

PROPOSED RULEMAKING

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 36]

Film Tax Credit

The Department of Community and Economic Development (Department), under the authority of section 1710-D of the Tax Reform Code of 1971 (act) (72 P. S. § 8701-D), proposes to add Chapter 36 (relating to film production tax credit). The purpose of this proposed rulemaking is to delineate actions necessary for financial compliance with the film production tax credit requirements and the use and transfer of tax credits.

Introduction

The act authorizes the Department to promulgate rules and regulations to interpret and make specific the provisions of the film production tax credit. Section 1710-D of the act states that the rules and regulations are to be promulgated "for the implementation of the provisions of this article." The purpose of Chapter 36 is to provide guidance and clarification concerning the ability to qualify, receive, utilize or transfer film production tax credits.

Fiscal Impact

The proposed rulemaking supplements the existing compliance framework. It does not create adverse fiscal impact and should benefit both the regulated community and State government through a reduction in errors, greater compliance and more efficiency in the administration of the film production tax credit.

Paperwork

The proposed rulemaking will not change existing paperwork requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 23, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Urban Affairs Committee and the Senate Community Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

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

Effective Date/Sunset Date

The proposed rulemaking will become effective 60 days after final-form publication in the *Pennsylvania Bulletin*. The regulations will be monitored on a regular basis and updated as needed.

Contact Person

Interested persons are invited to submit in writing, within 30 days from the date of publication of the proposed rulemaking, comments, suggestions or objections to Andrew Tanzer, Assistant Counsel, Office of Chief Counsel, Department of Community and Economic Development, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120, (717) 720-7317; or Jane Saul, Executive Director, Pennsylvania Film Office, 4th Floor, 400 North Street, Commonwealth Keystone Building, Harrisburg, PA 17120, (717) 783-3456.

AUSTIN J. BURKE,
Secretary

Fiscal Note: 4-92. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART I. GENERAL ADMINISTRATION

Subpart F. FILM PRODUCTION TAX CREDIT

Chap. 36.

FILM PRODUCTION TAX CREDIT

CHAPTER 36. FILM PRODUCTION TAX CREDIT

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§ 36.1. Definitions.

The definitions in section 1702-D of the Tax Reform Code of 1971 (act) (72 P. S. § 8702-D), known as the Pennsylvania Film Production Tax Credit Law, are incorporated by reference. The following words and terms, when used in this chapter, have the following meanings, unless context clearly indicates otherwise:

CPA—A certified public accountant.

Pennsylvania Film Office—The office within the Department which administers the tax credit.

Single application for assistance—The Department's application for its funding programs.

§ 36.2. Application.

(a) Taxpayers shall provide the following information and documentation to the Pennsylvania Film Office to be considered for an award of a tax credit:

(1) A completed tax credit application available at the Pennsylvania Film Office web site at <http://www.filminpa.com>.

(2) A completed Single Application for Assistance available at the Department's web site at <http://www.newpa.com>. The Single Application of Assistance shall be submitted electronically.

(3) A budget top sheet in a format that provides side-by-side comparison of total production expenses and qualified Pennsylvania production expenses. Expenses not included in the budget will not be eligible for the award of tax credits.

(4) A statement indicating whether financing for the project has been secured or will be secured prior to the planned start date of principal photography in this Commonwealth. If financing is or will be in place, a taxpayer shall provide appropriate documentation and notify the Pennsylvania Film Office of any change in financing prior to completion of the project.

(5) Additional information and documentation requested during an interview, in person or by telephone, with the Pennsylvania Film Office to discuss the application prior to its submission. Interested taxpayers should request an appointment by calling (717) 783-FILM.

(6) Other information or documentation deemed appropriate by the Pennsylvania Film Office.

(b) Applications shall be mailed, faxed or sent by means of email to:

Pennsylvania Film Office
 Department of Community and Economic Development
 Commonwealth Keystone Building
 400 North Street, 4th Floor
 Harrisburg, PA 17120-0225
 Phone: (717) 783-FILM
 Fax: (717) 787-0687
 info@filminpa.com

§ 36.3. Special circumstances.

(a) *Productions lasting more than 12 months.* If a film is scheduled to be in production for more than 12 months, the taxpayer may, at the time of application, make a written request that a tax credit be issued on an annual basis rather than upon completion of production. If accepted, the request may not be withdrawn or changed. The Pennsylvania Film Office may grant the request, subject to the following conditions:

(1) The amount of the tax credit to be issued shall be limited to 25% of qualified Pennsylvania production expenses actually incurred during the relevant 12-month period.

(2) The taxpayer shall comply with the financial compliance provisions of this chapter with respect to each tax credit to be issued under § 36.6 (relating to financial compliance).

(b) *More than one film.* A taxpayer may submit one application for a slate of feature films, that is, three or more films each with a running time of more than 75 minutes. The application must be accompanied by a proposal detailing how the taxpayer will ensure that all of the films will be completed and will qualify for the tax credit.

(c) *Large awards.* If the total tax credit award for one approved application exceeds 20% of the film production tax credit allocation for that fiscal year, the Pennsylvania Film Office may award the tax credit for that application over succeeding years in each case not to exceed 20% of the allocation for that fiscal year.

§ 36.4. Review.

Applications will be considered in the order in which they are received. Applications will be reviewed for completeness and compliance with the law, regulations and guidelines. The Pennsylvania Film Office may consider the following criteria in its review of applications:

(1) The amount of qualifying Pennsylvania production expenses to be incurred by the taxpayer.

(2) The number of jobs in this Commonwealth to be created by the project.

(3) The number of days shooting in this Commonwealth.

(4) Whether the film is or will be fully financed prior to the start date.

(5) Whether distribution for the film has been secured.

(6) The number of job training opportunities in this Commonwealth to be generated by the film.

(7) Whether post production activity will take place in this Commonwealth.

(8) Other factors as the Pennsylvania Film Office may deem appropriate.

§ 36.5. Contract.

If an application for a tax credit is approved, the Pennsylvania Film Office will prepare and send a contract to the taxpayer. The contract will specify the maximum amount of eligible tax credits and the taxpayer's obligations including the following:

(1) Provide evidence that the taxpayer has registered to do business in this Commonwealth prior to the start date.

(2) Provide evidence that all personal service corporations or loan-out companies engaged by the taxpayer are incorporated in or have registered to do business in this Commonwealth prior to the start date or the date on which the company was engaged, whichever is later.

(3) Provide evidence of the start date. When the taxpayer demonstrates to the satisfaction of the Pennsylvania Film Office that exigent circumstances have caused an unavoidable delay in the commencement of production, the Pennsylvania Film Office may agree to extend the start date by up to an additional 120 days upon receipt of satisfactory evidence that the production will commence within the time of the extension.

(4) Provide the following reports to the Pennsylvania Film Office on a timely basis until completion of the production using the forms provided by the Pennsylvania Film Office:

(i) Projects of less than 3 months duration only need to submit an economic impact report. The economic impact report shall be submitted to the Pennsylvania Film Office within 60 days of completion of the production.

(ii) Projects with a duration of more than 3 months shall submit a monthly report in addition to an economic impact report.

(5) Provide an independently audited report of production expenses and all qualifying Pennsylvania production expenses upon delivery of the completed project to investors. The report shall be prepared in accordance with § 36.3 (relating to special circumstances).

(6) Include with the end credits, in each print and electronic version of the film, an acknowledgement of the support provided by the Pennsylvania Film Office and any applicable regional film office and the logo of the Pennsylvania Film Office.

(7) Other terms and conditions the Pennsylvania Film Office deems appropriate.

§ 36.6. Financial compliance.

(a) *Description.*

The taxpayer shall submit, through a CPA, an audit or a report on agreed upon procedures within 120 days after

completion of film unless a written request for an extension has been submitted to and approved by the Pennsylvania Film Office.

(b) *Selection of an independent CPA.* The audit or report on agreed upon procedures shall be performed by a properly licensed CPA. Prior approval of the CPA selection is not required unless the taxpayer is notified in writing by the Department.

(c) *Audit.*

(1) *Scope.* The audit must include all funds expended on the film under the Department contract and encompass the entire contract period. Other periods may also be specified at the discretion of the Department and the Department reserves the right to designate additional compliance factors.

(2) *Components.* The audit shall be done in accordance with the standards set forth in the Generally Accepted Auditing Standards, current revision, and include, as a minimum, the following:

- (i) Accountant's report.
- (ii) Financial statements, including the statement of total qualifying Pennsylvania expenses and total production expenses.
- (iii) Notes to the financial statements.
- (iv) Report of estimated Sales Tax and individual Gross Income Tax withheld related to the film.
- (v) Internal control report.
- (vi) Compliance report including all findings (that is, instances of noncompliance or deficiencies in the internal control structure), along with all attendant costs.

(d) *Report on agreed upon procedures.*

(1) *Scope.* If the taxpayer chooses to submit a report on agreed upon procedures, the CPA shall first submit a draft engagement letter to the Department before performing the procedures. The engagement letter should include the Department as a signing party and include the following procedures:

(i) The CPA shall apply the agreed-upon procedures to the expense accounts of the taxpayer for the preproduction, production and postproduction periods of the film in accordance with the standards established by the American Institute of Certified Public Accountants. Other periods may also be specified at the discretion of the Department and the Department reserves the right to designate additional compliance factors.

(ii) The CPA shall read and understand Article XVIII of the Tax Reform Code of 1971 (72 P. S. §§ 8701-D—8712-D), known as the Film Production Tax Credit Law, regulations, guidelines and other materials specified by the Pennsylvania Film Office.

(iii) The CPA shall test payments on a sample basis and verify the agreement of: the date the expense was incurred, the payee and the amount of the expense. The CPA shall also inspect the documentation for evidence of the expense being incurred in this Commonwealth if the invoice has been included in the report as a qualified Pennsylvania production expense in accordance with the Film Production Tax Credit Law, regulations and guidelines.

(iv) The CPA shall confirm with the Department of State whether the taxpayer and all loan-out companies involved in the production are registered to do business in this Commonwealth.

(v) The CPA shall calculate the amount of the credit at 25% of the qualified Pennsylvania production expenses.

(vi) The CPA shall review categories of expenses and payroll reports and prepare an estimate of Sales Taxes and individual Gross Income Taxes related to the project.

(2) *Components.* The agreed upon procedures engagement shall be performed in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and include, at a minimum, the following:

(i) The CPA's report on agreed upon procedures.

(ii) The statement of total qualifying Pennsylvania production expenses and total production expenses and computation of the tax credit.

(iii) A report of estimated Sales Tax and individual Gross Income Tax withheld related to the film.

(iv) A report containing an attestation that the taxpayer met the conditions in the Film Production Tax Credit Law, regulations, guidelines and the other materials provided by the Department.

(e) *Economic impact report.* In addition to the audit or report on agreed upon procedures, the taxpayer shall submit an economic impact report in the form provided by the Department.

(f) *Submission of materials.* Three copies of the audit or report on agreed upon procedures, economic impact report, application, engagement letter and award letter shall be submitted to the Pennsylvania Film Office within 120 days after the completion of the film unless a written request for an extension has been submitted to and approved by the Pennsylvania Film Office. The Pennsylvania Film Office will not issue a tax credit certificate until it has received, reviewed and approved the audit or report on agreed upon procedures and the economic impact report.

§ 36.7. Issuance of tax credits.

Tax credit certificates will be issued by the Department upon review and approval of the audit or report of agreed upon procedures, the economic impact report and other information requested by the Pennsylvania Film Office. Provided that the information submitted meets the financial reporting requirements of the regulations, a tax credit certificate will be issued within 45 days of receipt. The amount of the tax credit issued will not exceed the amount requested in the application. Tax credits can only be issued to entities that have a State Tax ID number. Entities not incorporated in this Commonwealth shall register to do business in this Commonwealth to obtain a State Tax ID number.

§ 36.8. Use and transfer of tax credits.

(a) *Taxpayer's qualified tax liability.* The tax credit shall be applied first to the taxpayer's qualified tax for the taxpayer's tax year in which the tax credit is awarded. The tax credit cannot be applied against the liability until the return for the year has been filed.

(b) *Options.* If the taxpayer's qualified tax liability is less than the tax credits awarded to it, the taxpayer may do one of the following:

(1) Carry forward the unused portion of the tax credit for a period not to exceed 3 additional tax years and may use the tax credit to offset qualified tax liabilities during those years.

(2) Apply to the Pennsylvania Film Office for approval for the sale, transfer or assignment of all or a portion of the tax credit to another entity for use against qualified tax liabilities.

(c) *Tax returns.* A taxpayer shall file all required State tax reports and returns for the years up to and including the date of the award letter and pay any balance of State tax due as determined at settlement, assessment or determination by the Department of Revenue before the tax credit can be used and before an application for sale or assignment will be approved.

(d) *Transfer application review.* Applications for the transfer of all or a portion of the tax credit shall be submitted to the Pennsylvania Film Office for review. If the application is complete in all respects, the Pennsylvania Film Office will approve and forward the application to the Department of Revenue for review and processing.

(e) *Effective date of transfer.* Subject to the statutory requirements relating to the payment of all outstanding qualified tax liabilities for the year in which the tax credit is awarded, a taxpayer may transfer unused tax credits. The effective taxable year for the transferred tax credits will be the date of approval of the application for transfer by the Department, the tax report filing date or the date the seller becomes compliant, whichever is latest.

(f) *Limits.* The amount of the tax credit that a transferee may use against any one qualified tax liability may not exceed 50% of the qualified tax liability for the taxable year. A transferee may not carry back or obtain a refund of unused tax credits. After submitting an application to transfer a tax credit, a taxpayer may no longer use that portion of the tax credit to offset a qualified tax liability unless the application is denied by the Pennsylvania Film Office or withdrawn by the taxpayer.

(g) *Doing business in this Commonwealth.* Tax credits can only be awarded, issued, sold or assigned to entities that have a State Tax ID number. Entities not incorporated in this Commonwealth shall register to do business in this Commonwealth to obtain a State Tax ID number. The Department requires that the taxpayer and all loan-out companies involved in the production are registered to do business in this Commonwealth.

[Pa.B. Doc. No. 10-1932. Filed for public inspection October 8, 2010, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]

[L-2009-2123673/57-278]

Call Recording for Telephone Companies

The Pennsylvania Public Utility Commission, on April 15, 2010, adopted a proposed rulemaking order which establishes regulatory conditions under which telephone companies may record customer communications for training and quality of service purposes.

Executive Summary

This proposed rulemaking was prompted by requests in 2007-2008 from eight local exchange carriers (LECs) requesting waivers of § 63.137 (relating to service moni-

toring and related matters) to allow them to record telephone calls between their customers and employees for training and quality of service purposes. Currently, under § 63.137, telecommunications carriers cannot record customer contact calls for any reason. Other utilities do not have restrictions and are able to record calls for the training and quality of service purposes. The eight LECs were granted individual waivers and the Commission established terms and conditions for a temporary blanket waiver of § 63.137(2) in a Blanket Waiver Order at Docket No. M-2008-2074891.

The instant Proposed Rulemaking Order entered on April 19, 2010, at Docket No. L-2009-2123673 proposes to amend § 63.137 to remove the prohibition against call recording and to establish parameters for permitting call recording of customer contact calls for training and quality of service purposes. Additionally, the proposed rulemaking would make the ministerial edit of changing "employee" to "employee."

This Proposed Rulemaking Order seeks to benefit every LEC by allowing uniformity across multistate service territories and establishing consistency in utility regulation. The jurisdictional utilities affected by the regulation will benefit from the regulation as they will know what is expected of them if they choose to record calls. The regulations are designed to help the utility improve training methods and quality of service provided to customers by their employees. Better trained utility employees and improved quality of service benefits utility customers. The regulations are not financially or unduly burdensome upon the jurisdictional utilities because the utilities can continue to operate without choosing to record calls. Furthermore, the utilities operating under the individual waivers and under the blanket waiver have not noted problems with the terms of those waivers that would be codified as regulations under the proposed rulemaking. Utilities that have not requested a waiver or opted-into the blanket waiver will be saved the time and expense of such a request.

The Commission will benefit from a more uniform approach to the methods that utilities may use to improve quality of service and to ensure adequate employee training. Additionally, it will save time and money by eliminating the need to process individual requests for waivers or for opting into the blanket waiver.

Public Meeting held
April 15, 2010

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

Proposed Rulemaking: Elimination of the Call Recording Prohibition in 52 Pa. Code § 63.137 and Establishment of Regulations to Govern Call Recording for Telephone Companies;
Doc. No. L-2009-2123673

Proposed Rulemaking Order

By the Commission:

On July 29, 2009, at Docket No. M-2008-2074891 (Blanket Waiver Order), the Pennsylvania Public Utility Commission adopted a blanket partial waiver of the call recording prohibition in § 63.137(2) regarding telephone companies.¹ By this order, we issue for comment proposed regulations that would modify the regulatory prohibition against call recording by telephone companies and would

¹ The term "telephone company" as defined in § 63.132 incorporates all jurisdictional telephone companies:
Telephone company—A public utility which provides regulated telecommunication services subject to Commission jurisdiction.

establish regulatory conditions under which telephone companies may record customer communications. Additionally, we shall propose the ministerial edit of changing “employee” to “employee” throughout § 63.137.

Background

§ 63.137(2)

Section 63.137(2) was promulgated in an effort to balance customer privacy interests with the business interests of the telephone companies.² To establish this balance, telephone company call center supervisors are allowed to monitor communications between customers and utility service representatives through “live” or “real-time” listening in, but calls may not be recorded. Substantively, § 63.137(2) provides, in relevant part, as follows:

(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. *The recording of conversations is prohibited.*

(Emphasis added). The remainder of § 63.137(2) explains, in several subparts, the types of service evaluation and monitoring of customer telephone calls a telephone company may perform in the provision of service to its customers. No other jurisdictional utility industry is subject to similar customer or call-center call-recording prohibitions under our regulations.

On November 20, 2008, we entered a Tentative Order at Docket No. M-2008-2074891 soliciting comments on proposed guidelines for a blanket waiver to avoid addressing waiver requests on a piecemeal basis in the future. The Tentative Order proposed a process whereby a telephone company may petition the Commission for a 1-year partial waiver of § 63.137(2) and up to two 1-year extensions, subject to proposed uniform terms and conditions applicable to operations under the temporary partial waiver.

The Tentative Order provided notice to the public, in general, and to the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and the Office of Trial Staff (OTS), in particular. The Pennsylvania Telephone Association (PTA) filed the only comments, emphatically asserting that continued requirement of individual petitions with a 1-year limitation and two renewals would not be consistent with a “blanket” waiver. PTA suggested the Commission handle this matter as it handled a similar matter in *Rulemaking re: Provision of Bundled Service Package Plans*, Docket No. L-00060179 (July 3, 2006) (BSP Rulemaking Order), in which the Commission established conditions under which a blanket waiver was granted regarding § 64.21. Companies were required to agree to comply with the specific conditions to qualify for the automatic waiver.

By order entered July 29, 2009, we found merit in the PTA’s comments and adopted a blanket partial waiver of § 63.137(2) permitting call recording under certain circumstances. Specifically, the Blanket Waiver Order permits telephone companies to record customer calls for quality of service and training purposes subject to the following terms and conditions:³

- A carrier seeking to operate under the Blanket Waiver Order is required to file notice with the Secretary of the Commission, with a copy to the Commission’s

Bureau of Consumer Services, of its intent to do so prior to beginning operations, giving at least 30 days notice to the Commission, and must also provide its customers with a bill insert (or make an equivalent customer contact) explaining the call recording process and the opt-out process to customers at least 30 days before beginning call recording operations.

- A carrier with a pre-existing waiver that had not commenced actual recording of customer calls under the pre-existing waiver could only subsequently begin call recording under the Blanket Waiver Order terms and conditions.

- A carrier that began call recording of customer calls without a previously granted specific waiver or under the Blanket Waiver Order had 20 days to come into compliance with that order or had to discontinue call recording.

- Telephone companies must provide a prerecorded message to the effect that the call may be monitored or recorded for training or quality control purposes.

- The prerecorded message must advise callers that they have the option to discontinue the call and to request a call back from an unrecorded line and must also provide instructions on how to request a call back prior to any aspect of the call being recorded.

- Recorded telephone calls may be used solely for the purpose of training or measuring and improving service quality.

- Recorded calls must be erased after a 90-day (or shorter) retention period.

- All other provisions of § 63.137 remain in full force and effect.

When we established terms and conditions for a temporary partial waiver of § 63.137(2) in the Blanket Waiver Order, we noted that we would take under consideration at another docket the matter of opening a rulemaking to eliminate the call recording prohibition. This order begins that proceeding.

Existing waivers

Eight petitioning LECs received waivers allowing them to record, for training and quality of service purposes, customer calls to their call centers.⁴ Additionally, several telephone companies have provided notice that they have opted to operate under the Blanket Waiver Order. The amendments to § 63.137(2) proposed herein are consistent with the waivers granted to the petitioning LECs and to telephone companies operating under the Blanket Waiver Order and would require no further action on their part to remain in compliance.

Discussion

Currently, § 63.137(2) prohibits telephone companies except those with specific waivers and those operating under the Blanket Waiver Order from recording customer contact calls. The strikingly similar arguments presented by the petitioning LECs and by PTA in support of a blanket waiver, coupled with the differences in the specific features and permissions requested by those petitioning LECs, lead us to conclude that this Commission should institute a generic rulemaking on this matter. Among other arguments supporting a change in the

² The provisions of § 63.137(2) were issued under 66 Pa.C.S. §§ 501 and 1501 and were adopted July 24, 1992, effective September 23, 1992, 22 Pa.B. 3892.

³ Telephone companies may still petition individually for a partial temporary waiver of § 63.137(2).

⁴ Verizon Pennsylvania, Inc. and Verizon North, Inc. (Verizon LECs) were granted partial waivers at Docket No. P-00072333 (December 20, 2007). Full Service Computing Co. and Full Service Network LP (Full Service LECs) were granted partial waivers at Docket No. P-2008-2020446 (May 5, 2008). Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company, and D&E Systems, Inc., were granted partial waivers of at Docket No. P-2008-2051138 (September 23, 2008).

regulations, the petitioning LECs noted that telephone companies are the only class of jurisdictional utilities prohibited from recording calls for any purpose including training and measuring and improving service quality. Other utilities, as well as other businesses and this Commission, routinely record calls for service quality purposes within the bounds of applicable laws concerning wiretaps and trap and trace devices.

Throughout our individual waiver and the blanket waiver deliberations, we have consistently rejected the use of the calls recorded for “evidentiary” purposes. We propose to continue to do so, because we believe that permitting calls, taped under the mantle of training and quality service improvement purposes and then used for an evidentiary purpose, may violate 18 Pa.C.S. Chapter 57 (relating to Wiretapping and Electronic Surveillance Control Act) (Wiretap Act). None of the petitioning LECs that were granted partial waivers of § 63.137(2) have been granted permission to use the recorded calls for evidentiary purposes, and the Blanket Waiver Order is consistent on this point. We see no reason to change our position here on this matter in the context of a proposed rulemaking. Accordingly, the proposed revisions to existing regulations are also consistent on this point.

The Wiretap Act provides, in pertinent part, that:

It shall not be unlawful and no prior court approval shall be required under this chapter for:

* * * * *

(6) Personnel of any public utility to record telephone conversations with utility customers or the general public relating to receiving and dispatching of emergency and service calls provided there is, during such recording, a periodic warning which indicates to the parties to the conversation that the call is being recorded.

* * * * *

(15) The personnel of a business engaged in telephone marketing or telephone customer service by means of wire, oral or electronic communication to intercept such marketing or customer service communications where such interception is made for the sole purpose of training, quality control or monitoring by the business, provided that one party involved in the communications has consented to such intercept. Any communications recorded pursuant to this paragraph may only be used by the business for the purpose of training or quality control. Unless otherwise required by Federal or State law, communications recorded pursuant to this paragraph shall be destroyed within one year from the date of recording.

18 Pa.C.S. § 5704(6) and (15) (relating to exceptions to prohibition of interception and disclosure of communications).

On a going-forward basis, we propose changes to § 63.137(2) as set forth in Annex A. These changes are consistent with the analysis underlying the Blanket Waiver Order. It is expressly noted that the amendments proposed to § 63.137(2) would neither enlarge nor limit, in any way, a jurisdictional utility’s obligations or a customer’s protections under either to the Wiretap Act or to any applicable Federal statutes or regulations.

In addition to the substantive changes proposed, we also intend to address an inconsistency within § 63.137. Both “employee” and “employeee” are used in various places in § 63.137. In an effort to provide consistency, we

propose to change the spelling of “employee” to “employeee” to reflect the generally accepted form of the term.

Conclusion

The use of a regulation to address the recording of customer calls for telephone companies not only will increase efficiency in industry operations but also will facilitate the entry and participation of competitors in the telecommunications market by allowing each to standardize operations throughout its National service territories. Additionally, various telephone companies in this Commonwealth have had the ability to record customer contact calls since late 2007 under either to specific waivers or to the blanket waiver process, and we have not seen any problems or customer complaints arise. The blanket waiver process has been in place since late July 2009. The telephone companies have not requested any alterations to the terms of the blanket waiver. Thus, it appears that the terms of the Blanket Waiver Order have provided the telecommunications industry with a workable tool to balance any concerns relative to quality of customer service, employee education, and privacy. The purpose of this proposed rulemaking is to develop and to codify these standards for the telecommunications market in this Commonwealth. We anticipate and appreciate industry comments on this proposed rulemaking.

Accordingly, under sections 501, 504, 2203(12), 2205, and 2208 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 2203(12), 2205 and 2208; sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240), 45 P. S. §§ 1201 and 1202, and the regulations promulgated there under 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 745.5 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 there under at 4 Pa. Code §§ 7.231—7.234, we are proposing to amend our regulations as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. A rulemaking docket shall be opened to amend § 63.137(2) as set forth in Annex A.
2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.
3. The Secretary shall submit this order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. Persons may either eFile or file an original and 15 copies of written comments referencing the docket number of the proposed regulations within 45 days of publication of notice of this order in the *Pennsylvania Bulletin*. Instructions for eFiling may be found at <http://www.puc.state.pa.us/efiling/default.aspx>. A paper original accompanied by the e-confirmation page or a cover letter with the eFiling Confirmation Number must be provided to the Secretary of the Commission within 3 days of an eFiling being submitted. If not eFiling, then the original and the requisite number of copies must be filed with the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. To facilitate posting, filed comments also should be forwarded by means of e-mail, in Word or Word-compatible format, to Tawana

Dean, tadean@state.pa.us; Melissa Derr, mderr@state.pa.us; Louise Fink Smith, finksmith@state.pa.us; and Cyndi Page, cypage@state.pa.us.

6. A copy of this order and Annex A shall be served on the PTA, the OCA, the OSBA and the OTS and a copy of this order and Annex A shall be posted on the Commission's web site.

7. The contact persons for this proposed rulemaking are Tawana Dean, tadean@state.pa.us, Bureau of Consumer Services; Melissa Derr, mderr@state.pa.us, Bureau of Fixed Utility Services; and Louise Fink Smith, finksmith@state.pa.us, Law Bureau.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-278. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter J. CONFIDENTIALITY OF CUSTOMER COMMUNICATIONS AND INFORMATION

§ 63.137. Service monitoring and related matters.

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.

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(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. The recording of conversations **between telephone company employees and customers, potential customers, or applicants is [prohibited] permitted only as provided in this paragraph. All other recording of conversations is prohibited.**

(i) *Service evaluation.* A telephone company may engage in the sampling of customer communications by telephone company **[employes] 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 **[employe] 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 **[employe] 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 **[employe] employee** contacts with customers and with other **[employes] 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.

(iv) *Call recording.* A telephone company may record calls by employees to or from customers, potential customers, or applicants only under the following circumstances:

(A) A telephone company shall give notice to its customers with a bill insert or equivalent customer contact explaining the call recording process and the opt-out process at least 30 days before commencing call recording or to new customers at the time service commences.

(B) A telephone company shall provide callers calling a company telephone number equipped to record customer or prospective customer calls with a prerecorded message that the call may be monitored or recorded for training or quality control purposes.

(C) The prerecorded message must advise callers that they have the option to discontinue the call and to request a call back on an unrecorded line and provide instructions on how to request a call back prior to any aspect of the call being recorded.

(D) Recorded telephone calls shall be used solely for the purpose of training or measuring and improving service quality and may not be used for formal or informal evidentiary purposes.

(E) Recorded calls shall be erased after a 90-day or shorter retention period.

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