

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION
[25 PA. CODE CH. 93]

Corrective Amendment to 25 Pa. Code § 93.9e

The Department of Environmental Protection has discovered a discrepancy between the agency text of 25 Pa. Code § 93.9e (relating to Drainage List E), as deposited with the Legislative Reference Bureau and published at 27 Pa.B. 5247 (October 11, 1997) and the official text as published in the *Pennsylvania Code Reporter* (Master

Transmittal Sheet No. 277 (December 1997)), and as currently exists in the *Pennsylvania Code*. When the amendment made by the Department at 27 Pa.B. 5247 was codified, it was not accurately reflected in the text.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legislative Reference Bureau a corrective amendment to 25 Pa. Code § 93.9e. The corrective amendment to 25 Pa. Code § 93.9e is effective as of December 6, 1997, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 93.9e appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9e. Drainage List E.

Delaware River Basin in Pennsylvania
Delaware River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
1—Delaware River	Main Stem, Lehigh River to Head of Tide	Bucks	WWR; MF	Delete Bac ₁ , pH ₁ and TDS ₁ Add Bac ₅ , MBAS ₁ , pH ₄ , Rad, TDS ₃ , Temp ₄ Temp ₈ , TON and Tur ₇
2—Unnamed Tributaries to Delaware River	Basins, Lehigh River to Pidcock Creek	Northampton-Bucks	TSF	None
2—Frya Run	Basin	Northampton	HQ-CWF; MF	None
2—Cooks Creek	Basin	Bucks	EV	None
2—Gallows Run	Basin	Bucks	CWF	None
2—Tinicum Creek	Basin	Bucks	EV	None
2—Tohickon Creek	Basin, Source to Lake Nockamixon Dam	Bucks	TSF	None
2—Tohickon Creek	Basin, Lake Nockamixon Dam to Deep Run	Bucks	CWF	None
3—Deep Run	Basin	Bucks	WWF	None

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[Pa.B. Doc. No. 98-1146. Filed for public inspection July 17, 1998, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA UTILITY COMMISSION

[52 PA. CODE CH. 56]

[L-960114]

Standards and Billing Practices for Residential Utility Service

The Pennsylvania Public Utility Commission (Commission) on April 30, 1998, adopted a final rulemaking to clarify, simplify and remove excessive and burdensome requirements from the parties dealing with the Bureau of Consumer Services. The contact persons are Kathryn G. Sophy, Law Bureau, (717) 772-8839 and Louis Sauers, Bureau of Consumer Services, (717) 783-6688.

Executive Summary

On June 3, 1995, this Commission published an Advance Notice of Proposed Rulemaking (ANPR) in the *Pennsylvania Bulletin* inviting public comments. See 25 Pa.B. 2188. Upon review of numerous constructive comments, the Commission issued its proposed rulemaking which was published at 26 Pa.B. 2908 (June 22, 1996) inviting further comments. Comments were received from legislators, the utility industry, consumer groups, various associations, organizations and unions and more than 200 individuals.

Our review of Chapter 56 (relating to standards and billing practices) was careful and meticulous. We are well aware of our duty to ensure that the quality of utility service remain high while not unreasonably restricting the efforts of the utility companies to collect amounts due to them.

The comments assisted the Commission in its final evaluation of the procedures in Chapter 56. On May 1, 1998, the Commission approved final changes designed to clarify, simplify and remove excessive and burdensome requirements from parties dealing with our Bureau of Consumer Services.

Section 56.2 (relating to definitions) has been revised to allow a utility to call a customer back or to allow contact with more than one utility employe without escalating the matter to the level of a "dispute." The chapter has been revised to require less frequent actual meter readings, to remove the use of composite credit groups, to revise utility recordkeeping requirements.

Chapter 56 has been revised further to modify the requirements associated with termination of service. The revisions clarify when a utility may terminate service and what steps are required to be taken before termination may occur.

Finally, § 56.211 (relating to informal complaints) has been modified to require customers to attempt to resolve their disputes with their utilities before bringing their complaints to the Commission.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 30, 1997, the Board submitted a copy of the final rulemaking, which was published as proposed at 26 Pa.B. 2908 to IRRC and the Chairpersons of House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. Under section 5(c) of the Regulatory Review Act, IRRC and the

Committees were provided with copies of all comments received, as well as other documentation.

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

These final-form regulations was deemed approved by the House and Senate Committees on June 8, 1998, and were approved by IRRC on June 18, 1998, in accordance with section 5(c) of the Regulatory Review Act.

Public Meeting
held April 30, 1998

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; John Hanger; David W. Rolka; and Nora Mead Brownell

By the Commission:

By order entered March 5, 1996, we issued a Proposed Rulemaking Order to Review And Rescind All Obsolete And Excessive Rules And Regulations at Docket No. L-950103. The proposed rulemaking was published at 26 Pa.B. 2908 and a 30-day comment period set. Advance notice of this rulemaking was given by order entered May 23, 1995, and published at 25 Pa.B. 2188 with a 60-day comment period.

Comments were received from Columbia Gas of Pennsylvania, the Office of Consumer Advocate, PECO Energy Company, The Pennsylvania Gas Association, Pennsylvania Power & Light Company, The Peoples Natural Gas Company, Pennsylvania Utility Caucus, T.W. Phillips Gas & Oil Company, the Honorable Kathrynann W. Durham, the Honorable David R. Wright, Westmoreland County Blind Association, the Honorable Sara Steelman, the Pennsylvania Chapter of the National Association of Water Companies, System Council U-10 of the International Brotherhood of Electrical Workers, the Honorable Bruce Smith, the Independent Regulatory Review Commission (IRRC), various union petitions, other organizations and more than 200 individuals. Each of the comments were reviewed and considered. We are setting forth final changes which we believe will clarify, simplify and remove excessive and burdensome requirements from the parties dealing with our Bureau of Consumer Services.

What follows is a summary of the final changes pursuant to the many helpful comments from interested parties.

Chapter 56. Standards and Billing Practices for Residential Utility Service

§ 56.2. Definition of "dispute." The definition is amended to allow a utility to exclude an "initial inquiry."

§ 56.2. Definition of "initial inquiry." Addition of this definition will allow a utility to check records and get back to the customer within 3 business days with additional information without the contact being categorized as a dispute.

§ 56.2. Definition of "utility." After receiving a great many comments expressing deep concern over our initial proposal to expand the definition to include a utility's agents, we have reconsidered our initial proposal and will retain the present definition of "utility."

§ 56.2. Definition of "remote reading device." Language has been added to better define these types of meters.

§ 56.12. Meter reading; estimated billing; ratepayer readings. The new language allows gas, water and electric utilities which use remote reading devices to do an actual reading every 5 years instead of every 2 for electric

and gas and every 3 years for water, which reflects the increasing reliability of meters used in each utility field. To balance the chance that any underbilling discovered may be proportionately higher, language is added to require that the utility comply with the requirements of § 56.14. Language is also added to require utilities to make a bona fide attempt to schedule an appointment with the departing ratepayer or new occupant to secure an actual meter reading.

§ 56.14. Previously unbilled utility service. To remove an unfair administrative burden for utilities, this section now requires that companies comply with § 56.14 only if the billing or rebilling exceeds otherwise normally estimated bills by at least 50% and \$50.

§ 56.33. Composite credit group; cash deposits; third-party guarantors. Composite credit groups are eliminated as an option to payment of a deposit.

§ 56.53. Refund of deposit. Paragraph (3) is eliminated to remove the use of composite credit groups.

§§ 56.61—56.65. Composite credit groups. These sections have been eliminated to remove the use of composite credit groups.

§ 56.91. General notice provisions. This section is changed to clarify the language.

§ 56.93. Personal contact. After receiving a great many comments concerning our initial proposal to change the personal contact provisions, we have reconsidered our initial proposal and will retain the present procedures. However, this section is changed to correct a typographical error.

§ 56.97. Procedures upon ratepayer or occupant contact prior to termination. This section is modified to require that the authorized utility employe explain the reasons for the proposed termination, how to avoid termination, and the medical emergency procedures if a settlement payment agreement is not established.

§ 56.101. Limited notice upon noncompliance with report or order. Language is altered to include mediation decisions and to allow the use of limited notice on a restricted basis during the nonwinter period whenever a customer breaks a payment agreement entered after the company issued a 10-day notice.

§ 56.114. Length of postponement; renewals. Language is added to allow a ratepayer to renew a medical certification only twice in situations where the ratepayer is not fully meeting the obligation under § 56.116 to equitably arrange to make payment on all bills.

§§ 56.121—56.126. Termination at residential dwellings where service is in the name of the landlord. These sections are eliminated in light of the specific requirement in 66 Pa.C.S. §§ 1523—1528.

§ 56.140. Follow-up response to inquiry. This section is added to provide that a utility may not terminate service during the period that a customer is awaiting a response to an inquiry which does not yet fall into the category of "dispute."

§ 56.142. Time for filing a termination dispute or informal complaints. Language is added to eliminate the possibility that a dispute may be filed with the representative of the utility company when that representative shows up to terminate service. Disputes must be filed prior to that time.

§ 56.151. General rule. This section is changed to identify when a utility may limit the information contained in its report.

§ 56.152. Contents of the utility company report. (Utility company dispute procedures) The section reflects the general change that if a customer is satisfied with the dispute resolution the company does not need to provide all of the information in § 56.152. If, however, the customer is not satisfied, then the company would adhere to the current full requirements at § 56.152.

§ 56.162. Informal complaint filing procedures. The list of requested information now includes the telephone number of the complainant.

§ 56.191. General rule. (Restoration of service) This section is modified to allow companies to require full payment of outstanding charges for restoration of service if a customer has twice defaulted on a payment arrangement.

§ 56.202. Record maintenance. This section is modified to require that a utility maintain records for a minimum of 4 years.

§ 56.211. Informal complaints. This section is modified to require customers to attempt to resolve disputes with their utility providers before bringing their complaints to the Bureau of Consumer Services.

Through these changes, we are eliminating those sections which no longer serve a useful purpose and we are modifying others to promote the ease of application as well as fairness. Accordingly, under sections 501, 504, 505, 506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301 and 1501, and the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1201 et seq.), and the regulations promulgated thereunder, we hereby amend the Commission's regulations as set forth in this order and the attached Annex A. *Therefore,*

It is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 56, are amended by:

(a) Amending §§ 56.2, 56.12, 56.14, 56.33, 56.53, 56.91, 56.93, 56.97, 56.101, 56.114, 56.142, 56.151, 56.152, 56.162, 56.191, 56.202 and 56.211; by

(b) Deleting §§ 56.61—56.65 and 56.121—56.126; and by

(c) Adding § 56.140 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. 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 and approval by IRRC.

5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The amendments are effective August 17, 1998.

6. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

By the Commission

JAMES J. MCNULTY,
Secretary

(Editor's Note: The proposal to amend §§ 56.35, 56.95 and 56.135, included at 26 Pa.B. 2908, has been withdrawn. The addition of § 56.135, included in the proposal at 26 Pa.B. 2908, has been withdrawn. The addition of § 56.140 was not included in the proposal at 26 Pa.B. 2908.)

Fiscal Note: Fiscal Note 57-171 remains valid for the final adoption of the subject regulations.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3338 (July 11, 1998).)

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. PRELIMINARY PROVISIONS

CHAPTER 56. STANDARDS AND BILLING PRACTICES

Subchapter A. PRELIMINARY PROVISIONS

§ 56.2. Definitions.

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

* * * * *

Dispute—A grievance of an applicant, ratepayer or occupant about a utility's application of a provision covered by this chapter, including subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts or the proper party to be charged. If, at the conclusion of an initial contact or, when applicable, a follow-up response, the applicant, ratepayer or occupant indicates satisfaction with the resulting resolution or explanation, the contact will not be considered a dispute.

* * * * *

Initial inquiry—A concern or question of an applicant, ratepayer or occupant about a utility's application of a provision covered by this chapter, including subjects such as credit determinations, deposit requirements, the accuracy of meter readings or bill amounts or the proper party to be charged. If a utility, with the consent of the applicant, ratepayer or occupant, offers to review pertinent records and call back the applicant, ratepayer or occupant within 3 business days with a response, the contact will be considered an initial inquiry pending a determination of satisfaction by the applicant, ratepayer or occupant with the company's response. If the company cannot reach the customer to convey the information obtained through a review of company records, a letter shall be sent which summarizes the information and informs the customer to contact the company within 5 business days if the customer disagrees with the company position, or has additional questions or concerns about the matter.

* * * * *

Remote reading device—A device which by electrical impulse or otherwise transmits readings from a meter, excluding devices that permit direct interrogation of the meter, usually located within a residence, to a more accessible location outside of a residence.

* * * * *

Subchapter B. BILLING AND PAYMENT STANDARDS

§ 56.12. Meter reading; estimated billing; ratepayer readings.

Except as provided in this section, a utility shall render bills based on actual meter readings by utility company personnel.

(1) *Inapplicability to seasonally billed ratepayers.* This section does not apply to ratepayers billed on a seasonal basis under terms included in the tariff of the utility.

(2) *Estimates for bills rendered on a monthly basis.* If a utility bills on a monthly basis, it may estimate usage of service every other billing month, so long as the utility provides a ratepayer with the opportunity to read the meter and report the quantity of usage in lieu of the estimated bill. The resulting bills shall be based on the information provided, except for an account where it is apparent that the information is erroneous.

(i) Upon the request of the ratepayer, the utility shall, at least annually, provide preaddressed postcards on which the ratepayer may note the reading. The utility shall provide additional preaddressed postcards on request.

(ii) The utility may establish due dates by which the postcards shall be received for a bill to be based upon the meter reading of the ratepayer or occupant. If the reading of a ratepayer is not received by that due date, the utility may estimate the quantity of usage.

(3) *Estimates permitted under exigent circumstances.* A utility may estimate the bill of a ratepayer if extreme weather conditions, emergencies, equipment failure, work stoppages or other circumstances prevent actual meter reading.

(4) *Estimates when utility personnel are unable to gain access.* A utility may estimate the bill of a ratepayer if utility personnel are unable to gain access to obtain an actual meter reading, as long as the following apply:

(i) The utility has undertaken reasonable alternative measures to obtain a meter reading, including, but not limited to, the provision of preaddressed postcards upon which the ratepayer may note the reading or the telephone reporting of the reading.

(ii) The utility, at least every 6 months, or every four billing periods for utilities permitted to bill for periods in excess of 1 month, obtains an actual meter reading or ratepayer supplied reading to verify the accuracy of the estimated readings.

(iii) The utility, at least once every 12 months, obtains an actual meter reading to verify the accuracy of the readings, either estimated or ratepayer read.

(5) *Remote reading devices for water, gas and electric utilities.* A utility may render a bill on the basis of readings from a remote reading device under the following conditions:

(i) When a gas, electric or water utility uses readings from a remote reading device to render bills, the utility shall obtain an actual meter reading at least once every 5 years to verify the accuracy of the remote reading device. If the ratepayer of record at the dwelling changes during the 5-year period between actual meter readings, the utility shall make a bona fide attempt to schedule an appointment with the departing ratepayer and, if necessary, the new occupant, to secure an actual meter reading.

(ii) When the actual meter reading establishes that the customer was underbilled due to an error in the registration of the remote reading device, the utility may render a bill for the uncollected amount. If the rebilling exceeds the otherwise normal estimated bill by at least 50% and at least \$50, the utility shall comply with § 56.14 (relating to previously unbilled utility service).

(iii) When the actual meter reading establishes that the customer was overbilled due to an error in the readings of the remote reading device, the utility shall credit or refund to the customer the amount overbilled plus interest calculated under § 56.181(3) (relating to duties of parties; disputing party's duty to pay undisputed portion of bills; utility's duty to pay interest whenever overpayment found).

(iv) Nothing in this section may be construed to limit the authority of electric, gas or water utilities to gain access to a residence for the purpose of checking or reading a meter.

(6) *Limitation of liability.* If a water company has estimated bills and if the ratepayer or occupant during that period has consumed an amount of water in excess of normal seasonal usage because of a verified leak that could not reasonably have been detected or other unknown loss of water, the ratepayer is not liable for more than 150% of the average amount of water consumed for the corresponding period during the previous year. This section does not apply when the water utility was unable to gain access and has complied with paragraph (4).

(7) *Equal monthly billing.* A gas, electric and steam heating utility shall provide its residential ratepayers with an optional billing procedure which averages estimated utility service costs over a 10-month, 11-month or 12-month period to eliminate, to the extent possible, seasonal fluctuations in utility bills. The utility shall review accounts at least three times during the optional billing period.

(8) *Notice.* The utility shall inform existing ratepayers of their rights under this section and under 66 Pa.C.S. § 1509 (relating to billing procedures).

§ 56.14. Previously unbilled utility service.

When a utility renders a make-up bill for previously unbilled utility service resulting from utility billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills and the make-up bill exceeds the otherwise normal estimated bill by at least 50% and at least \$50:

(1) The utility shall review the bill with the ratepayer and make a reasonable attempt to enter into a payment agreement.

(2) The period of the payment agreement may, at the option of the ratepayer, extend at least as long as:

(i) The period during which the excess amount accrued.

(ii) Necessary so that the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50%.

Subchapter C. CREDIT AND DEPOSITS STANDARDS POLICY PROCEDURES FOR NEW APPLICANTS

§ 56.33. Cash deposits; third-party guarantors.

If an applicant does not establish his credit under § 56.32 (relating to credit standards), the utility shall provide residential service when one of the following requirements is satisfied:

(1) *Cash deposit.* The applicant posts a cash deposit.

(2) *Third-party guarantor.* The applicant furnishes a written guarantee from a responsible ratepayer which, for the purposes of this section, shall mean a ratepayer who has or can establish credit, under § 56.32, to secure payment in an amount equal to that required for cash deposits.

(i) A guarantee shall be in writing and shall state the terms of the guarantee.

(ii) The guarantor shall be discharged when the applicant has met the terms and conditions which apply under §§ 56.52—56.57.

CASH DEPOSITS

§ 56.53. Refund of deposit.

A cash deposit shall be refunded under the following conditions:

(1) *Termination or discontinuance of service.* Upon termination or discontinuance of service, the utility shall promptly apply the deposit of the ratepayer, including accrued interest, to any outstanding balance for utility service and refund or apply to the ratepayer's account, the remainder to the ratepayer. A transfer of service from one location to another within a service area may not be deemed discontinuance within the meaning of this chapter.

(2) *Credit established.* When a ratepayer establishes credit under § 56.32 (relating to credit standards), the utility shall refund or apply to the ratepayer's account, any cash deposit plus accrued interest.

(3) *Third-party guarantor.* When a ratepayer substitutes a third-party guarantor in accordance with § 56.33(3) (relating to composite group; cash deposits; third-party guarantor), the utility shall refund any cash deposit, plus accrued interest, up to the limits of the guarantee.

(4) *Prompt payment of bills.* After a ratepayer has paid bills for service for 12-consecutive months without having service terminated and without having paid his bill subsequent to the due date or other permissible period as stated in this chapter on more than two occasions, the utility shall refund any cash deposit, plus accrued interest, so long as the customer currently is not delinquent.

(5) *Optional refund.* At the option of the utility, a cash deposit, including accrued interest, may be refunded in whole or in part, at any time earlier than the time stated in this section.

§ 56.61. (Reserved).

§ 56.62. (Reserved).

§ 56.63. (Reserved).

§ 56.64. (Reserved).

§ 56.65. (Reserved).

Subchapter E. TERMINATION OF SERVICE

§ 56.91. General notice provisions.

Prior to a termination of service, the utility shall mail or deliver written notice to the ratepayer at least 10 days prior to the date of the proposed termination. In the event of any taking or acceptance of utility service without the knowledge or approval of the utility, other than unauthorized use of service as defined in § 56.2 (relating to definitions), the utility shall comply with §§ 56.93—56.97, but need not otherwise provide notice 10 days prior to termination.

§ 56.93. Personal contact.

Except when authorized by § 56.71, 56.72 or 56.98 (relating to interruption of service; discontinuation of service; and exception for terminations based on occurrences harmful to person or property), a utility may not interrupt, discontinue or terminate service without personally contacting the ratepayer or a responsible adult occupant at least 3 days prior to the interruption, discontinuance or termination, in addition to providing other notice as specified by the properly filed tariff of the utility or as required by this chapter or other Commission directive. For purposes of this section, "personal contact" means:

- (1) Contacting the ratepayer or responsible adult occupant in person or by telephone.
- (2) Contacting another person whom the ratepayer has designated to receive a copy of a notice of termination, other than a member or employe of the Commission.
- (3) If the ratepayer has not made the designation noted in paragraph (2), contacting a community interest group or other entity, including a local police department, which previously shall have agreed to receive a copy of the notice of termination and to attempt to contact the ratepayer.
- (4) If the ratepayer has not made the designation noted in paragraph (2) and if there is no community interest group or other entity which previously has agreed to receive a copy of the notice of termination, contacting the Commission in writing.

§ 56.97. Procedures upon ratepayer or occupant contact prior to termination.

(a) If, after the issuance of the initial termination notice and prior to the actual termination of service, a ratepayer or occupant contacts the utility concerning a proposed termination, an authorized utility employe shall fully explain:

- (1) The reasons for the proposed termination.
- (2) All available methods for avoiding a termination, including the following:
 - (i) Tendering payment in full or otherwise eliminating the grounds for termination.
 - (ii) Entering a settlement or payment agreement.
- (3) The medical emergency procedures.

(b) The utility, through its employes, shall exercise good faith and fair judgment in attempting to enter a reasonable settlement or payment agreement or otherwise equitably to resolve the matter. Factors to be taken into account when attempting to enter into a reasonable settlement or payment agreement include the size of the unpaid balance, the ability of the ratepayer to pay, the payment history of the ratepayer and the length of time over which the bill accumulated. If a settlement or payment agreement is not established, the company shall further explain the following:

- (1) The right of the ratepayer to file a dispute with the utility and, thereafter, an informal complaint with the Commission.
- (2) The procedures for resolving disputes and informal complaints, including the address and telephone number of the Commission: Public Utility Commission, Box 3265, Harrisburg, Pennsylvania, 17105-3265, (800) 692-7380.
- (3) The duty of the ratepayer to pay any portion of a bill which the ratepayer does not honestly dispute.

NOTICE PROCEDURE AFTER DISPUTE FILED

§ 56.101. Limited notice upon noncompliance with report or order.

(a) Except during the winter period identified in § 56.100 (relating to winter termination procedures), the original grounds for terminations may be revived provided a 10-day termination notice was previously issued to the ratepayer. The original grounds for termination shall be revived and utilities may proceed with termination as provided in subsection (b) upon the failure to timely appeal from or comply with any of the following:

- (1) A utility company report required by § 56.151 (relating to the general rule).
- (2) An informal complaint report required by § 56.161 (relating to general rule; time for filing).
- (3) An order from a formal complaint, under § 56.173 or § 56.174 (relating to formal complaint procedures other than appeals from mediation decisions of the Bureau of Consumer Services; and formal complaint procedures for appeals from mediation decisions of the Bureau of Consumer Services).
- (4) A company negotiated payment or settlement agreement where a customer fails, at any time, during the first 120 days to maintain the agreement and this failure reflects payments of less than 50% of the overdue balance during this same time period.

(b) The utility may not be required to give further written notice so long as within 10 business days of the failure to appeal or comply with subsection (a):

(1) The ratepayer is personally contacted as described in § 56.93(1), (2) or (3) (relating to personal contact), at least 3 days prior to termination. If the utility is unable to make personal contact as described in § 56.93(1), (2) or (3), it shall proceed with the posting procedure described in § 56.95 (relating to deferred termination when no prior contact).

(2) At the time of termination, the utility serves personally on the ratepayer or posts conspicuously at the residence of the ratepayer and at the affected premises, including common areas where permissible, a post-termination notice complying with § 56.96 (relating to post-termination notice).

EMERGENCY PROVISIONS

§ 56.114. Length of postponement; renewals.

Service may not be terminated for the time period specified in a medical certification; the maximum length of the certification shall be 30 days.

(1) *Time period not specified.* If no length of time is specified or if the time period is not readily ascertainable, service may not be terminated for at least 30 days.

(2) *Renewals.* Certifications may be renewed in the same manner and for the same time period as provided in §§ 56.112 and 56.113 (relating to postponement of termination pending receipt of certificate; and medical certifications) and this section if the ratepayer has met the obligation under § 56.116 (relating to duty of ratepayer to pay bills). In instances where a ratepayer has not met the obligation in § 56.116 to equitably make payments on all bills, the number of renewals is limited to two 30-day certifications. If a utility wishes to contest the renewal, it shall follow § 56.118(3) (relating to the right of utility to petition the Commission).

(*Editor's Note:* See 66 Pa.C.S. §§ 1521—1533 (relating to discontinuance of service to leased premises).)

§ 56.121. (Reserved).

§ 56.122. (Reserved).

§ 56.123. (Reserved).

§ 56.124. (Reserved).

§ 56.125. (Reserved).

§ 56.126. (Reserved).

**Subchapter F. DISPUTES; TERMINATION
DISPUTES; INFORMAL AND FORMAL
COMPLAINTS**

GENERAL PROVISIONS

§ 56.140. Follow-up response to inquiry.

When a customer is waiting for a follow-up response to an inquiry under § 56.2 (relating to the definition of initial inquiry), termination or threatening termination of service for the subject matter in question shall be prohibited until the follow-up response, and when applicable, subsequent dispute resolution is completed by the utility.

§ 56.142. Time for filing a termination dispute or informal complaints.

To be timely filed, a termination dispute—which may not include disputes under §§ 56.35 and 56.191 (relating to payment of outstanding balance; and general rule)—and informal complaints shall be filed prior to the day on which the utility arrives to terminate service. If the utility arrives to terminate service and posts a deferred termination notice in lieu of termination or otherwise fails to terminate service, the time for filing a termination dispute or informal complaint shall be extended until the end of the business day prior to the utility again arriving to terminate service.

UTILITY COMPANY DISPUTE PROCEDURES

§ 56.151. General rule.

Upon initiation of a dispute covered by this section, the utility shall:

(1) Not issue a termination notice based on the disputed subject matter.

(2) Investigate the matter using methods reasonable under the circumstances, which may include telephone or personal conferences, or both, with the ratepayer or occupant.

(3) Make a diligent attempt to negotiate a reasonable payment agreement if the ratepayer or occupant claims a temporary inability to pay an undisputed bill. Factors which shall be considered in the negotiation of a payment agreement shall include, but not be limited to:

- (i) The size of the unpaid balance.
- (ii) The ability of the ratepayer to pay.
- (iii) The payment history of the ratepayer.
- (iv) The length of time over which the bill accumulated.

(4) Provide the ratepayer or occupant with the information necessary for an informed judgment, including, but not limited to, relevant portions of tariffs, statements of account and results of meter tests.

(5) Within 30 days of the initiation of the dispute, issue its report to the complaining party. The utility shall inform the complaining party that the report is available upon request.

(i) If the complainant is not satisfied with the dispute resolution, the utility company report shall be in writing and conform to § 56.152 (relating to contents of the

utility company report). Further, in these instances, the written report shall be sent to the complaining party if requested or if the utility deems it necessary.

(ii) If the complaining party is satisfied with the orally conveyed dispute resolution, the written utility company report may be limited to the information in § 56.152(1), (2), and, when applicable, § 56.152(7)(ii) or (8)(ii).

(iii) If the complaining party expresses satisfaction but requests a written report, the report shall conform with § 56.152, in its entirety.

§ 56.152. Contents of the utility company report.

A utility company report shall include the following:

(1) A statement of the claim or dispute of the ratepayer and a copy thereof if the claim or notice of dispute was made in writing.

(2) The position of the utility regarding that claim.

(3) A statement that service will not be terminated pending completion of the dispute process, including both informal and formal complaints, so long as there is compliance with all requirements of the Commission.

(4) A statement that if the complaining party does not agree with the utility company report, an informal complaint shall be filed with the Commission within 10 days of the mailing date of the report to insure the preservation of all of his rights.

(5) The office where payment may be made or information obtained listing the appropriate telephone number and address of the utility.

(6) A full and complete explanation of procedures for filing an informal complaint with the Commission (see § 56.162 (relating to informal complaint filing procedures)). If a written report is not requested by the complaining party or deemed necessary by the utility, the utility shall provide the information in § 56.162(1), (2) and (5). In addition, the utility should always provide the telephone number and address of the office of the Commission where an informal complaint may be filed.

(7) If the matter in dispute involves a billing dispute, the report shall include the following:

(i) An itemized statement of the account of the complaining ratepayer specifying the amount of credit, if any, and the proper amount due.

(ii) The date on or after which the account will become delinquent unless a settlement or payment agreement is entered into or an informal complaint is filed with the Commission. This date may not be earlier than the due date of the bill or 15 days after the issuance of a utility company report, whichever is later.

(8) If the matter involves a dispute other than a billing dispute, the report shall also state the following:

(i) The action required to be taken to avoid the termination of service.

(ii) The date on or after which service will be terminated unless the report is complied with, settlement agreement entered or an informal complaint filed. This date may not be earlier than the original date for compliance with the matter which gave rise to the dispute or 10 days from the date of issuance of the utility report, whichever is later.

INFORMAL COMPLAINT PROCEDURES

§ 56.162. Informal complaint filing procedures.

An informal complaint may be filed orally or in writing and shall include the following information:

- (1) The name and address of the ratepayer and, if different, the address at which service provided.
- (2) The telephone number of the ratepayer.
- (3) The account number of the ratepayer, if applicable.
- (4) The name of the utility.
- (5) A brief statement of the dispute.
- (6) Whether the dispute formerly has been the subject of a utility company investigation and report.
- (7) Whether the dispute formerly has been the subject of a Commission informal or formal complaint.
- (8) The date, if any, of proposed termination.
- (9) The relief sought.

Subchapter G. RESTORATION SERVICE

§ 56.191. General rule.

When service to a dwelling has been terminated, the utility shall reconnect service by the end of the first full working day after receiving one of the following:

- (1) Full payment of an outstanding charge plus a reasonable reconnection fee. Outstanding charges and the reconnection fee may be amortized over a reasonable period of time. Factors to be taken into account shall include, but not be limited to:
 - (i) The size of the unpaid balance.
 - (ii) The ability of the ratepayer to pay.
 - (iii) The payment history of the ratepayer.
 - (iv) The length of time over which the bill accumulated.
- (2) Payment of amounts currently due according to a settlement or payment agreement, plus a reasonable reconnection fee, which may be a part of the settlement or payment agreement. The utility may apply the procedure in paragraph (1), if the payment history indicates that the ratepayer has defaulted on at least two payment agreements, or an informal complaint decision, or a formal complaint order.
- (3) Adequate assurances that any unauthorized use or practice will cease, plus full payment of the reasonable reconnection fee of the utility, which may be subject to a payment agreement and compliance or adequate assurance of compliance with an applicable provision for the establishment of credit or the posting of deposits or guarantees.

Subchapter H. PUBLIC INFORMATION PROCEDURES; RECORD MAINTENANCE

§ 56.202. Record maintenance.

A utility shall preserve for a minimum of 4 years written or recorded disputes and complaints, shall keep the records within this Commonwealth at an office located in the territory served by it, and shall make the records available for examination by the Commission or its staff. Information to be maintained shall include the following:

- (1) The payment performance of each of its ratepayers.
- (2) The number of settlement agreements made by the utility company and a synopsis of the terms, conditions and standards upon which agreements were made.

(3) The number of service terminations and reconnections.

(4) Communications to or from individual ratepayers regarding interruptions, discontinuances, terminations and reconnections of service, including the name and address of the ratepayer, the date and character of the dispute or complaint and the adjustment or disposal made of the matter.

Subchapter I. INFORMAL COMPLAINTS

§ 56.211. Informal complaints.

The Bureau of Consumer Services (BCS) will have primary jurisdiction over ratepayer, applicant or occupant complaints arising under this chapter. The BCS, through its Director and with the concurrence of the Commission, will establish appropriate internal procedures to implement the provisions of this chapter.

(1) Absent good cause, the BCS will handle only Chapter 56 informal complaints in which the customer first attempted to resolve the matter with the utility.

(2) Only after the customer and the utility have failed to resolve the dispute will BCS initiate an investigation.

[Pa.B. Doc. No. 98-1147. Filed for public inspection July 17, 1998, 9:00 a.m.]

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
[52 PA. CODE CH. 57]**

[L-970120]

Electric Service Reliability

The Pennsylvania Public Utility Commission (Commission) on April 23, 1998, adopted a final rulemaking to provide for continuing adequacy and reliability and ensuring safety of the generation, transmission and distribution of electricity in this Commonwealth. The contact persons are Patricia Krise Burket, Law Bureau (717) 787-3464 and Blaine J. Loper, Bureau of Conservation, Economics and Energy Programs, (717) 787-3810.

Executive Summary

On June 12, 1997, the Commission promulgated proposed regulations to add Chapter 57, Subchapter N (relating to electric reliability standards) which establishes standards and procedures for assessing the reasonableness of electric service reliability. The proposed amendments were published at 27 Pa.B. 5262 (October 11, 1997) with a 60-day comment period.

At the public meeting held April 23, 1998, the Commission adopted an order which promulgates final-form regulations which are necessary to ensure the continued safety and reliability of electric service in this Commonwealth.

The final-form regulations require electric distribution companies (EDCs) and electric generation suppliers (EGSs) to conform to the requirements of the North American Electric Reliability Council and the appropriate regional reliability council, or successor organizations. The final-form regulations also adopt industry accepted performance indicators for monitoring the performance and reliability of the transmission and distribution systems, and requires annual filings of utility performance results.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 30, 1997, the Commission submitted a copy of the final rulemaking, which was published as proposed at 27 Pa.B. 5262, 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. Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of all comments received, as well as other documentation.

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

These final-form regulations were deemed approved by the House and Senate Committees by June 8, 1998. IRRC met on June 18, 1998, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

Public Meeting
held April 23, 1998

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; John Hanger, Statement attached; David W. Rolka; Nora Mead Brownell

Final Rulemaking Order*By the Commission:*

On December 3, 1996, Governor Tom Ridge signed into law 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act) (act). The act establishes standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system.

In response to this Legislative mandate, on January 24, 1997, the Commission instituted a rulemaking proceeding to develop regulations to ensure the safety, adequacy and reliability of the generation, transmission and distribution of electricity in this Commonwealth. See 66 Pa.C.S. §§ 2802(12) and (20), 2803, 2804(1), 2805(b)(1)(iii) and 2807(a).

An advance notice of proposed rulemaking was published at 27 Pa.B. 809 (February 15, 1997), with a 30-day comment period. Based upon the comments received, we promulgated proposed regulations to amend Chapter 57 by adding Subchapter N which establishes standards and procedures for assessing the reasonableness of electric service reliability. On September 30, 1997, a copy of the proposed rulemaking was submitted to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. The proposed amendments were published at 27 Pa.B. 5262, with a 60-day comment period.

Comments were received from: John G. Alford, former Commission Secretary; Enron Power Marketing, Inc. (Enron); Ford Motor Land Services Corporation (Ford); the Industrial Energy Consumers of Pennsylvania (IECPA); the International Brotherhood of Electrical Workers' Pennsylvania Utility Caucus (IBEW); IRRC; Lebanon Methane Recovery, Inc. (LMRI); Metropolitan Edison Company and Pennsylvania Electric Company (collectively, GPU Energy); the Office of Consumer Advocate (OCA); PECO Energy Company (PECO); the Penn-

sylvania Electric Association (PEA); the Pennsylvania Rural Electric Association (PREA); Pennsylvania Power & Light Company (PP&L); the Pennsylvania Rural Electric Association (PREA); and UGI Utilities, Inc.—Electric Division (UGI).

This order discusses the comments received and sets forth, in Annex A, final-form regulations governing the safety and reliability of electric service in this Commonwealth.

Many comments suggested that the proposed regulations adopted by the Commission failed to clearly communicate the basic approach to ensuring reliability. In general, the regulations establish recordkeeping and reporting requirements concerning various aspects of system reliability. However, the Commission believes that it is inappropriate, at this time, to establish specific performance standards due to the need to better understand existing performance levels and to permit flexible modification of standards as the competitive market develops.

Thus, these regulations generally utilize existing performance standards, such as those established under the National Electrical Safety Code (NESC) or by industry organizations, such as the Institute of Electrical and Electronic Engineers (IEEE), the North American Electric Reliability Council (NERC) and regional reliability organizations. IRRC comments that it was unable to determine from the proposed regulations what the performance standards would be or how they would be adopted. The Commission will issue additional orders pursuant to these regulations, from time to time, as necessary or appropriate to adopt specific benchmarks, based upon historic performance or standards, or both, for required performance. The orders will be adopted following the opportunity for interested parties to submit comments. It is noted that historic or benchmark performance may either exceed or fail to meet acceptable performance standards.

It is also important to note the long-standing concept of "reasonable service" under traditional utility regulation. Reasonable service always has balanced consumer demands and industry standards. Reliability performance standards must be consistent with this concept of reasonable service. Reasonable service for all consumers, considering the cost of providing the service, is the goal. Perfect service for all consumers, regardless of the cost, has never been the goal, and it cannot now be.

Existing Regulations.

Related existing regulations under §§ 57.13—57.16 remain in effect. The definition of "service interruption" under § 57.17 is replaced by the new definitions under § 57.192 (relating to definitions).

We agree with the OCA and IBEW that we cannot simply delete the existing regulations on maintenance and inspection and be consistent with the statutory directive to at least maintain or improve service quality. We have retained § 57.18(a) as § 57.194(c) (relating to distribution system reliability). Section 57.194(b) generally requires conformity with the NESC. While we are adopting the NESC as the basic external standard, neither existing regulations nor the NESC provides specific standards for inspection and maintenance. These standards will be adopted in subsequent orders.

Section 57.26 is deleted and has been replaced by § 57.193(a) (relating to transmission system reliability) and § 57.194(b).

§ 57.192. Definitions.

Several commentators suggested changes to definitions contained in the proposed rulemaking for clarification. Many of these suggestions have been incorporated in the final rule and are discussed below.

Adequacy

The transition to competition requires that adequacy include the delivery of power from multiple suppliers to customers in the service territory in an efficient open access network. Thus, the definition of "adequacy" has been modified.

Interruption Duration

Many commentators recommended modifications to the definitions relating to the duration of interruptions that would substantially change reporting requirements and performance standards. For example, IECPA proposes the adoption of existing IEEE standards, while the PEA proposes the adoption of the proposed IEEE standards. Upon consideration of these comments, we conclude that reference to an objective industry standard without specification of a defined time period is appropriate at this time. Thus, while the industry standard may change, these regulations need not be revised.

Major Event

The PEA and PP&L aver that the cause of a major event should not be limited to weather or unusual equipment failures. They suggest that other potential causes include relatively nonviolent weather conditions, such as thunderstorms and snowstorms, other types of natural disasters, such as earthquakes, floods or fires, and incidents beyond the control of the EDC, such as accidental damage, civil unrest or sabotage. PEA believes that weather conditions which routinely occur in this Commonwealth should be excluded from the definition unless they occur during and are attributable to a disaster emergency as declared by the Pennsylvania Emergency Management Agency (PEMA).

We agree with the PEA and PP&L that measurement of compliance with benchmark or performance standards should not be inappropriately distorted by significant major events beyond utility control. However, all events that are beyond the control of the utility should not be excluded. For example, a normal winter storm is beyond utility control but causes many outages, and the EDC must maintain its distribution system sufficiently to reasonably minimize the likelihood of service outages. Even if major events are not reported in a way which may distort system performance averages, they remain the central reliability issue. These events should be reported and service response to major events must still be adequate. Thus, we will exclude major events, as defined, from inclusion in the performance indices, but will require EDCs to include them in the reporting of all service interruptions.

We believe that the limitation in the definition of "major event" to those outages affecting at least 10% of the customers in an operating area during the course of the event for a duration of 5 minutes each or greater is appropriate to ensure that routine outages, even if weather related or otherwise beyond the control of the EDC, are nevertheless considered. It is noted that nothing in these regulations modify existing reporting or operational requirements related to PEMA or emergency operations.

The purpose of identifying a major event is to exclude abnormal events that would skew the data used in the

calculation of reliability indices and make it difficult to objectively analyze performance. While there may be several weather and nonweather related causes of random major events, we believe that the key to identifying such an event is the magnitude of the event; that is, the total number of customers affected by the event. Identification of every conceivable unusual occurrence is both impractical and unnecessary. Thus, we have revised this definition to include interruptions which are the results of involuntary factors beyond the control of the EDC. It is noted that under § 57.195(b), the EDC is required to annually provide an assessment of electric service reliability, including a discussion of major events occurring during the preceding calendar year. This will provide the Commission the opportunity to examine the causes of all major events identified by the EDC.

GPU Energy, PEA and PP&L believe that, when a major event affects more than one operating area, the resulting service interruptions for all affected areas should be excluded from the EDC's overall reliability indices, even though the other affected operating areas do not meet the threshold of at least 10% of the customers. We will accept this modification.

PECO believes that the 10% threshold is unfair to large EDCs and suggests that a 5% threshold is appropriate for PECO (approximately 75,000 customers). PECO alleges that the smaller EDCs will be removing a far greater percentage of events than the larger EDCs and wants assurance that it will be able to compete on a level playing field with the other Pennsylvania EDCs. For the Commission to ensure the continuation of reliable electric service, we intend to identify benchmark performance based on historical performance and new performance standards. Utility performance will be evaluated based on these measures. Thus, we believe, PECO's concern is without merit.

Based on other comments from PEA and OCA, we have made revisions to the definition of "major event" to identify when a major event begins and ends, and to clarify that a major event does not include an EDC's actions to interrupt customers on interruptible rate tariffs who agree to interruptions in return for a rate discount.

Reliability Indices

GPU Energy and PP&L recommended that the System Average Interruption Duration Index (SAIDI) be deleted, since SAIDI can be calculated by multiplying Customer Average Interruption Duration Index (CAIDI) by System Average Interruption Frequency Index (SAIFI). Although we agree that SAIDI can be calculated from SAIFI and CAIDI, we believe that the EDC should perform the calculations to avoid questions concerning Commission calculations.

GPU Energy, PEA and PP&L suggested that the requirement for a Momentary Average Interruption Frequency Index (MAIFI) be deleted, since the information needed to calculate this index is difficult and extremely costly to obtain, without any real attendant benefits. We do not intend to require knowledge of every interruption or the expenditure of large amounts of capital to obtain the information. Only the reporting of known interruptions, of any duration, will be required. Thus, we have retained this performance indicator.

Sustained Customer Interruption

Several commentators suggested expanding this definition to clarify the types of service interruptions which are not to be considered sustained customer interruptions for the purpose of calculating the reliability indices. We find

that the modified definition of "major event" and the exclusion of major events from the calculation of the reliability indices render the detailed and inconsistent qualifications of this definition unnecessary. Additionally, rather than adopting a specific outage duration, we are adopting the IEEE definitions as they may change from time to time.

Worst-Performing Circuits

Many commentators suggested modifications to the definition and use of the concept of worst-performing circuits in order to make it more practical and meaningful. Upon consideration of the comments, we conclude that identification of worst-performing circuits adds unnecessary complication to the regulations without increasing our ability to ensure the maintenance or improvement of system reliability. For example, if only 1% of a utility's circuits fail to meet the reliability standard, focusing on the 5% worst-performing circuits is not useful. The concept is similarly inapt if 10% of a utility's circuits do not meet the performance standards. Thus, the concept of worst-performing circuits has been deleted from the regulations. Instead, the regulations will provide for the establishment of performance standards that identify circuits or operating areas requiring improved performance.

§ 57.193. Transmission system reliability.

The PEA commented that facilities governed by the NESC, while required to meet current the NESC requirements upon their initial installation, are permissibly maintained and operated in conformity with the relevant requirements of the same NESC edition, not the most recent edition. The application of the NESC is limited to new installations and extensions. PEA also states that the NESC requirements relate to the electrical, mechanical and civil engineering aspects of the design, installation and maintenance of the physical transmission and distribution facilities, whereas reliability council policies and requirements relate to continuing, real-time operation of the transmission system.

Our concern here is with applicable requirements, not the applicable edition. It is possible that future editions of the NESC may require the upgrading of some existing system components. It is also possible that an EDC may not operate all aspects of the transmission system directly, as in the case of an independent system operator (ISO), and there may be other entities, such as regulatory commissions or ISOs, which have additional requirements. Thus, we have revised subsection (a) to reflect these concerns.

Subsection (b) of the proposed regulations established comparability standards for an EDC's transmission service provided to wholesale customers. PP&L argued that this subsection should be deleted, since transmission service provided to wholesale customers is a matter wholly within the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC). IRRC recommended retaining this subsection to help ensure the quality of electric service, upon confirmation of its legality.

We included this section to reflect our legislative mandate under section 2805(b)(1)(iii) of the act (relating to regionalism and reciprocity). While we fully recognize FERC's authority to regulate the rates, terms and conditions of wholesale transmission service, we are nevertheless obligated by statute to ensure comparability of service to electric cooperative corporations and, therefore, reject PP&L's argument.

The OCA and Enron suggested that the Commission actively monitor the use of the transmission system. As we begin the retail open access era, the Commission must know if the transmission system is adequately constructed, maintained and operated in a way which promotes a fully competitive and efficient market. Thus, we have added subsection (c) to annually require an assessment of the performance of the transmission system.

§ 57.194. Distribution system reliability.

The language in subsection (a) has been modified to precisely reflect existing law and standards concerning reasonable service and facilities, see 66 Pa.C.S. § 1501 (relating to character of service and facilities).

We have modified subsection (b) to refer to the applicable requirements of the NESC instead of the "most recent edition" of the NESC. This is consistent with our change to § 57.193(a).

Subsection (e) required EDCs to maintain procedures designed to sustain, at a minimum, the historical level of reliability. PP&L believed that sustaining historically high levels of reliability in a specific operating area may not be practical or cost effective. PP&L recommends that this subsection refer to "acceptable levels of reliability" and that "and cost effective" should be added after "where necessary." IRRC agreed with adding the cost effective qualifier, but did not concur with PP&L's recommendation concerning the level of service to be sustained, noting that historical levels can be documented.

As discussed further, we will use historical data to establish performance standards which will serve as acceptable electric service reliability. Thus, to avoid confusion with regard to the minimum level of reliability required by this subsection, we have modified subsection (e) to clarify the link between this requirement and the reliability performance standards established under subsection (h).

In response to comments of the PEA, subsection (f) has been revised to reflect the deletion of the term "worst performing circuits" and to clarify the EDC's objective for analyzing its circuits.

Subsection (g) required that the EDC maintain a 5-year historical record of service interruptions. GPU Energy, PEA and PP&L commented that the EDC does not always know of service interruptions, especially those of short duration, unless notified by a customer or unless expensive, customer-specific equipment is installed. As discussed earlier, these regulations are not requiring knowledge of every interruption or the upgrade of interruption detection systems at this time. The requirement is to track and report all known interruptions of whatever duration, by category. It is noted that the existing regulations under §§ 57.14 and 57.15 (relating to service voltage; and system frequency) remain in effect and already require a minimum detection standard, although it may be appropriate to revise these standards at a later date. In addition, the EDC will be required to retain all records required to comply with the reporting requirements.

Subsection (h) required an EDC to "take measures necessary to meet the reliability performance standard set forth by this subsection." The provisions refer to the establishment of a numerical benchmark based on historic performance and a performance standard for each reliability index. The regulations adopt a general rule that each EDC must at least maintain the historic benchmark and meet the performance standard.

PEA and PP&L believe that the numerical values for the reliability indices for each operating area should be developed in cooperation with the EDCs and other affected parties. UGI avered that it is incumbent upon the Commission to consider the specific conditions applicable to each operating area before setting that area's initial performance standards. GPU Energy recommended that the Commission use a 5-year historical average to calculate the initial and subsequent values for the reliability indices. IRRC believed that the regulations should either provide the actual standards or criteria for calculating the standards, or at least specify where the standards or criteria can be found. IRRC also suggests that the regulations should provide a timely due process opportunity for affected parties to provide input or raise objections.

It is the Commission's intention to set reliability performance standards in cooperation with the industry. All parties will have an opportunity to provide comments prior to final adoption of the Commission's decision. Since benchmarks based on historical performance of each EDC may vary, both below or above the performance standard established, the Commission may take such history into account as it establishes the benchmarks and performance standards. We have reflected IRRC's comments by clarifying this section with substantial changes. Although we agree with IRRC that actual standards or criteria are preferable, the foregoing comments and the lack of existing data in the record of this proceeding require that we decline to adopt a particular methodology or precise standard in this rulemaking. The parties have not had an opportunity to comment and there may be other specific factors to be considered. Rather, this rulemaking establishes the reporting requirements and the parameters that will permit the adoption of more specific standards and benchmarks in the future.

As discussed above, we will require reporting of all known service interruptions according to the definitions established by IEEE. Both IECPA and PEA indicated support for this result as an alternative to their preferred recommendations. We agree with this approach as being consistent with other aspects of these regulations concerning compliance with NERC, the NESC and other objective standards by reference. While we agree with PEA that it would be expensive and inappropriate to require an EDC to identify all outages, we note that the existing regulations under § 57.17 already require utilities to keep records of outages affecting the entire system or a major division of the system, as brief as 1 minute. As the Commission adopts performance benchmarks and standards, all parties must remain cognizant of the goal of requiring reasonable service without gold-plating, while recognizing that changes in our economy and society may indicate that a different level of performance quality is required to provide reasonably reliable service.

Subsection (h) has been modified to reflect the above discussion.

§ 57.195. Reporting requirements.

Subsection (a) requires an EDC to submit to the Commission, on or before March 31 of each year, a reliability report. PP&L avers that it would be very difficult to prepare and submit the report by March 31, because of the time required to verify and enter end-of-year reliability information into its database, to make the necessary analyses, to plan improvements and to determine the improvement experienced by circuits that were worked on during the previous year. PP&L recommended a 2-month delay in the reporting deadline. Although no

other EDC has voiced this concern, we recognize the work required to comply with this and several other annual reporting requirements. To reduce the EDCs' reporting burden, we have moved the reporting deadline to May 31.

GPU Energy, PEA and PP&L suggested revisions to our proposed subsection (e), which required information regarding worst-performing circuits that fail to meet the performance standards. GPU Energy and PEA recommended that the reporting requirements of this subsection apply only for an operating area that fails to meet the standards established for the operating area. PP&L believed that circuits should be evaluated on a utility systemwide basis, not on an operating area basis.

GPU Energy also pointed out a recent action by the New York Public Service Commission (NYPSC), which eliminated a worst-performing circuits reporting requirement, since it had "become something of a post-review exercise in that utilities were merely compiling and documenting corrective actions that had already been taken. This requirement has become a time consuming exercise of little benefit to the companies." The revised NYPSC standards only require a description of the company's program for analyzing worst-performing circuits and a summary of the results of the program. (Order Adopting Changes to Standards on Reliability and Quality of Service, Case 96-E-0979, Issued February 26, 1997, NYPSC.)

Consistent with our previous discussion, we have deleted this requirement.

§ 57.196. Generation reliability.

Subsection (a) required an electric generation supplier EGS to conform to the operating policies and standards of NERC and the appropriate regional reliability council. PEA strongly believed that EGSs must also be required to become members of NERC and regional councils, since membership will enhance their active participation in cooperation with and adherence to the full range of council activities and requirements, and subject them to council direction and discipline necessary to preserve electric service reliability. IBEW also agreed with mandatory membership. PEA suggested that brokers and marketers be exempt from the requirement of membership. IRRC agreed with PEA's position and recommended that the Commission impose a membership requirement, but couple it with an exemption provision for financial hardship.

At its January 6-7, 1997, Board of Trustees meeting, NERC voted unanimously to obligate its regional councils and their members to promote, support and comply with all NERC reliability policies and standards. The regional councils are currently in the process of revising their bylaws and agreements to conform with NERC. NERC and the regional councils are also developing appropriate mandatory compliance monitoring and enforcement mechanisms, including penalties for noncompliance. Although compliance is mandatory for members, membership is voluntary.

We agree with PEA and IRRC that EGSs must be required to be members of appropriate regional councils for the new enforcement mechanisms to be effective. We also recognize that the definition of electric generation supplier is quite broad. Some suppliers will not operate generating plants or schedule transmission directly. Moreover, mandatory membership beyond that which is required by such entities, may impose a financial hardship on smaller EGSs, which may become a barrier to participation in the generation market. Therefore, we have

added a new subsection (d) to require membership in an appropriate regional reliability council or other reliability entity, as required by such entity.

Subsection (b) provided for the maintenance of appropriate generating reserve capacity by EGSs. The IECPA argued that the Commission must allow the competitive market to establish appropriate levels of generation reserves. The IECPA suggested that the level of generation reserves necessary to ensure supply of electricity to a customer should be dictated by the level of reliability desired by the particular customer. IRRC suggested that the reserve requirement standards apply only to an EGS's firm service obligations.

Although the competitive market should, in time, provide the appropriate price signals necessary to ensure adequate levels of generation reserves, ISO and market information is just beginning at this time. We find it necessary and appropriate during this transition period to require compliance with all regional council policies and standards, including generation reserves. This is also our mandate under sections 2804(1) and 2809(e) of the act (relating to standards for restructuring of electric industry; and requirements for electric generation suppliers). Furthermore, interruptible loads are routinely factored out when determining the reserve obligations of EGSs. Thus, we have not revised subsection (b).

§ 57.197. Reliability investigations and enforcement.

Enron suggested that subsection (b)(2) be revised to provide for penalties less than revocation of the supplier's license. Enron also points out that the regional reliability councils are currently in the process of establishing penalties for EGSs that are noncompliant and, therefore, no additional Commission enforcement is necessary.

Inasmuch as we have the authority to impose civil penalties, under 66 Pa.C.S. § 3301 (relating to civil penalties for violations) and, to provide the ability for the Commission to assess less severe penalties, we will adopt the suggestion of lesser penalties. To the extent that the regional reliability councils have implemented their own penalties for noncompliance, we will defer to them with regard to those matters clearly within their purview. We have also made some minor changes to clarify this section. In addition, we have modified the regulations to make clear that Commission staff may initiate investigations as necessary.

Other Issues

IRRC pointed out that other commentators raise a number of issues which could have a direct bearing on the success of competition in electric generation. IRRIC does not, however, believe these issues should be addressed in this rulemaking, but should be the subject of future rulemakings to insure that affected parties will have an adequate opportunity to provide input to the Commission.

Power Quality

IECPA and Ford argued that the Commission must establish specific reliability criteria related to voltage and frequency variations and mandate that the EDCs track and rectify interruptions of less than 30 seconds in duration. According to IECPA, these power quality problems are especially troublesome to sensitive manufacturing equipment such as computers, motors, heating elements, adjustable speed motor drives and programmable logic controllers.

We agree with the concerns of IECPA and Ford. We note that customers of all classes are using more sensitive

equipment that can be adversely affected by power quality problems. However, the Commission does not have the record of data at this time to establish specific new standards for voltage or frequency variations or performance benchmarks or standards concerning the interruptions. In the meantime, the standards under §§ 57.14 and 57.15 are being retained, not eliminated, although it may be appropriate to modify them in the future.

Inspection and Maintenance Standards

IBEW reiterated its plea for the Commission to adopt specific inspection and maintenance standards. The IBEW avered that, without the standards, distribution systems would be allowed to deteriorate to the point where actual problems are being experienced. IBEW also pointed out that the NESC lacks requirements for the inspection and maintenance intervals for each type of equipment. IRRIC recommended that the Commission reconsider this matter, including an evaluation of what other states have done or are doing regarding inspection and maintenance standards.

In our Proposed Rulemaking Order, we declined to require specific inspection and maintenance standards, because of the new methods and technologies that utilities are developing to improve the inspection and testing process. We hesitate to impose excessive requirements upon the EDCs and to engage in what may be considered micromanagement. Nevertheless, we believe that this matter is worthy of further consideration. Therefore, we shall direct the Commission's Bureau of CEEP to conduct a study of the issue of developing specific inspection and maintenance standards and submit recommendations for the Commission's consideration.

We find that the revisions to our proposed regulations, as delineated above, and as set forth in Annex A, to be necessary and appropriate to ensure the continued safety and reliability of electric service in this Commonwealth. Accordingly, under 66 Pa.C. S. §§ 501, 524, 1102, 1103, 1501, 1504, 1505, 2802, 2804, 2807 and 2809, and the Commonwealth Documents Law (45 P. S. § 1202 et seq.) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we hereby amend Chapter 57 by adding Subchapter N, as set forth in Annex A hereto, which establishes standards and procedures for assessing the reasonableness of electric service reliability; *Therefore,*

It Is Ordered that:

1. The regulations of the Commission, 52 Pa. Code Chapter 57, are amended by deleting §§ 57.17, 57.18 and 57.26 to read as set forth at 27 Pa.B. 5262; and by adding §§ 57.191—57.197 to read as set forth in Annex A.
2. The Secretary shall certify this order, 27 Pa.B. 5262 and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. The Secretary shall submit this order, 27 Pa.B. 5262 and Annex A to the Office of Attorney General for approval as to legality.
4. The Secretary shall submit this order, 27 Pa.B. 5262 and Annex A to the Governor's Budget Office for review of fiscal impact.
5. The Secretary shall submit this order, 27 Pa.B. 5262 and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

6. A copy of this order, 27 Pa.B. 5262 and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, all jurisdictional electric utilities and all parties of record.

7. These final-form regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

8. That the Bureau of Conservation, Economics and Energy Planning conduct a study of the issue of developing specific inspection and maintenance standards and submit recommendations for the Commission's consideration.

By the Commission

JAMES J. MCNULTY,
Secretary

Statement of Commissioner John Hanger

This rulemaking does not address directly the issue of generation adequacy. Some have argued that regulatory authorities should play no role in insuring generation adequacy. Market forces, it has been said, will insure that the supply of generation meets demand.

Other voices have been raised to say that regulatory authorities or private organizations like Independent System Operators must set minimum generation adequacy standards. If one accepts this view, the questions are many. Who should set the standards? How should the standard be set? What should be the standard? These are but a few of the questions raised.

In Pennsylvania, those electric suppliers doing business in the PJM market must comply with an installed capacity requirement designed to create a loss of load probability of one day in ten years. The electric suppliers doing business in the ECAR region of Pennsylvania utilize an operating reserve requirements combined with dependence on supplemental capacity resources (DSCR) of less than 10 days per year as a generation adequacy standard.

In my opinion, this Commission must soon formally examine these differing standards, their relevance, their adequacy, and any possible necessary modifications as Pennsylvania begins electric generation competition.

Fiscal Note: Fiscal Note 57-185 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

Subchapter C. FIXED SERVICE UTILITIES

CHAPTER 57. ELECTRIC SERVICE

Subchapter N. ELECTRIC RELIABILITY STANDARDS

Sec.	
57.191.	Purpose
57.192.	Definitions.
57.193.	Transmission system reliability.
57.194.	Distribution system reliability.
57.195.	Reporting requirements.
57.196.	Generation reliability.
57.197.	Reliability investigations and enforcement.

§ 57.191. Purpose.

Reliable electric service is essential to the health, safety and welfare of the citizens of this Commonwealth. The purpose of this subchapter is to establish standards and procedures for continuing and ensuring the safety and reliability of the electric system in this Commonwealth.

The standards have been developed to provide a uniform method of assessing the reasonableness of electric service reliability.

§ 57.192. Definitions.

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

Adequacy—The ability of the electric system to supply the aggregate electrical demand and energy requirements of the customers from various electric generation suppliers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.

Control area—An electric system or systems, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other control areas and contributing to frequency regulation of the interconnected systems.

Electric distribution company—An electric distribution company as defined in 66 Pa.C.S. § 2803 (relating to definitions).

Electric generation supplier or electricity supplier—An electric generation supplier or electricity supplier as defined in 66 Pa.C.S. § 2803.

IEEE—Institute of Electrical and Electronic Engineers.

Interruption duration—A period of time measured to the nearest 1-minute increment which starts when an electric distribution company is notified or becomes aware of an interruption, unless an electric distribution company can determine a more precise estimate of the actual starting time of an interruption, and ends when service is restored. Interruptions shall be categorized, based on duration, such as momentary or sustained interruptions, or by similar descriptions, as adopted by the IEEE or similar organization identified by the Commission. This subchapter requires tracking, reporting and evaluation of two categories of interruption duration that will incorporate any changes in the terms used or the definitions of those terms as adopted by the IEEE or Commission order.

Major event—

(i) Either of the following:

(A) An interruption of electric service resulting from conditions beyond the control of the electric distribution company which affects at least 10% of the customers in an operating area during the course of the event for a duration of 5 minutes each or greater. The event begins when notification of the first interruption is received and ends when service to all customers affected by the event is restored. When one operating area experiences a major event, the major event shall be deemed to extend to all other affected operating areas of that electric distribution company.

(B) An unscheduled interruption of electric service resulting from an action taken by an electric distribution company to maintain the adequacy and security of the electrical system, including emergency load control, emergency switching and energy conservation procedures, as described in § 57.52 (relating to emergency load control and energy conservation by electric utilities), which affects at least one customer.

(ii) A major event does not include scheduled outages in the normal course of business or an electric distribution company's actions to interrupt customers served under interruptible rate tariffs.

Momentary customer interruption—The loss of electric service by one or more customers for the period defined as a momentary customer interruption by the IEEE as it may change from time to time. The term does not include interruptions described in subparagraph (ii) of the definition of “major event,” or the authorized termination of service to an individual customer.

NERC—North American Electric Reliability Council—An organization of regional reliability councils established to promote the reliability of the electricity supply for North America.

Operating area—A geographical area, as defined by an electric distribution company, of its franchise service territory for its transmission and distribution operations.

Regional reliability council—An organization established to augment the reliability of its members’ bulk electric supply systems through coordinated planning and operation of generation and transmission facilities. The following regional reliability councils impact the bulk electric supply systems within this Commonwealth:

- (i) The East Central Area Reliability Coordination Agreement (ECAR).
- (ii) The Mid-Atlantic Area Council (MAAC).
- (iii) The Northeast Power Coordinating Council (NPCC).

Reliability—The degree of performance of the elements of an electric system that results in electricity being delivered to customers within accepted standards and in the desired amount, measured by the frequency, duration and magnitude of adverse effects on the electric supply and by considering two basic and functional aspects of the electric system: adequacy and security.

Reliability indices—Service performance indicators which measure the frequency, duration and magnitude of customer interruptions, excluding outages associated with major events.

(i) *CAIDI—Customer Average Interruption Duration Index*—The average interruption duration of sustained interruptions for those customers who experience interruptions during the analysis period. CAIDI represents the average time required to restore service to the average customer per sustained interruption. It is determined by dividing the sum of all sustained customer interruption durations, in minutes, by the total number of interrupted customers. This determination is made by using the following equation:

$$CAIDI = \frac{\sum r_i N_i}{\sum N_i} = \frac{SAIDI}{SAIFI}$$

where:

i = an interruption event

r_i = restoration time for each interruption event

and N_i = number of customers who have experienced a sustained interruption during the reporting period

(ii) *MAIFI—Momentary Average Interruption Frequency Index*—The average frequency of momentary interruptions per customer occurring during the analysis period. It is calculated by dividing the total number of momentary customer interruptions by the total number of customers served. This determination is made by using the following equation:

$$MAIFI = \frac{\sum M_i}{N_T}$$

where:

M_i = number of customers who have experienced a momentary interruption during the reporting period

(iii) *SAIDI—System Average Interruption Duration Index*—The average duration of sustained customer interruptions per customer occurring during the analysis period. It is the average time customers were without power. It is determined by dividing the sum of all sustained customer interruption durations, in minutes, by the total number of customers served. This determination is made by using the following equation:

$$SAIDI = \frac{\sum r_i N_i}{N_T}$$

where:

N_T = total number of customers served for the area being indexed

(iv) *SAIFI—System Average Interruption Frequency Index*—The average frequency of sustained interruptions per customer occurring during the analysis period. It is calculated by dividing the total number of sustained customer interruptions by the total number of customers served. This determination is made by using the following equation:

$$SAIFI = \frac{\sum N_i}{N_T}$$

Security—The ability of the electric system to withstand sudden disturbance such as electric short circuits or unanticipated loss of system elements.

Sustained customer interruption—The loss of electric service by one or more customers for the period defined as a sustained customer interruption by IEEE as it may change from time to time. This term does not include interruptions described in subparagraph (ii) of the definition of “major event,” or the authorized termination of service to an individual customer.

§ 57.193. Transmission system reliability.

(a) An electric distribution company shall install and maintain its transmission facilities, and ensure that its transmission facilities are operated, in conformity with the applicable requirements of the National Electrical Safety Code. An electric distribution company shall operate its transmission facilities in conformity with the operating policies, criteria, requirements and standards of NERC and the appropriate regional reliability council, or successor organizations, and other applicable requirements.

(b) The reliability of an electric distribution company’s transmission service provided to wholesale customers, such as electric cooperative corporations and municipal corporations, shall be comparable to the reliability which the transmission supplier provides at the wholesale level, taking into account the nature of each service area in which electricity is delivered to the customer, the delivery voltage and the configuration and length of the circuit from which electricity is delivered.

(c) An electric distribution company shall submit to the Commission, on or before May 31, 1999, and May 31 of each succeeding year, information concerning the performance of the transmission system, as built and operated, to serve a fully competitive generation market efficiently. The report shall include available transfer capability, total transfer capability and the use, in general, of the

transmission system. The report shall include an assessment of the past performance of the transmission system and an appraisal of future transmission system performance. In complying with this requirement, electric distribution companies operating under a single system operator may submit a joint report by an independent system operator, or other appropriate transmission system operator.

§ 57.194. Distribution system reliability.

(a) An electric distribution company shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employes and the public. The service shall be reasonably continuous and without unreasonable interruptions or delay.

(b) An electric distribution company shall install, maintain and operate its distribution system in conformity with the applicable requirements of the National Electrical Safety Code.

(c) An electric distribution company shall make periodic inspections of its equipment and facilities in accordance with good practice and in a manner satisfactory to the Commission.

(d) An electric distribution company shall strive to prevent interruptions of electric service and, when interruptions occur, restore service within the shortest reasonable time. If service must be interrupted for maintenance purposes, an electric distribution company should, where reasonable and practicable, attempt to perform the work at a time which will cause minimal inconvenience to customers and provide notice to customers in advance of the interruption.

(e) An electric distribution company shall design and maintain procedures to achieve the reliability performance standards established under subsection (h).

(f) An electric distribution company shall develop and maintain a program for analyzing the service performance of its circuits during the course of each year.

(g) An electric distribution company shall maintain a 5-year historical record of all known customer interruptions by category of interruption duration, including the time, duration and cause of each interruption. An electric distribution company shall retain all records to support the reporting requirements under § 57.195 (relating to reporting requirements) for 5 years.

(h) An electric distribution company shall take measures necessary to meet the reliability performance standards adopted under this subsection.

(1) In cooperation with an electric distribution company and other affected parties, the Commission will, from time to time, establish numerical values for each reliability index or other measures of reliability performance that identify the benchmark performance of an electric distribution company, and performance standards.

(2) The benchmark will be based on an electric distribution company's historic performance for each operating area for that measure. In establishing the benchmark, the Commission may consider historic superior or inferior performance or system-wide performance.

(3) The performance standard shall be the minimal level of performance for each measure for all electric distribution companies, regardless of the benchmark established.

(4) An electric distribution company shall inspect, maintain and operate its distribution system, analyze performance and take corrective measures necessary to achieve the performance standard. An electric distribution company with a benchmark establishing performance superior to the performance standard shall maintain benchmark performance, except as otherwise directed by the Commission.

§ 57.195. Reporting requirements.

(a) An electric distribution company shall submit to the Commission, on or before May 31, 1999, and May 31 of each succeeding year, a reliability report which includes, at a minimum, the information prescribed in this section.

(1) An original and 5 copies of the report shall be filed with the Commission's Secretary and one copy shall also be submitted to the Office of Consumer Advocate and the Office of Small Business Advocate.

(2) The name and telephone number of the persons having knowledge of the matters, and to whom inquiries should be addressed, shall be included.

(b) The report shall include an assessment of electric service reliability in the electric distribution company's service territory, by operating area and system-wide.

(1) The assessment shall include a discussion of the electric distribution company's programs and procedures for providing reliable electric service.

(2) The assessment shall include a description of each major event, including the time and duration of the event, the number of customers affected, the cause of the event and any modified procedures adopted to avoid or minimize the impact of similar events in the future.

(c) The report shall include a table showing the actual values of each of the reliability indices, and other performance measures required by this subchapter or Commission order, for each operating area and for the electric distribution company as a whole for each of the preceding 5 calendar years.

(d) When an electric distribution company's reliability performance within an operating area is found to be unacceptable, as defined in § 57.194(h) (relating to distribution system reliability), the report shall include the following:

(1) An analysis of the service interruption patterns and trends.

(2) An analysis of the operational and maintenance history of the affected operating area.

(3) A description of the causes of the unacceptable performance.

(4) A description of the corrective measures the electric distribution company is taking and target dates for completion.

§ 57.196. Generation reliability.

(a) An electric generation supplier shall operate and maintain its generating facilities in conformity with the operating policies, criteria, requirements and standards of NERC and the appropriate regional reliability councils, or successor organizations.

(b) An electric generation supplier shall maintain appropriate generating reserve capacity in compliance with any applicable reserve requirement standards set forth by the appropriate regional reliability council, successor organizations or other entity or agency with jurisdiction to establish the requirements.

(c) An electric generation supplier shall abide by applicable Commission regulations, procedures and orders, including emergency orders.

(d) An electric generation supplier shall maintain membership, to the extent required by any regional reliability council, independent system operator or similar organization, in the appropriate regional reliability councils, or successor organizations.

§ 57.197. Reliability investigations and enforcement.

(a) The Commission staff may initiate an investigation, or may do so upon complaint by an affected party, to determine whether an electric distribution company is providing service in accordance with §§ 57.193 and 57.194 (relating to transmission system reliability; and distribution system reliability).

(1) Based upon the record developed in such an investigation, the Commission may enter an order directing the electric distribution company to take reasonable corrective action necessary to improve the reliability of electric service.

(2) If the Commission directs an electric distribution company to make expenditures to repair or upgrade its transmission or distribution system, the electric distribution company may seek an exception to the limitations in 66 Pa.C.S. § 2804(4) (relating to electric utility rate caps).

(b) The Commission staff may initiate an investigation, or may do so upon complaint by an affected party, to determine whether an electric generation supplier is providing reasonable service in accordance with § 57.196 (relating to generation reliability).

(1) Based upon the record developed in such an investigation, the Commission may enter an order directing the electric generation supplier to take the corrective action the Commission deems necessary to improve the reliability of service.

(2) If the corrective action is not taken within the period of time designated by the Commission in an order entered under paragraph (1), the Commission may elect to impose a penalty up to and including the revocation, either temporarily or permanently, of the license of the electric generation supplier, obtained under 66 Pa.C.S. § 2809(a) (relating to requirements for electric generation suppliers).

[Pa.B. Doc. No. 98-1148. Filed for public inspection July 17, 1998, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION
[52 PA. CODE CHS. 63 AND 64]

[L-960113]

Telephone and Residential Telephone Service

The Pennsylvania Public Utility Commission (Commission) on April 9, 1998, adopted a final rulemaking to clarify and streamline existing regulations to the extent possible and update existing regulations to reflect current industry standards. The contact persons are Susan D. Colwell, Law Bureau, (717) 783-3459 and Louis Sauers, Bureau of Consumer Services, (717) 783-6688.

Executive Summary

By order entered May 23, 1995, the Commission issued an Advance Notice of Proposed Rulemaking to Review

and Rescind All Obsolete and Excessive Rules and Regulations. Comments were received from the Pennsylvania Telephone Association (PTA), GTE North and the Office of Consumer Advocate (OCA). Based upon the comments and upon its own review, the Commission identified approximately 30 sections in Chapters 63 and 64 (relating to telephone services; and standards and billing practices for residential telephone service) which it proposed for revision in its proposed rulemaking, published at 26 Pa.B. 2810 (June 15, 1996). Comments were received from AT&T Communications of Pennsylvania, Bell Atlantic-Pennsylvania, Inc., OCA, PTA, the Independent Regulatory Review Commission (IRRC) and the Honorable Kathrynann W. Durham and the Honorable David R. Wright.

The Commission worked with industry representatives and the OCA to develop the final regulations, which are meant to update those regulations which were outdated, to clarify and streamline existing requirements, and to eliminate obsolete provisions.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 30, 1996, the Commission submitted a copy of the final rulemaking, which was published as proposed at 26 Pa.B. 2810, and served on May 30, 1996, to IRRC and the Chairpersons of House Committee on 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 all comments received from IRRC, the Committees and the public.

These final-form regulations were approved by the House and Senate Committees on June 8, 1998. IRRC met on June 18, 1998, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

Public Meeting
held April 9, 1998

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; John Hanger; David W. Rolka, Dissenting Statement attached; Nora Mead Brownell

Final-Form Rulemaking Order

By the Commission:

By order entered May 23, 1995, we issued at Docket No. L-00950103 an Advance Notice of Proposed Rulemaking To Review And Rescind All Obsolete And Excessive Rules And Regulations. The advance notice was published at 25 Pa.B. 2188, and a 60-day comment period set.

After reviewing and considering the detailed comments we received from the telephone industry, we issued a proposed rulemaking order on March 18, 1996, at this docket, for the purpose of revising Chapters 63 and 64 and requested further comments from interested parties. Following publication of the order at 26 Pa.B. 2810, comments were received by AT&T Communications of Pennsylvania (AT&T), Bell Atlantic-Pennsylvania, Inc. (BA-PA), OCA, PTA, IRRC, the Honorable Kathrynann W. Durham and the Honorable David R. Wright.

We believe that the changes we adopt with this final rulemaking order are necessary to clarify and simplify existing requirements of the telephone industry, to update certain regulations to reflect present industry standards and to eliminate provisions believed to be excessive and which no longer serve a useful purpose.

CHAPTER 63. TELEPHONE SERVICE

Subchapter B. SERVICE AND FACILITIES

Section 63.1. Definitions.

As with § 64.2 (relating to definitions), the definition of "interexchange carrier" is obsolete and is updated to provide that it is a carrier which provides interexchange services to the public under 66 Pa.C.S. § 3008 (relating to interexchange telecommunications carrier).

Section 63.15. Complaint procedures.

Subsection (a) is amended to provide that the utility may terminate the investigation by submitting a copy of the service order which identifies the action taken by the utility to resolve the service complaint.

Section 63.17. Number of subscribers per line.

This section is being deleted since it contains standards and procedures applicable prior to December 19, 1983. The four subscriber-maximum presently used by the industry is being added to § 63.18.

Section 63.18. Multiparty line subscribers.

To reflect the change in industry standards, the limit for maximum subscribers to a multiparty line is added.

Section 63.21. Directories.

Subsection (e) is replaced to clarify a LEC's authority to investigate, evaluate and require modification or deletion of misleading directory listings without being as duplicative or onerous as the existing language.

Subchapter C. ACCOUNTS AND RECORDS

Section 63.31. Classification of telephone public utilities.

The amendment to this section reflects the standards included in Chapter 30 and recent Commission rulemakings to provide for two classes of telephone utilities: Class A carriers are defined as those with more than 50,000 access lines; while Class B carriers are defined as carriers with 50,000 access lines or less. We note that AT&T suggests that we raise the number of demarcation for access lines to 250,000 to be consistent with our order in *Investigation into IntraLATA Interconnection Arrangements*, I-00940034 (December 14, 1995), but we are constrained by the numbers appearing in our enabling statute at 66 Pa. C.S. § 3006 (relating to streamlined form of rate regulation). Consequently, we are keeping the number at 50,000.

Section 63.41(k).

This section now requires that telephone utilities file undergrounding construction and specification standards and revisions with the Commission's Bureau of Fixed Utility Services instead of the Bureau of Safety and Compliance.

Subchapter G. PUBLIC COIN TELEPHONE SERVICE

In the proposed rulemaking order, under Subchapter G, the Commission proposed making changes to two sections, namely, §§ 63.95 and 63.96 (relating to coin telephone service in the public interest; and service requirements for coin telephone). However, the changes proposed did not reflect the passage and implementation of the

Telecommunications Act of 1996 (TA-96), 47 U.S.C.A. § 251 et seq., which was enacted February 8, 1996. We are including a number of changes here which were not included in the proposed rulemaking but are mandated by the Federal Communications Commission (FCC) in orders implementing the Federal legislation.

The purpose of TA-96 is "to provide for a pro-competitive, deregulatory National policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . ." TA-96 directs the FCC to promulgate new regulations which govern the payphone industry and, inter alia, ensure that all payphone owners are compensated for calls originated on their payphones and discontinue subsidies for payphones owned by local exchange carriers (LECs). See 47 U.S.C.A. § 276.

Our proposed rulemaking order was entered on March 18, 1996. Given that the FCC did not conclude the rulemaking until November of 1996, we did not have an opportunity to consider the ramifications of the FCC's action with respect to our coin telephone regulations.

A notice of proposed rulemaking (NOPR) to promulgate new regulations to govern the payphone industry was adopted by the FCC on June 4, 1996, and released on June 6, 1996. On June 27, 1996, this Commission filed comments to the FCC's rulemaking. On September 20, 1996, the FCC adopted and released a report and order implementing the payphone provisions of TA-96. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 and No. 91-35, *Report and Order*, (September 20, 1996). Although the Commission did not petition for reconsideration of the FCC *Report and Order*, the Commission filed a Reply in Support of the Petitions for Reconsideration filed jointly by New York, Maine, Vermont, Virginia, Alabama, the District of Columbia, Maryland and Montana (the Petitioners). The Petitioners argued that section 276 of TA-96 does not empower the FCC to preempt state regulation of entry and exit to the payphone market, or to regulate intrastate retail coin rates for local service, including rates charged for directory assistance. The Petitioners also emphasized that the FCC failed to raise the issue of deregulation of local coin rates in the NOPR. Finally, the Petitioners believed that the record developed in the Federal rulemaking did not support the FCC's deregulation plan or conclusion that unfettered competition will ensure fair compensation for all calls from payphones.

On November 8, 1996, the FCC released its order on reconsideration. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 and No. 91-35, *Reconsideration Order*, (November 8, 1996). A summary of the *Reconsideration Order* was published in the *Federal Register* on December 12, 1996. See 61 FR 65341 (December 12, 1996). The FCC, finding no new evidence or arguments, made no significant changes to its *Report and Order*. The decision to deregulate the local coin rate remained basically unchanged.

The FCC affirmed its position that the payphone market is fundamentally competitive and can be safely deregulated so as to permit market forces to set the rate for local coin calls. *Reconsideration Order*, ¶¶61-62. The FCC also disagreed with the Petitioners' arguments that

¹ Congressional Conference Report accompanying S. 652.

its conclusions concerning local coin rates constitute unwarranted preemption of state authority over intrastate telecommunications. *Reconsideration Order*, ¶157. In the *Reconsideration Order* (¶160), the FCC also declined to reconsider conclusions that its actions were necessary to implement the stated goals of TA-96 Section 276 "of promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public . . ." See 47 U.S.C.A. § 276(b)(1). The FCC clarified that while it is willing to consider petitions from individual states for exceptions to deregulation of local coin calls, the state must make a detailed showing of justification for regulation based on findings in a state proceeding that examines areas of market failure. The FCC also stated that it viewed the exception for market failures as a "limited" one. *Reconsideration Order*, ¶162.

The FCC has directed each state to examine its regulations applicable to payphones and payphone service providers (PSPs), removing or modifying those that erect barriers to entry or exit and thereby affect the ability of companies to compete in the payphone industry on an equal footing. *Report and Order*, ¶160. As of October 7, 1997, the market was allowed to set the price for local coin rates. *Report and Order*, ¶160.

Finally, in response to Congress' concern about public interest payphones expressed in TA-96 section 276(b)(2), the FCC concluded that a need exists to "ensure the maintenance of payphones that serve the public policy interests of health, safety, and welfare in locations where there would not otherwise be payphones as a result of the operation of the market." *Report and Order*, ¶1277. The FCC was concerned about the access to emergency services in isolated areas with low residential phone penetration. *Report and Order*, ¶1277. The FCC further expressed the opinion that states are in a better position to ascertain the need for payphones which serve community interests. *Report and Order*, ¶1278. However, the FCC believed that TA-96 directed the agency to impose guidelines for establishment of a public interest payphone program. *Report and Order*, ¶1281.

As we recognized in our decision on the *Petition of the Pennsylvania Telephone Association Regarding Paystation Deregulation Compliance Filings (PTA Petition)*, P-00971166 (March 14, 1997) page 5:

The FCC established a National guideline whereby the companies providing public interest payphones are to be fairly compensated for the cost of such services. The FCC allows the individual state commissions to determine whether they want to adopt rules for funding and maintaining such a program.

After noting that Pennsylvania's Universal Service Fund may be used to fund public interest payphones, we directed the Universal Task Force to consider this issue and requested the submission of recommendations and comments on public interest payphones and their funding. *PTA Petition*, page 13.

The FCC essentially preempted state regulations of entry and exit to the payphone market and intrastate coin rates for local service, including rates charged for directory assistance. Historically, states have had the central role in regulating payphone rates, which the Commission believed should continue given the individual states' better position to determine local market conditions. Furthermore, since the competitive market has resulted in an overabundant supply of payphones in urban areas, the states should retain control over entry

and exit to the payphone market. Moreover, the Commission was concerned that the FCC's removal of entry and exit restrictions may conflict with the broad discretion granted to the states for maintaining public interest payphones, 47 U.S.C.A. § 276(b)(2), and with the Commission's express authority under Chapter 30 and our regulations concerning the placement of payphones. See 66 Pa.C.S. §§ 3001—3009 and §§ 63.91—63.98.

On January 29, 1997, the Commission filed with the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) a Motion for Leave to Intervene of the Pennsylvania Public Utility Commission to intervene in Case No. 97-1016, *People of the State of New York and the Public Service Commission of the State of New York v. Federal Communications Commission and the United States of America*, and in any other appeals which may be consolidated with this case, as well as appeals into which this proceeding may be consolidated.² The People of the State of New York and the Public Service Commission of the State of New York had petitioned the DC Circuit for review of the *Reconsideration Order* issued by the FCC (FCC 96-439) on November 8, 1996.³ By Order filed February 11, 1997, the DC Circuit granted the Commission's Motion for Leave to Intervene and further acknowledged that the Commission must join the brief of similarly situated state agencies.⁴

Before the DC Circuit, the Various States filed an initial, reply, final and final reply brief advancing the argument that the FCC has crossed the line between the federal and state jurisdictions insofar as it asserts power over local coin rates. Furthermore, assuming for argument that the FCC has jurisdiction over local coin rates, TA-96 section 10 still requires that the FCC, before forbearing from regulating local coin telephone rates, make a finding that "enforcement of such regulation or provision is not necessary for protection of consumers." 47 U.S.C.A. § 160(a)(2). Based on the existence of the "locational monopoly," such as, coin providers in airports, malls, and convenience stores, etc., the Various States argued that consumers would not be protected in the absence of regulation. Accordingly, the Various States concluded that the FCC's deregulation was arbitrary and capricious for failing to address these recognized monopolies.

On July 1, 1997, the DC Circuit decided the consolidated petitions for review of the FCC decision implementing the payphone provisions of TA-96.⁵ In addition to deciding the issue of the FCC assuming authority over local coin rates, the Court addressed a number of issues raised on appeal by the Various States. With respect to the issue of local coin rates, emphasized by the Various States, the Court recognized that Congress in § 276 of TA-96 directed the FCC to establish regulations to "ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call." 117 F.3d 562. The Court framed the issue as whether in § 276 Congress gave the FCC the authority to set local coin rates to achieve that goal. Finding that Congress has used the term "compensation" elsewhere in TA-96 to encompass rates paid by callers, and that a payphone service provider's compensation is in the form of coins deposited in the phone, the DC Circuit held that

² This proceeding was consolidated with Case No. 96-1394, *Illinois Public Telecommunications Association v. Federal Communications Commission*.

³ The petition for review was filed on or about January 9, 1997.

⁴ This Commission joined in the filing of briefs with the state regulatory Commissions of New York, Missouri, Virginia, California, Maine, Vermont, Ohio and Mississippi. The DC Circuit referred to the Commissions as "the Various States."

⁵ *Illinois Public Telecommunications Association v. Federal Communications Commission*, 117 F.3d 555 (D. C. Cir. 1997).

there is no indication that Congress intended to exclude local coin rates from the term "compensation" in § 276. 117 F.3d 562.

Furthermore, the Court determined, given the lack of any evidence that there are significant locational monopolies in states that have already deregulated local coin rates, it was not unreasonable for the FCC to conclude that market forces will keep prices at a reasonable level. 117 F.3d 562. Finally, the Court agreed with the FCC that the Federal agency did not forebear from regulating local coin rates because it did establish a compensation plan consistent with TA-96 since a market-based approach is as much a compensation scheme as a rate-setting approach.⁶ 117 F.3d 563. On December 24, 1997, the Virginia State Corporation Commission and Texas Office of Public Utility Counsel filed a Petition for Writ of Certiorari with the Supreme Court of the United States of America. That appeal was subsequently denied by order entered March 30, 1998.

As indicated previously, the FCC concluded that many states impose regulations on PSPs that are barriers to a fully competitive payphone marketplace and shall be preempted. *Report and Order*, ¶59. The FCC reasoned that ease of market entry and exit will promote competition and allow the market to control the payphone industry. In order to accomplish this goal of competition in the payphone industry, the FCC has directed each state to examine and modify its restrictive regulations as follows:

... we conclude that each state should, in light of the instant proceeding, examine and modify its regulations applicable to payphones and PSPs, particularly those rules that impose market entry or exit requirements, and others that are not competitively neutral and consistent with the requirements of Section 276 of the Act. We conclude that, for purposes of ensuring fair compensation through a competitive market place, states need only remove those regulations that restrict competition, and they need not address those regulations that, on a competitively neutral basis, provide consumers with information and price disclosure.

Report and Order, ¶49. Therefore, we must satisfy the FCC's directive that state commissions remove market entry and exit requirements.

In our decision on the *PTA Petition* of March 14, 1997, we acknowledged that we might have to revisit this matter and modify our payphone regulations so as to comply with the FCC's decision and address the new competitive environment. We shall now take this opportunity to review our regulations to determine whether any regulations exist that may adversely affect payphone competition in the Commonwealth. In completing this task we are mindful that competitively neutral regulations on information and price disclosure are not preempted. Moreover, the access to dialtone, emergency calls, and telecommunications relay service calls must still be available from all payphones without charge. *Report and Order*, ¶60.

Our current regulations on coin telephones are in §§ 63.91—63.98. The title refers to this type of telephone service as "Public Coin." However, in § 63.92, we will be deleting the definition of the term "public coin telephone." Therefore, we shall retain the term "coin telephone" as

⁶ However, the Court vacated and remanded, for further consideration, portions of the FCC's decision unrelated to the issues we are addressing here. Also, three petitions for rehearing were filed in response to the D. C. Circuit opinion. These petitions were all denied with the last denial occurring on October 7, 1997.

the title of the subchapter since this term is still defined in § 63.92. The reason for deleting the definition "public coin telephone" will be discussed below.

Subchapter G. PUBLIC COIN TELEPHONE SERVICE

§ 63.91. Purpose.

The purpose of these regulations was "to maintain and promote the availability and affordability of coin telephone service in this Commonwealth." See § 63.91. The FCC has preempted our ability to regulate availability through entry or exit requirements, and also to regulate the price of local coin service. It will be necessary for us to replace this provision given that the purpose of the subchapter is no longer legally enforceable. Rather than regulating the overall number of payphones in the market and the price charged for a call, our emphasis will now be on promoting competition in the coin telephone market in this Commonwealth, assuring accurate price disclosure, and providing for public interest payphones.

§ 63.92. Definitions.

The changes to this section involve deletion of the definitions for "comparable public telephone," "public coin telephone," and the term "nonpublic utility." The term "comparable public telephone" is only used in § 63.95(a) and (b). As will be discussed below, these provisions will be deleted from the subchapter. Therefore, it will no longer be necessary to retain this definition. Furthermore, since the term "public coin telephone" is only used within the definition of "comparable public telephone," which is being deleted, and other sections, such as, §§ 63.94(f), 63.95(c) and 63.98(a), where a distinction is irrelevant, retention of this definition is also unnecessary.

Finally, although we do not believe it necessary to modify the substantive definition of the term "nonpublic utility," we shall change the name to "payphone service provider" to be consistent with the terminology used by the FCC, and use it throughout the subchapter. The FCC has determined that incumbent LEC payphones should be treated as deregulated and detariffed customer premises equipment. *Report and Order*, ¶142. We recognized the FCC's action in our *PTA Petition* decision where we declared that "ILECs may maintain the assets on their books on a deregulated basis or transfer the payphone assets to a separate affiliate" (page 5). The players are now all nonpublic utilities, or PSPs, and the definition as written can encompass a LEC maintaining separate books under a segregated corporate division or a separate affiliated entity.

§ 63.93. Conditions of service.

Under the definitions section of these regulations, § 63.92, a payphone service provider is an entity that "manufactures, vends, owns, or leases coin telephones, and is not required to be certificated by the Commission for the provision of coin telephone service." Section 63.93 imposes upon a nonpublic utility the obligation to comply with conditions of service set forth in the subchapter to be eligible for access to intrastate telephone facilities. Given that certain requirements are mandated by the FCC, like access to dialtone and emergency calls, and that other requirements on information and price disclosure are allowable if competitively neutral, this provision is not violative of the FCC's decision and shall not be deleted nor modified.

§ 63.94. Coin telephone requirements.

Under § 63.94, subsections (a) and (b), a coin telephone must comply with FCC registration requirements and

provide access to dialtone and 911 service, respectively. Furthermore, we are adding the requirement that the coin telephone provide access to telecommunications relay services and comply with ADAAG⁷ usability standards where compliance with usability standards is required by the ADA.⁸ Clearly, since these requirements are also imposed by the FCC and Federal government, deletion is unnecessary and the additions are warranted.

We also find it necessary to require that coin telephones provide per-call blocking service whereby the caller can initiate the service by dialing *67. In *Petition of Intellicall, Inc. for a Declaratory Order (Petition of Intellicall)*, P-00950936 (April 14, 1997), we issued an order declaring that customer owned coin operated telephone (COCOT) providers are obligated to make caller identification (Caller ID) service blocking options available from their telephones. We determined in the *Petition of Intellicall* (pages 13—14) that whoever offers Caller ID service is legally obligated to make blocking options available to callers to satisfy the requirement of section 2906 of the Public Utility Code, 66 Pa. C.S. § 2906.⁹ We concluded that customer premises equipment which cannot provide to the end user a service required by law is effectively in violation of section 2906. We ordered all payphone service providers, including LEC coin telephones and COCOTs, to provide per-call blocking whereby the end user caller can initiate the service by dialing *67. The payphone service provider must provide notice of the availability of this service which can be placed on the phone or enclosure. As an alternative to per-call blocking, we further allowed the COCOT provider to offer and pay for operator service to callers to override the unblocked line and block Caller ID. Again, the COCOT must provide notice of this option. *Petition of Intellicall*, pages 16—17. The OCA, the Central Atlantic Payphone Association, BA-PA, PTA, Pennsylvania Coalition Against Domestic Violence, and Intellicall, Inc. were parties to this proceeding. Our decision was not appealed. We therefore make modification to our regulations so as to include these service requirements. The new provision is a competitively neutral service requirement to satisfy statutory privacy interests accorded to Pennsylvania coin telephone end users.

Subsections (c) and (d) address coin telephones being capable of accepting coins and being able to provide message toll service and completing toll free 800-number calls without payment of coins. The requirements that coin telephones accept nickels, dimes and quarters and provide message service do not restrict entry and exit into the payphone market in this Commonwealth. Furthermore, since the FCC has provided for compensating the payphone service provider for subscriber 800 calls, *Report and Order*, ¶52, coin compensation for each call is not mandated by the FCC's decision. However, we shall delete the reference to "800" numbers since toll free numbers are also provided through 888, and possibly through additional numbers in the future. Section (e) prohibits connecting more than one coin telephone to a single access line and imposes a restriction if a noncoin extension is connected. These provisions apply equally to all payphones, and therefore are competitively neutral.

Subsection (f) addresses an LEC's service obligations to the payphone service provider, the charges, and the payphone service provider's responsibilities. We submit

that the only inconsistency under this provision is subparagraph (f)(5), but only to the extent that the subparagraph limits directory assistance charges to 25¢. The FCC has determined that "if the incumbent LEC imposes a fee on the independent payphone providers for '411' calls, then the LEC must impute the same fee to its own payphones for this service." *Report and Order*, ¶62. Given the preemption on the local charge for directory assistance, this provision on limiting the charge is inconsistent with the FCC's decision and must be deleted. Accordingly, LECs in Pennsylvania will no longer have to comply with this provision. However, subparagraph (f)(6) can remain because improperly or erroneously accepted calls is a cost for which the LEC should be reimbursed in a competitive market.

A review of subsections (g) and (h), and all subparagraphs, clearly indicates that these provisions deal with display instructions and notices, which are specifically allowed by the FCC as providing consumers with information and price disclosure. However, we shall modify paragraph (1) so as to recognize the difficulty that posting rates for message toll calls imposes on payphone service providers. Given the variant types of calls that may be placed from a coin telephone, we shall instead impose the posting of dialing instructions to obtain the rates. Furthermore, we shall include a new paragraph (4) requiring notification of the per-call blocking option and the alternative free operator services to block Caller ID to be "prominently posted on, or in the immediate vicinity of the pay telephone." See *Petition of Intellicall*, page 18. Finally, we shall delete subsection (h) so as to remove the redundancy.

Subsection (i), which will change to (h), addresses the LEC obligation to provide payphone service provider access lines and to make available to payphone service providers a number of services on an unbundled basis. Essentially, these services have been available from or provided to LEC coin telephones. Since the purpose of the regulation is to create a level playing field for competition in the payphone industry, we will not delete this provision. However, we believe it unnecessary to identify all these unbundled services since LECs must provide these tariffed services, where available, on a nondiscriminatory basis, and shall modify the paragraph accordingly.

The last subsection of the current section, subsection (j), establishes a procedure for LECs to petition the Commission to waive subsection (i), or parts thereof, if there is not enough demand to economically justify any service. Recently, we have had the occasion to address such a petition. *Petition of Pennsylvania Telephone Association Requesting a Waiver of Obligation to Unbundle Services for Public Coin Telephones*, P-00940869; P-00940870 (Order entered May 23, 1997). On the third page of the Order, we cited language in the *Report and Order* (¶146) and the *Reconsideration Order* (¶163) where the FCC has imposed on incumbent LECs the obligation to provide individual central office coin transmission services to payphone service providers and file intrastate tariffs for these services, respectively. Thereafter, on the same page of the Order, we went on to acknowledge that in our March 14, 1997 *PTA Petition* (page 2), we stated that "any unbundled payphone services used by the ILEC's operations must also be made available to independent payphone providers." Consequently, we denied the petition as being moot, and an identical result should be reached here, that is, LECs cannot be relieved of the obligation to provide these services that are available to their own coin telephones. This provision is no longer available to LECs, and shall be deleted.

⁷ Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities.

⁸ Americans With Disabilities Act of 1990. The justification for including this provision can be found under § 69.221 which is the policy statement for application of accessibility and usability standards to pay telephone service providers.

⁹ All Pennsylvania local exchange companies have satisfied the requirements of the statute by providing Caller ID per-call and per-line blocking. *Petition of Intellicall*, page 15.

§ 63.95. Sufficiency of public telephone service.

The current section addresses the need to both maintain the number of public telephones and replace certain public telephones. In particular, subsection (a) requires LECs to maintain their level of public telephones except where replaced by a "comparable public telephone." Furthermore, subsection (b) directs that the Commission be notified of plans to remove public telephones. Upon review of these provisions, it appears that continued enforcement of these provisions would have a chilling effect on competition in the coin telephone market. The entry and exit requirements into the coin telephone market which are being imposed by this section must be deleted. Furthermore, the current section still references LEC ownership of coin telephones, which is inconsistent with the FCC's action.

We had intended to replace the existing section with wording that more closely follows 66 Pa.C.S. § 2912¹⁰ which authorizes the Commission to ensure that there is adequate coin telephone service in this Commonwealth. While we still believe that we retain this authority under existing subsection (c), the proposed language appears to explicitly impose upon LECs requirements that must be satisfied prior to removing an existing coin telephone station. Whereas we are preempted from imposing these standards, and the LEC coin telephone classification no longer exists, the requirements with respect to existing subsection (c) are still enforceable, but only upon payphone service providers.

This provision outlines the discretion retained by the Commission in ordering the placement or replacement of a public telephone that is in the public interest. As referred to earlier in this Final Rulemaking Order, the FCC is concerned about the public's access to emergency services in isolated areas and the need for payphones which serve community interests. *Report and Order*, ¶¶277 and 278. Therefore, the FCC has still left for the states the implementation of public interest payphone programs, finding that states are better equipped to respond to factors affecting the need for these payphones as opposed to the program being addressed on a National level. *Reconsideration Order*, ¶245.

In its *Reconsideration Order*, ¶248, the FCC set the following guideline with respect to the program:

Each state is required, within two years of the date of issuance of the *Report and Order*, to evaluate whether it needs to take any measures to ensure that payphones serving important public interests will continue to exist in light of the elimination of subsidies and other competitive provisions established pursuant to Section 276 of the 1996 Act, and that any existing programs are administered and funded consistent with the Commission's rules.

In response to this directive, the Commission addressed this issue of public interest payphones in the *Final Report and Recommendation of the Pennsylvania Universal Telephone Service Task Force*, filed September 29, 1997, at Docket No. I-00940035.¹¹ The following decision was made with respect to our obligation in addressing this matter:

With respect to the issue of public interest payphone funding, the Subcommittee concludes that the issue is too complex to be addressed within the time

allotted. Further, much of the information that the Subcommittee needs to consider will not be available until after October 7, 1997, the date on which the regulation of payphone prices is scheduled to end. The Subcommittee will address this issue when the requisite information becomes available, and will submit a supplemental report to the Commission concerning this subject.

Universal Service Task Force Report, page 3. Given the relatively recent deregulation of payphone rates, the requisite information on this subject is still not available. In fact, it has been a number of years since we dealt with complaints about the low level of residential payphone penetration. To the contrary, our recent concern and the complaints we have received on payphone penetration levels pertain to having too many phones and the role they play in illegal drug transactions. In any event, existing subsection (c) is consistent with the FCC's directive since the regulation contemplates that we would ensure the placement of public telephones at certain locations to promote the public interest. Therefore, this regulation will remain, but the title to the section will be changed to reflect the deletion. To the extent that the Commission relies on this provision to order the removal of nuisance payphones, or service to such payphones, we conclude that Congress never intended the FCC to preempt the states ability to take this action based on public health, safety or welfare concerns. See 47 U.S.C.A. § 276(b)(2).

Finally, the OCA raised a good point in its comments about the current definition of the term "comparable public telephone" interfering with the objective of 66 Pa.C.S. § 2912 as it relates to accessibility to public telephones by those with disabilities. According to the OCA, coin telephones that are designed to assist those with physical impairments, such as deafness, hearing deficiencies and loss of sight, could be replaced with telephones that cannot provide assistance without being in violation of the new or old regulations. Given the FCC's action in this matter, the issue raised by the OCA is moot since we are without the requisite jurisdiction to control the overall level of payphones in the marketplace. However, we still believe that the power we retain under existing subsection (c) provides sufficient authority for requiring the placement of a public interest payphone that assists those with disabilities. Whereas our general jurisdiction to impose entry and exit requirements is preempted, we continue to have the legal ability or control over the placement or replacement of a coin telephone that is in the public interest, including a coin telephone that is needed to assist those with disabilities.

Similarly, we also find merit with IRRC's concerns about proposed subsection (c)(3) and its failure to define the term "insufficient usage" and limiting the LEC's ability to remove a public coin telephone. However, because of the FCC's action, the issue is moot.

§ 63.96. Service requirements for coin telephones.

We further find that it is unnecessary to modify proposed § 63.96 which establishes the general rule that a coin telephone must provide two-way service unless the Commission determines one-way outgoing service is in the public interest. Again, the Commission believes that regulating the type of service that a coin telephone can provide, whether two-way or one-way calling, based on public health, safety or welfare considerations, is not outside the parameters of our jurisdiction as intended by Congress and defined by the FCC. These matters do not entail regulation of entry and exit requirements, nor do

¹⁰ At some point, it will be necessary to amend Subchapter B. Regulation of Coin Telephone Services, 66 Pa.C.S. §§ 2911-2915, to comply with the Federal mandate in TA-96.

¹¹ This report and recommendation was adopted and approved by the Commission by Final Opinion and Order entered February 2, 1998.

they restrict the coin telephone marketplace. Moreover, we are equally confident that the proposed regulation, which replaces the existing subsections (b)—(h) with new subsections (b)—(e), is competitively neutral and does not impose restriction on entry and exit to the marketplace.

Finally, we are not persuaded that an exception should be carved out for credit card telephones as proposed by AT&T. Although credit card phones may be used by a more limited segment of the payphone users' market for outgoing calls, the receivers of incoming calls are not so limited and may, in fact, rely on a credit card phone for primary incoming telephone service.

§ 63.97. Coin telephone rate filings.

Section 63.97 requires, inter alia, LECs to file tariffs establishing coin telephone rates, nonpublic utilities completing forms to obtain service from LECs and revise rates, limiting the charge for a local call and directory assistance, and setting the minimum period for the duration of the local call. Given the FCC's preemption of local coin rates and entry and exit requirements, we are without authority to regulate these matters, and these provisions are deleted.

§ 63.98. Compliance.

Finally, § 63.98 addresses the submission of data, the Commission's authority to direct LEC termination of service to a payphone service provider for noncompliance with the regulations, payphone service provider participation with a self-enforcement program, and a housekeeping provision. To the extent that we still retain jurisdiction to regulate certain aspects of the coin telephone market in this Commonwealth, this section recognizes a payphone service provider's obligation to provide information on their compliance with the sections still in effect, and also insures a payphone service provider's compliance by our authority to direct LEC termination of service to the PSP for noncompliance. This directive, along with retaining authority to require payphone service providers to participate in a self-enforcement program, are not inconsistent with or in violation of the FCC's rulemaking or DC Circuit decision. These provisions merely assist the Commission in enforcing its legally authorized regulations. However, the section is modified so as to clarify that LEC coin telephones are considered payphone service provider coin telephones.

CHAPTER 64. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL TELEPHONE SERVICE

Subchapter A. PRELIMINARY PROVISIONS

Section 64.2. Definition of dispute.

The definition of "dispute" is changed to exclude callbacks, issues outside the scope of Chapter 64, payment arrangements and interexchange carrier (IXC) billing. BA-PA characterizes this change as "positive," and AT&T also supports the change, stating that the modification "... will convert an ambiguous and excessive regulation to one which is considerably more reasonable." The OCA notes that the proposed change significantly alters the definition of "dispute," and is concerned with the elimination from the definition of transactions and billing related to IXCs. OCA recommends "... that the Commission examine this chapter of the regulations and modify only those provisions that are truly obsolete, rather than discounting the entire chapter when it comes to billing disputes with IXCs." The OCA further states that "[c]onsumers are still in need of being advised of the informal complaint procedure, having access to that procedure and

to the protections afforded by that process, and access to the formal complaint process even where their long distance service is concerned."

In response to the OCA's comments regarding the proposed elimination from the definition of "dispute" of transactions and billing related to IXCs, the Commission notes that this new regulatory language resulted from a proposal by the PTA. The language was approved by this Commission at Public Meeting of February 8, 1996. As the PTA notes in its comments dated August 2, 1995, the definition of "dispute" should exclude "... a disagreement which arises from billing data provided to the LEC by an interexchange carrier." The PTA commented that this exclusion "... obviates the necessity of LECs' treating customer IXC toll inquiries which must be passed on to IXCs for resolution as 'disputes' even though the vast majority of such billing inquiries are resolved to the customer's satisfaction and even though such inquiries do not give rise to 'disputes' when they are made directly to the IXC by the customer." (Emphasis in original.) The PTA further noted that this proposed exclusion "... recognizes that the current competitive reality that customers who are dissatisfied with the resolution of IXC billing inquiries have the option to easily and immediately switch to another IXC. Such a market penalty provides a powerful disincentive to IXCs' causing customer dissatisfaction in the handling of IXC inquiries, and eliminates the need for the protection of Chapter 64 'dispute' regulations."

The Commission concurs with PTA's argument that the elimination of the Chapter 64 dispute provisions is offset by the option of a dissatisfied customer to easily and immediately switch to another IXC. Accordingly, the final version of the definition of "dispute" will retain the elimination of IXC billing data as disputable subject matter under the Chapter 64 provisions. Given this change in the definition of "dispute," the final regulations will delete § 64.22(1) since the LECs will no longer be responsible for settling IXC-related complaints.

Finally, IRRRC expressed concerns regarding the length and clarity of the proposed definition of "dispute." IRRRC recommends, and we concur, that the definition be revised as we have it in Annex A.

Section 64.2. Definition of "interexchange carrier."

AT&T notes that the definition of "interexchange carrier" is obsolete and recommends that it be modified to read: A carrier which provides interexchange services to the public under 66 Pa.C.S. § 3008. The Commission is adopting this recommendation.

Subchapter B. PAYMENT AND BILLING STANDARDS

Section 64.11. Method of payment.

This section is modified to provide that LECs may treat an unpaid check as a payment never made by the customer, and consequently, may take immediate action to suspend or terminate service once a check is returned as "unpaid." The new language prohibits suspension or termination of service when the bill is in dispute and further provides that LECs may not impose a handling charge if the customer stops payment on a check due to a good faith billing dispute. No comments were received regarding this revision as it was proposed, and the language will be adopted as proposed.

Section 64.12. Due date for payment.

The proposed language, which would have added an exception to the 20-day rule in those instances where the

LEC had negotiated earlier due date arrangements with the customer, is deleted under recommendations by the OCA and IRRC as contrary to 66 Pa.C.S. § 1509. Therefore, the provision will remain unchanged.

Sections 64.17 and 64.18. Partial payments and application of partial payments between past and current bills.

The proposed language for §§ 64.17 (a) and (b) and 64.18 would have provided that partial payments be applied first to payment of basic charges before going toward payment of any other service. The PTA and BA-PA question whether the proposed revision to the hierarchy of applying partial payments by customers to balances for different services would result in any substantive degree of protection for basic service. Further, they raise concerns about the cost of implementing the change. Representative David R. Wright, Democratic Chairperson of the House Consumer Affairs Committee, in a letter dated August 14, 1996, states that "... the changes are not required and will lead to customer confusion as to how the partial payments are being applied to past due balances." IRRC states that there may be a greater need to protect basic service as long distance and other services enter the era of deregulation. However, IRRC recommends that the Commission review the proposed revision to determine if, in fact, the current partial payment application hierarchy places basic service at greater risk than the proposed revision. Further, IRRC recommends that the Commission determine if any additional protection derived from the proposed revision justifies the cost of reprogramming utility billing systems. After careful review, the Commission agrees with the LEC industry and Representative Wright that the proposed revisions to §§ 64.17(a) and (b) and 64.18 do not provide any substantive degree of protection for basic service above the protections currently contained at §§ 64.17 and 64.18. Accordingly, the proposed changes to §§ 64.17(a) and (b) and 64.18 have been deleted from this rulemaking.

Section 64.17(c) drew comments from both IRRC and the OCA pointing out that the phrase "may not" lacks clarity and needs to be changed in the final-form regulation. Accordingly, "may not" is replaced with "does not."

Section 64.21. Separate Billing for Nonbasic Service, Toll Service, and Basic Service.

Proposed changes allow LECs to bill in two "pots" rather than one for each service, with the requirement that basic service be billed separately being retained. The OCA expresses concern that consumers will not be able to check bills or to identify services for which they are being charged if all services, other than basic, are allowed to be billed in one lump sum. IRRC believes the OCA raises a valid concern regarding the proposed change in § 64.21, and recommends the Commission PUC include language in the final regulation requiring itemization for each service rendered.

The Commission respectfully disagrees with the OCA and IRRC that language should be placed in § 64.21 requiring itemization for each service rendered. Section 64.12 is intended to separate telephone bills into the two general categories of basic, toll and nonbasic services. Further, this regulation prohibits suspension of basic service for nonpayment of the other services. Section 64.21 is not intended to address the legitimate concern raised by the OCA regarding itemization. Instead, the current language in § 64.14(b) (relating to billing information) is intended to address this concern. Section 64.14(b) provides that "[a]t least annually, and upon the

request of the customer, the local exchange carrier shall provide an itemization of all service equipment and other recurring charges." Moreover, § 64.14(a)(5) requires itemization of toll charges. Finally, § 64.14(c) requires the LEC to inform a customer of the monthly recurring charge for new or additional services ordered by the customer. This provision also requires that the LEC maintain a record of the estimates given to a customer for 90 days. This 90-day record requirement allows any subsequent disputes to be properly investigated. Thus, while the need for some degree of itemization is legitimate, the Commission believes § 64.14 adequately addresses this concern. Given the fact that the average telephone bill already is viewed by many consumers as too long, the Commission does not believe further itemization of charges is appropriate. Accordingly, this order retains the language that allows LECs to bill in two "pots" rather than three, with the requirement that basic service remains a separately billed charge.

Note, too, that in response to comments regarding § 64.191(a) (relating to public information), the newly revised requirements call for the LEC to send new customers a confirmation letter itemizing the services ordered at the time of application. Thus, residential customers will receive immediate itemization through application of § 64.191(a), and periodic itemization by means of application of § 64.14.

Subchapter C. CREDIT AND DEPOSIT STANDARDS POLICY

Section 64.31. (Policy Statement) Local exchange carrier credit and deposit policies.

The proposed language was meant to clarify that LECs are not required to furnish service to an applicant if a member of applicant's household is indebted to the LEC for service previously furnished. The BA-PA and PTA support the proposed change in § 64.31. Both parties believe it is a positive change that will reduce a loophole that allows customers to "game the system" and remain on the network while not paying for service. Further, BA-PA and the PTA view this change as "limited," and recommend additional changes to allow LECs to collect advance payments and set credit limits for toll and nonbasic services from customers who are a credit risk.

The OCA opposes the change at this section and §§ 64.61(9) and 64.63(7), both of which contain similar language. The OCA expresses privacy concerns relating to this proposed change, as well as pointing out that this proposed change allows telephone companies the unprecedented advantage of independently determining that one party is responsible for a debt that accrued under an account in another party's name. Finally, the OCA notes that the regulation fails to define the term "household."

Representative Kathrynann Durham, Majority Chairperson of the House Consumer Affairs Committee, by letter dated August 5, 1996, expressed similar concerns. She opposes this change and states:

... the proposed change at § 64.31 goes too far by allowing LECs to deny service to any applicant sharing a household with a person indebted to the LEC. The regulation does not even define the word household. Permitting phone companies to effectively dictate living arrangements by restraint of basic service without even an attempt to define the parameters is unprecedented and clearly a violation not appropriately placed in this state regulation.

IRRC shares the concerns expressed by Representative Durham and the OCA, and recommends that this provi-

sion be deleted from the final regulation. IRRC also expresses concern that the title "policy statement" does not clearly reflect the content of the section. IRRC recommends that the Commission replace the existing title of § 64.31 with a title such as "Local exchange carrier credit and deposit policies."

The Commission supported the publication of this PTA proposal for comment in the hope that, through comments, the final language in § 64.31 would enable LECs to deal with the legitimate scenarios they cite without adversely impacting privacy rights or the volume of complaints to the Commission about bill-responsibility issues. However, given the merit of the comments of the OCA, Representative Durham and IRRC to the proposed change, as well as the absence of suggestions for changes in language that would satisfactorily address these concerns, the Commission has eliminated the proposed language in the final rulemaking. Instead, this section is included to effect only the change in its title according to IRRC's suggestion.

Discussion of the following two sections has been consolidated and appears following the explanation of the proposed changes.

Section 64.33. Payment of outstanding balance.

The proposed rulemaking proposed deleting subsection (b), which prohibits LECs from requiring payment for a residential service previously furnished under an account in the name of persons other than the applicant without a legal determination that the applicant is obligated to pay.

Section 64.34. Written procedures.

Proposed language would permit LECs to give a "brief" explanation of credit and deposit procedures rather than the lengthy explanation given by some LECs now.

The PTA and BA-PA recommend additional changes to the credit and deposit standards to help LECs reduce fraudulent use of the network and avoid uncollected debt. Specifically, the LEC industry suggests changes to allow advance payments for toll and nonbasic service to be collected from customers who are credit risks. The industry also believes the rules should be changed to allow LECs to set credit limits on toll and nonbasic for customers who are credit risks. Further, if a customer exceeds his or her credit limit, LEC industry wants to apply the limited notice provisions in § 64.81.

IRRC expresses a favorable view of both credit limits and advance payment, but recommends the Commission "... give them serious consideration for a future rulemaking since these types of revisions were not included in this proposed regulation."

Comments concerning § 64.12 explain why the Commission did not include these types of revisions in the instant rulemaking proceeding. Briefly, the Commission considered proposed regulatory language regarding advance payment and credit limits, but deleted language pertaining to these two credit activities because they went beyond the intent of the Commission's May 23, 1995 Order. The Commission did, however, grant a petition by GTE North Incorporated (Docket No. P-00950967) to establish Advance Credit Management (ACM) on a 24-month trial basis to help determine the effectiveness of credit limit procedures. The Commission looks forward to the GTE report on the results of this trial program.

As a result of this review, the Commission withdraws its proposed changes to § 64.33.

Section 64.41. Interest.

The BCS proposed changing this section to be consistent with § 56.57 which provides that the interest rate be determined by the average rate of 1-year Treasury Bills for September, October and November of the previous year. The PTA, however, recommended that the interest rate be changed from 9% per annum to the current legal rate. The PTA stated that it believed the change from 9% to 6%, the current legal rate, is a positive change, although the OCA argues that the interest rate paid on deposits should remain at 9% so that consumers will not be hurt if the market is paying higher interest. The Commission believes that it is more important to set the interest rate at a level that provides incentive to collect a deposit in appropriate situations than to set the interest rate to ensure no loss in value to the consumer. Consumers who are dissatisfied with the interest paid on deposits need only pay their bills on time for 12-consecutive months to receive refund of this money. See § 64.37(3).

In a petition filed by on April 3, 1998, the PTA has requested a waiver of the existing section to utilize the standard set forth in § 56.57. *Petition of The Pennsylvania Telephone Association for Waiver of the Pennsylvania Public Utility Commission's Regulation at 52 Pa. Code § 64.41*, Docket No. . PTA recognizes that this represents a marked departure from its prior recommendation but states that it believes that the waiver will benefit consumers of telecommunications services in the Commonwealth by reducing interest payments made by LECs and foster an increased willingness on the part of LECs to require customer deposits in situations that warrant such measures.

To give the industry and other interested entities an opportunity to comment on this change, we are eliminating this section from the instant rulemaking with the intent to include it in a future rulemaking. If we grant the petition, we will also have the additional benefit of seeing how well this standard works for LECs prior to implementing any permanent industry-wide change.

Subchapter D. INTERRUPTION AND DISCONTINUATION OF SERVICE GROUNDS FOR SUSPENSION

Section 64.61(9). Authorized suspension of service.

The proposed language allowed LECs to suspend service whenever there exists an unpaid indebtedness for telephone service from a previous customer, and the previous customer continues to occupy the premises.

IRRC notes that the same concerns raised by the OCA and Representative Durham in relation to §§ 64.31 and 64.33 apply to the proposed change in this section. Consequently, IRRC recommends that proposed section 64.61(9) be deleted. The Commission agrees and withdraws its proposed language for amending this section.

Section 64.63(7). Unauthorized suspension of service.

The proposed language would have removed the requirement that the legal obligation must be established prior to suspending service, and service could not be suspended for nonpayment of a previous occupant of the residence unless that occupant continues to reside there. Since these proposals raise the same concerns as those raised by OCA, IRRC, and Representative Durham in relation to §§ 64.31, 64.33 and 64.61(9), the Commission withdraws the amendment.

NOTICE PROCEDURES PRIOR TO SUSPENSION

Section 64.71. General notice provisions.

The additional language provides that LECs may revert to the 24-hour personal notice of suspension provision of § 64.81 when a customer fails to comply with the material terms of a payment agreement for toll or nonbasic service, or both.

The BA-PA and PTA recommend extending application of the limited notice provision in § 64.81 to breached payment agreements for basic service. Although recognizing the merits of such an addition from the LECs' point of view, the Commission will not grant the extension in order to ensure that basic service is afforded the highest degree of protection. Each LEC needs to provide customers with an opportunity to point out mistakes that may have resulted in a threat to suspend basic service. Sometimes, customer payments are sent but not received by the company. Other times, customer payments are received but are applied to the wrong account. According to the Commission's Bureau of Consumer Services, BA-PA has reported on several occasions that "payment claims" constitute a high number of complaints from residential customers. A written 7-day notice provides an opportunity for the customer to contact the LEC and correct such errors before service is suspended. The § 64.81 limited notice does not provide that same degree of protection. The limited notice is not guaranteed contact; it is a reasonable attempt at contact 24 hours before suspension. Since denial of basic service raises health and safety concerns relating to the ability to access 911 emergency services or medical services, or both, the Commission believes that it is in the best interest of all parties to retain the requirement of written notice to residential customers that basic service will be suspended in 7 days.

Section 64.74. Procedures upon customer contact before suspension.

Language is added to subsection (b) to provide that the LEC may suspend toll or nonbasic service after complying with the limited notice provision in § 64.81 when a customer breaches a payment agreement for toll or nonbasic service. The BA-PA and PTA recommend language changes in § 64.74 to conform with their recommendation to allow the use of limited notice for basic service if a customer breaches a payment agreement. For reasons stated above, the Commission declines to accept this recommendation.

NOTICE PROCEDURES AFTER DISPUTE FILED

Section 64.81. Limited notice upon noncompliance with report or order.

Added language expands this section to allow LECs to use limited notice in instances where a customer fails to keep the terms of a payment agreement for toll or nonbasic service. The BA-PA and PTA recommend language changes to allow the use of limited notice for basic service if a customer breaches a payment agreement. For reasons stated above, the Commission declines to accept this recommendation.

Section 64.108. Right of LEC to petition the Commission.

Revised language recognizes the new § 64.109, which deals with the circumstances under which LECs can suspend service before the expiration of a medical certification. No comments were received relating to this section.

Section 64.109. Suspension prior to expiration of medical certification.

This new section provides that a telephone company may suspend service prior to the expiration of a medical certification if the customer has failed to make timely payments for service provided, if the company follows the notice procedures in § 64.71. No comments were received relating to this section.

**Subchapter G. DISPUTES; INFORMAL AND FORMAL COMPLAINTS
GENERAL PROVISIONS**

Section 64.133. Termination stayed.

New language provides that the disputing party shall pay or enter into a reasonable payment agreement on all undisputed portions of the bill. No comments were received relating to this section.

TELEPHONE COMPANY DISPUTE PROCEDURES

Section 64.141. General rule.

Paragraph (5) is changed to reduce the paperwork of a company if a customer is satisfied with the dispute resolution. At IRRC's suggestion, we have added a sentence in the final rulemaking requiring the LEC to inform the complaining party that a copy of the written summary is available upon request. This additional language addresses IRRC's concern that customers may not be aware of the written summary and their right to receive a copy upon request.

Section 64.142. Contents of the LEC report.

Paragraph (6) is revised to specify that LECs must provide the information at Section 64.152(a)(1)—(3) and (6) when a written report is neither requested nor deemed necessary. AT&T comments that the proposed and existing language is unclear. AT&T suggests adding a new subsection (b) providing that the LEC shall submit a letter in lieu of a written report, containing some basic information regarding the complaint. Contrary to AT&T's statements, the Commission believes that the proposed language provides clear direction for LECs regarding when it is appropriate to abbreviate the explanation of informal complaint filing procedures in § 64.152.

Nor do we agree with AT&T's suggestion to substitute a letter in lieu of a written summary in instances where a written report is not requested by the complainant or deemed necessary by the LEC. Since LECs are required to prepare a written summary at the conclusion of every dispute, AT&T's suggestion would have the effect of doubling the amount of paperwork of the LEC. Moreover, this extra paperwork would go to customers who indicated satisfaction with the LEC resolution. While we do not object to LECs sending a letter as suggested by AT&T, we decline to make this a requirement. Accordingly, we are retaining the proposed language regarding this section.

INFORMAL COMPLAINT PROCEDURES

Section 64.153. Commission Informal Complaint Procedures.

New language prohibits LECs from suspending or terminating service based on the complaining party's nonpayment of other billed amounts where these other amounts reflect the same underlying problem as the contested billed amounts. No comments were received regarding this section.

FORMAL COMPLAINTS*Section 64.161. General rule.*

Added language limits a broad stay provision to specifically provide that LECs may still suspend or terminate service based on the complaining party's nonpayment of other billed amounts. No comments were received regarding this section.

Subchapter I. PUBLIC INFORMATION; RECORD MAINTENANCE*Section 64.191. Public information.*

New language specifies which verbal information must be transmitted to an applicant in order to relieve LECs of the necessity of giving all information to the applicant. Numerous comments were made regarding the proposed changes. This section is extremely important since it sets forth the standards by which a local exchange carrier responds to applications for residential telephone service. Representative Wright expresses concern that the proposed regulations "... limit the flexibility of any local exchange carrier (LEC) to tailor the information provided during a new service contact to individual customers' needs and requests." Representative Durham expresses similar concerns by stating the following in regard to this section:

Requiring the oral description of the numerous service options will cause unnecessary customer confusion and possibly lead to consumers mistakenly purchasing services that they do not want or need. The extensive oral recitation is also unnecessary as the customer currently has the option, at § 64.191, to have the LEC mail a copy of written service choices. Finally, telecommunications competition, itself, creates more than adequate marketing incentive without mandating an overwhelming recitation of a LEC's service capabilities.

The regulation should require that the service representative recite the least expensive basic service price, inform applicants when services discussed are optional and answer all questions related to the purchase of telephone services.

AT&T comments that it "... generally supports the new language proposed by the Commission ..." but recommends that the list of service and equipment options should contain only those options which the LEC determines would be of interest to residential customers, and that the LEC should be required to send it only to customers who, in response to an inquiry by the LEC service representative, say they want the price list.

Additionally, AT&T recommends that the Commission insert the words "objective and unbiased" into the language which requires LEC representatives to explain the choices for toll service. AT&T states:

This explanation should be for informational purposes and should not be an opportunity to give the customer a "sales pitch" for the LEC or one of its affiliates. Furthermore, the language of the regulation should be clarified to include intraLATA toll services once presubscription is available.

AT&T's final suggestion regarding this section is to delete the requirement that service applicants be informed that they can purchase a phone instead of leasing because the requirement is outdated.

The LEC industry recommends against the proposed change in § 64.191(a), stating that it would "... straightjacket the contact into a invariable basic, toll,

nonbasic order-or-service discussion." The industry recommends the following alternative:

... [t]he Commission should adopt an alternative Section 64.191 revision which would limit the required oral recitation to giving applicants the least expensive basic service and its price, and telling applicants when services discussed are optional. This revision will give LECs needed flexibility in the competitive arena to discuss additional basic and optional services and prices with customers in a way that both best meets their individual needs and conserves their time.

Finally, IRRC supports a limited oral recitation of service options as long as prices are included with the description of each optional service. IRRC recommends the Commission revise this section "... to require that LECs provide applicants with a brief description and price for the least expensive basic service available, and require that they ask applicants if they want information about toll services or other services or options beyond basic service. The final regulation should also require that any description of a service include the applicable price list." IRRC cautions, "... that any further revision to Section 64.191 needs to be carefully drafted to prevent recurrence of past abuses."

The Commission appreciates the many comments regarding § 64.191(a) since this provision deals with a difficult consumer issue involved in the ongoing transition of telecommunications from the traditional monopoly setting to the competitive marketplace. Since 1984, applicants for residential telephone service find themselves contacting a monopoly, the LEC, but interacting with a service representative who is expected to market optional services. The Commission, therefore, shares the concern expressed by several parties that the application process for residential telephone service not cause unnecessary customer confusion or result in consumers mistakenly purchasing services that they do not want or need. We also agree with IRRC that any further revision to § 64.191 needs to be carefully drafted to prevent recurrence of past abuses. Finally, the Commission also shares the parties' desire to shorten the application process.

Regarding this latter point, the proposed revision to § 64.191(a) eliminates the requirement that the LEC provide "... a verbal recitation of *all* available service and equipment options and their prices" to applicants who apply by phone. (Emphasis added.) We proposed this modification because in our view the proliferation of service options since the promulgation of that requirement has made compliance with this requirement increasingly difficult for LECs, and confusing for applicants. Thus, the elimination of this requirement to recite all services was intended to address the need to shorten the process and help reduce unnecessary customer confusion.

With the aid of the above-noted comments relating to § 64.191(a), we believe the final regulation: 1) provides for quality service by ensuring communication of factual information to each applicant 2) provides LECs with the flexibility they desire to respond to applicant's needs and 3) conserves applicants' time by shortening the process.

The final-form regulation recognizes the fact that applying for residential telephone service requires applicants to select from an increasing number of options. The Commission believes the final-form regulation must set forth a reasonable process for covering the many services available to residential telephone applicants in a manner that allows applicants to make informed decisions. Moreover, as other parties enter the local exchange carrier

business and local competition develops, presubscription becomes available for intraLATA toll service, and LECs begin to provide interLATA toll service, the regulation in § 64.191(a) should enable a consumer to more easily compare offerings and prices. We have attempted, therefore, to modify the final regulation so as to address the many comments, including those urging more LEC flexibility to respond to specific requests and conserve consumers' time.

Accordingly, the final-form regulation requires LECs to describe the least expensive basic service and quote its price. Next, the LEC must determine whether the applicant needs to know about services for customers with disabilities.

After these two items have been addressed, the final regulation will allow LECs to complete the remainder of the application in the manner that best responds to the applicant's questions and preferences. The final-form regulation, however, sets forth other items that must be covered at some point in the application process. These include: 1) the date service will be installed 2) available blocking options, that is, 900, 976, collect call and Caller ID and 3) directory listing options.

Another important decision for an applicant is choosing a Primary Interexchange Carrier (PIC). Further, as noted by AT&T, the recent Federal telecommunication legislation will eventually allow applicants to decide whether the provider of both intraLATA and interLATA toll service will be the same or different parties. The Commission, therefore, agrees with AT&T that the LEC, acting as the gatekeeper for the toll presubscription process, should provide an explanation of the choices or options for toll services in an "objective and unbiased" manner so as to safeguard the rights of consumers. The final-form regulation reflects this general requirement.

The Commission also agrees with IRRC and other parties that the LEC should inform applicants when services discussed are optional, along with their price. We include this requirement in the final-form regulation. Further, we are deleting the outdated requirement that applicants be informed of the lease-versus-purchase option.

Finally, we believe there is merit in AT&T's comments regarding price lists. Therefore, we are replacing the requirement relating to mailing a lengthy price list upon request with a requirement that LECs send each applicant a confirmation letter which itemizes the services ordered, identifies those services that are optional, and clearly states the prices of the services ordered. If the new customer purchases a package, then the confirmation letter must itemize the services that make up the package, and identify all optional services and their prices. Where applicable, the confirmation letter must also inform the new customer that a more complete explanation and price list of services of interest to residential customers is contained in the phone book. Since most companies send some type of confirmation letter already, this change not only helps eliminate customer confusion, it does so without increasing paperwork.

Accordingly, under sections 501, 504—506, 1301 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501, and the Commonwealth Documents Law, 45 P. S. § 1201, et seq., and the regulations promulgated thereunder, we adopt as final the regulations appended to this order to accomplish the objectives described in the body of this order; *Therefore,*

It Is Ordered that:

1. The Commission's regulations 52 Pa. Code Chapters 63 and 64, are amended by:

Adding § 64.109;

Deleting §§ 63.17 and 63.97; and by

Amending §§ 63.1, 63.15, 63.18, 63.21, 63.31, 63.41, 63.91—63.96, 63.98, 64.2, 64.11, 64.17, 64.21, 64.31, 64.34, 64.71, 64.74, 64.81, 64.108, 64.109, 64.133, 64.141, 64.142, 64.153, 64.161 and 64.191 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. 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 and approval by the IRRC.

5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. A copy of this order and Annex A shall be served upon all persons who submitted comments in this rule-making proceeding.

7. The regulations adopted with this order are effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

(Editor's Note: The proposed amendments to §§ 64.12, 64.18, 64.33, 64.41 and 64.61, included in the proposal at 26 Pa.B. 2810 (June 15, 1996) have been withdrawn by the Commission. The amendments to §§ 63.1, 63.91—63.94 and 63.98, included in this rulemaking, were not published in the proposal at 26 Pa.B. 2810.)

Dissenting Statement of Coimmissioner David W. Rolka

The current "three pot rule" which requires separate subtotals for basic, toll and non-basic services is not obsolete and should not be rescinded. The reference to the notice requirement of § 64.14(c) regarding recurring charges provides no information to the customer that uses non-basic services in ways that result only in non-recurring charges as is the case with usage sensitive services. I therefore dissent from that portion of the Law Bureau recommendations regarding the rescision of Section 64.21 Separate Billing for Nonbasic Service, Toll Service, and Basic Service

(Editor's Note: For the text of the order of Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 3338 (July 11, 1998).)

Fiscal Note: Fiscal Note 57-170 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subject C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter A. GENERAL PROVISIONS

§ 63.1. Definitions.

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

* * * * *

Interexchange carrier—A carrier which provides interexchange telephone services to the public under 66 Pa.C.S. § 3008 (relating to interexchange telecommunication carrier).

* * * * *

§ 63.15. Complaint procedures.

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

* * * * *

§ 63.17. (Reserved).

§ 63.18. Multiparty line subscribers.

A multiparty line subscriber may be required to take service of a different grade if his use of service interferes unreasonably with the necessary service of the other subscribers on the line. The number of subscribers connected to a multiparty line shall be limited to a maximum of four.

§ 63.21. Directories.

(a) When a directory is provided by the public utility, it shall be revised and reissued at sufficiently frequent intervals to avoid serious inconvenience to the public. A satisfactory length for a directory period shall be determined by the volume of changes and new listings and the facilities available for supplying new numbers to calling parties and for intercepting calls to numbers which have been changed.

(b) One copy of each new directory issue shall be furnished to each subscriber and one copy sent to the Commission by the issuing public utility at the time of its distribution to subscribers.

(c) A directory shall contain the following:

- (1) The name of the issuing public utility.
- (2) The month and year issued.
- (3) A statement of the area covered by the directory.
- (4) Necessary instructions to enable users to place calls efficiently, including, but not limited to, telephone company local, toll, emergency and operator-assistance calls. Necessary instructions to transact business with the telephone company, such as payment of bills, ordering changes in service and reporting service difficulties.
- (5) A separate section containing social service organization, school and government listings.

(d) A name shall be listed in a directory only if the following conditions are met:

- (1) It leads to a positive and particular identification of a party.
- (2) It is a name the party legally is authorized to use.
- (3) It is a name used by the party in the community.
- (4) It is a name which is not misleading, deceptive or confusing.

(e) Upon receiving a customer complaint alleging misleading, deceptive or confusing directory listings, a public utility shall investigate the complaint under § 63.15 (relating to complaint procedures). If the utility determines that a directory listing is misleading, deceptive or confusing, the utility shall delete the listing from future directories. After reaching its decision the public utility shall advise interested parties in writing of its opinion and shall inform them of the right to file a complaint with the Commission.

§ 63.31. Classification of public utilities.

For accounting and reporting purposes, telephone public utilities are classified as follows:

- (1) *Class A.* Public utilities having 50,000 or more access lines.
- (2) *Class B.* Public utilities having less than 50,000 access lines.
- (3) *Class C.* Telephone public utilities having average annual operating revenues exceeding \$10,000 but not more than \$50,000.
- (4) *Class D.* Telephone public utilities having average annual operating revenues not exceeding \$10,000.

Subchapter D. UNDERGROUND SERVICE

§ 63.41. Underground telephone service in new residential developments.

* * * * *

(k) Telephone utilities shall file undergrounding construction and specification standards and revisions thereto with the Commission's Bureau of Fixed Utility Services.

* * * * *

Subchapter G. COIN TELEPHONE SERVICE

§ 63.91. Purpose.

The purpose of this subchapter is to promote competition in the coin telephone market, assure accurate price disclosure and provide for public interest coin telephones.

§ 63.92. Definitions.

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

Coin telephone—A telephone which includes a coin mechanism which accepts coins for payment of rates or charges associated with placing local or interexchange calls from the telephone. The term does not include a telephone which requires insertion of a credit card to pay for using or placing calls from the telephone and does not include a telephone without a coin mechanism.

Local exchange carrier—A telephone company certificated by the Commission to provide service within a local calling area.

Payphone service provider—A corporation, association, partnership or person who manufactures, vends, owns or leases coin telephones and is not required to be certificated by the Commission for the provision of coin telephone service.

§ 63.93. Conditions of service.

A payphone service provider shall provide service in accordance with this subchapter to be eligible for access to a public utility's intrastate telephone facilities and services, and these services shall be denied when a

payphone service provider does not comply with the requirements of this subchapter.

§ 63.94. Coin telephone requirements.

(a) A coin telephone shall be registered with the Federal Communications Commission when required under 47 CFR Part 68 (relating to the connection of terminal equipment to the telephone network).

(b) A coin telephone shall provide a dial tone without the insertion of a coin to permit access to the operator. A coin telephone shall comply with the Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) usability standards where compliance with usability standards is required by the Americans With Disabilities Act of 1990 (ADA). It shall provide call completion for 911 service if available, access to telecommunication relay services, and per-call blocking of any caller identification service when the caller initiates the blocking service by dialing *67. As an alternative to the per-call blocking service, the coin telephone shall offer callers free operator service to block caller identification.

* * * * *

(d) Coin telephones shall provide message toll service. The coin telephone shall be capable of completion of toll free numbers without the payment of a coin, that is, either without the insertion of a coin or with the return of the coin inserted.

* * * * *

(f) A local exchange carrier shall provide access lines to a payphone service provider. The payphone service provider shall be responsible for charges properly attributable to the installation, connection and use of the line. The charges may not include a charge for unpublished numbers for coin telephone listings. The charges may include the following:

- (1) Nonrecurring installation charges.
- (2) Connection and reconnection charges.
- (3) Service call charges.
- (4) Recurring monthly flat rate and measured-metered charges.
- (5) Directory assistance charges.

(6) Improperly or erroneously accepted collect message toll charges, third number billing charges and credit card billing charges unless the nonpublic utility is paying a charge to the local exchange carrier for screening calls.

(g) A coin telephone shall display instructions and notices which are prominently posted on, or in the immediate vicinity of, the coin telephone clearly stating the following:

- (1) The charge for local coin calls and dialing instructions to obtain rates for other types of calls.
- (2) The name, address and telephone number of the owner, lessee or supplier of the telephone.
- (3) Dialing and other instructions applicable to the use of the coin telephone.
- (4) The telephone number of the coin telephone.
- (5) Notice that the coin telephone provides one-way service only, if applicable.
- (6) Notice of the per-call blocking option by dialing *67 or, as an alternative, free operator service to block any caller identification service.

(7) The procedure for registering service complaints and obtaining refunds.

(h) A coin telephone may not be connected to a type of line other than a payphone service provider access line. Existing connections using business or residential access lines shall be converted by the local exchange carrier to utilize payphone service provider access lines. Each local exchange carrier shall maintain provisions in its tariff providing for payphone service provider access line service offerings. Through these tariff provisions, each local exchange carrier shall offer payphone service provider access lines and associated optional features to all payphone service providers on a nondiscriminatory basis.

§ 63.95. Coin telephone service in the public interest.

The Commission may require a payphone service provider to place or replace a coin telephone at a particular location if it is determined that a placement or replacement is in the public interest.

§ 63.96. Service requirements for coin telephones.

(a) A coin telephone shall provide two-way service and may be converted to one-way outgoing service only under extraordinary circumstances when the Commission determines that the action is justified based on public health, safety or welfare concerns, and is in the best interest of the public.

(b) A local exchange carrier, payphone service provider or other interested party may seek Commission review of whether conversion of a coin telephone from two-way service to one-way is justified by extraordinary circumstances. Conversion requests shall be made in writing and shall identify the telephone number and location of the coin telephone, and describe the circumstances which justify conversion.

(c) The Commission's Bureau of Consumer Services shall determine whether a conversion request is justified within 10 days of its receipt unless the information provided by the requesting party is inadequate to make a determination. The Bureau will notify the requesting party and the owner of the coin telephone of its determination by telephone. The Bureau will provide the requesting party and the owner of the coin telephone written notice of its determination. The Bureau will limit the duration of the conversion authorization if it appears that the circumstances justifying the conversion are temporary in nature.

(d) A party may appeal the Bureau's determination, or request that a coin telephone previously approved for one-way conversion be returned to two-way service, by filing a formal complaint with the Commission.

(e) In instances where a conversion request involves allegations of drug trafficking from a coin telephone or other emergency circumstances pertaining to public health, safety or welfare concerns, the Bureau may telephonically authorize the owner of the coin telephone to convert the telephone to one-way service on the same day the emergency conversion request is received. Following an emergency conversion authorization, the Bureau will review the conversion request under the procedures established in subsection (c).

§ 63.97. (Reserved).

§ 63.98. Compliance

(a) The Commission may direct a payphone service provider to submit data or other information to ensure compliance with this subchapter and may direct a local

exchange carrier to terminate service to a payphone service provider found by the Commission to be in violation of this subchapter. The owner of a coin telephone shall be primarily responsible for assuring compliance with this subchapter.

(b) The Commission may direct payphone service providers to participate in the implementation of a self-enforcement program for payphone service provider coin telephones.

(c) This subchapter supersedes conflicting provisions of previously issued Commission orders.

CHAPTER 64. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL TELEPHONE SERVICE

§ 64.2. Definitions.

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

* * * * *

Dispute—A grievance of an applicant, customer or customer's designee about a utility's application of one or more provisions covered by this chapter, including credit determinations, deposit requirements, the accuracy of amounts billed or the proper party to be charged, which remains unresolved after the initial contact or utility follow-up response when the applicant, customer or customer's designee consents to the utility reviewing pertinent records or other information and calling back. The term does not include a disagreement arising from matters outside the scope of this chapter, or failure to negotiate a mutually satisfactory payment agreement regarding undisputed amounts, or a disagreement over billing data provided to the local exchange carrier by an interexchange carrier.

* * * * *

Interexchange carrier—A carrier which provides interexchange services to the public under 66 Pa.C.S. § 3008 (relating to interexchange telecommunications carrier).

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§ 64.11. Method of payment.

Payment may be made in any reasonable manner including payment by personal check, unless the customer within the past year has tendered a check which has been returned unpaid to the LEC by a financial institution for a reason for which the customer is at fault. When a tendered personal check is returned unpaid to the LEC by a financial institution for a reason for which the customer is at fault, the LEC may treat such unpaid check as a payment never made by the customer and, if it does so, shall not be obligated to halt suspension or termination action based on its receipt of this check from the customer. The LEC also may impose a handling charge, the amount of which shall be set forth in the carrier's approved tariff. Notwithstanding the foregoing provisions, the LEC may not proceed with suspension or termination of service based on a disputed billed amount or impose a handling charge if the customer stops payment on a check due to a good faith billing dispute.

§ 64.17. Partial payments.

(a) Payments received by a LEC which are insufficient to pay the balance due for telephone service and nonbasic service shall first be applied to telephone service.

(b) Payments received by a LEC which are insufficient to pay the amount due for telephone service shall first be applied to basic service.

(c) This section does not apply if the customer supplies written instructions specifying how a partial payment should be applied.

§ 64.21. Separate billing for basic service.

(a) Charges for basic service shall be billed separately from charges for other services.

(b) A customer's failure to pay charges for other services may not be a basis for termination of basic service unless the LEC is technically unable to terminate toll service without also terminating basic service as provided in § 64.63 (relating to unauthorized suspension of service).

§ 64.31. LEC credit and deposit policies.

An essential ingredient of the credit and deposit policies of each LEC shall be the equitable and nondiscriminatory application of those precepts to potential and actual customers throughout the service area or a part thereof. Deposit policies shall be based on the credit risk of the applicant or customer rather than upon the credit history of the affected premises or upon the collective credit reputation or experience in the area in which the applicant or customer lives without regard to race, religion, gender, age if over 18, national origin or marital status.

§ 64.34. Written procedures.

Each LEC shall establish written procedures for determining the credit status of an applicant. Each LEC employ processing applications or determining the credit status of an applicant shall be familiar with and have ready access to a copy of the written procedures of the LEC. A copy of the procedures shall be maintained on file in each business office of the LEC and be made available, upon request, for inspection by the public and the Commission.

(1) *Informing applicants of procedures.* The LEC personnel shall provide an explanation of applicable credit and deposit procedures to each customer or applicant for service.

(2) *Reasons for deposit request.* If a deposit or payment of an outstanding residential account is required before furnishing service, the LEC shall inform the applicant in writing of the reasons for denial of credit and how to obtain service. Existing customers will be informed of the reasons for denial of credit before suspension of service.

§ 64.71. General notice provisions.

The LEC shall mail or deliver written notice to the customer at least 7 days before the date of proposed suspension regardless of the grounds upon which suspension is sought, with the exception of the following: Failure to comply with the material terms of a payment agreement for toll or nonbasic service, or both. In these cases, the LEC shall comply with § 64.81 (relating to limited notice upon noncompliance with report or order).

§ 64.74. Procedures upon customer contact before suspension.

(a) If, at a time after the issuance of the suspension notice and before the suspension of service, a customer contacts the LEC concerning the proposed suspension, an authorized LEC employ shall fully explain, where applicable, some or all of the following:

- (1) The reasons for the proposed suspension.

(2) All available methods of avoiding a suspension including:

(i) Tendering payment in full or otherwise eliminating the grounds for suspension.

(ii) Entering a payment agreement.

(iii) The right of the customer to file a dispute with the telephone company and, thereafter, an informal complaint with the Commission.

(3) The procedures for resolving disputes relating to charges on the notice other than IXC toll charges and the procedures for filing informal complaints to request payment terms on the basic service portion of the account, including the address and the telephone number of the nearest regional Commission office.

(4) The duty of the customer to pay a portion of a bill not honestly disputed.

(5) The duty of the customer to restrict toll usage to 150% of average normal toll usage.

(6) The medical emergency procedures.

(7) That upon failure to timely appeal from or comply with a telephone company report, as defined in § 64.142 (relating to contents of written summary by the LEC), an informal complaint report, or an order from a formal complaint—the LEC is not required to give further written notice before suspension so long as the LEC makes a reasonable attempt to contact the customer personally at least 24 hours prior to suspension.

(b) The LEC, through its employes, shall exercise good faith and fair judgment in attempting to enter into a reasonable payment agreement regarding undisputed amounts or to otherwise equitably resolve the matter. Factors to be taken into account when attempting to make a reasonable payment agreement shall include, but not be limited to, the size of the unpaid balance, the payment history of the customer and the length of time over which the bill accumulated. When the customer breaches a payment agreement for toll or nonbasic service, or both, the LEC may suspend the toll or nonbasic, or both, service after complying with § 64.81 (relating to limited notice upon noncompliance with report or order). At the time a payment agreement is entered into, the LEC shall explain to the customer the consequences of breaching the payment agreement, including the possible suspension of toll or nonbasic service, or both, without further written notice. The LEC may not suspend service for an undisputed delinquent bill under either of the following circumstances:

(1) While it is negotiating a payment agreement with the customer.

(2) Within 24 hours after negotiating fails, except where toll usage increases by \$25 or more after the initial customer or customer designee contact.

§ 64.81. Limited notice upon noncompliance with report or order.

Upon the customer's failure to timely appeal from or comply with a LEC report as defined in § 64.142 (relating to contents of the LEC report), an informal complaint report, an order from a formal complaint, or a payment agreement negotiated for toll or nonbasic service, or both, the original grounds for suspension shall be revived and the LEC may not be required to give further written notice before suspension if the telephone company makes a reasonable attempt to contact the customer personally at least 24 hours before suspension.

§ 64.108. Right of LEC to petition the Commission.

(a) To completely suspend service before the expiration of the medical certification, except when allowed under § 64.109 (relating to suspension prior to expiration of medical certification), an LEC may petition the Commission for waiver from the medical certification procedures to contest the validity of a certification.

(b) A LEC shall continue to provide access to emergency telephone services while a final Commission adjudication on the petition is pending.

(c) Upon the filing of a petition for waiver of medical certification, Commission staff will review the facts and issue an informal written decision.

(d) A party to the proceeding may, within 20 days of the informal decision, and not thereafter except for good cause shown, appeal by filing with the Secretary of the Commission a letter stating the basis for appeal. An appeal from the informal decision will be assigned to the Office of Administrative Law Judge for hearing and decision.

§ 64.109. Suspension prior to expiration of medical certification.

A telephone company may suspend service prior to the expiration of the medical certification when the customer fails to make timely payments for service provided by the LEC after the date on which service is restored or suspension postponed. The company must follow notice procedures prior to suspension according to § 64.71—64.74.

§ 64.133. Termination stayed.

Except as otherwise provided in this chapter, when a dispute is properly registered in accordance with this subchapter, suspension or termination based on disputed portions of the bill is prohibited until resolution of the dispute. However, the disputing party shall pay, or enter into a reasonable payment agreement for all undisputed portions of the bill. If the disputing party does not do so, the LEC may suspend or terminate service based on the nonpayment, if the suspension or termination is otherwise permitted under this chapter.

§ 64.141. General rule.

If, at any time before suspension or termination of service, a customer registers a dispute, the LEC shall do the following:

(1) Not issue a suspension or termination notice based on the disputed subject matter.

(2) Investigate the matter using reasonable methods which may include telephone contacts and personal contacts with the customer.

(3) In a manner clear to the customer, set aside the disputed charges pending resolution of the dispute and demand payment of undisputed charges only.

(4) Provide the customer with the information necessary to arrive at an informed judgment, including, but not limited to, relevant portions of tariffs and statements of account.

(5) Within 30 days of the registration of the dispute, review findings with the customer in a manner which outlines clearly the results of the investigation and which indicates what action will be necessary for the customer to continue service. The findings shall be summarized in a report as follows, and the LEC shall inform the customer that a copy of the report is available upon request:

(i) If the complainant is not satisfied with the dispute resolution, the LEC report shall be in writing and conform to § 64.142 (relating to contents of the LEC report). In these instances, the written report shall be sent to the complaining party if requested, or if deemed necessary by the LEC. The written report shall also be sent to the Commission upon request.

(ii) If, however, the complaining party is satisfied with the orally conveyed dispute resolution, the written LEC report may be limited to the information required by § 64.142(1) and (2), and, if applicable, § 64.142(7).

(iii) If the complaining party expresses satisfaction but requests a written report, the report shall conform with § 64.142 in its entirety.

§ 64.142. Contents of written summary by the LEC.

The LEC report shall include the following:

(1) A statement of the claim or dispute and a copy thereof if the claim or dispute was made in writing.

(2) The position of the LEC and the results of investigation.

(3) An itemized statement of the account, specifying amounts credited or due as a result of the disputed subject matter.

(4) A statement that service will not be suspended pending completion of the dispute process, including both informal and formal complaints, so long as the customer:

(i) Pays all nondisputed amounts.

(ii) Files an informal complaint with the Commission within 10 days of the date on which the LEC mailed the written summary to the customer.

(5) The address and telephone number of the LEC office where payment can be made or information obtained.

(6) A complete explanation of procedures for filing an informal complaint with the Commission (see § 64.152 (relating to informal complaint filing procedures)). If a written report is not requested by the complaining party or deemed necessary by the LEC, the LEC must provide the information in § 64.152(a)(1)—(3) and (6). In addition, the LEC should provide the telephone number and address of the office of the Commission where the informal complaint may be filed.

(7) The date on or after which the account will be delinquent unless a payment agreement is entered into or an informal complaint is filed with the Commission. The date may not be earlier than the original due date of the bill or 10 days after the mailing or personal delivery of the written summary, whichever is later.

§ 64.153. Commission informal complaint procedures.

(a) The timely filing of an informal complaint acts as a limited stay and the LEC may not suspend or terminate service based on the complaining party's nonpayment of any billed amount which is contested in the informal complaint until the complaint is resolved. The LEC may not suspend or terminate service based on the complaining party's nonpayment of additional billed amounts that reflect the same underlying problem, other than a claimed inability to pay, as the billed amounts contested in the informal complaint. This limited stay does not prevent the LEC from suspending or terminating service based on the complaining party's nonpayment of other billed amounts, where the suspension or termination is otherwise permitted under this chapter.

(b) Upon the filing of an informal complaint, which shall be docketed as "(complainant) v. (company)," Commission staff will immediately notify the utility, review the dispute, and, within a reasonable period of time, issue to the utility and the complaining party an informal report with findings and a decision. The reports shall be in writing and a summary will be sent to the parties if a party requests it or if the Commission staff finds that a summary is necessary.

(1) *Review techniques.* Review shall be by appropriate means, including LEC written summaries, telephone calls, conferences, written statements, research, inquiry and investigation. Procedures shall be designed to insure a fair and reasonable opportunity to present pertinent evidence and to challenge evidence submitted by the other party to the dispute. Information and documents requested by Commission staff as part of the review process shall be provided by the LEC within 30 days of the request.

(2) *Settlement.* Before the issuance of its report, Commission staff may negotiate with the parties in an attempt to settle the matters in dispute.

(c) Commission staff resolution of informal complaints is binding upon the parties unless formal proceedings are initiated under Chapter 5 (relating to formal proceedings).

(d) Subsection (b) supersedes § 3.112 (relating to action on informal complaints).

§ 64.161. General rule.

(a) Except as otherwise provided in this chapter, formal complaint proceedings shall proceed according to Chapters 3 and 5 (relating to special provisions; and formal proceedings).

(b) The timely filing of a formal complaint acts as a limited stay and the LEC may not suspend or terminate service based on the complaining party's nonpayment of any billed amount which is contested in the formal complaint until the complaint is resolved. This limited stay does not prevent the LEC from suspending or terminating service based on the complaining party's nonpayment of other billed amounts, if the suspension or termination is otherwise permitted under this chapter, and if the suspension or termination is preceded by the required notification.

§ 64.191. Public information.

(a) LEC service representatives shall provide applicants who apply for residential telephone service in person with a concise, easy-to-understand printed price list showing all available service and equipment options. The price of the least expensive single-party basic service option shall be clearly and conspicuously displayed on the list.

(b) If an applicant applies for service by telephone, the LEC service representative shall:

(1) Explain and give the price of the least expensive type of single-party basic service.

(2) Determine whether the applicant wants information about services for customers with disabilities.

(c) The LEC service representative may complete the remainder of the application in the manner the LEC determines best responds to the applicant's questions and needs. Applicants shall be informed of the following information during the application process:

(1) The date service will be installed.

(2) Available blocking options, for example, 900, 976, collect call, Caller ID.

(3) Directory listing options.

(d) The LEC service representative shall inform applicants when services discussed are optional and shall include the price with the description of each optional service.

(e) The explanations of toll presubscription, whether interLATA, intraLATA, or both, shall be objective and unbiased.

(f) The LEC service representative shall inform each applicant that they will be sent a confirmation letter, which will include:

(1) An itemization of the services ordered.

(2) The price of each service ordered.

(3) Identification of the services that are optional.

(4) Information instructing the applicant that a more thorough explanation and price list of services of interest to residential customers, and instructions on how to obtain the information, may be found in the telephone directory, when applicable.

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