concerned by the fact that the market for interexchange credit or debit cards is not wholly competitive. A marketplace with total and perfect competition does not exist in the real world, and consumers do not always base their market choices on finding the most competitive price for a product or a service. The argument that residential consumers or others may suffer financially is not persuasive. The interexchange market provides consumers with a remedy for financial loss by allowing them to make choices between competitors. We see little to no need for regulation of rates in a competitive marketplace when consumers may exercise their own discretion to protect themselves. If they do not like the service they receive or its cost, consumers can simply switch providers. By contrast, the primary purpose of the

PUC is to regulate monopolies because most utility services by their very nature restrict competition via limited choice of providers.

With regard to the reason and need for this regulation, we see merit in regulating rates for OSPs, and the legislative sponsor of Act 67 and others agree with this part of the regulation. However, we question the need for, and reasonableness of, regulating rates for credit or debit cards provided to consumers by facilities-based carriers. The PUC states that the rates for services provided by the facilities-based carriers are used as "caps" for rates charged by the OSPs. This is not a sufficient justification for regulation. We are confident that the PUC can devise other mechanisms for regulating the rates of OSPs. We recommend that the PUC make the determination that credit or debit cards provided to consumers by facilities-based carriers are a "competitive service" and amend this regulation accordingly. The PUC should eschew needless regulation and leave the marketplace to its own devices. At the same time, the PUC should not forego its duty under Act 67 to monitor the marketplace. It needs to monitor the industry in order to ascertain whether there may be a need at some future date to reclassify a service as noncompetitive or competitive.

IRRC Comments at 1-3, emphasis added.

Our rationale in formulating the proposed regulations was stated in our Declaratory Order of January 10, 1995, as follows:

We are cognizant of the fact that IXC operator assisted and calling card services are offered in a competitive environment. We are administratively aware that the IXC service offerings in this area have increased substantially in recent times, for example, end-users can now obtain prepaid debit calling cards not only through traditional IXC offerings that are on tariff with this Commission, but, also from a regular retail store. The issue remains, however, that such services can be accessed from both regular telephone and aggregator stations irrespective of the access method, for example, the end-user customer will accrue operator assisted or calling card call surcharges whether the call is made through a "0+" or "1-800" access. [footnote omitted] In addition, we are concerned that for these services price leadership patterns may emerge between major competing IXCs especially in the areas of operator assisted and calling card call surcharges. In that event, surcharges that are charged by resellers and/or AOS providers for similar services may also rise under the Commission's applicable rate cap regulations, especially for residential and small business customers, for example, for end-user customers that may not have the usage volumes and/or sophistication in obtaining operator and/or calling card services under a broader dis- count plan from the competing IXCs that would normally be available for large business users such as Carnegie Mellon.

Although operator assisted and calling card services could be classified into those used by residential and business customers respectively, this approach is not without problems. For example, as mentioned before, a "residential" classification for these services may also encompass small business users who cannot avail themselves of broader IXC service packages at a discount.

It also appears that the major IXCs participating in the instant proceeding are more interested in being able to rapidly offer additional operator assisted and calling card services options and features rather than engaging in a lengthy proceeding designed to ascertain whether these services are competitive or noncompetitive under the premises of the Chapter 30 law. Both AT&T and MCI indicated during the public forum discussion that regulatory forbearance for operator assisted and calling card service offerings is a potentially acceptable possibility.

We believe that a policy of absolute forbearance for IXC operator assisted and calling card service tariff filings will simply preserve our jurisdiction to investigate such filings on a post facto basis, for example, after those tariff filings would have gone into effect. Such investigations, depending on the task and workload priorities and assignments of the Commission and its staff may or may not commence and conclude on a timely basis. Furthermore, if such investigations were to produce formal rulings necessitating credits or refunds to affected end-user customers, such credits or refunds would be difficult to accomplish with reasonable timeliness, equity and low administrative cost to the Commission and the IXCs concerned if they were to be distributed to end-user members of the transient public.

Thus, we prefer to maintain our existing mode of regulation over the IXC operator assisted and calling card services of IXCs, inclusive of prepaid debit calling cards. We will, however, shorten the notice period relating to the associated tariff filings from the current interval of 30 days to 14. In addition, we will delegate the necessary authority to the Office of Special Assistants in order to expedite the processing of such filings...

Declaratory Order at 23-24.

As IRRC's comments point out, "Section 3008(a) of Act 67 does not delineate between providers of the interexchange service" to an "aggregator telephone," and that Act 67 "contains no distinction between services provided by an OSP, a reseller or a 'facilities-based' carrier such as AT&T." Thus, IRRC believes that "the PUC has the statutory authority to regulate interexchange service to an aggregator telephone as a 'noncompetitive service' when it is provided by OSPs or any other entity including a 'facilities-based' carrier." IRRC Comments at 2. We are obviously in agreement with the IRRC analysis. Not only do the IRRC comments delineate the scope of our statutory authority in regulating IXC noncompetitive services, but, they also underscore an additional important point. The language of Chapter 30 regarding the scope of our statutory authority to regulate noncompetitive IXC services is competitively neutral. It only follows that the promulgation and application of any rules regarding our regulation of IXC noncompetitive services must follow this important principle. Indeed, the concept of competitive neutrality permeates a multitude of activities and proceedings in the arena of telecommunications regulation both within this Commission's jurisdiction, in the respective jurisdictions of other state utility regulatory bodies, and the interstate jurisdiction.

We believe that the approach suggested by AT&T, MCI and IRRC, will violate the principle of competitive neutrality. Essentially, this approach will remove services such as the operator services of the facilities-based IXCs from this Commission's regulatory scrutiny. At the same time, however, the same services of other carriers (including resellers) will remain under the regulatory purview of this Commission if AT&T's proposals were to be adopted. Adoption of the AT&T/MCI proposals could potentially lead to the formation of "price leadership" rate ceilings for certain services which other carriers (especially resellers) could follow under our own "rate cap" rules. This scenario would not lead to more vigorous price competition among

the IXCs and, thus, would not result in increased consumer and social economic welfare. In addition, the AT&T/MCI proposed distinction between facilities-based and other telecommunications carriers could become increasingly unenforceable over time.

As it has been previously stated, we intend to extend the same procedures for intraLATA toll service rate changes to LECs upon their respective implementation of intraLATA "1+" dialing parity. In addition, CLECs may avail themselves of the same procedures under the same criteria and standards. We are already administratively aware that certain CLECs are facilities-based while others exist in the marketplace by being resellers. Yet other carriers have a mixed mode existence through their partial ownership and operation of facilities and their simultaneous reliance on leased or resold facilities and/or services from yet other carriers. Thus, as we move further into the future of the telecommunications industry transition and competition, the lines between the various categories of carriers are becoming increasingly blurred.[3] This is especially true when there is an attempt to impose a regulatory "bright dividing line" between facilities-based and nonfacilities-based carriers.[4] Thus, we intend to continue regulating IXC noncompetitive services to aggregator telephones without any distinction as to the nature of the provider. This approach will preserve the existing "rate cap" regulation of reseller IXCs while enabling us to better monitor and police the rate movements of services to aggregator telephones. We further believe that live and automated operator services continue to be at the core of IXC noncompetitive services to aggregator telephones and that such services should continue to be subject to our regulatory scrutiny, albeit in such a manner that would not harm the legitimate competitive interests of the participants in the relevant services markets.[5]

We believe, however, that our definition of interexchange service to aggregator telephones should exclude prepaid debit calling card services. The AT&T/MCI comments in this regard are indeed persuasive. End-users can obtain prepaid debit calling cards from a number of providers and not only from telecommunications carriers that are under our jurisdiction. In that respect, the exercise of our jurisdiction and our efforts in protecting the public interest and end-users of telecommunications services, can best be directed in areas where our regulatory oversight will be of the most social benefit at the least administrative cost to this agency. Thus, IXCs with tariffed prepaid calling card services in their tariffs can file changes to such tariffs for informational purposes only. Such tariff changes will be permitted to become effective on 1-day's notice.

2. *Definition of "Working Days"*

AT&T argues, and IRRC concurs, that the definition of "working days" contained in the proposed § 63.102, should be aligned with the existing definition of "days" already in place in the Commission's existing regulations at 52 Pa. Code § 1.12. AT&T Comments at 7, IRRC Comments at 3. These comments have merit. However, in order to conserve the Commission's own resources, the periods of staff review in our proposed regulations shall be modified accordingly from "10 working days" to "14 days." Similarly, the notice periods relating to the effective dates of the IXC tariff supplement filings contemplated in our proposed regulations should be lengthened from "14 days" to "16 days." We believe that these time periods will ensure adequate opportunity for agency review of and action on the associated IXC filings without placing unnecessary administrative impediments and delays on the IXCs.

3. *Standard of Commission Review for Existing Noncompetitive Services*

AT&T consistently argues in its comments that the proposed ". . . regulations pertaining to noncompetitive services should not be made to apply to operator and calling card services provided by facilities-based, interexchange carriers." AT&T Comments at 12, emphasis in the original. In addition, AT&T argues that "...even if these services are characterized as noncompetitive under the rules, the extent of Commission review for proposed changes to noncompetitive services is limited by law, and should be limited by long-standing Commission policy, to assuring that a reasonable justification is provided and that the change complies with the 'service adequacy' and privacy requirements of the Code." Id., emphasis in the original. AT&T goes on to argue that the proposed regulation at § 63.105 is in need of substantial modification and that, statutorily, the Commission's review of tariff changes in noncompetitive IXC services should be bound only by the ". . . provisions regarding safety, adequacy, reliability and privacy of telecommunications services" found at 66 Pa.C.S. § 3009(b)(4). Id., emphasis in the original. AT&T further asserts that this "is the only grant of authority established by Chapter 30 for changes to interexchange carrier's noncompetitive services" and that the "Commission's reviewing authority does not, therefore, extend to a traditional review of the reasonableness of the rates proposed for these services or requiring cost justifications or cost-of-service or revenue analyses." Id. AT&T also offers the additional arguments as to why cost justification and data are not required for the evaluation of existing IXC noncompetitive service tariff filings and associated rate changes:

> Moreover, requiring cost justifications and data . . . would mean that a statute that was passed to *deregulate* virtually all of the services provided by facilities-based carriers would be used to impose *greater* regulatory review and justification requirements than existed *before the statutory reform was passed*. Indeed, AT&T has [*sic*] not been required by the Commission to provide cost or cost-of-service justifications for its proposed rate changes *since the PUC's Generic IXC Order in 1985. Opinion and Order, dated August 9, 1985, Re: Petition Requesting the Commission to Institute a Generic Investigation Concerning the Development of Intrastate Access Charges,* Doc. No. P-830452. It hardly could have been the intent of the Legislature in passing Act 67 to reverse 10 years of regulatory restraint and to *re-regulate* AT&T.

Accordingly, a reasonable business justification, along with relevant information indicating that the change complies with code standards for safety, reliability, adequacy and privacy, is all that the Commission should require for interexchange carriers. The rules should

[3] It should be noted that the AT&T/MCI position was formulated prior to the enactment of the Federal Telecommunications Act of 1996, and while AT&T and MCI were formulating their respective business plans for their entry into the local exchange services markets. Currently, both AT&T and MCImetro Access Transmission Services, Inc., have been certified as CLECs by this Commission and are vigorous participants in various proceedings relating to local interconnection. Assuming that AT&T were to operate as a CLEC on the basis of "pure resale," under the premises of its own proposal in the instant proceeding, "CLEC-reseller" AT&T could find itself in the unenviable position of having its noncompetitive services to aggregator telephones subjected to more regulatory scrutiny than that potentially applied to Bell Atlantic-Pennsylvania, Inc.'s — AT&T's ILEC competitor — corresponding services since Bell would be classified as a "facilities-based" carrier or "interexchange transporter"

[4] Such "dividing lines" will continue to blur as various telecommunications carriers utilize both their own networks and "unbundled elements" from the networks of other carriers for the provision of services to end-users.

[5] AT&T's Comments plainly suggest that the definition of interexchange service to aggregator telephones should include "live and automated operator services." AT&T Comments, recommended amendments to proposed 52 Pa. Code § 63.102, Appendix A, at 19.

specify that justification for changes could include: conforming the rate or surcharge to the comparable interstate charge, responding to competitive conditions, reducing customer confusion, conforming the rates or the service to generally applicable marketing plans or making changes to improve the quality or the value of the service provided. Cost justifications, cost-of-service or detailed rate data are unnecessary and the rule should state that such information or data are not required.

AT&T Comments at 13-14, footnote omitted, emphasis in the original.

We addressed the same AT&T argument in a limited fashion in our June 8, 1995, Order at Docket No. R-00953364, where we stated:

AT&T urges us to adopt a limited statutory interpretation regarding our authority to review IXC tariff filings that involve noncompetitive services as those are defined under the premises of 66 Pa.C.S. § 3008(a)(1)&(2) '. . . unless determined otherwise by the commission.' AT&T's statutory interpretation, anchored in its reading of 66 Pa.C.S. § 3009(b)(4), would permit this Commission's review of changes to existing IXC noncompetitive services on the basis of whether such changes are in '... compliance with applicable provisions regarding safety, adequacy, reliability and privacy of telecommunications services.'

AT&T's suggested interpretation may render unanswered the question of how this Commission is supposed to perform a review of the rates for IXC services that could be classified as noncompetitive under the premises of 66 Pa.C.S. § 3008(a)(1).

Pennsylvania Public Utility Commission v. AT&T Communications of Pennsylvania, Inc., Docket No. R-00953364, Order entered on June 8, 1995, at 4-5, emphasis in the original.

Although we sympathize with AT&T's position on the required flexibility for our evaluation standards of IXC noncompetitive services tariffs, we find its statutory interpretation on the scope of the available review standards to be disturbingly narrow. AT&T's interpretation will deprive this Commission of certain evaluation standards, inclusive of the cost information that may be of relevance to a particular tariff filing. This interpretation is unacceptable. As the trend of IXC noncompetitive service tariff filing evaluations demonstrates, following our Order at Docket No. R-00953364, the cost information issue or the cost-based rates of IXC tariff filings for noncompetitive services, have not become subjects of litigation before this Commission. Therefore, AT&T's concerns that the regulatory evaluation process for IXC noncompetitive service tariff filings would become unduly burdensome, have not materialized under our Interim Guidelines. However, in the remote possibility that cost data or information are legitimately needed in order to evaluate an IXC noncompetitive service tariff filing, this Commission and its staff cannot deprive themselves of the opportunity to seek such information in order to protect the broader public interest and the welfare of end-user consumers of telecommunications services.

We must also pay attention to the evaluation mechanism that will be used for existing IXC noncompetitive service tariff filings in the context of our proposed rules, since the same mechanism will be used for the evaluation of intraLATA toll rate changes by LECs under conditions of "1+" intraLATA toll dialing parity. We believe that AT&T and other IXCs will be hard pressed to argue that cost information and data are irrelevant in the evaluation of toll rate changes that can and will be filed by LECs under the procedures contemplated in the instant rulemaking. This is due to the traditional interest that IXCs have expressed and continue to express about LEC intraLATA toll service rate movements and their relationship to the LEC carrier access services and rates that are engaged by the IXCs for the origination, transport, switching and termination of toll calls within the Commonwealth.

We believe, however, that we can formally adopt additional flexibility in our rules regarding the evaluation standards for the IXC tariff filings with changes to their existing noncompetitive services. This flexibility largely reflects the decisions that we have already taken with respect to certain tariff filings from facilities-based IXCs such as AT&T and Sprint at Docket Nos. R-00953364 and R-00953388, respectively. Thus, we will include an additional subsection in our final regulation at § 63.105 (relating to noncompetitive services) to reflect these decisions as well as certain of the suggestions that have been made by AT&T in its comments. This subsection will essentially accomplish the following:

—It will eliminate the need of any review for IXC existing noncompetitive service tariff filings, on the basis of cost justification, cost-of-service, or revenue data if the proposed tariff changes reflect tariff changes for the same service that have become lawfully effective in the interstate jurisdiction or in several other states.

—Gives the IXC the opportunity to submit other reasonable justification for its proposed existing noncompetitive service tariff change, and provides the Commission and its staff the opportunity to request any other relevant data.

—It will eliminate the need for any review if the IXC requests a rate decrease for its existing noncompetitive service.

—It will eliminate the need for any review if the IXC proposed tariff change for an existing noncompetitive service involves terms and conditions for the service without any rate effects.

AT&T's Comments suggest that the regulations should "...explicitly permit a filing that reflects a negotiated or compromise version of the tariff supplement arrived at between the PUC staff and the interexchange carrier" and that "[e]xplicit recognition of this alternative may facilitate a compromise solution, saving time and resources for all concerned." AT&T Comments at 11 and Appendix A at 23-24. The IRRC Comments endorse this approach. We find great merit in this proposal. Thus, our final regulation regarding the evaluation of IXC tariff filings for existing noncompetitive services shall be modified accordingly to reflect this approach.

AT&T proposes that if a contested IXC tariff filing with a change in an existing noncompetitive service is brought before the Commission by the Commission's staff, such action should be taken at the next available Public Meeting following the issuance of the staff report that suspended the filing. Furthermore, AT&T suggests that if the Commission would fail "to reject the carrier's tariff at the next public meeting, the tariff filing shall be deemed approved and the carrier may place the service into effect upon one day's notice." AT&T Comments, Appendix A at 23.

We decline to accept AT&T's suggestion. We are aware that our staff strives to bring contested matters to our attention for resolution with all possible speed. Our

experience with contested IXC tariff filings for existing noncompetitive services clearly indicates that such matters were resolved without any undue delay. In addition, we cannot precisely forecast at this time if IXC tariff filings for their services may become contested matters because of the actions of other interested telecommunications carriers or parties. If past experience with proposed toll rate changes by certain ILECs in this Commonwealth is any indication, it is highly probable that our staff will be called to analyze such disputes and refer them to the Commission for final disposition. Under such circumstances, the Commission cannot limit the necessary time frame in which a contested matter can be timely resolved while following all due process requirements. Such a time frame cannot be bound by the time limits suggested by AT&T which we find to be highly arbitrary.

4. *New Competitive Services*

We agree with AT&T's comments that our proposed rule requirement for the submission of "comprehensive information" when a new IXC competitive service is filed, needs to be modified. Thus, we believe that AT&T's suggestion has merit in replacing the term "comprehensive" with "relevant." AT&T Comments at 8. We further agree with AT&T's Comments that if an IXC files a tariff for a new competitive service, the IXC will not need to submit any information regarding comparable services from other IXCs. AT&T Comments at 9. We believe that there is no need for such an administrative burden in automatically requesting such information from the IXCs. If there is a need to obtain such information in order to analyze the related IXC filing, such information can be obtained on a case-by-case basis.

5. *Reclassification of Services*

AT&T urges us to modify § 63.106 (relating to reclassification of services) of our proposed regulations in order to incorporate a time limit for the Commission to decide whether an IXC noncompetitive service is competitive. AT&T Comments at 15. AT&T suggests that although Chapter 30 contains a 180-day limit for such a decision if the service involved is an LEC noncompetitive service, the corresponding decision for an IXC noncompetitive service should be reached within 90 days from the date of commencement of the relevant proceeding. AT&T states in support that "... the strong presumption is that the General Assembly's characterization of a service as 'noncompetitive' was a temporary phenomenon and, if an investigation under this section is initiated, the service likely will be found to be competitive." AT&T Comments at 16.

For generally similar reasons, AT&T argues that the IXC noncompetitive service reclassification to a competitive one should take place without the need for a hearing. AT&T contrasts the statutory language at 66 Pa.C.S. § 3008(c) where the Commission "shall have the authority to reclassify telecommunications services provided by an interexchange ...carrier as noncompetitive if, after notice and hearing, it determines, upon application of the criteria set forth in this chapter, that sufficient competition is no longer present," with 66 Pa.C.S. § 3008(a) where the telecommunications services "provided by an interexchange carrier shall be deemed to be competitive services ...except for the provision of the following interexchange services which will be deemed to be noncompetitive services unless determined otherwise by the commission..." AT&T reaches the conclusion that "...since Chapter 30 does not require it, the [proposed regulation] section should be rewritten to acknowledge that the Commission can resolve a petition by an interexchange carrier to reclassify a service from noncompetitive to competitive without *requiring* a hearing." AT&T Comments at 17, emphasis in the original.

As we have previously noted, the procedures contemplated in the instant rulemaking will also be utilized by other telecommunications carriers for the provision of their intraLATA toll services under conditions of "1+" intraLATA toll dialing parity. Thus, the need for maintaining competitive neutrality among the various competing carriers in the intraLATA toll services market, obliges us to adopt the existing statutorily specified *procedural* guidelines that are already contained in Chapter 30 that relate to the competitive reclassification of LEC noncompetitive services at 66 Pa.C.S. § 3005(a). Thus, the Commission will utilize both a 180-day period and a hearing in reaching its determination on whether an IXC noncompetitive service can be reclassified as competitive. We cannot fail to observe that the competitive reclassification of the IXC services to aggregator telephones and of IXC optional calling plans would in all likelihood require a hearing because of the multitude of issues involved and the potential effects on various interested parties and on the public interest in general.

6. *Annual Reporting Requirements*

AT&T argues against the proposed annual reporting requirement for intrastate service-by-service revenue and usage data. AT&T Comments at 18. The IRRC comments also question whether this Commission needs such data if an IXC files an annual report with the FCC, with more comprehensive information than that required under our proposed regulation, and the IXC also forwards a copy of its FCC annual report to this Commission as well. It should be noted that only AT&T was under the obligation of providing a comprehensive annual report to the FCC. Thus, it is imperative that this Commission shall obtain the necessary information on IXC operations within this Commonwealth. In this respect, we will not adopt AT&T's suggestion to eliminate the annual reporting requirement for revenue and usage data on a service-by-service basis. Furthermore, we note that we are requesting such information on "subject to data availability basis." Thus, such a reporting requirement will not be an undue administrative burden on smaller IXCs, while the larger ones maintain such data on a highly automated basis.

C. *Availability of Procedures to Local Exchange Carriers*

Under our previously discussed pronouncements, the procedures contained in the present final rule will also be available for ILEC and CLEC intraLATA toll rate changes once intraLATA "1+" dialing parity is implemented. This Commission will be issuing further directives regarding ILEC and CLEC rate changes for their respective toll services, including the disposition of AT&T's Petition for Clarification at Docket Nos. P-00961024 and P-00961081, *Commonwealth Ch. 30 Order.* Pending the issuance of such directives, ILECs and CLECs that plan to utilize the IXC procedures for intraLATA toll service rate changes once "1+" intraLATA toll dialing parity is implemented, are directed to propose intraLATA toll rate changes in *separate and distinct* tariff filings from those involving their local exchange and/or carrier access services. We intend to continue accepting, evaluating and resolving ILEC and CLEC tariff filings on a 60-day notice basis under the premises of Section 1308(a) of the Public Utility Code, 66 Pa.C.S. § 1308(a). Thus, ILEC and CLEC tariffs which may "intermix" proposed rate changes in intraLATA toll services under the procedures in the instant final regulations, with rate changes for local

exchange and/or carrier access services, will be deemed improper and will not be accepted for filing by this Commission.

Accordingly, under section 501 and section 3009(d) of the Public Utility Code, 66 Pa.C.S. §§ 501 and 3009(d), and the Commonwealth Documents Law (45 P. S. § 1201, et seq.) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we amend the regulations at 52 Pa. Code § 63.101, et seq., Subchapter H, as noted above and as set forth in Annex A of this order; *Therefore*,

It is Ordered that:

1. The Interim Guidelines, currently in place, regarding the regulation of interexchange carriers operating or otherwise conducting business in this Commonwealth, and contained in Appendix A of the January 10, 1995 Declaratory Order, shall remain in effect until these regulations become effective upon publication in the *Pennsylvania Bulletin*.

2. The regulations of the Commission, 52 Pa. Code Chapter 63, are amended by adding §§ 63.101—63.110 to read as set forth in Annex A.

3. The Secretary shall submit this Order and Annex A to the Office of Attorney General for approval as to legality.

4. The Secretary shall submit this Order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this Order and Annex A for formal review by the designated standing committees of both Houses of the General Assembly, and for formal review by the Independent Regulatory Review Commission.

6. The Secretary shall duly certify this Order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Alternative formats of this document are available to persons with disabilities and may be obtained by contacting Shirley M. Leming, Regulatory Coordinator, Law Bureau at (717) 722-4597, or through AT&T Relay Center at 1-800-654-5988.

7. These regulations shall become effective upon publication in the Pennsylvania Bulletin.

By the Commission,

JOHN G. ALFORD,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 2790 (June 7, 1997).)

Fiscal Note: Fiscal Note 57-155 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter H. INTEREXCHANGE TELECOMMUNICATIONS CARRIERS

(*Editors Note*: As part of this regulatory package, the Commission is relettering subchapters in Chapter 63. The rulemaking inserts a new Subchapter H, §§ 63.101—63.110. The current Subchapter H, §§ 63.111—63.118 becomes Subchapter I, numbered sections do not change. The current Subchapter I, §§ 63.131—63.137, becomes Subchapter J, numbered sections do not change.)

Sec.

§ 63.101. Statement of purpose and policy.

On July 8, 1993, the General Assembly enacted sections 3001—3009 of the code (relating to alternative form of regulation of telecommunications services) (Chapter 30), which provided for the regulatory reform of the telephone industry in this Commonwealth. Sections 3008 and 3009(b)(4) of the code (relating to interexchange telecommunications and carrier; and additional powers and duties) have significant effect on the future regulation by the Commission of interexchange telecommunications carriers. The purpose of this subchapter is to codify the application of Chapter 30 to interexchange telecommunications carriers and codify the modification of procedures to address the application of Chapter 30.

§ 63.102. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

Code—The Public Utility Code, 66 Pa.C.S. §§ 101—3316.

Competitive services—Interexchange services other than noncompetitive services.

Existing service—A competitive or noncompetitive service which an interexchange telecommunications carrier offered prior to July 5, 1997, or a competitive or noncompetitive service previously introduced as a new service under either § 63.104 or § 63.105(b) (relating to new competitive services; and noncompetitive services).

Interexchange service to aggregator telephones—An interexchange service offered to consumers using telephones, including coin telephones, credit card telephones and telephones located in hotels, motels, hospitals and universities, which are made available to the transient public, customers or patrons. The term includes live and automated operator services and other services which are provided to consumers placing calls from aggregator telephones, but excludes prepaid debit calling card services.

Interexchange telecommunications carrier—A carrier other than a local exchange carrier or local telecommunications company authorized by the Commission to provide long distance telecommunications service. The term includes both interexchange transporters and interexchange resellers as those terms are defined in § 63.112 (relating to definitions).

New service—A competitive or noncompetitive service which an interexchange telecommunications carrier is proposing to offer not previously offered by that interexchange telecommunications carrier and which is not a modification to an existing service or an adjunct to an existing service.

Noncompetitive services—

(i) This term includes the following categories of service:

(A) Interexchange service to aggregator telephones.

(B) Optional calling plans required by the Commission under § 63.73 (relating to optional calling plans).

(C) Other interexchange services expressly determined by the Commission to be noncompetitive under § 63.106 (relating to reclassification of services).

(ii) The term does not include services incorporated within the service categories identified in subparagraph (i) which the Commission expressly determines to be competitive under § 63.106.

§ 63.103. Existing competitive services.

(a) An interexchange telecommunications carrier shall maintain in its tariff rates and service description information relating to each of its existing competitive services.

(b) Tariff supplements intended to modify existing competitive service rates or conditions of service may be filed to become effective on 1 days' notice. Supporting data and cost justification related to the modification contained in the tariff supplements are unnecessary. These tariff supplements shall become effective as filed and will not be subject to Commission approval.

(c) Tariff supplements intended to modify existing competitive services shall clearly indicate this purpose on each page of the tariff supplement.

(d) Tariff supplements intended to modify existing competitive services shall be in compliance with section 3008(d) of the code (relating to interexchange telecommunications carrier) and regulations promulgated thereunder.

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

§ 63.104. New competitive services.

(a) New competitive services shall be introduced through the filing of a tariff supplement and verified, supporting documentation which contains the following information:

(1) An indication on each page of the tariff supplement that the page pertains to a new competitive service.

(2) A description of the new competitive service.

(3) The rates for the new competitive service.

(4) An executive overview summarizing the reason for the filing which includes relevant information regarding the safety, adequacy, reliability and privacy considerations related to the new competitive service.

(b) New competitive service tariff supplements may be filed with the Commission to become effective on 16-days' notice.

(c) The Commission and Commission staff's review of new competitive service tariff supplements is restricted to reviewing whether the proposed service is a competitive service and is safe, adequate, reliable and consistent with privacy concerns. This review shall be conducted consistent with the following procedures:

(1) Within 14 days of the date of filing, Commission staff shall either issue a notice allowing the tariff supplement to become effective or issue a report which explains why the tariff supplement should not be permitted to become effective without modification. The staff report may identify modifications which would eliminate inadequacies in the tariff supplement. Commission staff will deliver or transmit the notice or report to the filing interexchange telecommunications carrier at the time of issuance.

(2) When Commission staff issues a notice allowing the tariff supplement to go into effect, the tariff supplement will become effective, without modification, 16 days after the filing date. If the Commission staff does not issue a notice or report on the tariff supplement within the 14-day period, the tariff supplement will go into effect by operation of law at the end of the 16-day notice period.

(3) When Commission staff does not allow the tariff supplement to go into effect and issues a report addressing the inadequacies in the tariff supplement, the tariff supplement will be suspended pending consideration of the tariff supplement under paragraphs (4) and (5).

(4) The filing interexchange telecommunications carrier may file a response to a staff report suspending the carrier's tariff supplement. Responses shall be filed within 7 days of the issuance of the staff report. Contested staff reports shall be considered by the Commission at public meeting.

(5) In the alternative, the interexchange telecommunications carrier may withdraw the tariff supplement and file a tariff supplement which adopts the modifications addressed in the staff report. When a modified tariff supplement is filed, the modified tariff supplement shall become effective on 1 day's notice unless the modified tariff supplement is not in full compliance with the staff report.

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

§ 63.105. Noncompetitive services.

(a) Each noncompetitive service offered by an interexchange telecommunications company shall be included in the carrier's tariff in compliance with sections 1302 and 1303 of the code (relating to tariff filing and inspection; and adherence to tariffs).

(b) New noncompetitive services shall be introduced through the filing of a tariff supplement. The tariff supplement and verified, supporting documentation shall contain the following information:

(1) An indication on each page of the tariff supplement that the page pertains to a new noncompetitive service.

(2) A description of the new noncompetitive service.

(3) The rates proposed for the new noncompetitive service.

(4) Supporting data justifying the proposed rates for the noncompetitive service.

(5) An executive overview summarizing the reason for the filing which includes relevant information regarding the safety, adequacy, reliability and privacy considerations related to the proposed service.

(c) Modifications to existing noncompetitive services shall be implemented through filing of a tariff supplement and verified supporting documentation. The tariff supplement and supporting documentation shall contain the information prescribed in subsection (b)(1)—(4). Supporting rate data is only required if the tariff supplement purports to increase an existing rate or surcharge.

(d) When a proposed change to an existing noncompetitive service is accompanied by information which satisfies one or more of the following provisions, the Commission and the Commission staff's review of the proposed change

will be based on a review of whether the proposed change in the noncompetitive service is safe, adequate, reliable and consistent with privacy requirements, and the submitting interexchange carrier is not required to submit cost justification, cost-of-service or revenue data relating to the proposed change if one of the following applies:

(1) The proposed change is designed to make the rates, terms or conditions for the service conform to the comparable rates, or conditions for the same service that have become lawfully effective in the interstate jurisdiction.

(2) The proposed change is designed to make the rates, terms or conditions that have become lawfully effective in several other states.

(e) An interexchange carrier may also satisfy the requirements of subsections (b)(4) and (c), and obtain approval for a rate change filed under this section, if the interexchange carrier submits other reasonable justification for the change, or if the Commission or the Commission's staff request any other relevant data.

(f) An interexchange carrier requesting rate decreases for its existing noncompetitive services will be permitted to put them in effect at the end of the specified 16-day notice period without any further review or approval by the Commission or the Commission's staff.

(g) An interexchange carrier requesting changes in the terms and conditions of its existing noncompetitive services, where the changes will not result in any rate changes, will be permitted to put them in effect at the end of the specified 16-day notice period without any further review or approval by the Commission or the Commission's staff.

(h) Noncompetitive service tariff supplements shall be filed to become effective on 16-days' notice.

(i) Review of noncompetitive service tariff supplements shall be conducted consistent with the following procedures:

(1) Within 14 days of the date of filing, Commission staff will either issue a notice allowing the tariff supplement to become effective or issue a report which explains why the tariff supplement should not be permitted to become effective without modification. The staff report may identify modifications which would eliminate inadequacies in the tariff supplement. Commission staff will deliver or transmit the notice or report to the filing interexchange telecommunications carrier at the time of issuance.

(2) When Commission staff issues a notice allowing the tariff supplement to go into effect, the tariff supplement will become effective, without modification, 16 days after the filing date. If the Commission staff does not issue a notice or report on the tariff supplement within the 14-day period, the tariff supplement will go into effect by operation of law at the end of the 16-days' notice period.

(3) When Commission staff does not allow the tariff supplement to go into effect and issues a report addressing the inadequacies in the tariff supplement, the tariff supplement will be suspended pending consideration of the tariff supplement under paragraphs (4) and (5).

(4) The filing interexchange telecommunications carrier may file a response to a staff report suspending the carrier's tariff supplement. Any response shall be filed within 7 days of the issuance of the staff report. Contested staff reports will be considered by the Commission at public meeting.

(5) In the alternative, the interexchange telecommunications carrier may withdraw the tariff supplement and file a tariff supplement which adopts the modifications addressed in the staff report or which reflects a version of the tariff supplement that has been agreed to by the carrier and the staff. When a modified tariff supplement is filed, the modified tariff supplement shall become effective on 1-days' notice.

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

§ 63.106. Reclassification of services.

(a) The Commission has authority, under section 3008(a) and (c) of the code (relating to interexchange telecommunications carrier), to, after notice and hearing, reclassify services defined as either a noncompetitive service or a competitive service.

(b) Commission review of whether a competitive service should be reclassified as a noncompetitive service will be performed either within the scope of a Commission investigation conducted under section 331(a) of the code (relating to powers of commission and administrative law judges), or upon consideration of a complaint filed under section 701 of the code (relating to complaints).

(c) Commission review of whether a noncompetitive service should be reclassified as a competitive service will be performed either within the scope of a Commission investigation conducted under section 331(a) of the code or upon consideration of a petition filed by the interexchange telecommunications carrier under § 5.41 (relating to petitions generally).

(d) When reviewing whether a service should be reclassified, the Commission will consider the following factors:

(1) The ease of entry by potential competitors into the market for the specific service at issue.

(2) The presence of other existing telecommunications carriers in the market for the specific service at issue.

(3) The ability of other telecommunications carriers to offer the service at competitive prices, terms and conditions.

(4) The availability of like or substitute service alternatives in the relevant geographic area for the service at issue.

(5) Other factors deemed relevant by the Commission.

§ 63.107. Annual reporting requirements.

(a) On or before May 31 of each calendar year, a certificated interexchange transporter, as defined in § 63.112 (relating to definitions), shall file with the Commission an annual report for the preceding calendar year. The annual report shall be filed with the appropriate office or bureau. The report shall be considered a proprietary document by the Commission.

(b) The annual report shall contain aggregate total revenue and traffic volume data measured in minutes of use for the carrier's intrastate operations during the preceding calendar year. Subject to data availability, this information should be disaggregated in the following service categories:

(1) Message toll service (MTS) and associated services including operator assisted and calling card services.

(2) Services corresponding to outbound Wide Area Telecommunications Services (WATS).

(3) Services corresponding to inbound WATS or "800" type services.

(4) Private line or dedicated communication path services.

(5) Dedicated network type services, including virtual network type services.

(c) Together with the annual report required by subsection (a), an interexchange telecommunications carrier which is required to file an annual report with the Federal Communications Commission (FCC), shall also file a copy of the FCC annual report. The FCC annual report shall be considered a public document by the Commission unless deemed to be proprietary in whole or in part by the FCC.

Subchapter I. INTEREXCHANGE RESELLERS

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(*Editor's Note*: Throughout the entire Chapter 63, Subchapter I (former Subchapter H), the term "aggregator" shall be changed to "nonpublic utility aggregator.")

Subchapter J. CONFIDENTIALITY OF CUSTOMER COMMUNICATIONS AND INFORMATION

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