

RULES AND REGULATIONS

Title 4—ADMINISTRATION

STATE CIVIL SERVICE COMMISSION

[4 PA. CODE CH. 95]

[Correction]

Promotion Procedure

An error appeared at 32 Pa.B. 1644 (March 30, 2002) in the listing of the fiscal note for the previously-referenced document. The correct fiscal note number is 61-04.

[Pa.B. Doc. No. 02-493. Filed for public inspection March 29, 2002, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 63 AND 71]

[L-00010153]

Telecommunications Carriers

The Pennsylvania Public Utility Commission (Commission) on November 30, 2001, adopted a final order which streamlines certain financial reporting requirements for both competitive local exchange carriers (CLECs) and local exchange carriers (ILECs), while still providing the Commission with necessary information needed to effectively monitor the telecommunications industry in this Commonwealth.

Executive Summary

In September 2000, the Commission established a collaborative consisting of all interested telecommunications carriers, Commission staff and other interested parties (Collaborative) to determine what, if any, modifications should be adopted to the Commission's accounting procedures and financial reporting requirements in response to the opening of the local and toll telecommunications markets to competition. In particular, the Collaborative was charged with resolving a number of important issues, including whether CLECs should be held to the same financial reporting requirements as incumbent ILECs, what reports should be treated as proprietary and whether CLECs should be required to maintain separate accounting systems for their various operations.

At the conclusion of its deliberative process, the Collaborative filed a final report detailing its findings and recommendations. The recommendations significantly streamline the reporting requirements for both CLECs and ILECs; however, several of the recommendations require changes in the Commission's regulations.

Specifically, these final-form regulations redefine the classes of telephone utilities in § 63.31 (relating to classification of public utilities) based on whether a carrier is an incumbent or new entrant, and, if an incumbent, whether the utility is subject to an alternative form of regulation or some type of rate based, rate-of-return regulation. The current class definitions are based solely on access lines or minimal operating revenues, or both, which results in CLECs and ILECs filing the same reports even though the Commission's informational needs for these two types of carriers are completely

different. These final-form regulations also amend § 63.32 (relating to systems of accounts) to recognize that CLECs not required by the Federal Communications Commission to conform to the Uniform System of Accounts must inform the Commission of this fact in their annual reports and state what method of accounting is being utilized. Finally, these final-form regulations clarify that the quarterly or annual rate-of-return financial reports required under § 71.3 (relating to filing requirements) only apply to ILECs and that the quarterly reports for the larger ILECs are reduced to a semi-annual basis.

The contact persons are Carl S. Hisiro (717) 783-2812 and Elizabeth Lion Januzzi (717) 772-0696 in the Law Bureau, and Robert Wilson (717) 783-6162 in the Bureau of Fixed Utility Services.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 21, 2001, 2002, the Commission submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 5110 (September 8, 2001), to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Commission has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on February 13, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 21, 2002, and approved the final-form rulemaking.

Public Meeting held
November 30, 2001

Commissioners Present: Glen R. Thomas, Chairman; Robert K. Bloom, Vice Chairman; Aaron Wilson, Jr.; Terrence J. Fitzpatrick

Order

By the Commission:

On June 28, 2001, this Commission entered an order proposing to amend its regulations relating to financial reporting requirements for telecommunications providers. These proposed amendments to existing regulations will facilitate adoption of the various recommendations to streamline certain financial reporting requirements previously contained in the final report of the Collaborative, which was created by this Commission at M-00001374.

The June 28, 2001, order was published at 31 Pa.B. 5110. Comments were thereafter received from only three entities: the Office of Consumer Advocate (OCA), AT&T Communications of Pennsylvania, Inc. (AT&T) and IRRC. This final-form rulemaking order discusses the comments received and sets forth, in Annex A and 31 Pa.B. 5110, final amendments to the Commission's regulations necessary to adopt the recommendations contained in the Collaborative's final report filed March 15, 2001, with this Commission at M-00001374.

Discussion

None of the comments filed address concerns or disagreements with any of the proposed amendments to the existing regulations.¹ Instead, the focus of the comments filed by the OCA and IRRC address more general concerns relating to how the Commission will treat financial reporting information that is designated "confidential" or "proprietary" in the future.

The OCA's primary concern is that the recommendation made by the Collaborative and adopted by the Commission in its June 28, 2001, order, relating to the preliminary designation of certain schedules or parts thereof as proprietary, will "virtually eliminate all useful ILEC [(incumbent local exchange carrier)] information from the public view." OCA Comments filed October 9, 2001 (OCA Comments), at 2. This is the same concern that the OCA expressed in its minority report filed with the Collaborative's March 15, 2001, final report and rejected by the Commission when it adopted the Collaborative's recommendations in total. For the reasons expressed in this preamble and in the final report, we do not agree with the OCA that the preliminary designations of proprietary treatment for certain schedules, or parts thereof, will have the type of negative impact suggested in the OCA's comments. We believe, instead, that the preliminary proprietary designations represent an appropriate and reasonable balancing of competing interests between disclosure and nondisclosure in an evolving competitive environment.

IRRC's concern, on the other hand, relates solely to the vehicle used by the Commission to effectuate a change in how certain information designated as "proprietary" will be handled in the future. IRRC asserts that the change contemplated by the Commission should be implemented through the formal rulemaking process and not as a change to its internal operating procedures.

Specifically, IRRC's position is that to allow a utility to designate preliminarily certain financial information as proprietary without filing a petition for protective order is in conflict with § 71.9. Section 71.9 provides that "financial reports are public documents" and that "[i]f a public utility requests proprietary treatment for information in the report," the utility must "file a petition for protective order."

After carefully reviewing IRRC's comments in regard to this issue, we conclude that no change to § 71.9 is required at this time. The change that was implemented by the Commission in its operating procedures does not affect the underlying principle that these financial reports are public documents or that a petition for protective order must be filed if there is a challenge to any "proprietary" designation made by a utility.²

The reality of the marketplace today in an increasingly deregulated environment is that disclosure of certain financial information may indeed cause unfair economic or competitive damage. Under current practice, telecommunications carriers have routinely designated various schedules or parts thereof of their annual financial reports as proprietary to protect themselves from damag-

ing disclosures. The fact that they are entitled to do so notwithstanding the designation of the reports as "public documents" in § 71.9 is beyond question. Section 5.423 (relating to orders to limit availability of proprietary information) spells out the specific procedures that must be followed if a utility wants to designate certain information as proprietary that otherwise would be made part of the "public record."

Indeed, § 5.423(b)(4) clearly supports the type of process the Commission has set up herein, whereby a utility does not file a petition for protective order until there is a specific challenge to a proprietary designation. Under that subsection, the party claiming the privilege must only file a petition for protective order "within 14 days of the date the request for information was received." As the General Instructions to the new Annual Reports at page 2 clearly provide, the preliminary classifications "as to what may be proprietary are not final or binding on the Commission or any party wishing to challenge these [proprietary] designations nor are they binding on any party seeking to have additional schedules, or parts thereof, declared proprietary." (Emphasis added.) These same General Instructions also instruct the company on when it has to file a petition for protective order under § 5.423 to preserve its proprietary designation. We, therefore, believe that the procedures utilized for designating certain financial information as proprietary are consistent with the terms of § 71.9 and no amendment to this section is necessary.

In discussing whether allowing certain financial information to be designated "proprietary" runs counter to the current regulation's declaration that the financial reports are "public documents," IRRC also points out an apparent typographical error in the text of § 71.9 which cites to "§ 5.43 (relating to petitions for issuance, amendment, waiver or repeal of regulations)." IRRC suggests that the proper cite should have been to § 5.423 (relating to orders to limit availability of proprietary information) and not to § 5.43.

In researching this issue back to when Chapter 71 (relating to financial reports) was originally proposed in the early 1990s, we find that the advance notice of proposed rulemaking Re: Public Utility Earnings, Docket No. L-00910061 entered September 24, 1991, did cite to § 5.423, and not to § 5.43. The cite to § 5.423, however, was later changed, inadvertently it appears, in the proposed rulemaking order at the same docket entered March 3, 1992, and was not discovered by anyone until now. We agree with IRRC that the appropriate cite in § 71.9 should be to § 5.423. Section 5.43 relates to petitions filed with the Commission to change a regulation; it has nothing to do with petitions seeking proprietary treatment. After consulting with the Legislative Reference Bureau regarding the proper way to handle this issue, we are amending § 71.9 as set forth in Annex A to make this technical correction to the citation found in that section.

Finally, the OCA also suggests that the Commission should have taken this opportunity to develop information to help consumers better understand which companies offer service in their area and what those services may be. OCA Comments at 7-9. The OCA contends that with this type of information, it could provide consumers with a shopping guide listing the companies that provide services in each incumbent's territory and how to contact these companies. While we agree that the provision of the information would be beneficial to consumers, this rulemaking proceeding dealing with financial reporting re-

¹Indeed, AT&T's comments consist of a one-page letter in lieu of comments stating its support of the adoption of the new rules. In addition, AT&T urges the Commission to continue to monitor the condition of the Pennsylvania marketplace and to be prepared to take further steps to ensure that the remaining reporting requirements do not act as a barrier to entry in Pennsylvania.

²We must emphasize that the only modification made to the proprietary designation process is to the timing of when the petition for protective order has to be filed with the Commission. If the petition was required to be filed at the same time the annual report has to be filed with the Commission, we could fairly expect the Commission to be inundated with repetitive petitions to protect the confidentiality of the requested information.

quirements of telecommunications carriers is not the proper vehicle for addressing this issue.³

Conclusion

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 1501; sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P. S. § 745.5) and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder in 4 Pa. Code §§ 7.251—7.235, we find that the regulations in §§ 63.31—63.33, 71.3 and 71.9 should be amended as set forth in Annex A; therefore,

It Is Ordered that:

1. The regulations of the Commission, 52 Pa. Code Chapters 63 and 71, are amended by amending §§ 63.31—63.33 and 71.3 to read as set forth at 31 Pa.B. 5110; and by amending § 71.9 to read as set forth in Annex A.

2. The Secretary shall certify this order, 31 Pa.B. 5110 and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. The Secretary shall submit this order, 31 Pa.B. 5110 and Annex A to the Office of Attorney General for approval as to legality.

4. The Secretary shall submit this order, 31 Pa.B. 5110 and Annex A to the Governor's Budget Office for review of fiscal impact.

5. The Secretary shall submit this order, 31 Pa.B. 5110 and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the IRRC.

6. A copy of this order, 31 Pa.B. 5110 and Annex A shall be served upon the Pennsylvania Telephone Association, the Telecommunications Resellers Association, all jurisdictional telecommunication utilities, the Office of Trial Staff, the OCA and the Small Business Advocate.

7. The final-form regulations embodied at 31 Pa.B. 5110 and in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 1362 (March 9, 2002).)

Fiscal Note: Fiscal Note 57-222 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 71. FINANCIAL REPORTS

§ 71.9. Financial reports as public documents.

The financial reports are public documents. The reports will be maintained by the Secretary and will be available

³It is worth noting that the Commission at its Public Meeting of November 9, 2001, adopted a Tentative Order seeking comments on whether it should create a standard method for comparing local telephone offers at M-00011580; the very issue raised by the OCA in its comments. The order was entered on November 13, 2001.

for public inspection. If a public utility requests proprietary treatment for information in the report, it shall be incumbent upon that utility to file a petition for protective order under § 5.423 (relating to orders to limit availability of proprietary information).

[Pa.B. Doc. No. 02-520. Filed for public inspection April 5, 2002, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 71 AND 73]

Propagation of Fish

The Fish and Boat Commission (Commission) by this order amends Chapters 71 and 73 (relating to propagation and introduction of fish into Commonwealth waters; and transportation of live fish into this Commonwealth). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to fishing.

A. Effective Date

The amendments will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The amendments to §§ 71.1 and 73.2 (relating to general; and authorized list) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendments to §§ 71.2 and 71.3 (relating to fish species approved for artificial propagation and introduction; and closed system propagation) are published under the statutory authority of section 2102 of the code and 3 Pa.C.S. § 4219 (relating to permissible propagation). The amendment to § 71.7 (relating to triploid grass carp) is published under the statutory authority of section 2102 and section 2904 of the code (relating to permits for protection and management of particular fish).

D. Purpose and Background

The amendments are designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the amendments is described in more detail under the summary of changes.

E. Summary of Changes

On October 16, 1998, the General Assembly amended the Commonwealth's agriculture laws to designate aquaculture as a normal farming activity. This amendment transferred most administrative functions related to commercial artificial propagation from the Commission to the Department of Agriculture (Department). On December 16, 1998, the Department began registering commercial propagators of fish and dealers in live aquatic animals. The Commission no longer issues artificial propagation licenses, live fish, fishbait and baitfish dealer licenses and resident and nonresident fish transportation

licenses. Accordingly, Commission's regulations pertaining to the issuance of these licenses should be removed.

In addition, 3 Pa.C.S. § 4219 provides that the Commission will determine which species of fish are allowed to be propagated in each watershed and will provide the Department with the list. This section also provides that special regulations shall be promulgated regarding closed system propagation. Therefore, the Commission proposed amendments addressing those issues.

A notice of proposed rulemaking was published at 31 Pa.B. 3412 (June 30, 2001). The Commission did not receive any written public comments regarding the proposed rulemaking. However, the Department's Aquaculture Advisory Committee (Committee) discussed the proposed rulemaking on several occasions, and members of the Committee recommended changes to the proposed amendments relating to closed system propagation. Based upon the Committee's recommendations, the Commission has adopted the amendments as set forth in the notice of proposed rulemaking with the changes to § 71.3 to read as set forth in Annex A.

F. Paperwork

The amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 31 Pa.B. 3412. The Commission subsequently published a notice at 31 Pa.B. 6287 (November 17, 2001), advising the public that staff would be recommending that the Commission consider additional changes to § 71.3. The notice also extended the public comment period until January 15, 2002. In addition, the Commission mailed a copy of the notice and the additional changes to all registered aquaculture producers and live aquatic animal dealers. The Commission did not receive any public comments concerning the proposal.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and no comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 71 and 73, are amended by amending §§ 71.1, 71.2, 71.7 and 73.2 to read as set forth at 31 Pa.B. 3412 and § 71.3 to read as set forth in Annex A.

(b) The Executive Director will submit this order, 31 Pa.B. 3412 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 31 Pa.B. 3412 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-117 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 71. PROPAGATION AND INTRODUCTION OF FISH INTO THE COMMONWEALTH WATERS

§ 71.3. Closed system propagation.

(a) *Closed (no discharge) system.* A propagating system may be designated as a closed system only if all of following criteria are met:

(1) There will be 100% recycling water as normal operations.

(2) Closed systems will be housed indoors in a structure enclosed by solid walls, floor and roof. For purposes of this subsection, a wall, floor or roof will be considered "solid" if it is constructed and maintained to prevent unauthorized human or animal intrusions into the closed system facility and to prevent release or escape of aquatic organisms from the closed system.

(3) Water can be added to the system only for making up evaporative loss, cleaning and fish harvesting or to reduce toxic ammonia/nitrates by diluting.

(4) The system does not discharge water into waters of this Commonwealth.

(5) No live fish or live fish eggs will be allowed to escape with water discharges. Accidental spillage of live fish or live fish eggs (including truck loading, and the like) will be contained within the facility in a manner that will prevent fish and fish eggs from escaping into the waters of this Commonwealth.

(6) The system operator is registered with the Department of Agriculture (Department). The Department will notify the Commission when it receives an application to register a proposed closed system, and the Commission may, within 30 days of receipt of the notice, inspect the system to ensure that it is designed and constructed in a manner to prevent escapement of live fish or live fish eggs into the waters of this Commonwealth. Closed systems registered under this subsection shall, in addition to an initial inspection, be subject to inspection at any time to ensure compliance with the requirements of this section and the Commission may issue an order to suspend operations of any closed system when an inspection discloses that it is not in compliance.

(7) The Commission will invite the Department's Aquaculture Advisory Committee or a subcommittee thereof to draft and periodically update construction guidelines for closed system propagators to help them ensure enclosed facilities prevent escape of aquatic organisms into the waters of this Commonwealth. These guide-

lines will assist registered propagators in the design, construction and maintenance of closed systems and will assist the Commission in inspecting these systems.

(b) *Systems with discharges rendered incapable of containing living organisms.* A system whose discharge of water is rendered incapable of containing self-perpetuating living organisms shall be registered with the Department. The Department will notify the Commission when it receives an application to register a proposed system under this subsection, and the Commission may, within 30 days of receipt of the notice, inspect the system to ensure that it is designed and constructed so that its discharge is rendered incapable of containing live fish or live fish eggs. Systems registered under this subsection shall, in addition to an initial inspection, be subject to inspection at any time to ensure compliance with this section and the Commission may issue an order to suspend operations of any system when an inspection discloses that it is not in compliance. The registration of this system may include any species of fish with the approval of the Department.

(c) *Escape of fish into waters of this Commonwealth.* It is unlawful for an operator of any system registered under subsection (a) or (b) to allow fish to escape into the waters of this Commonwealth.

(d) *Written plans for discharge.* An operator of any system registered under subsection (a) or (b) shall develop, maintain and make available for immediate inspection by the Commission and the Department upon request a written plan for containing or treating discharge in the event of a discharge system failure.

(e) *Satisfaction in event of discharge.* An operator of any system registered under subsection (a) or (b) shall notify both the Commission's Director of the Bureau of Fisheries and the Department's Aquaculture Coordinator immediately in the event of a discharge system failure that is likely to contain viable living organisms.

[Pa.B. Doc. No. 02-521. Filed for public inspection April 5, 2002, 9:00 a.m.]