

PROPOSED RULEMAKING

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CH. 806]

Review and Approval of Projects

Summary: This document contains proposed rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to update the requirements and standards for review of projects, amend the rules dealing with groundwater withdrawals, and revise the regulatory triggers related to grandfathered sources. These rules are designed to enhance and improve the Commission's existing authorities to manage the water resources of the basin, add regulatory clarity, and to achieve efficiencies and reduced costs in the preparation and review of applications for groundwater renewals.

Dates: Comments on the proposed rulemaking may be submitted to the Commission on or before May 17, 2021. The Commission has scheduled a public hearing on the proposed rulemaking to be held by telephone on May 6, 2021. The location of the public hearing is listed in the addresses section of this document.

In addition, the Commission will hold two informational webinars explaining the proposed rulemaking on April 6 and April 14, 2021. Instructions for registration for the webinars will be posted on the Commission's website.

Addresses: Comments may be mailed to: Jason E. Oyler, Esq., General Counsel, Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788, or by e-mail to regcomments@srbc.net. The public hearing will be held by telephone rather than at a physical location. Conference Call # 1-888-387-8686, the Conference Room Code # 9179686050.

Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

For Further Information Contact: Jason E. Oyler, Esq., General Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: joyler@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's website at <http://www.srbc.net>.

Supplementary Information:

The Commission is proposing revisions to amend several sections of its regulations to provide clarity to project sponsors, target only the most appropriate activities, and establish a more efficient and effective framework to review groundwater withdrawals, which can be data-intensive and time consuming and costly for both the Commission and the project sponsor. The proposed revisions also modify the aquifer testing requirements to include an Alternative Hydrogeologic Evaluation (AHE) process for certain new and existing projects and establishes where an aquifer test or AHE evaluation is not required. As a companion to this rulemaking, the Commission is also releasing three policies related to groundwater reviews to be open for public comment simultaneously with this proposed rulemaking: a revised Aquifer Testing Plan Guidance; a new policy on Alternative Hydrogeologic Evaluations; and a new policy on Pre-Drill Well Site Review. The Commission recognizes that groundwater management will be a challenge under

changing climate conditions. These rules will ensure wells are permitted and monitored in efficient but robust ways that allow the Commission to provide dynamic decision making as impacts of climate change manifest. Further, the proposed rules and policies will help reduce costs, both to systems that are smaller and have economic challenges, including communities with environmental justice concerns.

The Commission is also proposing revisions to update its regulations dealing with the triggers that lead to the loss of grandfathering, consumptive water use by the natural gas industry, the transfer of projects, as well as general updates to its project review application procedures.

In recognition of the Commission's priority of pursuing environmental justice initiatives, Commission staff will conduct inclusive outreach on this proposal to maximize public awareness and participation in the rulemaking process by underrepresented communities.

Definitions—Small and Medium Capacity Withdrawals—18 CFR 806.3

Definitions of small and medium capacity sources are added to 18 CFR 806.3. The jurisdictional limit for Commission review of a withdrawal is 100,000 gallons per day (gpd) over a consecutive 30-day average. However, over time, the regulations developed various mechanisms that also apply the Commission's regulatory oversight to small (under 20,000 gpd) and medium (between 20,000 and 100,000 gpd) capacity withdrawals. Current groundwater regulations, policy, and review standards subject these sources to the same level of review and associated cost implications as large volume withdrawals, regardless of their potential risk of adverse impact. The new definitions and classification of withdrawals based on size clarifies, and in some cases, reduces the level of effort by a project sponsor to seek approval to use small and medium capacity sources as well as reduces the level of review by the Commission based on the potential risk for adverse impact. To the extent these sources in some cases are utilized by smaller communities with financial challenges and serving disadvantaged communities, it will provide more flexibility moving forward for the Commission to consider appropriate measures for such consideration.

Projects Requiring Review and Approval—18 CFR 806.4

Changes are proposed to § 806.4 regarding projects requiring review and approval. The proposed revisions eliminate § 806.4(a)(2)(iii) that captures small and medium capacity sources supplying water to a regulated consumptive user. New language has been proposed to § 806.4(a)(1) clarifying the regulatory requirements for small and medium capacity withdrawals related to a consumptive use approval.

Constant-Rate Aquifer Testing and Standards for Water Withdrawals—18 CFR 806.12 & 806.23

The Commission is seeking to revise the scope of its constant-rate aquifer testing requirements and standards for groundwater withdrawals to encourage the use of existing data and review projects in a manner commensurate with the level of risk posed by a withdrawal. The proposed processes will allow the Commission's review to more adequately consider data and information that include changing conditions in the environment and with climate to allow for more sustainable and resilient withdrawals.

First, as related to small capacity sources, the Commission finds that their size significantly limits the likelihood of adverse impacts to aquifers, surface water features or competing water users and the Commission is able to utilize methods other than aquifer testing to assess the impact of withdrawal from these small sources. Accordingly, the rule proposes § 806.12(j) to provide that these small capacity sources do not generally need an aquifer test, but does retain the flexibility for the Executive Director to determine that one is needed for evaluation of resource issues in limited circumstances. Similarly, § 806.23(b)(7) is proposed to provide more focused standards for small capacity sources.

Second, existing groundwater regulations, policy and review standards include limited differentiation for renewals versus proposed new withdrawals. This lack of differentiation limits effective consideration of previous aquifer testing results and long-term operational data for some existing projects, resulting in increased renewal costs to regulated projects and the Commission. The proposed rules provide better clarity and the streamlining of review standards, especially if the project sponsor is not changing its withdrawal quantities as part of the renewal. The rule proposes a new paragraph, § 806.12(h), which provides that projects undergoing a renewal with the Commission that have also previously completed an aquifer test under the Commission's approval can satisfy the aquifer testing requirement by relying on the prior test and providing an updated groundwater availability estimate. This is conditioned on the project sponsor seeking to operate at the previously tested rate of withdrawal. Section 806.23(b)(6) is proposed to provide more differentiation between reviews for renewed or otherwise existing sources versus new projects. This differentiation includes relying on prior testing and operational data of existing projects, as well as the alternative hydrogeologic evaluation established in § 806.12(i) and the related guidance document also proposed. The proposed rule also enshrines the Commission's current flexibility to require an aquifer test and/or condition docket approvals.

Third, as related to aquifer testing and an aquifer testing waiver, existing regulation, unless formally waived, requires aquifer testing of all groundwater wells regardless of setting, size of withdrawal, available data, and status as a new, renewing or existing source. The existing waiver process used to avoid aquifer testing is not well understood by projects or consultants and frequently leads to increased costs to both the Commission and projects due to confusion about the process and incomplete submittals. The proposed rule amends § 806.12 to improve this process by adding clarity and more certainty for project sponsors but retaining the flexibility that the Commission currently has in these reviews. Section 806.12(i) is added to provide for the Alternative Hydrogeologic Evaluation (AHE) process to replace the previous waiver process. The Commission is also proposing a draft AHE policy and a revised Aquifer Testing Guidance that provide further clarity and a revised technical approach for these evaluations.

Finally, § 806.12(g) establishes that the hydrogeologic evaluation requirements in § 806.12 do not apply to withdrawals related to mine dewatering, construction dewatering, water resources remediation and acid mine drainage (AMD) remediation facilities to support the existing regulatory review provisions for these types of facilities codified in § 806.14(b)(6), (d)(6) and 806.23(b)(5). Mining and remediation projects in particular are heavily regulated by our member jurisdictions, and the proposed

rule would allow the Commission to rely on the work previously done in order to get member jurisdiction approval for these activities.

Contents of Application—18 CFR 806.14

The proposed rule offers edits to § 806.14 to clarify and improve the readability of the regulation and to account for the changes to § 806.12. These changes generally fall into two categories: 1) those that increase efficiency through simplification and clarification and 2) those that establish updated requirements for how groundwater applicants provide data and information required by § 806.12. The changes recognize prior determinations (including waivers of § 806.12) by the Commission staff which establish clear requirements for projects in those situations, remove uncertainty regarding previous determinations of aquifer testing requirements, and increase efficiency for both application preparation and the review of renewal and modification applications by Commission staff. These changes will greatly help projects by allowing them to avoid additional unnecessary aquifer testing or data collection, especially in those situations where the requirements had been previously met. These changes are important with the larger number of projects that will be seeking renewals for the first time over the next ten years.

Projects Requiring Review and Approval & Transfer of Approvals—18 CFR 806.4 & 806.6

Grandfathering, the exemption for certain pre-existing projects to operate without formal review and approval, can be lost by a variety of mechanisms. The Commission has been overseeing the successful implementation of its grandfathering registration program. This program was developed to help track an estimated one billion gallons of water use a day by grandfathered projects, while allowing them to preserve the grandfathered status of their consumptive uses and withdrawals through registration with the Commission. This program has been successfully filling in the data gaps created by grandfathered projects and is thus a valuable effort in the improvement of the water management of the basin. With this program in place, the Commission proposes to eliminate most of the current triggers for losing grandfathering and retain just two: 1) increasing the usage above the registered amount and 2) through a transfer of ownership.

First, minor changes are proposed to §§ 806.4(a)(1)(iii) and 806.4(a)(2)(iv) to reflect the closing of the grandfathering registration window. Because the term "pre-compact consumptive use" is defined, it is added to Section 806.4(a)(1)(iii). Similarly, the regulatory trigger dates are no longer needed in Section 806.4(a)(2)(iv); however, they were relocated to § 806.4(a)(2)(i) because they still have regulatory significance and cannot be eliminated altogether.

Second, section 806.4(a)(2)(ii) is revised to remove the language that acted as a trigger for the loss of grandfathering when a source was added or any source of a project was increased in quantity. The language related to the review of increases to existing sources is removed from (a)(2)(ii) and is now contained in the revised § 806.4(a)(2)(iii). The revised § 806.4(a)(2)(ii) provides that a regulated project that adds a new source must make an application for review and approval of that source, but it does not serve as a trigger for loss of grandfathering and subject the entire project to review, as it previously did. Similarly, revised § 806.4(a)(2)(iii) provides that any previously approved withdrawal that increases above its approval amount must make an

application for review and approval of the increased amount. However, this increase does not subject the entire project to review and approval, as it previously did, which was also a trigger for loss of grandfathering.

Third, for diversions, minor adjustments to §§ 806.4(a)(3)(iii) and (iv) were needed to make the provisions related to grandfathered diversions be consistent with the changes made to grandfathered withdrawals and consumptive uses.

Fourth, change of ownership remains a pathway for the loss of grandfathering under §§ 806.4(a)(1)(iv), (a)(2)(v), and (a)(3)(iv). This is also reflected in § 806.6(b). All of these provisions are simplified and revised to reflect that the grandfathering registration period is now closed.

Fifth, a new paragraph § 806.6(d) is added to provide the new sponsor of a transferred project time to collect operational data that would allow it to take advantage of the AHE and not have to immediately prepare applications for the source(s) that have lost grandfathering. These changes are also consistent with the direction provided by the Commissioners in Resolution 2017-12 related to inter-municipal transfers.

Under the proposed rule, a new project owner with registered grandfathered sources undergoing a qualified change in ownership would be required to comply with the existing monitoring requirements under § 806.30 for all sources, along with any other conditions necessary to effectuate the transfer. Additionally, for any unapproved sources, the approved transfer will act as the project's approval for a period of five years, at which point, the project sponsor must submit an application for review and approval of the sources. This would provide ample time for the new project sponsor to collect operational data for these existing sources and potentially avoid the cost of an aquifer test.

Related to transfers, the proposed rule eliminates the corporate reorganization exception in § 806.4(b). This exception caused confusion to project sponsors, was difficult to implement and was infrequently used.

Standards for Consumptive Uses of Water for Natural Gas Projects—18 CFR 806.22(f)

Section 806.22(f) is amended to update the Commission's regulation of consumptive waster use for unconventional natural gas extraction. Commission staff conducted an internal review of processes and procedures used by its Approval by Rule program and has developed these changes to update the regulations to address the evolution of this program and the industry.

Section 806.22(f)(11)(ii) is amended to include captured stormwater, which includes corresponding changes to § 806.4(a)(3)(v) through (vii) and adding a definition of "captured stormwater" to § 806.3. The purpose of this change is to make clear that this captured stormwater is covered under the Commission's regulatory approvals, which is consistent with how these regulations have been interpreted.

The proposed rule also eliminates the concept of "hydrocarbon water storage facilities" from the regulations. There are two reasons for this change. First, this concept was developed early on in the Commission's initial response to the development of the unconventional natural gas industry. However, the industry's water use evolved in a manner where approvals of this type were never issued by the Commission. Second, the Commission began regulating and tracking consumptive use by the natural gas industry at the source of withdrawal. This method of

tracking has proven itself to be effective and enforceable and obviates the need for the water storage facility provisions, both now and in the future. Accordingly, the Commission is proposing corresponding changes to §§ 806.3, 806.22(f)(11)(iv), and 806.22(f)(14).

Section 806.22(f)(4) is revised to eliminate some of the specific details for what is ultimately captured in the post-hydrofracture report. This report is still required; however, this revision makes it easier for the Commission to revise the items requested in the report and the Commission intends to align this report with the post-drilling completion reports filed with the member jurisdictions to avoid any duplication of effort.

Sections 806.22(f)(12) and (13) are amended to track and support the Commission's current practices with respect to the use of non-public and public water suppliers by the natural gas industry as a source for water.

Other Changes

Interconnections. The Commission is proposing to eliminate language in § 806.4(a)(2) that subjected public water supply interconnections to specific review and approval requirements. The Commission is adding language dealing with interconnections as a part of a project in its review standards for water withdrawals in § 806.23. Public water supply interconnections are closely regulated by member jurisdictions and these revisions allow the Commission to avoid any duplication of effort.

Diversions for Municipalities on the Basin Divide. The proposed rule adds a paragraph § 806.4(a)(3)(viii) that would allow the diversion of drinking water or sewage into or out of the basin without applying for approval from the Commission. The diversion would have to be by or through a publicly or privately owned public water supplier or wastewater treatment works and, for out of basin diversions, service a municipality that was on or adjacent to the basin divide in order to be eligible for the exemption. The primary purpose of the Commission's regulations for reviewing diversions of water into the basin is to ensure that the water quality of the incoming water is not a threat to affect the water quality of the water resources of the basin. Where municipalities may cross the basin divide for the operation of drinking water and wastewater systems that are regulated by the member jurisdictions, any water quality concerns are fully mitigated by the regulatory oversight of the member jurisdictions and additional review by the Commission is unnecessary.

Notice Provisions. Changes are proposed to § 806.15 to clarify, update, and improve the readability of the regulation, as well as to align the notice requirements for applications for minor modifications, notices of intent (NOIs) for general permits, approvals by rule under § 806.22(e), approvals by rule (ABR) under § 806.22(f)(9) and source approvals under § 806.22(f)(13). The notice requirements in existing §§ 806.15(d), (e) and (f) are deleted and consolidated in part in a new § 806.15(g). The notice for groundwater withdrawals under § 806.15(b)(1) is revised to provide notice to property owners within a quarter mile radius of the withdrawal.

Minor Modifications. In 2015, the Commission added § 806.18 providing a process for minor modifications. This addition has been successful in creating an efficient method for the Commission to process changes to its approvals that are primarily administrative and do not rise to the level of major modifications. Based on the Commission's experience since 2015, it is proposing to modify and add new categories of changes that would

qualify as minor modifications. The addition of §§ 806.18(c)(10) and (11) also aid in the implementation of the Consumptive Use Mitigation Policy adopted in March 2020.

Consumptive Use Approvals—ABR(e). Consumptive users who are entirely sourced by public water supply, stormwater, wastewater, or reused or recycled water are eligible for a streamlined approval by rule under § 806.22(e). Section 806.22(e)(6) is revised to allow for discontinuance as a consumptive use mitigation option for these approvals to be consistent with and support the recently adopted Consumptive Use Mitigation Policy. Section 806.22(e)(8) is revised to allow the Executive Director to permit a project sponsor to continue to use the ABR(e) process if they use a small capacity well for consumptive use or for use only for supply of potable water. These small wells are below the Commission’s regulatory thresholds and their use should not be a reason to disallow the use of the ABR(e) process for project sponsors who use them to service their facilities.

Emergency Certificates. Section 806.34 is revised to allow an emergency certificate to be issued by the Executive Director for a term that allows the Commission to place the extension of a certificate on its public hearing notice. Currently, the rule requires that these certificates are valid until the next scheduled Commission meeting where they can be extended by the Commissioners, but typically this occurs after the public hearing has already been noticed and held. This change allows for greater public input and transparency when the project sponsor seeks the Commission’s approval to extend the term of these certificates for a longer period of time.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR part 806 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

1. The authority citation for part 806 continues to read as follows: Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub.L. 91-575, 84 Stat. 1509 et seq.

2. In § 806.3:

a. Add, in alphabetical order, the definition for “Captured stormwater”;

b. Remove the definition of “Hydrocarbon water storage facility”; and

c. Add, in alphabetical order, the definitions for “Medium capacity source” and “Small capacity source”.

The additions and revisions read as follows:

§ 806.3. Definitions.

* * * * *

Captured stormwater. Precipitation or stormwater collected on the drilling pad site, including well cellar water, waters from secondary containment, and water collected from post construction stormwater management features.

* * * * *

Medium capacity source. A ground or surface water source with a withdrawal of more than 20,000 but less than 100,000 gallons per day over a consecutive 30 day-average.

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Small capacity source. A ground or surface water source with a withdrawal of 20,000 gallons or less per day over a consecutive 30-day average.

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3. Revise § 806.4 to read as follows:

§ 806.4. Projects requiring review and approval.

(a) Except for activities relating to site evaluation, to aquifer testing under § 806.12 or to those activities authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B of this part and shall be subject to the applicable standards in subpart C of this part.

(1) *Consumptive use of water.* Any consumptive use project described in this paragraph (a)(1) shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.22, and, to the extent that it involves a withdrawal from groundwater or surface water except a small capacity source, shall also be subject to the standards set forth in § 806.23 as the Commission deems necessary. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Provided the commission determines that low flow augmentation projects sponsored by the commission’s member states provide sufficient mitigation for agricultural water use to meet the standards set forth in § 806.22, and except as otherwise provided in this paragraph (a)(1), agricultural water use projects shall not be subject to the requirements of this paragraph (a)(1). Notwithstanding the foregoing, an agricultural water use project involving a diversion of the waters of the basin shall be subject to such requirements unless the property, or contiguous parcels of property, upon which the agricultural water use project occurs is located at least partially within the basin.

(i) Any project initiated on or after January 23, 1971, involving a consumptive water use of an average of 20,000 gallons per day (gpd) or more in any consecutive 30-day period.

(ii) With respect to projects previously approved by the Commission for consumptive use, any project that will involve an increase in a consumptive use above that amount which was previously approved.

(iii) With respect to projects with pre-compact consumptive use:

(A) Registered in accordance with subpart E of this part that increases its consumptive use by any amount over the quantity determined under § 806.44;

(B) Increasing its consumptive use to an average of 20,000 gpd or more in any consecutive 30-day period; or

(C) That failed to register its consumptive use in accordance with subpart E of this part.

(iv) Any project, regardless of when initiated, involving a consumptive use of an average of 20,000 gpd or more in any consecutive 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(2) *Withdrawals.* Any project, including all of its sources, described in this paragraph (a)(2) shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in §§ 806.21 and 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph (a)(2) shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or 18 CFR part 801.

(i) Any project initiated on or after July 13, 1978 for groundwater or November 11, 1995 for surface water withdrawing a consecutive 30-day average of 100,000 gpd or more from a groundwater or surface water source, or any project initiated after January 1, 2007 withdrawing a consecutive 30-day average of 100,000 gpd or more from a combination of sources.

(ii) Any new source added to projects with previously approved withdrawals by the Commission.

(iii) Any withdrawal increased above that amount which was previously approved by the Commission.

(iv) With respect to projects with grandfathered withdrawals:

(A) Registered in accordance with subpart E of this part that increases its withdrawal by any amount over the quantity determined under § 806.44;

(B) Increasing its withdrawal individually or in combination from all sources to an average of 100,000 gpd or more in any consecutive 30-day period; or

(C) That failed to register its withdrawals in accordance with subpart E of this part.

(v) Any project, regardless of when initiated, involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more, from either groundwater or surface water sources, or in combination from both, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(3) *Diversions.* Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1) of this section, the projects described in paragraphs (a)(3)(i) through (iv) of this section shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. The projects identified in paragraphs (a)(3)(v) and (vi) of this section shall be subject to regulation pursuant to § 806.22(f).

(i) Any project initiated on or after January 23, 1971, involving the diversion of water into the basin by any amount, or involving a diversion of water out of the basin of an average of 20,000 gallons of water per day or more in any consecutive 30-day period.

(ii) With respect to diversions previously approved by the Commission, any project that will increase a diversion above the amount previously approved.

(iii) With respect to diversions initiated prior to January 23, 1971, any project that will increase a diversion into the basin by any amount, or increase the diversion of water out of the basin by any amount.

(iv) Any project, regardless of when initiated, involving the diversion of water into the basin by any amount or involving a diversion of water out of the basin by an average of 20,000 gallons of water per day or more in any consecutive 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraph (b) of this section or the Commission approval for such project is transferred pursuant to § 806.6.

(v) The interbasin diversion of any flowback or production fluids, topohole water and captured stormwater from hydrocarbon development projects from one drilling pad site to another drilling pad site for use in hydrofracture stimulation, provided it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction, shall not be subject to separate review and approval as a diversion under this paragraph if the generating or receiving pad site is subject to an Approval by Rule issued pursuant to § 806.22(f) and provided all monitoring and reporting requirements applicable to such approval are met.

(vi) The diversion of flowback or production fluids, topohole water and captured stormwater from a hydrocarbon development project for which an Approval by Rule has been issued pursuant to § 806.22(f), to an out-of-basin treatment or disposal facility authorized under separate governmental approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph, provided all monitoring and reporting requirements applicable to the Approval by Rule are met and it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(vii) The diversion of any flowback or production fluids, topohole water and captured stormwater from hydrocarbon development projects located outside the basin to an in-basin treatment or disposal facility authorized under separate government approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph (a)(3), provided the fluids are handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(viii) The diversion of drinking water and/or municipal wastewater out of the basin to a municipality on or straddling the basin divide if provided by or through a publicly or privately owned entity and regulated by the appropriate agency of the member jurisdiction shall not be subject to review and approval as a diversion under this paragraph (a)(3) of this section or as a consumptive use under paragraph (a)(1) of this section.

(ix) The diversion of drinking water and/or municipal wastewater into the basin to a municipality if provided by or through a publicly or privately owned entity and regulated by the appropriate agency of the member jurisdiction shall not be subject to review and approval as a diversion under paragraph (a)(3) of this section.

(4) *Crossing state boundaries.* Any project on or crossing the boundary between two member states.

(5) *Significant effect.* Any project in a member state having a significant effect on water resources in another member state.

(6) *Comprehensive plan.* Any project which has been or is required to be included by the Commission in its comprehensive plan, or will have a significant effect upon the comprehensive plan.

(7) *Determination.* Any other project so determined by the commissioners or Executive Director pursuant to § 806.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

(8) *Natural gas.* Any unconventional natural gas development project in the basin involving a withdrawal, diversion or consumptive use, regardless of the quantity.

(9) *General permit.* Any project subject to coverage under a general permit issued under § 806.17.

(b) Any project that did not require Commission approval prior to January 1, 2007, and undergoing a change of ownership, shall be exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v) or (a)(3)(iv) of this section if it is a:

(1) Transfer of a project to the transferor's spouse or one or more lineal descendants, or any spouse of such lineal descendants, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendants, or any spouse of such lineal descendants, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendant(s) and their spouses, continues to be 51 percent or greater; or

(2) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock, or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

4. Amend § 806.6 by revising paragraphs (a)(5) and (b) and by adding paragraph (d) to read as follows:

§ 806.6. Transfer of approvals.

(a) * * * * *

(5) If the existing project has an unapproved withdrawal, consumptive use and/or diversion listed in paragraph (b) of this section, the transfer shall be conditioned to require the submission of a new application for review and approval of the unapproved withdrawal, consumptive use and/or diversion consistent with §§ 806.4 and 806.14 and paragraph (d) of this section.

* * * * *

(b) Previously unapproved activities associated with a project subject to transfer under paragraph (a) include:

(1) The project has an associated pre-compact consumptive water use that has not had mitigation approved by the Commission.

(2) The project has an associated diversion that was initiated prior to January 23, 1971.

(3) Projects registered under subpart E of this part.
* * * * *

(d) Any unapproved activities associated with a transferred project shall be subject to the following:

(1) The transfer approval shall be conditioned to include monitoring requirements under § 806.30 for all previously unapproved sources and activities.

(2) The transfer approval may include any other conditions consistent with this part deemed necessary by the Executive Director.

(3) The approved transfer will act as the unapproved activity's temporary approval for a period of five years, at which point, the project sponsor shall submit an application for review and approval consistent with subpart B of this part.

(4) The Executive Director may require hydrogeologic evaluation under § 806.12 and/or formal review and approval of any of the previously unapproved sources sooner if those sources show a substantial likelihood of environmental harm, interference with other water users or water availability issues.

5. Revise § 806.12 to read as follows:

§ 806.12. Hydrogeologic evaluation.

Evaluation of groundwater withdrawal projects requires a hydrogeologic evaluation, which may be an aquifer test in accordance with an approved plan or an alternative hydrogeologic evaluation in conformance with this section.

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval for a new groundwater withdrawal, a renewal of an expiring groundwater withdrawal, or an increase of a groundwater withdrawal shall perform an aquifer test.

(b) Unless an alternative hydrogeologic evaluation method is approved, the project sponsor shall prepare an aquifer test plan for prior review and approval by Commission staff before testing is undertaken. Such plan shall include a groundwater availability analysis to determine the availability of water during a 1-in-10-year recurrence interval.

(c) Unless otherwise specified, approval of a test plan is valid for two years from the date of approval.

(d) Approval of a test plan shall not be construed to limit the authority of the Commission to require additional testing or monitoring.

(e) The project sponsor may be required, at its expense, to provide temporary water supply if an aquifer test results in interference with an existing water use.

(f) Review of submittals under this section may be terminated by the Commission in accordance with the procedures set forth in § 806.16.

(g) This section does not apply to withdrawals related to mine dewatering, water resources remediation or AMD facilities, provided the activity is governed by another regulatory agency.

(h) Sources undergoing renewal that can provide an interpretative hydrogeologic report that documents the results of a Commission approved aquifer test or documentation of an approved prior waiver by the Commission may meet the requirements of § 806.12 for that previously approved groundwater source.

(i) In lieu of completing a Commission-approved aquifer test, the project sponsor may submit an Alternative Hydrogeologic Evaluation (AHE) that provides supporting information equivalent to that which would be obtained from completing an approved aquifer test under paragraph (a) of this section. This supporting information includes, but is not limited to, prior aquifer testing data, the withdrawal setting and location, existing site specific operational data, and prior Commission approved waivers of aquifer testing requirements. Commission staff may approve an AHE for a project or require completion of a Commission approved aquifer test in accordance with paragraph (a) of this section.

(j) This section does not apply to withdrawals from a small capacity source, unless otherwise determined by the Executive Director.

6. Amend § 806.14 by:

a. Revise paragraphs (a)(2) and (3), (b)(1) and (2), and (c)(2), (3) and (5);

- b. Adding paragraphs (c)(10) and (11); and
- c. Revising paragraph (d).

The revisions and additions read as follows:

§ 806.14. Contents of application.

(a) * * * * *

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on a map, and evidence of legal access to the property upon which the project is proposed.

(3) Project description, including: purpose, proposed quantity to be withdrawn or consumed, if applicable, and description of all sources, consumptive uses and diversions related to the project.

* * * * *

(b) * * * * *

(1) Surface Water.

(i) Water use and availability.

(ii) Project setting, including surface water characteristics, identification of wetlands, and site development considerations.

(iii) Description and design of intake structure.

(iv) Anticipated impact of the proposed project on local flood risk, recreational uses, fish and wildlife and natural environment features.

(v) For new projects and major modifications to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a water with exceptional water quality, or as required by the Commission.

(2) Groundwater.

(i) With the exception other projects which are addressed in paragraph (b)(6) of this section, the project sponsor shall demonstrate that requirements of § 806.12 have been met by providing one of the following:

(A) An interpretive report that includes the results of a Commission approved aquifer test and an updated groundwater availability estimate if changed from the aquifer test plan,

(B) An approved AHE,

(C) A prior determination by the Commission staff under § 806.12(h) that the intent and requirements of § 806.12 have been met along with an updated groundwater availability estimate.

(ii) Water use and availability.

(iii) Project setting, including nearby surface water features.

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

* * * * *

(c) * * * * *

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on map, and evidence of legal access to the property upon which the project is located.

(3) Project description, to include, but not be limited to: purpose, proposed quantity to be withdrawn or consumed if applicable, description of all sources, consumptive uses and diversions related to the project and any proposed project modifications.

* * * * *

(5) An as-built and approved metering plan that conforms to § 806.30.

* * * * *

(10) Changes to the facility design.

(11) Any proposed changes to the previously authorized purpose.

(d) Additional information is required for the following applications for renewal of expiring approved projects.

(1) Surface water.

(i) Description and as-built of intake structure.

(ii) For renewals seeking to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality, or as required by the Commission.

(2) Groundwater.

(i) The project sponsor shall demonstrate that requirements of § 806.12 have been met by providing one of the following:

(A) Provide an interpretive report that includes the results of a Commission approved aquifer test and an updated GW availability estimate if changed from the aquifer test plan;

(B) An approved AHE; or

(C) A prior determination by the Commission staff under § 806.12(h) that the intent and requirements of § 806.12 have been met.

(ii) An interpretive report providing analysis and comparison of current and historic water withdrawal and groundwater elevation data with previously completed materials to demonstrate satisfaction of § 806.12, which may include a hydrogeologic report from previous aquifer testing, an approved AHE or prior determination of waiver of aquifer testing.

(iii) Current groundwater availability analysis assessing the availability of water during a 1-in-10 year drought recurrence interval under the existing conditions within the recharge area and predicted for term of renewal (i.e., other users, discharges, and land development within the groundwater recharge area).

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

(3) Consumptive use.

(i) Consumptive use calculations.

(ii) Mitigation plan, including method of consumptive use mitigation.

(4) Into basin diversion.

(i) Provide the necessary information to demonstrate that the project will continue to meet the standards in § 806.24(c).

(ii) Identification of the source and current water quality characteristics of the water to be diverted.

(5) *Out of basin diversion.*

(i) Provide the necessary information to demonstrate that the project will continue to meet the standards in § 806.24(b).

(6) *Other projects.* Other projects, including without limitation, mine dewatering, water resources remediation projects, and AMD facilities that qualify as a withdrawal.

(i) In lieu of a hydrogeologic evaluation, a copy of approved report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the project and effects on local water availability.

(ii) Any data or reports that demonstrate effects of the project are consistent with those reports provided in paragraph (d)(6)(i) of this section.

(iii) Demonstration of continued need for expiring approved water source and quantity.

* * * * *

7. Revise § 806.15 to read as follows:

§ 806.15. Notice of application.

(a) Except with respect to paragraphs (e), (f), and (g) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county and the appropriate county agencies in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (d) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall be in a form and manner as prescribed by the Commission.

(b) For withdrawal applications submitted pursuant to § 806.4(a)(2) for new projects, major modifications, and renewals requesting an increase, the project sponsor shall also provide the notice required under paragraph (a) of this section to each property owner listed on the tax assessment rolls of the county in which such property is located and identified as follows:

(1) For groundwater withdrawal applications, the owner of any contiguous property that is located within a one-quarter mile radius of the proposed withdrawal location.

(2) For surface water withdrawal applications, the owner of any property that is riparian or littoral to the body of water from which the proposed withdrawal will be taken and is within a one-half mile radius of the proposed withdrawal location.

(3) For groundwater withdrawal applications, the Commission or Executive Director may allow notification of property owners through alternate methods where the property of such property owner is served by a public water supply.

(c) For projects involving a diversion of water out of the basin, the project sponsor shall also publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the project proposing to use the diverted water is located. For projects involving a diversion of water into the basin, the project sponsor shall also

publish a notice of the submission of its application at least once in a newspaper of general circulation serving the area outside the basin where the withdrawal of water proposed for diversion is located.

(d) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt or the verified return receipt from a comparable delivery service for the notifications to agencies of member States, municipalities, counties and appropriate county agencies required under this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. The project sponsor shall maintain all proofs of publication and records of notices sent under this section for the duration of the approval related to such notices.

(e) For Notices of Intent (NOI) seeking coverage under a general permit, the project sponsor shall provide notice of the NOI to the appropriate agency of the member State and each municipality and county and appropriate county agencies in which the project is located and any additional notice identified in the general permit.

(f) For applications for minor modifications and approvals by rule under § 806.22(e), the project sponsor shall provide notice of the application to the appropriate agency of the member State and each municipality and county and appropriate county agencies in which the project is located.

(g) For NOIs seeking an approval pursuant to § 806.22(f), the project sponsor shall provide notice of the application to the appropriate agency of the member State, each municipality, county and appropriate county agencies, and the owner of the property on or in which the drilling pad site is located. For requests for approval submitted under § 806.22(f)(13), the project sponsor shall provide notice of the application to the appropriate agency of the member State, each municipality, county and appropriate county agencies in which the public water supply is located.

8. Amend § 806.18 by revising paragraph (c) to read as follows:

§ 806.18. Approval modifications.

* * * * *

(c) *Minor modifications.* The following are minor modifications:

- (1) Correction of typographical or other errors;
- (2) Changes to monitoring or metering conditions;
- (3) Addition, amendment or removal of sources of water for consumptive use or project descriptions;
- (4) Changes to the authorized water uses;
- (5) Changes to conditions setting a schedule for developing, implementing, and/or reporting on monitoring, data collection and analyses;
- (6) Changes to the design and minor changes to the location of intakes;
- (7) Increases to total system limits that were established based on the projected demand of the project; and
- (8) Modifications of extraction well network used for groundwater remediation systems.

(9) Adjustments to a term of an approval to align the approval with a member jurisdiction approval or another docket approval by the Commission.

(10) Changes to the method of consumptive use mitigation to payment of the mitigation fee, providing for discontinuance, use of storage or an adequate conservation release in accordance with a previous Commission determination.

(11) Addition of stormwater as a source of consumptive use, including an increase to the total consumptive use related to the stormwater use.

(12) Extension of the date of commencement of a withdrawal, diversion or consumptive use established under § 806.31(b).

* * * * *

9. Amend § 806.22 by revising paragraphs (e)(6) and (8), and (f)(4) and (11) through (14) to read as follows:

§ 806.22. Standards for consumptive use of water.

* * * * *

(e) * * * * *

(6) *Mitigation.* The project sponsor shall comply with mitigation in accordance with paragraph (b)(1)(iii), (b)(2) or (3) of this section.

* * * * *

(8) *Decision.* The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved. Use of small capacity sources or sources used only for supply of potable water may be appropriately included as a part of this approval by rule in the discretion of the Executive Director.

* * * * *

(f) * * * * *

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. The project sponsor shall submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

* * * * *

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, for unconventional natural gas development or hydrocarbon development, whichever is applicable, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

(i) Tophole water encountered during the drilling process, provided it is used only for drilling or hydrofracture stimulation.

(ii) Captured stormwater, provided it is used only for drilling or hydrofracture stimulation.

(iii) Drilling fluids, formation fluids, flowback or production fluids obtained from a drilling pad site, production well site or hydrocarbon water storage facility, provided it is used only for hydrofracture stimulation, and is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water, except a public water supply, approved by the Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use and the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission. Use of the registered source shall not commence until the Commission acknowledges in writing that the registration is proper and complete.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, water withdrawals or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a), public water supplies, or another approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(14) [Reserved]

* * * * *

10. Amend § 806.23 by revising paragraphs (b) introductory text and (b)(4), and adding paragraphs (b)(6) and (7), to read as follows:

§ 806.23. Standards for water withdrawals.

* * * * *

(b) Limitations on and considerations for withdrawals.

* * * * *

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources, interconnections or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, including interconnections, and support existing and proposed future withdrawals.

* * * * *

(6) Notwithstanding this paragraph, existing withdrawals that successfully complete the process in § 806.12(h) and (i) shall satisfy the standards in paragraph (b)(2) of this section. Further, evaluation of the withdrawal shall include reasonably foreseeable need and the need for total system limits, compliance with § 806.21, and any changes to the project or project location and setting.

(i) Approval of withdrawal limits on existing sources will not be set above the amount supported by the existing historical and current operating data or otherwise supported by the evaluation under § 806.12, and may be set at a different rate if supported by the evaluation required in this paragraph.

(ii) Any approvals shall include metering and measurement of parameters consistent with § 806.30, and may include conditions requiring monitoring of surface water features or other withdrawal sources.

(iii) If any reported metering or monitoring data or other information show a significant adverse impact to any consideration in paragraph (b)(2) of this section, the Commission may take actions necessary to eliminate the significant adverse impact, including but not limited to requiring the project to undertake more data collection and analysis, aquifer testing and/or conditioning the docket approval.

(7) Notwithstanding this paragraph, small capacity sources shall be subject to any withdrawal limit, including total system limit, set by the Commission and shall include metering and measurement of parameters consistent with § 806.30.

11. Amend § 806.34 by revising paragraph (c)(2) to read as follows:

§ 806.34. Emergencies.

* * * * *

(c) * * * * *

(2) With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, issue an emergency certificate for a term not to extend beyond the next regular business meeting of the Commission where the extension of the certificate may be included in the notice for the next regularly scheduled public hearing for that business meeting.

* * * * *

Dated: March 15, 2021.

ANDREW D. DEHOFF,
Executive Director

Fiscal Note: 72-16. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

**PART IV. SUSQUEHANNA RIVER
BASIN COMMISSION**

**CHAPTER 806. REVIEW AND
APPROVAL OF PROJECTS**

§ 806.1. Incorporation by reference.

The regulations and procedures for review of projects as set forth in 18 CFR Part 806 [(2019)] (2021) (relating to review and approval of projects) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 21-562. Filed for public inspection April 9, 2021, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CH. 11]

Purchases, Sales and Returns; General Provisions

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P.S. § 2-207(i)), proposes to amend §§ 11.1 and 11.3—11.5 to read as set forth in Annex A.

Summary

The Board submits this proposed rulemaking to update its regulations in Chapter 11 (relating to purchases, sales and returns). This proposed rulemaking is undertaken as part of a larger effort to update the Board's regulations. The intent behind this proposed rulemaking is to elimi-

nate outdated provisions in Chapter 11 to provide streamlined regulations for the regulated community.

Section 11.1 (relating to definitions) includes two definitions: "Manufacturer" and "State, territory or county of origin." The first sentence for "Manufacturer" is left unchanged. The second sentence is proposed to be deleted, since it modifies the definition of "Manufacturer" for Subsection L, which no longer exists. The definition of "state, territory or county of origin" is proposed to be deleted, since this phrase does not appear anywhere in the Board's regulations.

Section 11.3 (relating to sales at retail) is proposed to be amended in the title so that the new title of the section is "Sales of ethyl alcohol at retail." This new title more accurately reflects the contents of the section after subsection (b) is deleted. Subsection (b) is proposed to be deleted because ethyl alcohol is no longer procured by the special order process. Subsection (a) accurately describes the process for obtaining ethyl alcohol at retail.

Section 11.4 (relating to sales at wholesale) is proposed to be amended in the title so that the new title of the section is "Sales at wholesale for United States Armed Forces facilities." This new title more accurately reflects the contents of the section after subsections (a) and (b) are deleted. Subsections (a) and (b) are proposed to be deleted because ethyl alcohol is no longer procured by the process described in these subsections. The current process is set forth in § 11.33 (relating to purchase of alcohol by AN and AE permittees).

Section 11.5 (relating to issuance of wholesale liquor purchase permit cards) is proposed to be amended to delete, in subsection (a), the phrase "if the retail cost of the order is \$50 or more." By deleting this phrase, a retail liquor licensee or a United States Armed Forces facility will be able to obtain all liquor purchases—not just those that cost \$50 or more—at the discounted rate allowed by the wholesale liquor purchase permit card. This amendment was requested by the Pennsylvania Tavern Association.

In addition, § 11.5 is proposed to be amended by the deletion of subsection (b). This subsection describes a special form of Wholesale Liquor Purchase Permit Card that is issued to pharmacists, State-owned institutions and to certain manufacturers of nonbeverage products. The type of card issued to these entities is called a Wholesale Alcohol Purchase Permit Card, and its use is covered in §§ 11.21—11.23 (relating to wholesale alcohol purchase permits). Since the information in this subsection is superfluous, it is being deleted.

Affected Parties

The affected parties include those retail licensees and United States Armed Forces facilities that will be entitled to a discount on every purchase of liquor with their Wholesale Liquor Purchase Permit Card. As of November 19, 2020, there were approximately 13,165 of these licensees.

Paperwork Requirements

This proposed rulemaking does not impose any new paperwork requirements on licensees.

Fiscal Impact

This proposed rulemaking will have a positive impact on licensees, since it removes a minimum purchase requirement before licensees may receive a 10% licensee discount.

Effective Date

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments about this proposed rulemaking to Rodrigo Diaz, Chief Counsel, Jason M. Worley, Deputy Chief Counsel, or Norina Foster, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, by e-mail at ra-lblegal@pa.gov, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. When commenting, individuals should indicate if they wish to be apprised of future developments regarding this proposed rulemaking, and include a name, address and e-mail address. Comments submitted by facsimile will not be accepted.

Public comments will be posted on the Independent Regulatory Review Commission's (IRRC) web site. Personal information will not be redacted from the public comments received.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 10, 2021, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

TIM HOLDEN,
Chairperson

Fiscal Note: 54-102. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 40. LIQUOR****PART I. LIQUOR CONTROL BOARD****CHAPTER 11. PURCHASES, SALES AND RETURNS****Subchapter A. GENERAL PROVISIONS****RETAIL AND WHOLESALE PURCHASE—GENERAL****§ 11.1. Definitions.**

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

Manufacturer—A person engaged in the manufacture, rectification or compounding of liquors, other than wines, or an agent or representative of the manufacturer. [**The term, as it relates to Subchapter L (relating to manner of changing prices of malt or brewed beverages), is any entity licensed for and engaged in the manufacture of malt or brewed beverages within this Commonwealth or elsewhere.**]

State, territory or county of origin—The place where liquors other than wines offered for sale to the Board are manufactured, rectified or compounded for the market.]

§ 11.3. Sales **of ethyl alcohol** at retail.

[(a)] State liquor stores may stock ethyl alcohol, 190 proof, for retail sales subject to the following:

(1) An individual or entity desiring to purchase ethyl alcohol shall file an application on forms provided by the Board.

(2) The Board may approve the application of an individual or entity who swears or affirms that the alcohol will be purchased for nonpotable use only.

[(b) **Special orders are subject to the following:**

(1) **Special orders for ethyl alcohol shall be accepted for a minimum quantity of one case of 24 pints or one case of 12 quarts.**

(2) **Special orders of absolute ethyl alcohol, 200 proof, shall be accepted for a minimum quantity of 1 gallon.**

(3) **Special orders require a deposit of at least 25% of the selling price at the time of placing an order. The name of the manufacturer shall also be furnished.]**

§ 11.4. Sales at wholesale **for United States Armed Forces facilities.**

[(a) **The Board may keep in stock ethyl alcohol in 2 gallon containers, which will be priced at net wholesale, available only to holders of Wholesale Alcohol Purchase Permit Cards. There will also be available to holders of the cards, the containers which are carried in regular stock, at net wholesale permittee prices.**

(b) **Special orders are subject to the following:**

(1) **Special orders may be placed at State Liquor Stores by holders of Wholesale Alcohol Purchase Permit Cards for a minimum quantity of 1 gallon of absolute ethyl alcohol and ethyl alcohol in standard case quantities.**

(2) **A special order will not be accepted for a brand of alcohol sold as stock merchandise in the same size containers.**

(3) **Special orders require a deposit of at least 25% of the selling price at the time of placing an order. The name of the manufacturer shall also be furnished.**

(c)] Under section 305(b) of the Liquor Code (47 P.S. § 3-305(b)), wholesale sales of liquor may be made to a United States Armed Forces facility which is located on a United States Armed Forces installation within this Commonwealth. The sales shall be conducted under the authority and regulations of the United States Armed Forces. The sales shall be made under terms and conditions agreed upon by the Board and United States Armed Forces facility representatives.

(1) The Board may accept checks in payment for sales of liquor to a United States Armed Forces facility under terms and conditions as the Board deems appropriate.

(2) Direct delivery of liquor to a United States Armed Forces facility may be accomplished under terms set forth by the Board.

§ 11.5. **Issuance of Wholesale Liquor Purchase Permit Cards.**

[(a)] As evidence of the privilege given to a retail liquor licensee and a United States Armed Forces facility

to purchase liquor from State Liquor Stores at wholesale, the Board will issue to the licensee and a United States Armed Forces facility a Wholesale Liquor Purchase Permit Card, which allows the purchase of liquors at wholesale [if the retail cost of the order is \$50 or more].

[(b) Special forms of Wholesale Liquor Purchase Permit Cards issued to pharmacists registered under the statutes of the Commonwealth to hospitals, State-owned institutions and to certain manufacturers of nonbeverage products, will allow the purchase, at wholesale of liquors listed on the card.]

[Pa.B. Doc. No. 21-563. Filed for public inspection April 9, 2021, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 53, 63 AND 64]
[L-2018-3001391]

Rulemaking to Comply with the Competitive Classification of Telecommunication Retail Services under 66 Pa.C.S. § 3016(a); General Review of Regulations 52 Pa. Code Chapters 53, 63 and 64

Public Meeting held
August 27, 2020

Commissioners Present: Gladys Brown Dutrieuille, Chairperson, statement as follows; David W. Sweet, Vice Chairperson; John F. Coleman, Jr.; Ralph V. Yanora

Rulemaking to Comply with the Competitive Classification of Telecommunication Retail Services Under 66 Pa.C.S. § 3016(a); General Review of Regulations 52 Pa. Code, Chapter 53, Chapter 63 and Chapter 64; Docket No. L-2018-3001391

Notice of Proposed Rulemaking Order

By the Commission:

A little over two years ago, this Commission initiated an Advance Notice of Proposed Rulemaking (ANOPR) pursuant to our Reclassification Order entered March 4, 2015, which addressed service provided by the incumbent local exchange carriers (ILECs) Verizon Pennsylvania LLC (Verizon PA) and Verizon North LLC (Verizon North) (collectively Verizon).¹ The ANOPR was intended to address not only those regulations that were temporarily waived due to Verizon's competitive reclassification but also those that, in effect, had become less vital given the evolution of the provision of telecommunications today.

Additionally, Chapter 30 of the Public Utility Code authorizes the Commission to review and revise quality of service standards contained in 52 Pa. Code (relating to public utilities) that address the safety, adequacy, reliability and privacy of telecommunications services and the ordering, installation, suspension, termination and restoration of any telecommunications service. This statutory provision also states that any review or revision must take into consideration the emergence of new industry

¹ Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered March 4, 2015) (Reclassification Order).

participants, technological advancements, service standards and consumer demand. 66 Pa.C.S. § 3019(b)(2).

This Notice of Proposed Rulemaking (NPRM) is not just the adjunct to our ANOPR. It is more importantly our responsible exercise of regulation over utilities subject to our jurisdiction and those consumers who rely on that jurisdiction. While the telecommunications market has evolved, some issues, especially in matters involving service and safety, continue to warrant oversight. The Commission retains jurisdiction generally under all sections of the Code and specifically over the provision of service under Section 1501 of the Code, 66 Pa.C.S. § 1501. Our regulations provide a roadmap to guide the reasonable exercise of that jurisdiction. Nevertheless, it is time to update that map in order to further alleviate burdens on carriers while still providing sufficient directions to guide us all as we discharge our responsibilities under the Code.

In particular, with this NPRM and accompanying Appendix, the Commission proposes revisions to Chapter 53, 63 and 64 of its regulations. The Commission has worked to (1) identify common interests and concerns; (2) reasonably balance competing interests; (3) craft amendments that acknowledge today's telecommunications market but not require or rely upon formal competitive analyses or designations under Chapter 30; and (4) propose modified regulations that are more equitable for the industry, sufficiently protective for consumers, and structurally feasible for both staff and the industry. Specifically, the Commission has endeavored to reduce utility reports and other burdens while still ensuring a meaningful manner of addressing regulated service in order to find the right balance between relieving utilities of existing burdens while retaining an adequate layer of consumer protection.

The Commission is initiating this rulemaking to respond to these changes in competitive market conditions in the telecommunications industry and, in particular, to address whether the increases in competition and the subsequent reclassification of certain wire centers as competitive because of the presence of viable competitive alternatives warrant the elimination of certain regulations applicable to jurisdictional telecommunications carriers in both competitive and noncompetitive areas.

Background

I. Verizon Petition and Advance Notice of Proposed Rulemaking

Following a full evidentiary proceeding under Section 3016(a), 66 Pa.C.S. § 3016(a), on March 4, 2015, the Commission entered its Reclassification Order, partially granting a petition filed jointly by Verizon PA and Verizon North to reclassify 153 of their 504 total wire centers as competitive and waive certain regulations.² As part of the Reclassification Order, the Commission also granted for the Verizon ILECs' competitive wire centers a five-year waiver of certain of the Commission's Chapter 63 and Chapter 64 regulations, pending a rulemaking to determine the amendment of these regulations in competitive and noncompetitive wire centers on a permanent and

² See also Tentative Implementation Opinion and Order at Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered June 1, 2015) (Tentative Implementation Order), Final Implementation Opinion and Order at Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered September 11, 2015) (Final Implementation Order), and Reporting Order at Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered September 11, 2015) (Reporting Order).

industry-wide basis. At the same time, the Commission also temporarily waived, for any competitive local exchange carriers (CLECs) operating in Verizon's competitive service areas, specific regulations in Title 52 of the Pennsylvania Code pending further review of the waivers in a subsequent rulemaking.

In furtherance of this objective, the Commission issued an Advanced Notice of Proposed Rulemaking Order (ANOPR Order) at Docket No. L-2018-3001391 on July 12, 2018, in which it solicited initial and reply comments on these matters.³ We observed the following in our ANOPR Order:

According to Chapter 30, the primary impact of a competitive determination is that: (1) Verizon may price the service at its discretion; and (2) Verizon may maintain a price list of a competitive service rather than maintaining a Commission-approved tariff.⁵ However, a finding that the market is competitive is not equivalent to nor does it require a complete deregulation of the service.⁶

The Commission has retained authority under the Code over certain aspects of landline telecommunications services determined to be competitive, including retaining jurisdiction over quality of service standards that address the safety, adequacy, reliability, and privacy of telecommunications services and the ordering, installation, suspension, termination, and restoration of any telecommunication service.⁷ According to Chapter 30, our jurisdiction is only limited to the extent that competitive services' rates may not be regulated by the Commission,⁸ and the Commission may not require tariffs for competitive services. However, the Commission may require that a price list for competitive services be maintained at the Commission,⁹ an outcome similar to the principle of detariffing, which is the elimination of the requirement to file and maintain tariffs, including not only the rates for service set by the regulatory authority but also the terms and conditions of service approved by the regulatory authority.¹⁰

⁵ See 66 Pa.C.S. §§ 3016(d) and (e).

⁶ "Deregulation" is the pervasive elimination of all regulation, including both price and service regulation.

⁷ See 66 Pa.C.S. § 3019(b)(2); see also 66 Pa.C.S. § 1501.

⁸ 66 Pa.C.S. § 3016(e)(1) ("Subject to the requirements of subsection (d)(1) [establishing cost of service as the price floor], a local exchange telecommunications company may price competitive services at the company's discretion.").

⁹ 66 Pa.C.S. § 3016 (d)(4) ("The commission may require a local exchange telecommunications company to maintain price lists with the commission applicable to its competitive services. Price changes that are filed in a company's tariff for competitive services will go into effect on a one-day notice.").

¹⁰ Tariffs are defined under 66 Pa.C.S. § 102 as including not only rates and rate schedules but also "rules, regulations and practices" of the utility. Moreover, the Commission's Regulation at 52 Pa. Code § 53.25 specifies that a telephone utility's tariff shall set forth "all rules and regulations" which apply generally to all classes of

³ Rulemaking to Comply with the Competitive Classification of Telecommunications Retail Services Under 66 Pa.C.S. § 3016(a); General Review of Regulations 52 Pa. Code, Chapter 63 and 64, Docket No. L-2018-3001391, (Advanced Notice of Proposed Rulemaking Order entered July 12, 2018), 48 Pa.B. 4792 (Aug. 4, 2018) (ANOPR Order).

services. Therefore, we interpret the Section 3016(d)(2) language specifying that the Commission may not require tariffs for competitive services as applying to not only rates but also terms and conditions of service. In the event rates, services, or other conditions are detariffed, consumer protections are invoked under the Consumer Protection Act, 73 P.S. §§ 201-1 to 9.

ANOPR Order at 7-8, 48 Pa.B. 4794.

The ANOPR was intended to address not only those regulations that were temporarily waived due to Verizon's competitive reclassification but also those that, in effect, had become less vital given the evolution of the provision of telecommunications today. Whatever the number of regulated access lines in Pennsylvania,⁴ we do not disagree with two underlying premises at play in our actions. First, unregulated providers not subject to our Title 52 regulations compete with our regulated wireline utilities. Second, many of our regulations were prescribed before those unregulated providers existed. While we lack sufficient analysis of the competitive alternatives throughout all Pennsylvania, particularly in rural carriers' territories, we may nonetheless modernize our regulations to remove obligations we believe, on balance, present a greater burden than benefit. We cannot, however, support a wholesale repeal of regulations where, upon deliberate consideration, we find some remain necessary to protect the public interest, which includes the interests of both carriers and consumers.

The Commission received comments from the following entities in the ANOPR stage of this proceeding:

- AT&T Corp. and Teleport Communications America, LLC (collectively AT&T) (Initial Comments, October 3, 2018).
- Coalition for Affordable Utility Services and Energy Efficiency (CAUSE-PA) (Initial Comments, October 2, 2018).
- Communications Workers of America (CWA) (Initial Comments, October 2, 2018).
- Dex Media, Inc. d/b/a "Dex YP" (Dex Media) (Initial Comments, October 2, 2018, Reply Comments, November 2, 2018).
- Pennsylvania Office of Consumer Advocate (OCA) (Initial Comments, October 3, 2018, Reply Comments, November 2, 2018).
- Rural ILECs⁵ (RLECs) (Initial Comments, October 3, 2018, Reply Comments, November 2, 2018).
- Tenny Journal Communications (Tenny Journal) (Initial Comments, September 4, 2018).

⁴ Our regulations apply to certificated wireline carriers, including ILECs, CLECs, and Competitive Access Providers. The access line counts reported to and on file at the Commission from certificated carriers reveal 4,244,647 wireline access lines in Pennsylvania for the year ended December 31, 2019, up from 4,239,517 as of December 31, 2018. Our incumbent carriers rely on the Voice Telephone Services Report filed at the Federal Communications Commission (FCC), which reveals just under 1.7 million ILEC-only access lines as of December 31, 2018.

⁵ Armstrong Telephone Company—North; Armstrong Telephone Company—Pennsylvania; Bentleyville Communications Company; Citizens Telecommunications Company of New York, Inc.; Citizens Telephone Company of Kecksburg; Consolidated Communications of Pennsylvania Company, LLC; Frontier Communications Commonwealth Telephone Company; Frontier Communications of Breezewood, LLC; Frontier Communications of Canton, LLC; Frontier Communications of Lakewood, LLC; Frontier Communications of Oswayo River, LLC; Frontier Communications of Pennsylvania, LLC; Hancock Telephone Company; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services, Inc.; Laurel Highland Telephone Company; Marianna & Scenery Hill Telephone Company; North-Eastern Pennsylvania Telephone Company; North Penn Telephone Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; TDS Telecom/Deposit Telephone Company; TDS Telecom/Mahanoy & Mahantango; Telephone Company; TDS Telecom/Sugar Valley Telephone Company; The United Telephone Company of Pennsylvania; LLC d/b/a CenturyLink; Venus Telephone Corporation; West Side Telephone Company; Windstream Buffalo Valley, Inc.; Windstream Conestoga, Inc.; Windstream D&E, Inc.; Windstream Pennsylvania, LLC and Yukon-Waltz Telephone Company (hereinafter collectively referred to as the "Rural ILECs").

• The Verizon ILECs and their affiliated companies regulated by the Commission including MCImetro Access Transmission Services Corp., MCI Communications Services, Inc., XO Communications Services, LLC, Verizon Long Distance LLC, and Verizon Select Services, Inc. (hereinafter collectively referred to as Verizon) (Initial Comments, October 3, 2018, Reply Comments, November 2, 2018).⁶

The relevant comments of the participating parties are substantively addressed in relation to the proposed treatment of our Chapter 53, 63 and 64 regulations in the context of this NPRM, and in relation with other pertinent matters.

To that end, and to address certain additional issues, this NPRM Order is being issued to solicit public input regarding the proposed amendment of the Commission's Chapter 53, 63, and 64 regulations, including, inter alia, whether to make permanent any regulatory waivers granted in the Reclassification Order but, as proposed herein, on an industry-wide basis, whether to make permanent temporary waivers that at various times were granted to regulated telecommunications utilities operating under our jurisdiction and whether to rescind as obsolete or amend any Chapter 63 and 64 regulations in Pennsylvania.

II. Commission Actions Following the Closure of the ANOPR Comment Period

Following the formal closure of the ANOPR Order comment period, the Commission undertook further actions consistent with the time frame that was established in the Reclassification Order with respect to the temporary regulatory waivers of certain of our regulations for the competitive wire centers of the Verizon ILECs. Through a Tentative Order that was issued on February 6, 2020, the Commission sought additional comments on a further extension of the temporary regulatory waivers granted to Verizon as well as on managing access to the proprietary Verizon ILEC data that had been submitted to the Commission for the 2015-2016 time frame, which included the filing of two separate reports for calendar years 2015 and 2016, under the relevant 2015 Implementation Order and Reporting Order by interested and participating parties in this proceeding. Following the receipt of comments from Verizon, the OCA and CAUSE-PA, the Commission issued a Final Order on February 27, 2020 on this particular matter.⁷ The Commission stated the following:

We disagree with OCA that the Commission must set forth further conditions or consideration of information which might militate against blanket continuation of the subject regulatory waivers. Specifically, we do not believe that it is necessary to accept OCA's recommendation that the Commission rescind or end certain waivers granted to Verizon in the Reclassification Order before we complete our analysis in the ANOPR. The Reclassification Order was very specific in stating that the regulatory waivers are granted "temporarily" for the earlier of five years or the completion of a rulemaking proceeding, in order to provide "Verizon time to experience competitive operations in these wire centers," allow Verizon and other

interested parties to track data, and, finally, "to allow the Commission time to undertake a rulemaking to determine what service Regulations, if any, should apply in competitive and noncompetitive wire centers." Reclassification Order at 104. Thus, we view our decision to maintain the status quo and extend the regulatory waivers, until December 31, 2022 or completion of the Rulemaking (whichever is sooner), as a logical extension of our decision in the Reclassification Order. Moreover, the decision to extend the waivers is well within our discretion.

February 2020 Order at 8-9.

The Commission also addressed the availability of the Verizon ILECs' 2015-2016 proprietary data that had been submitted to the Commission by interested parties:

Verizon has already submitted the required two years of data to help assess the market conditions present in the 153 wire centers determined to be competitive. Since Verizon has already submitted this historic proprietary data in response to the Commission's Reclassification Order, it is our intent, as stated in the Tentative Order, to make this relevant data available to the participating parties in the ANOPR at Docket No. L-2018-3001391 in order to provide them with an opportunity to review the data, perform an independent analysis of the data and assist the Commission in assessing the market conditions of these 153 competitive wire centers and to help address the regulatory impact of continuing the regulatory waivers on a permanent and industry-wide basis for any additional areas determined to be competitive. We note that none of the commenters opposed this tentative conclusion. We further note that the data provided to the Commission should also be provided to the parties executing the Non-Disclosure Agreement as it was provided to the Commission although Verizon can, if it chooses, provide additional information. Once their review of the Verizon historic proprietary data is completed, the parties will have the opportunity to file supplemental comments and replies in the pending ANOPR proceeding. Those comments and replies shall be due on or before March 18 and April 2, 2020, respectively.

Accordingly, this process should address CAUSE-PA's concern that there be an opportunity for both parties and then subsequently the Commission to conduct a comprehensive analysis, pursuant to the data available, whether the regulatory waivers have negatively impacted the ability of consumers to access universal telecommunication service. To assist the Commission in this endeavor, we also will direct our Bureau of Consumer Services, with the assistance of Law Bureau, the Bureau of Technical Utility Services, and any other necessary Commission bureaus, to perform an analysis of the Verizon historic proprietary data to include (1) a comparison of the data, and any conclusions therefrom, regarding the effect of the waivers on competitive wire centers, pre-waiver and post-waiver, and (2) a comparison of the data, and any conclusions therefrom, between competitive and noncompetitive wire centers. We believe this analysis along with the supplemental comment process should address the concern of CAUSE-PA.

February 2020 Order at 9-10.

We directed the following with our February 2020 Order:

• That the temporary waivers of our Chapter 63 and 64 regulations specified in the Commission's Reclassification Order for the services in the 153 wire centers determined to be competitive, be extended from March 4,

⁶ The term Verizon and Verizon ILECs may on occasion be used interchangeably in this NPRM Order. However, where there are references to Verizon comments, the term also encompasses Verizon's competitive affiliates. Verizon Comments, n. 1 at 1.

⁷ Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services; Rulemaking to Comply with the Competitive Classification of Telecommunications Retail Services Under 66 Pa.C.S. § 3016(a); General Review of Regulations 52 Pa.Code, Chapter 63 and 64, Docket Nos. P-2014-2446303, P-2014-2446304, L-2018-3001391 (Order entered February 27, 2020) (February 2020 Order).

2020 to December 31, 2022, or until the issuance of final-form regulations in a pending rulemaking, whichever is earlier;

- That the participants in the ANOPR proceeding be provided the opportunity to file supplemental comments based on the access and review of the Verizon historic proprietary data and with prescribed deadlines for the submission of such supplemental and reply comments; and

- That the Bureau of Consumer Services, with the assistance of the Law Bureau and the Bureau of Technical Utility Services, and other bureaus as necessary complete an analysis of and preparation of conclusions regarding the data and recommendations on moving forward with a Notice of Proposed Rulemaking no later than June 30, 2020.

February 2020 Order, Ordering Paragraphs 1—3, at 12.

Following the issuance of the February 2020 Order, supplemental comments and replies were received from:

- The OCA (Supplemental Comments, filed March 18, 2020).
- The Pennsylvania Telephone Association (PTA) on behalf of the Rural ILECs (Letter in lieu of Supplemental Comments filed on March 18, 2020).
- Thryv, Inc. (f/k/a Dex Media) (Supplemental Reply Comments filed April 2, 2020).
- Verizon (Supplemental Reply Comments filed April 2, 2020).

Consistent with the determinations made in our February 2020 Order, we do not see any procedural barriers that may prevent the initiation of the actual NOPR phase in this proceeding with proposed permanent revisions to our regulations.

Concurrently with the filing of their October 3, 2018 initial comments in response to the ANOPR, the participating 35 Rural ILECs also jointly filed a petition at Docket No. P-2018-3005224 (RLEC Petition) seeking the temporary waiver of certain Chapter 63 and 64 regulations.⁸ The RLEC Petition sought the waiver of these regulations “until such a time as the Commission completes its rulemaking proceeding at Docket No. L-2018-3001391.”⁹ The Commission disposed of the RLEC Petition with its July 28, 2020 Order that granted it in part and denied it in part as follows:

1. That the Petition of the Rural Incumbent Local Exchange Carriers for a Temporary Waiver of 52 Pa. Code Section 63.21 regarding directories be granted subject to the same conditions, terms, limitations, and requirements

⁸ As set forth in the RLEC Petition, the RLECs were seeking temporary waivers of 52 Pa. Code §§ 63.12, 63.13, 63.15(b) and (c), 63.16, 63.18—63.24, 63.31, 63.32, 63.54—63.62, 63.64, 63.71—63.77, 63.91, 63.98, 64.12, 64.123, 64.141, 64.142, 64.191, 64.192, and 64.201.

⁹ RLEC Petition ¶ 7 at 3. The RLECs also sought: (1) An immediate and permanent waiver of 52 Pa. Code §§ 63.21 and 64.191(g) for all jointly petitioning RLECs consistent with the relief granted to CenturyLink, and the Verizon ILECs to end saturation delivery of paper copies of residential white pages, business white pages, and business yellow page directories, except for those customers who are likely to use the directories or who specifically request them. See Joint Petition and Notice of the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, Verizon Pennsylvania LLC and Verizon North LLC and Dex Media, Inc. to Reduce Distribution of Print Telephone Directories and Transition to Digital Publication or, Alternatively, for Relief of 52 Pa. Code § 64.191(g), Docket No. P-2017-2610359 (Order entered August 31, 2017) (CenturyLink/Verizon/Dex Media White Pages Order); and, (2) an immediate and permanent waiver of 52 Pa. Code § 64.191(e) for all jointly petitioning RLECs consistent with the respective waivers granted to the CenturyLink and Verizon ILECs with respect to various provisions of the Commission’s IntraLATA Presubscription Implementation Order at Docket No. I-00940034 (Order entered May 9, 1997), and the Commission’s toll presubscription regulation. See Petition of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink for a Waiver of the Commission’s Regulation Governing Toll Presubscription, 52 Pa. Code § 64.191(e), Docket No. P-2014-2439191 (Tentative Order entered Oct. 23, 2014) (becoming final by operation of law on Nov. 2, 2014). RLEC Petition, n.5 and 6 at 3-4.

attached to prior Commission waivers granted for this regulation as set forth in this Order.

2. That the Petition of the Rural Incumbent Local Exchange Carriers for a Temporary Waiver of 52 Pa. Code Section 64.191(e) regarding toll presubscription be granted subject to the same conditions, terms, limitations, and requirements attached to prior Commission waivers granted for this regulation as set forth in this Order.

3. That in all other respects the Petition of the Rural Incumbent Local Exchange Carriers for a Temporary Waiver of Certain Chapter 63 and 64 Regulations be denied pending resolution of the Commission’s Chapters 63 and 64 Notice of Proposed Rulemaking before the Commission for consideration at Docket No. L-2018-3001391.

See Petition of the Rural Incumbent Local Exchange Carriers for Temporary Waiver of Certain Chapter 63 and 64 Regulations, Docket No. P-2018-3005224, (Order entered July 28, 2020) (RLEC Directory and Toll Presubscription Order).

III. Verizon Proprietary Data Submissions (2015-2016)

A. Procedural Matters

Our September 11, 2015 Reporting Order directed the submission of certain data for the 2015 and 2016 calendar years including certain access line and quality of service statistics no later than April 1, 2016, and April 1, 2017, respectively. The Verizon ILECs have submitted data consistent with the Reporting Order and subsequent directives and on a proprietary basis.¹⁰ The issue of access to the Verizon ILECs’ 2015 and 2016 proprietary data was addressed by several parties during the comment period in the ANOPR stage of this proceeding. OCA observed that the Verizon ILEC “reports are proprietary and so limits the ability for public discussion and comment on the impact of the Reclassification Order on the affordability of service.”¹¹ CAUSE-PA pointed out that while “this data may have been available to the Commission in developing its recommendations, it is not available to the public at the docket [Docket No. L-2018-3001391].”¹² CWA stated the following:

Indeed, leading up to the filing of its Complaint [Docket No. P-2015-2509336], CWA’s counsel asked the Commission to provide the service quality information it had collected from Verizon. That request was denied because the information was confidential, and the Commission claimed it was part of an ongoing oversight or investigative process. Now that it appears the Commission wants to use that information to make judgments about changes in regulations, CWA submits that the data must be made public.

* * * * *

CWA respectfully submits, therefore, that the Commission must make public the data the Commission has collected from Verizon under the Reclassification Order. If the data are customer-specific (which the Reclassification Order does not appear to require), then an aggregated version of the data can be made public. If, however, as

¹⁰ Reporting Order, Ordering Paragraph 1 at 17. See also Docket Nos. P-2014-2446303, P-2014-2446304, Secretarial Letters entered December 8, 2016 and January 10, 2017.

¹¹ OCA Comments at 6. OCA also observed that “[w]ith regard to the pricing of protected residential and small business basic local services in competitive areas, Verizon PA and Verizon North have increased the monthly dial tone line and usage prices for these services to mirror the amount and timing of those increases to non-competitive protected local services implemented as part of the Companies’ annual Price Change Opportunity (PCO) filings,” and that the “availability of cable and wireless alternatives in the competitively classified wire centers has not deterred Verizon from increasing its basic service rates in those areas.” Id. at 6-7 (citation omitted).

¹² CAUSE-PA Comments at 3 (emphasis in the original omitted).

appears likely from the order, the data do not contain any customer-specific information, then the data should be made public as the Commission received it from Verizon.”

CWA Comments at 6-7.¹³

Verizon initially argued that the “data reported includes proprietary and competitive information such as Verizon’s monthly line counts and detailed service quality metrics,” and that it had “agreed to supply this competitively sensitive information in reliance on the fact that it would be kept confidential and not made available to the public or Verizon’s competitors.”¹⁴

In our February 6, 2020 Tentative Order in this proceeding,¹⁵ we tentatively concluded and directed that “the Verizon historic proprietary data that was submitted in response to the Commission’s Reclassification Order will be made available to the participating parties in the ANOPR at Docket No. L-2018-3001391” under an executed confidentiality agreement with Verizon. We also indicated that the “Commission shall also provide participants in the ANOPR proceeding the opportunity to file supplemental comments and replies based on the access and review of the Verizon historic proprietary data following resolution of the waiver extension and access to confidential data.”¹⁶

In its additional comments to the Tentative Order, CAUSE-PA indicated that it had executed the confidentiality agreement to review and assess the Verizon ILECs’ proprietary data filed with the Commission and reserved the right to file supplemental comments after conducting the review. CAUSE-PA also noted “that it is not entirely clear whether further review of this data will provide the information necessary to assess whether it is appropriate to extend the regulatory waivers.”¹⁷

In its additional comments, the Verizon ILECs agreed to supply the 2015-2016 proprietary data at issue under the requisite confidentiality agreements.¹⁸ As previously recounted, we formally directed and specified the requisite access to the proprietary Verizon ILEC data with our February 2020 Order and requested supplemental comments in that regard.

In its supplemental comments, the OCA indicated that in light of the COVID-19 pandemic and the closure of the Commonwealth government offices, it unfortunately encountered difficulties conducting an in-depth analysis of the Verizon ILEC proprietary data. The OCA further indicated its support for an analysis of the data by Commission Staff and requested that the “Staff analysis be made available to the public advocates and other interested participants in this advance rulemaking proceeding [Docket No. L-2018-3001391].” Additionally, consistent with its comments and reply comments in the ANOPR stage of this proceeding, the OCA also stated that “the Verizon reported data is of limited value, in the scope of this ANOPR.”¹⁹ In its supplemental reply comments, Verizon indicated that “[p]ursuant to the required protective order, Verizon provided the data to parties that requested it.”²⁰

The Commission has not received any supplemental comments from interested and actively participating parties that contained any substantive analysis of the 2015-2016 Verizon ILEC proprietary data submissions. We also acknowledge that no requests or petitions for extension of the relevant deadlines under our February 2020 Order were filed. Accordingly, we conclude that we have provided adequate opportunity for interested and participating parties in the ANOPR stage of this proceeding to properly access the 2015-2016 Verizon ILEC proprietary data, to analyze such data, and submit relevant supplemental comments to the Commission. Naturally, the same proprietary 2015-2016 Verizon ILEC data can be properly utilized for the submission of further initial and reply comments to this NPRM.

B. Data Evaluation

Although the Commission did not receive any substantive analysis of the 2015-2016 Verizon ILEC proprietary data submissions from interested stakeholders, it performed its own analysis of the 2015-2016 Verizon ILEC proprietary market data. The Commission acknowledges that the requested 2015-2016 Verizon ILEC data was limited in scope, granularity and, certainly, timeframe. Because the data was submitted on a proprietary basis, the Commission will provide general observations on an aggregate basis regarding some trends that both the raw numerical data and certain ratios indicate. Our focus will be on specific quality of service metrics. It is rather well-established that the pricing of individual rate elements for basic local exchange services in the Verizon ILECs’ competitive wire centers (i.e., dial tone access lines), has followed the pricing trends established under the Verizon ILECs’ regulated Chapter 30 network modernization and alternative regulation plans and price stability mechanisms (Price Change Opportunity price cap formulas) for the same services in their noncompetitive wire centers.²¹

The data relating to certain quality of service metrics indicates that although the Verizon ILECs have experienced declines in their total access lines that were subject to the reporting parameters, there were some uneven observable trends regarding the competitive and noncompetitive wire centers for Verizon PA and Verizon North. As just one example, the average monthly number of out-of-service reports (per year) appeared to decline at a higher rate than the decrease in average monthly access lines (per year) for the competitive wire centers of both Verizon ILECs in the 2015 and 2016 timeframes. There was a generally similar trend for the average monthly number of out-of-service reports (per year) when compared to the decline of Verizon North’s average monthly access lines (per year) for its non-competitive wire centers. However, the average monthly number of out-of-service reports (per year) for Verizon PA declined at a much smaller percentage rate than its corresponding rate of decrease for the average monthly figure (per year) of its access lines in its noncompetitive wire centers.

The data involving out-of-service reports (more than 24 hours) presented a dissimilar trend for both Verizon ILECs. The rate of decrease in the average number of monthly out-of-service reports (more than 24 hours) was much smaller than the corresponding rate of decrease in the average monthly number of access lines (per year) for the competitive wire centers of both Verizon PA and Verizon North in the 2015-2016 time frame. The related data comparison for the out-of-service reports (more than 24 hours) indicates that there was an opposite trend for

¹³ See also CWA Comments n.2 at 1, citing Petition of Communications Workers of America for a Public, On-the-Record Commission Investigation of the Safety, Adequacy, and Reasonableness of Service Provided by Verizon Pennsylvania LLC (converted by Commission Order to complaint proceeding), Docket No. P-2015-2509336, Settlement Agreement and Certificate of Satisfaction filed June 2, 2017.

¹⁴ Verizon Comments at 25.

¹⁵ Tentative Order, Docket Nos. P-2014-2446303, P-2014-2446304, L-2018-3001391 (Order entered February 6, 2020) (Tentative Order).

¹⁶ Tentative Order at 4-5.

¹⁷ CAUSE-PA Additional Comments, February 18, 2020, at 3.

¹⁸ Verizon ILECs Additional Comments, February 18, 2020, at 5.

¹⁹ OCA Supplemental Comments, March 18, 2020, at 2-3.

²⁰ Verizon Supplemental Reply Comments, April 2, 2020, n. 2 at 1.

²¹ OCA Comments at 6-7.

the noncompetitive wire centers for both Verizon ILECs during the same timeframe. The rate of the average monthly out-of-service (more than 24 hours) reports (per year) for the noncompetitive wire centers of both Verizon ILECs actually increased from 2015 to 2016, while, at the same time, the average monthly access line figures for both Companies actually declined in the same timeframe. This positive rate of increase for the average number of monthly out-of-service reports (more than 24 hours) for the 2015-2016 time period—as compared to the rate of decline of the average monthly access line figure (per year)—was more pronounced for the noncompetitive wire centers of Verizon PA.²²

Average monthly out-of-service report ratios as percentages of monthly access line figures in Verizon ILEC competitive and noncompetitive wire centers disclose that such ratios are higher for the noncompetitive wire centers for both Verizon ILECs, with incrementally higher values observed for the Verizon North noncompetitive wire centers both in 2015 and 2016. The same observation can be made with the same type percentage ratios for trouble reports. The average monthly trouble report ratios as percentages of monthly access line figures in Verizon ILEC competitive and noncompetitive wire centers disclosed that such ratios are higher for the noncompetitive wire centers for both Verizon ILECs, and with noticeably higher values observed for the noncompetitive wire centers of Verizon North.

However, in our estimation, the collected data did not present any direct causative links to and readily available explanations for the observable trends. For example, the 2015-2016 Verizon ILEC proprietary data does not disclose any infringement of the Commission's regulation at 52 Pa. Code § 63.57(f). However, the various ratio statistics and quality of service metrics already recounted may not indicate the most optimal situation for the noncompetitive wire centers of both Verizon ILECs, and especially for the noncompetitive wire centers of Verizon North (ex-GTE North).

Naturally, we cannot make any hypotheses nor can we draw any conclusions from these limited data before us whether the Verizon ILECs' networks in noncompetitive wire centers—which include a lesser number of major urban areas—present more quality of service issues than the competitive ones, or that the Verizon ILECs have increased the concentration of their operational maintenance activities in the competitive wire center areas. In order to make this determination, the Commission would need more detailed and specific analyses that would also need to span a longer timeframe than the 2015-2016 period. Accordingly, this conclusion substantiates many of the determinations below regarding whether we should eliminate entirely the need for and the type of regulation in competitive wire centers where consumers have multiple options for communications services, including wireline, cable-voice, and wireless options.

IV. *Format of Proposed Revisions to Regulations*

The Commission had granted temporary waivers of specific regulations set forth in Chapter 53 which allowed the recipients to detariff certain service to a distinct class of commercial business customer prior to the Reclassification Order. We had also granted some general waivers in specific cases, for example waiving for some utilities the obligation to provide paper directories, that were to be revisited in this NOPR. Finally, as mentioned above, in the Reclassification Order, the Commission had also

granted temporary waivers of certain regulations in Chapter 63 and Chapter 64 in those wire centers where it had determined that all retail telecommunications services, including basic local exchange services, were competitive pursuant to 66 Pa.C.S. 3016(a). We acknowledged that the outcome of the Reclassification Order was that we now have both competitive and noncompetitive wire centers and that some regulations may no longer be necessary in a competitive market. ANOPR Order at 28. We sought comment on the possibility of making all of the temporary regulatory waivers the Commission had granted permanent through the rulemaking process.

However, we further acknowledged that, except for obsolete provisions, we would continue to retain any current regulation set forth in Chapters 63 or Chapter 64 of our regulations that is pertinent to and necessary for the continuation of the reliable and adequate provisioning of local exchange telecommunications service in noncompetitive wire centers. *Id.* Because of this dynamic, we also raised the possibility of bifurcating wire centers between competitive and noncompetitive wire centers. *Id.* To accomplish this, we explained that existing provisions would be retained for retail service in noncompetitive wire centers and a separate set of regulations would be needed for competitive wire centers. *Id.* at 28-29. With this possible new format, certain regulations would apply only in those geographic areas where the ILEC has been granted competitive classification of protected residential and small business local exchange services pursuant to Section 3016(a).²³ ANOPR Order at 28-29. Thus, we discussed creating a separate Chapter and subchapters to address local exchange telecommunications service for competitive versus noncompetitive wire centers. *Id.*

The OCA had suggested a format which borrows on the concept of separate provisions but the “compilation of alternative regulations could be set forth in Chapters 63-C and 64-C where the ‘C’ signifies competitively classified.” OCA Comments at 5. Specifically, alternative regulations would be adopted for and apply to competitively classified areas. *Id.* CWA agreed that proposing to establish regulations that apply to either competitive or noncompetitive wire centers and codified in separate Chapters would provide notice and clarity to customers to determine which regulations apply. CWA Comments at 25-26.

The RLECs opposed the implementation of a two-tier regulations structure. The RLECs state that a second set of regulations would cause confusion where customers may not know which area or exchange they are in. RLEC Comments at 9. RLECs maintained serious reservations with respect to regulations that depend upon whether an exchange is competitive or noncompetitive. RLEC Reply Comments at 10.

In this NOPR Order we do not propose a bifurcated system of regulations that may be separately applicable to competitive and noncompetitive wire centers or geographic areas. Rather, we propose that all retained regulations will continue to remain applicable in all areas and not in a bifurcated fashion that differentiates between competitive and noncompetitive areas. While we approved a two-tiered regulatory structure for the Verizon competitive and noncompetitive wire centers in our Reclassification Order, we conclude that such an approach is not workable as a permanent, industry-wide solution. Having endeavored to balance the burdens and benefits of

²² We note that the operations of both Verizon ILECs were impacted in part by a work stoppage that occurred between April 3, 2016 and May 31, 2016.

²³ The only Pennsylvania ILEC that has obtained this statutory relief is Verizon. But only for 153 of its 504 wire centers. This relief also applied to CLECs operating in those wire centers.

each regulation, and to propose amendments that reduce regulatory burdens while also factoring in the separate consideration of modernizing our regulations where we can irrespective of any competitive analyses, we believe a one-tier, even-handed approach affords our utilities relief in a fashion that is manageable for both them and our staff while erring, where necessary, on the side of consumer protection.

Accordingly, the Commission proposes to rescind any regulations we find to be obsolete or outdated and that the proposed regulations will supersede all waivers, waiver conditions, and all regulation-like requirements that are outside of this Commission's regulations. ANOPR Order at 29. We noted that a similar approach was undertaken in our Chapter 14 regulations where substantially the same provisions apply to utilities and customers under Subchapter A—K and Victims of Domestic Violence with a Protection from Abuse Order under Subchapter L—V. See 52 Pa. Code § 56.1(b); Id.

Finally, we also acknowledge that there are some provisions of Chapters 63 and 64 that we propose to rescind to streamline our regulations but note that other support, such as statutes other than Section 1501 or other Commission or court orders, also address the subject. For example, in Chapter 63 we propose rescinding Section 63.60 addressing automatic dialing announcing devices, yet other provisions of state and Federal law may be implicated to address today's modern-day scourge of robocalling. We are proposing to rescind Subchapter G addressing public coin telephone service, yet as the Rural ILECs noted, subchapter B of Chapter 29 of the Public Utility Code continues to address public pay phone service where necessary. We are proposing to rescind Subchapter H addressing Interexchange Telecommunications Carriers, but Chapter 30 of the Code as reenacted in 2004 and Commission orders issued since that time adequately establish the standards applicable to that service today. Similarly, in Chapter 64 we are proposing to rescind Section 64.211, addressing the availability of other procedures. However, customers still retain the right to pursue complaints under Section 301.8 and Chapter 7 of the Public Utility Code and Chapter 5 of our regulations.

The regulated industry, consuming public, and other interested stakeholders should understand that modernization of these regulations to balance the utilities' need for relief from unnecessary regulatory burdens against the consumers' need for regulatory protection does not diminish any underlying existing statutory rights or standards of care.

Proposed Regulations

I. Chapter 53 Tariffs for Noncommon Carriers: 52 Pa. Code §§ 53.57—53.60

A. Past Waivers

In the ANOPR Order, we specifically discussed the grant of temporary regulatory waivers to various telecommunications carriers over time and solicited comments whether such waivers should become permanent and embodied in revised regulations going forward. ANOPR Order at 27-28, 48 Pa.B. 4799. Certain of these past and periodic temporary regulatory waivers have involved the provision of services to enterprise and large business customers by CLECs and associated relief primarily from tariffing requirements under Section 53.58 (Offering of competitive services) of our regulations.

With respect to these waivers, Verizon explains that the Chapter 53 rules are based on the old version of Chapter

30 that expired in 2003, and some are contrary to the current Chapter 30 statutory provisions. Verizon Comments at 10. Verizon recommends that the Commission replace these regulations with "guidelines" that address tariffs, product guides and price lists that are consistent with the current Chapter 30 and with the Commission's recent orders on detariffing of competitive services. Id. Verizon offers the following clarification:

- Any regulated service classified as "competitive" under Chapter 30 may be detariffed at the option of the provider.
- If a service is detariffed, the provider must maintain its terms in conditions in a product guide that will be made available on the company's website. The Commission may require an informational price list to be filed for detariffed stand-alone basic residential service, but will not require price lists for other detariffed services.
- For any service that is required to be or chose to be tariffed, the Commission should streamline to the greatest extent possible the filing process.
- There is no need for these regulations to repeat standards that are clearly stated in Chapter 30, such as the process for competitive classification.

Verizon Comments at 10-11.

Verizon also notes that we have already concluded that we would address Chapter 53 tariff filing regulations in this rulemaking proceeding. Verizon Comments at 10, n. 17. Verizon identifies the telephone sections of Chapter 53 tariff filing requirements under 52 Pa. Code §§ 53.57—53.60 and raises the issue of permanently revising Sections 53.58 and 53.59.

The OCA supports updating the Sections 53.57—53.60 regulations to conform with the current Chapter 30 statutory language but opposes only requiring the filing of price list information for stand-alone basic residential service under Section 53.58(d), where the following is the filing requirement:

(d) CLECs and ILECs offering services classified by the Commission as competitive shall file with the Commission appropriate informational tariffs, price lists and ministerial administrative tariff changes. These filings will become effective on 1-days' notice.

OCA Reply Comments at 8-9.

According to the OCA, its proposal is consistent with Section 3016(d)(4) of the Code, 66 Pa.C.S. § 3016(d)(4), which allows the Commission to require an ILEC "to maintain price lists with the Commission, applicable to its competitive services." OCA Reply Comments at 9. The OCA also opposes any proposal that Verizon's Product Guide can reside solely on its website. Id. As support for its position, the OCA cites Section 3016(c) that authorizes the Commission to change the designation of a competitive service back to noncompetitive, which indicates the temporary nature of the relief that is granted under 66 Pa.C.S. §§ 3016(a) and (b). The OCA believes that the Commission has an obligation to monitor competition in services and markets. Id.; 66 Pa.C.S. § 3016(c).

The OCA emphasizes that the Reclassification Order and Final Implementation Order required Verizon to file with the Commission updates to its Price List and Product Guide for competitively classified services. Id.; Reclassification Order at 56, 62-63, 65-66; Final Implementation Order at 6-7, 20-21. According to the OCA, there are "non-tariff filings necessary for the benefit of

the Commission and Verizon's customers receiving competitive services," and they should be required. OCA Reply Comments at 9.

In granting past temporary waivers of our tariffing regulations at Section 53.58 to CLECs for the provision of retail services to their enterprise and large business customers, we recognized that such regulations, in part, were based on the statutory framework of the older version of the Chapter 30 law.²⁴ For example we observed that:

Under the superseded version of Chapter 30, both ILECs and CLECs could petition the Commission for a determination of whether a telecommunications service or other service or business activity offered by them is competitive because the definition of local exchange telecommunications company under the superseded version of Chapter 30 simply was "a carrier authorized" to provide local telecommunications services." See 66 Pa.C.S. § 3002 [superseded and repealed]. Thus, under the old, superseded Chapter 30, both ILECs and CLECs could petition and obtain a competitive classification of their noncompetitive services from the Commission. See 66 Pa.C.S. § 3005 [superseded and repealed]. Indeed, section 53.58(c) of our regulations was promulgated under this statutory scheme. See 52 Pa. Code § 53.58(c).

However, section 3016(a)(1) of the new Chapter 30, which involves the right to petition for changes in the classification of protected or noncompetitive services, gives that right to a "local exchange telecommunications company" which as defined in the current section 3012 no longer includes CLECs. See 66 Pa.C.S. §§ 3012 and 3016(a)(1).

Verizon Access June 3, 2009 Order at 6 (footnotes omitted).

The Commission had granted temporary waivers of our tariff filing regulations for ILECs and CLECs along the lines outlined below in the Verizon Access June 3, 2009 Order:

1. That Verizon Access's request for a waiver of Section 53.58(c) of our regulations so as to permit it to declare its non-protected services offered to enterprise and large business customers as competitive without first having to file a petition and obtain a competitive designation from the Commission is hereby granted.

2. That Verizon Access's request for waiver of Section 53.58(d) of our regulations that would require it to maintain informational tariffs or price lists for its non-protected service offerings to enterprise and large business customers is hereby granted on the condition that it maintain its terms, conditions and rates for these services in the on-line Guide.

3. That Verizon Access's request for waiver of Section 53.59 of our regulations so as to permit it to provide the rates and terms for basic dial tone service offered to enterprise and large business customers on its Internet website is hereby granted for a trial period of 2 years

²⁴ Petition of MCI Metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for a Waiver of the Commission's Regulations at 52 Pa. Code §§ 53.58 and 53.59 to Permit Detariffing of Services to Enterprise and Large Business Customers, Docket No. P-2009-2082991 (Order entered June 3, 2009) (Verizon Access June 3, 2009 Order). On April 26, 2012, we granted Verizon Access a four-year extension of the trial waiver to continue detariffing of basic dial tone service in its service territory. The Commission did not conclude that granting a permanent waiver was warranted. Petition of MCI Metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for a Waiver of the Commission's Regulations at 52 Pa. Code §§ 53.58 and 53.59 to Permit Detariffing of Services to Enterprise and Large Business Customers, Docket Nos. P-2011-2267522 and P-2009-2082991 (Order entered April 26, 2012), at 7. The same waiver was granted for other CLECs, AT&T, Windstream Communications, and CenturyLink. Id., n. 9. That waiver expired on April 26, 2016.

from the entry date of this order and on the condition that it maintain information regarding the rates, terms, conditions for these services in the on-line Guide as would have been available in a paper tariff.

Verizon Access June 3, 2009 Order at 12.

The periodic extension of these temporary regulatory waivers also took into account the initiation of a rulemaking that would address whether Sections 53.58 and 53.59 should be modified by adopting the periodically renewed temporary waivers as a permanent regulatory change. In granting such a further extension we ruled:

2. That MCI Metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services is hereby granted an extension of the trial permitting it to maintain information regarding the rates, terms, and conditions for basic dial tone service offered to enterprise and large business customers on its internet website. The extension is effective from entry date of this Order to the conclusion of the above-reference rulemaking wherein we will consider the necessity of 52 Pa. Code §§ 53.58(c), 53.58(d), and 53.59 in the circumstances presented by this Petition.

Petition of MCI Metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for a Waiver of the Commission's Regulations at 52 Pa. Code §§ 53.58 and 53.59 to Permit Detariffing of Services to Enterprise and Large Business Customers, Docket No. P-2016-2556207 (Order entered September 1, 2016) (Verizon Access Order) at 8.

AT&T also seeks a permanent implementation of the temporary waivers of 52 Pa. Code §§ 53.58(c), (d), and 53.59 with respect to detariffing that had been initially granted to it by the Commission in 2010.²⁵ AT&T Comments at 7. According to AT&T, the current temporary regulatory waiver granted by the Commission in 2017 was based on the success of detariffing during the preceding waiver it had received in 2010. Id. AT&T argues that the detariffing of business services has not resulted in any customer complaints and has allowed AT&T to satisfy the needs of its business customers. Id.

B. Conclusion Regarding Past Detariffing Waivers

In this NOPR we propose to update the regulatory language of Sections 53.57 to 53.60 regulations to align with the current statutory language of Chapter 30. For example, the language of Section 53.58(c) which, in part, had been designed to achieve tariff filing parity between ILECs and CLECs, needs to be modified because the competitive classification and provision of ILEC services now depends on the outcome of proceedings or actions under 66 Pa.C.S. § 3016, and not on the competitive classification of corresponding services that are offered by a CLEC.²⁶ Similarly, the potential reclassification of ILEC services previously found competitive to a noncompetitive status is governed by 66 Pa.C.S. § 3016(c). Additionally, we propose to add definitions for competitive telecommunications carriers and enterprise and large business customers, amend the definitions of competitive service and noncompetitive service, and rescind the definitions

²⁵ Based upon the relief it had granted in the Verizon Access June 3, 2009 Order, the Commission previously waived the relevant portions of Sections 53.58 and 53.59 for AT&T in 2010 and extended these waivers for service to business customers by CLECs on June 21, 2012, for four years. Both Orders (in 2010 granting the two-year trial period and in 2012 granting the four-year extension) were based on the same analyses and subject to the same conditions set forth in preceding orders granting identical waivers to Verizon Access.

²⁶ We note that under our Reclassification Order, the competitive provision of Verizon ILEC services, including basic local exchange services, correspondingly leads to the similar provision of corresponding services by CLECs that operate in the same competitively classified Verizon ILEC wire centers. Reclassification Order at 124 (Ordering Paragraph 4).

for CLEC and ILEC in Section 53.57 to provide clarity as to which retail nonprotected services are covered by the proposed changes to Section 53.58. If an interested stakeholder seeks to revise this proposed definition we request specificity and supporting documentation on its proposed definition.

Specifically, in Section 53.57 we propose to replace the current definition of “CLEC,” or “competitive local exchange carrier,” with “CTC,” or “competitive telecommunications carrier.” We propose to define a CTC as “an entity that provides telecommunications services subject to the jurisdiction of the Commission and in competition with a local exchange telecommunications company.” This definition is more encompassing, recognizing that CLECs are not the only competitive carriers regulated by the Commission and subject to these regulations. This term also avoids any conflict or confusion with the existing statutory definition of the term “alternative service provider,” under Chapter 30 of the Code, which is defined as an entity that provides competing services regardless of its status as subject to the Commission’s jurisdiction and regulations.

In Section 53.58 (offering of competitive services), we propose that where reference to a “product guide” is applicable, the reference will be to a product guide “or similar document.” The term “product guide” was first identified in the Verizon ILECs’ reclassification proceeding, and it may be specific to Verizon. For that reason, the addition of “or similar document” will ensure that recognition of a document not on file as a Commission tariff will apply equally to other carriers’ offerings that are not necessarily described as a “product guide.”

We propose to revise Section 53.58(c) by adding language that permits a CLEC to declare any retail nonprotected services as competitive without filing a petition and demonstrating competitiveness. Because the Code under Section 3016(d)(4) permits the Commission to require that ILECs maintain price lists for competitive services, we see no reason to keep the language in subsection (d) that requires CLECs and ILECs offering competitive services to file “informational tariffs, price lists, and ministerial administrative tariff changes.” 52 Pa. Code § 53.58(d). Therefore, we propose to remove this language and the reference to being “effective on 1-days’ notice.”

Similarly, in Section 53.58(d) we propose to allow an ILEC or CTC to make rates and terms of basic service available through a product guide or similar document on the carrier’s website in lieu of maintaining a price list or formal tariff on file with the Commission. However, so that both the Commission and consumers retain reasonable access to the nontariffed provisions, we further propose that the carrier shall maintain an archive of outdated rates, terms, and conditions that were available in a product guide or similar document for a period of four years, and shall remain obligated to provide both current and archived documents to the Commission upon reasonable request.

We further propose to modify Section 53.58(e)(4) to align with the current statutory criteria of Chapter 30, Section 3016, of the Public Utility Code. To that end, retention of the criteria set forth in Section 53.58(e)(2), (e)(4), and (e)(4)(vii)—the presence of competitors, availability of like kind/substitute services, and other relevant factors as determined by the Commission—parallel the current statutory provisions while also affording the Commission discretion to determine whether additional factors may be relevant to a specific case at hand.

Conversely, elimination of Section 53.58(e)(1), (e)(3), (e)(4)(v), and (e)(4)(vi) is appropriate because those conditions are not specifically required under the current statutory regime. Again, should the Commission believe additional information is relevant, a reclassification under this regulatory provision continues to remain subject to any additional factors the Commission may deem relevant.

We will not eliminate tariff filing requirements under our Section 53.57—53.60 regulations for noncompetitive and protected services, including basic local exchange services. However, we propose that the temporary regulatory waivers that have so far been provided in relation with the detariffing of the provision of services to enterprise and large business customers under Section 53.58(c), 53.58(d), and 53.59 be made permanent. Furthermore, in Section 53.59(f)(5) we intend to replace “Office of Trial Staff” with “Bureau of Investigation and Enforcement or successor.” A similar change is made wherever “Office of Trial Staff” appears. Similarly, in Sections 53.57—53.60, the term “CLEC” will be replaced with “CTC” and its defined term for the reasons stated, and as previously identified.

We are generally aware that enterprise and large business customers often receive integrated telecommunications and broadband access services under individual case base (ICB) contracts, and that ILECs, CLECs, and competitive access providers (CAPs) do have tariffs that permit the provision and pricing of various of their services on an ICB basis. Therefore, our proposed definition of enterprise and large business customers will reference the monthly or annual revenues that are generated above a given threshold that can be appropriately differentiated for urban, suburban and rural exchanges within the Commonwealth as the means to determine for which types of commercial operations CLECs have the authority to detariff their retail services, including basic local voice service. The Commission determines that this is reasonable because detariffing the provision of retail services to these classes of end-user consumers will not pose any risks or concerns to these entities or the overall competitive provision of services in Pennsylvania.

II. Chapter 63. Telephone Service

As a preliminary matter, in setting forth our determinations and proposals regarding the regulations set forth in Chapter 63, we will proceed by going from Subchapter A to Subchapter O. In the Reclassification Order, we granted the Verizon ILECs’ request for waiver of certain Sections of Chapter 63 as addressed specifically in each individual Subchapter B, C, E, F, and G below. Reclassification Order at 79. However, all remaining portions of Chapter 63 remained in full force in the wire centers classified to be competitive in that proceeding, including Subchapter D. Underground Service, Subchapter K. Competitive Safeguards, Subchapter L. Universal Service, and Subchapter M. Changing Local Service Providers. *Id.*

With regards to the Chapter 63 conditional and temporary waivers, we have reviewed the comments to the ANOPR and the 2015-2016 Verizon proprietary data to assist us in reaching a determination of whether the regulations should be deleted entirely and rescinded, thus making the temporary waivers permanent on an industry-wide basis.

The Commission notes that one of the stated policy goals of Chapter 30 of the Code is to ensure “regulatory parity” by reducing the regulatory obligations imposed upon ILECs to be more consistent with the regulatory

obligations applicable to competing alternate service providers. Regulatory parity ensures that our jurisdictional telecommunications companies are less burdened with outdated legacy regulations from yesteryear. The Commission acknowledges that eliminating obsolete and unnecessary regulations could promote and encourage the provision of advanced services and broadband deployment by our jurisdictional ILECs in their respective service territories as streamlined regulation could allow them to be better able to compete and thrive in this modern, competitive telecommunications environment where consumers may have multiple options for communications services from wireline CLECs, cable-voice, and wireless options. Lastly, effective competition induces competitors toward efficiency, customer service, and reliability and the Commission agrees that greater competition leads to greater innovations which ultimately benefit consumers.

Notwithstanding, in pursuing and establishing regulatory reform, the Commission has to balance attempting to create a more level regulatory playing field for our regulated ILECs with the countervailing principle of ensuring that consumers retain adequate protections. These two principles are not mutually exclusive, and this is the standard by which the Commission is making its determinations in this rulemaking proceeding. In order to achieve this balance, the Commission directed Verizon to submit market data so as to provide the Commission and other interested stakeholders with the means to evaluate the market based regulatory goals of the Reclassification Order. Specifically, the data collection was intended to help assess the market in the 153 competitive areas, including the impact of our decision on affordability of basic service and quality of service in those areas and provide guidance for this instant rulemaking.

At this point, we are unable to conclude that we can do a wholesale elimination of the entirety of Chapter 63. Nor are we able to support a conclusion to make all temporary regulatory waivers of the pertinent Chapter 63 regulations permanent on an industry-wide basis. The Commission acknowledges that the presence of competition can and does work and should be a consideration when evaluating its regulations applicable to telecommunications services. However, the Commission has to conduct a more nuanced and granular analysis regarding competition as it may not work in every geographic market and may only be beneficial for certain consumer segments or for specific products. Due to the absence of compelling, sufficient and substantial data, the Commission determines that it will neither delete Chapter 63 outright nor make all temporary waivers permanent for all jurisdictional telecommunications carriers. Accordingly, the Commission is proposing that the regulations it proposes to retain, as set forth in the Annex, will be applicable to all geographic areas served by our jurisdictional telecommunications carriers whether competitive or noncompetitive.

Additionally, we propose to change the name of this Chapter of our regulations from "Telephone Service" to "Telecommunications Service" to reflect the modern nomenclature associated with this utility service. In addition, in various sections throughout this Chapter, we propose to replace the term "telephone" appearing in the existing text of the regulation with the term "telecommunications," but only where such replacement would be appropriate.

A. Subchapter A (General Provisions)

1. 52 Pa. Code § 63.1 (Definitions)

The Commission proposes to amend this regulation consistent with the discussion *infra*. In this NOPR and as incorporated in the Annex, we have determined not to adopt the concept of a two-tiered regulatory structure setting forth competitive and noncompetitive regulations. Instead, we propose to retain a unified set of regulations that will apply uniformly to all geographic areas where the telecommunications services offered by the jurisdictional telecommunications carrier, whether they have been determined to be "competitive" under 66 Pa.C.S. § 3016 or remain noncompetitive telecommunications services, as applicable.

Additionally, since we are proposing to rescind Section 63.60, which relates to automatic dialing-announcing devices, we propose to remove the definition of automatic dialing-announcing device from Section 63.1. We also propose to update the reference to the Public Utility Code in the definition for interexchange carrier to the correct section of the statute. Additionally, we propose to establish definitions for the terms "competitive" and "noncompetitive" wire centers as well as clarify in this section that the definition of the term "wire center" also includes "or other geographic area defined by the public utility." As with "product guide or similar document," reference in a regulation to a wire center was introduced in the Reclassification Order and may be Verizon-specific or terminology of otherwise limited applicability. Our proposed regulations should be sufficiently expansive to reflect geographic areas of all carriers no matter their specific terminology. We also propose to add the language "or other geographic area defined by the public utility" in any other section of Chapter 63 where the term "wire center" is inserted in the proposed regulations of this NOPR.

B. Subchapter B (Services and Facilities)

In the Reclassification Order, we waived the applicability of the following regulations in Subchapter B of Chapter 63 for Verizon in their 153 competitive wire centers:

Section 63.12 (Minimizing interference and inductive effects);

Section 63.16 (Traffic measurements);

Section 63.17 (Reserved)

Section 63.18 (Multiparty line subscribers);

Section 63.19 (Interoffice lines);

Section 63.21 (Directories);

Section 63.23 (Construction and maintenance safety standards); and

Section 63.24 (Service interruptions).

Reclassification Order at 79. Conversely, the Commission did not waive the following regulations in Subchapter B of Chapter 63:

Section 63.13 (Periodic inspections);

Section 63.14 (Emergency equipment and personnel);

Section 63.15 (Complaint procedures);

Section 63.20 (Line extensions); and

Section 63.22 (Service records).

Reclassification Order at 80.

1. *52 Pa. Code § 63.12 (Minimizing interference and inductive effects)*

Verizon generally proposes that the Commission should eliminate and replace all of these regulations for both competitive and noncompetitive wire centers. Verizon Comments at 12. The RLECs contend that Section 63.12, which addresses crosstalk and noise, is no longer applicable in today's digitally based network. RLECs Comments at 10. The OCA seeks retention of this regulation arguing that although Verizon has extended its fiber network in portions of the competitively classified areas, some Verizon customers are still served over the Verizon copper network, which presents the potential for impaired quality of message transition due to inadequate design and/or maintenance. OCA Comments at 11. The OCA responds further that switching to an alternative provider is not cost-free for the customer, and without standards there can be a discrepancy as to the reasonableness of the level of service the customer is receiving. OCA Comments at 12.

We propose to eliminate Section 63.12 and address all relevant matters of interference under Section 63.63. As currently written, Section 63.12 speaks to interference that is traditionally recognized in relation to the provision of analog service, which although it continues to exist is being replaced with digital service. In consideration of the amendments that we propose below relating to Section 63.63, addressing transmission requirements and standards, Section 63.12 is being eliminated from the existing regulations. That said, we emphasize that all jurisdictional public utilities remain statutorily obligated to provide service that is reasonable, efficient, safe, adequate, and reasonably continuous without unreasonable interruption or delay under Section 1501 of the Code. This obligation does not cease simply because a LEC has transitioned to a fiber optic based distribution network to provision jurisdictional telecommunications service.

2. *52 Pa. Code § 63.13 (Periodic Inspections) and § 63.14 (Emergency Equipment and Personnel)*

Section 63.13 requires utilities to adopt a program of tests and inspections. Section 63.14 addresses telecommunications network operational matters during emergencies. Verizon asserts that these regulations are unnecessary for both competitive and noncompetitive wire centers and proposes that they should be deleted entirely. Verizon Comments at 12. The RLECs submit that periodic testing and inspections are an unnecessary maintenance requirement in today's competitive market. RLEC Comments at 10. We did not agree with that perspective in our Reclassification Order or our ANOPR Order. Reclassification Order at 80; ANOPR Order at 11.

Similar to our proposal to eliminate Section 63.12, because the subject of the regulation in Section 63.13 is adequately addressed through our proposed modifications to Section 63.63, where we will consolidate addressing matters of service delivery and interference, we agree with commenters that this section may be eliminated. While we will no longer propose to require a plan, a public utility's plan of inspections likely will play a role in its ability to maintain continuous and efficient network operations, which will still be required.

We propose to retain in its present form and in its entirety Section 63.14 (emergency equipment and personnel). We believe that the retention of this regulation is essential for the provision of adequate, reliable and resilient telecommunications services under conditions of various emergency situations including but not limited to

natural disasters, for all wire centers and geographic areas our jurisdictional utilities serve.

3. *52 Pa. Code § 63.15 (Complaint Procedures) and § 63.22 (Service Records)*

The RLECs also oppose retention of Section 63.22 (Service records), arguing that there is no legitimate need or consumer benefit derived from keeping these records. RLECs Comments at 11. These service records address conditions of network facilities, action taken by the utility, service complaints, and trouble reports that are relevant to the complaint process. Given the importance of this information, we do not agree in total with the RLECs' opinion that, on balance, these requirements are more unduly costly and burdensome than beneficial. RLEC Comments at 10-11. Accordingly, consistent with our prior determination in the ANOPR Order, we determine that this regulation continues to serve a legitimate purpose by giving definition to a viable complaint process.²⁷ See ANOPR Order at 11. However, the regulations in Sections 63.15 and 63.22 can be further modernized and streamlined.

We propose to amend Section 63.15 to add new language to provide all telecommunications public utilities, most particularly our ILECs, the option to participate in a "warm transfer" or similar program for service and/or billing-related disputes made to the Commission's Bureau of Consumer Services (BCS). Under the parameters of the warm transfer program we adopted for the Verizon ILECs, all LEC customers who contact BCS about a service complaint would have the option, if set up between the LEC and BCS, to be transferred to a company representative in an effort to address the issues raised by the customer before BCS is called upon to address the matter as an informal complaint. Under the proposed amendment, all LECs will have the option to establish a program under which, with customers' consent, our BCS will be able to automatically transfer customers with service or billing complaints in real time to a live person at the LEC by way of a dedicated toll free number. Complaints that are not able to be resolved under this procedure will be returned to BCS for processing under other applicable regulations. This promotes efficiency for both customers and LECs. Sometimes the more challenging aspect of a complaint is having a dispute channeled to the appropriate company representative in a timely fashion.

We further propose to eliminate Section 63.22(a)(1) and (a)(4), 63.22(b), and 63.22(c) of this regulation on the same bases we have set forth addressing Sections 63.12, 63.13, and 63.63. However, we propose to retain Section 63.22(a)(2) and (3). Complaints involving service generally and outages specifically cut to the core of our regulatory oversight over consumer protections, especially when safety is involved. Retention of records required to be made under this and other service-related sections is further addressed in our discussion of Section 63.54. below.

4. *52 Pa. Code § 63.16 (Traffic measurements), § 63.18 (Multiparty line subscribers), and § 63.19 (Interoffice lines)*

Verizon proposes the rescission and repeal of these regulations. Verizon Comments at 12. Likewise, the OCA does not oppose a permanent waiver of Section 63.16 (Traffic measurements), Section 63.18 (Multiparty line subscribers), and Section 63.19 (Interoffice lines) for all

²⁷ We also noted that these regulations should be subject to the reporting requirements. Reclassification Order at 80.

telecommunications carriers in competitive or noncompetitive wire centers. OCA Comments at 10. We recognized in our ANOPR Order and Reclassification Order that Subchapter B includes provisions that relate to services that essentially no longer exist, including multiparty lines and also provisions relating to traffic measurements and recordkeeping that are largely manual in nature and predate the use of computers. Reclassification Order at 77–80; ANOPR Order at 10.

Our position herewith remains the same as it was in granting a temporary waiver of these specific regulations. Reclassification Order at 79. Sections 63.16, 63.18, and 63.19 are largely outdated and obsolete. These regulatory provisions are outdated and relate to services that essentially no longer exist, including multiparty lines, and also provisions relating to traffic measurements and recordkeeping that are manual in nature and predate the use of computers. Accordingly, we propose to permanently rescind Sections 63.16, 63.18, and 63.19 from Chapter 63 of our regulations.

5. *52 Pa. Code § 63.20 (Line Extensions)*

The RLECs contend that the obligations of this regulation are unreasonable. RLEC Comments at 10. The Commission continued the retention of Section 63.20 (Line extensions) because of continued relevance to Verizon's Section 1501 based carrier of last resort (COLR) obligations that will remain in competitive wire centers. Reclassification Order at 80-81. For the same COLR reason, we disagree with the RLECs' position. Thus, we propose to retain Section 63.20, and it will apply throughout all geographic areas.

6. *52 Pa. Code § 63.21 (Directories)*

We noted in the Reclassification Order that Verizon no longer provides a residential White Pages directory in paper form automatically. Reclassification Order at 80. Specifically, both Verizon and CenturyLink were granted relief to end saturation delivery of paper copies of residential and business White Pages and business Yellow Pages directories, except for those customers likely to use or specifically request the directories. ANOPR Order at 10.²⁸

The RLECs request that this regulation be eliminated. RLEC Comments at 11. Dex Media recommends that the Commission consider repealing directory regulations believing that the regulation may be obsolete. Dex Media Comments at 5–8. The OCA would agree to a revision of Section 63.21 that incorporates Ordering Paragraph No. 2 of the 2017 Directories Order that identifies the procedure to distribute print copies of White Pages directories to satisfy customer interest. OCA Comments at 13.

We waived the regulation finding that the residential White Pages directory information is available on Verizon's website and, upon request, in paper form or through CD-ROM at no charge. Reclassification Order at 80. Dex Media indicated that the changes have been overwhelmingly positive, and it has not received any complaints. Moreover, the Commission has recently granted to our thirty-five RLECs a temporary waiver of 52 Pa. Code Section 63.21 regarding directories that is subject to the same conditions, terms, limitations, and requirements attached to prior Commission waivers granted for this regulation.²⁹

²⁸ Joint Petition and Notice of the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, Verizon Pennsylvania LLC and Verizon North LLC and Dex Media, Inc. to reduce Distribution of Print Telephone Directories and Transition to Digital Publication or, Alternatively, for relief of 52 Pa. Code § 64.191(g), Docket No. P-2017-2610359 (Order entered August 31, 2017) (2017 Directories Order).

²⁹ See RLEC Directory and Toll Presubscription Order.

With this in mind, we agree that this regulation may be obsolete for end-user consumers that receive retail services, including protected basic local exchange services in all geographic areas. However, we are also cognizant of the fact that not all end-user consumers of regulated telecommunications services may simultaneously have broadband access to electronic directory information. Therefore, we propose to amend Section 63.21 to comport with and codify the temporary waivers of directory distribution and availability that were granted to the Verizon, CenturyLink, and Frontier ILECs,³⁰ which by virtue of our order entered July 28, 2020 at Docket No. P-2018-3005224, were also extended to the remaining Pennsylvania RLECs.

7. *52 Pa. Code § 63.23 (Construction and maintenance safety standards for facilities)*

We concluded in the Reclassification Order that some of our regulations are outdated, such as Section 63.23 requiring compliance with the 1981 National Electrical Safety Code (NESC). Reclassification Order at 77. The OCA supported such an amendment to Section 63.23. OCA Comments at 13. We also agreed with the CWA that the regulation addresses safety and is intended to protect workers and the public, and we decided to condition the waiver upon the requirement that Verizon construct and maintain equipment and facilities, and wire or cable crossings, in compliance with the safety standards provided in the current version of the NES. Reclassification Order at 81, 141 (Appendix D). The RLECs believe this section regulates the obvious and remains unnecessary. RLECs Comments at 11.

We still believe, as we did in the Reclassification Order, that since the goal of this provision is maintaining safety and reliability, the regulation remains relevant. However, we agree with the recommendation of the OCA that instead of just granting the waiver of Section 63.23 conditionally upon Verizon's construction and maintenance standards conforming with the current and most up-to-date version of the NES, we shall revise the section to reflect that the most up-to-date safety standards will apply to all jurisdictional telecommunications public utilities in all areas throughout the Commonwealth. OCA Comments at 13.

The need for safety and consistent standards should apply to all LECs. When it comes to safety and standards, we conclude that attaining these goals is relevant in all markets. Therefore, we propose retaining Section 63.23 and revising it so that is current with the most recent edition of the Institute of Electrical and Electronics Engineers (IEEE).

8. *52 Pa. Code § 63.24 (Service interruptions)*

The Commission previously granted a temporary waiver of this regulation that allows a credit on a customer's bill when telecommunications service is interrupted for at least twenty-four hours. We came to the conclusion that a competitive market can offer a dissatisfied customer an alternative service from another provider and a satisfactory financial remedy. Reclassification Order at 80. Moreover, we noted in the Reclassification Order that Verizon's Product Guide, Section 1, Original Sheet 6 addresses the issue by providing credits. *Id.*; Final Implementation Order at 17.

The RLECs consider the regulation redundant with their Section 1501 duty and argue that credits and

³⁰ Joint Notice and Petition of the Frontier Communications Companies to Reduce Mass Distribution of Printed Telephone Directories, Docket No. P-2019-3007831 (Order entered April 11, 2019).

adjustments should not be set by regulation. RLEC Comments at 11. The OCA supports retaining Section 63.24 arguing, as it did in addressing Section 63.12, that switching to another provider is only an “after-the-fact” remedy and may impose additional costs on the consumer. OCA Comments at 14. In addition, the OCA points out that the Commission cannot modify a provision of the Product Guide, unless this authority is “tied to a conditional grant of relief stated in the Verizon Reclassification proceeding” or, we assume, action taken in the context of this rulemaking proceeding. *Id.* The OCA further explains that without some specific regulatory relief tied to the occurrence of a service outage, the Commission’s authority to offer the customer relief for outages in competitive wire centers would be limited to a civil penalty under 66 Pa.C.S. § 3301 if Section 63.24(b) is deleted.

A public utility is required under Section 1501 to provide adequate, efficient, safe, reasonable, and reasonably continuous service. If an outage occurs and a customer is not reimbursed for the service that is not received, the customer could pursue a Section 1501 action if for some reason the Product Guide cannot provide relief for failure to compensate a customer for the outage. Furthermore, if the failure to compensate customers for service outages becomes a systemic issue, the Commission could pursue a Section 701 complaint if warranted. See 66 Pa.C.S. § 701.

Nonetheless, we are not persuaded that Section 63.24 is irrelevant for the provision of service to end-user consumers that receive retail services, including basic local exchange services. Network system maintenance and associated operational requirements and standards uniformly affect the provision of service. Similarly, network outages and service interruptions have the capability to affect all end-user consumers simultaneously and equally. Such outages and service interruptions can and do affect access to various retail services including 911/E911 emergency calling capabilities.³¹ While we do not necessarily agree with the OCA’s perspective on the limitations of our authority and that the only relief we can grant is limited to issuing a civil penalty, based on our discussion we propose to retain Section 63.24.

C. Subchapter C (Accounts and Records)

1. 52 Pa. Code §§ 63.31—63.37

In the Reclassification Order, we noted that no party addressed the waiver of this subchapter in the reclassification proceeding. *Id.* at 82. We specifically and temporarily waived Section 63.31 (Classification of public utilities); Section 63.32 (System of accounts); Section 63.33 (Integrity of reserve accounts to be preserved); Section 63.34 (Reclassification of telephone plant to original cost); and Section 63.35 (Preservation of records). Reclassification Order at 82. Sections 63.36 and 63.67 were not waived, and the RLECs agree with retaining these regulations only.³²

Regarding Sections 63.31—63.35, the RLECs contend that this accounting and recordkeeping is no longer relevant to the regulation of telephone companies under Chapter 30 of the Code and does not have an impact on the Commission and the regulation of those companies. However, in its Comments, the OCA cautions against a blanket waiver of these regulations mainly because the

Subchapter C regulations also apply to other public utilities with their own facilities and network, and Section 3016(f)(1) of the Code, 66 Pa.C.S. § 3016(f)(1), prohibits an ILEC from subsidizing competitive services with noncompetitive revenues or expenses. OCA Comments at 15-16.

Additionally, according to the OCA, Verizon can offer protected residential and small business services in non-competitive wire centers based on regulated rates, but in competitive wire centers the rates being charged are subject only to Verizon’s discretion. OCA Comments at 16. The OCA also commented that the Commission should consider whether the information required by these regulations may be needed for another purpose, other than setting of just and reasonable rates for end users, such as the records of investment in conduits and telephone utility poles that will be useful if the Commission assumes jurisdiction over pole attachments from the Federal Communications Commission (FCC).³³ OCA Comments at 16.

We find the RLEC Comments regarding the retention of our regulation on the system of accounts rather perplexing. Section 63.32 appears to be pertinent because it specifies accounting parameters and separations between regulated and unregulated operations of regulated telecommunications carriers, as well as the fundamental jurisdictional separations between intrastate and interstate operations. Although the Verizon ILECs and the majority of the RLECs operate in Pennsylvania under Chapter 30 alternative regulation and network modernization plans (NMPs) with price stability mechanisms that depend on price cap formulas, maintaining accounting information on revenues, expenses, and capital investment under a uniform system and being able to perform relevant and necessary accounting separations is still relevant and necessary.

We also note that although a number of RLECs operate under Chapter 30 price stability mechanisms with price cap formulas in Pennsylvania, the interstate operations of the same companies are subject to an overall method of rate base (RB) and rate of return (ROR) regulation (i.e., they are “Federal ROR” RLECs).³⁴ Furthermore, various Chapter 30 NMPs and price stability mechanisms contain provisions that may trigger certain exogenous event revenue adjustments that may be attributable to Federal regulatory or other actions. It is unclear how such effects can be correctly tracked in the absence of a proper uniform system of accounts that can properly deal with issues of jurisdictional separations.

A uniform system of accounts also defines the parameters of revenue, expense and capital investment classification that governs the submission of annual financial reports under Section 63.36. Such accounting classifications remain relevant and useful for a number of reporting purposes and Commission activities including enforcement. Finally, a uniform system of accounts is utilized across all the operations and services of a telecommunications utility, therefore any non-uniform application is really infeasible.

Absent any information that explicitly details the use of any other accounting methods that would accurately

³¹ We note that network outages and service interruptions can also disturb wholesale interconnection services. Thus, they have the capability of negatively affecting various retail services that are offered to end-users by interconnected telecommunications carriers.

³² However, under 52 Pa. Code § 63.37, the RLECs would require the reporting of TRS surcharge revenue only once per calendar year. RLEC Comments at 11.

³³ See Assumption of Commission Jurisdiction over Pole Attachments from the Federal Communications Commission, Docket No. L-2018-3002672, 48 Pa.B. 6273 (Sept. 29, 2018). We note that the Commission has affirmatively assumed jurisdiction from the FCC over pole attachments on or about March 18, 2020. *Id.*, Final Rulemaking Order entered September 3, 2020, 50 Pa.B. 469 (Jan. 18, 2020).

³⁴ We note that conventional methods of RB/ROR regulation are still relevant not only for some RLECs under Chapter 30 in Pennsylvania but also in the computation of wholesale interconnection unbundled network element costs and rates that are derived through the total element long-run incremental cost method.

preserve the accounting separations between the regulated and unregulated operations of a telecommunications utility, as well as the jurisdictional separation of its regulated operations in terms of appropriately classified categories of revenues, expenses and capital investments, we propose the retention of Section 63.32. In view of the preceding discussion, we also propose to update the reference to the FCC's Uniform System of Accounts (USOA) in Section 63.32.

Additionally, we still consider Section 63.36 (Filing of annual financial reports) necessary since there are statutory reporting mandates under 66 Pa.C.S. § 3015(e) including requiring LECs to file an annual financial report. Reclassification Order at 82-83.

Further, there were and still are no objections to retaining Section 63.37 (Operation of the Telecommunications Relay Service System and Relay Service Fund). The information required by the regulation is necessary to calculate the annual surcharge to support the relay service programs and, therefore, remains relevant.

The Commission disagrees that because some of the Chapter 30 ILECs have elected to move away from traditional RB/ROR regulation to an alternative form of regulation under Chapter 30, Sections 63.31 and 63.32 are unnecessary or the Commission should have to go through the process of filing a Section 701 complaint to enforce the Code. For these reasons, the Commission proposes to retain Sections 63.31, 63.32, 63.36, and 63.37.

We previously temporarily waived Sections 63.33 and 63.34, and in this proceeding we propose to rescind them permanently. We also believe that Section 63.35 has room for modernization though not full repeal. We propose to retain Section 63.35(a) while amending it to reflect the requirement that records be maintained per the requirements of the FCC and applicable Code of Federal Regulations (CFR) sections "as amended from time to time" or an equivalent.

As to Section 63.35(b) addressing the retention of original cost of plant in continuing property records, we propose to eliminate it as it is currently written. With regard to specific record retention under an amended subsection (b), unless a retention period is otherwise specifically addressed elsewhere in our proposed or final form regulations, we propose in a new Section 63.35(b) a required eight-year retention for records required for audits that may be performed by the Commission under Section 516 of the Code, such as but not limited to financial and management audits; records required for review under Sections 505 and 506 of the Code; records required under the system of accounts followed pursuant to Section 63.35(a) as amended above; and records required for those entities remaining subject to ratemaking provisions under Chapters 13 and 30 of the Code.

We note that telecommunications public utilities may continue to have a need for these or similar records for other regulatory purposes. For example, utilities that remain subject to a form of RB/ROR regulation may continue to require these or other records for purposes of voluntary rate change proceedings. Through amendment of Section 63.53(b), it is not our intent to eliminate any obligation to retain records used for other regulatory purposes.

D. Subchapter D (Underground Service)

1. 52 Pa. Code § 63.41(a)—(l)

The RLECs oppose this regulation arguing that less regulated or unregulated providers are not required to

only accept 60% contribution from a developer. The RLECs further argue that "when telephone companies regularly filed complex rate cases, there was no impact from maintaining this regulation" but today "there is an uneconomic impact from maintaining this regulation." RLEC Comments at 12.

This regulation was not waived in the Verizon ILEC Reclassification Order. However, upon further contemplation, we are persuaded at this time that there is no reason to retain it. Act 50 of 2017 authorizes the Commission to enforce provisions of the state's Underground Utility Line Protection Law, Act 287, also known as the "One Call Law."³⁵ These laws and applicable contractual agreements will govern the interactions and any potential disputes between the developer and the LEC that is being requested to place its facilities underground in order to provision telecommunications service within the development. Accordingly, we propose to rescind this regulation.

E. Subchapter E (Telephone Quality of Service Standards)

52 Pa. Code §§ 63.51—63.65

Subchapter E contains the provisions related to quality of service, i.e., the performance standards for trouble reports, service installations, operator calls, dial tone connection, completion of correctly dialed calls, as well as a safety program for its employees. We specifically and temporarily waived the following Subchapter E regulations:

Section 63.51 (Purpose);

Section 63.52 (Exceptions);

Section 63.53 (General provisions);

Section 63.54 (Record retention);

Section 63.56 (a)—(e) (Measurements);

Section 63.58 (Installation of service);

Section 63.59 (Operator-handled calls),³⁶

Section 63.60 (Automatic Dialing Announcing Devices (ADAD));

Section 63.61 (Local dial service);

Section 63.62 (Direct distance dial service);

Section 63.63 (Transmission requirements and standards);

Section 63.64 (Metering inspections and tests); and

Section 63.65 (Safety).

Reclassification Order at 85. The Commission, however, did not waive Section 63.55, Section 63.56(f) and (g), or Section 63.57 of this Subchapter.

In temporarily waiving these regulations, we reached the conclusion that if the Verizon ILECs' service quality is unacceptable, then customers can switch to an alternate service provider or "vote with their feet," and this should incentivize Verizon to provide quality service. Reclassification Order at 85. Moreover, we considered the Verizon ILECs' obligation to comply with the reasonable and adequate service requirements of Section 1501 as a "regulatory back-stop of quality service." Reclassification Order at 86. Customers can still file quality of service complaints as the Code still requires the Verizon ILECs

³⁵ 73 P.S. § 176 et seq.

³⁶ Pursuant to a prior ruling, we note that we have already granted a waiver for Verizon PA for Section 63.59(b)(2) related to customer calls to the business office, in place until a rulemaking is undertaken. See *Pa. Public Utility Commission, Law Bureau Prosecutory Staff v. Verizon Pennsylvania, Inc.*, Docket No. M-2008-2077881 (Order entered October 12, 2012) at 32—35, Ordering ¶ 4 (Quality of Service Order).

to provide reasonable service in competitive areas. Id. We further recognized that the Verizon ILECs' Section 1501 statutory obligation to provide certain standards of service was confirmed in Verizon's Chapter 30 plan and the record developed in the reclassification proceeding. Id. We shall address in order the regulations and the issues raised by the commenting parties.

1. § 63.51 (*Purpose*), § 63.52 (*Exceptions*), § 63.53 (*General provisions*), and § 63.55 (*Surveillance levels*)

The OCA recommends that Section 63.51 should be retained because it states that the provisions of Subchapter E should be applied in coordination with the Chapter 64 regulations. OCA Comments at 17. Based on our determination regarding Chapter 64 of our regulations infra, and because Section 63.51 operates in conjunction with our Chapter 64 regulations, we propose that it should be retained.

We determine that Section 63.52 covering inter-exchange carriers is no longer relevant as that service is adequately addressed under Chapter 30. Therefore, we propose to rescind it.

Also, the OCA states that it would preserve Section 63.53(a), which requires that a public utility provide telephone quality of service that meets or exceeds the Subchapter E standards, and Section 63.55 (Surveillance levels), which was not temporarily waived and still applies to all LECs. OCA Comments at 18. The OCA recommends that Section 63.53(b), which imposes a surveillance level reporting requirement, should also be retained and Section 63.53(e), which authorizes a party to petition for temporary exemption for unreasonable hardship, should also remain because a procedure should be in place if compliance causes an unreasonable hardship.

The RLECs submit that "network surveillance has been replaced with real time monitoring capabilities facilitated by computer technology," and that telecommunications "technology today uses alarms and renders the surveillance techniques envisioned and used in 1988 obsolete." RLEC Comments at 14. However, we note that despite such automated telecommunications and broadband access network monitoring capabilities and the existence of network operations centers, there still are network node failures including outages of central office switching facilities and equipment because of external and/or internal power supply interruptions.³⁷

We partially agree with the OCA and propose to retain the Section 63.53(a) and (e) because of ongoing surveillance obligation and the availability of relief from unreasonable hardship provided under Section 63.53(e). The OCA does not oppose rescission of Section 63.53(c) that requires maintenance of operator services and subsection (d) that requires forecasting customer demand. Id. Accordingly, we propose that subsections (c) and (d) of Section 63.53 should be rescinded. Additionally, we also propose modifying the language of Section 63.53(a) because it will involve telecommunications carriers that may be offering certain retail services not under a Commission filed and approved tariff but under a "product guide" or similar document. Also, in our continual balancing of burdens and benefits, we believe that we can rescind the reporting requirement in Section 63.53(b) as unnecessary in light of other protections. In other sections discussed in this NOPR Order, we retain reporting requirements regarding service levels that remain necessary. And, as proposed

³⁷ A power interruption that causes the outage of a central office network switching node can also negatively affect the proper operation of associated special access network circuit facilities and services, as well as the provision of various retail services including 911/E911 calling capabilities for end-user consumers.

below, we may always request a service report under Section 63.55(a) as proposed to be amended.

We propose to retain Section 63.55(a), addressing surveillance levels. However, in lieu of requiring a carrier to file reports to the Commission as set forth in Section 63.55(b) and 63.55(c), we propose to rescind those provisions and amend Section 63.53(a) to provide that a report of the investigation into a breach of a surveillance level shall be provided to the Commission upon request. Through these proposed revisions, the Commission may continue to monitor service quality as deemed necessary while reducing the regular reporting burden on carriers by limiting it to only those incidents for which the Commission requests a report.

2. 52 Pa. Code § 63.54 (*Record Retention*)

The OCA requests the preservation of Section 63.54 for both competitive and noncompetitive wire centers arguing that retention is necessary for compliance with the billing requirements of Section 1509 of the Code, 66 Pa.C.S. § 1509, and Section 64.24 of our regulations,³⁸ which was preserved in the Reclassification Order. Reclassification Order at 96. The OCA further argues that record retention also assists with improper charges that may be placed on the bill of an end-user consumer (cramming), and the unauthorized switch of a consumer's long-distance services provider (slamming).³⁹ The RLECs respond that the burden of proof is on the utility to maintain business records and that the utility company is in the best position to decide retention requirements. RLECs Comments at 14.

In light of the changes that we propose elsewhere with respect to reports and recordkeeping, we propose to amend Section 63.54 to retain the language that currently exists and incorporate it as a new Section 63.54(a). Thus Section 63.54(a) would retain the current 90-day retention period for undisputed billing records and a retention of records related to bills disputed until the dispute is resolved.

Under a new Section 63.54(b) we propose to establish a five-year record retention period for the following specific service records: (1) records related to call answering times, a subject currently addressed under Section 63.56 of our regulations and proposed to be amended in proposed Section 63.59 below; (2) records related to service complaints and trouble reports under Section 63.22 as proposed to be amended below; (3) records related to surveillance level investigations under Section 63.55 as proposed to be amended below; and (4) records related to service outages addressed under Sections 63.22 and 62.57 as proposed to be amended below. Through these amendments, in concert with the proposed amendments to other sections such as Sections 63.22, 63.55, and 64.57, the Commission will retain sufficient guidelines on the types of records related to service that utilities should continue to keep, thereby continuing consumer protections in core service-related matters, while at the same time also providing relief from what are multiple mandatory reporting requirements under our regulations as they currently exist.

3. 52 Pa. Code § 63.56 (*Measurements*)

The OCA does not oppose rescission of the measurement of dial line speeds of Section 63.56(a), (b), (c), and (d). However, the OCA submits that answer time for customer service calls reflect insight into the quality of

³⁸ Section 64.24 requires preservation of basic local exchange service upon the termination of a bundled package.

³⁹ OCA Comments at 18-19.

service being provided regardless of the area where service is provided. The OCA recommends that the Commission amend and retain subsection (e) for both competitive and noncompetitive areas since there should be adequate measurement and monitoring of a telecommunications utility's answering time for calls to the utility's customer and repair service operations and business office. OCA Comments at 19.

Because of amendments that we propose to Sections 63.54 and 63.59, we propose to delete this regulation as it currently exists.

4. 52 Pa. Code § 63.57 (Customer trouble reports)

In the Reclassification Order, we found it important that certain consumer protections relating to service outages be applied during the period of transition from a protected, noncompetitive service territory to a competitive service territory. Reclassification Order at 87. We considered it important to maintain these regulations in a competitive environment to ensure Verizon's compliance with Section 1501 and manage reasonable customer expectations in a competitive wire center when service outages occur. *Id.* We noted that the current language under Section 63.57(b) permits Verizon and the customer to "agree to another arrangement" other than a "substantial action within 24 hours" time frame for nonemergency outage calls. We then reasoned that such flexibility in a competitive environment made sense, particularly for customers who have wireless service and can schedule an appointment at a more convenient time other than within 24 hours of reporting the trouble. *Id.* at 87-88.

We note the RLECs' argument regarding the interpretation of the "substantial action" language in the regulation. The RLECs allege that Commission staff initially interpreted it "to mean substantial action that that would lead to 90% or higher of the out-of-service report being cleared within 24 hours," and that more recently Commission staff "has developed an even more rigid interpretation of the 'substantial action' phrase which mandates that that 100% of the routine trouble reports must be cleared in 24 hours."⁴⁰ The RLECs further argue that alternative providers are not under similar obligations and that greatly disadvantages the ILECs trying to keep customers.⁴¹

The RLECs' arguments present us with a paradox. If the RLECs strive and are successful in clearing routine customer trouble reports within 24 hours, then such actions should inure to their competitive advantage in retaining their customer base if and when alternative providers do not follow the same operational standard—unless someone were to assume that telecommunications services consumers prefer to receive substandard services that lack the requisite levels of adequacy, reliability, quality and safety. We further observe that we have ruled on formal complaint cases that have dealt with the interpretation of the term "substantial action" under Section 63.57, and we determine that the relevant rulings provide sufficient guidance.⁴²

That said, in an effort to minimize utility burdens where possible without sacrificing necessary customer protections, we propose to amend Section 63.57 to afford more flexibility to the customer and the telecommunications carriers. We propose to combine Sections 63.57(a) and 63.57(b) to impose a requirement that telecommuni-

cations public utilities respond to out-of-service trouble reports within 24 hours unless a different period of time is agreed to by the customer. Allowing carriers and their customers to agree to a different time period aligns better with current market practices where some issues are better resolved between the two parties without an unequivocal mandate. It also retains sufficient consumer protections, particularly in matters where safety and access to emergency services may be affected. We also propose to retain Section 63.57(c) and 63.57(d) as they are, amend Section 63.57(f) to remove the word "reporting" in the second sentence so that utilities remain subject to the "requirements" set forth in Section 63.55(a) (as proposed herein to be amended) but without any required "report," and eliminate Section 63.57(e).

5. 52 Pa. Code § 63.58 (Installation of service)

With respect to Section 63.58, we reached the conclusion "that information on the timing of service installations, including any standards applicable to service installation times, should be readily available to customers in some form other than a regulation." Reclassification Order at 87. We found that this would manage reasonable customer expectations, so we temporarily granted Verizon "waiver of Section 63.58 conditionally upon the requirement that Verizon include in its Product Guide applicable to competitive services its rules regarding timing of service installations and any commitments that Verizon is willing to make to customers on the subject." *Id.*

Verizon included in its Product Guide rules regarding commitments that Verizon is willing to make to customers in competitive areas. We accepted this requirement imposed upon the Verizon ILECs applicable to competitive services, finding that this will continue to manage reasonable customer expectations. Reclassification Order at 87. The RLECs submit that there is no such requirement imposed on alternative service providers nor are there such customer expectations of service that it be installed in five working days. RLEC Comments at 14-15.

The OCA asserts that, at a minimum, in competitive wire centers, Verizon should establish the date for service installation provided to the customer pursuant to Section 64.191(c)(1), and then accurately present the standard in the Verizon Product Guide.⁴³ OCA Comments at 21.

Installations of service—and of basic local exchange service in particular—is a critical component of the provision of service, particularly by ILECs that retain COLR obligations. We note that telecommunications utilities—as other public utilities—must manage and coordinate service installations within their overall network operations in an integrated and coordinated manner and under uniform standards irrespective whether such installations involve the provision of competitive or noncompetitive services. We reach the preliminary conclusion that the Product Guides of the Verizon ILECs, which govern the provision of competitive services, do not contain sufficient information adequately specifying the time intervals for service installations. We also note that Chapter 30 ILECs have the statutory obligation to make broadband access service available to a customer within ten business days after the customer's request.⁴⁴ Furthermore, the regulatory parameters of service installation also interrelate with our Subchapter M regulations on changing local service providers, 52 Pa. Code §§ 63.191 et seq.

⁴⁰ RLEC Comments at 14.

⁴¹ RLEC Comments at 14.

⁴² See, e.g., *Larry L. Wolfe v. Verizon North LLC*, Docket No. C-2011-2266224 (Order entered December 12, 2012); *Russell T. Lerch v. Verizon Pennsylvania Inc.*, Docket No. C-20077297 (Order entered September 11, 2008).

⁴³ OCA points out that the "Commission properly retained Section 64.191 (Public information), subparts (a) to (d), as establishing base line information which Verizon must provide to residential applicants for service in competitive and noncompetitive wire centers." OCA Comments at 21, citing to Reclassification Order at 102.

⁴⁴ 66 Pa.C.S. § 3014(b)(5).

Installations of service, including basic local exchange service, is a critical component of the provision of service, by all utilities and in particular our ILECs that retain COLR obligations and should be uniform across all LEC service territories. Since it is unclear if Verizon's Product Guides delineate similar timeframe intervals for primary and nonprimary service installations in competitive wire centers, we propose that Section 63.58 be retained in its entirety subject to the proposed amendment discussed immediately below.

However, for reasons similar to our proposed amendment to Section 63.57, and in order to provide more flexibility in the carrier/customer relationship, we propose to allow a public utility and its customer to agree to a different installation date. Therefore, we propose to revise the regulation to provide that the respective five-day and 20-day rules in Section 63.58(a) and 63.58(b) apply unless a later date is agreed to by the customer.

6. *52 Pa. Code § 63.59 (Operator-handled calls)*

We conditionally and temporarily granted the Verizon ILECs a waiver of Section 63.59 in all competitively classified wire centers. Reclassification Order at 85, 88, and 124 (Ordering Paragraph 2). The RLECs consider the requirements of the regulation arbitrary and dated and argue that current technology has rendered the regulation obsolete. The OCA believes Section 3019(d) provides more specific customer privacy directives. The OCA also notes that Verizon did not request a waiver of Subchapter J (Confidentiality of Consumer Communications and Information) in the reclassification proceeding. OCA Comments at 22. However, the OCA does not oppose rescission of Section 63.59(a).

The OCA also agrees that Section 63.59(b)(1) relates to "toll and operator assistance calls" and may be rescinded. Nonetheless, the OCA believes the Commission should retain the core concepts of Section 63.59(b)(2), (3), and (4) of our regulations. Section 63.59(b) sets a benchmark standard for answering performance for calls for repair or to the business office of a telecommunications utility. The OCA considers these provisions under Section 63.59(b)(2) as benchmark standards for contacting LEC repair offices and business offices that should protect consumers in both competitive and noncompetitive areas.

In any event, the OCA would accept as an alternative to the waiver of Section 63.59(b)(2), (3), and (4), continued compliance with the Section 54.153(b)(1) reporting standard for telephone access to electric distribution company (EDC) call centers or business offices. According to the OCA, the Commission had allowed the Verizon ILECs to substitute this same compliance as part of its approval of a prior settlement with Verizon in the Quality of Service Order, where we granted Verizon's request to waive Section 63.59(b)(2) for purposes of calls to the business office.⁴⁵ OCA Comments at 23. However, in moving from a benchmark to a reporting standard, we noted Verizon's representation that its failure to satisfy the "85%/20" benchmark occurred for calls to the business office only, but not for calls to repair centers, which we expected Verizon to maintain and that will note its performance in the reporting requirement. Quality of Service Order at 34.

The OCA argues that all customers should be able to make prompt contact with telecommunications public utility representatives in the repair offices and business offices. The OCA's opinion is that it should not matter

⁴⁵ We noted previously that we have already granted a waiver for Verizon PA for Section 63.59(b)(2) related to consumer calls to the call center or business office. (Quality of Service Order at 32–35, Ordering ¶ 4.).

whether the price paid for basic local service is rate regulated or detariffed and should not affect the quality of service that is provided to the customer. The OCA believes that the Commission should require the same level of service quality throughout the utility's service territory and contends further that the Commission should not transition the temporary waiver of Section 63.59(b) granted to Verizon in the Reclassification Order into the elimination of any answering performance standard for LEC repair offices or business offices. OCA Comments at 23–24. The OCA argues that Section 54.153(b)(1) could provide a model for an alternative to rescission of Section 63.59(b)(2), (3), and (4) in competitively classified wire centers. However, the OCA acknowledges that Section 54.153(b)(1) would require modification to change references from EDCs to "public utility" (a defined term in Chapter 63) and to cover calls to repair centers, as well as "call center or business office." OCA Comments at 24.

The RLECs argue that the answer requirements in subsection (b)(3) are arbitrary and with interactive voice response systems (IVRs) and call back technology, the regulation becomes obsolete.

In response to these arguments, we do not necessarily agree that the quality of service a Verizon ILEC customer receives should depend on the service area where the service is being provided.

In fact, in the Reclassification Order we made the following analysis:

Lastly, we note that, as part of its approval of a prior settlement with Verizon PA in the Quality of Service Order, we granted Verizon PA's request to waive Section 63.59(b)(2) for purposes of calls to the business office.⁷⁰ In lieu of following Section 63.59(b)(2), we permitted Verizon PA, for calls to its business office, to comply with the telephone access reporting requirements at 52 Pa. Code § 54.153(b)(1) applicable to electric distribution companies until such time that Section 63.59(b)(2) either is changed or repealed.⁷¹ In light of our granting a waiver of Section 63.59, in full, pending a rulemaking, we will no longer require Verizon to comply with the telephone access reporting requirements in Section 54.153(b)(1) of our Regulations.

⁷⁰ Section 63.59(b)(2) contains the standards for the speed of answering calls seeking repair service or calls to the business office.

⁷¹ By Order entered on January 10, 2013, at Docket No. P-2012-2333159, this same relief was granted to Verizon North. Because we are waiving Subsection 63.59(b)(2), for the earlier of the length of five years or the completion of a rulemaking proceeding in this Opinion and Order, our decision here supersedes and replaces the provision in the Quality of Service Order at ¶ 4.

Reclassification Order at 88.

We determine that certain and uniform performance standards governing the ability of end-user consumers to make prompt and direct contact with ILEC repair and business offices should be maintained. Our review of the Verizon ILEC 2015-2016 proprietary data as well as of other information in our administrative possession (e.g., our Bureau of Consumer Services UCARE Reports), persuades us that there is a continuous need for call answering performance standards. OCA's suggestion that at a minimum the framework of Section 54.153(b)(1)

provides an alternative to the permanent waiver of Section 63.59(b)(2), (3) and (4) in competitive wire centers, or to the rescission of these standards, is a sound one. The adoption of uniform performance standards also acknowledges that telecommunications utility networks and their operational support systems for the provisioning of services function in an integrated fashion.

Accordingly, we propose to take the following actions: (1) permanently rescind Section 63.59(a) and 63.59(b)(1) and, (2) revise Section 63.59(b)(2), (3) and (4) to mirror the Section 54.153(b)(1) framework by incorporating the specific wording and definitional changes necessary to make the Section 54.153(b)(1) framework applicable to all telecommunications utilities and services throughout Pennsylvania. Because of our proposed amendments to Sections 63.54 and 63.56, our proposed amendments to Section 63.59 also address the following points:

- Renaming Section 63.59 as “Call answering measurements.” Specifically including the phrase: “A public utility shall take measures necessary and keep sufficient call answering records to monitor answering times for calls as follows” in the beginning of the amended Section 63.59.
- Utilizing the word “records” instead of “reports” and “provide” in the proposed amendments in line with our goal of endeavoring to reduce utility reports and other burdens while still ensuring a meaningful manner of addressing regulated service by reducing reporting requirements and replacing them with clearer rules on service requirements and attendant recordkeeping.

7. 52 Pa. Code § 63.60 (*Automatic Dialing Announcing Devices (ADAD)*)

An automatic dialing announcing device is automatically used to place calls and play a recorded message. Our regulation addresses standards when an ADAD is used. As indicated previously, we specifically and temporarily waived Section 63.60 under our Reclassification Order. The RLECs contend that the regulation is simply not possible to enforce. RLECs Comments at 15. The OCA suggests that the Commission review the benefits of this regulation before granting a permanent waiver. OCA Comments at 25. We understand that the core issue relating to our Section 63.60 regulation primarily relates to technological change. The regulation was developed and originally implemented when ADADs would initiate automated voice calls through networks that largely utilized the time division multiplexing or TDM communications protocol. The evolution of telecommunications and broadband access networks and technologies have provided pathways for today’s unwanted and unlawful “robocalls” that utilize caller identification (caller ID) “spoofing” in order to initiate and propagate such traffic. The FCC has noted:

Technological advancements and marketplace developments in IP-based telephony have made caller ID spoofing easier and more affordable than ever before. Today, widely available Voice over internet Protocol (VoIP) software allows malicious callers to make spoofed calls with minimal experience and cost. Taking advantage of the ability to use spoofing to mask the true identity of an incoming call, these callers have turned to this technology as a quick and cheap way to defraud targets and avoid being discovered. Driven in part by the rise of VoIP, the telecommunications industry has transitioned from a limited number of carriers that all trusted each other to provide accurate caller origination information to a proliferation of different voice service providers and

entities originating calls, which allows consumers to enjoy the benefits of far greater competition but also creates new ways for bad actors to undermine this trust.

In re Call Authentication Trust Anchor; Implementation of TRACED Act—Knowledge of Customers by Entities With Access to Numbering Resources, WC Docket Nos. 17-97 and 20-67, (FCC, Rel. Mar. 31, 2020), Final Rule, FCC 20—42, 85 Fed. Reg. 22029, 22030 (April 21, 2020).

We note that Federal legislation has been enacted and that the FCC and the states have undertaken and continue to pursue various generic rulemakings as well as individual enforcement actions against entities that initiate unwanted and unlawful “robocall” traffic.⁴⁶ Also, the Commission has existing statutory authority to exercise its own abilities to independently or in an assistive fashion combat entities that initiate and propagate unwanted and unlawful “robocall” traffic. Thus, in view of the developments on the Federal level and our existing state law authority, we propose to rescind Section 63.60 in its entirety.

8. 52 Pa. Code § 63.61 (*Local dial service*), § 63.62 (*Direct distance service*), and § 63.63 (*Transmission requirements and standards*)

The Commission granted a temporary waiver of the Sections 63.61 and 63.62 regulations. Reclassification Order at 85. These regulations deal with central office, interoffice channel, trunk, and switching facilities capacity to handle certain types of telecommunications traffic. OCA notes that such facilities currently utilize more modern telecommunications technologies (e.g., soft switches, fiber optic circuits), that are not subject to capacity constraints of the more distant past (e.g., when analog central office switching equipment was in use). Therefore, OCA does not oppose the permanent rescission of Section 63.61 and Section 63.62. OCA Comments at 25.

With respect to Section 63.63, OCA believes that the minimum standards for transmission service quality should be the same whether the service is price regulated or detariffed, and this is consistent with OCA’s recommendation regarding Section 63.12 (Minimizing interference and inductive effects). OCA Comments at 26. The RLECs believe that any transmission issues should be handled between the customer and the utility. RLEC Comments at 15.

Performance requirements and standards that affect the integrated operations of telecommunications utility networks and the adequacy, efficiency, reliability and safety of the various services provided should operate in a uniform fashion. Quality of service issues such as noise, distortion and cross talk still affect voice telecommunications services today⁴⁷ and hold the potential of negatively affecting 911/E911 emergency calling capabilities. Water intrusion into outside plant cable network facilities is often the culprit of such problems.⁴⁸ Consistent with our proposed rescission of Section 63.12 and further amendments below, we propose the rescission of both Sections 63.61 and 63.62 in their entirety.

Our proposal to rescind Section 63.12 addressing interference is tied to our proposal to amend Section 63.63. Section 63.63(a) remains relevant, while Section 63.63(b)

⁴⁶ See, e.g., In re Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act), EB Docket No. 20-22, (FCC Rel. Mar. 27, 2020), Report and Order and Further Notice of Proposed Rulemaking, slip op. FCC 20—34.

⁴⁷ See, e.g., *Williams v. Verizon Pennsylvania LLC*, Docket No. C-2018-3005368, (Order entered August 23, 2019).

⁴⁸ See, e.g., *Optatus Chaila v. Verizon Pennsylvania LLC*, Docket No. C-2019-3008691 (Order entered March 31, 2020).

through 63.63(d) may be removed because as written they are increasingly obsolete. We also propose, however, to amend this Section to provide a new Section 63.63(b), using amendatory language originally proposed for inclusion in Section 63.12, as follows: “63.63(b) Fiber networks. The provisions of this section shall apply to each wire center or other geographic area defined by the jurisdictional telecommunications public utility where the utility has fully deployed a jurisdictional fiber-optic network.” As amended, Section 63.63 will continue to provide sufficient guidance under Section 1501 of the Code to ensure that our jurisdictional telecommunications public utilities provide reasonable service that is free from distortion, noise, and cross talk. As we recognize use of modern technology in our utility networks, however, the proposed language regarding fiber networks simply ensures that our telecommunications public utilities remain obligated to deploy and maintain networks that continue to provide for the satisfactory transmission of messages regardless of technology, confirming an obvious obligation that adds no additional burden.

9. *52 Pa. Code § 63.64 (Metering inspections and tests)*

Section 63.64(a) and (b) of our regulations impose certain obligations on telecommunications utilities to carry out periodic tests, inspections, and preventive maintenance, and to maintain and test the performance of equipment and facilities. Section 63.64(c) to (h) require the use of metering equipment for a variety of purposes including, for example, the measurement of call duration for billing purposes. This regulation was previously and temporarily waived for the competitive wire centers of the Verizon ILECs under our Reclassification Order. OCA submits that the regulation should be preserved for both competitive and noncompetitive ILEC service areas. OCA Comments at 26.

We determine that matters such as periodic tests, inspections, and preventive maintenance as well as the performance testing of telecommunications network equipment and facilities should operate under standards that are uniformly applicable for all services. Operational failures to perform preventive maintenance or adequate testing can and does lead to service outages that can also affect public health and safety, e.g., loss of 911/E911 emergency calling capabilities, or loss of the technical ability to route 911/E911 emergency call traffic to the appropriate public safety answering point. Such service outages can easily and simultaneously affect the provision of all retail services.

Furthermore, to the extent that telecommunications utilities already perform the operational functions that are specified under Section 63.64(a) and (b) as they should and do in the ordinary course of their respective business and operations, the existing regulation does not impose a regulatory burden. However, we propose to amend Section 63.64 consistent with the market and technological environment in which the regulated Pennsylvania telecommunications utilities operate. Therefore, we propose to rescind Section 63.64(d), 63.64(g), and 63.64(h), retain Section 63.64(a), 63.64(b), 63.64(c), and 63.64(e), and amend 63.64(f). If a meter is not used in the provision of service, Section 63.64(c) and 63.64(e) should not present a burden. If a meter is used, the retained sections provide for standards relating to billing. Section 63.64(f) requires a utility to perform periodic testing and maintenance of its utility trunking equipment, which should remain the utility’s obligation. However, in lieu of the “periodic” nature of this requirement, we propose amending the language in Section 63.64(f) to provide that the requirement shall apply “upon request or complaint.”

10. *52 Pa. Code § 63.65 (Safety)*

In the Reclassification Order, we recognized that the CWA and the International Brotherhood of Electrical Workers (IBEW, collectively CWA—IBEW) sought retention of Section 63.65 (Safety) and we concluded instead that workplace safety is adequately regulated at the Federal level. Reclassification Order at 86. We explained that the subchapter at Section 63.65 already incorporates the National Electric Safety Code for poles and conduits, which—at the time of our Reclassification Order—were regulated by the FCC, and by the workplace safety regulations of the U.S. Occupational Safety and Health Administration (OSHA), respectively. The OCA deferred to other parties who may have a direct interest in workplace safety and the status of whether Section 63.65 should be retained, modified, or permanently waived. OCA Comments at 27. The RLECs comment that they are already required to comply with OSHA standards, so a regulation is not needed. RLEC Comments at 15.

In temporarily waiving our regulation for the Verizon ILECs, we noted that this provision is enforced by other agencies, but at the same time, violations of FCC and/or OSHA workplace safety regulations are also subject to our jurisdiction and require compliance with Section 1501 of the Code. Consequently, we propose the permanent rescission of Section 63.65(1) to 63.65(4). However, we propose to retain the first part of this section, which requires telecommunications public utilities to adopt and implement a safety program fitted to their size in conformance with Occupational Safety Health Act standards, which we propose be amended to add the words “as amended from time to time” or an equivalent. This is consistent with a similar amendment we proposed which referred to application of a non-Commission standard. Elimination of Section 63.65(1)—63.65(4) reduces burdens, while retention of the first part as amended simply confirms the workplace safety standards that shall apply, affirms the importance of safety of Pennsylvania workers to the Commission, and adds no additional burden.

F. *Subchapter F (Extended Area Service)—52 Pa. Code §§ 63.71—63.77*

Subchapter G (Public Coin Service)—52 Pa. Code §§ 63.91—63.98

We specifically and temporarily waived the following Subchapter F (Extended Area Service) regulations for the Verizon ILECs under our Reclassification Order:

- Section 63.71 (Definitions);
- Section 63.72 (Traffic usage studies);
- Section 63.72(a) (InterLATA traffic studies);
- Section 63.73 (Optional calling plans);
- Section 63.74 (EAS polls);
- Section 63.75 (Subscriber polls);
- Section 63.76 (EAS complaints);
- Section 63.77 (Evaluation criteria).

In that same Order, we also temporarily waived the following Subchapter G (Public Coin Service) regulations for the Verizon ILECs:

- Section 63.91 (Purpose);
- Section 63.92 (Definitions);
- Section 63.93 (Conditions of service);
- Section 63.94 (Coin telephone requirements);
- Section 63.95 (Sufficiency of public telephone service);

Section 63.96 (Service requirements for coin telephones);

Section 63.97 ([Reserved]); and

Section 63.98 (Compliance).

No party objected to the request of the Verizon ILECs for a temporary waiver of Subchapters F and G. Reclassification Order at 88.

In the Reclassification Order, we discussed that the regulations were outdated and no longer purposeful or relevant in today's regulatory environment. Reclassification Order at 89. We explained the reasons why EAS regulations are no longer necessary as follows:

Our extended area service (EAS) regulations, which were developed before the existence of competition in the local market, are no longer enforced by the Commission. The EAS Regulations are a vestige of an era when local calling areas were limited in regard to the number of persons that could be called without having to incur a per-minute based long-distance toll charge. Local calling areas expanded significantly during the 1990's and early 2000's in part due to the automatic implementation clause of the EAS Regulations that required LECs to implement EAS on a toll route of a contiguous exchange whenever the average calling frequency on a specific route and the number of access lines making at least one call per month on that route reached a certain threshold. We take administrative notice that no LEC has implemented an EAS route in accordance with our EAS Regulations nor has any customer filed an EAS formal complaint against any LEC within at least the last five years. We note that EAS Regulations have been rendered useless, in part, by their success, which led to the more expansive local calling areas in place today, but especially by competition that evolved in the telecommunications market, especially over the last ten years that led to an abundance of flat rate calling plans (e.g., nation-wide calling for a fixed rate), bundled service packages, and competitive alternatives that are not measurable, including those from wireless and VoIP providers.

Reclassification Order at 89—91.

Based on the same analysis, the competitive telecommunications market eliminated the need for payphone service across Pennsylvania and throughout the country. Verizon notes that it no longer provides payphone services in Pennsylvania and that payphones also have been rendered obsolete, particularly due to the proliferation of wireless services across the Commonwealth. Reclassification Order at 90. The RLECs also address the technological obsolescence of the Subchapters F and G regulations. Furthermore, the RLECs indicate that "to the extent any carriers are still providing payphone service in Pennsylvania, those carriers will still be subject to Sections 2911—2915 of the Code, 66 Pa.C.S. §§ 2911—2915, which address the regulation of coin service and which will continue to provide sufficient Commission oversight and consumer protections."⁴⁹ OCA agrees that Subchapters F and G can be rescinded since they are no longer needed.⁵⁰

Tenny Journal Communications (Tenny), an independent payphone services provider based in Englewood Cliffs, New Jersey, submitted comments in this proceeding. Tenny's comments included a series of allegations directed against Verizon and Verizon's practices with respect to the provision of payphone services by independent providers such as Tenny. Tenny's comments allege

that Verizon has provided "false certification that it no longer provided payphone services in Pennsylvania," and that in December 2017 "Verizon, without legal right or justification, refused service to Tenny Journal in Pennsylvania."⁵¹ Tenny further alleges that "Verizon abruptly deactivated [Tenny's] Pennsylvania phones [payphones] knowing that doing so was an unjustified breach of contract," and that Tenny has been subjected to "unauthorized charges" by Verizon.⁵²

Verizon responded to these allegations indicating that Tenny is improperly utilizing this proceeding "to cast aspersions on Verizon due to an unrelated wholesale billing dispute."⁵³ Verizon further stated that it does not provide payphones and provides "access to wholesale lines that Tenny may use for payphone service," and that in "areas where Verizon is retiring copper pursuant to the FCC's rules those lines are only available over fiber."⁵⁴ We agree that this proceeding is not the appropriate forum for addressing a dispute between Tenny and Verizon. To the extent that this Commission can exercise appropriate jurisdiction, a wholesale interconnection and intercarrier compensation dispute can be properly brought before it through the filing and adjudication of a formal complaint. Accordingly, we propose to rescind Subchapters F and G regulations in their entirety.

G. Subchapters H, J, K, L M, N and O

All of these remaining Subchapters of Chapter 63 have remained in full force for all geographic areas. While Verizon encouraged the Commission to overhaul thoroughly the Chapter 63 regulations by eliminating various subchapters and provisions in Chapter 63, it also indicated that the following provisions could be kept as is: Chapter 63 L, Sections 63.161 through 63.171 (Universal Service), Chapter 63 M, Sections 63.191 through 63.222 (Changing Local Service Providers); Chapter 63 N, Sections 63.301 through 63.310 (Local Service Provider Abandonment Process) and Chapter 63 O, Sections 63.321 through 63.325 (Abbreviated Procedures for Review and Approval of Transfer of Control for Telecommunications Public Utilities). Verizon Comments at 9-10.

The RLECs asserted that Subchapter H—Interexchange Telecommunications Carriers (Sections 63.101 through 63.109) and Subchapter I—Interexchange Resellers (Section 63.101) no longer serve a useful purpose. The RLECs further asserted that these sections under these subchapters have been rendered obsolete given the competitive nature of interexchange services. Therefore, the RLECs propose that this subchapter should be eliminated. RLEC Comments at 17.

Additionally, the RLECs have asserted that Subchapter J—Confidentiality of Consumer Communications and Information (Sections 63.131 through 63.137) are largely duplicative of Section 222 of the 1996 Telecommunications Act, 47 U.S.C. § 222, and Federal Customer Proprietary Network Information (CPNI) requirements,⁵⁵ and supplemental to state and Federal wiretap laws. Id. They indicate that there are also state data breach laws in all 50 states addressing security measures to prevent unauthorized acquisition of information. Id. The RLECs state that they support the confidential treatment of all consumer communications and information, but the landscape has evolved and the provisions addressed in this subchapter are simply unnecessary.

⁵¹ Tenny Comments at 1-2.

⁵² Tenny Comments at 3.

⁵³ Verizon Reply Comments at 19.

⁵⁴ Verizon Reply Comments, n.46 at 19.

⁵⁵ The CPNI rules at 47 C.F.R. §§ 64.2001—64.2011 provide more detail and require reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI and reporting of CPNI breaches.

⁴⁹ RLEC Comments at 16-17.

⁵⁰ OCA Comments at 27.

Further, the RLECs assert that Subchapter K—Competitive Safeguards (Sections 63.141 through 63.144) along with Subchapter M (Changing local service providers (Sections 63.191 through 63.222) and Subchapter N (Local Service Provider Abandonment Process (Sections 63.301 through 63.310)—involve wholesale relationships. *Id.* at 17-18. They contend that this subchapter is outdated and effectively duplicative of Sections 251, 252, and 271 of the 1996 Telecommunications Act, 47 U.S.C. §§ 251, 252, 271. However, they state that the retail regulations in Chapters 63 require immediate attention and relief. *Id.* Thus, they state that despite the inefficiencies created by Subchapter K, action on the Chapter 63 wholesale-type regulations could be addressed later.

Furthermore, the RLECs state that Subchapter L contains the Commission's Universal Service regulations which, they maintain, should continue to remain in effect. They submit that these regulations are integral to the ability of the RLECs to provide reliable service at affordable rates and satisfy their COLR obligations. *Id.* at 18.

Lastly, the RLECs also support the retention of Subchapter O so long as the Commission retains its statutory authority under Chapter 11 of the Public Utility Code for reviewing and approving mergers, acquisitions, and other changes of control. The RLECs, however, recommended certain modifications to Subchapter O which, at a minimum, impose accelerated timelines for Commission action and order on general rule and pro forma transactions. *Id.*

Accordingly, we propose to rescind Subchapter H and I as obsolete. We understand the RLECs' position that the regulatory provisions of Subchapter J may be duplicative of existing Federal law and Federal CPNI requirements. We also agree that if there is a data breach, the alleged violator will be subject to Section 1501 of the Code or a Section 701 proceeding. Nevertheless, considering the circumstances regarding the recent data breaches, we determine that it necessary to continue to give specific instructions to our jurisdictional telecommunications companies so that they comply with 66 Pa.C.S. § 3019(d).

We will retain Subchapter J but propose to amend certain provisions. We specifically propose to add the words "agent," to be defined as "an individual or entity that performs work on behalf of a telecommunications public utility as the principal and is subject to this chapter," and "independent contractor," to be defined as "an individual or entity that performs work on behalf of a telecommunications public utility subject to this chapter," in Section 63.132. In this spirit, we also propose to insert "agent" and "independent contractor" after every mention of "employee" in the regulation. We believe this assumption of responsibility is both proper in the marketplace and no more burdensome a requirement than we currently impose in the energy market.

Finally, we propose to retain Subchapters K, L, M, N and O.

III. Chapter 64. Standards and Billing Practices for Residential Telephone Service

A. Background

In the reclassification proceeding, the Verizon ILECs requested a waiver of the entire Chapter 64 regulations at 52 Pa. Code §§ 64.1—64.213. The Chapter 64 regulations are titled "Standards and Billing Practices for Residential Telephone Service" and address the following items involving interactions with customers: billing and

payment, credit and deposit, termination, restoration of service, and complaint handling. Reclassification Order at 90—103.

In the same way we considered the temporary waivers of our quality of service regulations in the Reclassification Order, the Code under Section 1501 still requires the Verizon ILECs to provide reasonable and adequate service in competitive wire centers, including the provision of billing services. Thus, customers can still have recourse to the Commission and complain about billing matters that do not involve competitive service prices that are set "at the company's discretion." See 66 Pa.C.S. § 3016(e). In the context of the Reclassification Order, we ascertained that many of these regulations were no longer needed in competitive markets where competition could provide sufficient incentives for the Verizon ILECs to satisfy reasonable customer expectations and their Product Guides could adequately address certain issues.

The OCA has recommended that the Commission preserve the Chapter 64 protections for residential local exchange service in competitive areas, subject to limited amendments. OCA Comments at 28. In the Reclassification Order, we concluded that certain protections were still needed, and we addressed the regulations individually and granted, in part, and denied, in part, the Verizon ILECs' request to waive our entire Chapter 64 regulations in competitive wire centers. Reclassification Order at 93-94. We shall address these regulations in order below.

B. Subchapter A (Preliminary Provisions)

1. 52 Pa. Code § 64.1 Statement of purpose and policy; § 64.2 Definitions

Section 64.1 is the Chapter 64 statement of purpose and policy and Section 64.2 contains definitions. In the Reclassification Order, we reviewed the policy statement and found most of Section 64.1 relevant even for the Verizon ILECs' competitive wire centers. However, we granted a temporary waiver of the first sentence because that description of the purpose is no longer an accurate statement for the areas served by the Verizon ILEC competitive wire centers.

The OCA did not oppose the temporary waiver with the understanding that there will not be uniform standards because there will be two sets of service standards for competitive and noncompetitive areas. OCA Comments at 28. The standards should be uniform, fair, and equitable for protected services.

For the reasons stated above, we decline to establish a two-tiered regulatory structure that would impose different regulations and standards in competitive and non-competitive areas. Consequently, we propose the retention of Section 64.1 in its present form applied uniformly to all geographic areas where telecommunications services are offered by the jurisdictional telecommunications utilities. Furthermore, consistent with our previous proposals renaming certain sections of our regulations, we propose to rename Chapter 64 as "Standards and Billing Practices for Residential Telecommunications Service." Similarly, we propose the replacement of the term "Telephone" with "Telecommunications" throughout this chapter as appropriate and where the word "telephone" appears in the existing text of the regulation.

The Section 64.2 definitions are retained to the extent certain provisions within the Chapter are retained and that retention implicates certain definitions contained in Section 64.2. Reclassification Order at 95. Also, OCA commented that many of the Chapter 64 definitions relate to other Chapter 64 regulations which are being

preserved. *Id.* Thus, we agree and propose the retention of those definitions that are still relevant to the regulations. And, as we did in Chapter 63, we will also incorporate definitions for a competitive and noncompetitive wire center for purposes of future competitive designations. And for the reasons stated above supporting our proposal to further amend Section 63.1 of Chapter 63, our proposal to amend this section to define a term using the words “wire centers” will be expanded to include “or other geographic area defined by the public utility” in this section and anywhere else in Chapter 64 where there are further proposed amendments to insert the term “wire center” for those utilities that do not use the wire center terminology. We are also updating references to Chapter 30 of the Public Utility Code.

C. Subchapter B (Payment and Billing Standards)

1. *52 Pa. Code §§ 64.11—64.24*

In Subchapter B, which governs payment and billing, in the context of the reclassification proceeding, we temporarily waived the following Subchapter B regulations for the Verizon ILEC competitive wire centers:

- Section 64.11 (Method of payment);
 - Section 64.12 (Due date for payment);
 - Section 64.13 (Billing frequency);
 - Section 64.14 (Billing information);
 - Section 64.15 (Advance payments);
 - Section 64.16 (Accrual of late payment charges);
 - Section 64.17 (Partial payments for current bills);
 - Section 64.18 (Application of partial payments between past and current bills);
 - Section 64.19 (Rebilling);
 - Section 64.20 (Transfer of accounts);
 - Section 64.21 ([Reserved]); and
 - Section 64.22 (Billing service for interexchange carriers).
- Reclassification Order at 95.

We retained the applicability of the following Sections in Subchapter B both for the competitive and the noncompetitive wire centers of the Verizon ILECs:

- Section 64.23 (Cramming/Slamming); and
- Section 64.24 (Provision of bundled service packages)

As initial support for our action, we pointed out that Verizon’s Product Guide, Section 1 Original Sheets 5 and 6, addresses several of these payment related issues in the Verizon ILECs’ competitive wire centers. Reclassification Order at 96. However, we recognize that some important consumer protections still remain relevant such as Section 64.23 that relates to the standardized LEC response to cramming and slamming. We also noted that the Verizon ILECs are required to comply with the 47 C.F.R. § 64.2401 Federal truth-in-billing requirements applicable to billings for intrastate or interstate services. *Id.*

In the Reclassification Order we also denied the Verizon ILECs’ request for the temporary waiver of Section 64.24 that preserves basic local exchange service upon the termination of a bundled package. This is an important

consumer protection still relevant in a competitive market given the proliferation of bundled packages and the Chapter 30 statutory goals of preserving universal service. *Id.* We shall address Sections 64.11—64.24 in this instant order, plus Section 64.33 (Payment of outstanding balance) which is related to Section 64.20.

Generally, the OCA recommends, that the Commission should preserve Sections 64.11 through 64.22 for both competitive and noncompetitive wire centers. The OCA notes that without a statutory or regulatory standard, the Verizon ILECs can merely change “the scope and content of its Product Guide at will.” OCA Comments at 27. The OCA submits that the statutory “Billing Procedures” protection of Section 1509 of the Code, 66 Pa.C.S. § 1509, still apply in competitive and noncompetitive areas and the Payment and Billing Standards will assist the Commission in determining whether the LECs are in compliance with both Section 1501 and Section 1509 of the Code. OCA Comments at 30. The RLECs object arguing that voluminous regulations are not required to make Sections 1501 and 1509 effective, and in fact, Section 1509 is straight forward and is not in need of regulatory assistance. RLECs Reply Comments at 11; Verizon Comments at 9.

1. *52 Pa. Code § 64.11 (Method of payment)*

The OCA submits that the payment standards set forth in Section 64.11 (Method of payment) should be retained in both competitive and noncompetitive wire centers. We considered accepting the OCA’s recommendation to amend the regulation to recognize “electronic payments.” However, the regulation references that “[p]ayments may be made in any reasonable manner” and that can include electronic payments so we do not propose to make a change to the regulation. Additionally, we propose to revise the regulation to reference that returned check charges are to be included in the “carrier’s approved tariff, Product Guide or similar document.” However, even though we will not fully adopt the OCA’s recommendation, we propose the retention of the Section 64.11 regulation in all geographic areas where our jurisdictional telecommunications carriers serve.

2. *52 Pa. Code § 64.12 (Due date for payment), § 64.13 (Billing frequency), and § 64.14 (Billing information)*

OCA contends that the Commission should retain Sections 64.12 (Due date for payment), 64.13 (Billing frequency), and 64.14 (Billing information) as applicable in all LEC service areas, whether classified as competitive or noncompetitive. The OCA argues again that these regulations implement the provisions of Section 1509 of the Code that apply billing procedures for consumer protections. OCA submits that for purposes of simplification, the Commission should retain Section 64.14(a) that details the information that must be provided on each bill, but acknowledges, alternatively, that subsections (b), (c), and (d) could be rescinded or amended. OCA Comments at 29—31. The RLECs contend that none of its competitors are required to present bills in these arcane formats. RLEC Comments at 21.

OCA presents a better argument that provides for better billing transparency to end-user consumers of LEC services whether such services are provided on a competitive or non-competitive basis. Furthermore, regulated telecommunications utilities have been utilizing the billing formats prescribed by our regulations for a very long time and, consequently, their billing and operational support systems are already and appropriately configured to continue with established practices. This billing format

is also an appropriate device for the consumers to detect the presence of unwarranted and unauthorized charges potentially from third parties (e.g., cramming).

We take note of the RLECs' arguments for the use of electronic billing although their relevant comments correctly recognize "that some customers do not choose to have a broadband connection,"⁵⁶ and we observe that consumer engagement of broadband access services may not be solely and exclusively a simple matter of "personal choice." Nevertheless, we recognize the wide availability and use of electronic billing and we address this matter below. Consequently, we propose to retain Section 64.12 and Section 64.13 and also revise them so that the regulations delineate the necessary information and data for incorporating the availability and use of electronic billing in lieu of paper bills.

We propose to retain Section 64.14(a) and (c) and to rescind Section 64.14(b) and 64.14(d). The information provided in Section 64.14(c) is sometimes at the heart of consumer disputes. As is the case in other proposed revisions where we have proposed retention of information, for example our proposed amendment to Section 64.191, *infra*, this requirement that a utility inform the customer of charges to be incurred for new or additional services and then retain that information for 90 days, or approximately 3 billing cycles, protects both the provider and the consumer should a dispute arise from either party. We impose this obligation in other competitive industries. We believe it is appropriate to retain it here.

3. *52 Pa. Code § 64.15 (Advanced payments) and § 64.16 (Accrual of late payment charges)*

The OCA does not oppose the permanent rescission of Section 64.15 (Advanced payments) in both competitive and noncompetitive wire centers. OCA believes that Section 64.16 (Accrual of late payment charges) improves the affordability of service and should be preserved in both categories of wire centers. OCA Comments at 32. Our decision in the Reclassification Order allowed the Verizon ILECs to price their retail services, including basic local exchange services, at their discretion. Reclassification Order at 8. That being said, we also determined that customers in competitive wire centers who do not want to pay the price for the Verizon ILEC services have alternate services to choose from to replace their services. Reclassification Order at 62. Similarly, if Verizon ILEC customers in competitive wire centers are not satisfied with their terms of service for late payments, they can choose another provider with different terms of service.

We note that the Verizon ILECs provide retail services, including basic local exchange services, to Lifeline eligible consumers and households within their competitive wire centers. We understand that the terms of service regarding late payment fees in the Product Guide is the same for both Lifeline eligible customers and households that receive service from the Verizon ILECs in competitive wire centers. However, we note that at a certain point the Verizon ILECs had formally petitioned this Commission for a waiver of the Section 64.16(a) regulations in relation to their noncompetitive wire centers and had requested

certain increases in late payment charges.⁵⁷ In view of this discussion and because the provision of Lifeline services is inherently part of the universal service concept both under applicable Pennsylvania and Federal law, we propose the following: (1) the permanent rescission of Section 64.15; and, (2) the permanent retention of Section 64.16 for all geographic areas.

4. *52 Pa. Code § 64.17 (Partial payments for current bills) and § 64.18 (Application of partial payments between past and current bills)*

In competitive wire centers, the OCA recommends amending Sections 64.17 and 64.18 to instruct Verizon and any other LEC how to handle partial payments in accordance with the specific instructions of the consumer or if there are no instructions, reduce the balance due for basic service. OCA Comments at 32. OCA supports the retention of the Sections 64.17 and 64.18 regulations for both competitive and noncompetitive wire centers. In view of our preceding discussion on the proposed final disposition of Section 64.16, we propose to take the same course of action with the proposed disposition of Sections 64.17 and 64.18. Therefore, we will propose the permanent retention of Sections 64.17 and 64.18 for all geographic areas.

5. *52 Pa. Code § 64.19 (Rebilling)*

Section 64.19(a) addresses a four-year limit for the issuance of a make-up bill for unbilled services resulting from a LEC's billing error. Section 64.19(b) provides consumer protections through a remedy for over-billing by requiring the LEC to provide an appropriate credit to the customer's account including taxes. Section 64.19(c) requires a LEC to provide notice to the Commission "of rebilling affecting more than 10% of its residential customers within 90 days of the rebilling."

The OCA recommends that the provision of Section 64.19(a) and (b) should continue to apply in the competitive wire centers if any portion of the make-up bill for unbilled services or credit for overbilling relates to services received prior to the implementation date of the Reclassification Order's temporary waivers for the Verizon ILECs. OCA Comments at 33. We note that such implementation date would be September 15, 2015, the entry date for the Final Implementation Order. Final Implementation Order, Ordering Paragraph No. 6.

OCA further recommends that the Commission should retain the notice requirement of Section 64.19(c) with applicability to both competitive and noncompetitive wire centers. The OCA notes that the need for such a significant rebilling activity would be highly unusual and could be avoided because of computerized billing systems. However, according to OCA, a cybersecurity attack is not impossible and can disrupt routine operations including billing activities and, regardless of the cause, the Commission should receive notice of any such significant rebilling activities under Section 64.19(c). We find the OCA arguments persuasive and we propose the permanent retention of Section 64.19 in all geographic areas.

⁵⁷ In eventually granting the Verizon ILECs' request to withdraw the underlying petition, the Commission noted the following:

In its Waiver Petition, Verizon sought a waiver from the Commission's late-payment charge regulation at 52 Pa. Code § 64.16(a). Specifically, Verizon requested that, in noncompetitive wire centers, the Commission waive its limitation on late-payment charges for residential local exchange carrier service. Verizon sought to impose the greater amount of a \$5.00 minimum late-payment charge or a charge of 1.5% on the overdue amount owed. Verizon sought Commission approval prior to October 13, 2017, so that it could recognize the increase in its late-payment fee in preparation of its annual Chapter 30 Price Change Opportunity (PCO) filings to be made November 1, 2017, effective January 1, 2018. [P] On September 15, 2017, the Office of Consumer Advocate (OCA) filed an Answer opposing, in part, the Verizon Petition.

Petition for Leave to Withdraw of Verizon Pennsylvania LLC and Verizon North LLC, Docket No. P-2017-2621343, (Order entered October 26, 2017) at 1-2.

⁵⁶ RLEC Comments at 22. The RLEC Comments also reference the Commission's actions in prohibiting the imposition of paper billing fees. *Id.* n.28 at 22 (including citation to Rulemaking Re Amendment to 52 Pa. Code Chapter 53; Paper Billing Fees, Docket No. L-2014-2411278, (Final Rulemaking Order entered January 12, 2016). See also 52 Pa. Code § 53.85.

6. 52 Pa. Code § 64.20 (Transfer of account) and § 64.33 (Payment of outstanding balance)

Both Section 64.20 from Subchapter B and Section 64.33 from Subchapter C were temporarily waived, as to the Verizon ILECs' provision of residential local service in competitive wire centers. The OCA explains that Section 64.20 addresses transfer of accounts and outstanding balances associated with discontinuance or termination to a new or existing customer, and Section 64.33(a) allows a LEC to condition the provision of service to a new applicant upon payment of an outstanding balance "for which the applicant is legally responsible. . . ." In addition, Section 64.33(b) prohibits a LEC from requiring an applicant for service to pay an outstanding balance incurred in another person's name, absent a legal order determining the applicant's obligation to pay. OCA Comments at 33-34.

The OCA believes that these regulations protect the affordability and continuity of residential local service by providing specific guidance as to a LEC's collection practices applied to a customer, where the charges were incurred in another account or by another person. The OCA submits that the important balancing of interests contained in the regulations is unlikely to appear in the terms and conditions of a Product Guide. OCA recommends that these regulations should be preserved and apply to residential service in both competitive and noncompetitive areas. *Id.* at 34.

In light of our rejection of a two-tiered regulatory approach, and in consideration of our balancing of interests as explained above and asserted by the OCA, we propose to retain these regulations in all geographic areas.

7. 52 Pa. Code § 64.22 (Billing services for interexchange carriers)

This grant of a temporary waiver to the Verizon ILECs of this provision in competitive wire centers is unopposed. We also consider this regulation to be obsolete. Therefore, we propose the permanent rescission of Section 64.22 in all geographic areas.

8. 52 Pa. Code § 64.23 (Cramming/Slamming) and § 64.24 (Provision of bundled service packages)

We retained the applicability of Section 64.23 (Standardizing LEC responses to customer contacts alleging unauthorized charges added to the customer's bill (cramming) and unauthorized changes to the customer's long distance carrier (slamming)) and Section 64.24 (Provision of bundled service packages) to the Verizon ILECs' provision of service in competitive areas within the context of our Reclassification Order.

OCA does not oppose the retention and continuous applicability of both regulations to both competitive and non-competitive wire centers.⁵⁸ The RLECs support the elimination of Section 64.24 and they allege that it "unnecessarily limits and extends the billing and collection process that alternative providers with bundles need not undertake."⁵⁹ We disagree with this assertion and we note that Section 64.24 operates so that consumers who are unable to pay the full price for a bundle of services can default to a basic local exchange service and not lose connectivity. This serves the statutory goal of preserving universal service under 66 Pa.C.S. § 3011(2) and, contrary to the RLECs' assertions, does not undermine the pricing flexibility for bundled service packages under 66 Pa.C.S. § 3016(e).

Consistent with our proposed actions for Sections 64.14, 64.17 and 64.18, we propose the permanent retention of existing Sections 64.23 and 64.24 for all geographic areas.

D. Subchapter C (Credit and Deposit Standards Policy) 52 Pa. Code §§ 64.31—64.41

In our Reclassification Order, we granted the Verizon ILECs a waiver of all the following Subchapter C regulations in their competitive wire centers:

- Section 64.31 (LEC credit and deposit policies);
- Section 64.32 (Credit standards);
- Section 64.33 (Payment of outstanding balance);
- Section 64.34 (Written procedures);
- Section 64.35 (Deposit requirements for exiting customers);
- Section 64.36 (Method of making deposit);
- Section 64.37 (Refund of deposits);
- Section 64.38 (Application of deposit to bills);
- Section 64.39 (Periodic review);
- Section 64.40 (Refund statement); and
- Section 64.41 (Interest).

In addressing the credit and deposit standards, we acknowledged the importance of customer access to relevant information about their services with the following understanding:

We take note of Section 1, Original Sheet 1 of Verizon's Product Guide in both of its service territories in Pennsylvania, which applies to competitive services and which specifies that Verizon will use a credit check to determine creditworthiness. To the extent that the Product Guide does not address Verizon's policies and procedures applicable to applicants for service that are not deemed creditworthy, we believe such information should be added to the Product Guide. Therefore, we shall grant a waiver of this Subchapter conditionally upon the requirement that Verizon provide information in its Product Guide concerning the consequences if an applicant for service is not deemed to be creditworthy.

Reclassification Order at 97.

We relied on the Verizon ILECs to include this information in their Product Guides. We held the belief that disclosure of credit and deposit standards would help manage reasonable customer expectations. *Id.*

The OCA opposes to the elimination of Subchapter C for application to competitive services. OCA Comments at 35-36. The RLECs contend that the credit and deposit regulatory requirements do not reflect current business environment of serving only 12% of the market and the provisions are so onerous that the existing regulations effectively discourage companies from taking a deposit. RLEC Comments at 23. The RLECs further submit that consumers today are familiar with deposit practices which do not require payment of an actual cash deposit. Consumers, for example, may prefer a credit card kept on file. Moreover, the RLECs submit that alternative service providers in today's competitive marketplace do not have these requirements. *Id.*

1. 52 Pa. Code § 64.31 (LEC credit and deposit policies), § 64.32 (Credit standards), § 64.33 (Payment of outstanding balance), § 64.41 (Interest), and §§ 64.34—64.40

The OCA specifically addresses Section 64.31. OCA Comments at 36. In particular, the OCA asserts that

⁵⁸ OCA Comments at 34-35.

⁵⁹ RLEC Comments at 23.

Section 64.31 (LEC credit and deposit policies) should apply to all residential local service customers in both competitive and noncompetitive wire centers. *Id.* The OCA notes that the Reclassification Order did not change COLR obligations of the Verizon ILECs. Reclassification Order at 125. The OCA states that the Commission recognized that the Verizon ILECs' Product Guides (as of 2015) regarding extension of service were in conflict with Verizon's COLR obligation and Section 63.20 (Service line) obligations. OCA Comments at 36. Furthermore, the OCA submitted that the Commission required the Verizon ILECs to amend their Product Guides and provide information that explains the consequences if an applicant for service is not deemed to be creditworthy. Reclassification Order at 97.

The OCA believes that the Verizon ILECs' Product Guides is a temporary measure and when it comes to an ILEC's screening of applicants for service in a competitive area, the ILEC should be guided by an affirmative statement of the Commission's credit and deposit policies that will provide more protection. To the extent any of the other regulations should be amended, the OCA submits that the changes should simplify regulatory requirements, while preserving guidance to LECs in competitive areas. The OCA supports the preservation of the other Subchapter C sections in competitive and non-competitive areas, which cover credit standards, payment of outstanding balances, deposit requirements, refunds, and interest. OCA Comments at 36-37. The RLECs oppose the retention of these regulations on the grounds that they do not reflect the current business environment. RLEC Comments at 23.

We agree that since certain of these regulations contain objective credit standards and operate in conjunction with all LEC services, in particular the ILECs' COLR obligations (e.g., applications for the installation of service), their applicability should be uniform between competitive and non-competitive wire centers. Customer credit and deposit protections are important, and based on the input provided to the ANOPR, we are not persuaded that these requirements are fairly characterized as outdated in today's marketplace. In considering the overall balance of interests, and lacking a competitive analysis, we believe the scale tilts in favor of retaining the substantive requirements of this subchapter as is. Therefore, we propose the permanent retention of Sections 64.31, 64.32, 64.41 and 64.34—64.40, and their uniform and continuous application in all geographic areas served by our jurisdictional telecommunications utilities.

E. Subchapter D (Interruption and discontinuance of service)

52 Pa. Code §§ 64.51—64.53

In the Reclassification Order, we recognized that the Verizon ILEC Product Guide, Section 1 Original Sheet 6, is applicable to basic local exchange services in competitive wire centers in both Verizon ILEC service territories in Pennsylvania, and it addresses refunds for service interruptions and customer-initiated discontinuation of service. Reclassification Order at 97. We decided to temporarily waive the Subchapter D regulations Section 64.52 (Refunds for service interruption) and Section 64.53 (Discontinuance of service) for the Verizon ILECs. *Id.* However, we decided to retain Section 64.51. The regulations are addressed below. We note specifically that in light of our review in this NOPR including our overall balancing of interests and rejection of a two-tiered regulatory structure, we propose the retention of this subchapter in its entirety in all geographic areas.

1. 52 Pa. Code § 64.51 (Temporary interruption)

Section 64.51 allows an ILEC to interrupt service to a customer under emergency conditions and for critical maintenance purposes. The Commission retained the applicability of Section 64.51 in the context of the Reclassification Order for the Verizon ILECs, and this was not opposed. The OCA supports preservation of the requirement that the ILEC provide the residential customers with notice, if possible, of temporary interruptions and limit the duration. OCA Comments at 37. We continue to agree that ILECs must have the ability to interrupt service under emergency conditions and to perform critical maintenance. Therefore, the regulation shall be retained for all geographic areas.

2. 52 Pa. Code § 64.52 (Refunds for service interruptions)

We granted the Verizon ILECs a temporary waiver of Section 64.52 indicating that the Verizon ILECs' Product Guide in 2015 addressed the topic of refunds for service interruptions. Reclassification Order at 97-98; ANOPR Order at 17-18. Section 64.52(a) and (b) provide the general rules for calculation of an allowance in the event of an interruption of at least 24 hours and when the interruption is due to storms or other events beyond the telecommunications utility's control, respectively.

The OCA seeks preservation of these sections, analogizing this protection to a utility's obligation to provide reasonably continuous service. The OCA had recommended that the allowances provided for in Section 63.24 (Service interruptions) should be preserved in all areas as a corollary to this obligation. OCA Comments at 37. Since service interruptions have the capability of impacting end-user consumers of residential telecommunications services in the same fashion whether they receive such services in competitive or noncompetitive wire centers, we determine that the same protections should be extended to both consumer groups under the same objective standards. Therefore, we propose to retain the uniform applicability of Section 64.52 for all geographic areas.

3. 52 Pa. Code § 64.53 (Discontinuance of service)

The OCA agrees with the Commission that this regulation that addresses customer obligations can be rescinded in the competitive service areas. OCA Comments at 38. As we noted in the Reclassification Order, the Verizon ILECs' Product Guide, Section 1, Original Sheet 6 is applicable to local exchange service in competitive wire centers that address customer-initiated discontinuation of service. Reclassification Order at 97. Consistent with our approach, we propose the retention of this regulation in all geographic areas.

F. Subchapter E (Suspension of Service)

52 Pa. Code §§ 64.61—64.111

Subchapter E regulates grounds for suspension of service and notice procedures prior to suspension of service. In the context of our Reclassification Order, we temporarily waived a number of Subchapter E regulations for the Verizon ILECs but also concluded that a number of regulations remain relevant for competitive service. Reclassification Order at 98—100.

Specifically, we decided to temporarily waive the following Subchapter E regulations for the Verizon ILECs pertaining to grounds for suspension of service and certain notice procedures:

Section 64.61 (Authorized suspension of service);

Section 64.63 (Unauthorized suspension of service), except for subsection (10) relating to medical certificates;

Section 64.72 (Suspension notice information);

Section 64.73 (Notice when dispute pending);

Section 64.74 (Procedures upon customer contact before suspension); and

Section 64.81 (Limited notice upon noncompliance with report or order).

However, we denied the Verizon ILECs' temporary waiver request for the following Subchapter E regulations, which we acknowledged remained relevant and should continue to apply in a competitive environment:

Section 64.62 (Days suspension or termination of service is prohibited);

Section 64.63(10) (Unauthorized suspension of service) relating to medical certificates;

Section 64.71 (General notice provisions);

Section 64.75 (Exception for suspension based on occurrences harmful to person or property);

Section 64.101 (General provision);

Section 64.102 (Postponement of suspension pending receipt of certificate);

Section 64.103 (Medical certification);

Section 64.104 (Length of postponement);

Section 64.105 (Restoration of service);

Section 64.106 (Duty of customer to pay bills);

Section 64.107 (Suspension upon expiration of medical certification);

Section 64.108 (Right of LEC to petition the Commission);

Section 64.109 (Suspension prior to expiration of medical certification); and

Section 64.111 (Third-party notification).

The OCA agrees with the Subchapter E regulations the Commission preserved in the Reclassification Order for competitive wire centers. However, the OCA does not agree with the Commission's temporary waiver of a number of other regulations. The OCA sees these regulations as interrelated and as standards and mutual obligations of the LEC and its customers to assist these customers in staying connected to the network. OCA Comments at 38-39. The RLECs oppose these regulations as costly and time-consuming. RLEC Comments at 24. We shall address these waivers or rescissions of regulations that are opposed by the OCA.

As part of their obligation to provide reasonable service, we continue to retain for all geographic areas LECs' compliance with Section 64.62 regarding the days that services cannot be suspended or terminated and the written notice requirement prior to suspending service under Section 64.71. Without any data evidencing decreased customer reliance on these emergency-related provisions or to support a determination that the alleged utility burden is greater than the consumer benefit, we are reluctant to waive them. Accordingly, we shall retain the Subchapter E emergency provisions at Sections 64.101–64.111, given the potential impacts of suspension of service on customers with serious medical conditions, throughout all geographic areas.

1. *52 Pa. Code § 64.61 (Authorized suspension of service)*

The Commission temporarily waived this regulation for the Verizon ILECs in the context of the Reclassification Order as no longer relevant in a competitive market as these terms of service for grounds for suspension and termination are addressed in the Verizon ILECs' Product Guide at Section 1, Original Sheets 4 and 4.1, while termination is covered in Section 29. Reclassification Order at 99. Section 64.61 states eight separate grounds for authorized suspension of service. OCA submits that the regulatory paragraphs provide simple guidance as to when a suspension of service to a dwelling may be allowed on payment-related grounds.⁶⁰

OCA also brings to our attention that the Verizon ILECs have utilized Section 64.61(3) in the context of network transitions from conventional copper-based connections to fiber optic ones for residential customers. OCA indicates that Section 64.61(3) permits a LEC to suspend residential service upon "[u]nreasonable refusal to permit access to service connections, equipment and other property of the LEC for maintenance or repair," and references the *Altman* case.⁶¹ In the *Fox* copper to fiber transition case the presiding Administrative Law Judge determined that Mr. Fox's refusal to provide Verizon PA with access to his dwelling was unreasonable and put Mr. Fox at risk of suspension of service, and that Verizon must meet the notice requirements of Section 64.71 and 64.72 before proceeding with a service suspension.⁶²

OCA points out that the Commission's denial of Mr. Fox's complaint noted that "[w]hen migrating telephone service from a copper to fiber-based service, Verizon also must comply with the relevant customer notice requirements regarding suspension/termination of service in Chapter 64 of the Commission's regulations."⁶³ OCA recommends that "the Commission should not, through this rulemaking, diminish or dismantle such important, inter-related Chapter 64 provisions that relate to suspension of service and timely notice of how the customer may cure the potential suspension," and that the copper to fiber transition of network connections should be accomplished in a manner that does not confuse consumers or result in the avoidable suspension of vital residential basic local exchange services.⁶⁴ OCA supports the retention of the Section 64.61 regulation for both competitive and non-competitive areas.⁶⁵

OCA presents persuasive arguments, and, aside from our rejection of a two-tiered regulatory approach generally, we are not convinced that the authorized suspension of residential services, including basic local exchange services, should be governed by potentially different standards. In addition, to the extent that authorized suspension procedures provide standardized guidance for the operations of telecommunications utilities, such guidance should be applied uniformly in all geographic areas particularly in matters such as the continuing transition of network connections from copper-based to fiber optic facilities thus avoiding the suspension or even the loss of

⁶⁰ OCA Comments at 39.

⁶¹ OCA Comments at 39-40, citing *Neil and Gilda Altman v. Verizon Pennsylvania LLC*, Docket No. C-2015-2515583, (Order entered November 18, 2016) (*Altman*). OCA indicates that Verizon cited Section 64.61(3) as support for the possible suspension of service, but the presiding Administrative Law Judge found Section 64.61(3) inapplicable on the particular facts. OCA Comments at 40, citing the *Altman* Initial Decision at 14-15.

⁶² OCA Comments at 40-41, citing to *Irwin Fox v. Verizon Pennsylvania LLC*, Docket No. C-2016-2576094, (Order entered July 18, 2018) (*Fox*).

⁶³ OCA Comments at 40-41, citing to *Fox* at 9.

⁶⁴ OCA Comments at 41, citing *Altman* at 4, Ordering Paragraph 5. OCA also notes that the FCC has eliminated the requirement of a "direct notice to retail customers" in copper retirement network transitions. *Id.* at 41, n.79 at 41.

⁶⁵ OCA Comments at 39.

vital basic local exchange services. Thus, we propose to retain Section 64.61 for all geographic areas.

2. *52 Pa. Code § 64.62 (Days suspension or termination of service is prohibited)*

We denied Verizon's waiver request for Section 64.62 on the basis that identifying the dates service cannot be suspended or terminated is relevant and should apply in a competitive market. Reclassification Order at 99. Rather than a Product Guide determining these dates, we continue to conclude that these dates should be controlled by regulation indicating the importance of controlling these dates. Accordingly, the regulation will be retained and apply in all geographic areas.

3. *52 Pa. Code § 64.63 (Unauthorized suspension of service)*

This regulation identifies the reasons where "basic service may not be suspended, and a suspension notice may not be sent[.]" This regulation, except for subsection (10) addressing medical certifications, has been temporarily waived for the Verizon ILECs in our Reclassification Order. OCA notes that the regulation protects against unauthorized suspension of service for nonpayment of other telephone services or use of suspension to collect unpaid charges, from four or more years earlier. Also, OCA cites subsection (7) stating that basic local service is protected from suspension, based upon nonpayment by a third party unless a court order or administrative agency establishes the customer is legally obligated to pay the outstanding balance. OCA Comments at 41-42.

OCA argues that that the preservation of Section 64.63(1) through (9) provides consumer protections by preventing LECs from using suspension of residential basic exchange services as a means to collect payments owed for other services, owed by other parties, or outstanding amounts that may have already been written off. OCA recommends that the Commission preserve the regulation arguing that the regulation provides important consumer protections that should apply in all areas, competitive or noncompetitive. OCA Comments at 42.

We agree with OCA's position. In addition to our rejection of a two-tiered regulatory approach, we do not believe processes and procedures governing unauthorized suspensions for residential services, including basic local exchange services, should be governed by different standards when and where the same services are provided in competitive and non-competitive wire centers by the same telecommunications utility. Furthermore, it is unclear how potentially differing standards for dealing with unauthorized suspensions would operate with respect to select residential customer groups in the competitive and non-competitive wire centers of the same utility, e.g., low-income consumers and households that are eligible for Lifeline services. For these reasons, we conclude that the uniformity of treatment of unauthorized suspensions is a better resolution, and we propose to retain the Section 64.63 regulation for all geographic areas.

4. *52 Pa. Code § 64.71 (General notice provisions)*

In the Reclassification Order, the Commission retained Section 64.71 containing the notice requirements prior to suspension of service. The Commission considered the regulation relevant for application in a competitive environment. Reclassification Order at 99; ANOPR Order at 19, 25.

The OCA agrees, recommending that the 7-day written notice prior to the suspension be continued to apply to both competitive and noncompetitive areas. OCA Com-

ments at 43. However, the OCA noted the clarification in the ANOPR that in fact only the first sentence of Section 64.71 would be retained⁶⁶ because of the exception to the 7-day notice provision where there is a "[f]ailure to comply with the material terms of a payment agreement for toll or non-basic service, or both." In these cases, the LEC shall comply with § 64.81 (relating to limited notice upon noncompliance with report or order). As indicated in the regulation, if there is a failure to comply with the material terms of a payment agreement, the LEC shall comply with Section 64.81 which provides for a limited notice. However, in the Reclassification Order, we waived Section 64.81 as no longer necessary in a competitive market as the grounds for suspension and termination of service are addressed in the Verizon ILECs' Product Guide, Section 1, Original Sheets 4 and 4.1 and Section 29.

For reasons previously stated, we conclude that the uniformity of treatment of unauthorized suspensions is a better resolution, and we propose to retain Sections 64.71 and 64.81 as they presently exist for all geographic areas.

5. *52 Pa. Code § 64.72 (Suspension notice information)*

OCA recommends that the Commission retain Section 64.72 so that it is applicable to all residential local service customers, whether in competitive or noncompetitive wire centers. OCA Comments at 43. The regulation requires specific information that must be included on the suspension notice including a medical emergency notice. OCA asserts that the Commission waived Section 64.72 including the subsection (6) requirement that a suspension notice shall include, where applicable, a "medical emergency notice" based upon the Subchapter E, Appendix A "Medical Emergency Notice" form. OCA Comments at 43. OCA believes the waiver diminishes protection for all Verizon residential local exchange customers because customers need clear notice of the steps to take to prevent suspension of service (including those who may not comply with an initial Verizon notice of network connection transition from copper-based facilities to fiber optic ones), and since Section 64.72 may be permanently waived, customers may not receive notice of the medical certificate process. OCA Comments at 43-44.

The Commission temporarily waived this regulation for the Verizon ILECs finding that the provision is no longer necessary in a competitive market. Reclassification Order at 99. We temporarily waived the regulation with the understanding, as we stated previously, the grounds for suspension and termination of service are addressed in the Verizon ILECs' Product Guide. However, for the reasons stated above, we agree that the OCA arguments hold merit and do not find a compelling reason why suspension notice information for the same residential services should be subject to different standards. Adequate suspension notices that comply with the Section 64.72 standard preserve consumer protections and can timely prevent curtailment of services to residential consumers including essential basic local exchange services. This can be of particular benefit to select residential consumer groups including eligible low-income consumers and households that obtain Lifeline services in both competitive and noncompetitive wire centers, and it is consistent with the preservation of universal service principles under Pennsylvania and Federal law. Consequently, we propose to retain the Section 64.72 in all geographic areas.

⁶⁶ OCA Comments at 43, citing ANOPR Order at 25, n.19.

6. *52 Pa. Code § 64.73 (Notice when dispute pending)*

This Section under subsections (a) and (b) essentially determines that a LEC cannot mail or deliver a notice of suspension if a notice of dispute has been filed and the failure to comply with this requirement shall render the suspension notice “void,” respectively. Although this Section was temporarily waived for the Verizon ILECs, Reclassification Order at 99, OCA believes that the waiver of this regulation and of other Subchapter E provisions reduces the power of the Section 64.71 protection of the notice provision which was retained for both competitive and noncompetitive wire centers.

According to the OCA, the retention of Section 64.73 will avoid confusion. Further, because the Section 64.61(3) grounds for suspension were temporarily removed, Verizon could come up with its own standards for suspension on any grounds. Even though the Commission is not removing the Subchapter G (Disputes; Informal and Formal Complaints) regulations, if a customer had a pending dispute, the written notice protections of Section 64.73 would not apply. OCA Comments at 45. The OCA believes that with Section 64.73 rescinded in a competitive wire center, a Verizon ILEC can still issue a suspension notice where a dispute or informal complaint is pending. *Id.*

We first note that for reasons previously stated, in this NOPR we reject a bifurcated regulatory structure and thus propose the permanent retention of Section 64.61 for all geographic areas. Also, for the same reasons recounted previously, we find that the OCA arguments are persuasive, and we are reluctant to adopt different standards for notices when disputes are pending between essentially the same residential services, including basic local exchange services. However, we determine that the Section 64.73 regulation needs to be simplified. Therefore, we propose the following: (1) the retention of Section 64.73(a) and (b), including their uniform applicability in all geographic areas; and (2) the elimination of the part “except where toll usage exceeds the following usage in a billing period after the filing of the notice of dispute or informal complaint.”; and, subsections (1) and (2) of Section 64.73(a).

7. *52 Pa. Code § 64.74 (Procedures upon customer contact before suspension)*

The OCA believes that the basic concept in this regulation should be preserved. OCA Comments at 46. The regulation addresses the information that must be provided to a customer who has been issued a suspension notice but before suspension of service has taken place. The regulation addresses payment agreements and the consequences if the customer breaches the agreement. OCA supports retention of the regulation to help the customer take the steps to avoid termination of service. OCA acknowledges the need for updating the provisions that focus on toll and IXC services but still recommends preserving the basic concept.

We agree with OCA that these procedures are of material help to consumers and can substantially contribute to the avoidance of undesirable service suspensions and even terminations, as well as in a consequent reduction of informal and formal complaints that reach this Commission for adjudication and resolution. They are equally applicable to residential services, including basic local exchange services, that are provided in both competitive and noncompetitive wire centers of the same telecommunications utility. They are of particular benefit to low-income consumers and households that are eligible

and receive Lifeline services in both competitive and noncompetitive wire centers. In these respects, the Section 64.74 specified procedures contribute to the preservation of universal service within Pennsylvania. We also agree that the regulation should be changed with respect to its references to interexchange carrier (IXC) services and billings. Therefore, we propose the retention of Section 64.74 and its uniform applicability in all geographic areas. We also propose to amend Section 64.74 to eliminate the term “other than IXC toll charges” in subsection 64.74(a)(3) and to eliminate subsection 64.74(a)(5).

8. *52 Pa. Code § 64.75 (Exceptions for suspension based on occurrences harmful to person or property)*

This regulation was retained and does not appear to be opposed. ANOPR Order at 18, 25, 48 Pa.B. 4795, 4798. Based on the exigent circumstances that this regulation addresses we determine it more appropriate to address with regulatory action. Therefore, the regulation shall be retained and uniformly apply in all geographic areas.

9. *52 Pa. Code § 64.81 (Limited notice upon noncompliance with report or order)*

This regulation was temporarily waived in the Reclassification Order for the Verizon ILECs and addresses the circumstances where a customer does not comply with a dispute, informal or formal complaint resolution, and the original grounds for suspension are then revived, and the LEC can suspend subject to a 24-hour advanced notice by telephone. Reclassification Order at 99; ANOPR Order at 18, 25. The OCA reserved comment. Therefore, consistent with our discussions above, we propose that Section 64.81 be retained in its entirety and apply in all geographic areas.

10. *52 Pa. Code §§ 64.101—64.109 (Emergency provisions) and § 64.111 (Third Party Notification)*

These regulations were retained in both competitive and noncompetitive wire centers in our Reclassification Order. No arguments have been presented to convince us that customers do not rely on these important provisions. Therefore, these regulations will remain without amendment.

G. *Subchapter F 52 Pa. Code §§ 64.121—64.123 (Termination of Service)*

The Commission temporarily waived all of the Subchapter F provisions for the Verizon ILECs concluding that these provisions were no longer necessary in a competitive market and noting that the Verizon ILECs’ grounds for suspension and termination are covered in their Product Guides. Reclassification Order at 99; ANOPR Order at 19-20. We shall address the OCA’s opposition to the permanent waiver of these Subchapter F regulations in order.

1. *52 Pa. Code § 64.121 (Authorized termination of service), § 64.122 (Unauthorized termination of service when dispute pending), and § 64.123 (Termination notice)*

The OCA contends Sections 64.121 and 64.122 mirror Sections 64.61 and 64.63 and recommends that the 10-day wait between suspension of service and termination should be preserved in both competitive and noncompetitive service areas. The OCA notes that the Commission retained Section 64.62 identifying the days when suspension and termination of services are prohibited. OCA Comments at 47-48. Also, the OCA contends that the waiver of Section 64.122 presents the same concern as raised with respect to Section 64.73, the prohibiting of sending a suspension notice when a dispute is pending.

Finally, the OCA notes that waiver of Section 64.123 raises concern that certain termination notice protections will not be provided to the customer. The OCA recommends that the Commission retain these timing and notice protections for both competitive and non-competitive areas. *Id.* at 48.

The OCA's arguments hold merit. We agree that Sections 64.121 and 64.122 mirror our corresponding regulations regarding suspension of service in Sections 64.61 and 64.63. We find that the same reasons that we have explained earlier in permanently retaining Section 64.61 and 64.63 are equally applicable here without undue repetition. Similarly, a potential and permanent waiver of Section 64.123 would remove consumer protections that are inherent in the specifications of the relevant termination notice, including the timely availability of the medical certificate form.

As also previously noted, we also see the need to maintain a certain degree of uniformity of our suspension and termination regulations that are applicable to residential service and in all geographic areas. This uniformity and associated standards are also much easier to incorporate into the billing and operational support systems of telecommunications utilities. For example, we note that although our 2015 Final Implementation Order allowed for a "one-tier" notification process that would have permitted the Verizon ILECs to send only one notice before terminating service in its competitive wire centers, the Verizon ILECs never implemented this process. Verizon acknowledges that it "did not adopt this option because it was too difficult from a systems perspective and too potentially confusing to customers and employees to have very different suspension and termination requirements in certain geographic areas."⁶⁷

For these reasons, we propose the retention of our regulations at Sections 64.121, 64.122, and 64.123, and their uniform applicability in all geographic areas.

H. Subchapter G (Disputes; Informal and Formal Complaints)

We did not grant a waiver of Subchapter G in the Reclassification Order for the Verizon ILECs since a customer has a legal right to file an informal or a formal service complaint with the Commission, and we wanted to ensure and control the complaint process. See 66 Pa.C.S. §§ 308(b)(1) and 701; ANOPR Order at 20, n.16, citing 66 Pa.C.S. §§ 308(b)(1), 701; Reclassification Order at 100-01. However, we did streamline the process by making the "warm transfer" available for all Verizon ILEC retail customers in competitive wire centers who submit an informal complaint to our BCS about service and also adding billing-related complaints against the Verizon ILECs. Under this process, customers filing an informal complaint would be given the option to be transferred to Verizon to resolve the customer's complaint thereby eliminating the need for the customer to file an informal complaint. Reclassification Order at 100-01.

In response, OCA submits that even though Subchapter G provisions are preserved in the Verizon ILECs competitive wire centers, the waiver of other Chapter 64 provisions in this rulemaking may overall diminish the scope of protections provided by these regulations. OCA Comments at 49. The RLECs argue that since this three-phase procedural process is complicated and tedious, the Commission should adopt a streamlined, consumer-friendly dispute resolution process which encourages the

LEC and retail customer to directly resolve disputes and issues between parties before the Commission takes action and spends time and resources. RLEC Comments at 26. The RLECs propose a process that requires the customer to reach out to the company first to resolve a dispute, eliminates the informal complaint process, and requires mandatory mediation before a formal complaint can be filed. *Id.* at 27.

We agree with the OCA that we should preserve the full scope and protections provided to residential local service customers, whether in competitive or non-competitive areas. While Verizon's Product Guide may adequately address the waived Chapter 64 provisions such that the preserved provisions will not be adversely affected or be diminished by the rescinded provisions, even if the provisions of Subchapter G apply to Verizon's competitive wire centers, the waiver of other Chapter 64 provision may diminish the scope of protections. Moreover, to the RLECs' point, we did streamline the process by making the "warm transfer" available and noting that a customer has a legal right to file an informal complaint. See 66 Pa.C.S. § 308(b)(1).

In consideration of our determination that we should have uniform standards across all geographic areas on matters affecting customer service suspension or termination, we propose to retain Subchapter G will throughout all geographic areas. We also propose amendments to relevant regulations that will address the availability of a "warm transfer" process for the residential customers of all telecommunications utilities.

1. 52 Pa. Code §§ 64.151—64.154 (Informal complaint procedures)

Consistent with our prior proposals to amend Section 63.15 (Complaint procedures), we propose to add new language to provide all telecommunications public utilities, most particularly our ILECs, the option to participate in a "warm transfer" or similar program for service and/or billing, related disputes made to the Commission's BCS. The parameters of the proposed "warm transfer" or similar program have already been recounted in our proposed amendments of Section 63.15, they will not be repeated here, but are detailed in Annex A to this NOPR Order.

I. Subchapter H (Restoration of Service)

52 Pa. Code §§ 64.181—64.182

1. 52 Pa. Code § 64.181 (Restoration of service after suspension) and § 64.182 (Restoration of service after termination)

The Commission temporarily waived all of Subchapter H as to the Verizon ILECs provision of residential service in competitive wire centers. Reclassification Order at 99, 144. The OCA is concerned that the waiver of Section 64.181 requiring suspended service reconnected "by the end of the first full working day," will remove "a certain, measurable standard" for reconnecting service. OCA Comments at 49. However, the OCA supports rescission of Section 64.182 which allows a customer who has been terminated to reapply as a new applicant. We agree that the regulation in Section 64.182 is unnecessary and propose to rescind it.

The OCA seeks preservation of Section 64.181 to compliment other Chapter 64 regulations that address notice on suspension of service. We agree that the OCA arguments hold merit and are consistent with our previous proposals to permanently retain the applicability of certain service suspension and termination regulations for

⁶⁷ Verizon Reply Comments at 13-14, citing Final Implementation Order at 34-35. See also OCA Comments at 7, 55; CAUSE-PA Comments at 3-4.

both competitive and noncompetitive wire centers. Therefore, we propose the following: (1) the retention of Section 64.181 for all geographic areas; (2) the amendment of Section 64.181 to include reference to “product guides or other similar documents” in addition to a LEC’s lawful tariff to the extent those terms are applicable to the particular service.

The OCA supports rescission of Section 64.182, which allows a customer who has been terminated to reapply as a new applicant. Finding the regulation in Section 64.182 unnecessary and its rescission unopposed, we propose to rescind it.

J. Subchapter I (Public Information; Record Maintenance)

1. 52 Pa. Code § 64.191 (Public Information)

In Subchapter I, we temporarily waived Section 64.191(f) and (g) for the Verizon ILECs as no longer necessary in a competitive environment. However, we concluded that Section 64.191(a)—(d) provide necessary regulatory provisions governing applications for service and disclosure of information about available services to potential customers. Also, as we noted in the Reclassification Order, this regulation addresses the requirements of fair marketing that is also required of electric generation suppliers and natural gas suppliers. Reclassification Order at 102; see also, e.g., 52 Pa. Code §§ 54.43(1) and 62.114(1).

Section 64.191(e) which addresses toll presubscription was previously waived because of the competitive market forces. Joint Petition of Verizon Pennsylvania, Inc. and Verizon North, Inc. for a Waiver of the Commission’s Order Dated May 9, 1997, et al., Docket Nos. I-00940034 and P-00072348 (Tentative Order entered September 24, 2008, made Final Order effective October 6, 2008, by Secretarial Letter dated January 22, 2009) (May 9, 1997 Implementation Order). Since many customers receive bundled services, we found this no longer relevant or necessary in both competitive and noncompetitive markets.

The OCA describes Section 64.191 as a regulation setting forth information to be provided by a LEC service representative to an applicant such as price lists, service options, and other information covered in the application process. OCA Comments at 50. The RLECs object to the “minority” voice providers in Pennsylvania having to continue with these perceived outdated regulations.

Although the OCA acknowledges that Section 64.191 needs to be updated to reflect new technology, the OCA argues that the regulation requires that a LEC provide certain useful information. For example, subsection (f) requires the LEC to send a confirmation letter to the applicant with information about the service they ordered and subsection (g) requires that the LEC mail the applicant a summary of rights and responsibilities under Chapter 64. The OCA believes that the letter with the required information is more important in a competitive market as a customer chooses between detariffed basic and bundled service offerings. The OCA also sees the need for a summary of rights where there is a mix of information based upon Chapter 64 regulations and a LEC’s Product Guide. OCA Comments at 51.

In light of our rejection of a two-tiered regulatory structure and our prior proposals retaining regulations that provide necessary information to customers, we propose the permanent retention of Section 64.191(a)—64.191(d) and 64.191(f)-(g) for all geographic areas. However, we also propose to amend subsection (g) to require

this information be made only to new customers and thereafter only upon request. Ensuring that both parties to a new service know their rights and responsibilities affords protection to both the customer and the provider. However, in our continual effort to balance burdens on providers with protections for customers, narrowing the provision of this information to new customers only should reduce our providers’ burdens while still protecting all parties to the transaction.

With regard to Section 64.191(e) that requires “explanations of toll presubscription,” in addition to the temporary waivers that had been previously granted to the CenturyLink and Verizon ILECs, in our RLEC Directory and Toll Presubscription Order we granted the RLEC Petition for a temporary waiver of 52 Pa. Code Section 64.191(e) subject to the same conditions, terms, limitations, and requirements attached to prior Commission waivers granted for this regulation.⁶⁸

Therefore, finding this regulation to be no longer relevant, we propose its permanent rescission.

2. 52 Pa. Code § 64.192 (Record Maintenance)

This regulation was temporarily waived in the Reclassification Order proceeding and no longer obligated the Verizon ILECs to preserve all written and recorded disputes and complaints for four years. OCA Comments at 51; ANOPR Order at 21. OCA believes that the obligation to keep dispute and complaint records and information should apply in all wire centers. In particular, the OCA maintains that because of “warm transfers” the disputes and complaints regarding the copper to fiber network transition process should be part of the records maintained by not just Verizon but all LECs in competitive service areas. In addition, the OCA submits that the residential consumer disputes and informal complaints filed against Verizon regarding the copper to fiber network transition process should be part of the records maintained by Verizon pursuant to Section 64.192. OCA Comments at 52.

We agree with the OCA position and we determine that such record retention can and does assist when various disputes arise as well as in the resolution of informal and formal complaints. Since such record generation, retention and storage are being performed through electronic means in the ordinary course of business of telecommunications utilities by their respective billing and operational support systems, we do not see that the requirement to maintain such records uniformly for residential services provided in both competitive and noncompetitive wire centers constitutes an administrative burden. For these reasons, we propose to retain Section 64.192 for all geographic areas.

K. Subchapter J 52 Pa. Code §§ 64.201-64.202 (Annual Reporting Requirements)

1. 52 Pa. Code § 64.201 (Reporting Requirements)

The Commission retained the Section 64.201(a) annual reporting requirement that imposes on each LEC with residential accounts the obligation to file a report providing information that is set forth in Section 64.201(b).⁶⁹ We determined that parts of this regulation requiring the reporting of certain information related to basic local exchange service remain relevant and should continue to apply in competitive wire centers. Thus Verizon was to comply with Section 64.201(a) and the following Section 64.201(b) provisions: (b)(2)(i), (b)(4)(i), (b)(5), (b)(6), (b)(7),

⁶⁸ RLEC Directory and Toll Presubscription Order at 10-11.

⁶⁹ See Final Implementation Order at 32.

(b)(8)(i), (b)(9)(i), and (b)(10)(i). All other remaining Section 64.201(b) provisions were temporarily waived for competitive wire centers. Reclassification Order at 102.

The OCA supports the retention of the Section 64.201(a) obligation that each LEC file an annual report with information about the number of residential accounts, average residential bill per month, average residential overdue customer bill per month, and other covered information. Moreover, if a LEC offers residential local service in some of the competitive areas then the OCA supports reporting Section 64.201 information split between competitive and noncompetitive areas. OCA Comments at 53.

We agree that these reporting requirements for residential account information that covers non-basic and toll service data is no longer necessary in any area. Accordingly, we propose to rescind (b)(2)(ii), (iii), and (iv); (b)(4)(ii), (iii), and (iv); (b)(8)(ii), (iii), and (iv); (b)(9)(ii), (iii), and (iv); (b)(10)(ii), (iii), and (iv); and (b)(11). We propose to retain the remaining reporting requirements in Section 64.201, including the previously temporarily waived subsections (b)(1) and (3) for all geographic areas. The retention of these reporting provisions will continue to provide useful information regarding the status and assist our understanding of changes in the residential telecommunications services market.

2. 52 Pa. Code § 64.202 (Petition for waiver)

The Commission retained Section 64.202 which provided the basis for the Commission's authority to grant Verizon the temporary waivers of specific Chapter 63 and 64 regulations.⁷⁰ Moreover, since we have retained some Chapter 64 regulations, Section 64.202 remains relevant.⁷¹ Thus, we propose to retain this regulation in all geographic areas.

L. Subchapter K (General Provisions)

52 Pa. Code §§ 64.211—64.213

1. 52 Pa. Code § 64.211 (Availability of normal Commission procedures)

According to Section 64.211, “[n]othing in this chapter shall be deemed to prevent a customer of a LEC from pursuing other Commission procedures in a case not described in this chapter.” We temporarily waived Section 64.211 in the Verizon ILECs’ competitive wire centers.⁷² The OCA submits that the Commission should retain this provision and give residential local service customers, whether in competitive or noncompetitive wire centers, the ability to pursue other Commission procedures to obtain some relief or remedy which is beyond the protections and procedures described in Chapter 64. OCA Comments at 54. We do not consider the general provision necessary in any geographic areas since not having the regulation does not prevent a customer from pursuing other procedures prescribed by law. Thus, we propose to rescind this regulation.

2. 52 Pa. Code § 64.212 (Applications for modification or exception) and § 64.213 (Repealers)

We retained Sections 64.212 and 64.213 “because certain Chapter 64 provisions are retained. . .Section 64.212,

governing waiver requests, and Section 64.213, governing the effect of tariff provisions that are inconsistent, potentially remained useful.”⁷³ We propose to retain these regulations as they currently exist.

Conclusion

We welcome this comprehensive review of our telecommunications regulations. Our review reexamines the regulatory obligations on our regulated utilities through today’s lens while maintaining sufficient regulatory means to continue to ensure the provision of uninterrupted, modern, and safe service. We can remove unnecessary regulation, continue to ensure adequate, efficient, safe, and reasonable service and facilities, and provide for the accommodation, convenience and safety of utility patrons, employees, and the public in a reasonably continuous fashion. In other words, we can improve our regulatory construct while continuing to exercise our jurisdiction responsibly.

We invite interested parties to file comments and reply comments on this proposal to update the Commission’s regulations in Chapters 53, 63, and 64. We request that if an interested party suggests any amendments or revisions to the proposed regulations set forth in the Annex that they supplement their proposal with relevant and detailed supporting documentation, including, but not limited to cost information, market analysis studies or performance metrics etc., when necessary in order to support their amendments. Accordingly, under Sections 501, 504, 505, 506, 1501, 1504, 1507, 1508, 1509, and 3011—3019 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1501, 1504, 1507, 1508, 1509, and 3011—3019; Section 201 of the act of July 31, 1968 (P.L. 769, No. 240), known as the Commonwealth Documents Law (45 P.S. § 1201), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; Section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732 204(b)); Section 5 of the Regulatory Review Act (71 P.S. § 745.5); and Section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, the Commission proposes to amend its regulations at 52 Pa. Code §§ 53.57—53.60 and 52 Pa. Code Chapters 63 & 64, as set forth in Annex A; *Therefore*,

It Is Ordered:

1. That the proposed rulemaking at the above-captioned docket will consider the regulations set forth in Annex A.

2. That the Law Bureau shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.

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

4. That the Law Bureau shall deposit Order and Annex A with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That interested parties may submit written comments referencing Docket No. L-2018-3001391 within 45 days of publication in the *Pennsylvania Bulletin*, and

⁷⁰ Reclassification Order at 76, fn. 63.

⁷¹ AONPR at 21; Reclassification Order at 103.

⁷² Reclassification Order at 22.

⁷³ *Id.*

reply comments 30 days thereafter, to the Pennsylvania Public Utility Commission, Attn: Secretary, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120. Comments may also be filed electronically through the Commission's eFiling System. Filing instructions may be found on the Commission's website at: http://www.puc.pa.gov/filing_resources.aspx.

6. The contact person for this matter are David E. Screven, Deputy Chief Counsel, Law Bureau, dscreven@pa.gov. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Heather Probst, Law Bureau, (717) 783-2810, heprobst@pa.gov.

7. That the Secretary's Bureau will serve copy of this Order and Annex A upon the Pennsylvania Telephone Association, all the participating parties in the Advanced Notice of Proposed Rulemaking, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement.

8. That a copy of this Order will be published on the Commission's website at <http://www.puc.pa.gov>.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-331. No fiscal impact; (8) recommends adoption.

ORDER ADOPTED: August 27, 2020

ORDER ENTERED: September 21, 2020

Statement of Chairperson Gladys Brown Dutrieuille

While I support revising our regulations today, there are additional questions on which I would like more input, including proposed language, as we move forward.

Over 90% of the last mile connections serving consumers are provided by two industries: the cable and telephone companies.⁷⁴ The Federal law requiring the states to promote local competition using resale, unbundled network elements (UNEs), and standalone networks has been significantly altered by the Federal Communications Commission (FCC). The application of resale and UNE requirements have largely disappeared, not only from fiber networks, but also from copper networks.⁷⁵ Resale and UNEs provided access to competitors on the incumbents' networks so that competitors could compete. These changes also resulted in private contracts replacing the transparent Commission-approved interconnection agreements along with the competitors' right to opt-in to those agreements. Many entities that appear to be competitors are often incumbent affiliates.⁷⁶

First, to ensure that Pennsylvania continues to have a safe, adequate, and reliable network under Sections 1501

⁷⁴ See e.g., In re: IP-Enabled Services, Docket No. 04-36, Comments of Covad (5/29/4); Comments of MCI (5/29/4).

⁷⁵ See e.g., Report and Order on Remand and Memorandum Opinion and Order in WC Docket Nos. 18-141, et al. (UNE [Unbundled Network Elements] Transport Forbearance Order) released on July 12, 2019 and Order FCC 1972, Memorandum Opinion and Order in WC Docket 18-141 (UNE Loop and Resale Forbearance Order) released on August 2, 2019, (together, UNE/Resale Forbearance Orders).

⁷⁶ See e.g., Joint Application of Windstream Holdings, Inc.; Windstream Services, LLC; Windstream Pennsylvania LLC; Windstream Buffalo Valley, Inc.; Windstream Conestoga, Inc.; Windstream D&E Inc.; Windstream Communications, Inc.; Windstream D&E Systems, Inc.; Windstream KDL, Inc.; Intellifiber Networks Inc.; US LEC of Pennsylvania, LLC; Talk America, LLC; PAETEC Communications, Inc.; Choice One Communications of Pennsylvania, Inc. d/b/a EarthLink Business; Cavalier Telephone Mid-Atlantic, LLC; CTC Communications Corp. d/b/a EarthLink Business; MassComm LLC; Lightship Telecom d/b/a EarthLink Business, LLC; Eureka Telecom, Inc. Earthlink Business, LLC; ATX Licensing, Inc.; Broadview NP Acquisition Corp.; Broadview Networks, Inc.; BridgeCom International, Inc.; Business Telecom LLC d/b/a EarthLink Business III; American Telephone Company, LLC; A.R.C. Networks, Inc.; Windstream Norlight, Inc.; Windstream NTI, Inc.; McLeodUSA Telecommunications Services, LLC; LDMI Telecommunications Services, LLC; and DeltaCom, LLC for Approval of a General Rule Indirect Transfer of Control, Docket No. A-2020-3020132 (August 25, 2020)

of the Code, should Commission-approved reliability standards addressing the inspection, testing, surveillance, and interference minimization on the providers' networks, down to the consumer's Network Interface Device (NID) be developed?

Second, to promote reasonable and adequate service, should there be a specific response time for documenting and showing the resolution of problems with service installations, trouble reports, interference, and service outage except where the consumer agrees otherwise? What should those times be? How should consumer consent to a different time be recorded?

Third, should the regulations on installation, interference, trouble reports, and service outages contain a remedy for failure to perform? For example, an automatic reduction by a fixed percentage of the consumer's bill, for times when the service provider fails to meet the required or agreed upon response time? If so, what is a reasonable remedy?

Fourth, should there be a threshold for installations, interference, trouble reports, and service outages which requires not only notification but also a report demonstrating the problem's source and resolution? Should any issue or report provided to the FCC automatically be reported to the Commission?

Fifth, the proposed regulations understandably eliminate some subchapters in their entirety and propose to rely on Commission consumer education instead. Should a small portion of the chapter be retained that explains the matter to the consumer and should there be a provision educating the consumer about their right to contact the Commission or file an informal or formal complaint?

Sixth, the revision proposes to end any regulation of Automatic Dialing Devices, an earlier form of robocalls. Federal law and state efforts continue to try to eradicate robocalls. Should the Commission revise this subchapter to address robocalls? If so, how?

Seventh, the revisions in Section 63.59 address operator-assisted calls but there is no specific time-period in which a consumer can reach a live customer service representative. Should there be a specific time period, and if so, what should it be? Should there be a remedy for noncompliance?

Eighth, should the Section 63.63 provisions governing transmissions on traditional and fiber networks use the definition for incumbent local exchange carrier or competitive telecommunications carrier, as proposed in Section 53.57 and not an undefined term like jurisdictional telecommunications public utility? Should the scope of Section 63.63 include traditional or fiber connection both fully and partially deployed given the patchwork quilt of Pennsylvania's networks?

Finally, while traditional metering addressed "local" and "long distance" calling for billing and is no longer as relevant due to bundled service, should Section 63.64 be revised to encompass the ongoing metering measurements that network owners are doing to monitor and manage their network traffic? How should the Commission be informed about network monitoring, challenges, and their resolutions—particularly given the "bursty" nature of internet protocol transmission?

GLADYS BROWN DUTRIEUILLE,
Chairperson

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 53. TARIFFS FOR
NONCOMMON CARRIERSTARIFF FILING REQUIREMENTS FOR
[INCUMBENT LOCAL EXCHANGE CARRIERS]
[A LOCAL EXCHANGE TELECOMMUNICATION
COMPANY AND A COMPETITIVE
[LOCAL EXCHANGE CARRIERS]
TELECOMMUNICATIONS CARRIER]

§ 53.57. Definitions.

The following words and terms, when used in this section and §§ 53.58—53.60, have the following meanings, unless the context clearly indicates otherwise:

[CLEC—Competitive local exchange carrier—A telecommunications company that has been certified by the Commission as a CLEC under the Commission's procedures implementing the Telecommunications Act of 1996, the act of February 8, 1996 (Pub.L. No. 104-104, 110 Stat. 56), or under the relevant provisions of 66 Pa.C.S. § 3009(a) (relating to additional powers and duties).]

Competitive service—A service or business activity offered by [an ILEC or CLEC] a local exchange telecommunications company or a service or business activity offered by a competitive telecommunications carrier that has been [classified as] determined or declared to be competitive by the Commission under the relevant provisions of 66 Pa.C.S. § [3005] 3016 (relating to competitive services)

Competitive telecommunications carrier—an entity that provides telecommunications services subject to the jurisdiction of the Commission and in competition with a local exchange telecommunications company.

Enterprise and large business customer—any legal entity organized by charter, agreement or other similar instrument, including corporations, partnerships, limited liability companies or other similar organizations of more than one person, including, but not limited to hospitals, schools, government agencies and correctional institutions with annual revenues that exceeds \$500,000.00 gross revenue or that employs more than 50 full-time equivalent employees and obtains telecommunications service by means of customized or individually-negotiated contractual agreements.

[ILEC—Incumbent local exchange carrier—A telecommunications company deemed to be an ILEC under section 101(a)(h) of the Telecommunications Act of 1996 (47 U.S.C.A. § 251(h)).]

Joint or bundled service packages—

(i) Service packages composed of one or more distinct categories of noncompetitive and competitive services and service options or features, inclusive of toll services, when the service packages are offered by [CLECs and ILECs] competitive telecommunications carriers and local exchange telecommunications companies

under a single rate or charge and a unified set of terms and conditions for service as defined in a tariff approved by the Commission.

(ii) The term does not include [ILEC or CLEC] local exchange telecommunications company or competitive telecommunications carrier tariff filings that involve simultaneous changes in rates and charges for noncompetitive services in a revenue neutral manner.

Lifeline plan—A tariffed service offering, approved by the Commission, which provides telecommunications services to qualified low-income end-user consumers at reduced rates and charges in accordance with applicable State or Federal law or regulations.

Local exchange telecommunications company—An incumbent carrier authorized by the Commission to provide local exchange telecommunications service. The term includes a rural telecommunications carrier defined under section 3 of the Telecommunications Act of 1996 (47 U.S.C.A. § 153(44)) and a nonrural incumbent local exchange carrier under section 101(a)(h) of the Telecommunications Act of 1996 (47 U.S.C.A. § 251(h)).

New service—A service that is not substantially the same or functionally equivalent with existing competitive or noncompetitive services.

Noncompetitive service—A [protected telephone] telecommunications service as defined in 66 Pa.C.S. § [3002] 3012 (relating to definitions) or a regulated telecommunications service or business activity that has not been determined or declared to be competitive by the Commission [as not a competitive service].

Nonprotected service—A telecommunications service as defined in 66 Pa.C.S. § 3012 or any telecommunications service provided by a local exchange telecommunications company that is not a protected service.

Promotional service offerings—A service offered by a [CLEC or ILEC] competitive telecommunications carrier or local exchange telecommunications company at rates, terms and conditions that are designed to promote usage and available for a duration of no longer than 6 months in any rolling 12-month period.

Protected service—A telecommunications service as defined in 66 Pa.C.S. § 3012 that is offered by a local exchange telecommunications company and has not been determined to be a competitive service by the Commission.

§ 53.58. Offering of competitive services.

(a) [ILEC] A local exchange telecommunications company's protected, retail noncompetitive and retail nonprotected services that have been declared or determined to be competitive under the relevant provisions of 66 Pa.C.S. § [3005] 3016 (relating to competitive services), may also be offered by [CLECs] competitive telecommunications carriers as competitive services without prior competitive determination and classification by the Commission subject to this section.

(b) Under § 53.59 (relating to cost support requirements and effective filing dates for tariff filings of noncompetitive services), a [CLEC] competitive telecommunications carrier may offer services classified as noncompetitive in [an ILEC] a local exchange tele-

communications company's service territory when the [CLEC] competitive telecommunications carrier has been certificated to offer service.

(c) [When the Commission approves a CLEC petition under the relevant provisions of 66 Pa.C.S. § 3005 for classification of a noncompetitive service to a competitive service, the ILEC serving that petitioning CLEC's service territory and other certificated CLECs within the petitioning CLEC's service territory may offer the service approved by the Commission as a competitive service subject to this section.] A local exchange telecommunications company and a competitive telecommunications carrier may declare retail nonprotected services that they offer to enterprise and large business customers throughout their service territories as competitive without first filing a petition with the Commission and making a demonstration of competitiveness.

(d) [CLECs and ILECs] Local exchange telecommunication companies and competitive telecommunications carriers offering services [determined by the Commission as competitive shall file with the Commission appropriate informational tariffs, price lists, and ministerial administrative tariff changes. These filings will become effective on 1-days' notice] declared as competitive under 66 Pa.C.S. §§ 3011—3019 (relating to alternative form of regulation of telecommunications services) will not be required to file tariffs with the Commission for these services but the carrier may be required to maintain price lists with the terms and conditions in a product guide or similar document made available on the carrier's web site.

(1) A local exchange telecommunications company and a competitive telecommunications carrier shall file a price list for stand-alone basic residential service.

(2) A local exchange telecommunications company and a competitive telecommunications carrier may provide rates and terms of basic dial tone service available through a product guide or similar document on its web site instead of maintaining a price list or formal tariff with the Commission. The carrier shall maintain an archive of outdated rates, terms and conditions that were available in a product guide or similar document for a period of 4 years, and shall remain obligated to provide both current and archived documents to the Commission upon reasonable request.

(e) Under Chapter 5 (relating to formal proceedings), [the Commission] a party may petition the Commission to initiate a proceeding for the potential reclassification from competitive to noncompetitive a service that is offered by [either or both an ILEC and CLECs] a local exchange telecommunications company or competitive telecommunications carriers in a specific service territory under the relevant provisions of 66 Pa.C.S. § [3005(d)] 3016(c).

(1) The Commission will decide which competitive service of [an ILEC or CLEC] a local exchange telecommunications company or a competitive telecommunications carrier warrants reclassification to noncompetitive status under relevant provisions of 66 Pa.C.S. § [3005(d)] 3016(c).

(2) The Commission will provide an opportunity to participate in the proceeding to the [ILEC and to those CLECs] local exchange telecommunications company and those competitive telecommunications carriers that offer substantially the same or functionally equivalent competitive service within the service territory of the [ILEC or specific CLEC] local exchange telecommunications company for which there is a reclassification proceeding.

(3) The Commission will separately determine whether the substantially same or functionally equivalent service that is offered by [the competing ILEC or CLECs] a local exchange telecommunications company and a competitive telecommunications carrier in the relevant service territory will continue to be classified as a competitive service for the local exchange telecommunications company or competitive telecommunications carrier.

(4) When reviewing whether a service should be reclassified, the Commission will consider the following factors:

(i) [The ease of entry by potential competitors into the market for the specific service at issue] (Reserved).

(ii) The presence of other existing telecommunications carriers in the market for the specific services at issue.

(iii) [The ability of other telecommunications carriers to offer the service at competitive prices, terms and conditions.] (Reserved).

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

(v) [Whether the service is provided under conditions that do not constitute unfair competition.] (Reserved).

(vi) [Whether the service, including its availability for resale under the relevant provisions of the Telecommunications Act of 1996, the act of February 8, 1996 (Pub.L. No. 104-104, 110 Stat. 56), is provided on a nondiscriminatory basis.] (Reserved).

(vii) Other factors deemed relevant by the Commission.

§ 53.59. Cost support requirements and effective filing dates for tariff filings of noncompetitive services.

(a) [CLEC services] Services priced below [ILEC] the rates of a local exchange telecommunications carrier. [A CLEC] A competitive telecommunications carrier that offers services that are substantially the same or functionally equivalent with noncompetitive services by [an ILEC] a local exchange telecommunications company in the service territory of the [ILEC] local exchange telecommunications company, at rates and charges that are at or below the level of the corresponding rates and charges of the [ILEC] local exchange telecommunications company for these services, is not required to provide cost support for tariff filings and rate changes involving these services. These tariff filings will be effective on 1-days' notice if the following apply:

(1) The [CLEC] **competitive telecommunications carrier** offers these services in the same service territory as the [ILEC] **local exchange telecommunications company**.

(2) The [CLEC] **competitive telecommunications carrier** tariff filing does not contain any material changes in the [CLEC's] **competitive telecommunications carrier's** tariff rules, terms or conditions.

(3) The [CLEC] **competitive telecommunications carrier** specifically states in its accompanying cover letter that the filing is being made on 1-days' notice in accordance with this subsection, and that the tariff filing does not contain material changes in the [CLEC] **competitive telecommunications carrier's** tariff rules, terms or conditions.

(4) The [CLEC] **competitive telecommunications carrier** provides copies of the [ILEC's] **local exchange telecommunications company's** effective tariffs designating the corresponding rates and charges of the same or functionally equivalent noncompetitive services.

(b) [CLECs] **Competitive telecommunications carriers operating in multiple [ILEC] territories**. When [a CLEC] **a competitive telecommunications carrier** offers services in the service territories of more than one [ILEC] **local exchange telecommunication company**, and the rates and charges for these services satisfy the criteria of subsection (a), the [CLEC] **competitive telecommunications carrier** may file separate tariff schedules when the rates and charges for these services correspond to the rates and charges of the different [ILECs] **local exchange telecommunications companies** in their respective service territories.

(c) [CLEC services] **Services** priced above [ILEC] **the rates of a local exchange telecommunications company and [CLEC] competitive telecommunications carrier new services**.

(1) [CLEC] **A competitive telecommunications carrier** tariff filings for services that are substantially the same or functionally equivalent with noncompetitive services offered by [an ILEC] **a local exchange telecommunications company** in the same service territory of the [ILEC] **local exchange telecommunications company**, at rates and charges that are higher than the corresponding rates and charges of the [ILEC] **local exchange telecommunications company**, will become effective as filed if the Commission does not take any action within 30 days from the date when all consumers subject to the rate increase shall have received individual notice.

(2) [CLEC] **Competitive telecommunications carrier** tariff filings for new services will become effective as filed if the Commission does not take any action within 30 days from the date the tariff filing is filed with the Commission.

(3) The tariff filings in this subsection shall be received by the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's [Office of Trial Staff] **Bureau of Investigation and Enforcement** on the date of filing with the Commission's Secretary's Bureau.

(4) The Commission may extend the review period in this subsection by up to an additional 30 days upon notice

to the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's [Office of Trial Staff] **Bureau of Investigation and Enforcement** and the affected [CLEC] **competitive telecommunications carrier**.

(5) The [CLEC] **competitive telecommunications carrier** shall include the following summary documentation for tariff filings involving the services:

(i) A brief statement indicating whether the [CLEC] **competitive telecommunications carrier** offers these services solely on the basis of resale of an [ILEC's] **local exchange telecommunications company's** retail services, through its own facilities, or a combination of both.

(ii) A brief statement indicating whether the tariff filing represents an increase or decrease in existing rates and charges.

(iii) A summary justification of the tariff filing, including an explanation of whether the proposed changes have been caused by a corresponding change in rates and charges of the resold services of the underlying [ILEC] **local exchange telecommunications company**.

(d) [CLEC] **Competitive telecommunications carrier ministerial administrative changes**. [CLEC] **Competitive telecommunications carrier** ministerial administrative tariff filings for services that are substantially the same or functionally equivalent with noncompetitive services offered by [an ILEC] **a local exchange telecommunications company** in the same service territory of the [ILEC] **local exchange telecommunications company**, will be effective on 1-day's notice.

(e) *Cost support for [CLEC] filings*. When new or revised [CLEC] **competitive telecommunications carrier** rates for service are higher than those of the [ILEC] **local exchange telecommunications company** in that [ILEC's] **local exchange telecommunications company's** service territory, the Commission may request relevant documentary support, including cost support and a statement of compliance with applicable guidelines. The requests can be made either before or after the rates become effective, and will only occur when it is necessary to protect consumers such as, without limitation, when the service is targeted to the economically disadvantaged or customers with poor credit histories.

(f) [ILEC] **Local exchange telecommunications company rate changes**.

(1) *Rate reductions*. [ILEC] **Local exchange telecommunications company** tariff filings for noncompetitive services that represent rate reductions from current rates and charges of that [ILEC] **local exchange telecommunications company**, will become effective as filed if the Commission does not take any action within a 10-day notice and review period. To obtain the 10-day notice and review period, the [ILEC] **local exchange telecommunications company** shall provide copies of its current tariff for the noncompetitive service for which it seeks a rate reduction.

(2) *Rate increases*. [ILEC] **Local exchange telecommunications company** tariff filings for noncompetitive services that represent rate increases from current

rates and charges of that [ILEC] local exchange telecommunications company will become effective as filed if the Commission does not take any action within 30 days from the date when all consumers subject to the rate increase shall have received individual notice.

(3) *New services.* [ILEC] Local exchange telecommunications company tariff filings for new services will become effective as filed if the Commission does not take any action within 30 days from the date the tariff filing is filed with the Commission.

(4) *Ministerial administrative changes.* [ILEC] Local exchange telecommunications company ministerial administrative tariff filings for noncompetitive services will be effective on 1-day's notice.

(5) *Notice.* The tariff filings in this subsection shall be received by the Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's [Office of Trial Staff] Bureau of Investigation and Enforcement on the date of filing with the Commission's Secretary's Bureau.

(6) *Extension of review period.* The Commission may extend the review period in this subsection by up to an additional 30 days upon notice to the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's [Office of Trial Staff] Bureau of Investigation and Enforcement and the affected [ILEC] local exchange telecommunications company.

(7) *Documentary support.* Nothing in this subsection affects the type of documentary support, including cost support and a statement of compliance with all applicable regulations, that will be necessary for an [ILEC] local exchange telecommunications company to file with the Commission for approval of tariff filings involving noncompetitive service offerings.

(g) *Executive overview.* [ILECs and CLECs] Local exchange telecommunications companies and competitive telecommunications carriers that file tariff filings in accordance with subsection (c) or (f) shall file an executive overview summarizing the reason for the filing. The executive overview shall include relevant information regarding the safety, adequacy, reliability and privacy considerations related to the proposed or revised service.

(h) *Lifeline plan statement.* When a [CLEC] competitive telecommunications carrier proposes increases in rates and charges for any of its basic local exchange services, the [CLEC] competitive telecommunications carrier shall also state whether it has implemented a Lifeline Plan that has been approved by the Commission.

(i) *Enterprise and large business customers.* A local exchange telecommunications company and a competitive telecommunications carrier are not required to file a tariff setting forth the rates and terms for retail protected basic dial tone service offered to enterprise and large business customers but may maintain information regarding the rates, terms, and conditions for these services in an online guide on its Internet web site as it would have been available in a paper tariff.

§ 53.60. Supporting documentation for promotional offerings, and joint or bundled service packages[, and toll services].

(a) *Promotional offerings.* [CLECs and ILECs] Competitive telecommunications carriers and local ex-

change telecommunication companies are not required to provide cost support for tariff filings involving a promotional service offering for noncompetitive services so long as the promotional offering does not result in any type of price increase to customers.

(1) [ILEC and CLEC] A local exchange telecommunications company and competitive telecommunications carrier tariff filings involving a promotional service offering for noncompetitive services will become effective on 1-day's notice. [ILECs and CLECs] Local exchange telecommunications company and competitive telecommunications carriers shall provide a 10-day advance notice to any resellers that purchase the promotional service offering from the [ILEC or CLEC] local exchange telecommunications company or competitive telecommunications carrier making the tariff filing.

(2) The Commission may request relevant documentary support, including cost support for tariff filings involving promotional service offerings for noncompetitive services.

(3) [CLECs and ILECs] Competitive telecommunications carriers and local exchange telecommunications companies that file promotional service offerings for noncompetitive services under this subsection shall confirm in their filing that subscribers to the promotional service offerings will be required to respond affirmatively at any time the promotional service is being offered if they wish to continue the service beyond the promotional period.

* * * * *

(b) *Joint or bundled service packages.* [CLECs and ILECs] Local exchange telecommunications companies a competitive telecommunications carriers are relieved from an automatic obligation to provide cost support for tariff filings involving the offering of joint or bundled service packages.

(1) When [ILEC] local exchange telecommunications joint or bundled service packages include both competitive and noncompetitive services, these service packages shall meet any applicable State law or regulation regarding cost justification, discrimination and unfair pricing in joint or bundled service package offerings, and their component competitive and noncompetitive services.

(2) The Commission may request relevant documentary support, including cost support, for tariff filings involving joint or bundled services.

(3) No filing requirements exist for the offering of joint or bundled service packages composed entirely of competitive services.

[(c) Toll services. CLECs and ILECs may file tariffs with changes in their rates and charges for existing noncompetitive toll services alone that can become effective on 1-day's notice. A 16-day notice period is required for the filing of a new toll service or the specific noncompetitive services defined in 66 Pa.C.S. § 3008(a) (relating to inter-exchange telecommunications carrier). For tariff filings and rate changes involving noncompetitive toll services, the Commission may request relevant documentary support, including cost support.]

CHAPTER 63. [TELEPHONE]
TELECOMMUNICATIONS SERVICE

Subchapter A. GENERAL PROVISIONS

§ 63.1. Definitions.

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

Applicant—A person, association, partnership, corporation or government agency making a written or oral request for the commencement of or changes in its public utility service.

Application—A written or oral request to a public utility for the commencement of or changes in public utility service.

[*Automatic dialing-announcing device*—Automatic equipment used for solicitation which has a storage capability of multiple numbers to be called or a random or sequential number generator that produces numbers to be called and has the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called.]

Automatic customer transfer—The process through which the Commission's Bureau of Consumer Services is able to immediately and contemporaneously transfer a customer inquiry or service or billing complaint to a public utility that has voluntarily elected to participate in such an arrangement.

Busy hour—The continuous 1-hour period of the day during which the volume of traffic is greater than during another continuous 1-hour period of the same day.

Busy season—The calendar month or 30-day period of the year during which the greatest volume of traffic is handled in the office.

Calls—A customer [**telephone**] **telecommunications** message attempted.

Central office—An operating unit equipped with switching apparatus by means of which telephonic communication is established between telephones connected to it or by the additional aid of trunk lines between the telephones and telephones connected to other central offices.

Competitive wire center—A wire center or other geographic area that is defined and served by a local exchange telecommunications company where all of its retail telecommunications services have been determined to be competitive by the Commission under 66 Pa.C.S. § 3016 (relating to competitive services).

Customer—A person, association, partnership, corporation or government agency provided with [**telephone**] **telecommunications** service by a regulated public utility.

Exchange—A unit established by a public utility for the administration of communication services under its specific local exchange service tariff provisions consisting of one or more central offices with associated plant facilities used in furnishing services and having one point designated for the purpose of rating toll calls for customers.

Interexchange carrier—A carrier which provides interexchange [**telephone**] **telecommunications** ser-

vices to the public under [**66 Pa.C.S. § 3008**] **66 Pa.C.S. § 3018** (relating to interexchange telecommunication carrier).

Local service area—The area within which customers may call without assessment of toll charges.

Message—A completed customer or user call.

Message unit—A unit of measurement used for a form of exchange service under which originated messages are measured and charged for in accordance with the local exchange tariff.

Metering—The metering of data concerning a customer's calls which is used in preparation of the customer's bill for service which is made by operators, automatic message accounting, message registers or other acceptable data recorder methods.

Noncompetitive wire center—A wire center or other geographic area that is defined and served by a local exchange telecommunications company where the jurisdictional telecommunications public utility continues to offer protected, retail nonprotected and noncompetitive services as defined by 66 Pa.C.S. § 3012 (relating to definitions).

Nonprimary service order—An application for simple residential or business, voice grade, public utility service which is not primary service.

Primary service order—An application for simple residential or business, voice grade, public utility service to be provided at a customer location which does not have public utility service including, but not limited to, the initial connection of a new customer or the transfer of public utility service of an existing customer's service to a new location.

Public utility—A person or corporation owning or operating equipment or facilities in this Commonwealth for conveying or transmitting messages or communications over the telecommunications network for the public for compensation. The term does not include either a person or corporation not otherwise a public utility who or which furnishes service only to himself or itself or a bona fide cooperative association which furnishes services only to its stockholders or members on a nonprofit basis.

Subscriber—A person, firm or corporation designated on public utility records as the party responsible for payment of bills for [**telephone**] **telecommunications** service.

Surveillance level—A measurement of [**telephone**] **telecommunications** service which indicates a need for the public utility to investigate the cause of the problem, to remedy the problem and to inform the Commission of the problem.

Trouble report—A written or oral report delivered to an authorized public utility representative by a customer or user of public utility services which relates to a defect, difficulty or dissatisfaction with the public utility's regulated service.

Trunk—A communication channel between central offices, switching units or private branch exchanges.

Working day—A day except Saturday, Sunday or legal holiday.

Subchapter B. SERVICE AND FACILITIES

§ 63.12. [**Minimizing interference and inductive effects**] (Reserved).

[(a) *Interference*. A public utility system shall be so constructed as to eliminate cross-talk and noise

resulting from faulty construction, to the extent that these factors interfere with the satisfactory transmission of messages.

(b) *Induction.* A public utility shall use reasonable means to minimize inductive effects between adjacent power and communication circuits.]

§ 63.13. [Periodic inspections] (Reserved).

[A public utility shall adopt a program of periodic tests, inspections and preventive maintenance aimed at achieving continuous efficient operation of its system in a manner satisfactory to the Commission.]

§ 63.15. Complaint procedures.

(a) [*Investigations.* A public utility shall make a full and prompt investigation of service complaints made to it through the Commission by its customers or third parties. Upon receiving a service complaint from a customer of a utility, the Commission will transmit a summary of the service complaint to the utility. If a service complaint is resolved, the utility may terminate the investigation by submitting or transmitting a copy of the service order which identified the action taken by the utility to resolve the service complaint. When complaints are referred to the public utility through the Commission, the public utility and the Commission shall work to process and resolve all complaints] (Reserved).

(a.1) Automatic Customer Transfer. Upon the receipt of a customer complaint related to service or billing, the Bureau of Consumer Services of the Commission can seek to immediately and contemporaneously transfer the customer to a public utility for resolution to address the inquiry or service complaint in the following manner:

(1) The transfer will occur with the customer's explicit consent.

(2) The transfer will be made to a live public utility operator or customer service representative.

(3) The public utility shall maintain a dedicated toll-free telephone number for the automatic customer transfer process.

(4) In the event that the customer inquiry or service or billing complaint cannot be resolved, it will be referred back to the Bureau of Consumer Services of the Commission for resolution in accordance with the provisions of subsection (c).

(5) The Bureau of Consumer Services of the Commission and participating public utilities may establish automated electronic communication links, electronic data interfaces, or appropriate web page access, for the exchange of information and data in the automatic customer transfer. These links shall be used only by authorized Commission and public utility personnel and shall safeguard the customer's personal data and billing information from public disclosure.

(a.2) Investigations. If the customer declines to participate in automatic customer transfer resolution process set forth in subsection (a.1), the public utility shall make a full and prompt investigation of service or billing complaints made to it through the Commission by its customers or third parties. Upon receiving a service or billing complaint from a customer of a utility, the Commission

will transmit a summary of the service complaint to the utility. If a service or billing complaint is resolved, the utility may terminate the investigation by submitting or transmitting a copy of the service order which identified the action taken by the utility to resolve the service or billing complaint. When complaints are referred to the public utility through the Commission, the public utility and the Commission shall work to process and resolve all complaints.

(b) *Records of complaints.* A public utility shall preserve written or recorded service or billing complaints showing the name and address of the subscriber or complainant, the date and character of the complaint, the action taken and the date of final disposition. Records of complaints shall be kept in accordance with § 64.192 (relating to record maintenance).

(c) *Commission review.* If a customer or applicant expresses dissatisfaction with the utility company's decision or explanation, the utility shall inform the customer or applicant of the right to have the problem considered and reviewed by the Commission and shall provide the name, address and telephone number of the appropriate Commission Bureau. This subsection shall be read in conjunction with §§ [64.141—64.182] 64.141—64.181 when applicable to residential utility service.

§ 63.16. [Traffic measurements] (Reserved).

[Traffic measurements shall be taken of sufficient extent, frequency and character to determine that central office equipment and personnel are adequate to handle traffic without unreasonable delay.]

§ 63.18. [Multiparty line subscribers] (Reserved).

[A multiparty line subscriber may be required to take service of a different grade if his use of service interferes unreasonably with the necessary service of the other subscribers on the line. The number of subscribers connected to a multiparty line shall be limited to a maximum of four.]

§ 63.19. [Interoffice lines] (Reserved).

[A public utility furnishing, singly or jointly with other telephone companies, channels for communication between different central offices, may not connect stations of subscribers to these channels. Sufficient interoffice channels shall be provided to handle the traffic without unreasonable delay.]

§ 63.21. Directories.

* * * * *

(b) One copy of each new directory issue shall be furnished to [each subscriber and one copy sent to] the Commission by the issuing public utility at the time of its distribution to subscribers. The public utility shall furnish a new directory to customers and subscribers in the following manner:

(1) A public utility shall include a bill message no less than once annually advising customers that paper copies of that market's or service area's affected directories are available upon request. The notice must provide customers with a toll-free number to call to obtain a paper directory at no cost and must include the public utility's Internet address where customers can find the online directory. The public utility also shall post the notice on its web site.

(2) A public utility shall make paper directories or USB thumb drive directories available at no charge to customers in that market or service area on an “upon request” basis by calling a toll free number maintained by the public utility.

(3) Print directories shall be distributed to consumers who are more likely to use them.

(4) Requests for printed directories shall be treated as standing orders but may be reconfirmed by the public utility every 2 years.

(5) Directories shall be made available online in digital format at a web site maintained by the public utility.

(6) Printed, USB and online versions of directories must meet all regulatory form and content requirements of this section and § 64.191(g) (relating to public information).

* * * * *

§ 63.22. Service records.

(a) A public utility shall keep sufficient records to reflect the following:

(1) **[Tests and inspections showing data as to date, facilities tested or inspected, conditions of the facilities and action taken] (Reserved).**

(2) Service complaints and trouble reports.

(i) A public utility shall provide for the receipt of trouble reports at all hours and make a full and prompt investigation of, and response to, complaints, with the exception of isolated outages beyond normal working hours affecting fewer than 15 customers in an exchange.

(ii) A public utility shall maintain an accurate record of customer trouble reports which shall include:

- (A) Identification of the customer affected.
- (B) Service affected.
- (C) Time, date and nature of the report.
- (D) Results of investigation.
- (E) Action taken to remedy the situation.
- (F) Time and date of trouble clearance or other disposition.

(3) Service interruptions affecting 300 or more customers, including the date, cause, extent and duration of the interruption.

(4) **[Location and description of its plant, including maps, as appropriate.] (Reserved).**

(b) **[Records required by this chapter shall be kept within this Commonwealth at an office of the utility located in the territory served by it, and shall be open for examination by the Commission or its representative] (Reserved).**

(c) **[Records pertaining to reasonableness and adequacy of utility service, as required by this chapter, shall be filed with the Commission and released to the public upon request. A utility may petition the Commission for waiver of this subsection for particular public requests] (Reserved).**

§ 63.23. Construction and maintenance safety standards for facilities.

Overhead and underground public utility equipment or facilities and crossings of the wires or cables of every

public utility over or under the facilities of other public utilities, cooperative associations or electric utilities—including parallel or random installation of underground electric supply and communication conductors or cable—shall be constructed and maintained in accordance with safe and reasonable standards as set forth in the **[National Electrical Safety Code, 1981 edition] Institute of Electrical and Electronics Engineers’ (IEEE) National Electrical Safety Code (NESC), 2017 edition, as amended and supplemented.**

Subchapter C. ACCOUNTS AND RECORDS

§ 63.31. Classification of public utilities.

For accounting and reporting purposes, **[telephone] telecommunications** public utilities are classified as follows:

(1) **Class A. [Telephone] Telecommunications** public utilities that are incumbent local exchange carriers subject to an alternative form of regulation, including, but not limited to, price cap formulas, under 66 Pa.C.S. Chapter 30 (relating to alternative form of regulation of telecommunications services).

(2) **Class B. [Telephone] Telecommunications** public utilities that are incumbent local exchange carriers subject to rate base/rate of return regulation or the Plan B Simplified Ratemaking Plan approved by the Commission under 66 Pa.C.S. Chapter 30.

(3) **Class C. [Telephone] Telecommunications** public utilities that provide competitive local telephone exchange services and that are not the incumbent provider in any local exchange area within this Commonwealth.

§ 63.32. Systems of accounts.

(a) Class A and Class B **[telephone] telecommunications** public utilities shall keep their accounts in conformity with the requirements prescribed by the Federal Communications Commission (FCC), under “Common Carrier Services; Revision; Uniform System of Accounts (USOA); Classes A, B, and C Telephone Companies,” **[51 Fed. Reg. 43498 (December 2, 1986) (to be codified at 47 CFR Part 32)] 47 CFR Part 32 (relating to Uniform system of accounts for telecommunications companies).** The symbol “32” which forms the initial component of each account number in the system of accounts, as published, may not be considered as a prescribed part of the account number for accounting and reporting purposes.

(b) A Class C **[telephone] telecommunications** public utility which is not required by the FCC to conform to the USOA and does not do so, shall inform the Commission of this fact on its annual financial report. The Class C utility shall also state the method of accounting utilized to compile the financial information reported, including the Generally Accepted Accounting Principles (GAAP).

§ 63.33. [Integrity of reserve accounts to be preserved] (Reserved).

[With respect to those companies which keep their accounts in conformity with the requirements prescribed by the Federal Communications Commission under the “Common Carrier Services; Revision; Uniform Systems of Accounts (USOA); Classes A, B and C Telephone Companies,” 51 FR 43498 (December 2, 1986) (to be codified at 47 CFR Part 32), amounts in Class A and Class B accounts

169—173 inclusive, and in Class C accounts 185 and 190, reserved as of the effective date of the appropriate system of accounts prescribed in § 63.32 (relating to systems of accounts), may not, except by permission of the Commission, be used for any purpose other than the specific purpose for which reserved.]

§ 63.34. [Reclassification of telephone plant to original cost] (Reserved).

[Before making entries in its books of account to reclassify its telephone plant to original cost when first devoted to the public service, as required by the text of accounts 100:1, 100:2, 100:3, 100:4 and 100:7 of the uniform accounting system prescribed by § 63.32 (relating to systems of accounts), each telephone public utility subject to such system of accounts shall submit to the Commission, for approval, a draft of the entries which it proposes to make accompanied by all of the following data, sworn to or affirmed by the officer of the utility responsible for the preparation of such entries:

(1) *Statement A.* Statement A shall be a comprehensive statement of the procedures and methods followed by the utility in the determination of the original cost of its telephone plant at the effective date of the uniform accounting system prescribed by § 63.32. If procedures or methods or both differed with respect to classes of plant, such differences should be set forth clearly.

(2) *Statement B.* Statement B shall be a comprehensive index for the utility and for each of its predecessors of ledgers, journals and other books of account, of vouchers, work orders, contracts covering the purchase or construction of utility plant, time reports, payrolls and summaries and other original records which are the sources of entries in the books of account for telephone plant transactions and relevant reserves, and of other books and memoranda, such as minute books, operating maps and records, and similar items, which may be useful in the establishment of the historical development of the telephone plant and related reserves of the company. With the exception of mass records—such as material tickets, vouchers, work orders, time reports, payrolls, and similar items—the index shall describe each record, indicate the period covered by it, show the physical location of it, and give the name of the person in charge of it. For mass records, the index shall be so prepared to show, for each type record, the periods covered thereby at each location and identified, as appropriate, by the first and last serial number of the record for each period.

(3) *Statement C.* Statement C shall be an outline of the origin and the development of the utility, including a description of each consolidation and merger to which the utility or predecessors were parties, and each acquisition by the utility or by a predecessor of property comprising a substantially complete telephone system, exchange line, or toll line.

(4) *Statement D.* Statement D shall be a summary by years for the utility and for each of its predecessors of the gross debits and the gross credits to the telephone plant account from the date of origin of the telephone plant of the utility to the effective

date of the system of accounts prescribed by § 63.32, setting forth all of the following:

- (i) Plant acquired by merger or consolidation.
- (ii) Plant constructed by the utility.
- (iii) Plant acquired by purchase.
- (iv) Total.

(v) Retirements of the plant which cannot be classified by subparagraphs (i)—(iii).

(vi) Balance at the effective date of the system of accounts.

(5) *Statement E.* Statement E shall be a statement showing the following for each acquisition by the utility or by a predecessor—through consolidation, merger or purchase—of property comprising a substantially complete telephone system, exchange line, or toll line:

(i) A description of the property acquired.

(ii) The names of parties to the transaction and whether the parties were affiliated with each other.

(iii) The date of incorporation of the merged constituent or vendor.

(iv) The date physical property was acquired.

(v) A balance sheet of the predecessor at the date its plant was acquired.

(vi) The book value of the plant acquired, by primary accounts, as recorded by the predecessor or vendor, at the date the physical property was acquired.

(vii) The cost of the plant to the acquirer, and how the cost was determined.

(viii) Entries recording the acquisition.

(ix) The amount recorded by the acquirer in subaccounts of 100:1, "Telephone plant in service," of the uniform system of accounts prescribed by § 63.32.

(x) The amount of depreciation reserve applicable to the plant acquired, as shown in the books of account of the predecessor or vendor.

(xi) The adjustment of the depreciation reserve, if any, by the vendee with respect to the plant acquired, and the basis.

(xii) If the capital stock of the predecessor was acquired prior to the acquisition of its property, the date or dates such capital stock was acquired, from whom acquired, the consideration paid, and whether the vendor was an affiliate of the utility or of a predecessor.

(xiii) If the parties referred to in subparagraphs (ii) and (xii) were affiliates, the following additional information shall be furnished:

(A) With respect to subparagraph (ii), the name of the affiliated interest which acquired the property at arm's-length, and the consideration paid by it shall be given.

(B) With respect to subparagraph (xii), the name of the affiliated interest which acquired the capital stock at arm's-length, and the consideration paid by it shall be given.

(6) *Statement F.* Statement F shall be a statement for the accounting utility or its predecessors show-

ing any increases in plant accounts resulting from the recording of appraised values. The statement should give the full journal entry together with a comparative balance sheet showing the accounts prior and subsequent to the journal entry at the time the appraisal was recorded.

(7) *Statement G.* Statement G shall, with respect to increments, that is, differences between paragraph (5) (vi) and (ix) and also the amounts shown by Statement F under paragraph (6) in plant accounts of the utility or its predecessors arising from plant acquisitions or from the recording of appraised values, state the amounts of the increments remaining in the plant account as of the reclassification date.

(8) *Statement H.* Statement H shall be a statement with detailed accounts showing telephone plant per books as of the date as of which telephone plant will be reclassified to original cost.

(9) *Statement J.* A statement J shall be a statement, by years of plant installation, of the original cost of the telephone plant proposed to be classified in the subaccounts of account 100:1, "Telephone plant in service," of the uniform system of accounts prescribed in § 63.32.

(10) *Statement K.* Statement K shall be a comparative balance sheet, as of the effective date of the system of accounts, setting forth the accounts and the amounts appearing in the books of account both before entries to adjust the telephone plant to original cost have been made, and to give *pro forma* effect to the proposals of the utility for adjusting the telephone plant to original cost.

(11) *Statement L.* Statement L shall be a reconciliation of the book value of the telephone plant immediately before reclassification to original cost (as shown by Statement H in paragraph (8)) and the utility-determined original cost as of the effective date of the system of accounts (as shown in Statement J in paragraph (9)). The reconciliation shall show all adjustments by nature of adjustment in detail.

(12) *Statement M.* Statement M shall be an analysis of Account 100:4, "Telephone plant acquisition adjustment," and of Account 100:7, "Telephone plant adjustment," showing character and the basis for computation of each amount included and proposed to be included.

(13) *Statement N.* Statement N shall be a suggested plan for depreciating, amortizing, or otherwise disposing of, in whole or in part, the amounts included and includible, as of the effective date of the system of accounts, in Account 100:4, "Telephone plant acquisition adjustment," and Account 100:7, "Telephone plant adjustment," of the uniform system of accounts prescribed by § 63.32.]

§ 63.35. Preservation of records.

(a) A [telephone] telecommunications public utility shall keep and preserve its records in conformity with "Part 45—Preservation of Records of Telephone Carriers," adopted by Federal Communications Commission on August 16, 1950 (47 CFR Part 42) as amended from time to time.

(b) [Telephone public utilities which maintain the original cost of their plants in continuing prop-

erty records which conform with the requirements of the Commission may apply for permission to dispose of books and records related to transactions dated 20 years or more prior to the date of the application] Unless a different retention period is otherwise specifically addressed in this chapter, a telecommunications public utility shall be required to retain for eight years the following records: (1) all records related to an audit conducted by the Commission under section 516 of the code, such as but not limited to financial and management audits; (2) records required for review under sections 505 and 506 of the code; records required under the system of accounts followed pursuant to subsection (a); and (3) records required for those entities remaining subject to ratemaking provisions under Chapters 13 and 30 of the code.

Subchapter D. [UNDERGROUND SERVICE]
(Reserved)

§ 63.41. [Underground telephone service in new residential developments] (Reserved).

[(a) For the purpose of this section only, the following words and terms, have the following meanings, unless the context clearly indicates otherwise:

(1) *Applicant for telephone service*—The developer of a recorded plot plan consisting of five or more lots, or one or more five unit apartment houses.

(2) *Developer*—The party responsible for constructing and providing improvements in a development, that is, streets, sidewalks and utility-ready lots.

(3) *Development*—A planned project which is developed by a developer/applicant for telephone service set out in a recorded plot plan of five or more adjoining unoccupied lots for the construction of single-family residences, detached or otherwise, mobile homes, or apartment houses, all of which are intended for year-round occupancy, if telephone service to the lots necessitates extending the utility's distribution lines.

(4) *Distribution line*—A main line facility directly or indirectly connecting the customers in a development to the telephone central office.

(5) *Service line*—A line from the distribution line to the residence of the subscriber.

(6) *Subdivider*—The party responsible for dividing a tract of land into building lots which are not to be sold as utility-ready lots.

(7) *Subdivision*—A tract of land divided by a subdivider into five or more adjoining unoccupied lots for the construction of single-family residences, detached or otherwise, or apartment houses, all of which are intended for year-around occupancy, if telephone service to the lots necessitates extending the utility's existing distribution lines.

(b) Distribution and service lines, except pedestals, installed as the result of an application for the telephone service within a development shall be installed underground; shall conform to the utility's construction standards; and shall be owned and maintained by the utility. Excavating and backfilling shall be performed by the applicant for tele-

phone service or by another agent the applicant may authorize. Other installation shall be performed by the utility or by another agent the utility may authorize. The utility may not be liable for injury or damage occasioned by the wilful or negligent excavation, breakage or other interference with its underground lines occasioned by anyone other than its own employes or agent. Nothing in this section shall prohibit a utility from performing its own excavating and backfilling for greater system design flexibility. No charges other than those specified in subsections (c) and (d) is permitted.

(c) The applicant for telephone service to a development shall do the following:

(1) At its own cost, provide the utility with a copy of the recorded development plot plan identifying property boundaries, and with easements satisfactory to the utility for occupancy and maintenance of distribution and service lines and related facilities.

(2) At its own cost, clear the ground in which the service lines and related facilities are to be laid of trees, stumps and other obstructions, provide the excavating and backfilling according to utility specifications and subject to the inspection and approval of the utility, and backfill within 6 inches of final grade. Utility specifications for excavating and backfilling shall be set forth by the utility in written form and presented to the applicant at the time of application for the service and presentation of the plot plan to the utility. If the utility's specifications have not been met by the applicant's excavating and backfilling, the excavating and backfilling shall be corrected or redone by the applicant or its authorized agent. Failure to comply with the utility's construction standards and specifications permits the utility to refuse utility service until the standards and specifications are met.

(3) Request the installation of distribution and service lines at the time that the lines may be installed before curbs, pavements and sidewalks are laid; carefully coordinate scheduling of the utility's line and facility installation with the general project construction schedule including coordination with another utility sharing the same trench; keep the route of lines clear of machinery and other obstructions when the line installation crew is scheduled to appear; and otherwise cooperate with the utility to avoid unnecessary costs and delay.

(4) Place with the telephone company, in advance or upon other terms that the company may require, the following charges:

(i) A prepayment in aid of construction in an amount not in excess of 60% of the company's costs of the distribution line for the development.

(ii) The prepayment in aid of construction will be refunded on a proportionate basis for each contract for telephone service rendered. The basis for total refund shall be 100% refund upon receipt of telephone contracts for telephone service from 50% of the total development within a 10-year period.

(d) If the applicant changes the plot plan after installation of the telephone utility's lines has begun, or requests deviation from the utility's established underground construction practices, the additional costs shall be borne by the applicant. No

charges other than those described in this subsection and in subsection (c) may be borne by the applicant for telephone service or by another utility sharing the same trench, even if the utility elects to perform its own excavating and backfilling.

(e) The Commission believes that there should be joint use of trenches whenever economically and technologically feasible. However, the Commission realizes that the economic advantages which can result from the joint use of trenches may at times be obviated by the technological disadvantages of joint occupancy. Therefore, the Commission will not make the joint use of trenches mandatory but will require the joint use of trenches whenever the circumstances indicate that the use would be feasible and parties agree thereto.

(f) This section applies to all requests for distribution facilities for telephone service to developments which are filed after June 9, 1984.

(g) Amounts the public utility receives under subsection (c)(4)(i) shall be credited to Accounts 174-Other deferred credits.

(h) Whenever the public utility or an affected person believes that the application of the tariff rule works an undue hardship, involves a physical impossibility, or is otherwise inappropriate, the utility or person may request an exception from the undergrounding requirements of this section by following the procedure set forth in § 57.86 (relating to exceptions).

(i) Exceptions, as granted by the Commission for electric distribution lines under § 57.86 shall also apply to telephone facilities. If an exception request initiated by an applicant for telephone service is granted and the applicant thereafter desires underground service, then this section shall apply as if no exception had been granted.

(j) Telephone utilities shall file a tariff supplement adding this section to its tariff. The tariff supplement shall become effective on the date filed.

(k) Telephone utilities shall file undergrounding construction and specification standards and revisions thereto with the Commission's Bureau of Fixed Utility Services.

(l) Underground facilities in new residential developments are only required by this section when a bona fide developer exists, that is only when utility-ready lots are provided by the developer. A mere subdivision is not required to have underground service. However, should the lot owner or owners in a subdivision desire underground service, the service shall be provided by the utility if the lot owner or owners, at his option, either complies with subsection (c) or pays to the utility the charges that are contained in the utility's tariff for underground telephone service not required by this title.]

Subchapter E. [TELEPHONE]
TELECOMMUNICATIONS QUALITY SERVICE
STANDARDS

§ 63.51. Purpose.

This subchapter establishes, regulates and enforces uniform, fair and reasonable service objectives and surveillance levels of [telephone] telecommunications

service offered within this Commonwealth. This subchapter applies to regulated simple residential or business voice grade services offered by a public utility as defined in § 63.1 (relating to definitions). This subchapter does not preclude, supersede or amend Chapter 64 (relating to standards and billing practices for residential [telephone] telecommunications service). This subchapter shall be applied in conjunction with Chapter 64.

§ 63.52. [Exceptions] (Reserved).

[This subchapter does not apply to services offered by interexchange carriers as defined in § 63.1 (relating to definitions).]

§ 63.53. General provisions.

(a) A public utility shall provide [telephone] telecommunications service to the public in its service area in accordance with its tariff on file with the Commission or product guide or similar document listed on its web site. The quality of service shall meet or exceed the minimum standards set forth in this subchapter.

(b) [If a public utility fails to meet a standard service surveillance level in a reporting entity as described in this subchapter, the service data for the standard not met in that reporting entity shall be filed with the Commission] (Reserved).

(c) [A public utility shall provide access to operator-assisted services for all exchanges at all hours] (Reserved).

(d) [A public utility shall provide equipment and facilities designed and engineered in accordance with realistic forecasts of customer demand and shall maintain, or have access to, a stock of associated equipment to meet the demand] (Reserved).

(e) If unreasonable hardship to a person or to a utility results from compliance within this subchapter, application may be made to the Commission for modification of the section or for temporary exemption from its requirements. The adoption of this subchapter by the Commission will not preclude the altering or amending of the provisions in a manner consistent with applicable statutory procedures, nor will the adoption of this subchapter preclude the Commission from granting temporary exemptions in exceptional cases. A person or utility that files an application under this section shall provide notice to a person who may be affected by the modification or temporary exemption. Notice may be made by a bill insert or in another reasonable manner.

§ 63.54. Record retention.

(a) A telecommunications public utility shall retain for at least 90 days the information contained in customer bills and used by the public utility in compiling customer bills. Billing information on an account for which a dispute is pending shall be retained until the dispute has been finally resolved.

(b) A telecommunications public utility shall retain for at least a 5-year period the service records related to the following: (1) call answering times under § 63.59 (relating to call answering measurements); (2) service complaints and trouble reports under § 63.22 (relating to service records); (3) surveillance level investigations under § 63.55 (relating to surveillance levels); and (4) service outages

under § 63.22 and § 63.57 (relating to customer trouble reports) of this chapter.

§ 63.55. Surveillance levels.

(a) When the level of operation of a telecommunications public utility fails to meet a stated average level of operation required by this subchapter for a period of 3 consecutive months, the public utility immediately shall:

(1) Initiate an investigation into the cause of the inadequate performance.

(2) [Inform the Commission of the substandard performance and of steps, studies and investigations commenced and undertaken by the public utility to determine the cause and to remedy the inadequate performance] (Reserved).

(3) On request from the Commission, the telecommunications public utility shall provide to the Commission a report detailing the results of the investigation into a breach of a surveillance level substandard performance and any steps, studies and further action undertaken or commenced by the public utility to determine the cause and to remedy the inadequate performance.

(b) [In addition to the requirements set forth in subsection (a), a public utility shall file with the Commission, within 5 working days from its initial contact with the Commission as provided for in subsection (a)(2), a report which contains the following information:

(1) The nature of the problem.

(2) The cause of the problem.

(3) The duration of the problem.

(4) The result of studies and investigations which have been taken.

(5) The remedial action taken] (Reserved).

(c) [A public utility shall monitor the stated service problem area for a period of 1 month. At the end of this 1 month period the public utility shall file an updated status report with the Commission] (Reserved).

On request from the Commission, the telecommunications public utility shall provide to the Commission a report detailing the results of the investigation into a breach of a surveillance level substandard performance and any steps, studies and further action undertaken or commenced by the public utility to determine the cause and to remedy the inadequate performance.

§ 63.56. [Measurements] (Reserved).

[(a) A public utility shall utilize measuring devices, methods and practices generally recognized and accepted by the communications industry to obtain or to allow the calculation of the service objectives detailed in this subchapter.

(b) Equipment arrangements permitting, each public utility shall have an objective of attaining at least 300 local dial service measurements per month on originating entities serving more than 10,000 access lines that are a part of a local dial network of 15,000 access lines.

(c) A public utility shall provide, maintain and operate a dial tone speed measuring device for originating entities serving more than 3,000 access lines.

(d) A public utility shall provide, maintain and operate load or service indicating devices on originating equipment for entities not equipped with a dial tone speed measuring device.

(e) A public utility shall monitor the answering time for calls received at customer contact locations, including, but not limited to, repair service, business offices and toll operator office. The monitoring required by this subchapter may be accomplished through measuring devices, random sampling or statistically valid customer satisfaction surveys. The Commission retains the right to determine the appropriateness of utility monitoring methods in particular circumstances.

(f) A public utility shall establish and maintain a performance record for each central office or other appropriate entity which shall be kept current and shall show applicable service results hourly, daily, monthly, as appropriate.

(g) Records and measurements required by this section shall be retained by the public utility for a minimum period of 3 years.]

§ 63.57. Customer trouble reports.

(a) [A public utility shall respond to and take substantial action to clear out-of-service trouble of an emergency nature whenever the outage occurs, within 3 hours of the reported outage consistent with the needs of customers and personal safety of utility personnel.

(b) A public utility shall respond to and take substantial action to clear other out-of-service trouble, not requiring unusual repair, within 24 hours of the report, except for isolated weekend outages affecting fewer than 15 customers in an exchange or where the customer agrees to another arrangement] A public utility shall respond to out-of-service trouble reports within 24 hours unless a different period of time is agreed to by the customer.

[(c)] (b) A public utility shall keep commitments made to its customers and applicants, unless timely notice of unavoidable changes is given to the customer or applicant or a reasonable attempt is made to convey the notice.

[(d)] (c) If unusual repairs are required or other factors preclude the prompt clearing of reported trouble, reasonable efforts shall be made to notify affected customers.

[(e) A report received by the public utility shall be counted as a separate report even though it may be a duplication of, or may involve a progress inquiry of, a previous report.

(f)] (d) It shall be substandard performance for a public utility to receive more than 5.5 customer trouble reports per 100 lines per month. A public utility receiving greater than 5.5 customer trouble reports per 100 lines per month is subject to the [reporting] requirements set forth in § 63.55(a) (relating to surveillance levels).

§ 63.58. Installation of service.

(a) Ninety-five percent of a public utility's primary service order installation shall be completed within 5 working days of receipt of an application [unless a later date is requested by the applicant or when construction is required] or unless the customer agrees to a later date.

(b) [Ninety percent of a public utility's nonprimary service orders shall be completed no later than 20 days of receipt of an application unless a later date is requested by the applicant. If the utility company is unable to fill a nonprimary service order within the requisite time, the utility shall so inform the applicant and provide the applicant with the date nonprimary service will be available.] Ninety percent of a public utility's nonprimary service orders shall be completed no later than 20 days of receipt of an application unless the customer agrees to a later date. If the utility company is unable to fill a nonprimary service order within the requisite time, the utility shall so inform the applicant and provide the applicant with the date nonprimary service will be available.

(c) Ninety percent of a public utility's commitments to applicants as to date of installation of service orders shall be met, except for applicant-caused delays, adverse weather conditions and other supervening causes beyond the utility company's control.

§ 63.59. [Operator-handled calls] Call Answering Measurements.

A public utility shall take measures necessary and keep sufficient call answering records to monitor answering times for calls as follows:

(a) [A public utility supplying operators shall establish practices for operators and the public utility shall establish practices for its representatives with the stated objective of providing efficient and pleasing service to its customers. Operators and other representatives shall be instructed to be courteous and considerate, and to comply with the Communications Act of 1934 (47 U.S.C.A. §§ 157—611) in maintaining the secrecy of communications.] The percent of calls answered at each public utility's call center or business office, or both, within 30 seconds with the public utility representative ready to render assistance and to accept information necessary to process the call. An acknowledgment that the customer or applicant is waiting on the line does not constitute an answer. If the public utility records data for more than one call center or business office, the public utility should also record the combined percent of calls answered within 30 seconds for the public utility as a whole.

(b) [A public utility supplying operators shall maintain adequate personnel and equipment to assure an average operator answering performance on a monthly basis as follows:

(1) Ninety percent of toll and operator assistance calls shall be answered within 10 seconds.

(2) Eighty-five percent of calls seeking repair service or to the business office during normal working hours shall be answered within 20 seconds.

(3) For purposes of this section, an “answer” means that the operator or other representative is ready to render assistance and to accept information necessary to process the call. An acknowledgment that the customer or applicant is waiting on the line does not constitute an answer.

(4) A public utility may measure its compliance with paragraphs (1) and (2) through the use of measuring devices, random sampling, statistically valid customer attitude surveys or a combination of these compliance measuring techniques. The Commission retains the right to determine the appropriateness of utility monitoring methods in particular circumstances.] The average busy-out rate for each call center or business office, or both. If the public utility records data for more than one call center or business office, the public utility should also record the combined busy-out rate for the public utility as a whole.

(c) The call abandonment rate for each call center or business office, or both. If the public utility records data for more than one call center or business office, the public utility should also record the combined call abandonment rate for the public utility as a whole.

§ 63.60. [Automatic Dialing Announcing Devices (ADAD)] (Reserved).

[(a) Upon receipt of a complaint in which the complainant can identify the ADAD user, the public utility shall inform the ADAD user of the service standards set forth in subsection (b). A subsequent complaint may result, after notice, in suspension of the ADAD user’s service.

(b) A public utility may not knowingly permit an ADAD to be connected or operated over its network unless one of the following applies:

(1) A prior written agreement exists between the called and calling parties.

(2) The ADAD is used in accordance with the following standards:

(i) Within 10 seconds after the called-party terminates the call, the ADAD automatically shall create a disconnect signal or an on-hook condition allowing the called-party’s line to be released. The ADAD shall terminate calls completed and a disconnect

or an on-hook condition shall be created within 15 seconds of termination.

(ii) The recorded message shall begin with, or be preceded by, a statement announcing the name, address and call-back telephone number of the calling party, the nature and purpose of the ensuing message, and the fact the message is a recording.

(iii) No calls are permitted to be made to emergency telephone numbers of hospitals, fire departments, law enforcement offices or other entities providing emergency services.

(iv) No calls may be made on a Sunday before 1:30 p.m. or after 9 p.m. or before 9 a.m. or after 9 p.m. during the remainder of the week.

(v) The public utility shall make a determination either at the time of application for use or at the time the utility becomes aware of the use of the

ADAD that no substantial impairment of service will occur as a result of the use of ADAD.]

§ 63.61. [Local dial service] (Reserved).

[(a) A public utility shall operate and maintain central office and interoffice channel capacity and equipment adequate to achieve the following minimum service requirements during the average busy season, busy hour:

(1) Ninety-eight percent of calls shall be provided a dial tone within 3 seconds.

(2) Ninety-seven percent of correctly dialed intraoffice calls shall be completed.

(3) Ninety-six percent of correctly dialed interoffice calls shall be completed.

(b) For purposes of this section, completion is accomplished when either a ringing or busy signal resulting only from use of the called line occurs.]

§ 63.62. [Direct distance dial service] (Reserved).

[(a) A public utility shall operate and maintain trunk and related switching components in the intertoll network adequate to achieve the following minimum service requirements for operator unassisted, properly dialed, direct distance dialed calls during the average busy season:

(1) Ninety-seven percent of outgoing calls by customers shall be completed to the trunk group.

(2) Ninety-eight percent of incoming calls by customers shall be completed from the trunk group.

(b) This section applies only to calls placed exclusively over the facilities of the public utility or over which the utility leases for the completion of local exchange calls.]

§ 63.63. Transmission requirements and standards.

(a) A telecommunications public utility shall furnish, operate and maintain facilities adequate to provide acceptable transmission of communications. Transmission shall be at adequate volume levels and free of excessive interference, distortion, noise and cross talk.

(b) The transmission standards shall be based upon the use of telephone sets connected to a 48-Volt dial central office, measured at a frequency of 1000 Hertz (Hz)] The provisions of this subsection shall apply to each wire center or other geographic area defined by the jurisdictional telecommunications public utility where the utility has fully deployed a jurisdictional fiber-optic network.

[(c) A telephone line terminating at a customer’s premises shall have a loop resistance not exceeding the operating design of the associated central office equipment.

(d) Overall transmission loss on a customer loop shall not exceed 15 decibels.]

§ 63.64. Metering inspections and tests.

(a) A telecommunications public utility shall adopt a program of periodic tests, inspections and preventive maintenance aimed at achieving efficient operation of its system and the rendition of safe, adequate and continuous service.

(b) A telecommunications public utility shall maintain or have access to test facilities enabling it to

determine the operating and transmission capabilities of equipment and facilities, both for routine maintenance and for trouble location. The actual transmission performance of the network shall be monitored in order to determine if the established objectives and operating requirements are met. The monitoring function shall consist of circuit order test prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange and special transmission surveys of the network.

(c) If a meter is used in connection with [**telephone**] **telecommunications** service, it shall be read, where applicable, at monthly intervals. The meter reading records from which the customers' bills are prepared shall show:

- (1) Identifying number or means to determine readily the customer's name, address and service classification.
- (2) Meter readings.
- (3) Date of meter reading.
- (4) Multiplier or constant if used.

[**(d) A meter or other recording device used to record data and prepare customers' bills shall be in good mechanical and electrical condition, shall be accurately read and may not involve approximations. A meter or recording device shall accurately perform the following:**

(1) **For message rate service, if timing the length of message is not involved, the meter or recording device shall show the number of completed messages sent by the station or trunk which it is measuring.**

(2) **For measured rate or toll service when, in addition to recording a call, it is necessary to time the call, the recording device shall show the number of calls, and the chargeable time involved in each call and the station or trunk making the call. If a meter is associated with the station making the call, the meter shall accumulate the number of message units for these calls.**

(3) **If the recording equipment provides customer bills, accurate interpretation of the coded information is required.**

(e) **A telephone**] **(d) A telecommunications** meter and recording device shall be tested prior to installation or when released for service and at regular intervals, or both, either by the manufacturer, the public utility or an approved organization equipped for the testing. The utility shall comply with the following:

(1) A public utility furnishing service, if local exchange billing is based on the number or duration of messages, shall provide the necessary facilities, instruments and equipment for testing its metering or recording equipment.

(2) The overall accuracy of the test equipment and test procedure shall be sufficient to enable testing of meter and record equipment within the requirements of this chapter.

(3) A meter and recording device tested under this subchapter for routine or complaint shall be tested in its normal operating location and wiring mode prior to removal or adjustment.

(4) A record of meter and recording equipment tests and adjustments and data sufficient to allow checking of the results shall be recorded. The record shall include the identifying number of the meter and recording device, its type, the date and kind of test and the results of each test.

[**(f)**] **(e)** A public utility shall perform periodic testing and maintenance of its controlling trunk equipment associated with the meters or recording devices, or both, to assure the integrity of their operation **upon request or complaint.**

[**(g)** **Upon request of a customer, a public utility shall make a test of a meter and recording device related to the billing. The requests may not be made more often than once every 3 months unless unusual circumstances exist.**

(h) A customer, by request to the Commission, may have a test conducted by the public utility in the presence of a Commission representative.]

§ 63.65. Safety.

A public utility shall adopt and implement a safety program fitted to the size and type of its operation and shall conform to the Occupational Safety Health Act (OSHA) standards, 29 CFR Parts 1910—1999 [**which:**

(1) **Require employees to use suitable tools and equipment and to perform their work in a safe manner.**

(2) **Instruct employees in safe work practices.**

(3) **Instruct employees as to proper methods of artificial respiration for use in accidents, such as electric shock, asphyxiation and drowning.**

(4) **Exercise reasonable care in minimizing hazards to which employees, customers and the general public may be subjected] as amended from time to time.**

Subchapter F. [**EXTENDED AREA SERVICE**] (Reserved)

§ 63.71. [**Definitions**] (Reserved).

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

EAS—extended area service—The expansion of a local calling area to include additional exchanges.

Exchange—An area served by one or more central offices which has a unique local calling area and a defined rate center from which toll distances are measured.

Full billing and collection agreement—An agreement under which an interexchange carrier contracts with the local exchange carrier to bill and collect the revenues for message toll service calls placed by end users through the interexchange carrier as the presubscribed carrier.

Interexchange toll rates—Telephone rates, usually based in part on the length of a telephone call, which are applied to calls between exchanges that are not in the same local calling area.

LATA—A local access and transport area as designated by Federal law.

Local calling area—The area, consisting of one or multiple telephone exchanges, between which calls may be completed without having interexchange toll rates applied.

Local exchange carrier—A public utility which is certificated to provide intraexchange telephone service.

Optional calling plan—A tariff provision which establishes the rate option to be offered to residential and business subscribers in exchanges which qualify for alternatives to EAS under § 63.73 (relating to optional calling plans).

Qualified noncontiguous exchanges—Exchanges with toll rate centers within 16 miles of each other which do not geographically border each other but which meet the following criteria:

(i) The call-frequency standards between the exchanges established under § 63.74 (relating to EAS polls) are met in at least one direction.

(ii) The local calling area of the calling exchange is contiguous to the receiving exchange.

Subscriber—A person or entity which contracts directly with a telephone utility for telephone service.

Traffic study interexchange carriers—The five most active interexchange carriers in the service territory of a local exchange carrier as determined by a biennial review of interLATA access charge levels.]

§ 63.72. [Traffic usage studies] (Reserved).

[A local exchange carrier shall conduct a biennial interexchange toll traffic usage study. The study shall measure traffic over both intraLATA and interLATA routes. The study shall measure the average calling frequency between contiguous exchanges and between each exchange and each noncontiguous exchange having a toll rate center within 16 miles. On intraLATA routes only, the study shall also measure the percentage of total access lines within the exchange over which the calls are placed. In measuring calling frequency, all calling classes shall be considered collectively, including those who have elected optional calling plans under § 63.73 (relating to optional calling plans). The study shall measure usage in a representative 30-day period within the 12-month period preceding the study. The local exchange carrier shall prepare a report containing results of the study. The report is required to address only routes which equal or exceed 1.50 calls per access line per month. The report shall be filed with the Commission with a copy to the Office of Consumer Advocate on or before October 1 of each survey year. The report will be treated as proprietary and shall be filed under protective seal. The Commission and the Office of Consumer Advocate will release the results of the report, upon request, on a route specific basis to customers or customer representatives. Traffic usage data for routes with less than 1.50 calls per access line per month shall be submitted by local exchange carriers upon request by the Commission or the Office of Consumer Advocate.]

§ 63.72a. [InterLATA traffic studies] (Reserved).

[(a) By January 31 of each year in which a biennial traffic study is due, each local exchange carrier will identify and formally notify the Commission of the traffic study interexchange carriers in its service territory. The identity of the traffic study interexchange carriers shall be based upon review of the access charge levels from the most recent 12-month period available. Each local exchange carrier shall concurrently notify each traffic study interexchange carrier of the following:

(1) That the interexchange carrier's traffic will be included in the local exchange carrier's traffic study under this subchapter.

(2) The format which the local exchange carrier will utilize in its traffic usage study.

(3) The representative month the local exchange carrier will use in its study.

(b) Each traffic study interexchange carrier shall provide the local exchange carrier with data which identifies the relevant interexchange traffic completed by the interexchange carrier and which originated in the local exchange carrier's service territory for the representative month used by the local exchange carrier. The data shall be submitted to the local exchange carrier by June 1 of each year in which a biennial traffic usage study is due. The data submitted by traffic study interexchange carriers may not include traffic for which the interexchange carrier bills through the local exchange carrier under a full billing and collection agreement.

(c) The data submitted by each traffic study interexchange carrier shall be organized consistent with the following:

(1) The data shall be in the format specified by the local exchange carrier for the traffic usage study.

(2) The data shall identify the total number of calls completed by the traffic study interexchange carrier and which originated in each exchange in the local exchange carrier's service territory for each interLATA route which requires study under § 63.72 (relating to traffic usage studies) for the representative month.

(3) The data shall identify the total number of access lines presubscribed to the traffic study interexchange carrier in each exchange for which data is submitted under paragraph (2).

(4) Data submitted by a traffic study interexchange carrier to a local exchange carrier shall be considered proprietary to the traffic study interexchange carrier and may not be used by the local exchange carrier for a purpose other than preparing its traffic usage study.

(5) Each traffic study interexchange carrier may petition the Commission to waive the submission of a portion of the data required to be submitted under this section. Each waiver petition shall include the estimated costs of submitting the data and the relative amount of traffic which the data represents. The Commission will approve a waiver petition only if it finds that the costs to the interexchange carrier outweigh the value of the data to the traffic usage study.

(d) Upon receiving the traffic study interexchange carrier data, each local exchange carrier shall complete the following in preparing the interLATA component of the traffic usage study:

(1) Collect and analyze the traffic data for each traffic study interexchange carrier for calls completed by the interexchange carrier which are billed through the local exchange carrier under a full billing and collection agreement.

(2) Aggregate the traffic data it collects and analyzes under full billing and collection agreements with the traffic data it receives from each traffic study interexchange carrier. Each local exchange carrier shall report the aggregate interexchange carrier. Each local exchange carrier shall report the aggregate results of the interLATA traffic study to the Commission in its biennial traffic usage study filed under § 63.72.]

§ 63.73. [Optional calling plans] (Reserved).

[(a) When biennial interexchange toll traffic usage studies reveal an average monthly calling frequency of 2.00 or more calls per access line from one exchange to another and where at least 25% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange over a route for which a local exchange carrier provides toll service, a local exchange carrier shall offer one of the following rate options to each residential and business subscriber within the calling exchange:

(1) The ability to purchase for a flat fee a block of time for calls and a continuing discount for all usage exceeding the initial block of time to the receiving exchange during each billing period.

(2) Another alternative rate option approved by the Commission.

(b) When an exchange qualifies for an optional calling plan over a route served by a local exchange carrier, the local exchange carrier shall notify each residential and business subscriber within 60 days of the availability of the optional calling plan and shall provide to each subscriber a general description of the rates and benefits of the optional calling plan.

(c) When biennial interexchange toll traffic usage studies reveal an average monthly calling frequency of 2.00 or more calls per access line from one exchange to another over an interLATA route, each traffic study interexchange carrier serving the route shall offer one of the following rate options to each residential and business subscriber to whom the traffic study interexchange carrier provides toll service within the calling exchange:

(1) The ability to purchase a block of time for calls for a flat fee and a continuing discount for usage exceeding the initial block of time to the receiving exchange during each billing period.

(2) Another alternative rate option approved by the Commission.

(d) When an exchange qualifies for an optional calling plan over an interLATA route, each traffic study interexchange carrier serving the route shall notify each residential and business subscriber it serves in the exchange within 60 days of the avail-

ability of the optional calling plan and shall provide a description of the rates and benefits of the optional calling plan.

(e) A local exchange carrier and a traffic study interexchange carrier, serving a route which qualifies for an optional calling plan under a traffic usage study shall maintain in its tariff a provision which provides for establishment of an optional calling plan. The optional calling plan shall be consistent with subsection (a) or (b) and may establish flat fees to be charged for the installation of the optional calling plan.

(f) A local exchange or traffic study interexchange carrier may not terminate an optional calling plan to an exchange without express Commission approval.]

§ 63.74. [EAS polls] (Reserved).

[Whenever a traffic usage study between contiguous exchanges or between qualified noncontiguous exchanges qualifies for EAS under paragraphs (1) and (2), a subscriber poll of the calling exchange shall be conducted by the local exchange carrier serving the calling exchange to determine if the local calling area should be extended.

(1) For intraLATA routes, a route qualifies for extended area service if it has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to another and where at least 50% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange.

(2) For interLATA routes, a route qualifies for EAS if it has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to another.

(3) A subscriber request for polling will not be considered a legal pleading and will not be subject to response by a utility or another party.

(4) A poll is not required if subscribers have affirmatively rejected the implementation of EAS from the calling exchange to the receiving exchange during the preceding 2 years.

(5) Two-way balloting will not be required unless usage standards are met in both directions.

(6) If two-way balloting is required and if the same telephone utility serves each exchange, the utility shall poll subscribers in each exchange for EAS into the other exchange. If different telephone utilities serve each exchange, each utility shall poll its own subscribers.

(7) A poll is not required when usage standards are met on a specific route and there will be no increase in the local service charge for extending the local calling area of an exchange. In this instance, one-way EAS shall be implemented over the qualifying route.

(8) When usage standards are met in both directions, two-way balloting is not required if there will be no increase in the local service charge for extending the local calling area for one of the two exchanges. If one of the two exchanges will receive an increase, than that exchange shall be polled and, if the exchange polled adopts EAS two-way EAS

shall be implemented. Otherwise, one-way EAS shall be implemented on the route where there will be no increase.

(9) If circumstances require, the Commission may specify additional conditions under which polls shall be conducted.

(10) A local exchange carrier may petition the Commission for waiver of a provision of this section to address unique circumstances.]

§ 63.75. [Subscriber polls] (Reserved).

[The following rules apply to EAS subscriber polls:

(1) Within 180 days of the submission of traffic usage data indicating that a route qualifies for EAS under § 63.74 (relating to EAS polls), a local exchange carrier shall file a petition with the Commission requesting approval of a proposed transmittal letter and ballot which includes an estimate of the increase in the charge for local service to the Commission as a result of extending the local calling area. The Commission will approve a transmittal letter and ballot which shall include an estimate of the increase in the charge for local service, if any, due to the expansion of the local calling area.

(2) The local exchange carrier shall mail one approved ballot to each subscriber in the calling exchange. The local exchange carrier may tabulate the ballots itself but shall submit to the Bureau of Safety and Compliance a list of customers to be polled and their telephone numbers prior to sending out ballots. Upon completion of tabulation by a local exchange carrier, the local exchange carrier shall submit the original returned ballots to the Bureau of Safety and Compliance and shall submit a verified report to the Commission detailing the results of the poll. If the local exchange carrier does not tabulate the ballots itself, the ballots sent by the local exchange carrier to the subscribers shall be preaddressed, postage prepaid postcards to be returned to the Commission for tabulation.

(3) At least 50% of the ballots from an exchange shall be returned for a poll to be considered valid.

(4) In a valid poll, if 50% of the ballots returned from an exchange are in favor of EAS, the affected local exchange carriers shall implement EAS to the receiving exchange.

(5) In cases where interLATA EAS is implemented, telephone service between the calling exchange and the receiving exchange shall be transferred from the interexchange carriers serving the calling exchange to the local exchange carrier serving the calling exchange.

(6) In cases where the local exchange carrier is prohibited from providing service between the calling exchange and the receiving exchange by Federal antitrust consent decree restrictions and a waiver is necessary to implement EAS, the local exchange carrier shall apply for a waiver of Federal antitrust restrictions to allow it to implement EAS. The request for waiver will be made within 60 days of a Commission order or Secretarial Letter approving EAS. The Commission will file a statement affirmatively supporting the waiver application.]

§ 63.76. [EAS complaints] (Reserved).

[A formal complaint may be filed seeking the implementation of EAS. A complaint will be evaluated according to the criteria in § 63.77 (relating to evaluation criteria). If multiple telephone utilities are involved, each affected utility shall be an indispensable party to the proceeding. An administrative law judge may, as part of an initial decision, recommend the conduct of subscriber polls under § 63.75 (relating to subscriber polls) to determine if EAS should be implemented. The provisions of this subchapter do not prohibit the filing of complaints seeking the implementation of EAS between noncontiguous exchanges.]

§ 63.77. [Evaluation criteria] (Reserved).

[The Commission will consider the following criteria in evaluating EAS complaints:

(1) The amount of toll charge traffic between the two exchanges.

(2) The cost to the utility of implementing extended area service.

(3) The potential increase in local service charge due to implementation of EAS versus the current cost to subscribers for interexchange toll calls.

(4) The demography and the proximity of the exchanges as indicating community of interest.

(5) The availability of alternatives to EAS.

(6) The economic effect on the community if the local service area is not extended.]

Subchapter G. [PUBLIC COIN TELEPHONE SERVICE] (Reserved)

§ 63.91. [Purpose] (Reserved).

[The purpose of this subchapter is to promote competition in the coin telephone market, assure accurate price disclosure and provide for public interest coin telephones.]

§ 63.92. [Definitions] (Reserved).

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

Coin telephone—A telephone which includes a coin mechanism which accepts coins for payment of rates or charges associated with placing local or interexchange calls from the telephone. The term does not include a telephone which requires insertion of a credit card to pay for using or placing calls from the telephone and does not include a telephone without a coin mechanism.

Local exchange carrier—A telephone company certificated by the Commission to provide service within a local calling area.

Payphone service provider—A corporation, association, partnership or person who manufactures, vends, owns or leases coin telephones and is not required to be certificated by the Commission for the provision of coin telephone service.]

§ 63.93. [Conditions of service] (Reserved).

[A payphone service provider shall provide service in accordance with this subchapter to be

eligible for access to a public utility's intrastate telephone facilities and services, and these services shall be denied when a payphone service provider does not comply with the requirements of this subchapter.]

§ 63.94. [Coin telephone requirements] (Reserved).

[(a) A coin telephone shall be registered with the Federal Communications Commission when required under 47 CFR Part 68 (relating to the connection of terminal equipment to the telephone network).

(b) A coin telephone shall provide a dial tone without the insertion of a coin to permit access to the operator. A coin telephone shall comply with the Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) usability standards where compliance with usability standards is required by the Americans With Disabilities Act of 1990 (ADA). It shall provide call completion for 911 service if available, access to telecommunication relay services, and per-call blocking of any caller identification service when the caller initiates the blocking service by dialing *67. As an alternative to the per-call blocking service, the coin telephone shall offer callers free operator service to block caller identification.

(c) A coin telephone shall be capable of accepting and registering nickels, dimes and quarters for the payment of applicable charges for local exchange, message toll and other services.

(d) Coin telephones shall provide message toll service. The coin telephone shall be capable of completion of toll free numbers without the payment of a coin, that is, either without the insertion of a coin or with the return of the coin inserted.

(e) No more than one coin telephone may be connected to a single coin telephone access line. If a noncoin extension telephone is connected to the line, the instruments shall be wired so as to disconnect the extension telephone when the coin telephone hand set is off the hook.

(f) A local exchange carrier shall provide access lines to a payphone service provider. The payphone service provider shall be responsible for charges properly attributable to the installation, connection and use of the line. The charges may not include a charge for unpublished numbers for coin telephone listings. The charges may include the following:

- (1) Nonrecurring installation charges.
- (2) Connection and reconnection charges.
- (3) Service call charges.
- (4) Recurring monthly flat rate and measured-metered charges.
- (5) Directory assistance charges.
- (6) Improperly or erroneously accepted collect message toll charges, third number billing charges and credit card billing charges unless the non-public utility is paying a charge to the local exchange carrier for screening calls.
- (g) A coin telephone shall display instructions and notices which are prominently posted on, or in

the immediate vicinity of, the coin telephone clearly stating the following:

(1) The charge for local coin calls and dialing instructions to obtain rates for other types of calls.

(2) The name, address and telephone number of the owner, lessee or supplier of the telephone.

(3) Dialing and other instructions applicable to the use of the coin telephone.

(4) The telephone number of the coin telephone.

(5) Notice that the coin telephone provides one-way service only, if applicable.

(6) Notice of the per-call blocking option by dialing *67 or, as an alternative, free operator service to block any caller identification service.

(7) The procedure for registering service complaints and obtaining refunds.

(h) A coin telephone may not be connected to a type of line other than a payphone service provider access line. Existing connections using business or residential access lines shall be converted by the local exchange carrier to utilize payphone service provider access lines. Each local exchange carrier shall maintain provisions in its tariff providing for payphone service provider access line service offerings. Through these tariff provisions, each local exchange carrier shall offer payphone service provider access lines and associated optional features to all payphone service providers on a nondiscriminatory basis.]

§ 63.95. [Coin telephone service in the public interest] (Reserved).

[The Commission may require a payphone service provider to place or replace a coin telephone at a particular location if it is determined that a placement or replacement is in the public interest.]

§ 63.96. [Service requirements for coin telephones] (Reserved).

[(a) A coin telephone shall provide two-way service and may be converted to one-way outgoing service only under extraordinary circumstances when the Commission determines that the action is justified based on public health, safety or welfare concerns, and is in the best interest of the public.

(b) A local exchange carrier, payphone service provider or other interested party may seek Commission review of whether conversion of a coin telephone from two-way service to one-way is justified by extraordinary circumstances. Conversion requests shall be made in writing and shall identify the telephone number and location of the coin telephone, and describe the circumstances which justify conversion.

(c) The Commission's Bureau of Consumer Services shall determine whether a conversion request is justified within 10 days of its receipt unless the information provided by the requesting party is inadequate to make a determination. The Bureau will notify the requesting party and the owner of the coin telephone of its determination by telephone. The Bureau will provide the requesting party and the owner of the coin telephone written

notice of its determination. The Bureau will limit the duration of the conversion authorization if it appears that the circumstances justifying the conversion are temporary in nature.

(d) A party may appeal the Bureau's determination, or request that a coin telephone previously approved for one-way conversion be returned to two-way service, by filing a formal complaint with the Commission.

(e) In instances where a conversion request involves allegations of drug trafficking from a coin telephone or other emergency circumstances pertaining to public health, safety or welfare concerns, the Bureau may telephonically authorize the owner of the coin telephone to convert the telephone to one-way service on the same day the emergency conversion request is received. Following an emergency conversion authorization, the Bureau will review the conversion request under the procedures established in subsection (c).]

§ 63.98. [Compliance] (Reserved).

[(a) The Commission may direct a payphone service provider to submit data or other information to ensure compliance with this subchapter and may direct a local exchange carrier to terminate service to a payphone service provider found by the Commission to be in violation of this subchapter. The owner of a coin telephone shall be primarily responsible for assuring compliance with this subchapter.

(b) The Commission may direct payphone service providers to participate in the implementation of a self-enforcement program for payphone service provider coin telephones.

(c) This subchapter supersedes conflicting provisions of previously issued Commission orders.]

Subchapter H. [INTEREXCHANGE TELECOMMUNICATIONS CARRIERS] (Reserved)

§ 63.101. [Statement of purpose and policy] (Reserved).

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

§ 63.102. [Definitions] (Reserved).

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

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

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

Competitive services—Interexchange services other than noncompetitive services.

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

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

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

Interexchange telecommunications carrier—

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

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

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

§ 63.103. [Jurisdiction of interexchange reseller carriers] (Reserved).

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

§ 63.104. [Disclosure requirements for competitive services] (Reserved).

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

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

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

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

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

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

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

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

§ 63.105. [Reclassification of services] (Reserved).

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

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

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

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

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

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

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

§ 63.106. [Noncompetitive services and tariffs] (Reserved).

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

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

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

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

(2) A description of the noncompetitive service.

(3) The rates proposed for the noncompetitive service.

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

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

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

(d) The interexchange telecommunications carrier is not required to submit cost justification, cost-of-service or revenue data relating to the proposed change as directed in subsection (c)(4) if one of the following applies:

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

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

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

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

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

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

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

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

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

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

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

(i) This section supersedes Chapter 53 (relating to tariffs for noncommon carriers) to the extent that Chapter 53 is inconsistent with this section.] § 63.107. [Applications for authority] (Reserved).

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

(b) If an applicant is offering noncompetitive services to the public, it shall attach a proposed

tariff to its application containing the proposed rates of the noncompetitive services and the rules and policies under which the interexchange telecommunications carrier intends to provide its service. Rates for noncompetitive services provided for in the proposed tariff may not exceed the reasonable charge for a noncompetitive interexchange call.

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

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

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

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

(g) This section supersedes Chapter 53 (relating to tariffs for noncommon carriers) to the extent that Chapter 53 is inconsistent with this section.] § 63.108. [Reporting requirements] (Reserved).

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

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

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

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

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

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

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

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

(4) Private line or dedicated communication path services.

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

§ 63.109. [Enforcement] (Reserved).

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

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

Subchapter J. CONFIDENTIALITY OF CUSTOMER COMMUNICATIONS AND INFORMATION

§ 63.131. [Purpose and general] General provisions.

(a) [This subchapter establishes appropriate minimum standards to ensure that public utilities providing regulated telecommunication services

maintain the confidentiality of customer communications and customer information] (Reserved).

(b) [A telephone] A jurisdictional telecommunications company subject to this subchapter shall treat customer communications and customer information as confidential. Except for the limited instances provided in this subchapter, release of customer information to the public shall be permitted only on the authority of the customer. When a [telephone] telecommunications company or its authorized [employes] employees, agents or independent contractors utilize customer information, they shall do so only when necessary and only to the extent necessary to accomplish legitimate and authorized purposes, as set forth in this subchapter. [Telephone] Telecommunications companies and [telephone company employes] their employees, agents or independent contractors shall make every reasonable effort to avoid the unauthorized dissemination of customer information to the public.

(c) Nothing in this subchapter supersedes the Wiretap Act, or permits a [telephone] telecommunications company service or activity which is otherwise prohibited by the Wiretap Act.

§ 63.132. Definitions.

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

Agent—An individual or entity that performs work on behalf of a telecommunications public utility as the principal and is subject to this subchapter.

Customer communications—A customer voice or data communication made in whole or in part by wire, cable, microwave or other means for the transmission by a [telephone] telecommunications company of communications between the point of origin and the point of reception by a [telephone] telecommunications company.

Customer information—Information regarding a customer of a [telephone] telecommunications company or information regarding the services or equipment ordered and used by that customer. The term includes a customer's name, address and telephone number, occupation, information concerning toll calls, collect calls and third-party billed calls, local message detail information and information concerning services ordered or subscribed to by a customer. The term also includes bills, statements, credit history, toll records whether on paper, microfiche or electromagnetic media; computer records; interexchange carrier selection, service problems and annoyance call records.

Destruction—The mutilation of documents in a manner which insures that their content is obliterated by sufficiently tearing or shredding prior to collection by public waste or trash collectors or by appropriately erasing information stored electromagnetically.

[Employe] Employee—An individual who works directly for and is paid a salary by a [telephone] telecommunications company subject to this subchapter.

Independent contractor—An individual or entity that performs work on behalf of a telecommunications public utility that is subject to this subchapter.

[Pen register—A device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted with respect to wire communications on the telephone line to which the device is attached. The term does not include a device which is excluded from the definition of pen register by the Wiretap Act.]

Security department—The department or individuals with responsibility for the prevention and investigation of the loss, destruction or theft of **[telephone] telecommunications** company property, the unauthorized or unlawful use of **[telephone] telecommunications** company equipment or services and the unlawful conduct of **[telephone] telecommunications** company **[employees] employees, agents or independent contractors** which occurs during the course of employment.

Service evaluation and monitoring—Evaluation and monitoring of **[telephone] telecommunications** company operations, including communications, to maintain or improve the quality of service to the customer. The term includes review of **[customer/employee relations] employee, agent or independent contractor relationships with customers**, system checks and facility maintenance.

[Telephone] Telecommunications company—A public utility which provides regulated telecommunication services subject to Commission jurisdiction.

[Trap and trace device—A device which captures incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted. The term does not include a device which is excluded from the definition of trap and trace device by the Wiretap Act.

Wiretap—A device which is used to intercept and record or aurally monitor telephone communications whether from a local or remote site under a court order or other lawful process.]

Wiretap Act—Title 18 of the *Pennsylvania Consolidated Statutes* §§ 5701–5781 (relating to Wiretapping and Electronic Surveillance Control Act).

§ 63.133. Confidentiality.

A **[telephone] telecommunications** company shall **[establish] distribute** a written statement of its fundamental policy and obligation to maintain the confidentiality of customer communications and customer information **to its customers annually**. The written statement shall declare the responsibility of each **[employe] employee, agent or independent contractor** to maintain the confidentiality of customer communications and customer information in accordance with applicable State and Federal law.

§ 63.134. **[Employe commitment] Commitment** to confidentiality of customer communications and customer information.

A **[telephone] telecommunications** company shall confirm with each **[employe] employee, agent or independent contractor** the responsibility to maintain

the confidentiality of customer communications and customer information in accordance with applicable State and Federal law.

(1) *Securing commitment from [employes] employees, agents or independent contractors.* A **[telephone] telecommunications** company shall, at the time a person commences employment or an agency or independent contractor relationship, instruct that person regarding **[telephone] telecommunications** company policy covering the following points:

(i) State and Federal law generally prohibits the interception, disclosure and use of customer communications.

(ii) An **[employe] employee, agent or independent contractor** is prohibited from intercepting, using or disclosing customer communications except in those limited instances which are a necessary incident to:

(A) The provision of service.

(B) The protection of the legal rights or property of the **[telephone] telecommunications** company where the action is taken in the normal course of employment.

(C) The protection of the **[telephone] telecommunications** company, an interconnecting carrier, a customer or user of service from fraudulent, unlawful or abusive use of **[telephone] telecommunications** service.

(D) Compliance with legal process or other requirements of law.

(iii) An **[employe] employee, agent or independent contractor** is prohibited from using or disclosing customer information except when the use or disclosure is authorized by this subchapter.

(iv) Improper interception, use or disclosure of customer communications or customer information may result in disciplinary action, including dismissal or criminal and civil proceedings, or both.

(2) *Documentation of [employe] employee, agent or independent contractors commitment.* An appropriate document shall be prepared outlining the policy summarized in paragraph (1) and stating that the **[telephone] telecommunications** company **[employe] employee, agent or independent contractor** has read and understands the policy. The **[telephone] telecommunications** company shall present the document to each **[employe] employee, agent or independent contractors** for signature. A **[telephone] telecommunications** company manager shall witness and date the document, regardless of whether the **[employe] employee, agent or independent contractor** has agreed to sign the document. One copy shall be filed with the **[employe's] personnel papers of the employee, agent or independent contractors** and one copy given to the **[employe] employee, agent or independent contractors** to keep and review.

(3) *Annual review.* A **[telephone] telecommunications** company shall annually review with **[employes] employees, agents or independent contractors** the

commitment to confidentiality of customer communications and customer information, and shall make a record of that annual review.

§ 63.135. **Customer information.**

This section describes procedures for determining [**employee**] access to customer information and the purposes for which this information may be used by [**employees**] **employees, agents or independent contractors** responding to requests for customer information from persons outside the [**telephone**] **telecommunications** company and the recording of use and disclosure of customer information.

(1) [**Employee access**] **Access to and use of customer information.** Access to and use of customer information shall be limited to [**employees**] **employees, agents or independent contractors** who have a legitimate need to use the information in the performance of their work duties and, because of the nature of their duties, need to examine the data to accomplish the legitimate and lawful activities necessarily incident to the rendition of service by the [**telephone**] **telecommunications** company. An [**employee**] **employee, agent or independent contractor** shall be prohibited from using customer information for personal benefit or the benefit of another person not authorized to receive the information.

(2) *Requests from the public.* Customer information that is not subject to public availability may not be disclosed to persons outside the [**telephone**] **telecommunications** company or to subsidiaries or affiliates of the [**telephone**] **telecommunications** company, except in limited instances which are a necessary incident to:

- (i) The provision of service.
- (ii) The protection of the legal rights or property of the [**telephone**] **telecommunications** company where the action is taken in the normal course of an [**employee's**] **employee's, agent's or independent contractor's** activities.
- (iii) The protection of the [**telephone**] **telecommunications** company, an interconnecting carrier, a customer or a user of service from fraudulent, unlawful or abusive use of service.
- (iv) A disclosure that is required by a valid subpoena, search warrant, court order or other lawful process.
- (v) A disclosure that is requested or consented to by the customer or the customer's attorney, agent, [**employee**] **employee** or other authorized representative.
- (vi) A disclosure request that is required or permitted by law, including the regulations, decisions or orders of a regulatory agency.
- (vii) A disclosure to governmental entities if the customer has consented to the disclosure, the disclosure is required by a subpoena, warrant or court order or disclosure is made as part of [**telephone**] **telecommunications** company service.

(3) *Limitation on disclosures to agents, contractors, subsidiaries or affiliates.* To comply with this subchapter, a [**telephone**] **telecommunications** company may not allow disclosure of customer information to an agent, contractor, subsidiary or affiliate of a party it has entered into contract with (the contracting party) absent the prior establishment of terms and conditions for the disclosure pursuant to a written agreement that requires:

(i) Treatment of the information as confidential.

(ii) Use of the information by the contracting party or any of its respective [**employees**] **employees, agents or independent contractors** for only those purposes specified in the contract or agreement. The contract shall require the contracting party to establish a confidentiality statement which provides confidentiality protections which are no less than those required of the [**telephone**] **telecommunications** company by this subchapter and to maintain the same [**employee**] **employee** commitment to the protections in § 63.134 (relating to [**employee**] **employee, agent or independent contractor** commitment to confidentiality of customer communications and customer information). The contract may not allow the interception or use of the customer information or customer communications in a manner not authorized with respect to a [**telephone**] **telecommunications** company [**employee**] **employee, agent or independent contractor**. The contracting party shall also be subject to the operational restrictions specified in this subchapter with regard to the handling of customer communications and customer information as would otherwise apply to a [**telephone**] **telecommunications** company [**employee**] **employee, agent or independent contractor**.

(iii) Nondisclosure of the customer information and customer communications to third parties except as required by law.

(4) *Requests from law enforcement agencies and civil litigation.* Government administrative, regulatory and law enforcement agencies and parties in civil litigation may be able to compel the [**telephone**] **telecommunications** company to disclose customer information by serving upon the utility a subpoena, search warrant, court order or other lawful process.

(i) In response to legal process requiring the disclosure of customer information, the security department shall make the necessary arrangements with the government agency or attorney who caused the legal process to be issued regarding the information to be produced and the identity of the [**employee**] **employee, agent or independent contractor** or other [**telephone**] **telecommunications** company representative who will produce the information. The [**employee**] **employee, agent or independent contractor** assigned to produce this information shall secure the information, including applicable records, from the department having possession of the information and records and shall ascertain the meaning of a code word or letters or nomenclature which may appear on the records, to explain the meaning, if requested to do so. The [**employee**] **employee, agent or independent contractor** shall then comply with the legal process.

(ii) If information, including applicable records, is unavailable, the [**employee**] **employee, agent or independent contractor** selected to respond to the legal process shall be prepared to explain the unavailability of the information requested.

(iii) When a request for customer information is presented by a law enforcement agency, but that request is not accompanied by legal process, the request shall be referred to the security department. Absent legal process, the security department may not make disclosure of customer information to a law enforcement agency, except as required or permitted by law. Written, oral or other

communication to law enforcement officials to indicate whether obtaining legal process would be worthwhile is prohibited by the Commission.

(5) *Safeguarding customer information.* A [**telephone**] **telecommunications** company is responsible for implementing appropriate procedures to safeguard customer information and prevent access to it by unauthorized persons. Tangible customer records such as paper or microfiche records and electromagnetic media shall be stored in secure buildings, rooms and cabinets, as appropriate, to protect them from unauthorized access. Data processing and other electronic systems shall contain safeguards, such as codes and passwords, preventing access to customer information by unauthorized persons.

(i) *Transmission of customer information.* Customer information shall be transmitted in a manner which will reasonably assure that the information will not be disclosed to persons who are not authorized to have access to it.

(ii) *Reproduction.* Customer records may not be reproduced unless there is a business need for the reproduction. Only sufficient copies shall be made to satisfy the business purpose for the reproduction.

(iii) *Destruction of customer records.* Customer records shall be disposed of by the most advantageous method available at each location when retention of the records is no longer required by applicable Federal Communications Commission (FCC) regulations, other legal requirements, contract provisions such as government contract requirements or appropriate document retention guidelines.

(6) *Recording use and disclosure of customer information.* Because of the frequency with which customer information is used and disclosed in the ordinary course of business, it is neither practical nor desirable to record each instance in which customer information is used or disclosed by an [**employee**] **employee, agent or independent contractor**. However, the importance of some forms of customer information and the circumstances under which the information may be used or disclosed dictate that a record is required of the use or disclosure of customer information, as follows:

(i) Each instance in which customer information is used or disclosed for purposes other than to furnish service to the customer, to collect charges due from the customer or to accomplish other ordinary and legitimate business purposes.

(ii) Each instance in which information is disclosed to persons outside of the [**telephone**] **telecommunications** company, subject to subparagraph (i).

(iii) Each instance in which customer information is disclosed to a governmental entity or the [**telephone**] **telecommunications** company security department.

(iv) Each instance in which a record is required by other [**telephone**] **telecommunications** company practices or procedures.

(7) *Annual notice of Customer Proprietary Network Information (CPNI) rights.* The [**telephone**] **telecommunications** company shall provide an annual written notice of CPNI rights, as defined by the FCC, to customers with less than 20 access lines. The notice shall be submitted to the Commission's Bureau of Consumer Services for plain language review prior to issuance.

§ 63.136. [**Use of certain customer communications or customer information for debt collection purposes**] (Reserved).

[Notwithstanding another provision of this subchapter, neither the telephone company nor an agent or contractor of the telephone company may use itemized call information, including toll call information, which states the name or number of a person called by a customer, or customer communications with a person other than the telephone company, for the purpose of identifying and contacting the person to locate the customer to collect a debt owed by the customer to the telephone company. If the customer disputes liability for charges associated with a particular call, the telephone company may contact the person whom its records indicate was called to ascertain whether a call actually was placed from the customer's service to that person.]

§ 63.137. [**Service monitoring and related matters**] (Reserved).

[This section sets forth procedures for service evaluation and monitoring; use of pen registers and trap and trace devices; and responses to government requests for assistance in conducting wiretap, pen register, trap and trace and other types of investigations.

(1) *Compliance with State and Federal laws.* The telephone company shall comply with State and Federal laws regulating the recording, interception, disclosure or use of customer communications and the use of pen registers and trap and trace devices. Other recording of conversations is prohibited.

(2) *Service evaluation and monitoring.* The telephone company may evaluate and monitor those aspects of its operations, including customer communications, necessary for the provision of service to its customers.

(i) *Service evaluation.* A telephone company may engage in the sampling of customer communications by telephone company employees or automated equipment to measure service quality. This sampling of customer communications shall be kept to the minimum needed to measure service quality. Service evaluation facilities may not have monitoring access points outside official evaluation quarters. Entry to evaluation quarters shall be strictly controlled. During periods when evaluation quarters are not in use or when otherwise considered appropriate, the quarters shall be securely locked or the equipment rendered inoperative or accessible only by authorized personnel. Access to service evaluation documents that contain individual employee-customer contact information shall be closely guarded to protect the customer's privacy.

(ii) *Maintenance monitoring.* A telephone company may engage in the monitoring of telephone company facilities by an employee entering the circuit to listen and carry out tests to determine whether noise, "cross-talk," improper amplification, reproduction or other problems may exist. This includes the mandatory routines covered by equipment test lists, tracing of circuits for corrective action and other similar activities. The

monitoring may not interfere with the voice or data information being carried.

(iii) *Administrative monitoring.* A telephone company may engage in the monitoring of telephone company employee contacts with customers and with other employees which have a direct bearing on the quality of service provided to customers. The monitoring equipment shall be secure at all times and only used by authorized persons. The monitoring may be performed from a remote location. When the equipment is in a remote location and is not in use, it shall be secured or made inoperative or accessible only by authorized personnel.

(3) *Security department monitoring.* To the extent permitted by applicable State and Federal law, the security department may conduct monitoring, including recording of conversations, in conjunction with the investigation of toll fraud or other unlawful uses of the telephone network. The security department shall maintain complete records of monitoring performed. At a minimum, the records shall include the date and times between which the monitoring was conducted, the name, address and telephone number of the person from whose service the communication was placed and by whose service it was received, the name of the person making the communication, the duration of the communication and information derived from the monitoring. The records shall be retained for the period of time required by telephone company document retention guidelines.

(4) *Use of pen registers and trap and trace devices.*

(i) Pen register and trap and trace devices may be used by telephone company employees in accordance with applicable State and Federal law.

(ii) In each instance in which pen register or trap and trace devices are used for a purpose other than for the operation, maintenance or testing of the network, for billing purposes or for the provision of service, a record shall be made showing the dates and times between which the pen register or trap and trace device was used, the names of the persons by whom the use was authorized, directed to be performed and conducted, and the name, address and telephone number of the person whose service was subject to use of the pen register or trap and trace device. The record shall be retained for the time required by applicable telephone company document retention guidelines.

(5) *Employee authorization.* An employee may not perform service evaluation, maintenance monitoring or administrative monitoring or direct that these activities be performed unless the employee is authorized and has a need to do so as part of the employee's work duties. An employee may not use pen register or trap and trace facilities or direct that such a device or facilities be used unless the employee is authorized and has a need to do so as part of regular work duties.

(6) *Government orders.* Orders from courts and other lawful process requiring the telephone company to assist in the performance of pen register searches, trap and trace searches, wiretap searches and other types of investigations shall be handled in accordance with applicable State and

Federal law. The telephone company shall maintain a record of each investigation conducted under this subsection. The record shall be retained for the time required by applicable telephone company document retention guidelines.]

Subchapter K. COMPETITIVE SAFEGUARDS

§ 63.141. Statement of purpose and policy.

(a) This subchapter establishes competitive safeguards to:

(1) Assure the provision of adequate and nondiscriminatory access by [ILECs to CLECs] local exchange telecommunications carriers to competitive telecommunications carriers as the term is defined in this subchapter for all services and facilities [ILECs] local exchange telecommunications companies are obligated to provide [CLECs] competitive telecommunications carriers under any applicable Federal or State law.

(2) Prevent the unlawful cross subsidization or support for competitive services from noncompetitive services by [ILECs] local exchange telecommunications companies.

(3) Prevent LECs from engaging in unfair competition.

(b) These competitive safeguards are intended to promote the Commonwealth's policy of establishing and maintaining an effective and vibrant competitive market for all telecommunications services.

(c) The code of conduct in § 63.143 (relating to code of conduct) supersedes and replaces the code of conduct adopted by Commission order entered September 30, 1999, at P-00991648, et al.

§ 63.142. Definitions.

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

[*CLEC—Competitive local exchange carrier*]
Competitive telecommunications carrier—

(i) A local exchange telecommunications company services provider that has been certificated or given provisional authority by the Commission as a [CLEC] competitive telecommunications carrier under the Commission's procedures implementing the Telecommunications Act of 1996, the act of February 8, 1996 (Pub. L. No. 104-104, 110 Stat. 56), or under the relevant provisions in 66 Pa.C.S. § [3009(a)] 3019(a) (relating to additional powers and duties), and its successors and assigns.

(ii) The term includes any of the [CLEC's] competitive telecommunications carrier's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service.

*Competitive service—*A service or business activity offered by an [ILEC or CLEC] local exchange telecommunications company or competitive telecommunications carrier that has been classified as competitive by the Commission under the relevant provisions of 66 Pa.C.S. § [3005] 3016 (relating to competitive services).

[*ILEC—Incumbent local exchange carrier—*

(i) A telecommunications company deemed to be an ILEC under section 101(h) of the Telecom-

munications Act of 1996 (47 U.S.C.A. § 251(h)), and its successors and assigns.

(ii) The term includes any of the ILEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service.]

LEC—Local exchange carrier—A local [telephone company] exchange telecommunications service provider that provides telecommunications service within a specified service area. LECs encompass both [ILECs and CLECs] local exchange telecommunications companies and competitive telecommunications carriers.

Local exchange telecommunications company—

(i) A local exchange telecommunications services provider deemed to be an incumbent carrier under section 101(h) of the Telecommunications Act of 1996 (47 U.S.C.A. § 251(h)), and its successors and assigns.

(ii) The term includes any of the local exchange telecommunications company's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service.

Market price—Prices set at market-determined rates.

Noncompetitive service—Any protected [telephone] telecommunications service as defined in 66 Pa.C.S. § [3002] 3012 (relating to definitions), or a service that has been determined by the Commission as not a competitive service.

Telecommunications service—[A utility service, involving the transmission of messages, which is subject to the Commission's jurisdiction] The offering of the transmission of messages or communications for a fee to the public.

§ 63.143. Code of conduct.

All LECs, unless otherwise noted, shall comply with the following requirements:

(1) Nondiscrimination.

(i) [An ILEC] A local exchange telecommunications company may not give itself, including any local exchange affiliate or division or other corporate subunit that performs that function, or any [CLEC] competitive telecommunications carrier any preference or advantage over any other [CLEC] competitive telecommunications carrier in the preordering, ordering, provisioning, or repair and maintenance of any goods, services, network elements (as defined under section 3(29) of the Communications Act of 1934 (47 U.S.C.A. § 153(29)), or facilities.

(ii) [An ILEC] A local exchange telecommunications company may not condition the sale, lease or use of any noncompetitive service on the purchase, lease or use of any other goods or services offered by the [ILEC] local exchange telecommunications company or on a written or oral agreement not to deal with any CLEC. In addition, a LEC may not condition the sale, lease or use of any noncompetitive service on a written or oral agreement not to deal with any other LEC. Nothing in this paragraph prohibits an [ILEC] local exchange telecommunications company from bundling noncompetitive services with other noncompetitive services or with competitive services so long as the [ILEC] local ex-

change telecommunications company continues to offer any noncompetitive service contained in the bundle on an individual basis.

(iii) [An ILEC] local exchange telecommunications company shall offer to [CLECs] competitive telecommunications carriers for resale any bundled competitive and noncompetitive services it provides to end-users at the same price it offers the bundled services to end-users less any applicable wholesale discount approved by the Commission, and shall make the unbundled network elements associated with those services available to [CLECs] competitive telecommunications companies as may be required by any applicable State or Federal law.

(2) Employee conduct.

(i) A LEC employee, while engaged in the installation of equipment or the rendering of services to any end-user on behalf of a competitor, may not disparage the service of the competitor or promote any service of the LEC to the end-user.

(ii) A LEC employee, while processing an order for the repair or restoration of service or engaged in the actual repair or restoration of service on behalf of a competitor, may not either directly or indirectly represent to any end-user that the repair or restoration of service would have occurred sooner if the end-user had obtained service from the LEC.

(3) Corporate advertising and marketing.

(i) A LEC may not engage in false or deceptive advertising with respect to the offering of any telecommunications service in this Commonwealth.

(ii) A LEC may not state or imply that the services provided by the LEC are inherently superior when purchased from the LEC unless the statement can be factually substantiated.

(iii) A LEC may not state or imply that the services rendered by a competitor may not be reliably rendered or are otherwise of a substandard nature unless the statement can be factually substantiated.

(iv) [An ILEC] A local exchange telecommunications company may not state or imply that the continuation of any requested service from the [ILEC] local exchange telecommunications company is contingent upon taking other services offered by the [ILEC] local exchange telecommunications company that are not technically necessary to provide the requested service.

(4) Cross subsidization.

(i) [An ILEC] A local exchange telecommunications company may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services.

(5) Information sharing and disclosure.

(i) [An ILEC] A local exchange telecommunications company shall simultaneously make available to [CLECs] competitive telecommunications carriers network information not in the public domain that is used for sales purposes by the [ILEC] local exchange telecommunications company or the [ILEC's] local exchange telecommunications company's competitive local [exchange] telecommunications services affiliate or division or other corporate subunit that performs that function.

(A) The term “network information” means information concerning the availability of unbundled network elements or information necessary for interconnection to the [ILEC’s] **local exchange telecommunications company’s** network.

(B) Network information does not include information obtained during the processing of an order or service on behalf of the [ILEC] **local exchange telecommunications company** or the [ILEC’s] **local exchange telecommunications company’s** competitive local exchange affiliate or division or other corporate subunit that performs that function.

(ii) [An ILEC’s] **A local exchange telecommunications company’s** employees, including its wholesale employees, shall use [CLEC] **competitive telecommunications carrier** proprietary information (that is not otherwise available to the [ILEC] **local exchange telecommunications company**) received in the preordering, ordering, provisioning, billing, maintenance or repairing of any telecommunications services provided to the [CLEC] **competitive telecommunications carrier** solely for the purpose of providing the services to the CLEC. [ILEC] **Local exchange telecommunications company** employees may not disclose the [CLEC] **competitive telecommunications carrier** proprietary information to other employees engaged in the marketing or sales of retail telecommunications services unless the [CLEC] **competitive telecommunications carrier** provides prior written consent to the disclosure. This provision does not restrict the use of aggregated [CLEC] **competitive telecommunications carrier** data in a manner that does not disclose proprietary information of any particular [CLEC] **competitive telecommunications carrier**.

(iii) Subject to customer privacy or confidentiality constraints, a LEC employee may not disclose, directly or indirectly, any customer proprietary information to the LEC’s affiliated or nonaffiliated entities unless authorized by the customer under § 63.135 (relating to customer information).

(6) Sharing of employees and facilities. The [ILEC’s] **local exchange telecommunications company’s** wholesale employees who are responsible for the processing of a [CLEC] **competitive telecommunications carrier** order or service of the operating support system on behalf of a [CLEC] **competitive telecommunications carrier** may not be shared with the retail portion of the [ILEC’s] **local exchange telecommunications company’s** business, shall have offices physically separated from the [ILEC’s] **local exchange telecommunications company’s** retail employees and shall have their own direct line of management.

(7) Adoption and dissemination. Every LEC shall formally adopt and implement the applicable code of conduct provisions as company policy or modify its existing company policy as needed to be consistent with the applicable code of conduct provisions. Every LEC shall also disseminate the applicable code of conduct provisions to its employees and take appropriate steps to train and instruct its employees in their content and application.

Subchapter N. LOCAL SERVICE PROVIDER ABANDONMENT PROCESS

§ 63.302. Definitions.

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

* * * * *

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

* * * * *

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

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CHAPTER 64. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL [TELEPHONE] **TELECOMMUNICATIONS SERVICE**

Subchapter A. PRELIMINARY PROVISIONS

§ 64.1. Statement of purpose and policy.

The purpose of this chapter is to establish and enforce uniform, fair and equitable residential [telephone] **telecommunications** service standards governing account payment and billing, credit and deposit practices, suspension, termination and customer complaint procedures. The purpose of this chapter is to assure adequate provision of residential [telephone] **telecommunications** service; to restrict unreasonable suspension or termination of or refusal to provide service; and to provide functional alternatives to suspension, termination or refusal to provide service. Every privilege conferred or duty required by this chapter imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement. This chapter will be liberally construed to fulfill its purpose and policy and to ensure justice for all concerned.

§ 64.2. Definitions.

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

Applicant—A person who applies for residential [telephone] **telecommunications** service, other than a transfer of service from one dwelling to another within the service area of the LEC or a reinstatement of service following a discontinuation or suspension.

Basic service—The transmission of messages or communications by a telephone **device** between points within a local calling area as established in the tariff of [an] **a** LEC, including installation service, providing and restoring access lines, touch tone service and handling of unpaid checks as addressed in § 64.11 (relating to method of payment). The term includes charges for 911 service, telecommunications relay service and subscriber line service, but does not include [premise] **premises** visits for installation of new service.

Billing period—A period of at least 26 days and not more than 35 days, except in the following circumstances:

(i) An initial bill for a new customer may be less than 26 days or greater than 35 days. The initial bill may never exceed 60 days.

(ii) A final bill due to discontinuance or termination may be less than 26 days or greater than 35 days but

may not exceed 42 days. A bill may be rendered after the final bill for an additional toll, lost equipment or other similar charge.

(iii) Bills for less than 26 days or more than 35 days will be permitted if they result from a rebilling initiated by the company or by a customer dispute to correct a billing problem.

Bundled service package—A package of services offered and billed on one bill by [**an**] a LEC, as defined in this section, which includes nontariffed, competitive, noncompetitive or protected services, including services of an affiliate, in combinations and at a single price selected by the LEC.

Commercial service—[**Telephone**] **Telecommunications** service to a location other than a dwelling, except that service to a dwelling used for both residential and commercial purposes shall be considered commercial service if concurrent residential service is provided.

Competitive wire center—A wire center or other geographic area that is defined and served by a local exchange telecommunications company where all of its retail telecommunications services have been declared or determined to be competitive by the Commission as competitive under 66 Pa.C.S. § 3016 (relating to competitive services).

Cramming—The submission or inclusion of unauthorized, misleading or deceptive charges for products or services on an end-user customer's local telephone bill.

Customer—An applicant in whose name a residential service account is billed.

Delinquent account—Charges for [**telephone**] **telecommunications** service which have not been paid in full by the due date stated on the bill or otherwise agreed upon. The contested portion of an account may not be deemed delinquent if, before the due date, payment arrangements with the LEC have been entered into by the customer, a timely filed notice of dispute is pending before the LEC or an informal or formal complaint is timely filed with and is pending before the Commission.

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

Dispute—A grievance of an applicant, customer or customer's designee about a utility's application of one or more provisions covered by this chapter, including credit determinations, deposit requirements, the accuracy of amounts billed or the proper party to be charged, which remains unresolved after the initial contact or utility follow-up response when the applicant, customer or customer's designee consents to the utility reviewing pertinent records or other information and calling back. The term does not include a disagreement arising from matters outside the scope of this chapter, or failure to negotiate a mutually satisfactory payment agreement regarding undisputed amounts, or a disagreement over billing data provided to the local exchange carrier by an interexchange carrier.

Dwelling—A house, apartment or other location where a person resides.

Emergency—An unforeseen combination of circumstances requiring temporary discontinuation of service either to effect repairs or maintenance or to eliminate an imminent threat to life, health, safety or property.

Interexchange carrier—A carrier which provides interexchange services to the public under 66 Pa.C.S. § [**3008**] **3018** (relating to interexchange telecommunications [**carrier**] **carriers**).

LEC—*Local Exchange Carrier*—A public utility which provides basic service either exclusively or in addition to toll service **as an incumbent or a competitive carrier**.

Nonbasic service—A service or a product other than [**telephone**] **telecommunications** service which is either offered or billed for by [**an**] a LEC. The term includes the sale or lease of customer premises equipment, inside wiring maintenance plans, repair services, premises visits for service installation, nonrecurring charges for nonbasic services, restoral charges for nonbasic services, custom calling services, audiotex services, pay-per-call services and international information or entertainment services.

Noncompetitive wire center—A wire center or other geographic area that is defined and served by a local exchange telecommunications company where the jurisdictional telecommunications public utility continues to offer to its customer protected, retail nonprotected and noncompetitive telecommunications services as defined by 66 Pa.C.S. § 3012 (relating to definitions).

Occupant—A person who resides at a location to which residential service is supplied.

Payment agreement—A mutually satisfactory agreement between the customer and the LEC whereby a customer who admits liability for billed service is permitted to pay the unpaid balance of the account in one or more payments over a reasonable period.

Physician—An individual permitted under the statutes of the Commonwealth to engage in the practice of medicine and surgery or in the practice of osteopathy or osteopathic surgery.

Residential service—[**Telephone**] **Telecommunications** service supplied to a dwelling, including service provided to a location used for both residential and commercial purposes if no concurrent commercial service is provided. The term does not include [**telephone**] **telecommunications** service provided to a hotel or motel.

Service provider—Facilities-based interexchange carrier, interexchange reseller or information service provider initiating the service or charges to end-user customers.

Slamming—The unauthorized changing of a customer's telecommunications provider, whether for local exchange service, intraLATA toll or interLATA toll.

Suspension of service—A temporary cessation of service without the consent of the customer.

[**Telephone**] **Telecommunications** company—A public utility which provides [**telephone**] **telecommunications** service subject to Commission jurisdiction.

[**Telephone**] **Telecommunications** service—The transmission of messages or communications by telephone. The term includes basic service and toll service.

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

Toll service—The transmission of messages or communications by telephone between points which are not

both within a local calling area as established in the tariff of [an] a LEC. The term includes service that is either billed by or provided by [an] a LEC, toll restoral charges and presubscription interexchange carrier change charges.

Subchapter B. PAYMENT AND BILLING STANDARDS

§ 64.11. Method of payment.

Payment may be made in any reasonable manner including payment by personal check, unless the customer within the past year has tendered a check which has been returned unpaid to the LEC by a financial institution for a reason for which the customer is at fault. When a tendered personal check is returned unpaid to the LEC by a financial institution for a reason for which the customer is at fault, the LEC may treat such unpaid check as a payment never made by the customer and, if it does so, shall not be obligated to halt suspension or termination action based on its receipt of this check from the customer. **The LEC may impose a charge for a returned check as long as the charge is set forth be in the LEC's approved tariff, Product Guide or similar document.** The LEC also may impose a handling charge, the amount of which shall be set forth in the carrier's approved tariff. Notwithstanding the foregoing provisions, the LEC may not proceed with suspension or termination of service based on a disputed billed amount or impose a handling charge if the customer stops payment on a check due to a good faith billing dispute.

§ 64.12. Due date for payment.

The due date for payment of a monthly bill, **whether it be a paper bill or an electronic bill generated instead of a paper bill**, shall be at least 20 days from the date of mailing by the LEC to the customer.

(1) *Extension of due date to next business day.* If the last day for payment falls on a Saturday, Sunday or bank holiday or another day when the offices of the LEC which regularly receive payments are not open to the general public, the due date shall be extended to the next business day.

(2) *Date of payment by mail.* For a remittance by mail, one of the following applies:

(i) Payment shall be deemed to have been made on the date of the postmark.

(ii) The LEC may not impose a late payment charge unless payment is received more than 5 days after the due date.

(iii) The LEC may not mail or deliver notice of suspension until at least 5 days after the stated due date.

(3) *Date of payment to branch office or authorized payment agent.* The effective date of payment to a branch office or authorized payment agent is the date of actual payment at that location.

(4) *Multiple notifications.* When a LEC advises a customer by multiple notices or contacts and they contain different due dates, the date on or before which payment is due shall be the latest date contained in the notices listed in this section.

§ 64.13. Billing frequency.

[An] A LEC shall render **either a paper bill or shall generate an electronic billing instead of paper bills** once every billing period to customers in accordance with approved rate schedules.

§ 64.14. Billing information.

(a) Every bill rendered must [**state clearly**] **clearly state** the following information:

(1) The date of the bill.

(2) The due date on or before which payment shall be received to avoid an account being considered delinquent.

(3) The beginning and ending dates of the billing period for service, excluding toll usage and equipment.

(4) The amount due for basic service, nonbasic service, and taxes and applicable surcharges, during the current billing period.

(5) An itemized statement of toll charges listing the date, time, destination, duration and rate period for each toll call unless the customer subscribes to an unlimited toll service plan or toll service is included as part of the customer's bundled service package.

(6) The amounts for security deposits owed by or credited to existing customers. This amount shall be separately stated on each bill if a security deposit remains unpaid.

(7) The total amount of payments and other credits made to the account during the current billing period.

(8) The amount of late payment charges.

(9) The total amount due.

(10) A statement directing the customer to register a question or complaint about the bill prior to the due date, with the address and telephone number where the customer may direct questions or complaints.

(11) A statement that a rate schedule, an explanation of how to verify the accuracy of a bill, and an explanation of the various charges, if applicable, can be obtained by contacting the business office of the LEC.

(b) [**At least annually, and upon request of the customer, the LEC shall provide an itemization of all service equipment and other recurring charges**] **(Reserved).**

(c) Upon request for new or additional services, the LEC shall inform the customer of the monthly recurring charge for service and each item of equipment ordered by the customer and shall provide a minimum and maximum estimate of applicable nonrecurring charges. The LEC shall maintain a record of the estimates given for 90 days **or approximately 3 billing cycles.** The LEC shall have available a printed explanation of alternative rates and services.

(d) [**Every final bill must contain a statement that a subsequent bill will be rendered if needed to collect charges, such as additional tolls or lost equipment.**] **(Reserved).**

§ 64.15. [**Advance payments**] **(Reserved).**

[**Payment may be required before furnishing any of the following services:**

(1) **The construction of facilities and furnishing of special equipment.**

(2) **Temporary service for short-term use.**]

§ 64.22. [**Billing service for interexchange carriers**] (Reserved).

[**A LEC may provide billing services for interexchange carriers when the LEC applies its deposit rules.**]

**Subchapter C. CREDIT AND DEPOSIT
STANDARDS POLICY**

§ 64.34. **Written procedures.**

Each LEC shall establish written procedures for [**determining**] determining the credit status of an applicant. Each LEC [**employe**] employee, agent or independent contractor processing applications or determining the credit status of an applicant shall be familiar with and have ready access to a copy of the written procedures of the LEC. A copy of the procedures shall be maintained on file in each business office of the LEC and be made available, upon request, for inspection by the public and the Commission.

(1) *Informing applicants of procedures.* The LEC personnel shall provide an explanation of applicable credit and deposit procedures to each customer or applicant for service.

(2) *Reasons for deposit request.* If a deposit or payment of an outstanding residential account is required before furnishing service, the LEC shall inform the applicant in writing of the reasons for denial of credit and how to obtain service. Existing customers will be informed of the reasons for denial of credit before suspension of service.

§ 64.35. **Deposit requirements for existing customers.**

Deposits may be required to secure the account of an existing customer if any of the following conditions exist:

(1) *Delinquent account.* A customer has made payment of two consecutive bills, or of more than two bills within the [**proceeding**] preceding 12 months, after the payment due date. Before requesting a deposit under this paragraph, the LEC shall give the customer written notification of its intent to request a deposit if current and future bills continue to be paid after the due date.

(i) Notification shall clearly indicate that a deposit is not required at this time but that, if bills continue to be paid after the due date, a deposit will be required.

(ii) Notification may be mailed or delivered to the customer together with a bill for [**telephone**] telecommunications service.

(iii) Notification shall set forth the address and telephone number of the LEC office where complaints or questions may be registered.

(iv) The subsequent request for deposit shall clearly indicate that a customer should register a question or complaint about that matter prior to the date the deposit is due in order to avoid having service suspended pending resolution of a dispute. The request shall include the telephone number of the LEC office where questions or complaints may be registered.

(2) *Condition to the reconnection of service.* A LEC may require a deposit as a condition for reconnection of service after suspension or termination of service for nonpayment.

(3) *Failure to comply with payment agreement.* A LEC may require a deposit when a customer fails to comply

with the terms and conditions of a payment agreement, whether or not service has been suspended or terminated.

§ 64.36. **Method of making deposit.**

[**An**] A LEC's request for deposit may be satisfied by one of the following:

(1) *Posting a cash deposit.* The following conditions apply:

(i) *Applicants.* The amount of cash deposit required from an applicant may not exceed the estimated average 2-month bill for basic service plus the average 2-month toll charges for existing residential customers in the applicant's exchange during the immediately preceding 12-month period. Deposits may be adjusted to maintain a level equal to the estimated average 2-month bill. No more than one half of the deposit amount may be required prior to the providing of service by the utility with the balance of the deposit due no less than 30 days from the initial deposit payment.

(ii) *Existing customers.* The amount of a cash deposit required from an existing customer may not exceed the customer's average 2-month bill, including toll charges, during the preceding 12-month period. Deposits may be adjusted to maintain a level equal to the average 2-month bill. The deposit shall be paid within 20 days of the request for deposit.

(2) *Furnishing a written third-party guarantee.* Another customer who has met or can meet the credit standards of § 64.32 (relating to credit standards) may furnish a written guarantee to secure payment in an amount equal to the cash deposit required from the applicant or customer. The guarantor shall be discharged when the applicant or customer meets the terms and conditions of § 64.37 (relating to refund of deposits).

§ 64.37. **Refund of deposits.**

[**An**] A LEC shall refund the cash deposit, plus accrued interest, under the following conditions.

(1) *Termination or permanent discontinuance of service.* Upon termination or discontinuance of service, the LEC shall apply the deposit of a customer, including accrued interest, to the outstanding balance and refund the remainder to the customer. A transfer of service from one location to another within the service area may not be deemed a discontinuance within the meaning of this paragraph.

(2) *Credit established.* At the customer's request, when a customer establishes credit under § 64.32 (relating to credit standards), the LEC shall refund the cash deposit plus accrued interest.

(3) *Prompt payment of bills.* After a customer has paid bills for service for 12 consecutive months without having service suspended or terminated and without having paid bills subsequent to the due date on more than two occasions, the LEC shall refund the cash deposit, plus accrued interest, so long as the customer is not currently delinquent.

(4) *Optional refund.* At the option of the LEC, a cash deposit, including accrued interest, may be refunded, in whole or in part, at any time before the expiration of the time period stated in paragraph (3).

§ 64.38. **Application of deposit to bills.**

The customer may elect to have a deposit applied to reduce bills for [**telephone**] telecommunications service instead of a cash refund.

**Subchapter E. SUSPENSION OF SERVICE
 GROUNDS FOR SUSPENSION**

§ 64.61. Authorized suspension of service.

[Telephone] Telecommunications service to a dwelling may be suspended for any of the following reasons:

* * * * *

(6) Fraud or material misrepresentation of identity to obtain [telephone] telecommunications service.

* * * * *

(8) Unpaid indebtedness for [telephone] telecommunications service previously furnished by the LEC in the name of the customer within 4 years of the date the bill is rendered.

NOTICE PROCEDURES PRIOR TO SUSPENSION

§ 64.73. Notice when dispute pending.

(a) A LEC shall not mail or deliver a notice of suspension if a notice of dispute, as defined in § 64.2 (relating to definitions), has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed suspension [**except where toll usage exceeds the following usage in a billing period after the filing of the notice of dispute or informal complaint:**

(1) **For customers who have received service for 3 months or less—150% of the average use of the customer’s exchange during the previous 12 months.**

(2) **For customers who have received service for greater than 3 months but less than 12 months—150% of the customer’s average use.**

(3) **For customers who have received service for more than 12 months—150% of the customer’s average use during the previous 12 months] for customers who have received service for more than 12 months—150% of the customer’s average use during the previous 12 months.**

(b) A notice mailed or delivered contrary to the requirements of this section shall be void.

§ 64.74. Procedures upon customer contact before suspension.

(a) If, at a time after the issuance of the suspension notice and before the suspension of service, a customer contacts the LEC concerning the proposed suspension, an authorized LEC employee shall fully explain, when applicable, the following:

- (1) The reasons for the proposed suspension.
- (2) The available methods of avoiding a suspension including:
 - (i) Tendering the past due amount as specified on the suspension notice or otherwise eliminating the grounds for suspension.
 - (ii) Entering a payment agreement.
 - (iii) The right of the customer to file a dispute with the [telephone] telecommunications company and, thereafter, an informal complaint with the Commission.

(3) The procedures for resolving disputes relating to charges on the notice [**other than IXC toll charges**] and the procedures for filing informal complaints to request payment terms on the basic service portion of the

account, including the address and the telephone number of the nearest regional Commission office.

(4) The duty of the customer to pay a portion of a bill not honestly disputed.

[(5) **The duty of the customer to restrict toll usage to 150% of average normal toll usage.**

(6)] (5) The medical emergency procedures.

[(7)] (6) That upon failure to timely appeal from or comply with a [telephone] telecommunications company report, as defined in § 64.142 (relating to contents of written summary by the LEC), an informal complaint report, or an order from a formal complaint—the LEC is not required to give further written notice before suspension so long as the LEC makes a reasonable attempt to contact the customer personally at least 24 hours prior to suspension.

EMERGENCY PROVISIONS

§ 64.103. Medical certification.

Certifications initially may be written or oral, subject to the right of the LEC to verify the certification by calling the physician or to require written confirmation within 7 days. All certifications, whether written or oral, shall include all of the following information.

(1) The name, address and telephone number of the customer in whose name the account is registered.

* * * * *

(5) The specific reason why access to [telephone] telecommunications service must be maintained.

Subchapter G. DISPUTES; INFORMAL AND FORMAL COMPLAINTS

INFORMAL COMPLAINT PROCEDURES

§ 64.153. Commission informal complaint procedures.

(a) The timely filing of an informal complaint acts as a limited stay and the LEC may not suspend or terminate service based on the complaining party’s nonpayment of any billed amount which is contested in the informal complaint until the complaint is resolved. The LEC may not suspend or terminate service based on the complaining party’s nonpayment of additional billed amounts that reflect the same underlying problem, other than a claimed inability to pay, as the billed amounts contested in the informal complaint. This limited stay does not prevent the LEC from suspending or terminating service based on the complaining party’s nonpayment of other billed amounts, where the suspension or termination is otherwise permitted under this chapter.

(a.1) Upon the filing of an informal complaint customer related to a billing dispute, the Bureau of Consumer Services of the Commission can seek to immediately and contemporaneously transfer the customer to a public utility for resolution to address the complaint in the following manner:

(1) The transfer will occur with the customer’s explicit consent.

(2) The transfer will be made to a live public utility operator or customer service representative.

(3) The public utility shall maintain a dedicated toll-free telephone number for the automatic customer transfer process.

(4) In the event that the customer complaint cannot be resolved, it will be referred back to the Bureau of Consumer Services of the Commission for resolution in accordance with the provisions of subsection (b).

(5) The Bureau of Consumer Services of the Commission and participating public utilities may establish automated electronic communication links, electronic data interfaces, or appropriate web page access, for the exchange of information and data in the automatic customer transfer. These links shall be used only by authorized Commission and public utility personnel and shall safeguard the customer's personal data and billing information from public disclosure.

(b) [Upon the filing of an] If the customer declines to participate in the automatic transfer process outlined in subsection (a.1), the informal complaint [, which] shall be docketed as "(complainant) v. (company) [,]" and Commission staff will immediately notify the utility, review the dispute, and, within a reasonable period of time, issue to the utility and the complaining party an informal report with findings and a decision. The reports shall be in writing and a summary will be sent to the parties if a party requests it or if the Commission staff finds that a summary is necessary.

(1) *Review techniques.* Review shall be by appropriate means, including LEC written summaries, telephone calls, conferences, written statements, research, inquiry and investigation. Procedures shall be designed to insure a fair and reasonable opportunity to present pertinent evidence and to challenge evidence submitted by the other party to the dispute. Information and documents requested by Commission staff as part of the review process shall be provided by the LEC within 30 days of the request.

(2) *Settlement.* Before the issuance of its report, Commission staff may negotiate with the parties in an attempt to settle the matters in dispute.

(c) Commission staff resolution of informal complaints is binding upon the parties unless formal proceedings are initiated under Chapter 5 (relating to formal proceedings).

(d) Subsection (b) supersedes § 3.112 (relating to action on informal complaints).

Subchapter H. RESTORATION OF SERVICE

§ 64.181. Restoration of service after suspension.

If service has been suspended, the LEC shall reconnect service by the end of the first full working day after the customer has complied with or provided adequate assurance of compliance with an applicable provision of Subchapter C (relating to credit and deposit standards policy) and one of the following:

(1) Full payment of outstanding charges plus the reconnection fee listed in the LEC's lawful tariff, **pricing guide or similar document**. The payment may not exceed the total of applicable rates and reconnection fees specified in the LEC's tariff, **pricing guide or similar document**. Payment of outstanding charges and the reconnection fee may be spread out over a reasonable period. Factors to be taken into account include the size of the unpaid balance, the payment history of the ratepayer and the length of time over which the bill accumulated.

(2) Payment of amounts currently due according to a payment agreement, plus a reconnection fee, which may be a part of the settlement or payment agreement.

(3) Payment of an amount deemed appropriate by Commission staff upon its review of an informal complaint.

(4) Adequate assurances that unauthorized use or practice will cease, plus full payment of the reconnection fee of the LEC, which reconnection fee may be subject to a payment agreement.

§ 64.182. [Restoration of service after termination] (Reserved).

[When service has been terminated, the customer shall reapply for service as an applicant.]

**Subchapter I. PUBLIC INFORMATION;
RECORD MAINTENANCE**

§ 64.191. Public information.

(a) LEC service representatives shall provide applicants who apply for residential [**telephone**] **telecommunications** service in person with a concise, easy-to-understand printed price list showing all available service and equipment options. The price of the least expensive single-party basic service option shall be clearly and conspicuously displayed on the list.

* * * * *

(d) The LEC service representative shall inform applicants when services discussed are optional and shall include the price with the description of each optional service.

[(e) The explanations of toll presubscription, whether interLATA, intraLATA, or both, shall be objective and unbiased.

(f)] (e) The LEC service representative shall inform each applicant that they will be sent a confirmation letter, which will include:

- (1) An itemization of the services ordered.
- (2) The price of each service ordered.
- (3) Identification of the services that are optional.

(4) Information instructing the applicant that a more thorough explanation and price list of services of interest to residential customers, and instructions on how to obtain the information, may be found in the telephone directory, when applicable.

[(g)] (f) In addition to the notice requirements set forth in this chapter, **[before July 1, 1985,]** each LEC shall prepare a summary of the rights and responsibilities of the LEC and its customers under this chapter. This written information shall be subject to Commission review and approval and shall be reproduced by the LEC, displayed prominently, available at LEC locations open to the general public, printed in each telephone directory, and made available to each **new customer and shall be available thereafter only upon request.**

[Thereafter, the information shall be delivered or mailed to each new customer when service begins and shall be available at all times upon request.] The written information shall indicate conspicuously that it is being provided in accordance with this chapter and shall contain information including, but not limited to, the following:

- (1) Billing procedures.

- (2) Methods of customer verification of billing accuracy.
- (3) Payment requirements and procedures.
- (4) Security deposit and guarantee requirements.
- (5) Procedures for suspension, termination and reconnection of service.
- (6) Dispute, informal complaint and formal complaint procedures.
- (7) Third-party notification procedures.
- (8) Telephone numbers and addresses of the LEC and of the nearest Regional Office of the Commission where further inquiries may be made.
- (9) Definitions of terms or abbreviations used by the [telephone] telecommunications company on its bills.

Subchapter J. ANNUAL LEC REPORTING REQUIREMENTS

§ 64.201. Reporting requirements.

(a) *Annual report.* Within 90 days after the end of each calendar year, each LEC with residential accounts shall file with the Commission an annual report containing residential account information as listed in subsection (b) for the previous calendar year.

(b) *Elements of periodic reporting.* The following must be included in periodic reporting as required under this section:

- (1) The average number of residential accounts per month.
- (2) The average residential customer bill per month for [each of the following:
 - (i) **Basic service.**
 - (ii) **Nonbasic service.**
 - (iii) **Toll service.**
 - (iv) **Total amount due ((i) + (ii) + (iii))] basic service.**
- (3) The average number of overdue residential accounts per month.
- (4) The average overdue residential customer bill per month for [:
 - (i) **Basic service.**
 - (ii) **Nonbasic service.**
 - (iii) **Toll service.**

(iv) **Total amount overdue ((i) + (ii) + (iii))] basic service.**

(5) The average number of residential basic service suspension notices sent per month.

(6) The average number of residential basic service suspensions per month.

(7) The average number of residential basic service terminations per month.

(8) LEC gross revenue from all residential accounts [**separated as follows:**

(i) **Basic service.**

(ii) **Nonbasic service.**

(iii) **Toll service.**

(iv) **Total revenue ((i) + (ii) + (iii))] for basic service.**

(9) LEC gross write-offs of uncollectible residential accounts [**separated as follows:**

(i) **Basic service.**

(ii) **Nonbasic service.**

(iii) **Toll service.**

(iv) **Total gross write-offs ((i) + (ii) + (iii))] for basic service.**

(10) LEC net write-offs of uncollectible residential accounts [**separated as follows:**

(i) **Basic service.**

(ii) **Nonbasic service.**

(iii) **Toll service.**

(iv) **Total net write-offs ((i) + (ii) + (iii))] for basic service.**

[(11) **The total number of Chapter 64 disputes handled.**]

Subchapter K. GENERAL PROVISIONS

§ 64.211. [**Availability of normal Commission procedures**] (Reserved).

[**Nothing in this chapter will be deemed to prevent a customer of a LEC from pursuing other Commission procedures in a case not described in this chapter.**]

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