

# RULES AND REGULATIONS

## TITLE 40—LIQUOR

### PART I. LIQUOR CONTROL BOARD

#### CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

##### Subchapter J. MINORS ON LICENSED PREMISES

[Correction]

To enable the codification of the new Subchapter J (relating to responsible alcohol management program), added at 40 Pa.B. 3494 (June 26, 2010), existing § 5.121 (relating to service in establishments primarily serving food) will be renumbered to § 5.321. The text will remain the same.

[Pa.B. Doc. No. 10-1392. Filed for public inspection July 30, 2010, 9:00 a.m.]

## STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[ 49 PA. CODE CH. 36 ]

### Appraiser Trainees; Initial and Continuing Education; Supervised Experience; Practice Standards

[Correction]

The State Board of Certified Real Estate Appraisers (Board) published final-form amendments to Chapter 36 (relating to State Board of Certified Real Estate Appraisal) at 40 Pa.B. 3956. Several of the regulations were adopted as proposed as reflected in the Board's order at 40 Pa.B. 3959, which included amended §§ 36.1—36.3, 36.6, 36.42, 36.51, 36.52 and 36.262 and the addition of § 36.12a. The remaining regulations were adopted as set forth in Annex A, which included the amendment of §§ 36.11—36.13 and 36.54.

[Pa.B. Doc. No. 10-10-1277. Filed for public inspection July 16, 2010, 9:00 a.m.]

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 63 ]

[L-00070188/57-260]

### Abbreviated Procedure for Review of Transfer of Control and Affiliate Filings for Telecommunications Carriers

The Pennsylvania Public Utility Commission (Commission), on April 22, 2010, adopted a final rulemaking order which sets forth amendments to Chapter 63 (relating to telephone service) to streamline transfer of control and affiliate filings by telecommunications carriers.

#### Executive Summary

On April 22, 2010, the Commission adopted an Opinion and Order approving final-form rulemaking for

§§ 63.321—63.326. The rules streamline the time period for reviewing and approving an application for a transfer of control filed with the Commission for a Certificate of Public Convenience under 66 Pa.C.S. §§ 1102 and 1103(a) (the April final-form rulemaking). The April final-form rulemaking addresses a proposed rulemaking issued on October 27, 2007, in the docket (the October Rulemaking Order).

The final-form rulemaking contains revisions from the proposed rulemaking. The revisions respond to Comments and Reply Comments filed by many parties. The final-form rulemaking also adopts suggestions made to the Commission from a Working Group. The Commission convened that group at the suggestion of the Independent Regulatory Review Commission (IRRC) and the parties. The group met starting in June 2008 and filed the last round of responses in November 2009, 4 months before this final-form rulemaking.

The final-form rulemaking establishes time lines for the review and approval of an application that reflect the pace of technological change in the telecommunications industry. Under the current practice, there is no time line for reviewing applications that require a Certificate of Public Convenience under 66 Pa.C.S. §§ 1102 and 1103.

The final-form rulemaking establishes a three-tier structure for reviewing an application and issuing a Certificate of Public Convenience. These are Pro Forma, General Rule and Traditional Review.

Pro Forma review occurs no later than 30 days after notice in the *Pennsylvania Bulletin* and expiration of the protest period. General Rule occurs no later than 60 days after notice in the *Pennsylvania Bulletin* and expiration of the protest period. Traditional Rule review occurs if a formal protest or complaint is filed to any Pro Forma or General Rule application or if an application presents novel issues or is in the public interest.

Pro Forma review applies to applications that do not affect rates or conditions of service or do not involve a transfer greater than 20%. General Rule review applies to applications that also change rates or conditions of service or involve a transfer of control greater than 20%. Traditional Rule review occurs if a protest is filed or if longer review is needed because an application presents new or novel issues.

The final-form rulemaking requires that an application is published in the *Pennsylvania Bulletin* with a 15-day protest period. The notice will notify the public of any reclassification of an application. The final-form rulemaking also provides that the filing of any formal protest or complaint within the protest period will subject an application to the unlimited timeline for review and approval now in place for every application under the existing Traditional Rule.

The final-form rulemaking contains filing requirements that reflect FCC filing mandates or suggestions of the parties. Also, there are Pennsylvania-specific requirements that reflect State law. These include the obligation to demonstrate that an application will affirmatively benefit the public, contain findings concluding that issuance of a Certificate of Public Convenience is warranted, and analyze the impact that an application will have on competition. An applicant must provide a copy and updates to the Commission and the Statutory Advocates.

The final-form rulemaking abandons proposed affiliate interest filing requirements that were aimed at ensuring

compliance with 66 Pa.C.S. §§ 3016(f)(1) and 3019(b)(4) (relating to competitive services; and additional powers and duties). Instead, an applicant must file statements verifying that an application does not violate the prohibition against cross-subsidization and that the application complies with any broadband deployment or universal service commitments.

Public Meeting held  
April 22, 2010

*Commissioners Present:* James H. Cawley, Chairperson;  
Tyrone J. Christy, Vice Chairperson; Wayne E. Gardner;  
Robert F. Powelson

***Rulemaking to Amend Chapter 63 Regulations  
so as to Streamline Procedures for Commission  
Review of Transfer of Control and Affiliate Filings  
for Telecommunications Carriers;  
Doc. No. L-00070188***

***Petition of Level 3 Communications, LLC  
to Amend the Public Utility Commission Regulations  
to Streamline Transfer of Control and Affiliate  
Filing Requirements for Competitive Carriers;  
Doc. No. P-00062222***

**Final Rulemaking Order**

*By the Commission:*

Before the Commission for disposition is a staff recommendation on the final-form rulemaking addressing a proposed rulemaking adopted on September 27, 2007. The proposed rulemaking order granted an earlier Petition of Level 3 Communications, LLC (Level 3). Level 3 sought revision of the Commission's rules and procedures governing transfers of control and affiliate filing requirements under 66 Pa.C.S. §§ 1102(a)(3) and 1103 for telecommunications public utilities, including the ancillary Certificate of Public Convenience evidencing Commission approval of a transfer.

The current regulations are set out as application filing requirements in §§ 5.1, 5.11 and 5.43. Those procedural rules were substantially revised in 2006. The Commission has not revised its practice on reviewing applications for transfer of control other than issuance of a nonbinding Policy Statement issued under 66 Pa.C.S. § 1102(a), and set forth in § 69.901 of our regulations.

*The Proposed Rulemaking.* The proposed rulemaking created a three-tier process for reviewing and approving applications for approval of transfers of control. The applications would be subject to 66 Pa.C.S. § 1102(a) and require issuance of a Certificate of Public Convenience under 66 Pa.C.S. § 1103(a). The first tier was the existing unlimited time span for an application. This was called Traditional Review. The second tier was a General Review. It was a shorter sixty day review and approval period for applications that involved rate changes, changed terms of service, or were a change of control exceeding twenty percent. The third tier was Pro Forma review. This was an even shorter thirty-day review and approval period for applications that did not change rates, that did not change terms of service, or that did not constitute a change of control greater than twenty percent.

Section 63.324 of the proposed rulemaking addresses General Rule review and approval. Section 63.325 of the proposed rulemaking addresses Pro Forma review and approval. The topics in proposed § 63.324(a)—(1) were mirrored in § 63.325(a)—(1).

*The Final-Form Rulemaking.* The final-form rulemaking is promulgated even though some comments

question the need for the regulations. IRRC asked the Commission to explain why this final-form rulemaking is appropriate. The comments of the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA) (collectively Statutory Advocates) question whether this regulation is necessary. The Statutory Advocates urged the Commission to abandon the rulemaking.

We adopt the final-form rulemaking to address changes in technology and public utility regulation. The final-form rulemaking reflects suggestions we received after we convened a working group, a group suggested by IRRC and Verizon. Commission staff met with and solicited concrete suggestions from the parties. Meetings were held starting in the Summer of 2008. The final filing was submitted in October 2009 and the final response was filed in November 2009. There was no consensus. The final-form rulemaking addresses areas of disagreement and the comments, particularly from IRRC, for our consideration.

The final-form rulemaking retains three tiers of review but with modifications addressing IRRC's concern for due process, notice, and reclassification. The final-form rulemaking retains the Traditional Rule (current practice in which there is no limit to review), General Rule (review is completed within sixty days), and Pro Forma (review is completed within thirty days).<sup>1</sup> The final-form rulemaking reinstates the twenty percent threshold, will publish every application in the *Pennsylvania Bulletin*, and establish a fifteen day protest period. There is prior consumer notice. Reclassification notice occurs in the *Pennsylvania Bulletin*. The trigger for review and approval now starts with expiration of the protest period.

There are new filing requirements that address comments asking for more detail. The rules publish an application, establish a fifteen day protest period, and will subject an application to Traditional Rule review if a formal protest or complaint is filed. Prior notice must be provided to consumers using a notice developed by the applicant with approval from the Bureau of Consumer Services. Any dispute between the applicant and the Bureau of Consumer Services can be appealed to the Commission mirroring the rules in § 5.44 governing appeals from an action of staff. Commission approval will occur by Secretarial Letter or Order based on a review conducted under § 63.324(h) of material filed in § 63.324(d). This applies to Pro Forma as well.

**Background**

Level 3 filed their Petition to open a Rulemaking on May 31, 2006. Level 3 provided copies to the OCA, OTS, OSBA consistent with § 5.41(c) of the Commission's regulations. Level 3 also provided a copy to Verizon and the PTA as persons affected, consistent with § 5.41(c).

The Level 3 Petition asked the Commission to initiate a rulemaking to streamline the administrative process by which certificated competitive carriers may complete transfers of control and affiliate transactions. Level 3 sought revision to the Commission's regulations arguing that the process imposes unnecessary and burdensome requirements on non-dominant, competitive carriers. Level 3 also contended that the public interest in a competitive environment does not require strict scrutiny of non-dominant carriers' transactions because those carriers lack control over bottleneck facilities and generally lack market power compared to other carriers.

<sup>1</sup> Appendix B contains a chart that summarizes the abbreviated processes for review of these applications.

The Commission's proposed rulemaking addressed acquisitions, diminutions in control, mergers, stock sales or transfers, and transfers of assets of a telecommunications public utility. We also concluded that affiliate interest filings should be addressed.

The Commission published the Proposed Rulemaking Order on February 9, 2008 in the *Pennsylvania Bulletin*, 38 Pa.B. 758. The Commission solicited Comments by April 8, 2008 and Reply Comments by May 8, 2008. Multiple parties submitted Comments and Reply Comments. IRRC submitted comments on June 9, 2009.

### Discussion

#### A. Disposition of IRRC's Comments

IRRC submitted general concerns as well as comments on specific provisions of the proposed rulemaking. IRRC's comments on specific provisions are addressed in more detail in the Extended Discussion of Annex A where we address the Comments and Replies of the other parties on the proposed sections.

This section will address IRRC's general concerns. We do so because those concerns raise basic issues about the need for this regulation. Disposition of those concerns also resolves many of IRRC's more specific comments as well.

*The Need for the Regulation.* IRRC questioned the need for the regulation and asked the Commission to provide information on the average length of time it takes to review applications and the number of applications that would be subject to the proposed three-tier levels of review. IRRC Comments, p. 2.

In response, the Commission notes that five applications seeking Commission approval for transactions in 2006 and 2007 that did not involve changes in rates or terms and conditions of service, that is, Pro Forma transactions, were approved in time spans that ranged from 142 days to 310 days. One of these was litigated but the other four were settled by the parties. PTA Comments, p. 3.

The OCA also submitted a later filing to the working group in November 2009 that responded to a Level 3 filing (*OCA Response*). The *OCA Response* appended a chart supporting a claim that of the 114 applications filed by telephone companies pursuant to 66 Pa.C.S. § 1102 in 2008, two were protested and a hearing was held for one. All other Applications were not protested and there was no hearing. Moreover, the majority of those were decided in less than 90 days. *OCA Response*, pp. 6 and 7.

In this battle of the statistics, we conclude that a two-year span of evidence showing review periods for five applications in 2006 and 2007 support the rulemaking compared to a one-year sample. However, we recognize that these same statistics and staff claims about a decline in the volume of applications could support a different result.

*Complexity of the Regulations and a Working Group.* IRRC provided a summary of the major provisions of the proposed rulemaking. IRRC raised concern about whether the complexity will undermine abbreviated review. IRRC urged the Commission to convene a working group to address the regulations. IRRC Comments, pp. 2 and 3.

The Commission agreed with IRRC and convened a working group on the proposed rulemaking. The working group met from June 2008 through May 2009. The working group solicited filings with suggestions. The last filing was submitted by Level 3 in October 2009. This triggered the OCA Response filed in November 2009. The

Commission concludes that reliance on this working group's contribution, hopefully, has produced a better result compared to sole reliance on Comments and Replies.

*Secretarial Letters.* IRRC asked the Commission to explain how the proposed reliance on Secretarial Letters to approve applications in the proposed rulemaking was consistent with 66 Pa.C.S. § 1103(a). Section 1103(a) of 66 Pa.C.S. mandates that a certificate of public convenience issued in response to an application must be done so by order of the Commission. IRRC Comments, pp. 1 and 2.

The Commission proposes to use Secretarial Letters for streamlined review and approval except in very limited circumstances where an Order may be better. Secretarial Letters may be issued at any time and are not limited to the Commission's public meeting schedule. Pennsylvania caselaw, particularly *West Penn Power v. PaPUC*, 100 A.2d 110, 113 (Pa. Super. Ct. 1953), holds that Secretarial Letters can be equivalent to a final and appealable order of the Commission. We use that approach in light of that precedent.

*Affiliate Interest Agreement Review.* IRRC also questioned whether the extensive proposal for reviewing telecommunications providers' affiliated interest agreements was consistent with 66 Pa.C.S. § 3019(b)(1). Section 3019(b)(1) of 66 Pa.C.S. requires submission of affiliated interest agreements unless the service is declared competitive. Any filing is for notice only and does not require Commission approval. IRRC Comments, p. 3.

Section 3019(b)(4) of 66 Pa.C.S. authorizes the Commission to condition any approval under of 66 Pa.C.S. § 1101(a)(3), the subject of this rulemaking, to ensure there is no reduction in the broadband deployment obligations of the affected property or facilities. Moreover, 66 Pa.C.S. § 3016(f)(1) prohibits a carrier from using revenues from noncompetitive services to subsidize competitive service. The Commission relied on those ongoing mandates to develop a detailed filing and approval requirement.

In response to IRRC's concern, this provision is deleted in its entirety. Instead, the Commission provides a Filing Requirement in §§ 63.324(d) and 63.325(d) that makes an applicant verify that the transaction complies with the cross-subsidization prohibition of 66 Pa.C.S. § 3016(f)(1). An applicant subject to any broadband deployment commitment or Carrier-of-Last-Resort obligation must also verify compliance with those requirements. Finally, an applicant must address competitive impact. These filing statement substitutes address IRRC's concern with new definitions and provisions that tried to do the same thing in § 63.626 and throughout the proposed rulemaking.

*The City of York Standard.* IRRC asked the Commission to explain why the Commission's proposal does not violate the caselaw mandate "that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way" as set out in *Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007) and *City of York*, 295 A.2d 825 (Pa. 1972). IRRC Comments, pp. 3 and 4.

Initially, proposed § 63.324(d)(11)(i) and (ii) for General Rule applications and § 63.325(d)(11)(i) and (ii) for Pro Forma applications required the applicant to append a verified statement. The statement would show how the transaction (i) will service the public interest, convenience, and necessity and (ii) describe the general and specific affirmative public benefit to Pennsylvania consumers.

The proposed rule created two separate mandates for two distinct purposes. Sections 63.324(d)(11)(i) and 63.325(d)(11)(i) required the applicant to meet the Certificate of Public Convenience standard of 66 Pa.C.S. § 1103(a). Sections 63.324(d)(11)(ii) and 63.325(d)(11)(ii), respectively, addressed the *City of York* standard.

In response to IRRC's concerns, the final-form rulemaking deletes these two sections in their entirety. Instead, the final-form rulemaking at §§ 63.324(d)(11)(i) and 63.325(d)(11)(i) reiterates word-for-word the standard referenced in the comment on the *City of York* standard language applicable to a merger. Sections 63.324(d)(11)(ii) and 63.325(d)(11)(ii) require an applicant to append verifications establishing how the transaction "is necessary or proper for the service, accommodation, convenience, or safety of the public" in order to address the finding mandate set out in 66 Pa.C.S. § 1103(a). Finally, the applicant must provide a verified statement on the transaction's impact on competition. This addresses that legal requirement. These provisions effectively negate the proposed rulemaking addressing market power, market share, or competitive impact.

*Adequate Review Periods for Pro Forma and General Rule Applications.* The next issue IRRC raises is whether the proposed thirty and sixty day review periods for Pro Forma and General Rule applications is sufficient for interested parties to review the filings. IRRC is particularly concerned that very short review periods will simply encourage more formal protests to allow more time for review. IRRC Comments, p. 4.

The final regulations retain the thirty and sixty day review periods in §§ 63.324 and 63.325, respectively. There are four important revisions which address IRRC's concern about adequate review time for participants and inadvertently encouraging the filing of formal protests or complaints to get more review time.

The Commission revised the final-form rulemaking to address IRRC's concerns. Sections 63.324(c) and 63.325(c) require that a copy of an application and update be provided to the Statutory Advocates. Sections 63.324(f)(1) and 63.325(f)(2) publish an application in the *Pennsylvania Bulletin* to provide notice. Sections 63.324(f)(2) and 63.325(f)(2) establish a fifteen day protest period. Sections 63.324(g) and 63.325(g) require prior consumer notice absent a waiver from the Commission. Sections 63.324(f)(3) and 63.325(f)(3) provide that the filing of a formal protest or complaint subjects an application to Traditional review.

Sections 63.324(h)(1)–(4) and 63.325(h)(1)–(4) explain how Commission review is conducted. Sections 63.324(k) and 63.325(k) provide that Commission approval will occur by Secretarial Letter or Order as permitted by Pennsylvania law.

*Incumbent Broadband Deployment and COLR Obligations.* IRRC asked the Commission to explain why applications of an incumbent carrier are treated like those of a competitive carrier. IRRC questioned regulatory parity between incumbent and competitive carriers because incumbents have broadband deployment commitments in 66 Pa.C.S. § 3019(b)(4), and Carrier-of-Last-Resort (COLR) obligations as an Eligible Telecommunications Carrier (ETC) under 47 U.S.C.A. § 214(e)(1) and (2). IRRC Comments, p. 4.

In response to IRRC's concern, the final-form rulemaking revises the applicant's filing requirements in §§ 63.624(d) and 63.625(d). Sections 63.324(d)(21) and 63.325(d)(21) require an applicant with a broadband

deployment commitment under State or Federal law to verify compliance with that obligation. Sections 63.324(d)(22) and 63.325(d)(22) require an application with an Eligible Telecommunications Carrier (ETC) obligation to verify compliance with that obligation.

The Commission notes that ETC designation is not, strictly speaking, equivalent to the COLR mandate associated with electric and/or gas utilities. Incumbent or competitive carriers can seek ETC status. The Commission has granted ETC status to incumbent and competitive providers. The FCC granted ETC status for some wireless carriers in Pennsylvania because the Commission was initially reluctant to exercise jurisdiction on those requests. The Commission has since affirmatively decided to make wireless ETC designations as well.<sup>2</sup>

Any Commission or FCC grant of ETC status allows the provider to get Federal universal service support to provide narrowband voice service throughout the service area for which the designation is received. ETC designation requests may, or may not, be equivalent to an incumbent carrier's entire service area depending on the designation. Any carrier can relinquish that designation and the "service area" is equivalent to a "study area" but only for rural carriers. The FCC is actively considering transitioning this ETC support from narrowband voice to broadband as well.

*Consumer Notification.* IRRC expressed concern with the different treatment of prior consumer notices and the filing of formal protests or complaints in Pro Forma applications compared to General Rule transactions. IRRC suggested uniformity. IRRC Comments, pp. 5 and 8.

The final form rules treat every formal protest or complaint as subjecting an application to Traditional review. An applicant must provide prior notice to consumers, a practice consistent with the current rules for Abandonment of Service in § 63.301 et seq. The notice is prepared by the applicant and approved by the Commission's Bureau of Consumer Services (BCS) to ensure that consumers receive an understandable notice and to discourage the filing of formal protests or complaints. An Applicant can appeal any disagreement or determination directly to the Commission.

## B. Disposition of the Parties' Comments and Replies.

As an initial matter, we note that any specific objection or proposal not otherwise addressed in the final rulemaking is denied.

### 1. Summary of the Comments and Replies.

*Level 3.* Level 3 supported the proposed regulation. Level 3 particularly supported the solicitation of Comments and Reply Comments following publication in the *Pennsylvania Bulletin*. Level 3 argued that the filing of a formal protest or complaint should not derail abbreviated review because doing so allows the filing party to effectively delay a proceeding for unrelated business or commercial purposes. Level 3 filed suggestions on §§ 63.324 and 63.326 that will be discussed at the appropriate section. Level 3 Comments, pp. 1–3.

Level 3 supported the IRRC and Verizon suggestion to convene a stakeholders' meetings. Level 3 would not deny incumbents an opportunity to use abbreviated review but would use Comments and Replies to qualify for that review. Level 3 Reply Comments, pp. 1–3.

<sup>2</sup> *Commission Exercise of Jurisdiction to Designate Wireless Carriers As An Eligible Telecommunications Carrier (ETC) Pursuant 47 U.S.C. § 214(e)(2) of the Telecommunications Act of 1996 (TA-96)*, Docket No. M-00960799 (M-2009-2091317), Secretarial Letter issued on February 26, 2009.

Level 3 disputed the OCA's conclusion that procedural reformation violated applicable law. Level 3 noted the Pennsylvania Supreme Court's conclusion in *Elite Industries v. Pa. PUC*, 832 A.2d 428, 431-432 (Pa. 2003), that the Commission's mandate on regulations is "broad" and the courts defer to Commission regulations so long as they are not "so entirely at odds with fundamental principle so as to be a whim and not an exercise in judgment." Level 3 noted that Pennsylvania law has long considered Secretarial Letters to be equivalent to a final Commission Order. Level 3 disputed OCA's claim that thirty and sixty day review periods are impermissibly short. Level 3 notes that the regulations allow transactions to be reclassified and, moreover, contain substantially more filing requirement at the initial stage of an application. Those requirements bolster the ability to review and grant an application while issuing a Certificate of Public Convenience in a shorter timeframe. This is consistent with 66 Pa.C.S. §§ 1102 and 1103.

Level 3 cited the *Chester Water Authority v. Pa. PUC*, 868 A.2d 384, 390 (Pa. 2005) precedent to refute the OCA's claim that denial of a formal proceeding or hearing whenever a formal protest is filed violated Pennsylvania due process. Level 3 concluded that the same approach can be taken here regarding the formal protests filed by entities other than the Statutory Advocates. This is preferable to the current practice of mandating hearings every time someone files a formal protest or complaint. Level 3 Reply Comments, pp. 5-15. PTA agrees. PTA Reply Comments, p. 19.

*Neutral Tandem.* Neutral Tandem supported the proposed rulemaking. Neutral Tandem was concerned that the Filing Requirements set out in §§ 63.324(d)(12) and 63.325(d)(12) did not include provisions requiring applicants to disclose information about their regulatory compliance, including violations of federal or state law within the last three years; and alleged violations of federal or state law in a currently pending proceeding. Neutral Tandem Comments, pp. 1-4.

*Verizon.* Verizon generally supported the proposed rulemaking. Verizon proposed changes to simplify the rules using definitions in the Public Utility Code. Verizon also claimed that the *City of York*, 295 A.2d 825 (1972) standard, which requires that a merger affirmatively benefit the public, applies only to mergers so language expanding it beyond mergers is inappropriate. Finally, Verizon claimed that provisions which require Commission review and approval of affiliate transactions contradict 66 Pa.C.S. § 3019(b)(1). Verizon Comments, pp. 1-11.

Verizon dismissed the due process concerns raised by OCA, OSBA, and BCAP. Verizon noted that regulatory review of regulated carriers remains a burden, particularly when competitive carriers like cable companies can freely complete the type of transactions contemplated under 66 Pa.C.S. §§ 1102 and 1103 devoid of Commission review. Verizon Reply Comments, pp. 1-4. Verizon saw no basis for allowing competitors to obtain abbreviated review of their applications while denying that same option to incumbents. Verizon also opposed allowing any formal protest or complaint to interfere with a carrier's abbreviated review. Verizon opposed the increased filing requirements given their cost and burden on an applicant. Verizon Reply Comments, pp. 8-11.

*Windstream.* Windstream applauded the Commission's recognition of the need to change the Commission's review and approval process for regulated company transactions. Windstream asked the Commission to eliminate

unlimited review under the Traditional Rule and replace it with a two-track system with strict timelines. Windstream noted that other regulatory agencies have streamlined their review and approval process to sixty to ninety days. Instead, Windstream proposed an additional review period of thirty days to accommodate a hearing. Windstream Comments, pp. 1-16.

*PTA.* PTA endorsed a rapid review process. The PTA noted that other states approve applications with no changes in rates or services much faster than Pennsylvania. PTA was concerned that entities used the Commission's process to file formal protests or complaints to extract some gain from the applicant regardless of the issues raised in a protest or complaint. PTA proposed that no protest or complaint automatically subject an application to longer review. The Commission should examine the interest in the application, the fact-specific basis for the protest, a demonstrated nexus to the transaction, and novel or important issues before the Commission sustains any protest or complaint. The PTA opposed changing the transfer of control threshold from 20% in the Policy Statement to 10% in the proposed rule. The affiliate interest requirements were a possible violation of 66 Pa.C.S. § 3019(b)(1) as well. PTA Comments, pp. 1-12.

PTA noted that the overwhelming number of mergers and acquisitions subject to Chapter 11 do not involve rates or changes in service and would be appropriate for abbreviated review. PTA Reply Comments, pp. 1-20.

*BCAP.* The Broadband Coalition of Pennsylvania (BCAP) proposed abbreviated review only for competitor carriers. BCAP opposed abbreviated review for incumbent applications given their market dominance. BCAP argued that 66 Pa.C.S. § 3011(11) only states that the Commission should, not must, make all regulations equal between incumbent and competitive carriers. BCAP also opposed including "information services" as a filing requirement because those services are beyond the Commission's authority in 66 Pa.C.S. §§ 1102 and 1103. BCAP Comments, pp. 1-24. BCAP opposed distinguishing between "rural" and "nonrural" carriers when it came to Commission review and approval of incumbent applications. BCAP Comments, pp. 24-26.

BCAP asked the Commission to allow abbreviated review for applications that contain proprietary information or seek a protective order. BCAP supported using the definitions set out in Chapter 30. BCAP supported automatically subjecting an application to unlimited Traditional Rule review if a Statutory Advocate filed a formal protest or complaint. BCAP also urged the same treatment for private parties. BCAP Reply Comments, pp. 1-7.

*OCA.* The Consumer Advocate (OCA) filed detailed Comments opposing the rulemaking in its entirety. Alternatively, the OCA proposed a series of limited rules that would be applicable only to competitive carriers. OCA Comments, pp. 1-36. The OCA argued that incumbent carriers should not be able to use abbreviated review because they have Carrier-of-Last-Resort (COLR) obligations under federal law and broadband deployment obligations under 66 Pa.C.S. § 3013(a). The OCA expressed concern that abbreviated review for incumbent applications will undermine those provisions. For those reasons, OCA limits abbreviated review to competitive carriers. OCA Comments, pp. 1-36.

The OCA proposed an alternative that would only be provided to competitive carriers and then only if the Commission persists in this rulemaking as opposed to

complete withdrawal in its entirety. OCA Comments, pp. 29—35. The OCA proposed that all retail and wholesale customers, including interconnected carriers, be provided direct notice unless the interconnection agreement waives that notice requirement. The OCA would require that an application and all the accompanying information be provided to the Statutory Advocates and all affected parties on the same day it is filed with the Commission. The OCA would make applications involving abandonment or other consumer protections ineligible for abbreviated review. OCA Comments, pp. 29—32.

The OCA's Reply Comments opposed the proposed modifications of the carriers and PTA as well. OCA Reply Comments, pp. 1—15.

*OSBA.* The OSBA recognized that the proposed rulemaking will create three levels of review but suggested that all mergers, acquisitions, or similar transactions involving LECs with substantial market shares be subject to Traditional Rule review unless the transaction is unopposed. The OSBA also appended a series of extensive technical amendments to their comments in support of their position. OSBA Comments, pp. 1—24.

The OSBA opposed the PTA's proposals to reduce the filing requirements, rely on competition, and require more specificity in protests or formal complaints because they eliminated review of potential market concentration. The OSBA opposed Verizon's proposals because an intervenor would have to meet a higher showing for their protest yet be deprived of the information needed to meet it. OSBA Reply Comments, pp. 5—7.

#### *The Working Group*

The Commission received comments from the public, industry, the Statutory Advocates and IRRC. In particular, IRRC and other comments urged the Commission to meet with interested stakeholders and resolve concerns about the scope, complexity, limited participation rights of some parties, and the relationship with Chapter 30 before developing the final-form rulemaking.

Commission staff met with stakeholders, particularly industry and the Statutory Advocates, to try and resolve these more contentious issues. Their positions often repeat ones set out in earlier filings. Level 3 did amend its position to support incumbent carrier use of abbreviated review instead of limiting it to only competitive carriers. This was a major concession that aided in developing the final-form rulemaking. It also became evident that there would be no agreement on resolving some particularly contentious issues. These were: (1) What Transactions Are Eligible for Abbreviated Review; (2) Which Carriers are Eligible to use Abbreviated Review; (3) the Effect of a Formal Complaint or Protest; (4) the Reclassification of a Transaction Under Abbreviated Review; and (5) the Commission Process Used to Approve Pro Forma or General Rule transactions.

#### *2. Disposition of the Five Major Issues.*

*Which Transactions Are Eligible for Abbreviated Review.* The final regulations are limited to the acquisitions, mergers, stock sales or transfers, transfers of assets and transfers of control listed in the proposed Purpose. These require submission of an application seeking Commission approval under 66 Pa.C.S. § 1102 and the required Certificate of Public Convenience governed by 66 Pa.C.S. § 1103 evidencing Commission approval of the application. The final-form rulemaking excludes Securities Certificates or similar financial transactions. We prefer to limit the final-form rulemaking to the proposed subjects because there were no extensive objections to these types

of transactions. The final-form rulemaking also excludes Diminution in Control based on the comments.

*Which Carriers Are Eligible for Abbreviated Review.* The final-form rulemaking allows any applicant that is, an incumbent or competitive carrier, to seek abbreviated review of their applications. We recognize the continual assertion that abbreviated review should be limited to competitors or entities that clearly lack market power or control over bottleneck facilities. This assertion is less critical than developing a general rule applicable to all applicants. Abbreviated review for all applicants is preferable to allowing some applicants to get abbreviated review while denying that same relief to others based on current allegations about market power.

Market power is an elusive, complex, and changing term. For example, a current competitor with an overall small Pennsylvania market share may have a considerable market share of available Internet backbone facilities. On the other hand, a large Pennsylvania incumbent may have very little market share in critical Internet backbone facilities. This observation is evident in the variation in the comments on the extent and importance that competition should play in the final-form rulemaking. Compare BCAP Comments, pp. 13—17 (minimal competition) with PTA Reply Comments, pp. 8—13 (competition is robust and thriving).

A final rule should not rest on a preliminary determination about the market power of certain regulated carrier categories, where such a determination will then govern whether a carrier obtains abbreviated review for a change of control application.

Therefore, we conclude that it is more evenhanded to allow every applicant to seek abbreviated review so long as an applicant understands that formal protests or complaints may arise based on allegations of market power. This approach, coupled with published notice of all applications and allowing a protest period, is preferable to imposing detailed upfront filing mandates for some carriers while denying abbreviated review to others.

*The Effect of a Formal Protest or Complaint.* To facilitate abbreviated review, the proposed regulations confined the unlimited time span of the Traditional Rule to applications in which the Statutory Advocates filed a formal protest or review. This limited the ability of others to trigger a Traditional Rule proceeding.

There was substantial opposition to that proposal. The final regulations hold that the filing of any formal protest or complaint by any entity will trigger Traditional Rule review. This is current practice in virtually all other proceedings before the Commission. If, however, the formal protest or complaint does not raise material factual issues, formal evidentiary hearings would not be required as part of Traditional Rule review.<sup>3</sup> We conclude that technology and market changes do not justify departing from that rule for a discrete class of applications.

*Reclassification of a Transaction and Challenges to Reclassifications.* Presently, every application is subject to the unlimited review of the Traditional Rule if a formal protest is filed. The proposed rulemaking continued the Traditional Rule but created two abbreviated review periods for faster review and approval. Most comments do not dispute reclassification although there is considerable disagreement over when the Commission will reclassify and how the applicant should receive notice.

<sup>3</sup> The *Chester Water* decision held that 66 Pa.C.S. § 1103(b) did not require the Commission to hold evidentiary hearings when there were no material factual issues in dispute.

As an initial matter, we adopt IRRC's suggestion that the publication requirements for Pro Forma transactions should mirror those set out for General Rule transactions, that is, publication in the *Pennsylvania Bulletin*. IRRC Comments, p. 8. This means that reclassification and notice must be reconciled with notice published in the *Pennsylvania Bulletin*.

We conclude that any challenge to the reclassification should be filed during the fifteen day protest period following publication. The Commission will address challenges to reclassification during consideration of the application based on whether or not a formal protest or complaint to the application has been filed by any entity.

Under the final-form rulemaking, notice will be published for the reclassification of every application in the *Pennsylvania Bulletin*. A challenge to the Commission's proposed reclassification is not automatically subjected to Traditional Rule review. In cases where the application is reclassified and there is no formal protest or complaint, the Commission or staff will address the challenge during review and approval.

If, however, a formal protest or complaint to the filed transaction is filed in addition to any challenge to the Commission's proposed reclassification, the entire filing will be subject the application to the Traditional Rule. This is consistent with our determination that a filed formal protest or complaint subjects an application to Traditional Rule review. In that case, the reclassification and the formal protest or complaint will be disposed of during the Traditional Rule review.

We do not believe that a challenge standing alone should subject an unprotested Pro Forma or General Rule review to Traditional Rule review. That approach is punitive because a challenge to reclassifying an application becomes tantamount to a formal protest or complaint application even though there is no formal protest or complaint.

*Commission Review and Approval.* Most comments support abbreviated review for Pro Forma and General Rule applications although the OCA did oppose the rulemaking in its entirety. The final-form rulemaking addresses IRRC concerns with notice of a transaction, due process opportunities to participate, and reclassification of an application, and how the Commission approves an application. IRRC Comments, pp. 4—8.

In response to IRRC concerns, we conclude that abbreviated review and approval of an unprotested Pro Forma or General Rule application should be similar although we modify the rules to address IRRC's concerns in several critical ways. First, every application will be now published in the *Pennsylvania Bulletin*. Second, every notice will establish a 15 day protest period. Third, every notice will inform the applicant and the public about any reclassification of an application. Also, consumers will receive prior notice.

The Commission will review and approve an unprotested Pro Forma application in a Secretarial Letter no later than 30 days after expiration of the protest period. Review can be completed quickly because there are no formal protests or complaints, there have been no rate changes, no changes in conditions of service, or the change in control is less than 20%.

The Commission will also review and approve an unprotested General Rule application using the same approach with the only difference being the timing of the approval. The application will be published, there will be a 15 day protest period, and any reclassification will be

contained in the notice. There will also be prior consumer notice. The major difference is that the Commission will review and approve an unprotested General Rule application by a Secretarial Letter at Public Meeting no later than 60 days after the protest period. Review is longer because, although the application is unprotested, the application contains rate changes, a change in the conditions of service, or the change of control exceeds 20%.

### 3. *Disposition of the Ancillary Issues.*

The ancillary issues were: (1) Affiliated Interest filing requirements; (2) the 10% threshold; (3) the Filing Requirements; (4) using a "deemed approved" approach if an application is not approved by a date certain; (5) eligibility of applications with proprietary information or confidential agreements for abbreviated review; and (6) including "information services" and the Herfindahl-Hirschman Index (HHI) test for competition.

*Affiliated Interest Transactions.* The final-form rulemaking deletes proposed § 63.626 in its entirety. Instead, the final-form rulemaking requires two requirements. Sections 63.324(d)(11)(iii) and 63.325(d)(11)(iii) require an applicant to address competitive impact. Sections 63.324(d)(23) and 63.325(d)(23) require an applicant to verify compliance with the prohibition against cross-subsidization under State and Federal law, a prohibition set out in 66 Pa.C.S. § 3016(f)(1).

*The 10% Threshold.* The final regulation retains the twenty percent threshold figure. This provides guidance to all applicants seeking review and approval of a transfer of control better than adherence to an FCC requirement for a discrete class of applicants.

*Revised Filing Requirements.* The Filing Requirements are revised to include Neutral Tandem's suggestion to address regulatory compliance with state and federal law. The Filing Requirements also contain a verified statement in §§ 63.324(d)(11) and 63.325(d)(11) addressing the impact on competition in Pennsylvania.

*Deemed Approved.* The final-form rulemaking abandons the "deemed approved" approach. Final-form regulations in §§ 63.324(k) and 63.325(k) require the Commission to issue a determination based on facts set out in §§ 63.324(d)(11) and 63.325(d)(11).

This includes a holding that a merger will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way" as set out in *Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007) and *City of York*, 295 A.2d 825 (Pa. 1972). This includes findings to warrant issuance of a Certificate of Public Convenience in 66 Pa.C.S. § 1103(a) and addressing competitive impact.

The Commission will review an application in §§ 63.324(h)(1)—(4) and 63.325(h)(1)—(4) when determining whether to approve an application in § 63.324(k) or § 63.325(k), respectively.

The Commission will act on an unprotested Pro Forma application no later than 30 days after expiration of the protest period. The Commission will act on an unprotested General Rule application no later than 60 days after expiration of the same protest period. However, a failure by the Commission to meet these deadlines will not result in a transaction being "deemed approved" under these regulations.

*Review of Applications Containing Proprietary Information.* The final regulations do not differentiate between applications with or without proprietary information. The final regulations publish all applications and establish a

protest period of 15 days under § 5.14(d). This reflects IRRC's suggestion that all transactions be treated alike for public notice. Parties seeking access to that information can execute the necessary confidentiality agreement or seek appropriate relief from the Commission. The Statutory Advocates will receive a copy of the proposed transaction and they can execute any confidentiality agreement while the Commission sets the application for publication. This is consistent with BCAP's comments stating that transactions involving proprietary information should not be denied abbreviated review. BCAP Reply Comments, p. 2.

Consequently, there is no need to treat applications with proprietary information differently from applications that do not classify information as proprietary. We agree that there is no need to deny an applicant the opportunity to use abbreviated review simply because their filing may contain proprietary information or require an interested party to execute a confidentiality agreement.

*Inclusion of "Information Services" and the "Herfindahl-Hirschman Index" Competition Test.* The final regulations delete inclusion of Information Services, notwithstanding the increased convergence of telecommunications and information services. This avoids unsettled law on controversial issues. The Commission can revisit this issue later as appropriate.

The final regulations also delete the mandatory Herfindahl-Hirschman Index filing in favor of a general statement in the §§ 63.324(d)(11) and 63.325(d)(11) Filing Requirements. An applicant must address competitive impact to meet that requirement of Pennsylvania law although a general statement is better than requiring an applicant to develop and fund a Herfindahl-Hirschman Index study that may not even interest anyone. That triggers unnecessary expense. Equally important, a party with that concern can file a formal protest or complaint and ensure a detailed consideration under Traditional Rule review. We conclude it is better to examine a detailed concern afterwards instead of imposing a preliminary mandate to prepare a Herfindahl-Hirschman Index filing.

#### Extended Discussion of Annex A

*Section 63.321. Purpose.* The provision details the types of applications for which a telecommunications public utility can seek Commission approval. This provision reflects the Commission's statutory authority to issue a certificate of public convenience evidencing the approval of the type of transactions in this section.

*Objections.* There were no objections.

*Disposition.* The final-form rulemaking eliminates "Affiliate Interest" applications because we abandon that topic. The rules replace "transactions" with the phrase "an application seeking Commission approval." The phrase also uses the general term "applicant" because it is more encompassing than a more limited term for submissions seeking Commission approval under 66 Pa.C.S. § 1102(a) and a Certificate of Public Convenience under 66 Pa.C.S. § 1103. The final-form rulemaking excludes Securities Certificates and Diminution of Control as well.

*Section 63.322. Definitions.*

*Objections.* There were objections to some of the definitions. They are disposed of on a word-by-word basis in this section.

The proposed rulemaking contained definitions for "Affiliated Interest," "Formal Complaint," "Formal Investiga-

tion," "Formal Proceeding," "Incumbent Local Exchange Carrier," "Informal Complaint," "Informal Investigation," "Informal Proceeding," "Party," "Pennsylvania Counsel," "Person," "Staff," "Statutory Advocate," and "Verification." These reflect definitions contained in the Public Utility Code or the Commission's existing regulations in §§ 1.1, 3.1 and 5.1, et seq.

*Objection and Disposition.* There were no objections to these long-standing terms. The final-form rulemaking adopts them as set out in the proposed rulemaking.

The proposed rulemaking set out definitions for "controlling interest" and "diminution in control" as a modified version of definitions set out in the Commission's Policy Statement on Utility Stock Transfers in § 69.901.

*Objection.* The use of a ten percent figure in these terms raised questions. IRRC asked the Commission to explain why the Commission used the ten percent figure as a threshold when the current Policy Statement on Utility Stock Transfers in § 69.901(b)(2) uses a 20% threshold. IRRC Comments, p. 4.

PTA believed that it is a mistake for the Commission to jettison its own rules in favor of simple uniformity with the FCC's 10% rule for regulated telecommunications companies. PTA noted that other Pennsylvania utilities will continue to follow the 20% rule. PTA Comments, p. 11.

*Disposition.* The final regulations delete the proposed ten percent figure and retain the 20% figures set out in the Commission's Policy Statement in § 69.901 et seq. The proposed percent figure reflects the figure used at the FCC in their Streamlined Order but it is not consistent with the Commission guidelines set out in the Policy Statement. The FCC figure would subject a greater number of relatively small transactions to regulatory approval with no discernible public benefit. The Commission supported efforts to mesh state mandates with federal mandates, Proposed Rulemaking Order (October 19, 2007) at 14; however, given the need for abbreviated review and current Commission guidelines, we prefer to use the 20% figure.

*Objection.* Level 3 is concerned about the lack of clarity on how the ten percent figure in the definitions is calculated. Level 3 notes a lack of clarity if the threshold is calculated based on assets and facilities "within Pennsylvania" or if assets and facilities are calculated on a "nationwide" basis. If the calculation is within Pennsylvania, a General Rule review could apply because the threshold is met. If assets and facilities were calculated nationwide, a Pro Forma review could apply as the threshold is not met. Level 3 Comments, pp. 4 and 5.

*Disposition.* On consideration, we agree with Level 3 that clarity is needed albeit limited to the twenty percent figure. The final definition for "controlling interest" will apply "within Pennsylvania" or "nationwide" whichever is larger. This provides certainty and maximizes use of the Pro Forma or General Rule using a twenty percent threshold.

*Objection.* Level 3 also believed that the ten percent threshold should not be used in § 63.324(a)(3) to define diminution of control. Level 3 argues that the lower threshold would burden market transactions and is already covered by provisions addressing direct and indirect transfers of control anyway under § 63.324(a)(2).

*Disposition.* We agree. The final-form rulemaking strikes § 63.324(a)(3) and the definition. The definition appears to burden market transactions. The concern of



that definition is addressed in §§ 63.324(a)(2) and 63.325(a)(2) as a matter of direct and indirect transfers of control. The final-form rulemaking also removes the equivalent provision for Pro Forma review in § 63.235(a)(3) for the same reason. We also delete the proposed 10% threshold and reinstate the current twenty percent guideline figure instead.

*Objection.* IRRC noted that the term “information service” is used in several of these definitions. IRRC asks the Commission to explain why the definitions contain “information service” because at least one Comment thought the term is inappropriate. IRRC Comments, p. 4. BCAP opposed the inclusion of “information services” because those services are beyond the Commission’s authority under 66 Pa.C.S. §§ 1102 and 1103. BCAP Comments, pp. 1–24. BCAP also notes that the term “competitive carrier” is defined only in the definitions section but is not used anywhere in the regulation so it should be deleted. BCAP Comments, p. 22, n. 51. Verizon suggested that the term be removed as well. Verizon Comments, Annex A, p. 3.

*Disposition.* We agree. The final regulations delete reference to “information service” in the definitions and regulations. We do so given the General Assembly’s 2008 enactment of legislation concerning Internet Protocol (IP) enabled services in general and Voice over Internet Protocol (VoIP) in particular P. S. § 2251.1 et seq. The 2008 legislation restricted Commission authority in some areas, particularly the regulation of rates, terms and conditions of retail VoIP or IP-enabled services, although the Commission retained its authority in other areas.<sup>4</sup> Moreover, Federal regulation and legislation in this area are constantly changing. The Commission can revisit this issue if or when that becomes appropriate. The final regulations delete “competitive carrier” given BCAP’s observation.

*Objection.* Verizon proposed reliance on federal law and would limit definitions to Act 183 and the Public Utility Code, particularly for “telecommunications service,” “telecommunications carrier” and “public utility.” PTA and BCAP supported Verizon. PTA Comments, Annex A, pp. 1–3; BCAP Comments, pp. 21–23.

*Disposition.* We disagree. The proposed rulemaking contained definitions that incorporate the very sections cited from the broader Public Utility Code while incorporating ancillary federal definitions that are neither new nor novel. The inclusion of federal definitions is more encompassing and consistent with our deleting terms for matters like information service, dominant market power, predominant market presence, and the Herfindahl-Hirschman Index because they were new or may be beyond our authority.

We recognize the concern that deletion of the proposed definitions for “Dominant Market Power,” the “Herfindahl-Hirschman Index” (HHI), and “Predominant Market Presence” may be inadvisable. However, other comments make a compelling case for eliminating new definitions that create ambiguity even if they reflect current merger guidelines at the FCC<sup>5</sup> and the Department of Justice. We solve the issue by substituting a mandate that an applicant address competitive impact in §§ 63.324(d)(11) and 63.325(d)(11). A party with a greater concern can raise these FCC and U.S. Department of

Justice (U.S. DOJ) principles by filing a formal protest or complaint and raising them in a Traditional Rule review.

The definition of Pro Forma Transaction reflects the FCC’s Streamlined Regulation Order and the Commission Policy Statement on Utility Stock Transfers. There is a new definition that addressed diminutions of the controlling interest of stock based on the 20% rule set out in the Commission’s Policy Statement in § 69.901. This definition also encompassed mundane and repetitive transactions that require an application and a certificate of public convenience but do not involve changes in rates and terms or conditions of service.

*Objection.* IRRC noted that the definitions define Pro Forma Transaction but fail to define General Rule transaction. IRRC Comments, p. 4.

*Disposition.* We agree. The critical difference between a Pro Forma Transaction abbreviated review and a General Rule Transaction abbreviated review turns on whether the application seeking abbreviated review contains rate changes, changes in terms or conditions of service, or whether the transfer of control is twenty percent or less. The final rule inserts a definition of a General Rule Transaction that is consistent with this distinction. The final rule also slightly revised the proposed definition for a Pro Forma Transaction that clearly distinguishes between the two abbreviated review procedures based on the twenty percent threshold for transfers of control. Finally, as noted earlier, “Diminution in control” is eliminated because the final rule eliminates that as well.

*Objection.* Level 3 identifies the lack of definition for two vaguely defined and ambiguous terms in § 63.324(j)(2) for “major acquisition” or “substantial market shares” in the proposed regulations. Level 3 believes that this rule using these undefined terms is unnecessary because the Commission has built safeguards into the process sufficient to ensure that a transaction which raises concerns about major acquisitions or substantial market shares will not escape Commission review. Level 3 proposes definitions if the Commission retains this provision using those undefined terms. Level 3 Comments, pp. 12–13. Verizon and Windstream agree with Level 3. Verizon Comments, p. 8, n. 8; Windstream Comments, Annex A, pp. 17–19.

*Disposition.* We agree. The undefined terms in § 63.324(j)(2) are as unnecessary as the provision, given the relationship between these related revisions in the final-form rulemaking. The same applies to an identical § 63.325(j)(2) provision as well.

The final-form rulemaking contains three revisions resolving this concern. The final-form rulemaking reinstates the long-standing practice that the filing of any formal protest or complaint by any entity triggers a Traditional Rule review. This ameliorates objections to differentiating between the treatment of Non-Statutory Advocate formal protests or complaints compared to those of a Statutory Advocate. The final-form rulemaking also abandons attempts to detail concerns with market power and concerns like market share or major acquisitions, best represented in a proposed mandate to include an Herfindahl-Hirschman Index analysis. Instead, an applicant has to address competitive impact in a filing. Someone with more concerns can file a formal protest or complaint and examine the issue in a Traditional Rule review. The final-form rulemaking deletes a Herfindahl-Hirschman Index mandate consistent with these determinations.

*Objections.* IRRC noted the absence of definitions for “assets” and “customer base” used in § 63.324(a). IRRC

<sup>4</sup> See generally *Palmerton Telephone Company v. Global NAPS South, Inc., et al.*, Docket No. C-2009-2093336, Order entered March 16, 2010.

<sup>5</sup> *Streamlined Regulation Order*, paragraph 28. The FCC carefully distinguishes between applicants that are not dominant with regard to “any service” compared to those that are dominant in one service and not another. This approach apparently reflects Federal definitions of service set out in 47 U.S.C.A. § 153.

asked that both terms be defined. IRRC expressed the same concern for § 63.625(a) as well. IRRC Comments, p. 5. Verizon suggested use of the term applicant as well. Verizon Comments, Annex A, p. 9.

*Disposition.* We agree. The definitions in the final-form rulemaking include a definition for “Assets” and “Customer Base” as well as “applicant” for clarity and consistency.

*Section 63.323. Applicability.* The proposed rulemaking formalized the scope of relief sought in the Level 3 Petition as well as the Comments and Reply Comments of Level 3, Verizon, and the PTA. This provision is consistent with the Commission’s authority to issue a certificate of public convenience granting an application to approve an acquisition, diminution in control, mergers, stock sales or transfers, and transfers of assets or control of a telecommunications public utility under 66 Pa.C.S. §§ 1102(a) and 1103 and 66 Pa.C.S. Chapter 30.

*Objection.* IRRC’s comments recommend amending the regulation to include a reference to a telecommunications public utility’s “affiliated interest” as well. IRRC Comments, p. 4.

*Disposition.* We agree. We also agree with IRRC that there is no need for an extensive provision detailing affiliated interest filing requirements in § 63.626. The Commission deleted that provision given IRRC’s observation that the provision may violate the 66 Pa.C.S. § 3019(b), limitation on affiliated interest agreement review and approval. In addition, the detailed provisions are less effective than a verified statement confirming compliance with the prohibition against cross-subsidization under state and federal law, particularly 66 Pa.C.S. § 3016(f)(1). A verified statement is simply an easier and less expensive way.

*Objection.* The OCA noted that, despite the reference to 66 Pa.C.S. § 102(a)(3), however, the proposed language of § 63.323 does not conform specifically to 66 Pa.C.S. § 1102(a)(3) because it does not include a reference to the applicant’s affiliated interests. The OCA proposes insertion of the clause “and an affiliated interest of a telecommunications public utility” to bring the provision completely within 66 Pa.C.S. § 1102(a)(3). OCA Comments, p. 34; OSBA Comments, p. 7.

*Disposition.* We agree. The proposed rulemaking contained detailed provisions in § 63.326 governing Commission review and approval of affiliated interest transactions. The vast majority of the comments asked the Commission to explain how those detailed provisions were consistent with the language severely limiting Commission review and approval of affiliated interest transactions in 66 Pa.C.S. § 3019(b)(1). The final-form rulemaking removes that section in its entirety to avoid confusing affiliated interest transactions with the Commission’s residual authority to prevent cross-subsidization in 66 Pa.C.S. § 3016(f)(1) and review utility contracts under 66 Pa.C.S. § 2101(a).

We include this language with the caveat that the addition shall not be construed to mandate review and approval in a manner contrary to 66 Pa.C.S. § 3019(b)(1). This addition reflects the Commission’s authority under 66 Pa.C.S. §§ 3019(b)(4), 3016(f)(1).

*Section 63.324. General Rule Transaction.* The proposed rulemaking incorporated the parties’ suggestion that the Commission review mirror federal review by the FCC and the U.S. DOJ. The Commission proposed to complete review and approval of a General Rule transaction within 60 days after publication in the *Pennsylvania Bulletin*.

This reduced the current unlimited review and approval time span under the Traditional Rule.

This provision was modeled on the FCC practice of dating the FCC’s review period from posting at the FCC. In this case, however, web posting is not legal notice in Pennsylvania. The Commission concludes that if a transaction involved changes in conditions of service or rates, legal notice is preferable because it provides for a quicker review on transactions with issues of public concern.

*Section 63.324(a)(1)–(7).* The proposed rulemaking listed the transactions eligible for General Rule review under the 60 day rule. The list is greater than that proposed by the parties. More transactions are included so the Commission can refocus scarce resources on complex, novel, or controversial transactions.

*Objection.* Verizon suggests that, rather than trying to enumerate a list of transactions that might qualify as “general rule transactions,” the Commission could merely refer to the transactions covered by 66 Pa.C.S. § 1102(a)(3) or (4) and preserve its right to reclassify particular transactions as Pro Forma applications or as outside the scope of the abbreviated review for good cause shown. Verizon Comments, pp. 5 and 6.

*Disposition.* The Commission acknowledges Verizon’s point but will not make the revision. A general statement may have the virtue of being more encompassing but we conclude that a list minimizes the filing of formal protests or complaints while providing more clarity and better direction for future applicants.

*Section 63.324(a)(3).* The proposed rulemaking included any dilution in control greater than 10%. This addressed situations in recent mergers in which there was a significant dilution in a public utility’s ownership of stock in the merged or spun-off entity even if there was no loss of control. In those instances, stock ownership was diluted but it never fell below a 51% ownership. In these situations, dilution in voting percentage transfers utility property by reducing but not changing public utility control. These kinds of transactions were included within the regulation because they are transfers of assets even if control is retained.

The proposed rulemaking included telecommunications utility stock transfers within the scope of the regulation and adopted the FCC’s 10% threshold compared to the 20% reflected in the nonbinding Policy Statement. The 10% threshold is based on the 10% relied on by the FCC in the Streamlined Regulation Order<sup>6</sup> and cited by Level 3 in their petition. The proposal also reflects similar decisions by other state regulators on affiliate transactions as well.<sup>7</sup>

*Objection.* Level 3 believed that the transaction described in § 63.324(a)(3) should not be included under the general rule. In most instances, if a party reduces its ownership by 10% or more, it may be adding a new minority owner or an existing owner may be increasing their ownership level. Level 3 believed this rule will have unintended consequences if for example a mutual fund or other investor accumulates more than 10% of the stock of a company on the open market. They do not obtain a board seat or exert any control over the day to day operations of the company. In those circumstances, obtaining approval before that ten percent threshold is impossible. Level 3 Comments, p. 5.

<sup>6</sup> Streamlined Regulation Order, paragraph 30 and n. 65.

<sup>7</sup> In the Matter of the Review of Chapter 4901:1-6, Ohio Administrative Code, Case No. 06-1345-TP-ORD (June 6, 2007), Proposed Rule 4901:1-6-09(D) Affiliate Transactions, p. 48.

*Disposition.* We agree with Level 3. Given our earlier agreement with Level 3's concerns about the definition, we also agree with Level 3 on the need for striking § 63.324(a)(3) and the ancillary definition from the final-form rulemaking. Level 3 presents a cogent argument that inclusion appears to burden market transactions, particularly when the concern in this section is already included within the direct and indirect transfers of control under § 63.324(a)(2). The final-form rulemaking also removes the equivalent provision for Pro Forma review in § 63.235(a)(3) for the same reason and for consistency.

*Section 63.324(a)(6).* The proposed rulemaking included transfers of a customer base within the general rule if there is a change in terms of service or rates. Otherwise, a transfer of a customer base is a Pro Forma Transaction under § 63.325. The Commission was concerned about customer impact and education, particularly in matters involving a change in rates or conditions of service. This is entirely consistent with the FCC's Streamlined Regulation Order and the Commission's current regulations governing Abandonment of Service in §§ 63.301 et seq., particularly § 63.305. The Commission has faced a lot of customer inquiries with transfers of a customer base, particularly where there are changes in rates or conditions of service. The lack of notice may, in the worst case, constitute a form of sanctioned slamming.

*Objections.* Level 3 did not object to the proposal but sought three clarifications. Level 3 notes that a customer base is an "asset" under § 63.324(a)(1) and would be subject to the 10% threshold whereas the § 63.324(a)(6) provision seems to contemplate a complete transfer of the customer base. There is uncertainty about how a partial transfer of a customer base is managed under the rules, particularly which provision will control. Level 3 also seeks to know if the "change in rates" provision includes rate reductions. Finally, Level 3 wants assurances that post-transaction rate changes through company integration would be done as a tariff filing. IRRC Comments, p. 5; Level 3 Comments, pp. 6 and 7.

*Disposition.* We agree with Level 3 on the need to explain the interplay of §§ 63.324(a)(1) and 63.324(a)(6) albeit in a manner consistent with retention of the 20% threshold figure.

The transfer of a customer base without a change in rates or terms of service but exceeding 20% would be a transfer of an asset under § 63.324(a)(1) and subject to General Rule. The same transfer of a customer base without a change in rates or terms of service under § 63.324(a)(6) that is less than 20% would be a transfer of an asset under § 63.325(a)(1) and, as a consequence, it would be subject to Pro Forma review. The critical feature is the presence or absence of a change in rates or terms of service, including rate reductions. It is a change in rates, either an increase or a decrease, that is usually important to consumers. The final-form rulemaking reflects that and, as Level 3 notes, a change following approval of an application would become a tariff issue.

*Section 63.324(b).* *Reclassification of a general rule transaction.* This provision addressed reclassification of a General Rule Transaction.

Section 63.324(b) stated that reclassification would favor a change to a Pro Forma Transaction classification. Section 63.324(b)(1)—(3) governed the new "trigger date" for review if a transaction is reclassified. In all instances, the "trigger date" would be the date the Commission informs the applicant of a reclassification. These provisions provided an applicant with a right of appeal directly

to the Commission, using a process set out in § 5.44 of our rules, if an applicant disputes reclassification.

*Objections.* IRRC recommended that the Statutory Advocates be given notice of any reclassification. IRRC Comments, p. 5. OSBA suggested language emphasizing the reclassification to Pro Forma review. OSBA Comments, Annex A, p. 8.

*Disposition.* In response to IRRC's concern, the final-form rulemaking will publish applications for transfers of control in the *Pennsylvania Bulletin*. This notice allows the public, the Statutory Advocates, and the applicant to file a formal protest or complaint or challenge to a reclassification. That notice will contain any § 63.324(b) or § 63.325(b) reclassification. A reclassification challenge is filed during the fifteen day protest period.

The Commission will address any reclassification challenge involving an unprotested application during review and approval of the application. A challenge to any reclassification involving a protested application subjects the application to the Traditional Rule and, there, the challenge is considered in that review.

We do not think it appropriate to rule that an applicant's challenge to reclassification in an abbreviated review transaction subjects the application to Traditional Rule review in the absence of another filing of a formal protest or complaint that has already made the application a protested application.

*Section 63.324(c).* *Notification requirements for general rule transactions.* The proposed rulemaking contained a revised version of proposals presented by Level 3, Verizon, and the PTA.

Section 63.324(c) proposed that a filing be submitted no later than 60 days before the closing of any transaction. The Commission agreed with Verizon on the need for a viable period to trigger review. The Commission recognized that an applicant seeks approval on or right at the closing, not significantly after. By allowing a filing to occur 45, 30, or 15 days before a closing, the proposed 60 day review period would have extended beyond the closing. The proposed regulation contained a "trigger date" for filing 60 days before closing a transaction. Barring some unforeseen event, an applicant would have had Commission approval on or shortly near their anticipated closing date.

The proposed § 63.324(c)(1)—(4) adopted suggestions from Level 3 and Verizon that a filing be made at the time that any filing is made with the FCC or the U.S. DOJ. This provision also required additional notification on subsequent filings, including providing notice to the statutory advocates and the Commission.

Section 63.324(c)(5) required notifications if the Commission requires it in response to a request. The first would be at the request of a statutory advocate. The second would be at the request of another telecommunications public utility. The third and fourth are at the request of staff or a person or party with a stake in the transaction.

This provision required notification when a party does not file a protest or delay a proceeding but wants to keep abreast about a transaction. This provision provided an alternative to a formal adjudicatory proceeding in limited instances. The Commission proposed a viable and less expensive way of keeping abreast of a proceeding.<sup>8</sup>

<sup>8</sup> Telephone Company in Pennsylvania Eliminates Provisions Restricting Competition to Address Justice Department Concerns, Procompetitive Changes to Rural Incumbent Telephone Company's Settlements with New Entrants Will Deter Misuse of

*Objections.* OSBA wanted the rules to require the application to be served on the Statutory Advocates. OSBA Comments, Annex A, p. 8. Verizon would have deleted most of the filing requirements, limited the notice mandate to only those applications that required a certificate of public convenience, and filed the initial application on the same day as the first filing made with a federal agency. Verizon Comments, pp. 4 and 5. PTA did not think it necessary to require an applicant to respond to requests from the Statutory Advocates, other carriers, the Commission, or the public. PTA Comments, pp. 5 and 6.

*Disposition.* We agree with the OSBA that the Statutory Advocates should be provided copies of the application and any updates. We do not agree that service is required. That unnecessarily increases costs. Service is a legal requirement whereas providing a copy is a notice requirement. We agree with Verizon that an applicant should be allowed to file on the same date that they file with a federal agency. We also agree with Verizon that the term Applicant should be used as opposed to another term. Verizon Comments, Annex A, p. 9.

We disagree that substantial revision in the information requirements is necessary. The purpose of the information is to discourage the filing of formal complaints and protests simply to get information and updates. This keeps the public updated without making a formal filing that would also trigger Traditional Rule review.

*Section 63.324(d). Contents of Notification for General Rule Transactions.* This provision detailed the upfront filing requirements. The list incorporated the filing requirements in § 5.14 of the Commission's rules of administrative practice and procedure to promote consistency and self-contained provisions.

This provision relied on the detailed information requirements the FCC imposed on applicants for streamlined review in the Streamlined Regulation Order. The Commission's review of the Streamlined Regulation Order identified significant information requirements beyond those identified in the comments. The Commission agreed that, in this instance, regulatory uniformity and predictability warranted reliance on these requirements as opposed to unique mandates for the Commission.

Section 63.324(d)(11) listed the affirmative benefits that an applicant must allege in support of an application. This facilitated compliance with the obligation under Pennsylvania law, set out in *City of York v. Pa. PUC*, 295 A.2d 825 (Pa. 1972) and *Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007) requiring that a merger demonstrate an affirmative public benefit. This provision allowed the Commission to determine when, and under what circumstances, conditions may be appropriate under Section 1103 to meet this requirement.

*Objection.* IRRC asked the Commission to explain how the regulations complied with the *City of York* standard of review. IRRC Comments, pp. 3 and 4.

*Disposition.* The final regulations reiterate word-for-word the *City of York* standard in § 63.324(d)(11)(i) that will be applicable to a merger or similar transaction. This addresses the concern about not extending that precedent.

Section 63.324(d)(11)(ii) is revised to require an applicant to propose findings sufficient to meet the 66 Pa.C.S. § 1103(a) determination that a Certificate of Public Convenience "is necessary or proper for the service, accommo-

ation, convenience, or safety of the public." This addresses OCA's concern with making findings in a manner that is consistent with the 66 Pa.C.S. § 1103(a) obligation to make findings.

Section 63.324(d)(11)(iii) requires an applicant to append a verified statement on the transaction's impact on competition in Pennsylvania. This effectively negates the need for other filing requirements on competition.

*Objection.* IRRC asked why incumbent carriers and competitive carriers had identical requirements in §§ 63.324(d) and 63.325(d) even though incumbents also had broadband deployment commitments and COLR obligations. IRRC Comments, p. 4.

*Disposition.* The final-form regulations on filing requirements in §§ 63.324(d) and 63.325(d) contains two provisions requiring the applicant to address, as appropriate, their respective broadband deployment commitment in § 63.324(d)(21) and their COLR obligation in § 63.324(d)(22). These requirements are also set out in §§ 63.325(d)(21) and 63.325(d)(22) for Pro Forma applications. They are not limited to "ILECs" for the reasons set out below.

Currently, incumbent carriers have broadband deployment commitments under 66 Pa.C.S. § 3019(b). However, federal developments in pursuit of a National Broadband Plan issued in March 2010 envision reforming the Federal Universal Service Fund (FUSF) to transition support from narrowband voice to deployment of a broadband network.

The proposal to only require incumbent carriers to address any broadband deployment commitment is an older paradigm undergoing rapid change, including current proposals to support broadband deployment commitments using Federal grants and loans. Sections 63.324(d)(21) and 63.325(d)(21) require any applicant with a broadband deployment commitment under state or federal law to address compliance with that commitment in Pennsylvania.

In recognition of IRRC's concern about COLR, the final regulation revised the applicant's filing requirements in §§ 63.624(d)(22) and 63.625(d)(22) to address that concern albeit one required of any applicant with an Eligible Telecommunications Carrier (ETC) status. An applicant with ETC status will have to file a verified statement affirming that they will continue to comply with the requirement.

*Objection.* The OSBA proposed that an applicant provide a verified statement addressing the expected effect on the applicant's capital structure over the next five years. OSBA Comments, pp. 9 and 10 and Annex A, p. 19.

*Disposition.* We agree. The final regulations in §§ 63.324(d)(20) and 63.325(d)(20) include the OSBA proposal. We use the term "applicant" here as well since it is more encompassing and Verizon's suggestion for clarity and consistency.

*Objection.* Neutral Tandem wants the Commission to require an applicant to provide information on their 3-year history of regulatory compliance under State and Federal law in § 63.324(d)(12). Neutral Tandem Comments, p. 3.

*Disposition.* We agree. The final regulations in §§ 63.324(d)(12) and 63.325(d)(12) adopt the proposed revision for clarity and consistency.

*Objection.* Level 3 raised concerns and proposed alternative language for § 63.342(d)(6). Level 3 was concerned

Regulatory Challenges and Benefit Rural Pennsylvania Telephone Customers, United States Department of Justice, Antitrust Division, Press Release 07-448, June 25, 2007 (Pennsylvania Telco Release).

that the § 63.324(d)(6) mandate to describe the geographic area was too broad, confusing, and would consume resources identifying every geographic calling area. Level 3 proposed, instead, a revision that the applicant provide “a summary of the services and service territories” impacted by the application. Level 3 Comments, pp. 7 and 8.

*Disposition.* We agree with Level 3. The final-form rulemaking adopts the proposed language in §§ 63.324(d)(6) and 63.325(d)(6).

*Objections.* Level 3 was concerned about the § 63.324(d)(13) verified statement that every customer received notice. Level 3 thought this inadvisable because it is highly unlikely that individualized notices can be provided, securities law prevent giving notice until a transaction becomes public, and relying on billing inserts will delay the process because those can take up to 60 days. Level 3 proposed that the applicant affirm that “customers will receive” notice. Level 3 Comments, pp. 8 and 9.

IRRC asked how a verified statement that customers received notice for General Rule transactions in § 63.324(d)(13) worked with a § 63.324(g) requirement to provide notice to customers of a rate or terms of service change in consultation with the Commission’s Bureau of Consumer Service. IRRC Comments, pp. 5 and 6.

*Disposition.* We agree with IRRC and Level 3. A verified commitment to providing notice may be more workable for General Rule and Pro Forma abbreviated review applications. However, the Commission remains concerned that customers receive prior notice of an impending transaction, most particularly when the transaction involves a change in rate or terms of service—changes that subject an abbreviated review application to General Rule review. This rule is consistent with § 63.305 of our rules on abandonment of service by a local service provider.

The final regulations require an applicant to provide prior notice to the consumers. This requires an applicant to provide advance notice unless that is not practical, a possibility raised by Level 3. In that case, the applicant can seek a waiver of this requirement under § 1.2. In either instance, the notice is prepared and approved by the applicant and the Bureau of Consumer Services. This ensures that consumers receive an understandable notice that should discourage the filing of formal protests or complaints by a confused consumer. Moreover, any disagreement between an applicant and the Bureau of Consumer Services can be resolved by a direct appeal to the Commission mirroring the procedures set out in our current rule in § 5.44.

This approach is sound because the final-form rulemaking requires publication of an application seeking abbreviated review. Publication, notice, and protest give consumers and the Statutory Advocates information and a time period to decide on future action. Equally important, this will discourage the filing of those formal protests or complaints that will now subject a General Rule or Pro Forma application to Traditional Rule review.

This solution also addresses IRRC’s concern about consistency with the prior notice provisions in § 63.324(g) and the need to explain how the Commission’s Bureau of Consumer Services will do this. Section 63.324(d)(13) required a verified statement that consumers received notice whereas § 63.324(g) mandates the same except for good cause shown. In § 63.324(g), moreover, the applicant must consult with the Commission’s Bureau of Consumer

Services to ensure the language is understandable and that the consumers receive all the relevant information.

Carriers have historically worked with the Bureau of Consumer Services on such notices, whether in advance or after the fact. This best ensures that consumers receive understandable notice about the transaction. This occurred informally.

The final-form rulemaking anticipates that this informal process will continue here. In the unlikely event an applicant and the Commission staff are unable to agree on suitable language or what constitutes relevant information, the applicant can always appeal from staff action under § 5.44 of our rules.

The final-form rulemaking requires an applicant to provide advance notice under §§ 63.324(d)(13) and 63.325(d)(13) consistent with § 63.324(g) unless prior notice is not practical. In that case, a waiver granted under § 1.2 of our rules allows the applicant to provide notice after the fact.

Transactions involving changes in rates or terms of service, particularly a change in their provider due to a transfer of a customer base, are far more compelling matters to consumers than concerns about competitive impact or transactions that may involve rates but not their consumer rates.

*Objection.* PTA expressed its preference for statements as opposed to verified statements. PTA also suggested that a reference to a pending matter in a federal agency occur also by the electronic location. PTA proposed elimination of the verified statements on “market power” in §§ 63.324(d)(11)(iii) and 63.324(d)(18), the verified statements and copies of other Pennsylvania certificates in § 63.324(d)(14), and the verified statements regarding anticipated regulatory action at the Federal level or by other states in § 63.324(d)(17).

*Disposition.* We agree with PTA on § 63.324(d)(18) and that an electronic reference to a pending matter should be provided but not in place of providing a copy.

We disagree with PTA on eliminating verified statements. Verified statements have clearer legal implications compared to statements. Given the importance of the applications and the public interest, the final regulations retain verified statements. We disagree on eliminating a requirement that an applicant provide verified copies of current Pennsylvania certificates. A complete and comprehensive understanding of an applicant’s operations in Pennsylvania is an important consideration. This is the same logic the Commission used for adopting Neutral Tandem’s proposed language on an applicant’s regulatory history as well.

*Objections.* Verizon would eliminate all verified statements going to eligibility for abbreviated review, the *City of York* standard, impacts on competition, and notices to consumers. Verizon Comments, Annex A, pp. 5–8.

*Disposition.* We conclude that retention of the proposed filing requirements, albeit with some modifications, is important for several reasons. The final filing requirement modifies information on the territory covered, deletes reference to undesirable provisions on competitive impact, and gives an applicant the secondary option of providing consumers notice after the fact when prior notice is not practical. The amended requirements now contained in a submitted application greatly assist the Commission and the public in quickly getting pertinent information about a transaction while reducing the filing of formal protests or complaints. Given that the final-

form rulemaking now holds that the filing of a formal protest or complaint subjects abbreviated review applications to Traditional Rule review, the submission of more information earlier is even more important to discourage the filing of formal protests or complaints.

*Section 63.324(e). Continuing Obligations for Notification of General Rule Transactions.* This provision reflected a determination that the Commission must be given updated notice and information about a pending proceeding. This maximized information and furthered the goal of making abbreviated review workable.

*Objections.* Verizon provided several proposed revisions to the applicant's ongoing obligation to keep the Commission and the interested public current on developments elsewhere if they pertain to an application for abbreviated review pending at the Commission. Verizon Comments, Annex A, p. 8.

*Disposition.* We agree with Verizon. The final-form rulemaking is revised to incorporate much of Verizon's suggestion. The final-form rulemaking adopts Verizon's proposal to inform the Statutory Advocates by providing notice and a copy but they do not impose a legal mandate to "serve" a copy. Instead, providing a copy should reduce costs.

*Section 63.324(f). Commission Publication of General Rule Transactions.* This provision incorporated current publication requirements for applications under § 5.14 of the Commission's rules of administrative practice and procedure. The provision requires notice to consumers for transfers of a customer base.

*Objections.* This was a particularly controversial part of the proposed rulemaking because it would allow some formal filings to be treated as "general comments" as opposed to a formal protest or complaint. Moreover, some formal protests or complaints would not warrant a hearing and unlimited review under Traditional Review.

IRRC thought that the proposal that the Commission "may" reclassify a transaction on the filing of a protest "unless shown otherwise for good cause" was vague. IRRC was concerned that the regulation did not identify how a General Rule Transaction would be reclassified. IRRC suggested that the Commission develop criteria used in making a reclassification determination. This concern applied to similar provisions in the Pro Forma proposed regulation in § 63.325(f)(2)(ii). IRRC Comments, pp. 4 and 5.

Some comments, particularly those of the Statutory Advocates and BCAP, raised due process concerns. OSBA Reply Comments, p. 7; OCA Reply Comments, pp. 7—20; BCAP Comments, pp. 17—23. Other comments, particularly those of Level 3, PTA, and Verizon, supported the proposal. They thought the proposal was consistent with due process while reducing the filing of formal protests or complaint for ancillary purposes. They also thought the proposal was entirely consistent with the *Chester Water Authority* holding that the Commission need not have a formal hearing on every formal protest, particularly when there are no material factual issues in dispute. Level 3 Reply Comments, pp. 5—12; PTA Comments, pp. 5—10; PTA Reply Comments, pp. 17—20.

*Disposition.* After careful consideration of this controversial proposal, we conclude that, although the comments raised legitimate concerns, the suggested modifications are unworkable. Accordingly, we will continue our existing practice. The final-form rulemaking continues the

existing practice that the filing of any formal protest or complaint will subject that application to the Traditional Rule.

Section 63.324(f)(2)(iii) is deleted in the final-form rulemaking given that any formal protest or complaint against a Pro Forma or General Rule transaction subjects the transaction to Traditional Rule review. At the same time, however, if the formal protest or complaint does not raise any material factual disputes, the Traditional Rule review need not include evidentiary hearings.

*Section 63.324(g). Telecommunications public utility notice to customers.* Proposed § 63.324(g)(1) required the applicant to prepare and distribute a prior notice to consumers with the approval of the Commission's Bureau of Consumer Services (BCS). BCS involvement was deemed appropriate because the transaction involved changes in conditions of service or rates, items of particular interest to customers. BCS' involvement would ensure a notice understandable to consumers.

Sections 63.324(g)(2)(i)—(iv) would have distinguished between a general comment that did not involve a formal protest and formal protests. Section 63.324(g)(2)(iii) and (iv) distinguished between formal protests filed by a statutory advocate and the formal protests of others.

*Objections.* IRRC raised three concerns and recommended that the Pro Forma Transaction requirements of § 63.325(g)(1)—(2) mirror those of a General Rule Transaction. First, IRRC asked why a Pro Forma application did not require additional customer notice. Second, a formal protest filed to a Pro Forma application would not reclassify a transaction but one filed under the General Rule does. Third, Statutory Advocates' rights to file formal protests is set out for General Rule transactions but is not discussed for a Pro Forma Transaction. IRRC suggested the rules for a Pro Forma Transaction mirror those of a General Rule Transaction. IRRC Comments, pp. 6—8.

IRRC asked the Commission to explain how the requirement for a verified statement affirming prior consumer notice in the filing requirements provision in §§ 63.624(d) and 63.625(d) meshed with provisions dispensing with that same mandate in §§ 63.324(g) and 63.325(g). IRRC also asked if the applicant would have to secure BCS approval and, if so, how that would work. Finally, IRRC asked how disagreements would be solved. IRRC Comments, pp. 5 and 6.

*Disposition.* IRRC raises some valid points. The final-form regulations in §§ 63.324(g)(1) and (2) and 63.325(g)(1) and (2) are consistent with each other. The final-form rulemaking is revised so that the Commission's disposition of a § 63.324(d)(13) mandate for a verified statement on prior notice meshes with §§ 63.324(g) and 63.325(g). The final-form rulemaking now uniformly requires prior notice to consumers. An applicant can seek a waiver under § 1.2 if prior notice is not practical.

An issue arose about the management of consumer notices when there are transfers of a customer base. These transfers occur frequently but have been rarely addressed until now. These transfers often occur with no prior consumer notice let alone consent. The final regulations resolve this problem by reconciling notice with any pressing need for rapid approval. This reasoning applies with equal force to a Pro Forma Transaction in § 63.325(g)(1) and (2).

Moreover, prior notice is consistent with current regulations governing abandonments of service in § 63.301 et seq., particularly § 63.305. A prior notice that is under-

standable to consumers will discourage formal filings and promote abbreviated review. Any disagreements on the notice between an applicant and staff can be resolved with an appeal to the Commission mirroring the rules in § 5.44. Consequently, the final form regulations will require customer notice for a transaction which transfers a customer base, even in the absence of a change in rates or terms of service.

*Section 63.324(h). Commission Review of Transactions Subject to the General Rule.* This provision formalized the Commission's discretionary authority under 66 Pa.C.S. §§ 1102(a)(3) and 1103, particularly when the imposition of conditions for approval of the transactions is in the public interest. Discretion on the matter of conditions was consistent with due process.

*Objections.* The OCA expressed concern that the proposed rulemaking did not make the requisite findings, did not provide time to review the applications, and did not differentiate between incumbent and competitive carriers. The OCA recommended using a process that is open and flexible enough to allow for protests. OCA Comments, pp. 15–19; OCA Reply Comments, pp. 1–23, esp. 4–6. Verizon proposed language revisions to clarify that it is the application, not the transactions, reviewed and approved by the Commission. Verizon Comments, Annex A, p. 9.

*Disposition.* We agree that revisions are appropriate for clarity. The final-form rulemaking is revised to buttress the legal, due process, and notice determinations. The rule in § 63.234(d)(11) lists the findings and allegations that an applicant must show to the Commission to facilitate a consideration of the legal *City of York* standard, reach findings required by 66 Pa.C.S. § 1103 for Certificates of Public Convenience, and comply with the consideration of competitive impact. The Commission's disposition of an application in § 63.324(k) or § 63.325(k) will be done based on a review conducted under § 63.324(h)(1)–(4) or § 63.325(h)(1)–(4), respectively. Any concern with due process is bolstered by revised rules which provide that the filing of a formal protest or complaint will subject the transaction to the unlimited time span of Traditional Rule review. The concern with notice is resolved with rule revisions that mandate publication in the *Pennsylvania Bulletin* and a 15 day protest period.

The final-form regulations in §§ 63.324(d)(11), 63.324(h)(1)–(4), and 63.324(k) requires factual filings, Commission review, and issuance of Commission approval sufficient to meet 66 Pa.C.S. §§ 1102 and 1103(a). This abbreviated review is consistent with those legal standards.

*Section 63.324(i). Formal Protests to a General Rule Transaction.* This provision allowed the filing of a formal protest pursuant to the filing requirements set out in the Commission's Rule of Practice and Procedure.

*Objections and Disposition.* There were no objections to this section. However, the proposed rulemaking refers only to Formal Protests whereas the final regulations address formal protests and complaints based on filed comments. The revision here repeats that for consistency.

*Section 63.324(j). Reclassification of a Transaction from the General Rule.* This provision recognized that some transactions may be reclassified from the General Rule to either a Pro Forma Transaction or a Traditional Rule transaction. The provision also provided that the filing of a general comment or formal complaint or protest was not always tantamount to a formal protest requiring Traditional Rule review.

*Objections.* IRRC was concerned that the time periods in §§ 63.324(j)(1) and 63.325(j)(1) were too short and would encourage formal protests to simply get more time for review. IRRC also questioned why as a matter of equity a different result should hold for the public compared to a Statutory Advocate. IRRC Comments, pp. 4 and 6.

*Disposition.* We agree with IRRC. The final regulations retain the thirty and 60 day review periods for a Pro Forma and General Rule transaction, respectively, with four critical changes.

The final regulations will publish every application in the *Pennsylvania Bulletin*. This addresses concerns with notice and due process.

The notice establishes a 15 day protest period for every application. This addresses concerns with an opportunity to be heard.

The filing of any formal protest or complaint will trigger Traditional Rule review. This addresses the concern with consistent and equitable treatment of any formal protest or complaint by any private or public entity.

Finally, the rules require prior consumer notice. This addresses concerns with consistency between Pro Forma and General Review applications but in a way that minimizes the filing of a formal protest or complaint that would derail that application.

Taken in total, these revisions reduce concerns about the time to review and approve applications while giving all public and parties equal treatment.

*Section 63.324(k). Commission Approval for a General Rule Transaction.* This provision established a 60 day review and approval period for General Rule transactions following publication in the *Pennsylvania Bulletin*.

*Objections.* OCA questioned whether the “deemed approved” status for 60 day General Rule transactions or even a 30-day Pro Forma Transaction met the *City of York* standard or 66 Pa.C.S. §§ 1102 and 1103(a). OCA was concerned that the approval would occur by Secretarial Letter issued within a certain time interval from the date of filing with the Commission. OCA Comments, pp. 1–12; OCA Reply Comments, pp. 1–15.

Level 3 read the “in law and fact” language in §§ 63.324(k)(1) and 63.325(k) as allowing an applicant to close a transaction on the 61st or 31st day, respectively. Level 3 was concerned about interpretations which could require issuance of a Commission approval and the accompanying Certificate of Public Convenience as preconditions to closing a transaction. Level 3 Reply Comments, pp. 10 and 11.

*Disposition.* We understand the concerns and addressed them. The final rule in §§ 63.324(k) and 63.325(k) provides that the Commission will act by Secretarial Letter or Order following a review conducted under § 63.324(h)(1)–(4) or § 63.325(h)(1)–(4), respectively. However, although the Commission fully expects that these time frames for approval will be met, the Commission's time frames for review and approval are directory in nature; as such, in the absence of Commission approval within these time frames, the application is not deemed to be approved.

The rules publish an application, establish a 15 day protest period, and hold that the filing of any formal protest or complaint will subject a General Review transaction to Traditional Rule review. This final rule timelines

may be longer than the one envisioned in the proposed rule. However, the same timeline is also considerably shorter than the unlimited time span for Traditional Rule review.

*Section 63.324(l). Limitations on general rule transactions.* This concluding provision addresses bankruptcy and the possible misuse of a Pro Forma Transaction.

*Objections and Disposition.* There were no objections to this provision.

*Section 63.325. Requirements for a telecommunications public utility seeking Commission approval of a Pro Forma Transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103.* This provision addresses pro forma changes when a carrier or public utility undergoes restructurings that also require a certificate of public convenience.

*Section 63.325(a). Pro Forma Transactions.* This provision provided that Pro Forma review and approval applied to an application that did not change conditions of service or rates or did not reduce an applicant's control by more than 10%. Since there is no change in rates or service conditions, the public interest in these applications is typically far less than an application involving rates or conditions of service.

*Section 63.325(b). Reclassification of a Pro Forma transaction.* This provision mirrored the Section 63.324(b) provision addressing reclassification of a General Rule Transaction. In this case, however, the reclassification would have been to either the General Rule classification or Traditional review.

*Objections.* IRRC recommended that the Statutory Advocates be given notice of any reclassification. IRRC Comments, p. 5.

*Disposition.* As discussed earlier, the final-form rule-making will publish applications for transfers of control in the *Pennsylvania Bulletin* to provide notice. That notice informs the public, the Statutory Advocates, and the applicant of the transaction and any reclassification. That notice also provides any entity an opportunity to file a formal protest or complaint.

We conclude that any challenge to the reclassification should be filed during the 15 day protest period established in the notice. The Commission will address challenges to reclassification during consideration of the application based on whether or not a formal protest or complaint has been filed by any entity.

A challenge to the Commission's reclassification of an unprotested application will not automatically subject the application to Traditional Rule review. In those cases, the Commission or staff will address any reclassification challenge during review and approval of the application. But, a challenge to a protested application will be reviewed during consideration of the application under Traditional Rule review. This is consistent with our determination that a protested Pro Forma or General Rule application will subject the protested application to Traditional Rule review.

*Section 63.325(c). Notification Requirements for Pro Forma Transactions.* This provision mirrored the provision in § 63.324(c) for notification. The reasoning here was similar to the reasoning there. A simultaneous notice requirement to the Commission and the Statutory Advocates or others was considered to be a cost-effective way to keep interested parties informed while keeping a transaction on track. This was expected to minimize formal protests to an application just to stay informed.

*Objections.* OSBA recommended that the application be served on the Statutory Advocates. OSBA Comments, Annex A, p. 16. Verizon advocated deletion of most of the filing requirements. Verizon Comments, pp. 12 and 13. PTA suggested replacing the list in § 63.325(c) with a cite to § 63.624(c). PTA Comments, p. 13.

*Disposition.* For the reason discussed above, we agree that the Statutory Advocates should be provided copies of the application and any updates. We do not agree that service is required. That unnecessarily increases costs since service is a legal requirement whereas providing a copy is a notice requirement.

We disagree that substantial revision in the information update requirements is necessary. The purpose of the update mandate is to discourage the filing of formal complaints and protests to get updates on a proceeding. This is even more important now that the filing of any formal protest or complaint will reclassify an abbreviated Pro Forma application to Traditional Rule review. This keeps the public updated while discouraging a formal protest or complaint to get information.

*Section 63.325(d). Content of notification for Pro Forma Transaction.* This provision mirrored § 63.324(d) on filing requirements. This provided the same list of filing information for abbreviated review, albeit as a Pro Forma Transaction. The final-form rulemaking adopts the revisions set forth in § 63.325(d) similar to § 63.324(d).

*Objections and Disposition.* The objections to § 63.325(d) were like those to § 63.324(d). The final-form regulation in § 63.325(d) mirror § 63.324(d).

*Section 63.325(e). Continuing obligations for notification of Pro Forma Transactions.* This provision mirrored the § 63.324(e) provisions for General Rule transactions. This provision essentially required an applicant to keep the Commission informed about subsequent developments in other jurisdictions pertaining to the transaction pending at the Commission.

*Objections and Disposition.* The final-form regulation in § 63.325(e) mirror those for § 63.324(d) for similar reasons.

*Section 63.325(f). Commission publication of Pro Forma Transaction.* This provision addresses Commission publication about Pro Forma Transactions. The proposed requirements were different from those for General Rule review in § 63.324(f). Pro Forma Transactions are more mundane and involve no changes in conditions of service or rates compared to General Rule transactions.

Section 63.325(f)(1)–(3) no longer required publication in the *Pennsylvania Bulletin* nor was there a formal protest period. The Secretary had the discretion, not the obligation, to post a transaction on the Commission's website. The Secretary also had the discretion to solicit general comments.

*Objections.* IRRC suggested that the word "may" be replaced by the word "will" to promote certainty. IRRC thought this would remove uncertainty on how the Commission and the regulated community would know when the thirty period expired. IRRC also thought that posting on the Commission's website would further notice. IRRC Comments, p. 7. The objections to § 63.325(f) mirror those set out and addressed in § 63.324(f).

*Disposition.* We agree with IRRC's concerns, particularly about posting some applications on the website while publishing others in the *Pennsylvania Bulletin*. The final-form rulemaking addresses that concern by publishing every application in the *Pennsylvania Bulletin* and



establishing a uniform fifteen day protest period. The final-form regulation in § 63.325(f) are similar to those set out in § 63.324(f) for similar reasons.

*Section 63.325(g). Telecommunications public utility notice to customers.* This provision addressed information the applicant provided to customers. These transactions, unlike their counterpart in § 63.324(g), did not involve changes in service conditions or rates. The proposed regulation authorized the applicant to prepare and distribute a prior notice to the customers but need not do so if it were not practical. This approach ensured public notice in a way that did not undermine abbreviated review.

*Objections and Disposition.* IRRC was concerned about the differences in the notice requirements and the treatment of formal protests or complaint for a Pro Forma Transaction compared to General Rule transactions. IRRC suggested that the requirements for Pro Forma Transactions mirror those for General Rule transactions review the reference to § 5.14. IRRC Comments, p. 8.

*Disposition.* We agree with IRRC. The final-form regulation in § 63.325(g) mirror those for § 63.324(g). We also note that the reference to § 5.14 includes § 5.14(c) and (d). The rules in § 5.14(c) on protests contain a reference to § 5.53, a section that sets a 60 day default period for filing a protest unless the notice determines otherwise. Section 5.14(d) establishes a 15 day default period for filing a formal complaint. The final-form rulemaking requires a uniform 15 day period to file a formal protest or complaint. This meshes §§ 5.14(c), 5.14(d), and 5.53.

*Section 63.325(h). Commission Review of Pro Forma Transactions.* This provision formalized the Commission's discretionary authority under 66 Pa.C.S. §§ 1102(a)(3) and 1103, particularly regarding the imposition of conditions when they are needed to justify approving a transaction as in the public interest.

*Objections and Disposition.* The objections to § 63.325(h) mirror those already raised and addressed in § 63.324(h). The major concerns were compliance with the *City of York* standard and 66 Pa.C.S. §§ 1102(a) and 1103(a), sufficient notice provided to consumers, and ensuring the Commission's authority to impose conditions when necessary. These issues arose here even though the rules address transfers when there was no change in rate or conditions of service. Other concerns focused on due process and notice. The final-form rulemaking contains changes similar to § 63.324(h).

*Section 63.325(i). Protests to a Transaction Subject to the General Rule.* This provision explains how to file a formal protest or complaint. There were no objections.

*Section 63.325(j)(1) and (2). Removal of a transaction as a Pro Forma Transaction.* This provision recognized that some transactions may be reclassified.

*Objections and Disposition.* The objections to § 63.325(j)(1) and (2) mirrored those in § 63.324(j)(1) and (2). Although that section addressed applications with changes in rates or service conditions and this provision did not, IRRC's concern with consistency warrants rules that are consistent even if these transactions have no changes in rates or conditions of service. The final-form regulations in § 63.324(j)(1) and (2) do that.

*Section 63.325(k). Commission approval for a Pro Forma Transaction.* This provision established the process for reviewing and approving pro forma transactions.

Sections 63.325(k)(1)—(3) detailed the mechanics. Section 63.325(k)(1) provided that the Commission will issue a Secretarial Letter or order approving a transaction. Section 63.325(k)(2) recognized that staff may need a longer review period, reclassify a transaction, or take other action deemed appropriate. Section 63.325(k)(3) provided that final staff action shall be taken in writing and be subject to an appeal of staff which shall be stated in the writing informing the applicant of the decision.

*Objections and Disposition.* The objections in this provision mirror similar objections for § 63.324(k)(1)—(3). The final-form regulation in § 63.325(k)(1)—(3) mirror disposition of the objections to § 63.324(k)(1)—(3).

*Section 63.325(l). Limitations on Pro Forma transactions.* This concluding provision addresses bankruptcy and the possible misuse of a Pro Forma Transaction.

Section 63.325(l)(1) excludes bankruptcy proceedings from Pro Forma treatment. Bankruptcy filing requirements are addressed in the Commission's regulations at

*Sections 1.61 and 1.62.* There is no compelling reason to revisit that provision.

*Objections and Disposition.* There were no objections to these provisions.

Section 63.325(l)(2) prohibits a carrier or public utility from using this Pro Forma provision to abandon existing conditions of service, like payment dates and penalty provisions, or embed a rate change in an otherwise seamless transaction. This is consistent with the FCC's Streamlined Regulation Order.<sup>9</sup>

*Objections.* IRRC noted that this provision is lacking in the accompanying provision at § 63.324(l) for General Review transactions. IRRC Comments, p. 8.

*Disposition.* IRRC is correct. The proposed rulemaking contained this provision to prevent misuse of a Pro Forma Transaction as compared to a General Rule transaction. Pro Forma transactions do not involve changes in rates or conditions of service. This provision ensures that an applicant with a transaction involving a change in rates or conditions of service cannot file that transaction as a Pro Forma Transaction instead of filing it as a General Rule or Traditional Rule transaction. If that were to occur and the filing were approved, this provision provides a backstop for subsequent action.

*Section 63.326. Approval of contracts between a carrier or public utility and an affiliated interest under sections 2101(a) and 3019(b) and 3106(f)(1) of Chapter 30.*

The proposed rulemaking was intended to codify the Commission's residual authority over affiliated interest agreements to ensure that they do not cross-subsidize competitive services in violation of 66 Pa.C.S. § 3016(f)(1), as well as the Commission residual authority over utility contracts.

*Objections.* There was substantial opposition to this provision as contrary to 66 Pa.C.S. § 3019(b)(1). Section 3019(b)(1) of 66 Pa.C.S. limits the Commission's review and approval authority over affiliated interest agreements to noncompetitive services. Moreover, 66 Pa.C.S. § 3019(b)(1) provides that any filing must be for notice only and that the Commission is not authorized to approve the agreement.

<sup>9</sup> Streamlined Regulation Order, paragraph 52.

*Disposition.* Although the provision was intended to implement other provisions of residual Commission authority to prevent cross-subsidization, we delete the provision in its entirety.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 30, 2008, the Commission submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 758 (February 9, 2008), to IRRC and to the House Committee on Consumer Affairs, the Senate Committee on Consumer Protection and Professional Licensure (Committees) for review and comment.

Under section 5(b.1) 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.

The final-form rulemaking was deemed approved by the Committees on June 16, 2010. Under section 5(c) of the Regulatory Review Act, IRRC met on June 17, 2010, and approved the final-form rulemaking.

Accordingly, under 66 Pa.C.S. §§ 502, 1102, 1103, 2101—2107 and 3019, sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations promulgated thereunder, section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)) and section 745.5 of the Regulatory Review Act, the Commission adopts as final the regulations set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. The Secretary shall submit this order and Annex A to the Office of the Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.
2. The Secretary shall certify this order and Annex A for review by IRRC and the Committees.
3. The Secretary shall certify this order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin* as final following review and approval by IRRC and the Committees.
4. Upon final approval by IRRC, the Bureau of Fixed Utility Services shall have delegated authority to: (a) reclassify transactions when publishing notice of a submitted application and review; and (b) review and act on an uncontested Pro Forma transaction subject to § 5.44 of the Commission’s rules of administrative practice and procedure.
5. The regulations of the Commission, 52 Pa. Code Chapter 63, are amended by adding §§ 63.321—63.325 to read as set forth in Annex A.

ROSEMARY CHIAVETTA,  
Secretary

*(Editor’s Note:* The proposal to add § 63.326, included in the proposed rulemaking published at 38 Pa.B. 758, has been withdrawn by the Commission.)

*(Editor’s Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 3753 (July 3, 2010).)

**Fiscal Note:** Fiscal Note 57-260 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 O. ABBREVIATED PROCEDURES FOR REVIEW AND APPROVAL OF TRANSFER OF CONTROL FOR TELECOMMUNICATIONS PUBLIC UTILITIES**

Sec.	
63.321.	Purpose.
63.322.	Definitions.
63.323.	Applicability.
63.324.	Commission approval of a general rule transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103.
63.325.	Commission approval of a pro forma transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103.

**§ 63.321. Purpose.**

This subchapter establishes cost-effective review and approval periods that abbreviate the traditional unlimited time for approving an application seeking Commission approval of an acquisition, merger, stock sales or transfers, transfer of assets or transfer of control of a telecommunications public utility requiring a certificate of public convenience under 66 Pa.C.S. § 1102(a)(3) (relating to enumeration of acts requiring certificate).

**§ 63.322. Definitions.**

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

*Applicant*—A carrier, incumbent local exchange carrier, or telecommunications public utility seeking Commission review and approval of a transaction under 66 Pa.C.S. §§ 1102 and 1103 (relating to enumeration of acts requiring certificate; and procedure to obtain certificates of public convenience).

*Assets*—Property of all kinds, real and personal, tangible and intangible, including patents and causes of action which belong to an applicant as defined in this section under State and Federal law.

*Carrier*—An entity defined as a “public utility” in 66 Pa.C.S. § 102 (relating to definitions) or defined as a “public utility” in 66 Pa.C.S. § 102 and certificated by the Commission under 66 Pa.C.S. § 1102(a).

*Controlling interest*—An interest, held by a person or group acting in concert, which enables the beneficial holder or holders to control 20% or more, either within this Commonwealth or Nationwide, whichever is larger, of the voting interest in the telecommunications public utility or its parent, regardless of the remoteness of the holder or holders or the transaction. A contingent right may not be included.

*Customer base*—An asset of an applicant consisting of all or a portion of the customers served by the applicant.

*Formal complaint*—The term as defined in § 1.8 (relating to definitions) of the Commission’s rules of practice and procedure.

*Formal investigation*—The term as defined in § 1.8 of the Commission’s rules of practice and procedure.

*Formal proceeding*—The term as defined in § 1.8 of the Commission’s rules of practice and procedure.

*General rule transaction*—A transaction resulting in a change in rates or conditions of service or which, taken

together with all previous internal corporate restructurings, changes the applicant's controlling interest greater than 20%.

*Incumbent local exchange carrier*—A local exchange carrier as defined in section 3(26) of the Telecommunications Act of 1934 (47 U.S.C.A. § 153) or a local exchange telecommunications company as defined in 66 Pa.C.S. § 3012 (relating to definitions) including a certificated carrier under 66 Pa.C.S. § 1102(a).

*Informal complaint*—The term as defined in § 1.8 of the Commission's rules of practice and procedure.

*Informal investigation*—The term as defined in § 1.8 of the Commission's rules of practice and procedure.

*Informal proceeding*—The term as defined in § 1.8 of the Commission's rules of practice and procedure.

*Party*—The term as defined in § 1.8 of the Commission's rules of practice and procedure.

*Pennsylvania legal counsel*—The attorney of record appearing before the Commission as required under §§ 1.21 and 1.22 (relating to appearance; and appearance by attorney or certified legal intern) of the Commission's rules of practice and procedure.

*Person*—The term as defined in § 1.8 of the Commission's rules of practice and procedure.

*Pro forma transaction*—A transaction that is seamless to the customer and does not result in a change in rates or conditions of service which, taken together with all previous internal corporate restructurings, does not change the applicant's controlling interest greater than 20%.

*Staff*—The term as defined in § 1.8 of the Commission's rules of practice and procedure.

*Statutory advocate*—The term as defined in § 1.8 of the Commission's rules of practice and procedure.

*Telecommunications public utility*—An entity that provides telecommunications service as defined in section 3(46) of the Telecommunications Act of 1934 or 66 Pa.C.S. § 3012 or as a carrier.

*Verification*—The term as defined in § 1.8 of the Commission's rules of practice and procedure.

### § 63.323. Applicability.

This subchapter applies to an applicant and the affiliate of an applicant seeking Commission approval for an acquisition, merger, stock sales or transfers, transfer of assets or transfer of control of an applicant requiring a certificate of public convenience under 66 Pa.C.S. § 1102(a)(3) (relating to enumeration of acts requiring certificate) or approval of a contract between public utilities and affiliates.

### § 63.324. Commission approval of a general rule transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103.

(a) *General rule transactions.* The following transactions of an applicant involving a change in conditions of service or rates that seek Commission approval for acquisition, merger, stock sales or transfers, transfer of assets or transfer of control of an applicant require notification to the Commission and approval by the Commission as a general rule transaction:

(1) A transaction resulting in the transfer of 20% or more of the assets of an applicant.

(2) A transaction resulting in the transfer of 20% or more of the direct or indirect control of an applicant.

(3) A transaction requiring a certificate of public convenience issued under 66 Pa.C.S. § 1102(a) (relating to enumeration of acts requiring certificate).

(4) A transaction subject to evaluation under the statement of policy on transfer of control. See § 69.901 (relating to utility stock transfer under 66 Pa.C.S. § 1102(a)(3)).

(5) A transaction that transfers the customer base of an applicant and involves a change in conditions of service or rates.

(6) A transaction subjected to this subchapter by decision of the Commission, including a transaction no longer classified as a general rule transaction by the Commission.

(b) *Reclassification of a general rule transaction.* When an applicant seeks review and approval of a transaction as a general rule transaction and the Commission reclassifies the general rule transaction, the Commission will notify the applicant of the reclassification by notice published in the *Pennsylvania Bulletin*. An applicant may file a challenge to the reclassification during the protest period established by the notice. If a formal protest or complaint to the transaction is filed, the challenge will be reviewed as part of a traditional rule review proceeding. If no formal protest or complaint to the transaction is filed, the challenge will be reviewed by the Commission as part of the review of the transaction.

(c) *Notification requirements for general rule transactions.* Notification of a general rule transaction shall be filed with the Commission on the date of filing with a Federal regulatory agency seeking Federal approval of a general rule transaction or no later than 60 days prior to the closing of a transaction subject to this subchapter, whichever is longer. The applicant filing the notification shall comply with the Commission's rules of practice and procedure governing applications. (See §§ 5.11—5.14 (relating to applications).) The applicant shall clearly state that the application is a general rule transaction and provide a copy of the application to the Commission and the statutory advocates. An applicant shall provide an updated copy of any subsequent filings to the Commission and the statutory advocates in the following circumstances:

(1) Filing with the Federal Communications Commission (FCC) of an application seeking approval of the transaction (FCC application).

(2) Filing of a notice with the United States Department of Justice (U.S. DOJ) under the Hart-Scott-Rodino Antitrust Improvements Act (15 U.S.C.A. §§ 15c—15h, 18a and 66) (HSR Filing).

(3) Filing by an applicant of a pleading responding to a formal or informal complaint, investigation, or proceeding undertaken by the FCC or the U.S. DOJ or other State or Federal regulatory agency involving the transaction.

(4) Filing required by the Commission from an applicant in response to a notification by the Commission that simultaneous notification is appropriate to protect the public interest.

(5) Filing required by the Commission from an applicant in response to a request by any of the following:

- (i) A request by a statutory advocate.
- (ii) A request by a carrier with a certificate of public convenience obtained under 66 Pa.C.S. § 1102(a) for a copy.
- (iii) A request by the Commission or staff for a copy.
- (iv) A request by a person or party for a copy.
- (d) *Content of notification for general rule transactions.* In addition to the information required under § 5.12 (relating to contents of applications) of the Commission's rules of practice and procedure, a general rule transaction must contain the following information:
  - (1) The name, address and telephone number of each party or applicant to the transaction.
  - (2) The government, state or territory under the laws of which each corporate or partnership applicant to the transaction is organized.
  - (3) The name, title, post office address and telephone number of the officer or contact point, including legal counsel in this Commonwealth, to whom correspondence concerning the transaction is to be addressed.
  - (4) The name, address, citizenship and principal place of business any person, party or entity that directly or indirectly owns more than 20% of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest 1%).
  - (5) A summary description of the transaction.
  - (6) A summary of the services and the service territories in this Commonwealth that will be affected by the transaction.
  - (7) A verified statement as to how the transaction fits into one or more of the categories subject to the general rule for notification.
  - (8) Identification of other transactions related to the transaction.
  - (9) A verified statement whether the transaction warrants special consideration because either party to the transaction is facing imminent business failure.
  - (10) Identification of a separately filed waiver request sought in conjunction with the transaction.
  - (11) A verified statement containing facts and allegations establishing:
    - (i) For a merger or similar transaction, how the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way as required by State law.
    - (ii) Findings that approval for a transaction subject to 66 Pa.C.S. § 1103(a) (relating to procedure to obtain certificates of public convenience) is necessary or proper for the service, accommodation, convenience, or safety of the public.
    - (iii) The impact of the transaction on competition.
- (12) A verified statement affirming that the applicant is in compliance with Commission obligations and filings and a listing of all State and Federal proceedings when:
  - (i) Within the 3-year period prior to filing the application, the applicant was found to have violated either State or Federal requirements.
  - (ii) Within the 3-year period prior to filing the application, the applicant is alleged to have violated either State or Federal requirements.

- (13) A verified statement affirming that customers received prior notice. Notice shall be accomplished using a notice approved by the Commission's Bureau of Consumer Services (BCS). Any disagreement between the applicant and BCS shall be addressed by an appeal from an action of staff mirroring the process in § 5.44 (relating to petitions for appeal from actions of the staff) of the Commission's rules of practice and procedure.
- (14) A verified statement containing a copy of any Commonwealth utility certificates held by the applicant.
- (15) A verified statement on the effect of the transaction on existing Commonwealth tariffs. If applicable or in response to a request from staff, an applicant shall provide a red-line document identifying changes in existing Commonwealth tariffs before and after the transaction for which the applicant seeks approval from the Commission.
- (16) A verified statement on the transaction's effect on the existing affiliate interest agreements of the applicant.
- (17) A verified statement establishing that no State or Federal regulatory agency is expected to undertake an informal or formal investigation, complaint or proceeding relating to the transaction.
- (18) Organizational charts showing the effect on the applicant's organization before and after the transaction.
- (19) A copy of the application filed at the FCC or a notice filed with the U.S. DOJ, if any, including the electronic location on the agency's web site.
- (20) A verified statement setting forth the expected public effect of the transaction on the capital structure of the applicant over the next 5 years.
- (21) For an applicant subject to a broadband deployment commitment under Federal or State law, a verified statement affirming that the applicant is in compliance with that commitment.
- (22) For an applicant with eligible telecommunications carrier status under Federal and State law, a verified statement affirming that the applicant is in compliance with the law and that the applicant will continue to be in compliance with the law.
- (23) A verified statement affirming that the transaction complies with the prohibition against cross-subsidization imposed under Federal and State law.
  - (e) *Continuing obligations for notification of general rule transactions.* When a Commission or Federal proceeding related to a transaction that is the subject of the general rule transaction is pending, the applicant to the transaction shall file with the Commission and provide to the statutory advocates copies of all procedural motions, public responses to discovery, and orders or other actions addressing or terminating the proceeding. The applicant shall supplement the application with any FCC or U.S. DOJ public notice issued concerning the transaction.
  - (f) *Commission publication and reclassification of general rule transactions.*
    - (1) The Secretary will publish notice of a general rule transaction in the *Pennsylvania Bulletin*. The Secretary may post notice of the general rule transaction on the Commission's web site.
    - (2) Any notice will contain a 15-day formal protest period established under § 5.14(d) (relating to applications requiring notice) of the Commission's rules of practice and procedure. A formal protest or complaint

shall constitute a formal protest under § 5.14 of the Commission's rules of practice and procedure and subject the transaction to traditional rule review.

(g) *Applicant notice to customers.*

(1) *General rule transactions involving a change in conditions of service or rates.* An applicant shall prepare and distribute prior notice to the customers of a general rule transaction involving a change in conditions of service or rates with the approval of the BCS. Notice to the customers shall occur prior to Commission approval unless circumstances make distribution prior to approval impractical. Any disagreement between the applicant and BCS shall be addressed by an appeal from an action of staff mirroring § 5.44 of the Commission's rules of practice and procedure.

(2) *Transfers of customer base subject to the general rule.*

(i) A transaction transferring a customer base involving a change in conditions of service or rates shall require prior notice to the customer base prepared with the approval of the BCS. Any disagreement between the applicant and BCS shall be addressed by an appeal from an action of staff mirroring § 5.44 of the Commission's rules of practice and procedure.

(ii) A timely formal protest or complaint to the transfer of a customer base involving a change in conditions of service or rates shall constitute a formal protest under § 5.14 of the Commission's rules of practice and procedure.

(h) *Commission review of transactions subject to the general rule.* The Commission retains the discretion to make inquiries and, after notice and opportunity to be heard, take action to protect the public interest, including:

(1) For a merger or similar transaction, ensuring that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way as required by State law.

(2) Findings that a transaction subject to 66 Pa.C.S. § 1103(a) is necessary or proper for the service, accommodation, convenience, or safety of the public.

(3) Addressing the impact of the transaction on competition.

(4) The imposition of conditions on approval of the transaction when deemed necessary or proper under 66 Pa.C.S. § 1103.

(i) *Formal protests and complaints to a general rule transaction.* A protest filed to a general rule transaction must comply with the Commission's rules of practice and procedure. (See Subpart A (relating to general provisions).)

(j) *Reclassification of a transaction from the general rule.* The Commission will reclassify an application for approval of a general rule transaction in the following circumstances:

(1) The filing of a formal protest or complaint.

(2) The filing involves an acquisition, merger or other transaction that raises novel or important issues.

(3) The Commission determines that reclassification is necessary to protect the public interest.

(k) *Commission approval for a general rule transaction.* The Commission will issue a Secretarial letter or order after review of an unprotested application subject to this

subchapter determining if the application is in the public interest and consistent with 66 Pa.C.S. §§ 1102(a) and 1103(a) no later than 60 days after expiration of the protest period established in the public notice in the *Pennsylvania Bulletin*.

(1) The Commission will determine, for a merger or similar transaction, whether the transaction affirmatively promotes the service, accommodation, convenience, or safety to the public in some substantial way.

(2) The Commission will make findings whether a transaction subject to 66 Pa.C.S. § 1103(a) is necessary for the service, accommodation, convenience, or safety of the public and state whether the Commission will issue a certificate of public convenience authorizing the transaction under 66 Pa.C.S. §§ 1102(a) and 1103.

(3) The Commission will address the impact of the general rule transaction on competition.

(4) The Commission will determine whether to impose conditions deemed necessary or proper under 66 Pa.C.S. § 1103 in conjunction with a determination on approving a general rule transaction.

(5) The Commission or staff may extend the review and approval period, reject the filing or transaction, remove a transaction from the general transaction rule or take other action deemed appropriate to protect the public interest.

(6) A staff action will be in writing and inform the applicant of the right of appeal. An appeal from an action of staff shall be governed by the procedures governing appeals from an action of staff under § 5.44 of the Commission's rules of practice and procedure.

(l) *Limitations on general rule transactions.*

(1) *Bankruptcy proceedings.* General rule transactions related to bankruptcy remain subject to §§ 1.61 and 1.62 (relating to matters before other tribunals) of the Commission's rules of practice and procedure.

(2) *Scope of general rule transactions.* A general rule transaction may not operate to permit an applicant to circumvent an obligation by doing or refraining from doing anything that an applicant must do or cannot do.

**§ 63.325. Commission approval of a pro forma transaction subject to 66 Pa.C.S. §§ 1102(a)(3) and 1103.**

(a) *Pro forma transactions.* The following transactions of an applicant not involving a change in conditions of service or rates that seek Commission approval for acquisition, merger, stock sales or transfers, transfer of assets or transfer of control of an applicant require notification to the Commission and approval by the Commission as a pro forma transaction:

(1) A transaction resulting in the transfer of less than 20% of the assets of an applicant.

(2) A transaction resulting in the transfer of less than 20% of the direct or indirect control of an applicant.

(3) A transaction requiring a certificate of public convenience issued under 66 Pa.C.S. § 1102(a) (relating to enumeration of acts requiring certificate).

(4) A transaction subject to evaluation under the statement of policy on transfer of control, § 69.901 (relating to utility stock transfer under 66 Pa.C.S. § 1102(a)(3)).

(5) A transaction that transfers the customer base of an applicant and does not involve a change in conditions of service or rates.

(6) A transaction subjected to this subchapter by decision of the Commission, including a pro forma transaction no longer classified as a pro forma transaction by the Commission.

(b) *Reclassification of a pro forma transaction.* When an applicant seeks review and approval of a transaction as a pro forma transaction and the Commission reclassifies the pro forma transaction, the Commission will notify the applicant of the reclassification by notice published in the *Pennsylvania Bulletin*. An applicant may file a challenge to the reclassification during the protest period established by the notice. If a formal protest or complaint to the transaction is filed, the challenge will be reviewed as part of a traditional rule review proceeding. If no formal protest or complaint to the transaction is filed, the challenge will be reviewed by the Commission as part of the review of the transaction.

(c) *Notification requirements for pro forma transactions.* Notification of a pro forma transaction shall be filed with the Commission on the date of filing with a Federal regulatory agency seeking Federal approval of a pro forma transaction or no later than 30 days prior to the closing of a pro forma transaction subject to this subchapter, whichever is longer. The applicant filing the notification shall comply with the Commission's rules of practice and procedure governing applications. The applicant shall clearly state that the application is a pro forma transaction and provide a copy of the application to the Commission and the statutory advocates. An applicant shall provide an updated copy of any subsequent filings to the Commission and the statutory advocates in the following circumstances:

(1) Filing with the Federal Communications Commission (FCC) of an application seeking approval of the transaction (FCC application).

(2) Filing of a notice with the United States Department of Justice (U.S. DOJ) pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (15 U.S.C.A. §§ 15c—15h, 18a and 66) (HSR Filing).

(3) Filing by an applicant of a pleading responding to a formal or informal complaint, investigation, or proceeding undertaken by the FCC or the U.S. DOJ or other State or Federal regulatory agency involving the transaction.

(4) Filing required by the Commission from an applicant in response to a notification by the Commission that simultaneous notification is appropriate to protect the public interest.

(5) Filing required by the Commission from an applicant in response to a request by any of the following:

- (i) A request by a statutory advocate.
- (ii) A request by a carrier with a certificate of public convenience obtained under 66 Pa.C.S. § 1102(a) for a copy.
- (iii) A request by the Commission or staff for a copy.
- (iv) A request by a person or party for a copy.

(d) *Content of notification for pro forma transactions.* In addition to the information required under § 5.12 (relating to contents of applications) of the Commission's rules of practice and procedure, a pro forma transaction must contain the following information:

(1) The name, address and telephone number of each party or applicant to the transaction.

(2) The government, state or territory under the laws of which each corporate or partnership applicant to the transaction is organized.

(3) The name, title, post office address and telephone number of the officer or contact point, including Pennsylvania legal counsel in this Commonwealth, to whom correspondence concerning the transaction is to be addressed.

(4) The name, address, citizenship and principal place of business of any person, party or entity that directly or indirectly owns more than 20% of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest 1%).

(5) A summary description of the transaction.

(6) A summary of the services and the service territories in this Commonwealth that will be affected by the transaction.

(7) A verified statement as to how the transaction fits into one or more of the categories subject to the pro forma rule.

(8) Identification of other transactions related to the transaction.

(9) A verified statement whether the transaction warrants special consideration because either party to the transaction is facing imminent business failure.

(10) Identification of a separately filed waiver request sought in conjunction with the transaction.

(11) A verified statement of facts and allegations establishing:

(i) For a merger or similar transaction, how the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way as required by State law.

(ii) Findings that approval for a transaction subject to 66 Pa.C.S. § 1103(a) (relating to procedure to obtain certificates of public convenience) is necessary or proper for the service, accommodation, convenience, or safety of the public.

(iii) The impact of the transaction on competition.

(12) A verified statement affirming that the applicant is in compliance with Commission obligations and filings and a listing of all State and Federal proceedings when:

(i) Within the 3-year period prior to filing the application, the applicant was found to have violated either State or Federal requirements.

(ii) Within the 3-year period prior to filing the application, the applicant is alleged to have violated either State or Federal requirements.

(13) A verified statement affirming that customers received prior notice. Notice shall be accomplished using a notice approved by the Commission's Bureau of Consumer Services (BCS). Any disagreement between the applicant and BCS shall be addressed by an appeal from an action of staff mirroring § 5.44 (relating to petitions for appeal from actions of the staff) of the Commission's rules of practice and procedure.

(14) A verified statement containing a copy of any Commonwealth utility certificates held by the applicant.

(15) A verified statement on the effect of the transaction on existing Commonwealth tariffs. If applicable or in

response to a request from staff, an applicant shall provide a red-line document identifying changes in existing Commonwealth tariffs before and after the transaction for which the applicant seeks approval from the Commission.

(16) A verified statement on the transaction's effect on the existing affiliate interest agreements of the applicant.

(17) A verified statement establishing that no State or Federal regulatory agency is expected to undertake an informal or formal investigation, complaint or proceeding relating to the transaction.

(18) Organizational charts showing the effect on the applicant's organization before and after the transaction.

(19) A copy of the application filed at the FCC or a notice filed with the U.S. DOJ, if any, including the electronic location on the agency's web site.

(20) A verified statement setting forth the expected public effect of the transaction on the capital structure of the applicant over the next 5 years.

(21) For an applicant subject to a broadband deployment commitment under Federal or State law, a verified statement affirming that the applicant is in compliance with that commitment.

(22) For an applicant with eligible telecommunications carrier status under Federal and State law, a verified statement affirming that the applicant is in compliance with the law and that the applicant will continue to be in compliance with the law.

(23) A verified statement affirming that the transaction complies with the prohibition against cross-subsidization imposed under Federal and State law.

(e) *Continuing obligations for notification of pro forma transactions.* When a Commission or Federal proceeding related to a transaction that is the subject of the pro forma transaction is pending, the applicant seeking approval of a pro forma transaction shall file with the Commission and provide to the statutory advocates copies of all procedural motions, public responses to discovery, and orders or other actions addressing or terminating the proceeding. The applicant shall supplement the application with any FCC or U.S. DOJ public notice issued concerning the transaction.

(f) *Commission publication and reclassification of pro forma transactions.*

(1) The Secretary will publish notice of a pro forma transaction in the *Pennsylvania Bulletin*. The Secretary may post notice of the pro forma transaction on the Commission's web site.

(2) A notice will contain a 15-day formal protest period established under § 5.14(d) (relating to applications requiring notice) of the Commission's rules of practice and procedure. A formal protest or complaint shall constitute a formal protest under § 5.14 of the Commission's rules of practice and procedure and shall subject the transaction to traditional rule review.

(g) *Applicant notice to customers.*

(1) *Pro forma transactions with no change in conditions of service or rates.* An applicant shall prepare and distribute prior notice to the customers of a pro forma transaction involving no change in conditions of service or rates with the approval of the BCS. Any disagreement between the applicant and BCS shall be addressed by an appeal from an action of staff mirroring § 5.44 of the Commission's rules of practice and procedure.

(2) *Transfers of customer base subject to the pro forma rule.*

(i) A transaction transferring a customer base involving no change in conditions of service or rates shall require prior notice to the customer base prepared with the approval of the BCS. Any disagreement between the applicant and BCS shall be addressed by an appeal from an action of staff mirroring § 5.44 of the Commission's rules of practice and procedure.

(ii) A timely formal protest or complaint to the transfer of a customer base involving no change in conditions of service or rates shall constitute a formal protest under § 5.14 of the Commission's rules of practice and procedure.

(h) *Commission review of pro forma transactions.* The Commission retains the discretion to make inquiries and, after notice and opportunity to be heard, take action to protect the public interest, including:

(1) For a merger or similar transaction, ensuring that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way as required by State law.

(2) Findings that a transaction subject to 66 Pa.C.S. § 1103(a) is necessary or proper for the service, accommodation, convenience, or safety of the public.

(3) Addressing the impact of the transaction on competition.

(4) The imposition of conditions on approval of the transaction when deemed necessary or proper under 66 Pa.C.S. § 1103.

(i) *Formal protests and complaints to a pro forma transaction.* A protest filed to a pro forma transaction must comply with the Commission's rules of practice and procedure.

(j) *Reclassification of a transaction.* The Commission will reclassify an application for approval of a pro forma transaction in the following circumstances:

(1) The filing of a formal protest or complaint.

(2) The filing involves an acquisition, merger or other transaction that raises novel or important issues.

(3) The Commission determines that reclassification is necessary to protect the public interest.

(k) *Commission approval for a pro forma transaction.* The Commission will issue a Secretarial letter or order after review of an unprotested transaction subject to this subchapter determining if the application is in the public interest and consistent with 66 Pa.C.S. §§ 1102(a) and 1103(a) no later than 30 days after expiration of the protest period established in the public notice in the *Pennsylvania Bulletin*.

(1) The Commission will determine for a merger or similar transaction whether the transaction affirmatively promotes the service, accommodation, convenience, or safety of the public in some substantial way.

(2) The Commission will make findings whether a transaction subject to 66 Pa.C.S. § 1103(a) is necessary for the service, accommodation, convenience, or safety of the public and state whether the Commission will issue a certificate of public convenience authorizing the transaction under 66 Pa.C.S. §§ 1102(a) and 1103.

(3) The Commission will address the impact of the pro forma transaction on competition.

(4) The Commission will determine whether to impose conditions deemed necessary or proper under 66 Pa.C.S. § 1103 in conjunction with a determination to approve a pro forma transaction.

(5) The Commission or staff may extend the consideration period, reject the filing or transaction, remove a transaction from the pro forma rule or take other action deemed appropriate to protect the public interest.

(6) A staff action will be in writing and inform the applicant of the right of appeal. An appeal from an action of staff shall be governed by the procedures governing appeals from an action of staff under § 5.44 of the Commission's rules of practice and procedure.

(1) *Limitations on pro forma transactions.*

(1) *Bankruptcy proceedings.* Pro forma changes related to bankruptcy remain subject to §§ 1.61 and 1.62 (relating to matters before other tribunals) of the Commission's rules of practice and procedure.

(2) *Scope on pro forma transactions.* A pro forma transaction may not operate to permit an applicant to abandon a condition of service or rate. A pro forma transaction may not operate to permit an applicant to circumvent an obligation by doing or refraining from doing anything that an applicant must do or cannot do.

[Pa.B. Doc. No. 10-1393. Filed for public inspection July 30, 2010, 9:00 a.m.]

\_\_\_\_\_