RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 47 AND 49]

Technical Amendments

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) amends §§ 47.1, 47.1a, 47.11, 47.12a and 49.1 to read as set forth in Annex A.

Effective Date

The amendments take effect upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The amendments are authorized under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)), and section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3(a)).

Summary of Comments and Responses on Proposed Rulemaking

Notice of the proposed rulemaking was published at 35 Pa.B. 5530 (October 8, 2005). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Chapter of the National Association of Social Workers (NASW-PA), the Association of Social Work Boards (ASWB) and Dr. Edward W. Sites, professor at University of Pittsburgh School of Social Work.

Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. The following is a response to the comments and a description of changes in final rulemaking.

§ 47.1 (relating to definitions).

The HPLC and IRRC commented that in light of the change in definition of "accredited school," there may no longer be a need for the definition of "accredited program." The Board agrees and has deleted the definition of "accredited program" in final-form rulemaking.

§ 47.1a (relating to qualification for supervisors).

The HPLC and IRRC brought to the Board's attention that it was proposing to amend paragraph (3), a provision which expired as of January 1, 2006. The Board originally intended to have this change implemented long before the expiration date. Since this is obviously not the case, the Board recognizes that this change is unnecessary.

§ 47.11 (relating to licensure examination).

NASW-PA wrote in support of the Board's proposal to permit applicants for social work licensure to take either the master's level examination or the clinical level examination.

ASWB objected strenuously to the Board's proposal that applicants for the social work license be permitted to take either the master's level examination or the clinical level examination. In particular, ASWB commented that the master's level examination surveys a broad range of skills necessary in many different areas of social work, only one of which is clinical. When MSW graduates are permitted to take the clinical examination to measure minimum competence, they are not tested on many aspects of social work they will encounter in the beginning of their careers. In addition, they are asked on the clinical exam to have mastered knowledge and skills for advanced applications, when they have not yet attained the experience necessary to enhance their competence. Also, they cannot yet meet the Board's regulatory requirements of 2 years of supervised practice before they advance to the licensure level of clinical social worker.

HPLC and IRRC raised objections to the proposed amendments to § 47.11(a) and commented that the proposal violates the intent of the General Assembly as expressed in the act. IRRC also commented that the proposal is not sound policy because the master's level examination and the clinical examination are very different. In particular, IRRC referred to ASWB's comments that permitting entry level MSW's to take the clinical examination without the experience required in the statute and regulations would be tantamount to allowing those who have not concentrated in clinical social work to advance to the status of prospective clinical social workers without the background to assure competence.

The Board reviewed all of these comments and decided it needed additional information relating to the master's level examination and the clinical level examination. The Board invited representatives of ASWB to a Board meeting to address this issue. On March 14, 2006, the Board heard expert testimony of Troy Elliott, Communications Director, ASWB and Nisha Mittal, a psychometrician involved in the development of the ASWB examinations. The testimony elicited indicated that the master's level examination tests entry level skills in many different areas of social work practice and the clinical examination tests advanced applications.

Based upon the comments received and the testimony elicited, the Board has determined that the master's examination and the clinical level examination are, indeed, very different. For this reason, the Board has agreed, in this final-form rulemaking, to delete the option of allowing applicants for social work licensure to take the clinical level examination.

§ 47.12a (relating to licensed social worker).

Dr. Edward W. Sites commented that the Board should not permit students who graduate from social work or social welfare master's degree programs that are in candidacy for accreditation at the time of their graduation to apply for a license when the program obtains accreditation. Dr. Sites explained that the Council on Social Work Education (CSWE), the official accrediting body, always specifies an exact effective date for accreditation and that date is retroactive at least 2 years back into candidacy.

HPLC and IRRC also objected to this proposed change in that the Board lacks statutory authority to allow the licensure of individuals who did not graduate from accredited schools.

In determining whether to amend this proposal, the Board looked to the CSWE for guidance on what it means when a program is in candidacy for accreditation. It learned that programs working toward accreditation are first in precandidacy and then in candidacy. Precandidacy is a time that a new program and its institutional administration engages in a period of preliminary planning, securing resources, and hiring faculty before submitting an application for candidacy. Candidacy is the first step toward the initial accreditation process. Once a program is granted initial accreditation, it automatically covers those graduating classes of students who were admitted during or after the academic year, August to June, in which the program was granted candidacy. Students admitted prior to the academic year in which the program was granted candidacy (such as precandidacy) will not have graduated from a CSWE program. Based upon this information, the Board, in final rulemaking, has decided to delete the changes made in proposed rulemaking and to move the provision that states that students who graduate from social work or social welfare master's degree programs that are in candidacy for accreditation at the time of their graduation may apply for licensure once the program obtains accreditation. The Board believes this amendment does not violate the legislative intent because, as the CSWE has explained, accreditation relates back to cover the period of candidacy, but not precandidacy. Therefore, when the program becomes accredited, the students who were admitted while the program was in candidacy are then considered graduates of an accredited program.

NASW-PA also commented and asked the Board to revise the regulation to allow a student to become licensed upon graduation from a school in candidacy with the understanding that if the school is not successful in becoming accredited, that the license is thereby revoked. The Board's response is that, under the law of the Commonwealth, it cannot administratively revoke licenses once they are issued. However, the provision allowing students who graduate from programs that are in candidacy for accreditation at the time they graduate to apply for licensure once the program obtains accreditation should be a successful resolution of this issue.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking will have no fiscal impact and will not impose additional paperwork requirements on the private sector, the general public or the Commonwealth and its political subdivisions.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population. Accordingly, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted copies of the notice of proposed rulemaking, published at 35 Pa.B. 5530, to IRRC and the Chairpersons of the SCP/PLC and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board also provided IRRC, SCP/PLC and HPLC with copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the HPLC and the public. The Board did not receive comments from the SCP/PLC.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(f.2)), this final-form regulation was approved by the HPLC on November 20, 2007, and deemed approved by SCP/PLC on December 19, 2007. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.51(e)), IRRC met on December 20, 2007, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Sandra Matter, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1389.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 35 Pa.B. 5530.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in this Preamble.

Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapters 47 and 49, are amended by amending §§ 47.1, 47.11, 47.12a and 49.1 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

MICHAEL J. DESTEFANO,
Chairperson

(*Editor's Note:* The amendment of § 47.1a, included in the proposed rulemaking at 35 Pa.B. 5530, has been withdrawn by the Board.)

Fiscal Note: Fiscal Note 16A-699 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

GENERAL PROVISIONS

§ 47.1. Definitions.

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

Accredited school—A graduate program in social work or social welfare accredited by the Council on Social Work Education.

Act—The Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P. S. §§ 1901—1922).

Board—The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors.

Client/patient—An individual, group or family for whom a licensed social worker or licensed clinical social worker provides social work services or clinical social work services. In the case of an individual with a legal guardian, such as a minor or legally incapacitated adult, the individual is the client/patient.

Immediate family member—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient resides.

Licensed clinical social worker—A person who is currently licensed as a licensed clinical social worker under section 7 of the act (63 P. S. § 1907).

Licensed social worker—A person who is currently licensed as a licensed social worker under section 7 of the act.

Professional relationship—A therapeutic relationship which is deemed to exist for the period of time beginning with the first professional contact or consultation between a licensed social worker or licensed clinical social worker and a client/patient and continuing thereafter until the last date of a professional service. If a licensed social worker or licensed clinical social worker sees a client/patient on an intermittent basis, the professional relationship is deemed to start anew on each date that the licensed social worker or licensed clinical social worker provides a professional service to the client/patient.

Provisional licensed social worker—A person who is currently licensed as a provisional licensed social worker under section 7 of the act.

Related field—Includes the fields of psychiatry, psychology, marriage and family therapy, counseling, art therapy, dance/movement therapy, drama therapy, music therapy, human services and counseling education.

Sexual intimacies—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

(i) Sexual intercourse, or any touching of the sexual or intimate parts of the person for the purpose of arousing or gratifying sexual desire in either person.

(ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.

(iii) Sexual invitations.

(iv) Soliciting or accepting a date from a client/patient.

(v) Masturbating in the presence of a client/patient or encouraging a client/patient to masturbate in the presence of the licensed social worker or licensed clinical social worker.

(vi) Indecent exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

Supervisee—An individual who is fulfilling the supervised experience requirement for licensure as a clinical social worker.

Supervision—The act of overseeing, directing or instructing the activity or course of action of another.

Supervisor—An individual providing supervision to a supervisee who meets the criteria in § 47.1a (relating to qualifications for supervisors).

LICENSURE

§ 47.11. Licensure examination.

(a) The examination required as a prerequisite to original licensure as a licensed social worker is the Association of Social Work Boards' (ASWB) (formerly known as the American Association of State Social Work Boards' (AASSWB)) master's level examination.

(b) The examination required as a prerequisite to being granted a license to hold oneself out as a social worker with a provisional license is the ASWB (formerly known as AASSWB) bachelor's level examination.

(c) The examination required as a prerequisite to being granted a license to hold oneself out as a licensed clinical social worker is the ASWB (formerly known as AASSWB) clinical level examination.

(d) The applicant shall apply to the testing organization for admission to the applicable licensure examination and shall pay the required fee at the direction of the testing organization.

(e) The passing grade for the examination will be determined by the Board.

(f) The applicant shall be responsible for directing that the testing organization send examination results and other information requested to the Board.

§ 47.12a. Licensed social worker.

(a) To be issued a license to hold oneself out as a licensed social worker, an applicant shall provide proof satisfactory to the Board, that the applicant has met the following conditions:

(1) Satisfied the general requirements for licensure of § 47.12 (relating to qualifications for licensure).

(2) Received a master's degree in social work or social welfare from a school which was an accredited school on the date the degree was awarded or a doctoral degree in social work.

(3) Passed the examination required by § 47.11 (relating to licensure examination).

(b) Students who graduate from social work or social welfare master's degree programs that are in candidacy

for accreditation at the time of their graduation may apply for licensure when the program obtains accreditation.

(c) An applicant who is a graduate of a foreign school shall submit to the Board an evaluation of foreign credentials performed by the Council on Social Work Education, which assesses the foreign credentials to be the equivalent of the curriculum policy of an accredited graduate school during the same time period, to be considered as meeting the requirements of having earned a master's degree in social work or social welfare from an accredited school.

(d) If an applicant has a graduate or an equivalent degree or certificate in social work or social welfare, which was granted prior to July 1, 1952, the Board will review the complete application individually.

CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS

GENERAL PROVISIONS

§ 49.1. Definitions.

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

Accredited educational institution—A graduate school which is recognized as an institution of higher education or which is accredited by a regional accrediting association recognized by the Council for Higher Education Accreditation.

Act—The Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P. S. §§ 1901—1922).

Board—The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors.

Client/patient—An individual, group or family for whom a licensed professional counselor provides professional counseling services. In the case of an individual with a legal guardian such as a minor or legally incapacitated adult, the individual is the client/patient.

Doctoral degree in a field closely related to the practice of professional counseling—Includes one of the following:

(i) Doctoral degrees in social work, psychiatry, psychology, art therapy, dance/movement therapy, drama therapy, music therapy, human services, counseling education and child development and family studies.

(ii) Another doctoral degree in any applied behavioral science which is awarded after successful completion of a master's degree in a field closely related to the practice of professional counseling and that includes advanced (beyond the master's level) clinical instruction and advanced (beyond the master's level) coursework in any five of the educational requirements in § 49.2(1)—(8) (relating to educational requirements).

Doctoral degree in professional counseling—A doctoral degree which is awarded upon successful completion of a program which includes coursework that meets and builds upon the educational requirements in § 49.2.

Immediate family member—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient resides.

Institution of higher education—An independent institution of higher education, a community college, a State-related institution or a member institution of the State System. See 22 Pa. Code § 33.102 (relating to definitions).

Master's degree in a field closely related to the practice of professional counseling—Includes one of the following:

(i) Degrees in social work, psychology, art therapy, dance/movement therapy, drama therapy, music therapy, human services, counseling education and child development and family studies.

(ii) A degree in any applied behavioral science that includes a practicum or internship and meets any five of the educational requirements in § 49.2(1)—(8).

Planned program of 60 semester hours or 90 quarter hours of graduate coursework in counseling or a field closely related to the practice of professional counseling—A program which includes coursework that meets the criteria in § 49.2.

Professional relationship—A therapeutic relationship which is deemed to exist for the period of time beginning with the first professional contact or consultation between a licensed professional counselor and a client/patient and continuing thereafter until the last date of a professional service. If a licensed professional counselor sees a client/patient on an intermittent basis, the professional relationship is deemed to start anew on each date that the licensed professional counselor provides a professional service to the client/patient.

Related field—Includes the fields of psychiatry, psychology, social work, marriage and family therapy, art therapy, dance/movement therapy, drama therapy, music therapy, human services and counseling education.

Sexual intimacies—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

(i) Sexual intercourse, or any touching of the sexual or intimate parts of the person for the purpose of arousing or gratifying sexual desire in either person.

(ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.

(iii) Sexual invitations.

(iv) Soliciting or accepting a date from a client/patient.

(v) Masturbating in the presence of a client/patient or encouraging a client/patient to masturbate in the presence of the licensed professional counselor.

(vi) Indecent exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

Supervisee—An individual who is fulfilling the supervised experience requirement for licensure.

Supervision—The act of overseeing, directing or instructing the activity or course of action of another.

Supervisor—An individual providing supervision to a supervisee who meets the criteria in § 49.3 (relating to qualifications for supervisors).

[Pa.B. Doc. No. 08-131. Filed for public inspection January 25, 2008, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]

[L-00050170/57-239]

Interexchange Telecommunications Carriers and Service

The Pennsylvania Public Utility Commission (Commission) on August 8, 2007, adopted a final rulemaking order which sets forth provisions of Act 183 of 2004, which enacts an amended version of original Chapter 30 providing for regulatory reform of the telephone industry in this Commonwealth.

Executive Summary

Pursuant to 66 Pa.C.S. § 3018, jurisidictional interexchange telecommunications carriers (IXCs) have been excused from the traditional obligation to file tariffs, tariff supplements, or tariff revisions that contained the rate, provisions, rules and regulations governing the offering of their respective competitive services. This rulemaking eliminates regulations that require IXCs to file tariffs for intraState competitive services and establishes a permissive detariffing policy for the statutory categories of competitive services offered by IXCs.

The regulations ensure that the intraState interexchange market more closely resembles a traditional unregulated market. IXCs are required to disclose to the public information about the rates, terms and conditions of all of their respective competitive services at their business location during regular business hours and at their Internet web sites.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2005, the Commission submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 6777 (December 17, 2005), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on December 5, 2007, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 6, 2007, and approved the final-form rulemaking.

Public Meeting held
August 8, 2007

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

Final Rulemaking for Revision of Chapter 63 of Title 52 of the Pennsylvania Code Pertaining to Regulation of Interexchange Telecommunications Carriers And Service; Doc. No. L-00050170

Final Rulemaking Order

By the Commission:

Introduction

By Order entered March 29, 2005 at the previously-captioned docket, the Commission issued a proposed rulemaking order that sought to codify the provisions of the new 66 Pa. Code Chapter 30 (relating to interexchange telecommunications carriers) that were related to interexchange telecommunications carriers (IXCs). In particular, the proposed rulemaking order no longer requires IXCs to file tariffs for intraState competitive services and establishes a permissive detariffing policy for the statutory categories of competitive services offered by IXCs. Additionally, the proposed rulemaking clarifies various terms, imposes a new public notice requirement on IXCs, and changes the jurisdictional forum relating to the processing of consumer complaints against IXCs. The Commission requested comments on the proposed regulations from participants in the intrastate, interexchange market and other interested parties. This order addresses the comments to the Commission's proposed regulations and sets forth final regulations relating to interexchange telecommunications carriers.

Background

By Order entered September 20, 1991, at L-00900054, this Commission finalized regulations that codified our view that interexchange resellers are public utilities subject to our jurisdiction under Pennsylvania state law and modified the definition of "interexchange carrier" to include the subgroup of interexchange resellers.[1] See 22 Pa.B. 1554. The regulations were codified at 52 Pa. Code Chapter 63, Subchapter I (relating to interexchange resellers), and became effective April 4, 1992.

On July 8, 1993, the General Assembly enacted the original 66 Pa.C.S. Chapter 30 of the Public Utility Code, 66 Pa.C.S. §§ 3001—3009, which, among other things, modified and streamlined our procedures related to the regulation of IXCs. The original Chapter 30 included a provision that gave us the option of requiring IXCs to file tariffs or price lists for their competitive services.[2] See 66 Pa.C.S. § 3008(b).

On December 28, 1993, we entered an Order at L-00940099 prescribing interim guidelines for the regulation of IXCs under the original 66 Pa.C.S. Chapter 30. Despite the fact that we had been granted the option to discontinue the tariff filing requirement for competitive services offered by IXCs, we directed all jurisdictional IXCs to continue to submit tariffs for all of their services until further notice.

Subsequently, we determined that it was necessary that our interim guidelines regarding the regulation of IXCs under the original 66 Pa.C.S. Chapter 30 be permanently established in the context of a proposed rulemaking. Accordingly, by a Declaratory Order entered January 10, 1995, we adopted a revised set of interim guidelines and initiated a comprehensive rulemaking at the same L-docket proposing regulations to be codified at 52 Pa. Code §§ 63.101—63.107. The proposed regulations were published at 25 Pa.B. 1418 (April 15, 1995).

[1] Historically, we had declined to exercise jurisdiction over resellers of intrastate, interexchange telephone services as public utilities. The Commission had initially determined that resellers were not public utilities as defined in 66 Pa.C.S. § 102 because they did not own or operate facilities or equipment utilized to transmit messages. Nevertheless, the Commission determined that its initial view and interpretation of the statutory term "equipment and facilities" was too narrow. See 22 Pa.B. 1554. As a result, the Commission promulgated regulations so as to clarify and codify the policy that resellers of interexchange telephone services are subject to Commission jurisdiction as public utilities. Id. The above-mentioned regulations were codified at 52 Pa. Code §§ 63.111—63.118.

[2] Cf. 66 Pa.C.S. § 1302.

By an Order entered April 29, 1997, we promulgated final regulations to implement and codify the effect of the original Chapter 30 on our procedures related to the regulation of IXCs. See 27 Pa.B. 3217 (April 29, 1997). The regulations contained streamlined procedures applicable to the statutory categories of existing competitive services, new competitive services and noncompetitive services. The regulations also established procedures related to reclassification of services offered by IXCs. Nevertheless, the final regulations did not definitively prohibit IXCs from continuing to file tariffs or tariff supplements for their competitive services. 52 Pa. Code §§ 63.103 and 63.104.

On December 1, 2004, Act 183, P. L. 1398, 66 Pa.C.S. §§ 3011, et seq. ("Act 183" or "new Chapter 30") became effective. Act 183 enacted an amended version of the original Chapter 30 which had provided for the regulatory reform of the telephone industry in Pennsylvania and had expired pursuant to a sunset provision. In particular, Act 183 addressed specifically regulation of IXC intraState services and operations. However, unlike the previous version of Chapter 30, Act 183 initiated a permissive detariffing policy for the competitive services of IXCs. See 66 Pa.C.S. § 3018(b)(2). Essentially, IXCs have been excused from the traditional obligation to file tariffs, tariff supplements, or tariff revisions that contained the rates, provisions, rules and regulations governing the offering of their respective competitive services.

The Commission's proposed rulemaking order revised our existing regulations related to IXCs in order to be consistent with the provisions of the new Chapter 30. The notice requesting comments from interested parties on the proposed rules was published at 35 Pa.B. 6777 (December 17, 2005). Comments were received from Sprint Nextel Corporation ("Sprint"), Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance); NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions); Verizon Select Services Inc. and MCI Communications Services, Inc. (hereinafter collectively referred to as "Verizon"), the Pennsylvania Office of Consumer Advocate (OCA), Independent Regulatory Review Commission (IRRC) and the Pennsylvania Office of Attorney General (OAG). Verizon and the OCA filed reply comments.

Comments

Sprint Nextel Corporation

Sprint stated that it supports the Commission's rulemaking and its adoption of rules that give IXCs the option of discontinuing the filing of tariffs for their services. Specifically, Sprint sought clarification regarding proposed § 63.104(c)(2) (relating to disclosure requirements for competitive services). This subsection embodies the public notice requirements for IXCs that post information concerning their interexchange services on their Internet web sites. Sprint stated that IXCs should be allowed flexibility in how they structure their web sites to comply with this requirement. Sprint noted that it would not want to post the rates, terms, and conditions for its Pennsylvania intrastate services on its existing interstate terms and conditions web site section. Rather, Sprint proposed that it would post a Pennsylvania-specific price list or rate scheduled on its existing tariff web site that hosts rates, terms, and conditions applicable to services that are offered in the state. Sprint further states that the document would be posted on the same web page as the state tariffs. Sprint asserts that its proposal comports with the intent of the rule and that the rule, as written, gives it the flexibility to proceed in this manner.

Bell Atlantic Communications, Inc., et al

Verizon states that it supports the Commission's initiative to move towards deregulation of IXCs as it believes that the competitive marketplace, rather than the regulation, should guide the conduct of IXCs. Verizon further states that the proposed detariffing regulations are an appropriate acknowledgment of this reality. Nevertheless, Verizon suggests that the Commission clarify its proposed regulations so that they do not create any new or additional obligations on IXCs, which Verizon suggests may be at odds with the deregulatory emphasis of the proposed regulations. Verizon proposes several modifications to the proposed regulations.

Verizon states that proposed § 63.101 (relating to statement of purpose) should be clarified so that it is consistent with the statements made in the Commission's Order that the regulations are intended to "more closely resemble a traditional unregulated market." See Proposed Rulemaking Order at 5. Verizon asserts it is necessary that this statement be incorporated so that the new regulations are "interpreted in a manner consistent with the Commission's will and that the changes do in fact promote the Commission's goal of deregulation in a market that the Commission has recognized is 'an increasingly competitive' one." Verizon Comments at 2. Accordingly, Verizon proposes that the following sentence be added to proposed § 63.101: "The policy of this subchapter is to codify provisions that more closely resemble a traditional unregulated market."

Verizon further states that there are portions of the proposed regulations that could be misconstrued as creating new and additional obligations that are inconsistent with the Commission's de-regulatory intent and the will of the Pennsylvania Legislature. Verizon suggests that the following revision be made to proposed § 63.102 (relating to definitions): Delete in its entirety the definition for the phrase "Clear and conspicuous manner." Verizon asserts that this definition is unnecessary and introduces the unintended possibility of an additional and wholly subjective review process by the Commission staff. Verizon further asserts that it would hardly be a move toward deregulation if the Commission unintentionally assigned to Commission staff the obligation to determine whether "information" no longer subject to a tariffing obligation and constituting private contract terms was "plain language." Additionally, Verizon states that the possibility that IXCs could be subjected to a new layer of review, one that would apply vague and subjective standards, completely undermines the deregulatory impetus behind these modifications. Furthermore, Verizon suggests that any such new and additional regulations could well be at odds with Act 183, which enumerates and expressly limits the power of this Commission to regulate IXCs. See 66 Pa.C.S. § 3018(b)(1). In the alternative, Verizon suggests that if the Commission is not willing to delete this definition, then the Commission should at least clarify that in adopting this provision, it is not creating new and additional obligations for IXCs, or new and additional responsibilities for the Commission staff.

Verizon also proposes that the Commission make the following modifications to proposed § 63.104: Insert the word "tariffed" before the word "competitive" in the first sentence of subpart (b) ("An interexchange telecommunications carrier may maintain tariffs and file tariff supplements with the Commission that set forth the rates, charges, and service description information relating to each of its tariffed competitive services."). Verizon states that this change merely clarifies that competitive services do not automatically need to be tariffed.

Additionally, Verizon proposes the elimination of the phrase "in an easily accessible and clear and conspicuous manner" subsection (c). The revised subsection would look like this: ("If an interexchange telecommunications carrier chooses to detariff its competitive services, it shall make available for public inspection information concerning the rates, charges, terms and conditions for its competitive services [delete phrase] at the following locations:") Verizon asserts that this change clarifies that these deregulatory modifications do not introduce a new and additional authority to inspect IXC publicly posted language pertaining to detariffed competitive services. Furthermore, Verizon asserts that standards such as "easily accessible," "clear," and in a "conspicuous manner" introduce uncertainly, chill deregulation, and could be read to provide for the micromanagement of detariffed competitive services.

Verizon also proposes to replace "subsection (d)" with "paragraph (3)"; insert the word "detariffed" before the phrase "competitive services"; insert the word "either" before the phrase "principal office,"; replace the word "and" with the word "or" after the phrase "principal office." The revised subsection would appear like this: ("An interexchange telecommunications carrier shall update information concerning changes in rates, charges, terms and conditions for its "detariffed" competitive services "either" at its principal office "or" [delete "and"] its Internet web site no later than 48 hours after the effective date of the change so it provides the current information concerning service offerings."). Verizon asserts that these changes clarify that the obligations contained in this subpart apply only to those competitive services that the IXC chooses to detariff, and that they are not new and additional obligations for competitive services that an IXC chooses to continue to tariff. Furthermore, the suggested changes recognize that this subpart's updating requirement is an extremely broad one that not only encompasses rates, but also each and every term and condition associated with the provisioning of IXC service. Given the competitiveness of the IXC market, it is sufficient for an IXC to update the information either at its principal office or on the Internet. Verizon states that requiring both of these obligations would be unnecessary and burdensome.

Finally, Verizon proposes re-labeling subsections (e) and (f) and (d) and (e) consistent with the recommended changes listed previously.

Office of Consumer Advocate

The OCA states that certain amendments to the proposed regulations are necessary to better codify 66 Pa.C.S. § 3018 and so give IXCs and consumers clear and adequate notice of the Commission's authority preserved by 66 Pa.C.S. Chapter 30 for the protection of customers of IXCs. The OCA notes that under the proposed regulations, the Commission would enforce consumer complaints against IXCs only in very limited circumstances. The OCA states that proposed § 63.109 (relating to enforcement) would draw a line such that the Commission only will hear those consumer complaints which concern an IXC's compliance with the Commission's newly added disclosure requirements for detariffed services. All other consumer complaints regarding intrastate interexchange services will be referred to the Office of Attorney General's Bureau of Consumer Protection. The OCA states that the proposed Subchapter H omits any mention of the Commission's preserved authority over the provision of service by IXCs, including customer privacy, ordering, installation, restoration and disconnection, as well as the quality of service provided by IXCs to Pennsylvania consumers. 66 Pa.C.S. § 3018(b)(3) and (d)(1). The OCA suggests that the Commission should rectify this omission in any final-form regulations it promulgates in order to affirmatively state the scope of its ongoing authority to regulate the services of IXCs and its jurisdiction to hear consumer complaints on these issues.

Independent Regulatory Review Commission

IRRC notes that the OCA comments indicate that the limits the Commission has established over its jurisdiction over IXCs in the proposed regulations are not consistent with 66 Pa.C.S § 3018. IRRC states it agrees with the OCA that the Commission does have the authority to exercise jurisdiction over IXCs. However, IRRC notes that the Commission is well within its powers to decide which areas it will not exercise jurisdiction in order to promote competition. Nevertheless, IRRC states that the final form regulation should explicitly state which enforcement powers the Commission will retain, consistent with the OCA's comment.

Next, IRRC states that the last sentence in the definition of "interexchange facilities-based carriers" is substantive. IRRC notes that substantive provisions in a definition cannot be enforced. IRRC suggests that the sentence should be removed from the definition and placed in an appropriate section of the regulation.

Additionally, IRRC questions whether the Commission intends the term "interexchange transporter" to be the same as the defined term in § 63.112 of the Commission's existing regulations. IRRC notes if that is the case, the Commission should add a cross-reference to the definition.

IRRC takes note of Sprint's comments that IXCs should be allowed the flexibility to structure their web sites in a way that best allows them to give the public disclosure of information. IRRC agrees that proposed § 63.104(c) (relating to disclosure requirements for competition services) should be amended to allow for such flexibility. Additionally, IRRC states that proposed § 63.104(c)(1) mentions a "designated office;" however, the regulations do not state what a "designated office" is or how an office becomes designated. IRRC suggests that this information should be clearly set forth in the final form regulation or the term should be deleted. IRRC also agrees with Verizon's comments that the language in proposed § 63.104(d) should be amended to clarify that the provisions of this subsection apply only to the services that an IXC chooses to detariff.

IRRC commented on what are the "other factors deemed relevant by the Commission" in a reclassification proceeding. IRRC further questions how will an IXC know or become aware of these other relevant factors. Similarly, IRRC also states that the language in proposed § 63.106(b) (relating to noncompetitive services and tariffs) is unclear. IRRC states that the language in this subsection should be amended to state clearly the Commission's intention. IRRC questions as to how will an IXC know the "other reasonable justification or any relevant data that is requested by the Commission" in order to modify its tariff. IRRC suggests that this subsection should be broken out into a new section that details that other reasonable information might be requested by the Commission after initial review of the tariff. IRRC further notes that based upon its discussion with Commission staff, the phrase "may not" in proposed § 63.106(d) will be replaced with the phrase "is not required to."

Furthermore, IRRC suggests that the phrase "as closely as possible" should be deleted from proposed § 63.107(a) (relating to applications for authority). IRRC notes that the term "noncompetitive interexchange call" is not defined anywhere in the proposed regulations. IRRC suggests that either the definition of the term be added to proposed § 63.102 or the cross-reference in this subsection should be deleted. IRRC also suggests that the last sentence in proposed § 63.106(c) should be amended to state clearly the Commission's intention that a tariff will be deemed to be just and reasonable if it is at or below the reasonable charge established by proposed subsection § 63.106(b)

Finally, IRRC states that the last sentence in proposed § 63.108(c) is unclear and suggests that the subsection should be amended to state clearly the Commission's intent.

Pennsylvania Office of Attorney General

The OAG states that in proposed § 63.102, the definitions of "interexchange reseller carrier" and "interexchange facilities-based carrier" contain the phrase "interexchange transporter." The OAG questions if the term "interexchange transporter" should be separately defined in the proposed regulations.

The OAG notes that § 63.105 (relating to reclassification of services) provides that the Commission may reclassify interexchange services of an interexchange telecommunications carrier as noncompetitive after an appropriate hearing. However, the statutory and regulatory definitions of "interexchange telecommunication carrier" exclude local exchange telecommunication companies authorized to provide interexchange services. The OAG states that by using the term "interexchange services" without qualification in § 63.105(a), the regulation appears to include those interexchange services provided by local exchange telecommunications companies and appears to violate 66 Pa.C.S. § 3018(c), which applies only to interexchange telecommunication carriers.

The OAG further notes that § 63.107(b) states that "rates for noncompetitive services provided for in the proposed tariff may not exceed the reasonable charge for a noncompetitive interexchange call as defined in § 63.102 relating to definitions." However, a definition for "noncompetitive interexchange call" does not appear in § 63.102. The OAG states that § 63.107(b) should be further clarified.

Reply Comments

Bell Atlantic Communications, Inc., et al

Verizon took exception to the OCA's comments. Verizon asserts that the Commission should reject the proposals of the OCA to continue to regulate aspects of IXC services. Verizon states that the OCA's proposed language increases, rather than lessens, regulation. Verizon further asserts that the OCA's position is inconsistent with the highly competitive state of the IXC market, and the Commission's recognition that the IXC market should be guided by competition, not regulatory oversight. Verizon argues that 66 Pa.C.S § 3018 does not require the Commission to exercise jurisdiction where it is not necessary. In direct contravention to the OCA's position, Verizon concludes that the proposed regulations are entirely consistent with the law and do not need to be expanded or clarified.

Office of Consumer Advocate

The OCA states that Sprint's plan to meet the notice and disclosure requirements set forth in the proposed regulations is reasonable. However, the OCA opposes Verizon's proposed revisions, which they assert reflects greater degree of deregulation and reduction in Commission authority over IXCs. The OCA further asserts that Verizon's revisions to the proposed regulations are inconsistent with Chapter 30, which expressly preserved the Commission's authority to regulate the provisioning, quality and privacy of IXC services. The OCA states that it opposes Verizon's proposed revision to § 63.101 for the new regulations. The OCA states that the Commission should reject the broader language requested by Verizon because it is not supported by the language of the General Assembly as stated in 66 Pa.C.S. Chapter 30. The OCA continues to assert that the Commission should promulgate final-form regulations that affirm the Commission's on-going jurisdiction and authority to regulate the provision of service by IXCs for the protection of consumers.

The OCA is also opposed to Verizon's proposed revisions to § 63.104(c) and (d) of the new regulations. The OCA states that the General Assembly's prohibition against rate setting for interexchange services does not equate to complete deregulation. The OCA notes that the Commission's proposed regulations requiring disclosure of the rates, terms and conditions of competitive services is entirely within the Commission's continuing authority to regulate the provision and quality of service provided by IXCs, pursuant to 66 Pa.C.S. §§ 1501 and 3018(b)(2),(3). The OCA argues that proposed § 63.104 properly advises IXCs of the standard to be met in conveying such information regarding detariffed services to the public. Finally, the OCA takes exception to Verizon's request to allow an IXC to update its information either at the principal office or on its web site. The OCA notes that 66 Pa.C.S. § 3018(b)(2) preserves a role for the Commission in assuring the price list information for detariffed services is available to the public. The OCA asserts that requiring IXCs to update in a timely manner the information available to the public at two locations benefits consumers by assuring there is consistency and accuracy of information. The OCA states that the Commission should reject Verizon's proposed revision to § 63.104(c) and (d) as the subsections are reasonable and proper to protect consumers.

Discussion

Based upon our review of the received comments, we shall modify various portions of the proposed regulations. We shall present and discuss each section for which we received comments from the parties.

Section 63.101

We note Verizon's suggestion that we clarify proposed § 63.101 so that it is consistent with the statements made in the Commission's Order that the regulations are intended to "more closely resemble a traditional unregulated market." See Proposed Rulemaking Order at 5. Verizon suggested that the following sentence be added to proposed § 63.101: "The policy of this subchapter is to codify provisions that more closely resemble a traditional unregulated market."

Chapter 30 of 66 Pa.C.S. clearly indicates that the intraState interexchange services market is competitive. However, we believe that the language that Verizon proposes we incorporate into the new regulations is unnecessary. We believe that it is only necessary that we adopt regulations that reflect and promote the rationale of the increasingly competitive nature of the intraState interexchange telecommunications market. Accordingly, we shall not incorporate Verizon's language into proposed § 63.101.

Section 63.102

The OAG noted that in proposed § 63.102, the definitions of "interexchange reseller carrier" and "interexchange facilities-based carrier" contain the term "interexchange transporter." The OAG questioned whether the term "interexchange transporter" should be separately defined in the proposed regulations. We note the term "interexchange transporter" is an archaic term. Accordingly, we will simply delete the term from the final-form regulations.

Verizon stated that there are portions of the proposed regulations that could be misconstrued as creating new and additional obligations that are inconsistent with the Commission's de-regulatory intent and the will of the Pennsylvania Legislature. Verizon suggested deleting in its entirety the definition for the phrase "Clear and conspicuous manner" from the proposed § 63.102. Verizon asserted that this definition is unnecessary and introduces the unintended possibility of an additional and wholly subjective review process by the Commission staff. Verizon further asserted that it would hardly be a move toward deregulation if the Commission unintentionally assigned to Commission staff the obligation to determine whether "information" no longer subject to a tariffing obligation and constituting private contract terms was "plain language." Additionally, Verizon stated that the possibility that IXCs could be subjected to a new layer of review, one that would apply vague and subjective standards, completely undermines the deregulatory impetus behind these modifications. Furthermore, Verizon suggested that any such new and additional regulations could well be at odds with Act 183, which enumerates and expressly limits the power of this Commission to regulate IXCs. See 66 Pa.C.S. § 3018(b)(1). In the alternative, Verizon suggests that if the Commission is not willing to delete this definition, then the Commission should at least clarify that in adopting this provision, it is not creating new and additional obligations for IXCs, or new and additional responsibilities for the Commission staff.

We do not agree with Verizon's assertions. A plain language review does not necessarily undermine the deregulatory impetus for the intraState, interexchange telecommunications market. We note that the Commission has previously adopted a "plain language" policy statement that sets forth guidelines for written material provided to residential customers by public utilities. See 52 Pa. Code § 69.251 (relating to plain language-statement of policy). The Commission recognizes the need for carriers to provide information regarding their services in a format that is "easy to understand." Furthermore, this information is critical in order to allow consumers to make comparisons among various services offered by the carrier and services offered by other carriers. Moreover, we note that the Federal Communications Commission requires interstate interexchange carriers to include information that is "easy to understand" and encouraged the carriers to work with the FCC's Consumer Information Bureau to develop appropriate formats for the required disclosures. Accordingly, the Commission does not believe that it is onerous to include a provision in the proposed regulations that requires IXCs to provide information to consumers that is "clear and conspicuous" or that is in an easy to understand format. We encourage IXCs to work with the Commission's Bureau of Consumer Services so that it can review any written material provided to residential customers by IXCs regarding their services.

IRRC stated that the last sentence in the definition of "interexchange facilities-based carriers" is substantive. IRRC notes that substantive provisions in a definition cannot be enforced. IRRC suggests that the sentence should be removed from the definition and placed in an appropriate section of the regulation. We agree with IRRC and will delete the last sentence from the definitional section of the proposed regulations and place it within the appropriate subsection.

Additionally, IRRC questioned whether the Commission intends the term "interexchange transporter" to be the same as the defined term in § 63.112 of the Commission's existing regulations. IRRC notes if that is the case, the Commission should add a cross-reference to the definition. As mentioned previously, we note that the term "interexchange transporter" is an archaic term of the telecommunications industry and will delete it from the final form regulations.

Section 63.103

In light of the OAG's comments regarding the term "interexchange transporter" and our response to the OAG's comment as noted above, the Commission also deletes the term "interexchange transporter" from the caption of this section and from the body of this section in order to provide uniformity to the final regulations. Additionally, in order to provide consistency with the definitional section, the Commission adds the term "carriers" to the caption of this section and to the body of this section.

Section 63.104

Verizon also proposed that the Commission make the following modifications to proposed § 63.104: Insert the word "tariffed" before the word "competitive" in the first sentence of subsection (b) ("An interexchange telecommunications carrier may maintain tariffs and file tariff supplements with the Commission that set forth the rates, charges, and service description information relating to each of its tariffed competitive services."). Verizon stated that this change merely clarifies that competitive services do not automatically need to be tariffed. We agree with this clarification and adopt it.

Additionally, Verizon proposed the elimination of the phrase "in an easily accessible and clear and conspicuous manner" in subsection (c). The revised subsection would look like this: ("If an interexchange telecommunications carrier chooses to detariff its competitive services, it shall make available for public inspection information concerning the rates, charges, terms and conditions for its competitive services [delete phrase] at the following locations:") Verizon asserted that this change clarifies that these deregulatory modifications do not introduce a new and additional authority to inspect IXC publicly posted language pertaining to detariffed competitive services. Furthermore, Verizon asserted that standards such as "easily accessible," "clear," and in a "conspicuous manner" introduce uncertainty, chill deregulation, and could be read to provide for the micromanagement of detariffed competitive services. As we mentioned above, requiring some sort of "plain language" review is not diametrically opposed to the deregulatory impetus behind these regulations. We recognize the need for carriers to provide information regarding their services in a format which is "easy to understand" and, accordingly, decline to adopt Verizon's suggested revisions regarding the subsection.

Verizon also proposed to replace "subsection (d)" with "paragraph (3)"; insert the word "detariffed" before the phrase "competitive services"; insert the word "either" before the phrase "principal office,"; replace the word "and" with the word "or" after the phrase "principal

office." The revised subsection would appear like this: ("An interexchange telecommunications carrier shall update information concerning changes in rates, charges, terms and conditions for its "detariffed" competitive services "either" at its principal office "or" [delete "and"] its Internet web site no later than 48 hours after the effective date of the change so it provides the current information concerning service offerings.").

Verizon asserts that these changes clarify that the obligations contained in this subpart apply only to those competitive services that the IXC chooses to detariff, and that they are not new and additional obligations for competitive services that an IXC chooses to continue to tariff. IRRC also agreed with Verizon's comments that the language in proposed § 63.104(d) should be amended to clarify that the provisions of this subsection apply only to the services that an IXC chooses to detariff. We agree with Verizon's clarification and adopt it but will not redesignate the subparts.

Furthermore, Verizon suggested that its changes recognize that this subpart's updating requirement is an extremely broad one that not only encompasses rates, but also each term and condition associated with the provisioning of IXC service. Given the competitiveness of the IXC market, Verizon asserted that it is sufficient for an IXC to update the information either at its principal office or on the Internet. Verizon states that requiring both of these obligations would be unnecessary and burdensome.

The OCA opposed Verizon's proposed revisions to § 63.104(c) and (d) of the new regulations. The OCA stated that the General Assembly's prohibition against rate setting for interexchange services does not equate to complete deregulation. The OCA noted that the Commission's proposed regulations requiring disclosure of the rates, terms and conditions of competitive services is entirely within the Commission's continuing authority to regulate the provision and quality of service provided by IXCs, pursuant to 66 Pa.C.S. §§ 1501 and 3018(b)(2),(3). Finally, the OCA took exception to Verizon's request to allow an IXC to update its information either at the principal office or on its web site. The OCA noted that 66 Pa.C.S. § 3018(b)(2) preserves a role for the Commission in assuring the price list information for detariffed services is available to the public. The OCA further asserted that requiring IXCs to update in a timely manner the information available to the public at two locations benefits consumers by assuring there is consistency and accuracy of information. The OCA states that the Commission should reject Verizon's proposed revision to § 63.104(c) and (d) as the subsections are reasonable and proper to protect consumers.

We agree with the OCA and oppose Verizon's rationale. We determined that it is in the public interest that IXCs make available to the public information on current rates, terms and conditions for the detariffed competitive services in a timely manner and in at least one business location during regular business hours. In addition, the Commission required IXCs that have established Internet web sites to post that same information on-line and to update the information regularly. Consumers should have continuous access to information and we believe that an IXC should provide such information on its Internet web site and at its principal office or at a local business office.

Finally, Verizon proposes renaming subsections (e) and (f) and (d) and (e) consistent with the recommended changes above. We will not make these revisions to the proposed regulations as we find them unnecessary.

Sprint also submitted comments regarding this section. Specifically, Sprint sought clarification regarding proposed § 63.104(c)(2). Sprint stated that IXCs should be allowed flexibility in how they structure their web sites to comply with this requirement. Sprint noted that it would not want to post the rates, terms, and conditions for its Pennsylvania intraState services on its existing interstate terms and conditions web site section. Rather, Sprint proposed that it would post a Pennsylvania-specific price list or rate scheduled on its existing tariff web site that hosts rates, terms, and conditions applicable to services that are offered in the state. Sprint further states that the document would be posted on the same web page as the state tariffs. Sprint asserts that its proposal comports with the intent of the rule and that the rule, as written, gives it the flexibility to proceed in this manner. IRRC took note of Sprint's comments that IXCs should be allowed the flexibility to structure their web sites in a way that best allows them to give the public disclosure of information. IRRC agreed that proposed § 63.104(c) should be amended to allow for such flexibility.

We determined that the public information locations should contain information on a carrier's current rates, terms and conditions for all their detariffed intraState competitive interexchange services. However, the Commission did not require that public disclosure of this information be provided in any particular manner, except that the information must be posted on the web sites of those IXCs that currently maintain them over the Internet. Therefore, we are not opposed to Sprint's manner of presenting its information concerning its detariffed intrastate competitive services on its web site. We agree with Sprint and the IRRC that IXCs should have the flexibility to present the information on their web sites in any manner that they choose, as long as the information is easily accessible to the public.

IRRC also stated that this proposed subsection mentions a "designated office;" however, the regulations do not state what a "designated office" is or how an office becomes designated. IRRC suggested that this information should be clearly set forth in the final-form regulation or the term should be deleted. We shall delete the term "designated office" from the final-form regulations.

Section 63.105

The OAG noted that § 63.105 provides that the Commission may reclassify interexchange services of an interexchange telecommunications carrier as noncompetitive after an appropriate hearing. However, the statutory and regulatory definitions of "interexchange telecommunication carrier" exclude local exchange telecommunication companies authorized to provide interexchange services. The OAG stated that by using the term "interexchange services" without qualification in § 63.105(a), the regulation appears to include those interexchange services provided by local exchange telecommunications companies and appears to violate 66 Pa.C.S. § 3018(c), which applies only to interexchange telecommunication carriers.

The Commission agrees with the OAG's comment and will insert the language "reclassify the services of an interexchange telecommunications carrier as a noncompetitive service" after the word "hearing" in § 63.105(a). We believe that the insertion of this qualifying language addresses the OAG's concern.

IRRC questioned how will an IXC know the "other factors deemed relevant by the Commission" in a reclassification proceeding. We initially suggested to IRRC that the Commission would inform the IXC of the other

relevant factors it would consider in the notice initiating the reclassification proceeding. However, upon further reflection, it is more likely that the Commission will present this information to the IXC during the course of the reclassification proceeding through data requests rather than through the notice initiating the reclassification proceeding. Accordingly, we will strike § 63.105(c)(5) from the final-form regulations and will indicate that the Commission may possibly inform the IXC of the factors it deems relevant in the notice initiating the reclassification proceeding.

Section 63.106

IRRC stated that the language in proposed § 63.106(b) is unclear. IRRC questioned the purpose of the 45-day notice requirement for the tariff in the subsection if the Commission makes a decision on the tariff within 14 days. IRRC stated that the language should be amended to state clearly the Commission's intention. We agree with IRRC that this subsection should be clarified so that it indicates the 45-day notice requirement occurs prior to the filing of the tariff and the Commission's notice will come within 14 days after the filing of the tariff.

IRRC commented as to how an IXC will know the "other reasonable justification or any relevant data that is requested by the Commission" to modify its tariff. IRRC suggests that this subsection should be broken out into a new section that details the other reasonable information that might be requested by the Commission after initial review of the tariff. We disagree with IRRC's suggestion that we need to detail the other reasonable information the Commission might request from an IXC in order to modify its tariff in the regulations. The information requested from an IXC may vary on a case-by-case basis and it would be imprudent to attempt to establish an exhaustive list in the regulations. Nevertheless, Commission Staff will promptly advise the IXC about any additional relevant data or supporting documentation it must provide in order to modify its tariff after Staff's initial review of the tariff supplement.

IRRC further noted that based upon its discussion with Commission staff, the phrase "may not" in proposed § 63.106(d) will be replaced with the phrase "is not required to."

Section 63.107

IRRC suggested that the phrase "as closely as possible" should be deleted from proposed § 63.107(a). We agree with IRRC's comment and will delete the term "as closely as possible" from the final-form regulations.

IRRC notes that the term "noncompetitive interexchange call" is not defined anywhere in the proposed regulations. IRRC suggests that either the definition of the term be added to proposed § 63.102 or the cross-reference in this subsection should be deleted. The OAG noted this same discrepancy and suggested that § 63.107(b) should be further clarified by including a definition for "noncompetitive interexchange call" within § 63.102. We agree with IRRC's and the OAG's comments and will rectify this discrepancy by deleting the cross-reference set forth in this subsection.

We note that our Staff does make a distinction between a facilities-based IXC and a reseller IXC. IXC providers can be resellers, facilities-based or mixed. A competitive IXC applicant must apply for separate and distinct authority to provide IXC reseller services or IXC facilities-based services. The Secretary's Bureau designates a different folder number and issues a separate certificate of public convenience for each type of authority requested by the applicant. Accordingly, we will delete the last sentence of § 63.107(a) from the final-form regulations.

IRRC also suggests that the last sentence in proposed § 63.107(c) should be amended to state clearly the Commission's intention that a tariff will be deemed to be just and reasonable if it is at or below the reasonable charge as established by proposed § 63.107(b). We agree with IRRC's comment and will amend the subsection to clearly express this intention.

Section 63.108

IRRC states that the last sentence in proposed § 63.108(c) (relating to reporting requirements) is unclear. IRRC suggests that the subsection should be amended to state clearly the Commission's intention that the IXC should provide the required information in its annual report if it is technologically possible to collect the data. We agree with IRRC's comment and will clarify this subsection.

Section 63.109

The OCA expressed concerns regarding proposed § 63.109 (relating to enforcement). The OCA notes that under the proposed regulations, the Commission would enforce consumer complaints against IXCs only in very limited circumstances. Specifically, this proposed section draws a line such that the Commission only will hear those consumer complaints that concern an IXC's compliance with the Commission's newly added disclosure requirements for detariffed services. All other consumer complaints regarding intrastate interexchange services will be referred to the Office of Attorney General's Bureau of Consumer Protection. The OCA states that the proposed Subchapter H generally omits any mention of the Commission's preserved authority over the provision of service by IXCs, including customer privacy, ordering, installation, restoration and disconnection, as well as the quality of service provided by IXCs to Pennsylvania consumers. 66 Pa.C.S. § 3018(b)(3) and (d)(1). The OCA suggests that the Commission should rectify this omission in any final form regulations it promulgates in order to affirmatively state the scope of its ongoing authority to regulate the services of IXCs and its jurisdiction to hear consumer complaints on these issues.

Additionally, IRRC took note of the OCA's comments regarding the Commission's jurisdiction over IXCs in the proposed regulations. IRRC stated that it agrees somewhat with the OCA that the Commission does have the authority to exercise jurisdiction over IXCs. However, IRRC noted that the Commission is well within its powers to decide which areas it will not exercise jurisdiction in order to promote competition. Nevertheless, IRRC stated that the final-form regulation should explicitly state which enforcement powers the Commission will retain, consistent with the OCA's comment.

However, Verizon asserted that the Commission should reject the proposals of the OCA to continue to regulate aspects of IXC services. Verizon stated that the OCA's proposed language increases, rather than lessens, regulation. Verizon further argued that 66 Pa.C.S. § 3018 does not require the Commission to exercise jurisdiction where it is not necessary. In direct contravention to the OCA's position, Verizon concluded that the proposed regulations are entirely consistent with the law and do not need to be expanded or clarified.

The OCA believes that Verizon's proposed revisions reflect a greater degree of deregulation and reduction in Commission authority over IXCs, which it believes are

inconsistent with 66 Pa.C.S. Chapter 30. The OCA states that the Commission should reject the broader language requested by Verizon because it is not supported by the language of the General Assembly as stated in 66 Pa.C.S. Chapter 30, which expressly preserved the Commission's authority to regulate the provisioning, quality and privacy of IXC services. The OCA asserted that the Commission should promulgate final-form regulations that affirm the Commission's on-going jurisdiction and authority to regulate the provision of service by IXCs for the protection of consumers.

We agree with the OCA's and IRRC's observations. The proposed regulations do not reference the fact that the Commission continues to have authority over the provision of service by IXCs, including customer privacy, ordering, installation, restoration and disconnection, as well as the quality of service provided by IXCs to Pennsylvania consumers. See 66 Pa.C.S. § 3018(b)(3), (d)(1). Noting this omission, we will revise the proposed regulations so that the Commission's preserved authority over provisioning, quality and privacy of IXC services by IXCs is included within the proposed regulations.

Conclusion

Accordingly, under sections 501, 1501 and 3018 of the Public Utility Code, 66 Pa.C.S § 501, § 1501 and § 3018, and the Commonwealth Documents Law (45 P. S. § 1201, et seq.), and regulations promulgated thereunder in 1 Pa. Code §§ 7.1—7.4, we amend the regulations at 52 Pa. Code Chapter 63 as noted previously and as set forth in Annex A; *Therefore*,

It Is Ordered that:

1. The regulations of the Commission in 52 Pa. Code are amended by amending §§ 63.101—63.107; by adding §§ 63.108 and 63.109; and by deleting §§ 63.111, 63.112, 63.112a and 63.113—63.118 to read as set forth in Annex A.

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

3. The Secretary shall submit a copy of this order, together with Annex A, to the Governor's Office of Budget for review of fiscal impact.

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

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

6. This final-form rulemaking shall be come effective upon publication in the *Pennsylvania Bulletin*.

7. The contact persons for this matter are David E. Screven, Law Bureau, (717) 787-2126, Rhonda Staver, Bureau of Fixed Utility Services, (717) 787-7703 and Sherri DelBiondo, Regulatory Review Coordinator, (717) 772-4597.

JAMES J. MCNULTY,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 37 Pa.B. 6859 (December 22, 2007)).

Fiscal Note: Fiscal Note 57-239 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter H. INTEREXCHANGE CARRIERS

Sec.

§ 63.101. Statement of purpose and policy.

On December 1, 2004, the General Assembly enacted Chapter 30 of the code (relating to alternative form of regulation of telecommunications services), which provided for the regulatory reform of the telephone industry in this Commonwealth. Sections 3018 and 3019(b) of the code (relating to interexchange telecommunications carriers; and additional powers and duties) have significant effect on the future regulation by the Commission of intraState interexchange telecommunications carriers, which include interexchange resellers. The purpose of this subchapter is to codify the application of Chapter 30 of the code to intraState, interexchange telecommunications carriers and to codify the modification of procedures to address the application of Chapter 30 of the code.

§ 63.102. Definitions.

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

Clear and conspicuous manner—Information that is legible, stated in plain language and printed in 10-point type or larger.

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

Competitive services—Interexchange services other than noncompetitive services.

Interexchange facilities-based carrier—A person or entity whose facilities carry intraState interexchange service on a wholesale or retail basis through line, wire, cable, microwave, radio wave, satellite or other analogous facilities owned or operated by it.

Interexchange reseller carrier—A person or entity which directly or indirectly acquires intraState interexchange service capacity and establishes rates to sell interexchange service through the use of technology to a residential or nonresidential subscriber or consumer.

Interexchange services—The transmission of interLATA or intraLATA toll messages or data outside the local calling area.

Interexchange telecommunications carrier—

(i) A public utility, including both interexchange reseller carrier and interexchange facilities-based carrier, as those terms are defined in this section, authorized by the Commission to provide intraState interexchange service on a wholesale or retail basis.

(ii) The term does not include a local exchange telecommunications company authorized by the Commission to provide intraState, interexchange services.

Noncompetitive services—The term only includes those interexchange services or business activities that have been determined expressly by the Commission to be noncompetitive under § 63.105 (relating to reclassification of services).

§ 63.103. Jurisdiction of interexchange reseller carriers.

Under the definition of "public utility" in section 102 of the code (relating to definitions), a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transmitting intraState interexchange services is subject to Commission jurisdiction as a public utility. Interexchange reseller carriers operate equipment or facilities utilized for the transmission of interexchange services and therefore, under the statutory definition of "public utility," are jurisdictional.

§ 63.104. Disclosure requirements for competitive services.

(a) All services, new or existing, offered by interexchange telecommunications carriers are deemed competitive.

(b) An interexchange telecommunications carrier may maintain tariffs and file tariff supplements with the Commission that set forth the rates, charges and service description information relating to each of its tariffed competitive services. If an interexchange telecommunications carrier files a tariff or a tariff supplement with the Commission for its competitive services, it shall become effective on 1-day's notice.

(c) If an interexchange telecommunications carrier chooses to detariff its competitive services, it shall make available for public inspection information concerning the rates, charges, terms and conditions for its competitive services in an easily accessible and clear and conspicuous manner at the following locations:

(1) At the interexchange telecommunications carrier's principal office, if it is located within this Commonwealth, or at any local business office of the utility during regular business hours.

(2) At the web site of the interexchange telecommunications carrier. An interexchange telecommunications carrier has the flexibility to structure and present information concerning the rates, charges, terms and conditions for its competitive services on its internet web site in any manner that it chooses, as long as the information is easily accessible to the public.

(d) An interexchange telecommunications carrier shall update information concerning changes in rates, charges, terms and conditions for its detariffed competitive services either at its principal office or any local business office within 5 days and on its Internet web site no later than 48 hours after the effective date of the change so it provides the current information concerning service offerings.

(e) An interexchange telecommunications carrier that chooses to detariff its competitive services shall disclose to customers their right to request information concerning the rates, charges, terms and conditions for its competitive services and shall provide contact information for this purpose.

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

§ 63.105. Reclassification of services.

(a) The Commission has authority, under section 3018(c) of the code (relating to interexchange telecommunications carriers), after notice and an opportunity for a hearing, to reclassify the services of an interexchange telecommunications carrier as a noncompetitive service.

(b) The Commission will review whether a competitive service should be reclassified as a noncompetitive service within the scope of a Commission investigation conducted under section 331(a) of the code (relating to powers of commission and administrative law judges), or upon consideration of a complaint filed under section 701 of the code (relating to complaints). The notice to the interexchange telecommunications carrier may contain the information deemed relevant by the Commission in holding a reclassification proceeding.

(c) When reviewing whether a service should be reclassified, the Commission will consider all relevant information submitted to it, including the following factors:

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

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

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

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

§ 63.106. Noncompetitive services and tariffs.

(a) A noncompetitive service, as defined in § 63.102 (relating to definitions), offered by an interexchange telecommunications carrier shall be included in a tariff filed in compliance with sections 1302 and 1303 of the code (relating to tariffs; filing and inspection; and adherence to tariffs).

(b) Modifications to the rates, terms or conditions of the noncompetitive service set forth in the interexchange carrier's tariff shall be implemented through the filing of a tariff supplement and verified supporting documentation. The interexchange telecommunications carrier shall serve the tariff supplement on the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's Office of Trial Staff. The interexchange telecommunications carrier shall provide notice to the customer of the proposed change to the noncompetitive service 45 days prior to the filing of the tariff supplement with the Commission.

(c) The tariff supplement and verified supporting documentation must contain the following information:

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

(2) A description of the noncompetitive service.

(3) The rates proposed for the noncompetitive service.

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

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

(6) Other reasonable justification or any relevant data that is requested by the Commission after its initial review.

(d) The interexchange telecommunications carrier is not required to submit cost justification, cost-of-service or

revenue data relating to the proposed change as directed in subsection (c)(4) if one of the following applies:

(1) The proposed change does not purport to increase an existing rate or surcharge.

(2) The proposed change to the noncompetitive service is designed to make the rates, terms or conditions for that service comparable to the rates, terms and conditions that have been approved by several other state commissions.

(e) The noncompetitive service tariff supplement shall be filed to become effective on 16-days' notice by the interexchange telecommunications carrier.

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

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

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

(3) When the Commission prohibits a tariff supplement from going into effect and issues a report addressing the inadequacies in the tariff supplement, the tariff supplement shall be suspended pending consideration of the tariff supplement under paragraphs (4) and (5).

(4) The filing interexchange telecommunications carrier may file a response to the suspension of the carrier's tariff supplement. The response shall be filed within 7 days of the issuance of the report.

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

(g) An interexchange telecommunications carrier requesting rate decreases for its existing noncompetitive services shall be permitted to put them into effect at the end of the specified 16-day notice period without further review or approval by the Commission.

(h) An interexchange telecommunications carrier requesting changes in the terms and conditions of its existing noncompetitive services, when the changes do not result in any rate changes, shall be permitted to put them into effect at the end of the specified 16-day notice period without further review or approval by the Commission.

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

§ 63.107. Applications for authority.

(a) An applicant shall specifically indicate in the application for authority to commence service that it is requesting authorization to provide interexchange services to the public and comply with § 3.551 (relating to official forms).

(b) If an applicant is offering noncompetitive services to the public, it shall attach a proposed tariff to its application containing the proposed rates of the noncompetitive services and the rules and policies under which the interexchange telecommunications carrier intends to provide its service. Rates for noncompetitive services provided for in the proposed tariff may not exceed the reasonable charge for a noncompetitive interexchange call.

(c) In addition to review of the general evidentiary criteria applicable to interexchange telecommunications carrier application proceedings, the Commission will review the proposed tariff to determine if it complies with subsection (b). The Commission will grant applications only upon a finding that the proposed tariff complies with subsection (b). If the proposed tariff contains rates for noncompetitive services that do not exceed the reasonable charge for a noncompetitive interexchange call, the Commission will presume that the rates for the noncompetitive services are just and reasonable.

(d) Upon the grant of an application for authority to commence interexchange service, the applicant proposing to offer noncompetitive services shall file an initial tariff with the Commission for its noncompetitive services only. The initial tariff must contain the same rates, rules and policies for the noncompetitive services as set forth in the proposed tariff reviewed by the Commission. The initial tariff must become effective immediately upon filing. Initial tariffs must comply with §§ 53.1—53.10 and 53.21—53.26 (relating to filing regulations; and form and content of tariffs).

(e) Upon the grant of an application for authority to commence interexchange service, a new interexchange telecommunications carrier may file or maintain with the Commission tariffs containing the rates, terms and conditions for its competitive services. If the new interexchange telecommunications carrier files a tariff with the Commission, the tariff shall become effective on 1-day's notice.

(f) If a new interexchange telecommunications carrier chooses to detariff its competitive services, the information regarding the rates, terms and conditions for its competitive services shall be made available at the public disclosure locations established in § 63.104(c) (relating to disclosure requirements for competitive services). The new carrier shall post the information at the public disclosure locations within 48 hours of the date that its application to commence interexchange service has been approved by the Commission.

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

§ 63.108. Reporting requirements.

(a) Interexchange telecommunications carriers shall file affiliated interest and affiliated transaction agreements with the Commission unless the agreements involve services declared to be competitive. The filings constitute notice to the Commission only. The Commission may use the filings to audit the accounting and reporting systems of interexchange telecommunications carriers for transactions with their affiliates.

(b) On or before May 31 of a calendar year, a certificated interexchange telecommunications carrier, as de-

fined in § 63.102 (relating to definitions), shall file with the Commission an annual report for the preceding calendar year. The annual report shall be filed with the Commission's Bureau of Fixed Utility Services.

(c) The annual report must contain aggregate total revenue and traffic volume data measured in minutes of use for the carrier's intraState operations during the preceding calendar year.

(d) The interexchange telecommunications carrier shall provide disaggregated information in its annual report if it is technologically feasible for the interexchange telecommunications carrier to collect the data. Some examples of the information that shall be disaggregated in the carrier's major service categories are:

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

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

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

(4) Private line or dedicated communication path services.

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

§ 63.109. Enforcement.

(a) For the purpose of enforcement of consumer complaints regarding competitive services, the Commission will have jurisdiction to enforce consumer complaints that involve violations of the applicable public notice requirements established in this subchapter. The Commission will have jurisdiction to enforce consumer complaints regarding the provisioning of service by interexchange telecommunications carriers, including customer privacy, ordering, installation, restoration and disconnection, as well as the quality of service issues. Other consumer complaints, including those complaints involving violations that fall under the Unfair Trade Practices and Consumer Protection Law (73 P. S. §§ 201-1—209-9.3), will be referred by the Commission's Bureau of Consumer Services to the Office of Attorney General's Bureau of Consumer Protection.

(b) For the purpose of enforcement of consumer complaints related to noncompetitive services, the Commission will utilize the dispute and informal complaint procedures prescribed for residential billing disputes under Chapter 64 (relating to standards and billing practices for residential telephone service). The Bureau of Consumer Services will have primary jurisdiction over informal complaints arising under this subchapter for designated noncompetitive services.

Subchapter I. (Reserved)

§ 63.111. (Reserved).
§ 63.112. (Reserved).
§ 63.112a. (Reserved).
§§ 63.113—63.118. (Reserved).

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