

# PROPOSED RULEMAKING

## DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 285]

### Payment for Burial

The Department of Public Welfare (Department), under the authority of sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)), proposes to amend Chapter 285 (relating to payment for burial) to read as set forth in Annex A.

#### *Purpose*

The purpose of this proposed rulemaking is to codify the notice of rule change (NORC) published at 30 Pa.B. 2957 (June 10, 2000). The NORC increased the payment to funeral directors for burial services to \$750 for all eligible individuals. Prior to the NORC, payments were \$350 for an individual 10 years of age or older, \$250 for an individual under 10 years of age and \$85 for a stillborn child. The NORC also increased the maximum level of contributions made by an agency or individual from \$180 to \$750.

Additionally, the proposed rulemaking eliminates the separation of payments for goods and services and for interment and removes the requirement for a wooden outer case to provide a choice in determining the type of outer case.

#### *Need for Proposed Rulemaking*

The maximum allowance for burial services in Chapter 285 is inadequate and does not reflect the prevailing costs to provide basic burial services. The costs for transportation and preparation of the body, memorial services, gratuities to clergy and cemetery procedures have increased considerably in the last 25 years. Regulations governing maximum payment amounts for burial were adopted at 7 Pa.B. 2180 (August 5, 1977). The proposed rulemaking is necessary to update the regulations to provide a more adequate payment for basic burial services.

The proposed rulemaking to eliminate the separation of payment amounts and the requirement for a wooden outer case is necessary to allow an individual arranging the burial services and the funeral director more flexibility and choice in planning for goods and burial services.

#### *Requirements*

Following is a summary of specific proposed rulemaking:

The Department proposes to eliminate the restriction to provide a wooden outer case in § 285.3(c)(1)(ii) (relating to requirements). The Pennsylvania Funeral Director's Association indicates that a wooden outer case is not necessary and may be more expensive than an outer case of other materials, such as metal. Removing this restriction allows an individual arranging the burial services and the funeral director more flexibility and choice in planning for burial goods and services.

The Department proposes to amend § 285.3(d) to increase the maximum payment to funeral directors to \$750 for burial goods and services and interment for a deceased individual of any age who was receiving, or was eligible for and authorized to receive, cash assistance at

the time of death. Under current regulations, the maximum payment to funeral directors is \$350 for an individual 10 years of age or older, \$250 for an individual under 10 years of age and \$85 for a stillborn child. The Department also proposes to eliminate the separation of payment amounts for goods and services and for interment. The proposed rulemaking allows greater flexibility and choice in planning for burial goods and services.

The Department proposes to amend § 285.3(e)(1)(i) to increase the maximum level of contributions made by an agency or individual from \$180 to \$750. The Department also proposes to delete the requirements for interment charges, cave-proof containers and transportation since the payment for burial goods and services is now an unrestricted payment of \$750.

The Department proposes that contributions in excess of \$750 will reduce the Department's payment by the difference between \$750 and the value of the contribution. The proposed amendment to § 285.3(e)(1)(ii) is necessary for consistency in the allowable amounts for contributions as proposed in § 285.3(e)(1)(i).

#### *Affected Individuals and Organizations*

The proposed rulemaking affects an individual acting on behalf of a deceased individual of any age who was eligible and authorized for or was receiving cash assistance at the time of death. The proposed rulemaking allows an individual arranging the burial more flexibility and choice in planning for burial goods and services.

Funeral directors who are enrolled providers are the beneficiaries of increased burial payments. The proposed rulemaking allows increased payments to funeral directors that will more adequately cover the actual cost of burial goods and services.

#### *Accomplishments and Benefits*

The proposed rulemaking will benefit individuals acting on behalf of a deceased individual by allowing more flexibility and choice in the planning for burial goods and services.

The proposed rulemaking will benefit funeral directors by providing for increased payments that will more adequately cover the actual costs of burial goods and services. The proposed rulemaking will reduce the uncompensated costs for burial goods and services that are incurred by funeral directors.

#### *Fiscal Impact*

##### *Public Sector*

*Commonwealth:* The Department estimates an increase in annual expenditures of \$1.116 million. This amount represents the increase in payments to funeral directors for burial goods and services rendered at the new maximum rate of \$750.

*Political Subdivisions:* There will be no costs or savings for political subdivisions.

##### *Private Sector*

The proposed rulemaking will reduce the uncompensated costs for services that are incurred by funeral directors.

*General Public:* There will be no costs or savings for the general public.

*Paperwork Requirements*

This proposed rulemaking does not increase paperwork requirements.

*Effective Date*

The amendments to § 285.3(d) regarding the maximum payment amount for all eligible individuals and § 285.3(e) regarding resources that do not reduce payment are effective retroactive to July 3, 2000, to coincide with the effective date of the NORC.

The proposed amendments to § 285.3(c)(1)(ii) regarding standard outer case and § 285.3(d) regarding separation of payments for goods and services and for interment are effective upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

*Sunset Date*

There is no sunset date. The Department will review compliance with the regulation through its quality control and corrective action review process, which is monitored by the Federal Department of Health and Human Services.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 23, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking within 30 calendar days after the date of publication of this notice in the *Pennsylvania Bulletin* to the Department of Public Welfare, Office of Income Maintenance, Edward J. Zogby, Director, Bureau of Policy, Room 431 Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081. Comments received within 30 calendar days will be reviewed and considered in the preparation of the final-form rulemaking. Comments received after the 30-day comment period will be considered for subsequent revisions of the regulation.

Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-481. (1) General Fund; (2) Implementing Year 2003-04 is \$1,116,000; (3) 1st Succeeding Year 2004-05 is \$1,116,000; 2nd Succeeding Year 2005-06 is \$1,116,000; 3rd Succeeding Year 2006-07 is \$1,116,000; 4th Succeeding Year 2007-08 is \$1,116,000; 5th Succeeding Year 2008-09 is \$1,116,000; (4) 2002-03 Program—

\$668,832,000; 2001-02 Program—\$705,750,000; 2000-01 Program—\$668,586,000; (7) Medical Assistance—Outpatient; (8) recommends adoption. This regulatory action codifies existing policy. The payment rates for burial services have been in effect since the beginning of Fiscal Year 2000-01.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART II. PUBLIC ASSISTANCE MANUAL**

**Subpart I. OTHER INCOME MAINTENANCE PROGRAMS**

**CHAPTER 285. PAYMENT FOR BURIAL**

**GENERAL PROVISIONS**

**§ 285.3. Requirements.**

\* \* \* \* \*

(c) *Standards for burial.* The standards for burial are as follows:

(1) Payment of goods and services, and interment. The minimum requirements for goods and services, unless the remains are cremated, are as follows:

\* \* \* \* \*

(ii) Standard [ **wooden** ] outer case, unless a cave-proof container is contributed, or unless an outer case is contrary to custom or cemetery regulations.

\* \* \* \* \*

(d) *Department payment schedule.* The Department's total payment for burial [ **, if there are no resources to reduce the payment, are as follows:** ] is **\$750 for goods and services and for interment charges. The Department will make a total payment not to exceed \$750 for a deceased individual of any age who was receiving or was eligible and authorized to receive cash assistance at the time of death.**

<b>[ Client</b>	<b>Description</b>	<b>Amount (in dollars)</b>
<b>Adult or child 10 years of age</b>	<b>Good and services</b>	<b>280</b>
	<b>Interment, actual charges</b>	<b>70</b>
	<b>but not over</b>	<b>350 maximum</b>
<b>Child under 10 years of age</b>	<b>Goods and services</b>	<b>180</b>
	<b>Interment, actual charges</b>	<b>70</b>
	<b>but not over</b>	<b>250 maximum</b>
<b>Child born dead</b>	<b>Goods and services</b>	<b>50</b>
	<b>Interment, actual charges</b>	<b>35</b>
	<b>but not over</b>	<b>85 maximum ]</b>

(e) *Resources that do not reduce Department payment.* If a person or agency makes small contributions, such as articles of clothing, the use of cars to carry the funeral party, newspaper advertising, flowers, religious services, and the like, they are not considered in determining the amount of the Department payment.

(1) *Resources for special burial costs.* Resources for special burial costs are as follows:

(i) The Department burial payments are based on a minimum standard for burial. To recognize certain circumstances that the minimum standard does not include, the following resources do not reduce the Department payment: contributions in money, goods or services by an

agency or person, including legally responsible relatives, [ for clauses (A), (B) and (C), ] up to a total of [ \$180 for any or all of the following: ] \$750.

[ (A) The amount by which the actual charges for interment exceed \$70, or \$35 for a child born dead, in the cemetery chosen by the person requesting burial payment.

(B) The charge for a cave-proof container to meet the minimum standards of a cemetery that requires that type of container.

(C) The charge for transporting the remains for the number of miles over 15. This charge shall be no more than the prevailing local rate for hearse hire, or charge for rail transportation, whichever is used. ]

(ii) If agencies or persons, or both, make total contributions of [ over \$180 for subparagraph (i)(A), (B) and (C) ] more than \$750, the difference between [ \$180 ] \$750 and the value of the actual contributions reduces the Department payment.

\* \* \* \* \*

[Pa.B. Doc. No. 04-554. Filed for public inspection April 2, 2004, 9:00 a.m.]

# GAME COMMISSION

## [58 PA. CODE CH. 139] Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, proposed the following amendment:

Amend § 139.4 (relating to seasons and bag limits for the license year) to provide updated seasons and bag limits for the 2004-2005 hunting license year.

This proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the January 27, 2004, meeting of the Commission. Comments can be sent until April 16, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

### 1. Introduction

The Commission is proposing to amend § 139.4 to provide for updated seasons and bag limits for the 2004-2005 license year.

### 2. Purpose and Authority

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Although

the 2004-2005 seasons and daily season and possession limits are similar to those set in 2003-2004, the 2004-2005 seasons and bag limits have been amended to conform to current scientific data, harvest reports, field surveys and observations, staff and field input, as well as recommendations received from organized sporting groups, members of the agricultural community and others interested in the wildlife resources of this Commonwealth. One significant change for hunters next season will be the addition of an early elk season in September. This additional season will provide expanded hunting opportunities for elk hunters within this Commonwealth. As the next license year is approaching, the Commission is proposing to amend § 139.4 to provide updated seasons and bag limits for the 2004-2005 license year.

Section 322(c)(1) of the code (relating to powers and duties of commission) specifically empowers the Commission to “fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife.” Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to “promulgate regulations relating to seasons and bag limits for hunting or furtaking. . . .” The amendments to this section are proposed under this authority.

### 3. Regulatory Requirements

The proposed seasons and bag limits establish when and where it is lawful to hunt and trap various game species and also place limits on the numbers that can be legally taken.

### 4. Persons Affected

Persons wishing to hunt and trap in this Commonwealth would be affected by the proposed seasons and bag limits.

### 5. Cost and Paperwork Requirements

The proposed seasons and bag limits will not result in any additional cost either to the Commission or to hunters and furtakers.

### 6. Effective Date

The effective dates are July 1, 2004, to June 30, 2005.

### 7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-177. No fiscal impact; (8) recommends adoption.

*(Editor's Note:* As part of this proposed rulemaking, the Commission is proposing to delete the existing text of § 139.4, which currently appears in 58 Pa. Code pages 139-4—139-14, serial pages (297328)—(297338) and replace it with the following text, which is printed in regular type to enhance readability.)

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.4. Seasons and bag limits for the license year.

(SEASONS AND BAG LIMITS TABLE)

2004-2005 OPEN HUNTING AND FURTAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT

OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED

<i>Species</i>	<i>Limit</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law		Oct. 9	Oct. 15	6	12
Squirrels—(Combined species)		Oct. 16	Nov. 27	6	12
		and			
		Dec. 13	Dec. 23		
		and			
		Dec. 27	Feb. 5, 2005		
Ruffed Grouse—(Statewide)		Oct. 16	Nov. 27	2	4
		and			
		Dec. 13	Dec. 23		
		and			
		Dec. 27	Jan. 15, 2005		
Ruffed Grouse—There is no open season for taking ruffed grouse in that portion of State Game Lands No. 176 in Centre County which is posted "RESEARCH AREA—NO GROUSE HUNTING"					
Rabbits, Cottontail		Oct. 23	Nov. 27	4	8
		and			
		Dec. 13	Dec. 23		
		and			
		Dec. 27	Feb. 5, 2005		
Ringneck Pheasant—Male only in Wildlife Management Units 2A, 2B, 2C, 4B, 4C, 4E, 5A, 5B, 5C & 5D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law		Oct. 9	Oct. 11	2	4
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A & 4D Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law		Oct. 9	Oct. 11	2	4
Ringneck Pheasant—Male only in Wildlife Management Units 2A, 2B, 2C, 4B, 4C, 4E, 5A, 5B, 5C & 5D		Oct. 23	Nov. 27	2	4

<i>Species</i>	<i>Limit</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Ringneck Pheasant—Male or female combined in Wildlife Management Units 1A, 1B, 2D, 2E, 2F, 2G, 3A, 3B, 3C, 3D, 4A & 4D		Oct. 23 and Dec. 13 and Dec. 27	Nov. 27 Dec. 23 Feb. 5, 2005	2	4
<i>Species</i>	<i>Limit</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all Wildlife Management Units except in Wildlife Management Units 4A, 4B, 5A, 5B, 5C & 5D where the season is closed.		Oct. 23	Nov. 27	4	8
Hares (Snowshoe Rabbits) or Varying Hares		Dec. 27	Jan. 1, 2005	1	2
Woodchucks (Groundhog)		No closed season except during the regular firearms deer seasons and until noon daily during the spring gobbler turkey season.		Unlimited	
<i>Species</i>		<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Turkey—Male or Female				1	1
Wildlife Management Units 1A, 2A & 2B (Shotgun, Bow & Arrow only)		Oct. 30	Nov. 20		
Wildlife Management Unit 1B (Shotgun, Bow & Arrow only)		Oct. 30	Nov. 13		
Wildlife Management Units 2C, 2E, 4A, 4B & 4D		Oct. 30	Nov. 13		
Wildlife Management Units 2D, 2F, 2G, 3A, 3B, 3C, 3D, 4C & 4E		Oct. 30	Nov. 20		
Wildlife Management Units 5A & 5B		Closed to fall turkey hunting			
Wildlife Management Unit 5C & 5D		Oct. 30	Nov. 6		
Turkey (Spring Gobbler) Statewide <sup>5</sup> Bearded Bird only		April 30, 2005	May 28, 2005	1	1
Turkey (Spring Gobbler) Statewide Youth Hunt <sup>5</sup> Bearded Bird only Eligible junior hunters only with the required license and when properly accompanied		April 23, 2005	April 23, 2005	1	1

#### MIGRATORY GAME BIRDS

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) as published in the Federal Register on or about August 27 and September 28 of each year. Exceptions:

- (a) Hunting hours in § 141.4 (relating to hunting hours).
- (b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.
- (c) Subject to approval by the United States Fish and Wildlife Service, an early season for Canada geese will be held as defined in § 141.25.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 2	Nov. 28		Unlimited
Starlings and English Sparrows	Dec. 26	and April 3, 2005		Unlimited
	No closed season except during the regular firearms deer seasons and until noon daily during the spring gobbler turkey season			

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
<b>FALCONRY</b>				
Squirrels—(Combined species)	Sept. 1	Mar. 31, 2005	6	12
Quail	Sept. 1	Mar. 31, 2005	4	8
Ruffed Grouse	Sept. 1	Mar. 31, 2005	2	4
Cottontail Rabbits	Sept. 1	Mar. 31, 2005	4	8
Snowshoe or Varying Hare	Sept. 1	Mar. 31, 2005	1	2
Ringneck Pheasant—Male and Female—(Combined)	Sept. 1	Mar. 31, 2005	2	4

Migratory Game Birds—Seasons and bag limits shall be in accordance with Federal regulations.

**DEER**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>
Deer, Antlered & Antlerless—(Statewide) <sup>1</sup> (Archery—Bows and Arrows Only) Crossbows may be used in Wildlife Management Units 2B, 5C and 5D	Oct. 2	and Nov. 13 Dec. 27 Jan. 15, 2005	One antlered and an antlerless deer with each required antlerless license.
Deer, Regular Antlered & Antlerless—(Statewide) <sup>1</sup>	Nov. 29	Dec. 11	One antlered, and an antlerless deer with each required antlerless license.
Deer, Antlerless only—(Statewide) Only Junior and Senior License Holders, <sup>2</sup> PGC Disabled Person Permit Holders (to use a vehicle as a blind), and Residents serving on active duty in the U. S. Armed Forces, or in the U. S. Coast Guard, with required antlerless license	Oct. 21	Oct. 23	An antlerless deer with each required antlerless license.
Deer, Antlerless only—(Statewide) (Muzzleloading season)	Oct. 16	Oct. 23	An antlerless deer with each required antlerless license.
Deer, Antlered or Antlerless—(Statewide) <sup>1</sup> (Flintlock Muzzleloading season)	Dec. 27	Jan. 15, 2005	One antlered, or one antlerless—plus an additional antlerless deer with each required antlerless license.
Deer, Antlerless Wildlife Management Units 2B & 5C	Dec. 27	Jan. 15, 2005	An antlerless deer with each required antlerless license.
Deer, Antlerless Wildlife Management Unit 5D	Dec. 13	and Dec. 28 Dec. 27 Jan. 29, 2005	An antlerless deer with each required antlerless license.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Season Limit</i>
Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County)	Hunting is permitted on days established by the United States Department of the Army.		An antlerless deer with each required antlerless license.

**BEAR**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Bear, any age—(Statewide) <sup>4</sup>	Nov. 22	Nov. 24	1	1
Bear, any age <sup>4</sup> Wildlife Management Units 3D, 4C and that portion of 4E, East of Rt. 487 and that portion of 3B, East of 487 and South of Rt. 87 and that portion of 3C, East of I-81.	Nov. 29	Dec. 4	1	1

Portion of Wildlife Management Units 2G and 3B in Lycoming County that lie North of the West branch of the Susquehanna River from the Rt. 405 bridge, West to the Rt. 220 bridge, East of Rt. 220 to Rt. 44 and East of Rt. 44 to Rt. 973, South of Rt. 973 to Rt. 87, West of Rt. 87 to Rt. 864, South of Rt. 864 to Rt. 220 and West of Rt. 220 to Rt. 405 and West of Rt. 405 to the West Branch of the Susquehanna River.

**ELK**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Elk, Antlered & Antlerless <sup>6</sup> (With each required license)	Sept. 20	Sept. 25	1	1
Elk, Antlered & Antlerless <sup>6</sup> (With each required license)	Nov. 8	Nov. 13	1	1

**FUR TAKING—TRAPPING**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Minks and Muskrats—(Statewide)	Nov. 20	Jan. 8, 2005		Unlimited
Beaver—(Statewide)	Dec. 26	Mar. 31, 2005		
Wildlife Management Units 1A, 1B, 2F & 2G (Combined)			20	20
Wildlife Management Unit 3A, 3B, 3C & 3D (Combined)			20	40
Wildlife Management Units 2A, 2B, 2C, 2D, 2E, 4A, 4B, 4C, 4D & 4E (Combined)			10	10
Wildlife Management Units 5A, 5B, 5C & 5D (Combined)			6	6
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—(Statewide)	Oct. 17	Feb. 19, 2005		Unlimited
Bobcat <sup>3</sup> Wildlife Management Units 2C, 2E, 2F, 2G, 3A, 3B, 3C & 3D	Oct. 17	Feb. 19, 2005	1	1

FURTAKING—HUNTING

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Coyotes—(Statewide)				Unlimited
Opossums, Skunks, Weasels—(Statewide)				
Raccoons and Foxes—(Statewide)	Oct. 16	Feb. 19, 2005		Unlimited
Bobcat <sup>3</sup> Wildlife Management Units 2C, 2E, 2F, 2G, 3A, 3B, 3C & 3D	Oct. 16	Feb. 19, 2005	1	1

No open seasons on other wild birds or wild mammals.

<sup>1</sup>Only one antlered deer (buck) may be taken during the hunting license year.

<sup>2</sup>Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).

<sup>3</sup>Bobcat may only be taken by furtakers in possession of a Bobcat Hunting-Trapping Permit.

<sup>4</sup>Only one bear may be taken during the hunting license year.

<sup>5</sup>Only one spring gobbler may be taken during the hunting license year.

<sup>6</sup>Only one elk may be taken during the hunting license year.

[Pa.B. Doc. No. 04-555. Filed for public inspection April 2, 2004, 9:00 a.m.]

**[58 PA. CODE CH. 141]  
Hunting and Trapping**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, proposed the following amendments:

Amend §§ 141.41 and 141.43 (relating to general; and deer) to permit all hunters to hunt and take deer with a crossbow during any firearms deer season and also permit hunters within Wildlife Management Units (WMU) 2B, 5C and 5D to hunt and take deer with a crossbow during any deer season.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the January 27, 2004, meeting of the Commission. Comments can be sent until April 16, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Introduction*

The Commission is proposing to amend §§ 141.41 and 141.43 to permit all hunters to hunt and take deer with a crossbow during any firearms deer season and also permit hunters within WMUs 2B, 5C and 5D to hunt and take deer with a crossbow during any deer season.

2. *Purpose and Authority*

Currently, the use of a crossbow for deer hunting purposes is permitted, but only in limited circumstances. Most hunters are permitted to hunt and take deer with a crossbow only during the regular firearms deer season. Disabled hunters possessing a valid disabled persons crossbow permit are additionally permitted to hunt and take deer with a crossbow during archery season. The proposed rulemaking will provide expanded deer hunting opportunities for all hunters within this Commonwealth by permitting the use of crossbows to hunt and take deer during any firearms season. In addition, the proposed rulemaking will allow even greater hunting opportunities in WMUs 2B, 5C and 5D by permitting hunters within those units to hunt and take deer with a crossbow during any deer season. The purpose of the increased allowance in these WMUs is to offset the increasing difficulty for



hunters to safely hunt deer using firearms in these urban areas with high population centers.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating . . . the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." Section 2102(a) of the code provides that "the Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." These provisions provide the statutory basis for the proposed rulemaking.

3. Regulatory Requirements

The proposed rulemaking will permit hunters within WMUs 2B, 5C and 5D to hunt and take deer with a crossbow during any deer season. For all other WMUs, the proposed rulemaking will make it unlawful for hunters to hunt and take deer with a crossbow during any deer seasons other than any of the firearms seasons.

4. Persons Affected

Persons who wish to hunt deer with a crossbow will be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

6. Effective Date

The proposed rulemaking will be effective on final-form publication in the Pennsylvania Bulletin and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS, Executive Director

Fiscal Note: 48-178. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 141. HUNTING AND TRAPPING
Subchapter C. BIG GAME

§ 141.41. General.

(a) Permitted acts. It is lawful to take:

\* \* \* \* \*

(2) Deer during [the regular firearms deer season] any firearms season for deer with a crossbow with a draw weight of not less than 125 pounds nor more than 200 pounds.

(3) Deer with a crossbow with a draw weight of not less than 125 pounds nor more than 200 pounds in Wildlife Management Units 2B, 5C and 5D.

\* \* \* \* \*

§ 141.43. Deer.

(a) Archery season. It is unlawful while hunting deer with a bow and arrow or crossbow during the archery season to:

\* \* \* \* \*

(5) [Hunt] Except in Wildlife Management Units 2B, 5C and 5D, hunt or take deer with a crossbow without a valid disabled persons crossbow permit.

\* \* \* \* \*

(d) Prohibitions. While hunting deer during the flintlock muzzleloading season it is unlawful to:

\* \* \* \* \*

(4) [Hunt] Unless otherwise provided in this chapter, hunt, take or attempt to take deer through the use of a device not specifically described in subsection (b) or (c).

\* \* \* \* \*

[Pa.B. Doc. No. 04-556. Filed for public inspection April 2, 2004, 9:00 a.m.]

[58 PA. CODE CH. 143]
Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, proposed the following rulemaking:

Amend § 143.48 (relating to first-come-first-served license issuance) to remove the reference to § 143.45(g) (relating to completing and submitting applications), which will be eliminated; amend § 143.53 (relating to reapplication) to permit an applicant to receive a replacement license from any county treasurer; and amend §§ 143.55 and 143.56 (relating to unlawful acts; and penalties) to permit the revalidation of a license by submission of the required payment and fees despite prior submission of a nonnegotiable check.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the January 27, 2004, meeting of the Commission. Comments can be sent until April 16, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Introduction

The Commission is proposing to amend § 143.48 to remove the reference to § 143.45(g), which will be eliminated, § 143.53 to permit an applicant to receive a replacement license from any county treasurer and §§ 143.55 and 143.56 to permit the revalidation of a license by submission of the required payment and fees despite prior submission of a nonnegotiable check.

2. Purpose and Authority

Currently, § 143.48(b) makes reference to § 143.45(g). Section 143.45(g) provides the requirement that an applicant for an antlerless deer license or licenses identify the number of applications enclosed in the application envelope by circling the appropriate preprinted number on the outside of the envelope. This requirement will be eliminated, therefore the Commission is proposing to delete the reference to § 143.45(g) in § 143.48(b) to maintain clarity and eliminate "dead-end references" in the regulations.

Current regulations require that replacement license applicants apply to a county treasurer within the wildlife management unit where the original license was issued. The Commission is proposing to amend § 143.53 to allow applicants to apply to any current treasurer for a replacement license. This amendment is intended to make the reapplication process more convenient for hunters and allow county treasurers to provide better service for their constituents.

Current regulations stipulate that a nonnegotiable check that is submitted as payment for a license automatically voids the license and subjects it to confiscation by an officer of the Commission. The Commission is proposing to amend §§ 143.55 and 143.56 to the extent that a license will not be automatically and permanently voided when it is paid for with a nonnegotiable check. Rather, the Commission will permit a license holder to revalidate the license by submitting the required payment and fees charged for processing the nonnegotiable check to the county treasurer.

Section 2722(g)(2) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of activities related to license issuing. Section 2102(a) of the code (relating to regulations) provides that "the Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 143.48, 143.53, 143.55 and 143.56 are proposed under this authority.

3. Regulatory Requirements

The proposed rulemaking will remove reference to § 143.45(g) in § 143.48. The amendments to § 143.53 will permit applicants to receive a replacement license from any county treasurer rather than just the original license issuing county treasurer. The amendments to §§ 143.55 and 143.56 will also permit the revalidation of a license by submission of the required payment and fees despite prior submission of a nonnegotiable check.

4. Persons Affected

Persons applying for antlerless deer licenses or replacement licenses and persons wishing to revalidate a license voided by the submission of a nonnegotiable check will be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

6. Effective Date

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-180. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 143. HUNTING AND FURTAKER LICENSES**

**Subchapter C. ANTLERLESS DEER LICENSES**

**§ 143.48. First-come-first-served license issuance.**

\* \* \* \* \*

(b) If the conditions in § 143.45(b), (c)[ , ] and (e) [ and (g) ] are met, it constitutes initial acceptance, and the applications will be forwarded to a county treasurer within the wildlife management unit for issuance of the appropriate number of licenses. If the conditions are not met, the enclosed applications will be rejected and returned to the sender as soon as possible.

\* \* \* \* \*

**§ 143.53. Reapplication.**

\* \* \* \* \*

(b) A person who was issued a license that was subsequently lost in the United States mail and never received by the licensee may, upon submitting an affidavit stating this fact, receive a replacement license from [ a county treasurer within the wildlife management unit for which the license was intended ] any county treasurer. There will be no additional cost for this license. Prior to issuing a replacement license, county treasurers shall first verify through their records or through communication with another county treasurer that the applicant was issued the original license.

**§ 143.55. Unlawful acts.**

It is unlawful:

\* \* \* \* \*

[ (6) For a person to submit a nonnegotiable check or sight draft as payment for a license issued under this chapter. ]

**§ 143.56. Penalties.**

\* \* \* \* \*

[ (b) Submitting a nonnegotiable check as payment for a license is a violation of this chapter and section 502 of the act (relating to collection fee for uncollectible checks) and renders the license issued under this chapter invalid and subject to confiscation by an officer of the Commission. A county treasurer may be reimbursed for fees charged for

**processing the nonnegotiable check. The fees shall be paid from the \$25 collected under section 502 of the act.**

(c) ] Hunting antlerless deer or killing an antlerless deer with an invalid license constitutes hunting or killing deer without a license.

[Pa.B. Doc. No. 04-557. Filed for public inspection April 2, 2004, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]

[L-00030163]

### Changing Local Service Providers

The Pennsylvania Public Utility Commission, on October 2, 2003, adopted a proposed rulemaking order which sets forth regulations establishing an orderly process for customer migration between local service providers within the telecommunications industry. The contact persons are Louise Fink Smith, Law Bureau, (717) 787-8866 and M. J. (Holly) Frymoyer, Bureau of Consumer Services, (717) 783-1628.

#### *Executive Summary*

The advent of competition in the local telephone market in Pennsylvania has created situations that the Commission's current regulations do not address. Specifically, consumers have encountered a variety of problems when they attempt to change local service providers (LSPs) in the new competitive market. In April 2002, recognizing the need for both short-term and long-run solutions to problems associated with migrating local phone service, the Commission approved Interim Guidelines addressing the issues raised by the changes. Later in 2002, the Commission held collaborative sessions that involved telecommunications carriers and other interested parties in discussions of the issues. Two of the collaborative groups focused on issues related to changing local service providers and quality of service. The participants in these two groups agreed to combine the issues into one rulemaking. The collaborative participants addressed proposals for regulations and proposed solutions to the problems created by the changing telecommunications marketplace.

By Order entered on October 3, 2003 at Docket No. L-00030163, the Commission adopted a Proposed Rulemaking Order to amend 52 Pa. Code Chapter 63, consistent with the order and recommendations of the collaborative participants, the Bureau of Consumer Services and the Law Bureau. The intent of the proposed rulemaking is to promulgate a regulation to establish general rules, procedures, and standards to ensure that customers can migrate from one LSP to another without confusion, delay, or interruption of their basic telephone service.

The proposed regulation applies to all LSPs and network service providers (NSPs) operating in Pennsylvania. It does not apply to mass migrations of customers brought about by the selling or transferring of a customer base of one LSP to another. It does not apply to a LSP that has properly proceeded with the abandonment of service to its customer base and does not apply to Digital Subscriber Line migration or to line sharing/splitting arrangements.

The proposed regulation recognizes the right of a telephone customer to migrate from one LSP to another and addresses the responsibilities of old LSPs, new LSPs and NSPs throughout the migration process. The old and new LSPs are to work together to minimize or avoid problems associated with migrating a customer's account. The Commission will establish an industry work group to develop and update migration guidelines that LSPs and NSPs are to follow to facilitate migration of a customer's local telephone service.

Prospective new LSPs will need verified authorization from a customer to obtain the customer's service information from the current LSP. The current LSP is to provide specific customer service information within a specified timeframe to the prospective new LSP when the customer has indicated a desire to switch LSPs. The prospective new LSP may not process a change in LSPs for a customer who has a local service provider freeze in effect. All LSPs are to provide various methods for customers to lift or remove local service provider freezes.

An old LSP may not refuse to port a customer's telephone number to a new LSP unless the old LSP has terminated or discontinued service for that number prior to the migration request. In addition, an old LSP must issue a final bill within 42 days to any customer who has requested to switch service providers and the old LSP must stop billing the customer for any recurring charges as of the date of the change to the new LSP.

LSPs and NSPs are to follow specific procedures when pre-existing service at a location prevents a new LSP from reusing the existing telephone facilities to serve a new customer. If the problem cannot be resolved, the new LSP is to inform the consumer of various options for obtaining service including paying for the installation of new facilities.

In the event of a migration dispute between LSPs or between a LSP and a NSP, the Commission will make available a non-adversarial, expedited dispute process within the Commission to address the dispute and suggest a resolution.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 18, 2004, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the public comment period. The notification shall specify the regulatory review criteria that have not met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication in the amendments, by the Commission, the General Assembly and the Governor of objections raised.

Public Meeting held  
October 2, 2003

*Commissioners Present:* Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Kim Pizingrilli; Glen R. Thomas; Wendell F. Holland, Abstaining

*Proposed Rulemaking—Changing Local Service Providers; L-00030163*

### Proposed Rulemaking

*By the Commission:*

This proposed rulemaking order is intended to promulgate regulations to establish an orderly process for customer migration between local service providers (LSPs).<sup>1</sup> The proposed regulations, contemplating codification as a new subchapter in 52 Pa. Code Chapter 63, are attached as Annex A.

#### *Procedural Background*

Since the advent of competitive local exchange carriers (CLECs) in the Pennsylvania market, there have been numerous situations when the Commission's regulations did not address circumstances involving more than one LSP. Those regulations were developed in large measure prior to the emergence of multiple LSPs and network service providers (NSPs)<sup>2</sup> in the local service market. Recognizing the need for both short-term and long-run solutions, this Commission decided to seek voluntary industry compliance with interim guidelines in the short-term and to develop revised regulations for the long-run.

At Public Meeting on December 4, 2001, we issued four tentative orders for public comment regarding interim guidelines for jurisdictional LSPs. These tentative orders were designed to establish interim guidelines for Changing LSPs (M-00011582, base folder), Quality of Service (QoS) (F0002),<sup>3</sup> Customer Information (F0003), and Termination and Abandonment of Local Service (F0004), pending the approval of final regulations. After a public comment period, we entered final orders at those dockets on April 23, 2002, approving Interim Guidelines.

As the first step in the rulemaking process, we issued notices on December 4, 2001, announcing the commencement of four corresponding local telephone competition collaboratives to develop proposals for regulations to address the four areas of concern. Notice was sent to all telecommunications carriers and other interested entities in the Commonwealth and published in the *Pennsylvania Bulletin*. The collaborative meetings began in June 2002.<sup>4</sup> Active parties included Allegiance Telecom of PA, Inc.; AT&T Communications of Pennsylvania, Inc. (AT&T); ATX—CoreComm (ATX); Choice One Communications of PA, Inc. (Choice One); CTSI/Commonwealth Telephone; Denver & Ephrata Telephone & Telegraph (D & E); MCIWorldcom Network Services, Inc. (MCI); Metropolitan Telecommunications (MetTel); North Pittsburgh Telephone Company (NPT); Sprint/United Telephone Com-

pany; Verizon Pennsylvania, Inc. (Verizon PA) and Verizon North, Inc.; XO Communications (XO); Z-tel Communications (Z-tel); the Pennsylvania Telephone Association (PTA); the Pennsylvania Cable Television Association (PCTA); the Public Utility Law Project (PULP); NeuStar; the Office of Consumer Advocate (OCA); and the Office of Small Business Advocate (OSBA). Staff from the Commission's Bureau of Consumer Services (BCS), Bureau of Fixed Utility Services (FUS), Law Bureau, Office of Trial Staff (OTS), Office of Administrative Law Judge (OALJ), and Office of Communications also participated.

Parties were invited to make presentations and voice concerns at a number of collaborative sessions and to submit written comments. The parties were advised that the Commission did not want the provisions of the interim guidelines to be viewed as necessary elements for the proposed rulemakings. The parties were free to use what they wanted from the interim guidelines, but they were also free to propose regulations and topics not covered by the interim guidelines. The Commission invited the parties to submit proposed regulatory language for consideration. Noting this latitude, the parties, nonetheless, preferred to use the interim guidelines as a starting point for the proposed regulations.

Most of the parties participated in more than one collaborative; many participated in all. During the multi-collaborative process, it became apparent that several of the topics under consideration could have been addressed in more than one of the collaboratives. Since there was also substantial overlap in terms of issues and proposals in the Changing LSPs collaborative (Docket No. M-00011583) and the QoS collaborative (Docket No. M-00011585), these two collaboratives were combined to result in the instant rulemaking. It was further agreed that the various customer information issues should be consolidated with and addressed by the Customer Information collaborative (Docket No. M-00011584) and resulting rulemaking. The parties also agreed that transfers of customer base issues should be consolidated with and addressed by the Abandonment collaborative (Docket No. M-00011586) and resulting rulemaking.

#### *Discussion*

It should be noted that while every position espoused by each of the parties, whether in comments or in public collaborative sessions, may not be expressly detailed herein, each submittal was duly considered in the preparation of this Order and Annex A. Any position not expressly adopted herein is rejected without prejudice to future consideration as the parties request or the Commission deems appropriate.

#### *Subchapter M. CHANGING LOCAL SERVICE PROVIDERS*

##### *§ 63.191. Statement of purpose and policy.*

These proposed regulations have been drafted to recognize significant changes in the provision of local telephone service and the emergence of multiple LSPs in the local service market.

##### *§ 63.192. Definitions.*

###### *Positions of the Parties*

(1) *Local Service:* One aspect of the definition of "Local Service" caused concern when it was determined that the Commission's historical expectation is that LSPs provide two free directory assistance calls per month for residential service. One LSP noted that it provides only one free directory assistance call per month, pursuant to tariff provisions. Other LSPs had no provisions for free directory assistance calls.

<sup>1</sup> As used throughout this proceeding, "local service provider" or "LSP" refers to a company, such as a local exchange carrier, that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods.

<sup>2</sup> As used throughout this proceeding, "network service provider" or "NSP" refers to a service provider that interacts with LSPs and provides some or all of the facilities and equipment components needed to make up a customer's telecommunications service. A NSP may also be called an underlying carrier and is generally invisible to customers. A NSP may also operate as a LSP.

<sup>3</sup> "QoS" as used in M-00011582, F0002, and M-00011585 refers to how transactions between service providers are structured rather than to measures of the quantity or character of services provided to wholesale or retail customers. A proceeding is pending at Docket No. P-00021985 to address quality of service in terms of the measures or standards of services provided to customers as mandated by other provisions of 52 Pa. Code Chapter 63.

<sup>4</sup> During 2002, the Changing LSPs/QoS collaboratives met on June 3, July 15, and August 8.

(2) *Local Service Provider*: The PCTA also raised concerns that "LSP" might be applied to its members in an attempt to subject them to the jurisdiction of the Commission.

#### *Disposition*

(1) *Local Service*: The requirement of two free directory assistance calls per month for residential accounts is long standing in the Commonwealth. We see no basis or justification for changing the requirement in this proceeding. Non-conforming LSPs should bring their existing tariffs and practices into conformity with these existing requirements.

(2) *Local Service Provider*: Cable companies operating as cable companies are, per se, not subject to Commission jurisdiction. Entities that provide local exchange service do, however, come under the Commission's jurisdiction for the provision of local exchange service. The fact that such an entity is also a cable television company, or engaged in some other non-jurisdictional enterprise, does not insulate it from Commission regulation of those activities which are jurisdictional activities.

#### *MIGRATION*

§ 63.201. *General migration standards.*

§ 63.202. *Migration responsibilities of new LSPs (NLSPs) and NSPs.*

Migration<sup>5</sup> is the movement of a customer from one LSP to another LSP at the same service location, frequently reusing the same facilities as were providing the old service to provide the new service. This requires coordination between service providers to ensure that there are no unplanned or unexpected out-of-service conditions.

#### *Positions of the Parties*

The parties generally agreed that the regulations should apply to all LSPs and NSPs and to all customers,<sup>6</sup> but there was also a general consensus that there are situations or services when there should be exceptions. The parties asserted that voice grade services should be the primary focus of the proposed regulations, but agreed that the proposed regulations could be applied to products and services other than basic service. Further agreement reflected that application of the proposed regulations to digital subscriber lines (DSL)<sup>7</sup> should be deferred.

The group discussed how timeframes for migrating lines could depend on the numbers of lines, the availability of facilities, or the number of service providers involved. The necessity of tying intervals to the quantity and types of service being ordered was recognized as being a matter best left to the migration guidelines.<sup>8</sup> Finally, the vast majority of the parties agreed that the holding of facilities may not be used as a collection tool or to retain a customer. PTA reserved judgment for its further consideration.

#### *Disposition*

We agree that the proposed regulations should apply to all LSPs, all NSPs, and all customers. A particular listing of products and services risks being outdated before it can

<sup>5</sup> Relocation, on the other hand, involves a change in location and typically does not involve reuse of the same facilities. When a relocating customer is also changing LSPs, these proposed regulations may provide guidance for the coordination of the move and change in LSPs to ensure there are no unplanned or unexpected out-of-service conditions.

<sup>6</sup> The parties agreed that the definition of "small business" would be addressed by the customer information collaborative at M-00011584.

<sup>7</sup> A dedicated, high-speed always-on service, frequently used in the context of "aDSL" or "xDSL."

<sup>8</sup> See discussion of migration guidelines at § 63.203(a), below.

be adopted. It is our intention to look to the purpose of the communication in determining the applicability of the regulations rather than to try to itemize a specific listing of included or excluded products and services. We also agree to defer application of the proposed regulations to DSL, but recognize that the parties may, however, continue to explore application of the migration guidelines to DSL.

We agree that timelines should be addressed in the migration guidelines rather than codified. We also agree that an old LSP (OLSP) may not refuse to allow reuse of otherwise-available facilities on the basis of termination or discontinuation of service.

§ 63.203(a). *Migration guidelines.*

#### *Positions of the Parties*

The parties want specificity and marketplace compliance in terms of processes and procedures for coordination of migrations and communications among themselves. Verizon PA suggested that the Commission adapt New York's migration guidelines for operation in Pennsylvania. Some parties expressed concerns about using the New York migration guidelines as a template for Pennsylvania without certain significant revisions. The New York market is different in a number of aspects from the Pennsylvania market. For example, New York has provisions for a provider of last resort (PLR). Further, the parties noted that the regulatory framework in New York allows New York regulations to give effect to such a document setting out business rules and to obligate service providers to abide by it while allowing it to be changed over time without rulemakings.

A significant discussion arose regarding how the concept of migration guidelines could be formulated and used in Pennsylvania as a document subject to frequent changes yet still be binding on the parties and new market entrants. Noting that some processes and procedures would need continual updating or revisions, some parties suggested that items covered by regulation should not be included in the migration guidelines. In this context, they were concerned that codified processes and procedures might not be sufficiently responsive to changing conditions if a rulemaking was required each time business rule changes were contemplated.

Interested parties developed draft migration guidelines for Pennsylvania, based on the New York model. All parties had the option of participating in the process to develop the draft migration guidelines for Pennsylvania. Recognizing that working from a common format could be beneficial to service providers and customers, the parties agreed to explore the possibility of using the draft migration guidelines as a reference for formulating business rules for Pennsylvania.

The PTA is, however, not yet ready to endorse migration guidelines on behalf of the rural and small incumbent local exchange carriers (ILECs), especially those with continuing Section 251(f)(1) exemptions or Section 251(f)(2) suspensions.<sup>9</sup>

#### *Disposition*

The parties wish to have a set of obligatory business rules for local service transactions between service providers. We believe that establishing a relatively uniform set of procedures for local service transactions between service providers, even among competitive service providers,

<sup>9</sup> Of the Telecommunications Act of 1996, as codified at 47 U.S.C. §§ 251(f)(1) and 251(f)(2).

is appropriate.<sup>10</sup> We shall designate that these business rules, presently and as they may be modified by consensus from time to time, shall be applicable to all local service transactions between service providers. Accordingly, the proposed regulations make provisions for the use of migration guidelines to establish the business rules governing local service transactions between the service providers.

The cooperative development of migration guidelines for Pennsylvania is already underway.<sup>11</sup> These proposed regulations are not intended to restrict service providers from agreeing to workable processes and procedures as may be reached through an open, industry-wide, consensus process under the regulatory umbrella of Commission oversight. While the migration guidelines will supplement the proposed regulations, adoption of the migration guidelines need not be delayed until this rulemaking concludes. We shall post the migration guidelines on our website to ensure that they are available to all interested entities.

The PTA raises a valid point about the applicability of the migration guidelines to some of its members. We recognize that the rural and small ILECs in the Commonwealth are not as far along in adapting to competition as are the larger ILECs. Many of the requirements of the migration guidelines will require a certain level of experience with competition which the rural and small ILECs do not yet have. Under the auspices of an industry work group,<sup>12</sup> the migration guidelines can be tailored for the rural and small ILECs as competition comes into their service territories.

*§ 63.203(b). & § 63.203(c). Industry work group.*

*Positions of the Parties*

The parties requested a mechanism to ensure that service providers would be able to participate in updates and revisions to the migration guidelines. The parties felt that there should also be a process for having the Commission approve or adopt the consensus provisions and resolve matters where there was no consensus. Commission approval would ensure that all service providers would be motivated to operate pursuant to any updates and revisions.

*Disposition*

We agree that service providers with a desire to operate in the local market and other interested entities should be given public notice and an opportunity to participate in a Commission-sponsored industry work group convened to finalize Pennsylvania migration guidelines and keep them up-to-date.<sup>13</sup> To the extent that the group agrees upon processes and procedures (and subsequent revisions thereto) and they are adopted by the Commission, the processes and procedures (and revisions) will become part of the Pennsylvania migration guidelines. The Pennsylvania migration guidelines, initially and as they are ad-

justed from time to time, should be identified and adopted by Secretarial Letter or Commission order.

*§ 63.204. Standards for the exchange of customer service information.*

*Positions of the Parties*

The parties who are also active in New York proposed that the practices used there be adapted to Pennsylvania. This raised concerns about recognizing the privacy of customer records and the allocation of burdens for assuring a customer had given a prospective new LSP (NLSP) authority to access the customer's service records.

*Disposition*

This matter was not addressed by the Interim Guidelines, but the collaborative spent a considerable amount of time focused on the various alternatives that could have been advanced to the proposed regulations. Ultimately, the consensus was reached to recognize the impracticalities and burdens on the OLSP of requiring an OLSP to see proof of a prospective NLSP's right to access a customer's service records. The proposed regulations establish that a prospective NLSP is not to request access to a customer's service records from another LSP without verified authority to do so. If a prospective NLSP violates this provision, the customer may bring a complaint to the Commission.

*§ 63.205. Removal or lifting of LSPFs.*

A local service provider freeze (LSPF) is a designation elected by a customer that restricts a third party's ability to change the customer's choice of preferred LSP. A customer with a LSPF must take steps to lift the LSPF by advising the customer's preferred LSP of the customer's intention to change LSPs. The Commission, in an Order entered on June 20, 2002, at Docket No. M-00021592, directed Verizon PA to address the possibility of implementing a web page as a freeze-lifting option. Further, Verizon PA was to address this issue as part of the Changing LSPs collaborative.

*Positions of the Parties*

Verizon PA presented information on its web-based option for lifting LSPFs and committed to a Fall 2002 launch. According to Verizon PA, the webpage would be available to Verizon PA customers 24 hours a day/7 days a week using a secure access process. Flow-through requests to lift LSPFs will be effective in 24 hours or less. Manual lifting of a LSPF will require 48 hours and will be designed as next day manual fallout. Customers will not be able to lift a LSPF on resold local services (or to initiate a LSPF) using the webpage. Verizon PA wishes to prohibit third parties from using the webpage to lift a customer's LSPF. Verizon PA further argued that any requirements imposed on it for providing LSPF-lifting mechanisms should also be imposed on other LSPs. Verizon PA noted that it does not proactively market LSPFs and estimates that it has approximately 20,000 customers with LSPFs.

Other parties questioned why someone other than the customer should be prohibited from using the Verizon PA website, with the customer's permission, to lift a LSPF. The OCA and other parties believe that Verizon PA should extend its business hours for customers to lift LSPFs. One LSP favored use of a ".wav" file<sup>14</sup> to document a customer request to lift a LSPF.

<sup>10</sup> There already exists a pattern for such cooperative "rules of the road," e.g., as in terms of dialing parity.

<sup>11</sup> The Law Bureau will provide the Commission oversight for the migration guidelines, which the parties have requested.

<sup>12</sup> See discussion of industry work group § 63.203(b) & (c), below.

<sup>13</sup> We shall issue a Secretarial Letter to advise the parties that the Law Bureau will provide the Commission oversight for the migration guidelines and industry work group. Many of the parties in the collaboratives also participate in the Pennsylvania Carrier Work Group (PA CWG), which with its subgroups, is an established, effective, non-adversarial forum for operational discussions between service providers, statutory advocates and staff. We suggest that the industry work group operate as a subgroup of the PA CWG. To date, the PA CWG has focused primarily on implementing the PA Carrier-to-Carrier Guidelines (C2C Guidelines) and the PA Performance Assurance Plan (PA PAP) adopted in *PMO II*, Docket No. M-0011468 to address the quality of Verizon PA's wholesale service (including resale) to CLECs. While the primary industry input to the PA CWG is presently from Verizon PA and CLECs operating within Verizon PA's service territory, participation is not limited to those entities, and topics are not be limited to Verizon PA/CLEC matters.

<sup>14</sup> A ".wav" file uses a format developed by Microsoft which allows the storage of content with no pre-processing other than formatting the content. For example, a .wav file may be used to record a conversation containing a third-party verification of a customer's request to have a LSPF lifted. The .wav file may be emailed, stored and played audibly.

MCI, MetTel and AT&T do not offer LSPFs. Other companies were reluctant to divulge their marketing practices as to LSPFs. Some parties believe that the Commission should continue to allow service providers to offer LSPFs. Other parties urged that, until all of a LSP's customers had access to 24/7 freeze lifting mechanisms, the LSP should be precluded from offering LSPFs. Some parties felt that the best prevention of slamming would be certain and swift penalties.

Another issue was the identification of the presence of a LSPF in the customer service record (CSR). The LSPs who are CLECs wanted LSPF information to be clearly identified as such in customer records for use in discussions with prospective customers.

#### *Disposition*

Verizon PA initiated its website freeze lifting mechanism in December 2002. Verizon PA also agreed to identify the LSPF information on the CSRs. We believe that the website, which provides "24/7" access to Verizon PA customers, and their designees, to lift LSPFs is sufficient, in conjunction with normal business office operation. If tighter intervals, monitoring, or further procedures become an issue for service providers working with Verizon PA, the PA CWG is an available forum for further discussions.<sup>15</sup>

LSPs offering LSPFs shall provide appropriate customer access, as may be defined by this Commission or the Federal Communications Commission (FCC),<sup>16</sup> to their customers for lifting LSPFs. Disputes between LSPs as to the appropriateness of customer access to the OLSP for lifting LSPFs or the speed with which the OLSP lifts the freeze may be referred to the Commission. If a LSP chooses to offer LSPFs, its CSRs will have to clearly divulge the presence of LSPFs.

We recognize the seeming validity of Verizon PA's argument that freeze lifting mechanisms should be reciprocal, but with so few other LSPs offering LSPFs, we do not perceive a need to adopt stringent rules at this time for LSPs not offering freezes.

As to who may lift a LSPF, we note that migration of "frozen" service requires affirmative action by the customer to lift the LSPF. It is clear under the FCC regulations that a customer can delegate authority to a third party to place and lift freezes on service.<sup>17</sup> The controversy is whether a customer could make such a delegation to a prospective NLSP. At this point, we believe that status as a prospective NLSP should not preclude an entity from exercising an explicit delegation of freeze-lifting authority from its prospective customers. Under appropriately documented circumstances, a customer should be able to choose to delegate such authority to a prospective NLSP. Such a delegation must expressly state that it is a delegation of authority to lift a LSPF. Documentation of such authority will, however, be extremely important. The question of whether a prospective NLSP actually had the customer's authority is a matter that should not trouble the OLSP. It will be the prospective NLSP who is at risk if it cannot prove the existence of authority.

We agree that the best deterrent to slamming is sure and swift recourse against the slamming service provider.

<sup>15</sup> We shall issue a Secretarial Letter to close the proceeding at *PUC v. Verizon PA, Inc.*, Docket No. M-00021592.

<sup>16</sup> The FCC regulations are at 47 CFR §§ 64.1100 through 64.1195, changing long distance carriers. 47 CFR § 64.1190(b) extends the FCC requirements to LSPs.

<sup>17</sup> 47 CFR § 64.1100(h) defines "subscriber" to include "any person contractually or otherwise lawfully authorized to represent" the party "responsible for payment of the telephone bill." See also 47 CFR § 64.1190(e), procedures for lifting preferred carrier freezes.

Slamming is a serious violation of our statute and regulations, as well as of federal regulations. Violations or fraud in freeze-lifting matters will be considered even more egregious than other slamming violations. A LSP that violates freeze-lifting procedures or slams frozen service will be penalized. Penalties up to and including one thousand dollars per day may be levied. (66 Pa.C.S. § 3301).

#### *§ 63.206. Porting Telephone Numbers.*<sup>18</sup>

##### *Positions of the Parties*

Based on the FCC rules regarding porting, most of the parties agreed that customers could port their number up until the time of termination or discontinuation of service. The PTA disagreed with this position.

##### *Disposition*

The proposed regulations clarify and document the long-standing position of this Commission that termination of service by an OLSP or prior discontinuation of service by a customer are the only reasons for the OLSP to refuse to allow number porting upon an otherwise-appropriate request to do so. The telephone number may not be held hostage to retain a customer or because of a dispute between a customer and the OLSP.

#### *§ 63.207. Discontinuance of Billing.*

##### *Positions of the Parties*

This was not an area of significant disagreement among the parties. All recognized the need to avoid overlapping or incorrect billing.

##### *Disposition*

The proposed regulations would establish a 42-day outside limit for the OLSP to render a final bill to a customer who has migrated service to another LSP.

#### *§ 63.208. Carrier-to-carrier guidelines and performance assurance plans.*

As noted in footnote 13 above, Verizon PA is subject to the PA Guidelines (containing metrics) and the PA PAP (providing for remedies). To the extent that the metrics and remedies call for a more explicit or a higher level of performance for Verizon PA's wholesale and resale performance, they shall establish Verizon PA's minimum obligations in the event of a conflict with the proposed regulations or the migration guidelines. Presently, Verizon PA is the only service provider with specific metrics and remedies.

### *INTERFERING STATIONS*

#### *§ 63.301.—§ 63.304. Duties of Service Providers.*

##### *Positions of the Parties*

The issue of interfering stations received considerable attention during the collaborative process. An interfering station condition is the presence of pre-existing service that prevents the reuse of existing telephone facilities by a NLSP to serve a new customer at a location where the former customer has not notified the OLSP to disconnect the telephone service. Participating service providers acknowledged that the Commission's experiences in this area are reflective of day-to-day problems encountered by LSPs.

Verizon PA and MCI presented information on the procedure they use to deal with an interfering station and

<sup>18</sup> The participants agreed that a customer has the right to know about number portability. Getting this information to a customer is an aspect of consumer education and information, which has been consolidated in the Customer Information collaborative (M-00011584) and subsequent rulemaking.

the results of a trial run in Pennsylvania.<sup>19</sup> Verizon PA and MCI stated that the procedure worked in the instances when it was applied. Their procedure requires NLSPs to contact landlords, do property deed searches, and contact taxing authorities in an attempt to verify the standing of an applicant to have service connected at a location in question if there is existing service in place.

The majority of other parties did not want to require the prospective NLSP to make such contacts or perform such searches. A majority of the other LSPs characterized the Verizon PA-MCI process as too burdensome on the prospective NLSP and as going beyond a utility's traditional role in the application process. Consumer representatives preferred to retain traditional limits on utility requirements in processing applications. Some parties opined that contacting landlords and searching deed records could present confidentiality issues or expose the prospective NLSPs to liability for mistakes.

#### *Disposition*

The purpose of this aspect of the proposed regulations is to provide an orderly approach to resolving the dilemma of interfering stations. We have attempted to apportion the responsibilities among the OLSPs, the NLSPs, the NSPs, and the applicants without placing any undue hardships or risks on any of the entities involved.

#### *DISPUTES*

##### *§ 63.401. Consumer complaint procedures.*

#### *Positions of the Parties*

The parties were somewhat split on this subject. Some wanted extensive customer protections while others believed that a dissatisfied customer's best recourse was the ability to switch service providers in the event of a dispute.

#### *Disposition*

We did not specifically address residential and non-residential disputes in this collaborative. Non-residential disputes were discussed extensively in the Customer Information collaborative.<sup>20</sup> The customer complaint issues addressed herein were raised in part to ensure that procedures for resolving complaints were delineated. The proposed regulations strike a balance between customer protection and customer choice in a competitive market.

##### *§ 63.402. Expedited dispute process.*

#### *Positions of the Parties*

The parties agreed that there should be a dispute resolution process for disputes between service providers that would be non-adversarial and would not require legal representation. It was suggested that the Commission pursue a time-sensitive process similar to one operating in New York, where a third-party (e.g., the New York Public Service Commission) attempts to resolve issues between the parties.

#### *Disposition*

We shall establish an expedited dispute process and designate contacts within the Commission to assist the

service providers in determining a workable solution to problems as they may arise. This process should result in an informal staff review of the situation within two (2) business days of the submission of the problem, contact with the other service providers involved in the controversy, and a suggested, non-binding resolution of the situation consistent with 52 Pa. Code § 1.96. This process will not be a prerequisite to access to the Commission's alternate or formal dispute resolution processes.

#### *Other Areas of Discussion*

These matters were raised in the collaboratives but were not included in the proposed rulemaking for the following reasons.

*Review of Chapter 63:* The OCA sponsored a presentation by Rowland Curry to a combined session of all collaboratives calling for updating retail service quality regulations. Mr. Curry noted problems with the current service quality regulations and made recommendations for correcting these problems. Most of his recommendations addressed the development of new standards to measure the quality of telecommunications service provided to customers rather than the procedures for coordination between service providers. After discussion, the parties agreed that the OCA issues went beyond the intent of this rulemaking. In response to this consensus, the OCA filed a petition for review of Chapter 63, which has been docketed at *Petition for Review of Chapter 63*, Docket No. P-00021985.

*Repair:* This matter was addressed in the Interim Guidelines but is not included in the proposed regulations because there appeared to be no need for regulation to address the issue. The parties agreed that a LSP should not shift the burden of dealing with NSPs to the customer. Customers should not be burdened with solving the maintenance and repair problems after they have notified their LSPs about a problem beyond the NID. We agree. If further clarification of this matter is required, we shall address it when the matter arises.

*Line & Circuit Information:* It was suggested that customers should have access to their line and circuit information. After discussion, the parties agreed that providing customers with line and circuit identification information would be impractical, burdensome, and confusing and could result in unintended consequences if future migrations are predicated upon customers being able to reproduce the information. The parties agreed that establishing record retention requirements should be part of the business rules.

We agree that there should be certain standardized records maintained to facilitate an orderly migration or restoral of service. However, codifying a particular technology for such retention may have a counter-productive effect in a world of rapidly changing technology. Accordingly, each LSP and NSP should maintain, in an exchangeable format, accurate and reliable line and circuit identification information. The details of such information shall be addressed in the migration guidelines.

*Slamming:* The OCA and the Public Utility Law Project (PULP) believe that the Commission should elect to administer the FCC's anti-slamming rules. The OCA also suggested that the proposed regulations recognize the FCC's anti-slamming rules and identify specific provisions within the FCC rules for Commission enforcement.

We have previously decided that it is neither necessary nor practical to elect to administer the FCC's anti-slamming rules. Accordingly, we shall not assume primacy over the FCC's rules. Further, we see no need to

<sup>19</sup> MCI was the only LSP to agree to participate in the trial.

<sup>20</sup> The parties agreed that it would be beneficial to have an informal, non-adversarial dispute resolution process for resolving disputes between non-residential customers and service providers that would not require legal representation. To this end, a mini-collaborative was formed as an adjunct to this collaborative and to the customer information collaborative involving interested LSPs, the OSBA, the OALJ, the Law Bureau, the BCS, and the Office of Communications. After exploring numerous options, the mini-collaborative concluded that the existing mediation process in the OALJ will achieve many of the objectives. We see the potential value to customers, service providers, and this Commission of an informal, non-adversarial dispute resolution process for business customers. We also believe that our existing mediation process in the OALJ can serve this function.



identify specific regulations within the FCC rules for Commission enforcement. As we stated in our March 23, 2001 Secretarial Letter, we expect all LSPs to adhere to the FCC's rules, and we intend to enforce our regulations as they pertain to local service. This statement of expectation and intention does not require express incorporation in the proposed regulations; it is the underpinning of an orderly market. LSPs are expected to adhere to the FCC's anti-slamming rules<sup>21</sup> and the Commission's regulations and requirements.<sup>22</sup>

*Differences between Migration of Service and Termination and Discontinuation of Service:* Recently, a CLEC in its capacity as an OLSP requested Commission approval of a tariff establishing charges to NLSPs for migration of customer service. In our order suspending the tariff, we directed the Changing LSPs collaborative to address whether there were significant differences between migrations of service and terminations or discontinuations of service.<sup>23</sup> The collaborative noted that while migrations might require more coordination and higher priority work<sup>24</sup> than pure terminations or discontinuations, they had no proposed regulations on this issue.

#### Conclusion

Accordingly, pursuant to sections 501 and 1501 of the Public Utility Code, 66 PA.C.S. §§ 501 and 1501; to sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, as amended, 45 P. S. §§ 1201—1202, and the associated regulations at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, Act of October 15, 1980, P. L. 950, as amended, 71 P. S. 732.204(b); section 745.5 of the Regulatory Review Act, Act of June 25, 1982, P. L. 633, as amended, 71 P. S. § 745.5; section 612 of the Administrative Code of April 9, 1929, P. L. 177, as amended, 71 P. S. § 232, and the associated regulations at 4 Pa. Code § 7.231—7.234, we are considering adoption of the proposed regulations regarding migration of telecommunications service and interfering stations, as set forth in Annex A: *Therefore,*

*It Is Ordered That:*

1. This docket be opened to consider the proposed regulations set forth in Annex A.

2. The Secretary shall submit this Order and Annex A to the Office of Attorney General, for review as to form and legality, and to the Governor's Budget Office, for review of fiscal impact.

3. The Secretary shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. The Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. An original and 15 copies of any comments referencing the docket number of the proposed regulations be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. In addition, one copy in electronic format (Microsoft Word® 2002 or readable equivalent) on diskette

<sup>21</sup> See generally 47 CFR §§ 64.1100—64.1195.

<sup>22</sup> See generally 52 Pa. Code Chapter 64 and Secretarial Letter of March 23, 2001, which have been applied in practice to local service for residential and business customers.

<sup>23</sup> See *Choice One Communications of Pennsylvania, Inc.*, Docket No. R-00027409 (June 27, 2002). The CLEC withdrew its filing on August 7, 2002.

<sup>24</sup> For example, migrations may involve more coordination among service providers, immediate reuse of facilities, number porting and hot cuts, which are generally not required in pure disconnects.

shall be provided to the Secretary and a second copy on diskette shall be provided to the attention of Louise Fink Smith, Esq., at the same mailing address.

6. The contact persons for this rulemaking are M. J. (Holly) Frymoyer, Bureau of Consumer Services, 717-783-1628 (technical), and Louise Fink Smith, Assistant Counsel, Law Bureau, 717-787-8866 (legal). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, 717-772-4579.

7. A copy of this Order and Annex A shall be served upon the Pennsylvania Telephone Association, the Telecommunications Resellers Association, the Pennsylvania Cable Television Association, the Public Utility Law Project, all jurisdictional telecommunications utilities in the Commonwealth, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of the Small Business Advocate.

8. The Changing Local Service Providers collaborative at Docket No. M-00011583 and the Quality of Service collaborative at Docket No. M-00011585 shall both be marked closed with the reference that the rulemaking for both collaboratives has been consolidated at this docket.

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-230. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

#### Subpart C. FIXED SERVICE UTILITIES

#### CHAPTER 63. TELEPHONE SERVICE

#### Subchapter M. CHANGING LOCAL SERVICE PROVIDERS

##### GENERALLY

- |         |                                  |
|---------|----------------------------------|
| Sec.    |                                  |
| 63.191. | Statement of purpose and policy. |
| 63.192. | Definitions.                     |

##### MIGRATION

- |         |  |
|---------|--|
| 63.201. | General migration standards.                                   |
| 63.202. | Migration responsibilities of NLSPs and NSPs.                  |
| 63.203. | Migration guidelines and industry work group.                  |
| 63.204. | Standards for the exchange of customer service information.    |
| 63.205. | Removal or lifting of LSPFs.                                   |
| 63.206. | Porting telephone numbers.                                     |
| 63.207. | Discontinuance of billing.                                     |
| 63.208. | Carrier-to-carrier guidelines and performance assurance plans. |

##### INTERFERING STATIONS

- |         |  |
|---------|--|
| 63.211. | Duties of OLSPs and NSPs when an interfering station condition is identified.  |
| 63.212. | Duties of the prospective NLSP and the applicant when an interfering station condition is identified.  |
| 63.213. | Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing service is provided by the OLSP and the applicant has shown proof of ownership or right of occupancy. |
| 63.214. | Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.   |

##### DISPUTES

- |         |                                |
|---------|--------------------------------|
| 63.221. | Consumer complaint procedures. |
| 63.222. | Expedited dispute process.     |

##### GENERALLY

#### § 63.191. Statement of purpose and policy.

(a) The purpose of this subchapter is to establish general rules, procedures and standards governing the migration of customers between LSPs, including porting

telephone numbers, resolving interfering stations, exchanging customer records and the transition of billing accounts. The primary objective of this subchapter is to establish standards to ensure that customers can migrate from one LSP to another LSP without confusion, delay or interruption to their basic service.

(b) This subchapter applies to:

(1) LSPs and NSPs for migration of customers between LSPs.

(2) LSPs and NSPs when interfering station conditions are encountered.

(c) This subchapter does not apply to:

(1) Mass migrations of customers brought about by the selling or transferring of a customer base of one LSP to another.

(2) A LSP that has properly proceeded with the abandonment of service to its customer base.

(3) DSL migration.

(4) Line sharing/splitting arrangements.

(d) To the extent that other regulations do not address circumstances as described in subsection (c), this subchapter may provide guidance for those transactions.

### § 63.192. Definitions.

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

*Applicant*—

(i) A person who applies for telephone service, other than a transfer of service from one dwelling to another within the service area of the LSP or a reinstatement of service following a discontinuation or termination.

(ii) The term does not apply to a customer who is subject to special contractual arrangements and has otherwise agreed to different conditions of service that do not contradict Commission rules or regulations.

*CSR—Customer service record*—Documentation indicating the customer's name, address, contact telephone number, quantity of lines, services, features and other information associated with a customer account.

*Commission review*—Includes informal or formal review, evaluation or adjudication, staff-level review or alternate dispute resolution.

*Customer*—The end user recipient of telephone service provided by a LSP.

*DSL—Digital subscriber line*—A dedicated, high-speed, always-on service, frequently used in the context of "aDSL" or "xDSL."

*Discontinuation of service*—The temporary or permanent cessation of service upon the request of a customer.

*Freeze*—A designation elected by a customer that restricts a third party's ability to change a customer's choice of preferred service providers.

*Interfering station*—Preexisting service that prevents the reuse of existing telephone facilities by a new LSP to serve a new customer at a location where the prior customer did not notify the previous LSP to disconnect the telephone service. The previous LSP and the new LSP may be the same company.

*LOA—Letter of authorization*—

(i) Sometimes used in a general sense as the data or record indicating that the customer has authorized the new LSP to act as the customer's agent.

(ii) The term is used to indicate a specific document signed by a customer granting a new LSP the authority to act as the customer's agent.

*LSC—Local service confirmation*—Documentation issued by the NSP to inform the LSP of the confirmed scheduled completion date for work affecting specific telecommunications service activities such as unbundled loop connections.

*LSP—Local service provider*—A company, such as a local exchange carrier (LEC), that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods of providing local service to a customer.

(i) NLSP indicates "new" LSP, and OLSP indicates "old" LSP.

(ii) A LSP may also provide other telecommunications services, as well as nonjurisdictional services.

*LSP-to-LSP end user migration guidelines or migration guidelines*—A documentation of processes and procedures that establish general business rules, privacy protocols and general procedures governing the migration of end users (customers) between LSPs.

(i) The migration guidelines were developed by consensus among telecommunications industry participants and associations, statutory advocates and the Commission.

(ii) The migration guidelines will be amended from time to time as industry practices change.

*LSPF—Local service provider freeze*—A designation elected by a customer that restricts a third party's ability to change a customer's choice of preferred LSP.

*LSR—Local service request*—Document issued by LSPs to NSPs to arrange for installation of, change in or disconnection of services.

(i) The LSR is sent by a LSP to a NSP, for example, to request the activation of number portability, the installation of an unbundled loop facility, or the disconnection of loop facilities and migration of a number.

(ii) The NSP uses the LSR to create the internal directives, for example, a service order, to cause the work to be performed as ordered.

*Line sharing*—The sharing of facilities by a LSP and a NSP in the provision of voice and data services to a given location over the same facilities.

*Line splitting*—The sharing of facilities by two LSPs, when neither is the NSP, in the provision of voice and data services to a given location over the same facilities.

*Local service*—Telecommunications service within a customer's local calling area.

(i) The term includes the customer's local calling plan, dial tone line, touch-tone and directory assistance calls allowed without additional charge.

(ii) The term also includes services covered by the Federal line cost charge, Pennsylvania Relay Surcharge, Federal Universal Service Fund Surcharge, Local Number Portability Surcharge, Public Safety Emergency Telephone Act (9-1-1) Fee and applicable Federal and State taxes.

*Local service reseller*—A LSP that resells another company's wholesale telephone services to provide local service to customers.

*Migration*—The movement of a customer from one LSP to another LSP at the same service location.

*NLSP*—New local service provider.

*NSP—Network service provider*—A carrier that interacts with LSPs and provides the facilities and equipment components needed to make up a customer's telecommunications service.

(i) An NSP may also be referred to as an underlying carrier.

(ii) An NSP may also be a LSP.

*OLSP*—Old local service provider.

*Preferred service provider*—The company chosen by a customer to provide particular telecommunications services. A preferred service provider is sometimes referred to as a "preferred carrier."

*Porting*—The process that allows customers to keep their telephone numbers when changing LSPs.

*Service provider*—A generic term to include LSPs and NSPs.

*Termination of service*—Permanent cessation of service after a suspension without the consent of the customer.

### MIGRATION

#### § 63.201. General migration standards.

(a) A customer has the right to migrate from one LSP to another LSP.

(b) The NLSP shall communicate and explain to the customer the migration process and the migration timetable for various services, when applicable.

(c) The OLSP has the right to protect itself from potential loss as permissible by Commission regulations and by its lawful tariff in instances when Commission regulations do not address a situation.

(d) The OLSP and the NLSP shall work together in good faith to minimize or avoid problems associated with migrating the customer's account.

(e) The OLSP may not prohibit the NLSP from reusing facilities that are no longer needed by the OLSP to provide service to the migrating customer or other customer. If the OLSP has a conflict over the use of the facilities, it shall be resolved using the interfering station procedure.

(f) Each LSP shall ensure that its 9-1-1 and Directory Listings/White Pages databases are accurate, accessible and updated as appropriate.

(g) Each LSP and NSP shall maintain a company contact and escalation list for use in resolving migration problems and interfering station conditions. LSPs and NSPs shall exchange their lists with each other and provide copies to the Commission. The lists shall be updated as necessary to ensure that the information is current and accurate.

#### § 63.202. Migration responsibilities of NLSPs and NSPs.

(a) The prospective NLSP shall communicate and explain the migration process and the migration timetable for various services, when applicable, to the customer.

(b) The prospective NLSP shall be responsible for coordinating the migration of the customer's local service with its NSP, if any, and with the OLSP.

(c) The prospective NLSP shall provide the LSR information to affected service providers, as applicable.

(d) The NSP shall issue a LSC or rejection within 5 working days from the date it receives a valid LSR from the prospective NLSP.

(e) The NLSP shall be responsible for coordinating a customer's service restoration that may become necessary due to problems with the migration.

#### § 63.203. Migration Guidelines and industry work group.

(a) In addition to compliance with this subchapter, LSPs and NSPs shall follow the Migration Guidelines developed and updated by a telecommunications industry work group as a baseline set of principles, responsibilities and ground rules to facilitate migration of customer service.

(b) The Commission will establish an industry work group to be responsible for creating and updating the Migration Guidelines and addressing issues associated with LSP migrations as industry practices change.

(c) To the extent that the industry work group cannot agree on the details of the Migration Guidelines, the industry work group may request Commission review.

#### § 63.204. Standards for the exchange of customer service information.

(a) Prospective NLSPs may not acquire CSRs without a verified customer authorization. The prospective NLSP shall use one of the following verification procedures and shall retain the authorization and verification for 2 years:

(1) An LOA from the customer of record to review the customer's account.

(2) A third-party verification of the customer's consent.

(3) A recording verifying permission from the customer.

(4) Oral authorization documented with appropriate retained documentation.

(5) Additional procedures as may be authorized by the Federal Communications Commission (FCC) or the Commission.

(b) The prospective NLSP shall indicate to the customer's current LSP that it has a verified authorization for access to the CSR. The NLSP is not required to provide a copy of the authorization or verification to the current LSP.

(c) A current LSP may not contact a customer to retain or keep that customer as a result of a request from another LSP for the customer's CSR.

(d) When a prospective NLSP has verified authorization from the customer to switch the customer's LSP, the prospective NLSP shall request the customer's network serving arrangements and a CSR from the OLSP. The prospective NLSP is not required to provide proof to the OLSP of the authorization or verification at the time of migration. The prospective NLSP shall use one of the following types of verification and shall retain the authorization and verification for 2 years:

(1) An LOA from the customer to switch LSPs.

(2) A third-party verification of the customer's request.

(3) An electronic verification of the customer's request to switch LSPs that contains unique identifying information.

(4) Additional procedures as may be authorized by the FCC or the Commission.

(e) A customer's current LSP shall provide the following information when the CSR is requested to migrate a customer's service:

(1) Billing telephone number and working telephone number.

(2) Complete customer billing name and address.

(3) Complete service address, including floor, suite unit and any other unique identifying information.

(4) 9-1-1/E-9-1-1 information.

(5) Directory listing information, including address, listing type and all other pertinent information.

(6) Preferred service providers for interLATA, intraLATA, local basic service and other services.

(7) Provider freeze status by interLATA toll, intraLATA toll, local basic service and other services.

(8) Listing of all vertical services (for example, custom calling, hunting, and the like) to which the customer currently subscribes.

(9) Listing of all optional services (for example, 900 blocking, toll blocking, remote call forwarding, off-premise extensions, and the like) to which the customer currently subscribes.

(10) Tracking number or transaction number (for example, purchase order number).

(11) Service configuration information (for example, resale, UNE-P, unbundled loop).

(12) Identification of NSPs.

(13) Identification of any line sharing/line splitting on the migrating customer's line.

(f) Timetable for providing CSRs, minimum requirements:

(1) By \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposal.*), OLSPs shall provide 80% of requested CSRs within 48 hours.

(2) After \_\_\_\_\_ (*Editor's Note: The blank refers to a date 6 months after the effective date of adoption of this proposal.*), OLSPs shall provide 80% of requested CSRs within 24 hours.

(3) After \_\_\_\_\_ (*Editor's Note: The blank refers to a date 1 year after the effective date of adoption of this proposal.*), OLSPs shall provide 80% of requested CSRs the same day if the request is made by noon of that day, or by noon the next day if requested after noon.

#### **§ 63.205. Removal or lifting of LSPFs.**

(a) The prospective NLSP may not process a change in LSP if the customer does not remove an existing LSPF at the time of application. The prospective NLSP shall inform the applicant of the following at the time of application:

(1) If the applicant has a LSPF, the LSPF must be removed before the OLSP may process the prospective NLSP's request for a change of the customer's LSP.

(2) The applicant or appropriate agent shall contact the OLSP to have a LSPF lifted before an order to migrate the service may be processed.

(3) A prospective NLSP may not authorize the removal of an applicant's LSPF.

(b) When the prospective NLSP is also seeking to provide other services, (for example, interexchange, intraLATA, interLATA, interstate or international toll) covered by freezes, authorizations to lift the freezes may be transmitted in one process, if the applicant expressly requests that each freeze be lifted. The prospective NLSP shall inform the applicant of the distinctions among the services and of the requirement that service may not be migrated unless the customer expressly lifts each freeze.

(c) LSPs shall provide various methods to customers for lifting LSPFs, as required by the Commission or the Federal Communications Commission.

#### **§ 63.206. Porting telephone numbers.**

An OLSP may not refuse an otherwise valid request to port a number to a NLSP unless the number is for service that has been terminated or discontinued under Chapter 64 (relating to standards and billing practices for residential telephone service) for residential customers or consistent with the LSP's lawful tariff for other customer classes.

#### **§ 63.207. Discontinuance of billing.**

(a) LSPs shall minimize overlap in billing during the migration between LSPs.

(b) Upon notification from the prospective NLSP that the customer has requested to migrate service to the prospective NLSP, the customer's OLSP shall, within 42 days, issue the customer a final bill for services rendered.

(c) Once the customer has paid the charges on the final bill, the OLSP shall immediately remove the customer from its billing system and discontinue billing.

(d) The OLSP shall stop billing the customer for any recurring charges as of the date of the change to the NLSP.

(e) This subchapter does not affect a customer's debtor/consumer rights or a LSP's creditor's remedies, as may be otherwise permitted by law.

#### **§ 63.208. Carrier-to-carrier guidelines and performance assurance plans.**

For a LSP or NSP subject to state or Federal carrier-to-carrier guidelines or performance assurance plans, if the carrier-to-carrier guidelines or performance assurance plan provide a more explicit or a narrower window for performance, the carrier-to-carrier guidelines or performance assurance plan shall control for that LSP or NSP.

### **INTERFERING STATIONS**

#### **§ 63.211. Duties of OLSPs and NSPs when an interfering station condition is identified.**

(a) The OLSP or NSP shall inform the prospective NLSP of an interfering station condition by the end of the next working day after the OLSP or NSP identifies that an interfering station condition exists.

(b) The OLSP or NSP shall review the LSR information with the prospective NLSP to determine possible errors:

(1) Upon confirmation that the LSR information is correct, the OLSP or NSP shall inform the prospective NLSP that the LSR is cancelled because there is preexisting service at the service location.

(2) If the LSR information is incorrect, the OLSP or NSP shall correct the information and continue with the installation.

**§ 63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.**

(a) The prospective NLSP shall notify the applicant that there is preexisting service at the service location within 1 business day of the date it receives notice of the interfering station condition. The prospective NLSP shall contact the applicant by telephone, email, first class mail or in person to request that the applicant verify the address at the service location.

(b) If the applicant fails to respond to the notice within 5 days, the prospective NLSP may cancel the application.

(c) If the applicant informs the prospective NLSP that the address is incorrect, the prospective NLSP shall correct the information on the application and submit a new LSR.

(d) The prospective NLSP shall provide the new service installation date.

(e) If the applicant verifies that the address is correct, the prospective NLSP shall explain that new service is not able to be installed using the same facilities due to preexisting service at the address and request the applicant to provide proof of ownership or right of occupancy.

(f) If the applicant provides proof of ownership or right of occupancy, the prospective NLSP shall advise the applicant of the following options. The applicant may:

(1) Authorize the prospective NLSP to contact the OLSP to confirm abandoned service.

(2) Attempt to resolve the interfering station condition with the customer of record.

(3) Arrange for the installation of new facilities.

(i) If inside wiring is required, the applicant shall provide proof of installation before the prospective NLSP is able to proceed with the LSR.

(ii) If new facilities (for example, outside wiring or a network interface device (NID), are required, the prospective NLSP shall advise the applicant that the applicant shall pay for the installation of the new facilities pursuant to lawful tariff rates and that the installation may take longer than 5 days.

(4) Cancel the application.

**§ 63.213. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing service is provided by the OLSP and the applicant has shown proof of ownership or right of occupancy.**

(a) Within 3 business days of notification, the OLSP shall issue a termination notice to the customer of record in the OLSP's billing system. The notice of termination shall state the reason for termination, date of termination and what the customer of record is required to do to prevent termination. The termination date shall be 7 days from the date of mailing of the notice by first class mail.

(b) If there is no contact from the customer of record, the OLSP shall remove the customer from billing and take appropriate action to release the facilities to the prospective NLSP.

(c) If the OLSP is contacted by the customer of record who does not agree to the termination of service, the OLSP shall notify the prospective NLSP of the inability of the OLSP to release the facilities to be used by the prospective NLSP.

**§ 63.214. Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.**

(a) The prospective NLSP shall contact the applicant and explain that the preexisting customer will not agree to the termination of service and that the prospective NLSP is not able to use the existing facilities.

(b) The prospective NLSP shall inform the applicant of the following options:

(1) The applicant may pursue any disputes between co-tenants, owners and occupants before an appropriate forum for the remedy. The prospective NLSP shall inform the applicant that neither the prospective NLSP, the OLSP nor the Commission is responsible for or available to resolve private disputes between customers and applicants.

(2) If inside wiring is required, the applicant shall provide proof of installation before the prospective NLSP is able to proceed with the LSR.

(3) If new facilities (for example, outside wiring or a NID) are required, the prospective NLSP shall advise the applicant that the applicant shall pay for the installation of the new facilities pursuant to lawful tariff rates and that the installation may take longer than 5 days.

**DISPUTES**

**§ 63.221. Consumer complaint procedures.**

(a) *Records of complaints.* A service provider covered by or operating under this title shall preserve written or recorded complaints showing the name and address of the subscriber or complainant, the date and character of the complaint, the action taken and the date of final disposition. Records of complaints for residential customers shall be kept in accordance with § 64.192 (relating to record maintenance).

(b) *Commission review.* If a customer or applicant expresses dissatisfaction with the service provider's decision or explanation, the service provider shall inform the customer or applicant of the right to have the dispute considered and reviewed by the Commission and shall provide the name, address and telephone number of the appropriate Commission bureau. This subsection shall be read in conjunction with §§ 64.141—64.182 for residential service.

(c) *Investigations.* Upon receiving a complaint covered by this subchapter from an applicant, customer or third party, the Commission will transmit a summary of the complaint to the service provider. When complaints are referred to the service provider through the Commission, the service provider and the Commission will work to process and resolve the complaints. A service provider shall make a full and prompt investigation of complaints made to it through the Commission by the applicant, customer or third party.

(d) *Resolutions.* If a complaint is resolved between the service provider and the complaining party, the service provider shall advise the Commission and submit a copy of the service order or other documentation of satisfaction which identifies the action taken by the service provider to resolve the complaint. The service provider may not consider the complaint closed until the Commission advises the service provider that the Commission has closed the complaint.

**§ 63.222. Expedited dispute process.**

(a) The Commission will provide a nonadversarial, expedited dispute process to address migration disputes.

The Commission will designate contact persons through which LSPs and NSPs may request expedited resolution for alleged problems between service providers or compliance with this title and the migration guidelines pertaining to the migration of customer service.

(b) A LSP or NSP that has a dispute under this subchapter with another LSP which cannot be resolved between the entities may refer the dispute to the expedited dispute process for a suggested resolution in a nonadversarial context.

(c) The Commission designee will review the dispute within 2 working days of the date the dispute was received, attempt to contact the involved entities and suggest a nonbinding resolution of the dispute, consistent with § 1.96 (relating to unofficial statements and opinions by Commission personnel).

(d) If the expedited dispute process fails to resolve the dispute, the parties may resort to the Commission's alternate dispute or formal dispute resolution processes.

(e) The expedited dispute process is neither mandatory nor a prerequisite to the Commission's alternate or formal dispute resolution processes.

[Pa.B. Doc. No. 04-558. Filed for public inspection April 2, 2004, 9:00 a.m.]

**[52 PA. CODE CH. 63]**

[L-00030165]

**Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunications Companies**

The Pennsylvania Public Utility Commission, on December 18, 2003, adopted a proposed rulemaking order establishing an orderly process to follow when a local service provider abandons local telephone service. The contact persons are Wayne Williams, Bureau of Consumer Services, (717) 787-7137 and Terrance J. Buda, Law Bureau, (717) 783-5755.

*Executive Summary*

The advent of competition in the local telephone market in Pennsylvania has created situations that the Commission's current regulations do not address. To comply with certain aspects of the Telecommunications Act of 1996, the act of February 8, 1996 (Pub.L. No. 104-104, 110 Stat. 56), the Commission implemented a streamlined application process to modify traditional entry procedures applicable to telecommunications carriers. Specifically, the Commission's telecommunication procedures allow new entrants to commence service upon filing and service of the application, which must contain an interim tariff. These entry procedures apply to all carriers whether they are facilities-based, interconnected or reseller competitive local exchange carriers (CLECs). CLECs that are not facilities-based and rely either completely or partially for their underlying service on the incumbent local exchange carrier (ILEC) are considered resellers. If the CLEC fails to pay the underlying ILEC for the service it resells to its end-use customers, the CLEC's wholesale telephone service will be terminated. This results in the termination of dial tone service to the end-use customer—effectively a de facto abandonment of service by the CLEC. Although a public utility must seek prior approval to abandon service, the Commission's rules under Chapters 63 and 64 do

not cover abandonment of utility services nor do they address the notification of the end-use customers.

In April 2002, recognizing the need for both short-term and long-run solutions to problems associated with de facto abandonment, the Commission approved Interim Guidelines addressing the issues raised by this regulatory oversight. Later in 2002, the Commission held collaborative sessions that involved telecommunications carriers and other interested parties in discussions of the issues. The collaborative participants addressed proposals for regulations and proposed solutions to the problems created by the changing telecommunications marketplace.

By Order entered on December 23, 2003 at Docket No. L-00030165, the Commission adopted a Proposed Rulemaking Order to amend 52 Pa. Code § 63, consistent with the order and recommendations of the collaborative participants, the Bureau of Consumer Services and the Law Bureau. The intent of the proposed rulemaking is to promulgate a regulation to establish general rules, procedures, and standards to provide for an orderly process when a local service provider exits the market.

The proposed regulation applies to all local service providers (LSPs) and network service providers (NSPs) operating in Pennsylvania. The proposed regulation will provide for an orderly process when a NSP intends to embargo and terminate service to a LSP, when the Commission has issued an order to revoke a LSP's certificate of public convenience and when a LSP has filed an application to abandon a certificate of public convenience for the provision of local service. In particular, the regulation will ensure that customers do not lose service when their LSP exits the market and that customers are provided ample notice and the opportunity to select a new LSP of their choice. Moreover, the regulations will ensure that an abandoning LSP provides sufficient network information so that customers are able to be migrated seamlessly and also that an abandoning LSP coordinates with 9-1-1 service providers and the North American Numbering Plan Administrator. Finally, the regulations apply to a LSP that provides local service to residential or business customers.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 18, 2004, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Commission, the General Assembly and the Governor of objections raised.

Public Meeting held  
December 18, 2003

*Commissioners Present:* Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Kim Pizzigrilli; Glen R. Thomas; Wendell F. Holland

*Proposed Rulemaking—Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunication Companies; L-00030165*

**Proposed Rulemaking Order**

*By the Commission:*

This proposed rulemaking order is intended to promulgate regulations to establish an orderly process when a local service provider (LSP)<sup>1</sup> abandons local telephone service. The proposed regulations, contemplating codification as a new subchapter in 52 Pa. Code Chapter 63, are attached as Annex A.

*Procedural Background*

In 1993, competition in the local telecommunications markets in Pennsylvania was initiated through the enactment of Chapter 30 of the Public Utility Code, 66 Pa.C.S. §§ 3001-3009. The Telecommunications Act of 1996 (TA-96) mandated the opening of local telephone service competition on a national level.<sup>2</sup>

To comply with certain aspects of TA-96, the Commission implemented a streamlined application process to modify traditional entry procedures applicable to telecommunication carriers. Specifically, the Commission's telecommunication procedures allow new entrants to commence service upon filing and service of the application, which must contain an interim tariff. These entry procedures apply to all carriers whether they are facilities-based, interconnected or reseller competitive local exchange carriers (CLECs).

CLECs that are not facilities-based and rely either completely or partially for their underlying service on the incumbent local exchange carrier (ILEC) are considered resellers. If the CLEC fails to pay the underlying ILEC for the service it resells to its end-use customers, the CLEC's wholesale telephone service will be terminated. This results in the termination of dial tone service to the end-use customer—effectively a defacto abandonment of service by the CLEC. Although a public utility must seek prior approval to abandon service, the Commission's rules under Chapters 63 and 64 do not cover abandonment of utility services nor do they address the notification of the end-use customers. Therefore, the purpose of this rulemaking is to address this regulatory issue.

At Public Meeting on December 4, 2001, we issued four tentative orders for public comment regarding interim guidelines for jurisdictional LSPs and NSPs.<sup>3</sup> These tentative orders were designed to establish interim guidelines for Changing LSPs (M-00011582, base folder), Quality of Service (QoS) (F0002)<sup>4</sup>, Customer Information (F0003), and Abandonment of Local Service (F0004), pending the approval of final regulations. After a public comment period, we entered final orders at those dockets on April 23, 2002, approving interim guidelines.

As the first step in the rulemaking process, we also issued notices on December 4, 2001 that announced the

commencement of four corresponding local telephone competition collaboratives. The purpose of the collaboratives was to develop proposals for regulations to address the four areas of concern identified in the interim guidelines. Notice was sent to all telecommunications carriers and other interested entities in the Commonwealth and published in the *Pennsylvania Bulletin*. The collaborative meetings began in June 2002.<sup>5</sup> Active parties included AT&T Communications of Pennsylvania, Inc. (AT&T); ATX—CoreComm (ATX); CTSI/Commonwealth Telephone (CTSI); Choice One Communications of PA, Inc. (Choice One); MCIWorldcom Network Services, Inc. (MCI); Metropolitan Telecommunications (MetTel); North Pittsburgh Telephone Company (NPT); Sprint/United Telephone Company (Sprint); Verizon Pennsylvania, Inc. and Verizon North, Inc. (Verizon PA); Z-Tel Communications (Z-Tel); the Pennsylvania Telephone Association (PTA); the Pennsylvania Cable Television Association (PCTA); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); and the Pennsylvania Utility Law Project (PULP). Staff from the Commission's Bureau of Consumer Services (BCS), Bureau of Fixed Utility Services (FUS), Law Bureau, Office of Trial Staff (OTS), and Office of Communications also participated.

Parties were invited to make presentations and voice concerns in the collaborative sessions and submit written comments. The parties were advised that the Commission did not want the provisions of the interim guidelines to be viewed as necessary elements for the proposed rulemakings. The parties were free to use what they wanted from the interim guidelines, but they were also free to propose regulations and topics not covered by the interim guidelines. The Commission invited the parties to submit proposed regulatory language for consideration. Noting this latitude, the parties, nonetheless, preferred to use the interim guidelines as a starting point for the proposed regulations.

Most of the parties participated in more than one collaborative; many participated in all. During the multi-collaborative process, it became apparent that several of the topics under consideration could have been addressed in more than one of the collaboratives. Since there was also substantial overlap in terms of issues and proposals in the Changing LSPs collaborative (Docket No. M-00011583) and the QoS collaborative (Docket No. M-00011585), these two collaboratives were combined in a single rulemaking. It was further agreed that the various customer information issues should be consolidated with and addressed by the Customer Information collaborative (Docket No. M-00011584) and resulting rulemaking. The parties also agreed that transfers of customer base issues should be consolidated with and addressed in this Abandonment Process collaborative (Docket No. M-00011586) and resulting rulemaking.

*Discussion*

It should be noted that while every position espoused by each of the parties, whether in comments or in public collaborative sessions, may not be expressly detailed herein, each submittal was duly considered in the preparation of this Order and Annex A. Any position not expressly adopted herein is rejected without prejudice to future consideration as the parties request or the Commission deems appropriate.

<sup>1</sup>As used throughout this proceeding, "local service provider" or "LSP" refers to a company, such as a local exchange carrier, that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods.

<sup>2</sup>Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. (TA-96)

<sup>3</sup>As used throughout this proceeding, "network service provider" or "NSP" refers to a service provider that interacts with LSPs and provides some or all of the facilities and equipment components needed to make up a customer's telecommunications service. A NSP may also be called an underlying carrier and is generally invisible to customers. A NSP may also operate as a LSP.

<sup>4</sup>"QoS" as used in M-00011582, F0002, and M-00011585 refers to how transactions between service providers are structured rather than to measures of the quantity or character of services provided to wholesale or retail customers. A proceeding is pending at Docket No. P-00021985 to address quality of service in terms of the measures or standards of services provided to customers as mandated by other provisions of 52 Pa. Code Chapter 63.

<sup>5</sup>During 2002, the Abandonment Process collaborative met on June 4, July 16, and August 9.

*Subchapter N. Local Service Provider Abandonment Process Application*

*Positions of the Parties*

Comments provided by OCA and OSBA support the application of the rules to voice and data service. Other parties generally supported the application of the rules to voice service only.

The parties also discussed whether the rules should apply to business customers in addition to residential customers. There was general agreement among the parties that the abandonment rules would benefit both residential and business customers by providing advance notice of the cessation of service along with the opportunity to select another provider.

*Disposition*

On this issue, we find that the rules should not apply to LSP's providing only data service as opposed to voice and data, or voice only. Clearly, our major concern from the beginning of this process with the issuance of the December 4, 2001 Tentative Order was customers losing their telephone service when their LSP exits the market. In particular, we are concerned with customers losing their access to 9-1-1 service providers. Therefore, we shall decline to apply these regulations to data services.

We also agree with the parties that the abandonment rules should apply to LSPs who serve residential and/or business customers. (§ 63.1101(b)(1))

*Pre-Termination Embargo Process*

*Positions of the Parties*

The parties were generally supportive of retaining the Pre-Termination Embargo Process that was contained in the Local Service Provider Abandonment Process Abandonment Interim Guidelines. The parties noted that an embargo is a useful tool and should be time-limited. ATX commented that there should be a clear method of determining what is a properly filed dispute that may be the basis for an embargo and requested Commission guidance on this issue. ATX advocated for greater Commission involvement in payment disputes between an underlying carrier and a local service provider who is a reseller or using unbundled network elements (UNE) with or without platform.

*Disposition*

We have retained a time-limited embargo process in the proposed regulations as supported by the parties. (§ 63.1103) (§ 63.1104)

On the issue of further clarification of what constitutes a properly filed dispute about the payment of charges between an underlying carrier and LSP, we refrain from offering further clarification or Commission involvement. The terms and conditions of arrangements between the underlying carrier and a LSP for wholesale services should be spelled out in an interconnection agreement between the two parties. The Commission expects that the parties will incorporate whatever specificity about disputes is desired by the parties into the interconnection agreements. The Commission does not wish to become routinely involved in contract matter disputes between the two entities.

*Initiation of Abandonment*

*Positions of the Parties*

The parties explored whether there are reliable financial or other indices that could be used as advanced signals of a likely future abandonment of LSP service. If

such indications could be identified, perhaps when a LSP's indices reached the threshold levels, it would be required to file for abandonment. Such a process was believed to be preferable to situations in which LSPs have waited until they do not have the financial means to notify customers of their impending abandonment and provide call center support for the process. The parties were not able to identify any reliable advance triggers that could be used to effectively signal an impending abandonment.

*Disposition*

We did not incorporate any specific advance triggers into the abandonment rules. However, we did require a LSP to file an application to abandon service not less than 90 days prior to the date when financial data or operational indices indicate there is a reasonable likelihood that the LSP will no longer be able to provide service to some or all of its customers. (§ 63.1105)

*Alternative Notice Provider and LSP Deposit Requirements*

*Positions of the Parties*

Based on past Commission history, the parties explored what entity could provide customers with notices in the event that a LSP abandons service without notifying its customers. Unfortunately, several LSPs have abandoned service in Pennsylvania without customer notice and without providing the necessary customer service record information that would enable other providers to easily migrate customers to their service. In these cases, the Commission's Bureau of Consumer Services, in cooperation with the NSP, provided the customer notice of abandonment. Fortunately, in these cases of irresponsible abandonment, there were not a large number of customers involved and the Commission was able to provide such notices.

The parties noted that provisions also should be made for making customer service records available as well as providing call center support for questions, billing inquiries and complaints. The collaborative discussions did not result in a consensus as to what entity could provide the customer notice, customer information and call center support in the absence of the abandoning LSP providing these functions. However, the parties agreed that it would be very difficult for another entity to effectively provide these functions without the LSP's back office operations being fully functional.

The parties discussed the issue of another entity stepping in to manage the customer service aspects of an abandonment by a LSP that exits the market in an irresponsible manner. This led to a discussion about whether the Commission could require deposits from LSPs to ensure that an abandoning LSP had the financial resources available to provide the necessary customer service functions for abandonment. While the parties discussed several ideas pertaining to deposit requirements, letters of credit and liens tied to LSP applications, no clear consensus emerged as to a workable solution to ensure the provision of necessary customer service functions for abandonment.

*Disposition*

We determined that it is the responsibility of the LSP that is abandoning service to provide the customer service functions of notifying customers, providing customer service records to other carriers and maintaining call center support upon abandonment. The LSP is in the unique position of having the information to provide these func-



tions and should rightfully go about the process of abandoning service in an orderly fashion. The Commission or any other entity should not be placed in the position of carrying out the necessary customer service functions for a LSP who abandons service. Therefore, the Commission shall, through this regulation, spell out the requirements for the abandoning LSP to perform these necessary customer service functions for abandonment. We will refrain from imposing additional financial requirements in the form of deposits or letters of credit on all LSPs at this time. However, if the Commission continues to experience LSPs exiting the market in an irresponsible manner after the implementation of final abandonment rules, we may revisit the need for imposing additional financial requirements on all LSPs to ensure orderly abandonments of service. (§ 63.1106)

#### *Returning NNX Codes to the Area Code*

##### *Positions of the Parties*

When the Commission approved the Interim Guidelines Establishing a Local Service Provider Abandonment Process for Jurisdictional Companies, Commissioner Pizzingrilli, through a motion adopted by the Commission, directed that the abandonment collaborative promulgate regulations with provisions pertaining to the return of NXX codes. The motion stated:

1. The collaborative established to promulgate formal regulations regarding local service providers who abandon service address the disposition of these companies' NXX codes to ensure that any unused NXX codes are returned to the area code.
2. The regulations include a specific process through which local service providers who abandon service are required to return any unused NXX codes to the North American Numbering Plan Administrator (NANPA).

The collaborative parties discussed the issue and noted that a process already exists for returning unused NXX codes back to NANPA.

##### *Disposition*

We have incorporated specific provisions in the regulations that coincide with the process<sup>6</sup> that already exists for returning unused telephone numbers to the number administrator. An abandoning LSP shall provide written notice to the National Number Administrator authorizing the release of all assigned telephone numbers to other companies and releasing all unassigned telephone numbers to the number administrator. (§ 63.1106(d))

#### *Abandonment Plan*

##### *Positions of the Parties*

The parties reviewed and discussed a draft of the Pennsylvania Mass Migration Guidelines that was prepared by Verizon PA. The Pennsylvania draft was based on the New York Mass Migration Guidelines<sup>7</sup> that were in effect and governed the abandonment process in New York. Several of the parties assisted in the development of the New York Mass Migration Guidelines and had operational experience with the guidelines.<sup>8</sup> One central part of the New York guidelines is the provision for the existing

local service provider to file an exit plan with the New York Public Service Commission. The parties agreed that the Pennsylvania regulations should have a similar provision that requires an abandoning LSP to file an exit plan with the Commission.

##### *Disposition*

We have incorporated a provision in the regulations for the filing of an abandonment plan with the Commission. An abandoning LSP shall file an abandonment plan with the Commission at least 90 days in advance of abandoning service. The regulation provides a checklist of information that is to be included in the abandonment plan. Further, the abandonment plan contains provisions for how customer service records will be made available to other carriers so that customers can be migrated to new service providers. The rules also require for the LSP to include plans for maintaining toll-free telephone access to the LSP's call center. (§ 63.1106)

There are three overall abandonment scenarios, each having implications for customer notices, customer selection periods and migration periods. The first overall scenario is when the abandoning local service provider (LSP) has made arrangements for some or all of its customers to be transferred to an acquiring LSP.

In this scenario, the abandoning LSP will send a notice 60 days in advance of the exit date advising customers subject to acquisition that they have 30 days to select another LSP or they will automatically be transferred to the new (acquiring) LSP. The 60 day timeframe allows customers to shop in the first 30 day period, the remaining 30 days provides for migration of service. Customers subject to acquisition who have not selected a new LSP in the first 30 days will automatically be migrated to the acquiring LSP. To prevent double migration, customers who are automatically migrated to the acquiring LSP will not be able to select another LSP during the 30 day migration period.

Customers who are subject to acquisition will be notified by the acquiring carrier 60 days before the exit date (commensurate with the start of the 30 day selection period) of the rates and terms of the acquiring carrier so that they can use the information in their decision-making process.

A second overall scenario is when there are customers who are not subject to acquisition but are subject to default service provisions with the network service provider (NSP). In this scenario, the abandoning LSP will send a notice 60 days in advance of the exit date, advising customers that they have 30 days to select another LSP or they will be automatically transferred to the default NSP. The 60 day timeframe allows customers to shop in the first 30 day period, the remaining 30 days provides for migration of service. Customers who do not select a new LSP in the first 30 day selection period will be automatically migrated to the NSP during the subsequent 30 day period. To prevent double migration, customers who are being automatically migrated to the NSP will not be able to select another LSP during the 30 day migration period.

The third overall scenario is when there are customers who are not subject to acquisition or default NSP service. In this scenario, the abandoning LSP will send a notice 60 days in advance of the exit date that they have 30 days to shop and select another LSP or they risk losing their local service. Customers who do not select a new LSP in the first 30 day period will receive a second notice,

<sup>6</sup>Implementation of Number Conservation Measures Granted to Pennsylvania by the Federal Communications Commission in its Order released March 31, 2000—NXX Code Reclamation, M-00001373 (August 22, 2000).

<sup>7</sup>New York State Public Service Commission Mass Migration Guidelines, Case No. 00-0188, revised January 2, 2003.

<sup>8</sup>Although New York's Guidelines are not regulations, they are the product of a collaborative process which culminated with a Commission order adopting the Guidelines. As such, under New York law, the Guidelines warrant mandatory compliance by the industry.

30 days before the exit date, notifying them that they have 20 days to select a new LSP or they will likely lose local service.

#### *Abandonment Program Manager*

##### *Positions of the Parties*

The New York Mass Migration Guidelines provide for the appointment of a program manager to coordinate the abandonment process. The program manager works with project managers from each of the parties involved in the abandonment process. The parties noted that this was a worthwhile feature of the New York process and supported its incorporation into the Pennsylvania Abandonment Process.

##### *Disposition*

We have included language in the proposed regulations requiring the abandoning LSP to appoint a program manager to coordinate the abandonment process among the other principle entities that would be involved. The program manager will be selected from the abandoning LSP or, if applicable, from the acquiring LSP. The program manager will coordinate with a project manager from the Commission and, depending on the circumstance, a project manager from the NSP default provider. (§ 63.1107)

#### *Commission Posting Abandonment Information*

##### *Positions of the Parties*

One provision of the New York Mass Migration Guidelines that was discussed and generally endorsed by the parties was that the Commission post information about an impending abandonment on its website. This feature would allow other service providers to be aware of the abandonment so that they may make a special effort to migrate any customers who may seek service with a new provider.

##### *Disposition*

We have adopted a provision that the Commission will post information of an impending abandonment on our website under the title "Local Service Telephone Provider Abandonment Notification." (§ 63.1108)

#### *Default Provider Obligations*

##### *Positions of the Parties*

The parties engaged in limited discussion about the concept of a default provider for local service. The OCA commented on numerous occasions about the need for default provider coverage in Pennsylvania.

##### *Disposition*

While we have not included provisions for a comprehensive default provider function in the proposed regulations, we have adopted somewhat limited provisions that mirror in part New York's guidelines in this area. In cases where the abandoning LSP serves its customers through resale using the NSP's facilities and customers have not chosen a new provider in a timely manner and have not been picked up by an acquiring carrier, we have designated the NSP as the default provider so that customers will not lose their local service. In recognition of the possibility that some customers may be returning to the NSP with an outstanding balance from a previous service period with the NSP, we have sought to limit the NSP's financial exposure by requiring that the NSP provide 30 days of provisional local service. During the 30-day provisional service period, customers who have an outstanding balance with the NSP must pay the arrearage or make arrangements with the NSP to do so. Failure to make full

payment or arrangements for payment could result in the loss of default provisional basic service from the NSP. The default provider provisions seek to strike a balance so that resale customers do not fall through the cracks and find themselves without local service and at the same time provide for the payment of outstanding arrears with the NSP. (§ 63.1110)

#### *Abandonment Progress Reports*

##### *Positions of the Parties*

The parties discussed a provision in the New York Mass Migration Guidelines whereby the Commission is provided with progress reports on the status of the customer migrations. The parties recommended that this provision also be incorporated into the Pennsylvania Abandonment Process.

##### *Disposition*

We have included a provision in the proposed regulations that requires the abandoning LSP to track the progress of the number of customers that have and have not migrated to a new LSP and to provide the Commission with status reports. The reports will enable the Commission to evaluate the need to potentially revise the abandoning carrier exit date should that become necessary. The progress reports could also be useful to the NSP default carrier by providing an estimate on the number of customers who may be coming to the NSP default provider for service. (§ 63.1111(a))

#### *Second Customer Notification*

##### *Positions of the Parties*

Another provision in the New York Mass Migration Guidelines that received support from the parties was having the abandoning LSP send a second customer notice to customers who have not taken action to select a new LSP. The purpose of a second notification would be to alert the customer to take action to select another LSP so that their local service would continue uninterrupted.

##### *Disposition*

We have incorporated a provision in the proposed regulations for the abandoning LSP to send a second customer notice under certain conditions. The second notice provision is applicable when customers have not selected another LSP within the 30 day shopping period and they will not be automatically transferred to the acquiring carrier or the NSP default provider at the close of the 30 day shopping period. (§ 63.1111(b))

The Commission requests that the parties provide comments as to whether the regulations should have a provision that notifies customers of the need to contact their regional and long distance carrier(s) about the change in LSP. The purpose of such a provision would be to insure that the change in LSP will not adversely affect their current regional long distance plan. The Commission seeks comments as to whether such a provision is necessary.

##### *Conclusion*

Accordingly, pursuant to sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; to sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, as amended, 45 P. S. §§ 1201—1202, and the associated regulations at 1 Pa. Code §§ 7.1, 7.2, and 7.5;

section 204(b) of the Commonwealth Attorneys Act, Act of October 15, 1980, P. L. 950, as amended, 71 P. S. 732.204(b); section 745.5 of the Regulatory Review Act, Act of June 25, 1982, P. L. 633, as amended, 71 P. S. § 745.5; section 612 of the Administrative Code of April 9, 1929, P. L. 177, as amended, 71 P. S. § 232, and the associated regulations at 4 Pa. Code §§ 7.231—7.234, we are considering adoption of the proposed regulations regarding the abandonment process for local service providers, as set forth in Annex A: *Therefore*,

*It Is Ordered That:*

1. This docket be opened to consider the proposed regulations set forth in Annex A.

2. The Secretary shall submit this Order and Annex A to the Office of Attorney General, for review as to form and legality, and to the Governor's Budget Office, for review of fiscal impact.

3. The Secretary shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. The Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. An original and 15 copies of any comments referencing the docket number of the proposed regulations be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. In addition, one copy in electronic format (Microsoft Word® 2002 or readable equivalent) on diskette shall be provided to the Secretary and a second copy on diskette shall be provided to the attention of Wayne Williams, Bureau of Consumer Services, at the same mailing address.

6. The contact persons for this rulemaking are Wayne Williams, Bureau of Consumer Services, 717-787-7137 (technical), and Terrence J. Buda, Assistant Counsel, Law Bureau, 717-787-5755 (legal). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, 717-772-4597.

7. A copy of this Order and Annex A shall be served upon AT&T Communications of Pennsylvania, Inc.; ATX-CoreComm; CTSI/Commonwealth Telephone; Choice One Communications of PA, Inc.; MCIWorldcom Network Services, Inc.; Metropolitan Telecommunications; North Pittsburgh Telephone Company; Sprint/United Telephone Company; Verizon Pennsylvania, Inc. and Verizon North, Inc.; Z-Tel Communications; the Pennsylvania Telephone Association; the Pennsylvania Cable Television Association; the Office of Consumer Advocate; the Office of Small Business Advocate; the Pennsylvania Utility Law Project; and the Office of Trial Staff; and the North American Numbering Plan Administrator.

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-232. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

##### Subpart C. FIXED SERVICE UTILITIES

##### CHAPTER 63. TELEPHONE SERVICE

##### Subchapter N. LOCAL SERVICE PROVIDER ABANDONMENT PROCESS

Sec.	
63.301.	Statement of purpose and policy.
63.302.	Definitions.
63.303.	NSP embargo process.
63.304.	NSP termination process for wholesale customers.
63.305.	Initiation of abandonment.
63.306.	Abandoning LSP obligations for abandonment.
63.307.	Abandonment process management.
63.308.	Commission consideration and action.
63.309.	Acquiring LSP provisions and obligations.
63.310.	NSP obligations to serve as the default LSP.
63.311.	Abandoning LSP follow-up obligations.

#### § 63.301. Statement of purpose and policy.

(a) *Purpose.* The purpose of this subchapter is to:

(1) Provide for an orderly process when a NSP intends to embargo and terminate service to a LSP.

(2) Provide for an orderly process when a LSP seeks to stop the provision of existing service to residential and business customers under the following circumstances:

(i) A NSP that provides part or all of the services necessary to provide local service is intending to terminate a LSP's service agreement.

(ii) The Commission has issued an order to revoke a LSP's certificate of public convenience.

(iii) A LSP has filed an application to abandon a certificate of public convenience for the provision of local service.

(3) Ensure that customers do not lose service when their LSP exits the market.

(4) Ensure that customers are provided ample notice and the opportunity to select a new LSP of their choice.

(5) Coordinate information flow and activities through a project management team.

(6) Ensure that an abandoning LSP provides sufficient network information so that customers are able to be migrated seamlessly.

(7) Ensure that an abandoning LSP coordinates with 9-1-1 service providers and the North American Numbering Plan Administrator.

(b) *Application.*

(1) This subchapter applies to a LSP that provides local service to residential or business customers.

(2) This subchapter applies to a NSP that provides wholesale telephone service to a LSP and intends to embargo or terminate the LSP's service.

#### § 63.302. Definitions.

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

*Abandon*—To cease providing local service to existing customers. The term does not include discontinuance as a result of a customer's request or a temporary change in the provision of service that may arise from maintenance repair or failure of a LSP's equipment or facilities.

*Abandoning LSP*—A LSP that seeks to abandon providing local service to existing customers in a service area.

*Acquiring LSP*—A LSP that undertakes to provide local service to customers of the abandoning LSP after the abandoning LSP is permitted to alter or abandon providing local service.

*CSR—Customer service record*—Documentation indicating the customer's name, address, contact telephone number, quantity of lines, services, features and other information associated with a customer account.

*Customer*—The end-user recipient of telephone service provided by a LSP.

*Default LSP*—A NSP that assumes responsibility for the provision of local service when an abandoning LSP is a reseller of that NSP's service.

*Embargo*—The pretermination process in which a NSP refuses to process local service change requests or initiate new local service requests because the LSP that is reselling the NSP's services or buying the NSP's unbundled network elements (UNE) or unbundled network elements with platform (UNE-P) facilities is delinquent in paying for those services or facilities.

*Exit date*—The date upon which an abandoning LSP intends to cease providing telecommunications service.

*LSP—Local service provider*—A company, such as a local exchange carrier (LEC), that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods of providing local service to a customer.

(i) NLSP indicates "new" LSP, and OLSP indicates "old" LSP.

(ii) A LSP may also provide other telecommunications services, as well as nonjurisdictional services.

*Local service*—Telecommunications service within a customer's local calling area.

(i) The term includes the customer's local calling plan, dial tone line, touch-tone and directory assistance calls allowed without additional charge.

(ii) The term also includes services covered by the Federal Line Cost Charge, Pennsylvania Relay Surcharge, Federal Universal Service Fund Surcharge, Local Number Portability Surcharge, Public Safety Emergency Telephone Act (9-1-1) Fee and applicable Federal and State taxes.

*Local service reseller*—A LSP that resells another company's wholesale telephone services to provide local service to customers.

*NSP—Network service provider*—A carrier that interacts with LSPs and provides the facilities and equipment components needed to make up a customer's telecommunications service. A NSP may be referred to as an underlying carrier, and may also be a LSP.

*Wholesale customer*—A LSP that provides local service by resale or by unbundled network elements (with or without platform).

### § 63.303. NSP embargo process.

(a) *Authorized reasons for a NSP to embargo service.* A NSP may embargo service to a wholesale customer for the following reasons:

(1) Failure of the wholesale customer to pay an undisputed delinquent amount for services necessary to provide

customers with local service when that amount remains unpaid for 30 calendar days or more after the bill is rendered.

(2) Failure of the wholesale customer to abide by the terms and conditions of a Commission-approved interconnection agreement related to the provision of local service.

(3) Failure of the wholesale customer to comply with the terms of a payment agreement related to the provision of local service.

(4) Failure of the wholesale customer to comply with a Commission order related to the provision of local service.

(b) *Unauthorized reasons for a NSP to embargo service.* Unless specifically authorized by the Commission, a NSP may not embargo service for the following reasons:

(1) Failure of a wholesale customer to pay a charge unrelated to the provision of local service, for example, a charge for a LSP's own directory advertising in a NSP's yellow pages directory.

(2) Failure of a wholesale customer to pay a charge that was not previously billed prior to the due date of the current bill.

(3) Failure of a wholesale customer to pay a charge that is under a payment agreement prior to the date of payment set forth in the agreement.

(4) Failure of a wholesale customer to pay a charge that is at issue in a complaint before the Commission unless an embargo is specifically authorized by the Commission.

(5) Failure of a wholesale customer to pay a charge when there is an open complaint or dispute with a NSP about the accuracy or correctness of the charge. A wholesale customer is obligated to pay amounts not under complaint or dispute.

(c) *Embargo notification provisions.*

(1) At least 10 days prior to the initiation of an embargo, a NSP shall issue a written notice of embargo to the wholesale customer using the following procedures:

(i) A NSP shall send the embargo notice by first class mail unless other methods of delivery have been agreed to as part of the service agreement or are provided for in an applicable tariff.

(ii) A NSP shall address the embargo notice to the wholesale customer's designee.

(iii) A NSP shall send a copy of the embargo notice to the Secretary of the Commission and to the Commission's Bureau of Consumer Services.

(2) The embargo notice to a wholesale customer shall include the following:

(i) The date that the embargo shall begin. The beginning date given for the embargo may not be less than 10 days from the date the notice is mailed or otherwise delivered.

(ii) The amount owed which forms the grounds for the embargo.

(iii) The embargo issuing NSP's contact information to be used by a wholesale customer for payment of the NSP's bill.

(iv) A statement that if the bill is not paid or other acceptable arrangements are not made prior to the embargo date, the embargo shall commence on that date and a termination notice shall be issued.

**§ 63.304. NSP termination process for wholesale customers.**

(a) *Termination process initiation.*

(1) A NSP may initiate the termination process if a wholesale customer has not made payment in full or entered into a mutually acceptable written agreement for payment of outstanding debt by the embargo start date posted on the embargo notice.

(2) A NSP may not initiate the termination process for delinquent indebtedness which is the subject of an open dispute with the NSP or a pending complaint with the Commission filed by a wholesale customer.

(3) If during the termination process a wholesale customer initiates a properly filed dispute with a NSP or with the Commission, the NSP shall suspend the termination process unless it is based on other indebtedness that is not disputed.

(b) *Termination notice.*

(1) A termination notice from a NSP to a wholesale customer shall include the following:

(i) The date of the notification and reason for termination.

(ii) The date services shall be terminated unless payment is received or other mutually acceptable arrangements are made.

(iii) The amount owed, if applicable.

(iv) A contact telephone number and name for the NSP.

(2) A NSP shall provide a copy of the notice to the Commission's Secretary's Bureau, Bureau of Consumer Services and Law Bureau.

**§ 63.305. Initiation of abandonment.**

A LSP shall initiate abandonment of service when a NSP initiates the termination of a LSP's service, when the Commission issues an order to revoke a LSP's certificate of public convenience or when a LSP has made proper application to the Commission to abandon service.

(1) *NSP initiation.*

(i) A NSP that intends to terminate the service of a LSP that serves residential or business customers shall provide prior notice to the LSP and the Commission electronically and by first class mail 110 calendar days in advance of the scheduled termination.

(ii) The Commission may require a NSP to extend a LSP's termination date until the LSP properly notifies its customers.

(2) *Commission initiation.* The Commission may initiate the abandonment of a LSP's service through the issuance of a Commission order that revokes the LSP's certificate of public convenience.

(3) *LSP initiation.* A LSP may initiate the voluntary abandonment of some or all of its local service customers by filing with the Commission an application to abandon service to some or all of its existing customers. A LSP shall file an application to abandon service not less than 90 calendar days prior to the date when financial or operational data indicates there is a likelihood that the LSP may be unable to provide service to some or all of its customers.

**§ 63.306. Abandoning LSP obligations for abandonment.**

(a) *General.* Upon receiving a termination notice from a NSP, or upon receiving a Commission order notifying a

LSP of an effective date for revoking its certificate of public convenience, or upon a LSP's voluntary filing of an application to abandon service, the abandoning LSP shall make a good faith effort to secure an acquiring carrier to serve the customers it plans to abandon.

(b) *Abandonment plan.* The abandoning LSP shall file an abandonment plan with the Commission not less than 90 calendar days in advance of abandoning service. The abandonment plan shall contain the following information:

(1) An identification of the telecommunications services, either facilities-based or through resale, to be abandoned or curtailed in the associated service territory.

(2) An explanation of reasons for the abandonment of service.

(3) A detailed outline of the procedures a LSP shall use to ensure continuation of service for its affected customers. The abandoning LSP shall demonstrate that the abandonment will not deprive the public of necessary telecommunications services.

(4) The notices required by this section.

(5) A plan for an abandoning LSP to provide a list of current customers to the Commission within 60 calendar days prior to the exit date.

(6) A draft of an initial letter to be sent to customers.

(7) A plan for follow-up notification arrangements—for example, a second letter, phone calls, bill inserts, e-mail, and the like.

(8) A proposed exit date if the abandonment is initiated by termination by a NSP or by Commission order. The exit date may not be later than the termination date provided by the NSP or the date the certificate of public convenience is to be revoked.

(9) A date when customers shall select a carrier.

(10) Contact names and telephone numbers for a LSP's program manager, the regulatory contact and other pertinent contacts, for example, the contact for customer service records (CSR) or provisioning contacts.

(11) The arrangements made for an acquiring carrier.

(12) The procedures to be taken with the North American Numbering Plan Administrators (NANPA) to transfer NXX codes or thousand number blocks (if applicable) while preserving number portability for numbers within the code.

(13) The name of the NSP and the current customer serving arrangements, for example, UNE-P (x carrier), resale (y carrier), UNE-L (x carrier) or Full Facilities.

(14) An identification of customers when the abandoning carrier is the only provider of facilities to a customer or group of customers.

(15) The number of customers impacted.

(16) The format of the CSRs, a statement of what data elements are in the CSRs and a statement of how the CSRs will be made available to other carriers.

(17) The details of a transfer of assets or control that requires Commission approval.

(18) A request to modify or cancel tariffs.

(19) A plan for processing customer deposits, credits and termination liabilities or penalties.

(20) A plan for unlocking the E-9-1-1 records.

(21) A plan for maintaining toll-free telephone access to an abandoning LSP's call center (including customer service and billing records) so that a customer is able to contact the LSP to inquire about or dispute final bills and refunds.

(22) When the default LSP provisions apply, a plan for providing the default LSP with the CSRs of customers who will be migrated to each default carrier. The CSRs shall be provided to the default LSP in electronic format 28 days prior to the exit date so that the default LSP shall notify the migrating customers of the terms and conditions of service.

(c) *Transfer of customers' 9-1-1/E-9-1-1 records.*

(1) *Transfers to a NLSP.* An abandoning LSP shall unlock all of its telephone numbers in the 9-1-1/E-9-1-1 records to provide a NLSP with access to the abandoning LSP's customers' 9-1-1/E-9-1-1 records. The abandoning LSP shall unlock the 9-1-1/E-9-1-1 records in compliance with the National Emergency Numbering Association's (NENA) standards.

(2) *Transfers after abandonment.* An abandoning LSP shall submit a letter to the appropriate 9-1-1/E-9-1-1 service provider authorizing the 9-1-1/E-9-1-1 service provider to unlock remaining 9-1-1/E-9-1-1 records after the LSP has abandoned the market. The abandoning LSP shall provide this letter at least 30 days prior to abandoning the market.

(d) *Notification to the industry and NANPA.*

(1) *Industry abandonment notice.* An abandoning LSP shall provide written notice to:

(i) Telecommunications corporations providing the abandoning LSP with essential facilities or services or UNEs that affect the abandoning LSP's customers.

(ii) Telecommunications corporations providing the abandoning LSP with resold telecommunications services, if resold service is part of the telecommunications services provided to the abandoning LSP's affected customers.

(2) *NANPA.* An abandoning LSP shall provide written notice to:

(i) The NANPA, when applicable, authorizing the release of all assigned telephone numbers to other telecommunications companies and releasing all unassigned telephone numbers to the number administrator.

(ii) The NANPA, authorizing the release of all assigned telephone numbers to the succeeding carriers not less than 66 days prior to the abandonment.

(3) The notice shall include identification of all working telephone numbers assigned to the customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers shall be available for reassignment.

(4) The abandoning LSP shall authorize the release of each individually assigned customer telephone number to the subsequent provider selected by the customer. The abandoning LSP may not abandon NXX codes or thousand block numbers if a number within the relevant range of numbers has not been completely ported.

(e) *Abandoning LSP notification to customers.*

(1) The abandoning LSP (and acquiring carrier if applicable) shall notify customers by letter not less than 60 days in advance of the exit date.

(2) The abandoning LSP shall provide customers with a list of the services (local basic, regional toll, long distance toll) that the abandoning LSP is currently providing to the customer. The abandoning LSP shall direct customers to choose a service provider to replace the service that it has been providing.

(3) If applicable, the abandoning LSP shall notify customers that if they do not act to obtain service from another LSP, the abandoning LSP shall automatically transfer them to a default carrier for local service provision.

(4) The notice of pending abandonment of service to residential and business customers shall contain the following:

(i) A printed teaser on the envelope and the notice containing the words "Important Notice, Loss of Local Telephone Service" printed in bold letters with a font size of at least 14 points, conspicuously displayed on the front of the envelope to attract the attention of the reader.

(ii) A statement on the notice: "At this time, (LSP name) provides you with local telephone service."

(iii) A statement on the notice: "As of (the exit date) (LSP name) will no longer provide your local telephone service and you must take action."

(iv) A statement on the notice: "To prevent the loss of your local telephone service, you must select another local telephone service provider on or before (list a specific date 30 calendar days prior to the exit date). If you act by this date there will be enough time for the new local service provider you choose to start your new service before your current service ends."

(v) A statement on the notice: "Please remember that customers may choose the provider of their local telecommunications service. You may select any company that is offering service in your area."

(vi) A statement on the notice: "This is an important notice (the word "important" in bold) about the loss of your local telephone service. If you have any questions or need more information, contact (LSP contact information including a toll-free telephone number)."

(vii) A list of alternative LSPs, including contact numbers and addresses, that serve the customer's area.

(viii) Information to customers outlining the procedure for obtaining refunds of credits and deposits, obtaining final bills and addressing questions or complaints.

### **§ 63.307. Abandonment process management.**

(a) The abandoning LSP shall appoint a program manager to coordinate the abandonment process. The program manager shall be selected from the abandoning LSP or, if applicable, the acquiring LSP.

(b) The program manager shall be accountable to each of the parties involved in the abandonment. The individual parties involved in the migration may be:

- (1) The abandoning LSP.
- (2) The acquiring LSP.
- (3) The default LSP.
- (4) The Commission.

(c) The parties involved in the abandonment shall appoint a project manager who will work with the program manager to ensure that the abandonment process flows in a seamless manner.

**§ 63.308. Commission consideration and action.**

(a) The Commission will post information of an impending abandonment on its website under "Local Service Telephone Provider Abandonment Notification."

(b) If necessary, Commission staff may establish an industry conference call to address potential problem areas and procedures with the abandoning LSP, as well as with the acquiring, default or other LSPs as applicable.

**§ 63.309. Acquiring LSP provisions and obligations.**

(a) An acquiring LSP shall notify customers by letter of the pending change of service providers 60 days in advance of the exit date.

(b) An acquiring LSP shall notify customers in writing of its rates and terms and conditions of service 60 days in advance of the exit date.

(c) An abandoning LSP and acquiring LSP may change the customer's local service provider without being considered to have engaged in slamming if the acquiring LSP does not change a customer's preferred interexchange carrier designation without the customer's authorization.

(d) An abandoning LSP shall reimburse the new provider (customer selected, acquiring carrier or default carrier) for the carrier change charges. The provision in this subsection does not relieve telecommunications providers of any requirements imposed by the Federal Communications Commission (FCC), including FCC anti-slamming rules and 47 CFR 63.71 (relating to procedures for discontinuance, reduction or impairment of services by domestic carriers).

(e) If an acquiring LSP determines that it will be unable to provide service to a customer by the abandoning LSP's exit date, the acquiring LSP shall notify the Commission, the customer and the abandoning LSP within 24 hours of the determination. If the customer is unable to select another available LSP, the abandoning LSP shall continue to provide service until the date on which a LSP is able to provide service or a date ordered by the Commission, whichever is earlier.

**§ 63.310. NSP obligations to serve as the default LSP.**

(a) *Default LSP.* When the following conditions are met, a NSP becomes the default LSP and shall continue to provide local service to customers who will not be served by an acquiring LSP and who have not selected another LSP:

(1) An abandoning LSP serves its customers through resale using the facilities of a NSP.

(2) There is no acquiring LSP or an acquiring LSP is not acquiring all customers from the abandoning LSP.

(3) One or more customers have not chosen a new LSP within the selection period.

(b) *Notification to customers.*

(1) A default LSP shall send a letter to customers who will be switched from an abandoning LSP to the default LSP 20 days prior to the exit date.

(2) The 20-day letter shall advise the customers that their service is being switched on a specific date and notify customers of the rates and terms and conditions of service.

(c) *Notification and service to customers with outstanding balances.*

(1) When a customer being switched to a default LSP has an outstanding balance for local service with the default LSP from a service period within the last four years, the default LSP shall provide provisional local service for at least 30 days from the exit date.

(2) A default LSP shall notify a customer that the customer has an outstanding balance, the amount of the balance and the time period over which the balance accrued.

(3) A default LSP shall inform a customer that the default carrier is obligated to provide local service only until (list a specific date that is 30 calendar days from the exit date) unless the customer pays the outstanding local service balance or makes a payment arrangement.

(4) Information shall be contained in the 20-day letter regarding how a customer may contact a default provider to make payment or enter into a payment arrangement.

(5) A customer who, upon notification of the customer's outstanding balance for local service, fails to make payment or enter into a payment arrangement for the outstanding balance may be subject to suspension and termination action by a default LSP after expiration of the 30-day provisional local service period.

**§ 63.311. Abandoning LSP follow-up obligations.**

(a) An abandoning LSP shall track the progress of migrations and provide Commission staff with progress reports on the number of customers that have and have not migrated to a new LSP. The frequency of the updates will vary with the magnitude of the mass migration and will be determined by the Commission on a case by case basis.

(b) An abandoning LSP shall send a second abandonment notice to a customer who is not subject to acquisition or default service with a NSP and has not taken action to select a new LSP. The service notice shall be sent 30 days before the exit date. The form of the second notice is left to the discretion of the abandoning LSP and may be the following:

(1) First class mail.

(2) A telephone call.

(3) A bill insert.

(4) Any other means of direct contact with the customer.

[Pa.B. Doc. No. 04-559. Filed for public inspection April 2, 2004, 9:00 a.m.]