

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]
Petition for Rulemaking

Public Meeting held
February 9, 2006

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Petition of the Office of Consumer Advocate for a Rulemaking to Amend 52 Pa. Code Chapter 63 (relating to Telephone Service); Doc. No. P-00021985

Order

By the Commission:

On October 2, 2002, the Office of Consumer Advocate (OCA) filed with the Commission a petition for rulemaking to revise Subchapters A, B, and E of Chapter 63 of the Commission's regulations. These regulations relate to telephone service and contain requirements regarding, inter alia, service and facilities, accounts and records, telephone service standards and confidentiality of customer information.

Because of the passage of time and most importantly, the enactment of the new Chapter 30, 66 Pa.C.S. §§ 3010—3019, we are seeking updated comments to OCA's proposed revisions to these regulations. Comments are requested on any aspect of the OCA's proposed revisions and the regulations in Subchapter A, B, and E. Note that earlier filed comments remain of record in this proceeding and parties are requested not to repeat prior comments. Additional comments, however, are specifically requested on the possible continuation of service surveillance exception data and reports at 52 Pa. Code §§ 63.53 and 63.55.

Based on our review of these further comments and replies thereto, as well as the previously filed comments, we will determine whether these Commission regulations should be amended, supplemented, or deleted pursuant to a rulemaking.

Discussion

I. Background

The OCA Petition was initially published November 2, 2002 at 32 Pa.B. 5416 with a comment period ending December 2, 2002. Reply comments were not specifically permitted.

Comments were filed by nine parties,¹ including the OCA. Local Service Providers (LSPs) filed the majority of the comments and strongly opposed the petition. The opposition was based primarily on the costs of compliance with the proposed service requirements.

¹ Parties filing comments included OCA, Pennsylvania Telephone Association, Pennsylvania Cable and Telecommunications Association (PCTA), AT&T Communications (AT&T), Metropolitan Communications (Met Tel), Public Utility Law Project (PULP), MCI WorldCom Network Services, Inc., Citizens for Consumer Justice (late-filed comments), and Verizon Pennsylvania Inc. and Verizon North Inc. (collectively Verizon, filing joint comments).

On December 19, 2002, the Pennsylvania Telephone Association (PTA)² filed a letter protesting that OCA filed comments to its own petition. PTA claimed that OCA's comments added arguments in support of its petition and also added an affidavit from a consultant. PTA proposed that the Commission allow reply comments to provide others with the opportunity to address OCA's new arguments.

In accordance with PTA's request, on February 14, 2003, the Commission issued a Secretarial Letter establishing a reply comment period ending February 28, 2003. A notice inviting all interested parties to file reply comments was posted at the Commission's website. Reply comments were filed by four parties.³

Subsequently, two significant events occurred that affected the Commission's authority in regard to the regulation of LSPs specifically in regard to reporting requirements required. These prompted the Commission to postpone any immediate action on OCA's petition.

In June 2004, the Pennsylvania House of Representatives passed House Resolution 786 that directed the joint Legislative Budget and Finance Committee (LB & FC) to study LSP filing and reporting requirements and to report its findings. In its November 17, 2004 report, the *PUC Filing and Reporting Requirements on Local Exchange Carriers (LB & FC Report)*, the LB & FC identified and analyzed 30 reports, filings and other documents, and made its overall recommendation—that the Commission begin the process of reducing the regulatory requirements for local exchange carriers (LECs herein LSPs) in Pennsylvania by eliminating regulations requiring reports. The LB & FC recommended several avenues for accomplishing this goal, including updating the Commission's current computer capability, consolidating similar information in various reports, and eliminating regulations requiring reports that have been temporarily waived, suspended or otherwise no longer required.⁴ *LB & FC Report* at S-3-4.

Shortly thereafter, in December 2004, the General Assembly enacted Act 183⁵ that substantially amended the Public Utility Code relating to alternative forms of regulation for Local Exchange Telecommunications Companies (LETCs).⁶ In particular, Act 183 contained specific provisions that reduce the level of annual, quarterly and other periodic reporting requirements for LETCs to a required nine reports to be "submitted in the form determined by the Commission." 66 Pa.C.S. § 3015(e).

² According to PTA's Comments, it represented 30 member companies at the time. PTA Comments, p.1, fn. 1.

³ Parties filing reply comments include PTA, Verizon, PCTA, and OCA.

⁴ It is noted that two of the reports studied by the LB & FC—Accident Reports, Standard Service Surveillance Level Report—are required by regulations in Chapter 63, subchapters A, B and E that are the subject of the OCA Petition. While we will address the section 63.53 and 63.55 reports at this docket, the section 63.11 Accident Report was eliminated by the Commission in *Section 3015(f) Review Regarding the Lifeline Tracking Report, Accident Report and Service Outage Report*, Order entered December 30, 2005 at Docket No. M-00051900.

⁵ Effective December 1, 2004, Act of 2004, P. L. 1398, No. 183 (Act 183) became the new Chapter 30 to Title 66 of the *Pennsylvania Consolidated Statutes*. 66 Pa.C.S. §§ 3010—3019.

⁶ One of the challenges in this Order and in any subsequent rulemaking is the reconciliation of the different terms that have been used to refer to incumbent and competitive telecommunications companies over the past 20 years. The Commission most recently adopted the term "local service provider" or "LSP." This term applies to a local exchange carrier (LEC), a competitive exchange carrier (CLEC), an alternative service provider (ASP), a local exchange telecommunications company (LETC), and a public utility. LETC and ASP are terms defined in the newly enacted in the Chapter 30. A LETC is:

[a]n incumbent carrier authorized by the commission to provide local exchange telecommunications services. The term includes a rural telecommunications carrier and nonrural telecommunications carrier. . . .

An ASP is defined as an entity that provides communications services in competition with a LETC. 66 Pa.C.S. § 3012 (relating to definitions). For simplicity, the term "local service provider" or "LSP" is used generally in this Order, except where it is necessary to refer to specific subgroups of LSPs.

II. OCA Petition

In its petition, the OCA proposed revisions to Chapter 63 regulations, specifically 52 Pa. Code Subchapters A (relating to general provisions), Subchapter B (relating to service and facilities) and Subchapter E (relating to telephone quality standards). For example, the proposed revisions would, inter alia, amend section 63.14(a)(2) (relating to emergency equipment and personnel) to require LSPs to increase minimal battery reserves at local offices; amend section 63.18 (relating to multiparty line subscribers) to eliminate multiple party line service; amend section 63.56 (relating to measurements) to require LSPs to engage in programs to install network interface devices (NIDs) for all customer service lines; and amend section 63.57 (relating to customer trouble reports) to require payment to customers in the form of a service credit a penalty for late or missed appointments for service installation or repair. Also, OCA proposed at section 63.63 (relating to transmission requirements and standards) additional requirements relating to transmission standards including the reduction of transmission loss, the reduction of metallic noise and impulse noise level, and the maintenance of a minimum speed of 28,800 bits of data per second for data transfer. OCA further suggested revising section 63.23 (relating to construction and maintenance safety standards for facilities) to update to the reference to the National Electrical Safety Code from the 1981 edition to the current edition. Section D of the OCA Petition lists these and other proposed revisions to the regulations and is reproduced as an attachment⁷ to this Order.

III. Summary of Comments and Replies

Two commenters support the OCA's petition—the Public Utility Law Project (PULP) and Citizens for Consumer Justice (CCJ).⁸

PULP comments single out certain provisions that it felt deserved specific mention. These included, among others, the following: a requirement for carriers to provide dial-up at a minimum 28.8 Kbps in section 63.63 (relating to transmission requirements and standards); the installation of NIDs for every customer in section 63.56 (relating to measurement); and the requirement that service quality information be reported publicly on an exchange-by-exchange basis in section 63.55 (relating to surveillance levels). CJC's comments do not address any specific OCA provision but provide three reasons for the Commission to initiate a quality-of-service rule-making: (1) the urgent need for service improvement; (2) the great need to create standards for internet service; and (3) the need for the Commission to require telecommunications companies to supply increased financial documentation.

On the other hand, the majority of the commenters, which were telecommunications companies and trade associations, oppose OCA's petition for a rulemaking in general and a number of its proposals for revision of specific regulations in particular. For the most part, these commenters are in agreement with PTA's position that a demonstration of need for further standards, surveillance and reporting was minimally required, given the "streamlined" form of regulation under which its members oper-

ate, and that the OCA's petition did not demonstrate this need with supporting evidence. *PTA Comments*, p. 2. PTA argues that these new requirements would create costs that would need to be passed on to consumers. *PTA Comments*, p. 2. PTA also argues that it was not appropriate to impose regulations written for wire line companies on other service providers using different technologies. *PTA Comments*, p. 3.

As to specific OCA proposals, PTA states that service reports should not be filed as "public documents," and that any reports required by the Commission should be submitted on a proprietary basis. PTA states that OCA should follow current practice whereby OCA contacts the company and requests a limited exception to the propriety designation of such reports. As for revising section 63.55 to require service surveillance reporting on an exchange-by-exchange basis, PTA argues that doing so would be burdensome and states that service surveillance should be done on a company-wide basis. *PTA Comments*, pp. 4, 7.

PTA also opposes OCA's addition in section 63.56 (relating to measurements) of a mandatory installation program for NIDs as unnecessary and inflexible. PTA believes that the FCC may have preempted state action in regard to such matters. *PTA Comments*, pp. 7-8.

On establishing a minimum transmission speed of 28.8 Kbps at section 63.63, PTA strenuously objects and questions the authority of the Commission to impose such a requirement. PTA does not have an estimate as to the cost of upgrading all networks at all points to a minimum 28.8 Kbps standard but claims that the costs would be significant. *PTA Comments*, pp. 13-18.

In regard to the proposed deletion of section 63.18 (relating to multiparty line subscribers) PTA responds that there are still customers who are multiparty line service subscribers so that the regulation is still needed. *PTA Comments*, p. 5.

In its comments, the PCTA echoes another often repeated concern—that OCA's proposed amendments could impose a burden on the competitive market entrant, thereby undercutting the competitive marketplace. *PCTA Comments*, pp. 1-2. PCTA reserves comment on most of the proposals, but does raise the competitive disadvantage issue in expressing its opposition to OCA's proposed revision to section 63.63 (relating to transmission requirements and standards) that requires carriers to be capable of supporting dial-up Internet access at a minimum speed of 28.8 Kbps. *PCTA Comments*, p. 2.

In its comments dated December 2, 2002, the OCA supports it request for the implementation of a minimum modem speed requirement for dial-up Internet service. *OCA Comments*, pp. 5-7. The OCA states that a rule-making should be initiated to update Chapter 63 regulations regarding service quality since the existing regulations are out-of-date and incomplete. *OCA Comments*, pp. 7-11. Attached to its comments OCA submitted a discussion paper by consultant Rowland Curry, on network functionality and modem speeds.

In its reply comments dated February 28, 2003, OCA argues that some minimum dial-up modem speed is a necessary element of local exchange service, and answers arguments from Verizon, PTA and PCTA regarding the need for, the utility of, and the impact on competition of the Commission's establishing minimum modem speeds, and the authority of the Commission to establish minimum. *OCA Reply Comments*, p. 7-12. OCA replies to PTA's comments that it would be impractical for smaller

⁷ Attachment A to this order is a WORD version of Section D of OCA Petition, paragraphs 18 to 30 at pp. 9-11. This section, entitled *Amendments Requested*, describes OCA's then-requested changes to the regulations. Note that Attachment B referenced in paragraph 18 of OCA's petition is not part of the attachment. It was omitted because of its length.

⁸ The Center for Consumer Justice is a coalition of over 300 organizations and individuals representing a variety of consumer issues including improvement of health care, preservation of social security, promoting workplace safety, providing for public transportation, increasing access to courts and improving telecommunications service.

telecommunications companies to report on service quality on an exchange-by-exchange basis by proposing eliminating the requirement for companies with fewer than a certain number of exchanges. *OCA Reply Comments*, p. 13. OCA states in response to Verizon that because the utility already monitors service quality on an exchange basis, it would take little additional work to monitor service on an exchange-by-exchange basis. *OCA Reply Comments*, pp. 13-14. To PTA's comment that reports on service quality should be submitted on a proprietary basis, OCA states that the proposal is disturbing because the PTA is seeking Commission assistance in keeping this information from the public and competitors to the detriment of competition in the marketplace. *OCA Reply Comments*, p. 15.

In its reply comments, PTA states that the Commission should let Network Modernization Programs that are in place work. *PTA Comments*, p. 2. PTA also states that OCA failed to take into account the significant costs of needed network changes to guarantee a minimum modem speed of 28.8 Kbps and would need to be passed onto consumers. *PTA Comments*, pp. 2, 5-7.

PTA denies that Chapter 63 regulations are out of date. PTA states that companies do comply with the current edition, not the 1981 edition of the National Electrical Safety Code. *PTA Reply Comments*, p. 7. Also PTA points out that there are multiparty line service subscribers so that section 63.18 need not be eliminated. *PTA Reply Comments*, p. 8.

In its Reply Comments, the PCTA objects to the requirement of minimum modem speed for Internet dial-up arguing that it would hinder the development of the competitive market place; that any regulation regarding Internet access and assertion of corresponding jurisdiction would be premature and the issue is more appropriately addressed by the General Assembly in its Chapter 30 review. *PCTA Reply Comments*, p. 2.

Verizon's Reply Comments echo those of PTA on subject matter in regard to the need and costs of a minimum modem speed for Internet dial-up. *Verizon Reply Comments*, p. 2-3. Also Verizon disputes the necessity of initiating a rulemaking to update these regulations based on correcting section 63.23 to refer to the current version of the National Electrical Safety Code and the need to eliminate section 63.18 when customers still subscribe to multiparty service. *Verizon Reply Comments*, pp. 3-4.

No commenter objected to the proposal that the reference to the "National Electrical Safety Code, 1981 edition" in section 63.23 (relating to construction and maintenance safety standards for facilities) be updated to the current version, except that PTA stated that making this change in one regulation did not justify opening a rulemaking on Chapter 63 regulations. *PTA Reply Comments*, p. 8.

IV. Resolution

Based on the petition and comments, OCA's proposals to improve and clarify telephone service quality standards warrant further and updated comments.

OCA's suggestion to update the reference to the 1981 National Electrical Safety Code to the current version of the National Electrical Safety Code in section 63.23 (relating to construction and maintenance safety standards for facilities) certainly has merit. Other proposals, such as the addition to section 63.56(h) (relating to measurements) of a requirement for the installation of a NID for each customer, while providing a benefit to customers may not be practical in terms of today's costs, or possible in light of the enactment of Act 183 or federal law that

might preempt state action. Other proposals may create unintended consequences, such as the proposal to delete section 63.18 (relating to multiparty line subscribers) when according to PTA comments, there still are customers that subscribe to multiparty line service.

Accordingly, due to the passage of time since the initial comments and replies were filed, as well as the enactment of Act 183, it is incumbent upon us to seek updated comments from interested parties⁹ before we propose any specific regulations on this subject matter in the context of a formal rulemaking proceeding. Therefore, we shall request updated comments on OCA's Chapter 63 proposals.

The *Final Implementation Order in PUC Filing and Reporting Requirements on Local Exchange Carriers*, Order entered October 5, 2005 at Docket No. M-00041857 (*Final Implementation Order*) at pp. 52 and 65, referred to this proceeding the issue of whether the service surveillance exception data and reports currently required to be filed with this Commission by 52 Pa. Code § 63.53(b) and § 63.55(b) should be continued.

Section 63.53(b) and section 63.55 (b) and (c) of the Commission's regulations require LSPs to file service surveillance data, and service exception reports, within five working days of its initial notice of substandard service, and an update one month later. The obligation for a utility to file an exception report with the Commission attaches when a company's performance fails to meet minimal performance standards set forth in subchapter E (relating to telephone quality service standards). See generally 52 Pa. Code §§ 63.51—63.65 (relating to telephone quality service standards) and 52 Pa. Code § 63.55 (relating to surveillance levels).

Therefore, we hereby seek specific comment on whether these reports should be continued, amended or abolished, whether these reports fall within the scope of 66 Pa.C.S. § 3015(e)(4) (annual service report), and if not, whether these reports meet the exception standard in section 3015(f).

Conclusion

By this order, the Commission is seeking updated comments regarding OCA's Chapter 63 proposals, and comments on whether the service surveillance exception reports and data required by 52 Pa. Code § 63.53(b) and § 63.55(b) should be continued, amended or abolished. After review of these further comments, if the Commission determines that Chapter 63 regulations should be amended, we will initiate a separate rulemaking docket that will propose specific regulations for Chapter 63, subchapters A, B, and E; *Therefore,*

It Is Ordered That:

1. The Petition of the Office of Consumer Advocate for a Rulemaking to Amend 52 Pa. Code Chapter 63 (relating to Telephone Service) is granted consistent with the discussion contained in the body of this Order.

2. Interested persons, including the Office of Consumer Advocate, may file updated comments and reply comments to OCA's Chapter 63 proposals, and comments on whether the service surveillance exception reports required by 52 Pa. Code §§ 63.53(b) and 63.55(b) should be continued, amended or abolished.

3. A copy of this Order and Attachment A shall be posted on the Commission's website at <http://www.puc.state.pa.us>.

⁹ We note that OCA will be specifically permitted to file updated comments to its petition and replies to other commenters.

4. The Secretary shall serve a copy of this Order and attachments upon the Pennsylvania Telephone Association, the Broadband Cable Association of Pennsylvania (BCAP), the Public Utility Law Project, Competitive Telecommunications Association (COMPTEL), the Office of Trial Staff, the Office of Consumer Advocate, and the Office of the Small Business Advocate and any other parties who filed comments at this docket.

5. The Secretary shall certify a copy of this Order and Attachment A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. Updated comments shall be submitted to the Secretary of the Commission no later than 45 days from the date of the publication of this Order and Attachment A in the *Pennsylvania Bulletin*. Reply comments shall be filed no later than 45 days thereafter.

7. An original and 15 copies of comments or reply comments referencing this docket number shall be filed with Commission's Secretary at P. O. Box 3265, Harrisburg, PA 17105-3265. In addition, a copy of comments and reply comments in electronic format (Microsoft Word® 2002 or readable equivalent) shall be sent by electronic mail to Patricia Krise Burket, Assistant Counsel at, <pburket@state.pa.us>, Holly Frymoyer, Bureau of Consumer Services, at <mfrymoyer@state.pa.us>, Joseph Spandra, Bureau of Fixed Utility Services, <jospandra@state.pa.us>.

8. Upon close of the public comment period, the Commission's Law Bureau shall prepare for consideration at a subsequent Public Meeting a recommendation regarding the initiation of a rulemaking for revision of 52 Pa. Code Subchapters A, B, and E.

9. The contact persons for this rulemaking are Holly Frymoyer, Bureau of Consumer Services, (717) 783-1628 (technical), Joseph Spandra, Bureau of Fixed Utility Services, (717) 787-6489 (technical) and Patricia Krise Burket, Assistant Counsel, Law Bureau, (717) 787-3464 (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.

10. The Standard Service Surveillance Level Report, per occurrence, as required by 52 Pa. Code § 63.53 and § 63.55 shall remain in place subject to further Commission action.

JAMES J. MCNULTY,
Secretary

ATTACHMENT A

[OCA *Petition*, Section D. *Amendments Requested*, pp. 9-11]

D. Amendments Requested

18. To comply with the requirements of 52 Pa. Code § 5.43, an amended Title 52 Pa. Code § 63 et seq. is attached and incorporated by reference. That amended section is marked "Attachment B." Below, the OCA enumerates the specific sections it seeks to amend.

19. Chapter 63.12 Minimizing interference and inductive effects—the OCA seeks to amend this section to conform to modern standards and practices.

20. Chapter 63.14 Emergency equipment and personnel—the OCA seeks to amend this section to conform to modern standards and practices.

21. Chapter 63.18 Multiparty line subscribers—the OCA seeks to delete this section.

22. Chapter 63.22 Service records—the OCA seeks to amend this section to provide for easier consumer reporting and rapid provider response to all trouble reports and consumer complaints.

23. Chapter 63.23 Construction and maintenance safety standards for facilities—the OCA seeks to update these standards to reflect the current National Electrical Safety Code.

24. Chapter 63.55 Surveillance levels—the OCA seeks to amend this section to reflect an exchange-by-exchange approach to network service quality monitoring.

25. Chapter 63.56 Measurements—the OCA seeks to amend this section such that telecommunications providers shall retain records for a certain period and telecommunications providers shall engage in programs to install a network interface device on all residential and single-line business locations served.

26. Chapter 63.57 Customer trouble reports—the OCA seeks to amend this section to:

(a) remove certain exceptions relating to the reporting of outages;

(b) update the requirements for the clearing of out-of-service trouble reports;

(c) establish standards for commitments to complete repairs, and to establish exceptions thereto;

(d) establish customer credit amounts and procedures in the event of a carrier's failure to meet its appointment and repair commitments to its customer;

(e) provide for customer notification when a carrier cannot meet its existing repair commitment;

(f) establish procedures to make an individual tally of multiple reports received on the same complaint or trouble report;

(g) establish certain standards for the number of complaints received per 100 lines, per month, per exchange; and

(h) establish procedures to ensure for the prompt investigation and correction of trouble reports.

27. Chapter 63.58 Installation of service—the OCA seeks to amend this section to:

(a) provide for reporting requirements when a provider fails to meet 90% of its primary service order installations in any month on an exchange-by-exchange basis;

(b) establish procedures regarding the timing and scheduling of premises visits, and customer notice when the utility is unable to meet its scheduled commitment;

(c) establish customer credit amounts for the failure to meet installation commitments without adequate notice to the customer.

(d) establish a 90% completion requirement as to the date of installation of service and penalties and exceptions thereto.

28. Chapter 63.59 Operator handled calls—the OCA seeks to amend this section regarding operator answering performance.

29. Chapter 63.62 Direct distance dial service—the OCA seeks to amend this section regarding trunk group performance and certain reporting requirements.

30. Chapter 63.63 Transmission requirements and standards—the OCA seeks to amend this section to:

(a) reflect updated technical standards relating to line noise and performance;

(b) establish a minimum standard for voice circuit quality to allow for a transmission rate of at least 28,800 bits of data per second when connected to a standard modem or fax machine.

[Pa.B. Doc. No. 06-358. Filed for public inspection March 3, 2006, 9:00 a.m.]
