

CHAPTER 63. TELEPHONE SERVICE

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Subchapter A. GENERAL PROVISIONS

Sec. 63.1. Definitions.

Authority

The provisions of this Chapter 63 issued under act of May 28, 1937 (P. L. 1053) (66 P. S. §§ 1341—1342) (Repealed), unless otherwise noted.

Source

The provisions of this Chapter 63 adopted March 25, 1946; amended through June 30, 1969, unless otherwise noted.

§ 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.

*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 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.

*Customer*—A person, association, partnership, corporation or government agency provided with telephone 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 services to the public under 66 Pa.C.S. § 3008 (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.

*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 service.

*Surveillance level*—A measurement of telephone 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.

#### Authority

The provisions of this § 63.1 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301, 1501, 1504 and 2901.

#### Source

The provisions of this § 63.1 adopted March 25, 1946; amended through June 30, 1969; amended October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285; amended January 29, 1988, effective July 30, 1988, 18 Pa.B. 466; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial pages (232265) to (232266) and (205879).

#### Cross References

This section cited in 52 Pa. Code § 63.51 (relating to purpose); and 52 Pa. Code § 63.52 (relating to exceptions).

### Subchapter B. SERVICE AND FACILITIES

- Sec.
- 63.11. [Reserved].
  - 63.12. Minimizing interference and inductive effects.
  - 63.13. Periodic inspections.
  - 63.14. Emergency equipment and personnel.
  - 63.15. Complaint procedures.
  - 63.16. Traffic measurements.
  - 63.17. [Reserved].
  - 63.18. Multiparty line subscribers.
  - 63.19. Interoffice lines.
  - 63.20. Line extensions.
  - 63.21. Directories.
  - 63.22. Service records.
  - 63.23. Construction and maintenance safety standards for facilities.
  - 63.24. Service interruptions.

**§ 63.11. [Reserved].****Source**

The provisions of this § 63.11 adopted March 25, 1946; amended through June 30, 1969; amended October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285; amended December 15, 2006, effective December 16, 2006, 36 Pa.B. 7558. Immediately preceding text appears at serial pages (246445) to (246446).

**§ 63.12. Minimizing interference and inductive effects.**

(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.

**Authority**

The provisions of this § 63.12 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501 and 1508.

**Source**

The provisions of this § 63.12 adopted March 25, 1946; amended through June 30, 1969; amended October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285. Immediately preceding text appears at serial page (21001).

**§ 63.13. Periodic inspections.**

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.

**Authority**

The provisions of this § 63.13 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501 and 1508.

**Source**

The provisions of this § 63.13 adopted March 25, 1946; amended through June 30, 1969; amended October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285. Immediately preceding text appears at serial page (21001).

**§ 63.14. Emergency equipment and personnel.**

(a) *Emergencies.* A public utility shall take reasonable measures to meet emergencies, such as fire, storm, illness of personnel, power failure or sudden increase in traffic, by making available to the extent practicable the following:

(1) Emergency sources of ringing, lighting and other power.

(2) Other reserve equipment.

(i) The reserve equipment shall include a minimum of 3 hours battery reserve for central offices equipped with permanently installed standby power facilities.

(ii) Central offices shall have adequate provisions for standby power. A central office which is without stationary standby power facilities shall have available a portable power unit which can be delivered and connected on short notice.

(iii) Exchanges exceeding 5,000 lines shall be equipped with stationary standby power facilities.

(3) Qualified personnel for emergency operating and repair work.

(b) *Emergency service.* If the volume of traffic does not require that the central office be attended during the full 24 hours, emergency service shall be provided during the period in which the switchboard is unattended by the use of suitable alarm signals and conveniently available personnel.

**Authority**

The provisions of this § 63.14 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.14 adopted March 25, 1946; amended through June 30, 1969; amended January 29, 1988, effective July 30, 1988, 18 Pa.B. 466. Immediately preceding text appears at serial pages (78478) and (95639).

**§ 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 sub-

mitting 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.

(b) *Records of complaints.* A public utility shall preserve written or recorded service 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 when applicable to residential utility service.

#### Authority

The provisions of this § 63.15 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301, 1501, 1504 and 2901.

#### Source

The provisions of this § 63.15 adopted March 25, 1946; amended through June 30, 1969; amended October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285; amended January 29, 1988, effective July 30, 1988, 18 Pa.B. 466; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial pages (205881) to (205882).

### § 63.16. Traffic measurements.

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.

#### Source

The provisions of this § 63.16 adopted March 25, 1946; amended through June 30, 1969.

### § 63.17. [Reserved].

#### Source

The provisions of this § 63.17 adopted March 25, 1946; amended through June 30, 1969; amended October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285; reserved July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial pages (205882) and (225747).

### § 63.18. Multiparty line subscribers.

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 multi-party line shall be limited to a maximum of four.

**Authority**

The provisions of this § 63.18 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301, 1501 and 1508.

**Source**

The provisions of this § 63.18 adopted March 25, 1946; amended through June 30, 1969; amended October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial page (225747).

**§ 63.19. Interoffice lines.**

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.

**Source**

The provisions of this § 63.19 adopted March 25, 1946; amended through June 30, 1969.

**§ 63.20. Line extensions.**

(a) *Duty of public utility to make line extensions.* A public utility shall make reasonable line extensions within the territory in which it is chartered to operate.

(b) *Tariffs to include line extension rule.* As part of its tariffs each public utility shall file rules with the Commission setting forth the conditions under which it will make line extensions servicing applicants within its charter territory.

**Source**

The provisions of this § 63.20 adopted March 25, 1946; amended through June 30, 1969.

**§ 63.21. Directories.**

(a) When a directory is provided by the public utility, it shall be revised and reissued at sufficiently frequent intervals to avoid serious inconvenience to the public. A satisfactory length for a directory period shall be determined by the volume of changes and new listings and the facilities available for supplying new numbers to calling parties and for intercepting calls to numbers which have been changed.

(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.

(c) A directory shall contain the following:

- (1) The name of the issuing public utility.
- (2) The month and year issued.

- (3) A statement of the area covered by the directory.
- (4) Necessary instructions to enable users to place calls efficiently, including, but not limited to, telephone company local, toll, emergency and operator-assistance calls. Necessary instructions to transact business with the telephone company, such as payment of bills, ordering changes in service and reporting service difficulties.
- (5) A separate section containing social service organization, school and government listings.
- (d) A name shall be listed in a directory only if the following conditions are met:
  - (1) It leads to a positive and particular identification of a party.
  - (2) It is a name the party legally is authorized to use.
  - (3) It is a name used by the party in the community.
  - (4) It is a name which is not misleading, deceptive or confusing.
- (e) Upon receiving a customer complaint alleging misleading, deceptive or confusing directory listings, a public utility shall investigate the complaint under § 63.15 (relating to complaint procedures). If the utility determines that a directory listing is misleading, deceptive or confusing, the utility shall delete the listing from future directories. After reaching its decision the public utility shall advise interested parties in writing of its opinion and shall inform them of the right to file a complaint with the Commission.

#### Authority

The provisions of this § 63.21 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301, 1501, 1504 and 2901.

#### Source

The provisions of this § 63.21 adopted March 25, 1946; amended through June 30, 1969; amended January 29, 1988, effective July 30, 1988, 18 Pa.B. 466; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial pages (225747) to (225748) and (205885).

#### Notes of Decisions

##### *Duty to Inform*

Duty to inform public under this section does not establish duty on part of phone company to give non-negligent legal service in its directory, where issue was raised for first time on appeal. *Rice v. Bell Telephone Company of Pennsylvania*, 524 A.2d 522 (Pa. Super. 1987).

#### § 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.
  - (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.

(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.

(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.

#### Authority

The provisions of this § 63.22 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1508 and 2901.

#### Source

The provisions of this § 63.22 adopted March 25, 1946; amended through June 30, 1969; amended October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285; amended January 29, 1988, effective July 30, 1988, 18 Pa.B. 466. Immediately preceding text appears at serial pages (122647) to (122648).

### § 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.

**Authority**

The provisions of this § 63.23 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501 and 1508.

**Source**

The provisions of this § 63.23 adopted March 25, 1946; amended through June 30, 1969; amended October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285. Immediately preceding text appears at serial page (21004).

**§ 63.24. Service interruptions.**

(a) *System maintenance.* Each public utility shall endeavor to maintain its entire system in such condition as to make it possible to furnish continuous service, and shall take reasonable measures to prevent interruptions of service and to restore service with a minimum delay if interruptions occur.

(b) When main telephone service is interrupted for a period of at least 24 hours, the public utility, after due notice by the customer, shall apply the following schedule of allowances except in situations as provided for in paragraph (3):

(1) One-thirtieth of the tariff monthly rate of services and facilities furnished by the public utility rendered inoperative, useless or impaired for each of the first three full 24-hour periods during which the interruption continues after notice by the customer to the public utility conditioned that the out-of-service extends beyond a minimum of 24 hours.

(2) Two-thirtieths of each full 24-hour period beyond the first three 24-hour periods. However, in no instance may the allowance for the out-of-service period exceed the total charges in a billing period for the service and facilities furnished by the public utility rendered useless or impaired.

(3) When service is interrupted for a period of at least 24 hours due to such factors as storms, fires, floods or other conditions beyond the control of the public utility, an allowance of 1/30 of the tariff monthly rate for all services and facilities furnished by the public utility rendered inoperative or substantially impaired to the extent of being useless shall apply for each full 24 hours during which the interruption continues after notice by the customer to the public utility.

(4) The allowances set forth in paragraphs (1)—(3) may not be applicable where service is interrupted by the negligence or willful act of the customer to service or where the public utility, pursuant to the terms of the contract for service, suspends or terminates service for nonpayment of charges or for unlawful or improper use of the facilities or service or for any other reason provided for in the filed and effective tariff.

**Authority**

The provisions of this § 63.24 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501 and 1508.

**Source**

The provisions of this § 63.24 adopted March 25, 1946; amended through June 30, 1969; amended through October 29, 1982, effective December 18, 1982, 12 Pa.B. 4285. Immediately preceding text appears at serial pages (21004) to (21005).

**Subchapter C. ACCOUNTS AND RECORDS**

Sec.

- 63.31. Classification of public utilities.
- 63.32. Systems of accounts.
- 63.33. Integrity of reserve accounts to be preserved.
- 63.34. Reclassification of telephone plant to original cost.
- 63.35. Preservation of records.
- 63.36. Filing of annual financial reports.
- 63.37. Operation of the Telecommunication Relay Service System and Relay Service Fund.

**§ 63.31. Classification of public utilities.**

For accounting and reporting purposes, telephone public utilities are classified as follows:

- (1) *Class A.* Telephone 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 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 public utilities that provide competitive local telephone exchange services and that are not the incumbent provider in any local exchange area within this Commonwealth.

**Authority**

The provisions of this § 63.31 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

**Source**

The provisions of this § 63.31 adopted March 25, 1946; amended through June 30, 1969; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394; amended April 5, 2002, effective April 6, 2002, 32 Pa.B. 1723. Immediately preceding text appears at serial page (246453).

**Cross References**

This section cited in 52 Pa. Code § 56.15 (relating to billing information); and 52 Pa. Code § 56.265 (relating to billing information).

**§ 63.32. Systems of accounts.**

(a) Class A and Class B telephone 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). 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 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).

**Authority**

The provisions of this § 63.32 amended under the Public Utility Code, 66 Pa.C.S. §§ 501, 1501 and 1701.

**Source**

The provisions of this § 63.32 adopted March 25, 1946; amended through June 30, 1969; amended December 18, 1987, effective January 1, 1988, 17 Pa.B. 5253; amended April 5, 2002, effective April 6, 2002, 32 Pa.B. 1723. Immediately preceding text appears at serial pages (246453) to (246454).

**Cross References**

This section cited in 52 Pa. Code § 63.33 (relating to integrity of reserve accounts to be preserved); and 52 Pa. Code § 63.34 (relating to reclassification of telephone plant to original cost).

**§ 63.33. Integrity of reserve accounts to be preserved.**

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.

**Authority**

The provisions of this § 63.33 amended under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501.

**Source**

The provisions of this § 63.33 adopted March 25, 1946; amended through June 30, 1969; amended April 5, 2002, effective April 6, 2002, 32 Pa.B. 1723. Immediately preceding text appears at serial page (246454).

**§ 63.34. Reclassification of telephone plant to original cost.**

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 showing 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.

#### Source

The provisions of this § 63.34 adopted March 25, 1946; amended through June 30, 1969.

### § 63.35. Preservation of records.

(a) A telephone 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).

(b) Telephone public utilities which maintain the original cost of their plants in continuing property 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.

#### Source

The provisions of this § 63.35 adopted March 25, 1946; amended through June 30, 1969.

**§ 63.36. Filing of annual financial reports.**

Under 66 Pa.C.S. §§ 504 and 3301 (relating to reports by public utilities; and civil penalties for violations), the Commission may require a public utility to file certain reports, and invoke penalties for failure to file those reports. In this regard, the following apply:

(1) Unless prior permission to do otherwise is granted, a public utility, other than transportation, subject to the jurisdiction of the Commission, shall file with the Commission annual financial reports by April 30 immediately following the reporting year, for reports based upon the calendar year, and by July 31 immediately following the reporting year for reports permitted to be based upon the fiscal year ending May 31. A request for an extension of time for filing an annual report shall be submitted to the Commission prior to the filing dates specified in this paragraph.

(2) If a public utility, other than transportation, fails to file its annual report in compliance with paragraph (1), the public utility may be subject to a penalty as provided under 66 Pa.C.S. § 3301. Continued failure to file annual reports may result in additional penalties.

**Authority**

The provisions of this § 63.36 amended under the Public Utility Code, 66 Pa.C.S. §§ 501 and 504.

**Source**

The provisions of this § 63.36 adopted March 25, 1946; amended through June 30, 1969; amended May 6, 1988, effective May 7, 1988, 18 Pa.B. 2106. Immediately preceding text appears at serial page (125481).

**Cross References**

This section cited in 52 Pa. Code § 101.2 (relating to definitions); and 52 Pa. Code § 101.4 (relating to reporting requirements).

**§ 63.37. Operation of the Telecommunications Relay Service System and Relay Service Fund.****(a) General.**

(1) The Pennsylvania Telecommunications Relay Service (TRS), the Telecommunications Devices for the Deaf Program and the Print Media Access System Program are codified in the Universal Telecommunications and Print Media Access Act (35 P. S. §§ 6701.1—6701.4). The Relay Service Fund (Fund) covers eligible intrastate costs associated with the operation of the three programs. The costs are recovered from residential and business wireline access line end-users by a monthly surcharge on local service telephone bills.

(2) To permit the Commission to effectively monitor and evaluate the revenue and cost data associated with the Fund, each local exchange carrier (LEC) shall file an annual tracking report delineating monthly revenues collected and remittances for late payments for the preceding 12-month year and an annual access line summary report detailing its access line count as of December 31 of the preceding year. The tracking data are used for periodic audits of the Fund. The access line counts are used to calculate the next year's TRS surcharge.

**(b) Timely remittance of revenues.**

(1) LECs shall remit the TRS surcharge revenues to the Fund administrator by the 20th of each month for revenues collected during the prior month.

(2) Delays or inaccuracies in remitting revenues to the Fund result in lost earnings by the Fund. An LEC that is late in remitting surcharge revenues shall remit an additional contribution to the Fund to make up for lost Fund earnings. The additional contribution shall be based upon the published prime rate in effect at the time of the missed due date and shall cover the period beginning at the date of the occurrence of the failure to remit and continue until the surcharge revenues are properly remitted to the Fund.

(c) *Filing of TRS reports.*

(1) *Annual tracking report.* An LEC shall submit its annual tracking report to the Secretary's Bureau by March 31 of each year, in the format and detail specified on the Commission's web site ([www.puc.state.pa.us](http://www.puc.state.pa.us)).

(2) *Annual access line summary report.* An LEC shall submit its annual access line summary report to the Secretary's Bureau by March 1 of each year, in the format and detail specified on the Commission's web site.

(d) *Failure to remit TRS revenues or to file TRS reports.* An LEC that fails to timely and accurately submit a tracking report or an access line summary report or that fails to timely and accurately submit TRS surcharge revenues may need to reimburse the Fund under subsection (b). The Commission will utilize all available remedies to ensure reporting and remittance compliance including fines and the revocation of Certificates of Public Convenience.

#### Authority

The provisions of this § 63.37 adopted under the Universal Telecommunications and Print Media Access Act (35 P. S. §§ 6701.1—6701.4).

#### Source

The provisions of this § 63.37 adopted December 19, 2008, effective December 20, 2008, 38 Pa.B. 6924.

### Subchapter D. UNDERGROUND SERVICE

Sec.

63.41. Underground telephone service in new residential developments.

#### § 63.41. Underground telephone service in new residential developments.

(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 telephone 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 employees 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.

#### Authority

The provisions of this § 63.41 amended under the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501.

#### Source

The provisions of this § 63.41 adopted March 25, 1946; amended through June 30, 1969; amended June 29, 1984, effective June 30, 1984, 14 Pa.B. 2250; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial pages (205892) to (205895).

### Subchapter E. TELEPHONE QUALITY SERVICE STANDARDS

- |        |  |
|--------|--|
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| 63.51. | Purpose.                                     |
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#### § 63.51. Purpose.

This subchapter establishes, regulates and enforces uniform, fair and reasonable service objectives and surveillance levels of telephone 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 service). This subchapter shall be applied in conjunction with Chapter 64.

**Authority**

The provisions of this § 63.51 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.51 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.52. Exceptions.**

This subchapter does not apply to services offered by interexchange carriers as defined in § 63.1 (relating to definitions).

**Authority**

The provisions of this § 63.52 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.52 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.53. General provisions.**

(a) A public utility shall provide telephone service to the public in its service area in accordance with its tariff on file with the Commission. 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.

(c) A public utility shall provide access to operator-assisted services for all exchanges at all hours.

(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.

(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.

**Authority**

The provisions of this § 63.53 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.



**Source**

The provisions of this § 63.53 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.54. Record retention.**

A 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.

**Authority**

The provisions of this § 63.54 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.54 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.55. Surveillance levels.**

(a) When the level of operation of a 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.

(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.

(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.

**Authority**

The provisions of this § 63.55 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.55 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**Cross References**

This section cited in 52 Pa. Code § 63.57 (relating to customer trouble reports).

**§ 63.56. Measurements.**

(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.

**Authority**

The provisions of this § 63.56 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.56 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 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.

(c) 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) 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) 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).

#### Authority

The provisions of this § 63.57 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

#### Source

The provisions of this § 63.57 adopted January 29, 1988, effective July 30, 1988, except subsection (f) effective January 1, 1989, 18 Pa.B. 466.

### § 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.

(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.

(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.

#### Authority

The provisions of this § 63.58 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

#### Source

The provisions of this § 63.58 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.59. Operator-handled calls.**

(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.

(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 acknowledgement 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.

**Authority**

The provisions of this § 63.59 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.59 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.60. Automatic Dialing Announcing Devices (ADAD).**

(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 termi-

nate 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.

**Authority**

The provisions of this § 63.60 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.60 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.61. Local dial service.**

(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.

**Authority**

The provisions of this § 63.61 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.61 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.62. Direct distance dial service.**

(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.

**Authority**

The provisions of this § 63.62 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.62 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.63. Transmission requirements and standards.**

- (a) A 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 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).
- (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.

**Authority**

The provisions of this § 63.63 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.63 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 63.64. Metering inspections and tests.**

- (a) A 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 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 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 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) 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.

(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.

**Authority**

The provisions of this § 63.64 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1504 and 2901.

**Source**

The provisions of this § 63.64 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**§ 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.

**Authority**

The provisions of this § 63.65 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 1501, 1508 and 2901.

**Source**

The provisions of this § 63.65 adopted January 29, 1988, effective July 30, 1988, 18 Pa.B. 466.

**Subchapter F. EXTENDED AREA SERVICE**

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



**§ 63.71. Definitions.**

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.

**Authority**

The provisions of this § 63.71 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501.

**Source**

The provisions of this § 63.71 adopted March 17, 1989, effective March 18, 1989, 19 Pa.B. 1179; amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2340; amended June 18, 1993, effective June 19, 1993, 23 Pa.B. 2829. Immediately preceding text appears at serial page (157989).

**§ 63.72. Traffic usage studies.**

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.

**Authority**

The provisions of this § 63.72 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501.

**Source**

The provisions of this § 63.72 adopted March 17, 1989, effective March 18, 1989, 19 Pa.B. 1179; amended June 18, 1993, effective June 19, 1993, 23 Pa.B. 2829. Immediately preceding text appears at serial pages (157990) to (157991).

**Cross References**

This section cited in 52 Pa. Code § 63.72a (relating to interLATA traffic studies).

**§ 63.72a. InterLATA traffic studies.**

(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.

**Authority**

The provisions of this § 63.72a issued under 66 Pa.C.S. § 501.

**Source**

The provisions of this § 63.72a adopted June 18, 1993, effective June 19, 1993, 23 Pa.B. 2829.

**§ 63.73. Optional calling plans.**

(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 inter-LATA 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 availability 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.

#### Authority

The provisions of this § 63.73 issued under 66 Pa.C.S. §§ 501 and 1501.

#### Source

The provisions of this § 63.73 adopted March 17, 1989, effective March 18, 1989, 19 Pa.B. 1179; amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2340; corrected May 31, 1991, effective May 18, 1991, 21 Pa.B. 2555; amended June 18, 1993, effective June 19, 1993, 23 Pa.B. 2829. Immediately preceding text appears at serial page (157991).

#### Cross References

This section cited in 52 Pa. Code § 63.71 (relating to definitions); 52 Pa. Code § 63.72 (relating to traffic usage studies); and 52 Pa. Code § 63.102 (relating to definitions).

### § 63.74. EAS polls.

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.

#### **Authority**

The provisions of this § 63.74 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501.

#### **Source**

The provisions of this § 63.74 adopted March 17, 1989, effective March 18, 1989, 19 Pa.B. 1179; amended May 17, 1991, effective May 18, 1991, 21 Pa.B. 2555; amended June 18, 1993, effective June 19, 1993, 23 Pa.B. 2829. Immediately preceding text appears at serial pages (157991) to (157992).

#### **Cross References**

This section cited in 52 Pa. Code § 63.71 (relating to definitions); and 52 Pa. Code § 63.75 (relating to subscriber polls).

### **§ 63.75. Subscriber polls.**

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.

#### **Authority**

The provisions of this § 63.75 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501.

#### **Source**

The provisions of this § 63.75 adopted March 17, 1989, effective March 18, 1989, 19 Pa.B. 1179; amended June 18, 1993, effective June 19, 1993, 23 Pa.B. 2829. Immediately preceding text appears at serial pages (157992) to (157993).

#### **Cross References**

This section cited in 52 Pa. Code § 63.76 (relating to EAS complaints).

**§ 63.76. EAS complaints.**

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.

**Authority**

The provisions of this § 63.76 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501.

**Source**

The provisions of this § 63.76 adopted March 17, 1989, effective March 18, 1989, 19 Pa.B. 1179.

**§ 63.77. Evaluation criteria.**

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.

**Authority**

The provisions of this § 63.77 issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501.

**Source**

The provisions of this § 63.77 adopted March 17, 1989, effective March 18, 1989, 19 Pa.B. 1179.

**Cross References**

This section cited in 52 Pa. Code § 63.76 (relating to EAS complaints).



**Subchapter G. PUBLIC COIN TELEPHONE SERVICE**

Sec.	
63.91.	Purpose.
63.92.	Definitions.
63.93.	Conditions of service.
63.94.	Coin telephone requirements.
63.95.	Sufficiency of public telephone service.
63.96.	Service requirements for coin telephones.
63.97.	[Reserved].
63.98.	Compliance.

**§ 63.91. Purpose.**

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.

**Authority**

The provisions of this § 63.91 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301—1325, 1501—1511 and 2911—2915.

**Source**

The provisions of this § 63.91 adopted August 26, 1988, effective August 27, 1988, 18 Pa.B. 3810; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial page (205915).

**§ 63.92. Definitions.**

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.

**Authority**

The provisions of this § 63.92 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301—1325, 1501—1511 and 2911—2915.

**Source**

The provisions of this § 63.92 adopted August 26, 1988, effective August 27, 1988, 18 Pa.B. 3810; amended June 10, 1994, effective June 11, 1994, 24 Pa.B. 2922; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial page (205915).

**§ 63.93. Conditions of service.**

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.

**Authority**

The provisions of this § 63.93 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301—1325, 1501—1511 and 2911—2915.

**Source**

The provisions of this § 63.93 adopted August 26, 1988, effective August 27, 1988, 18 Pa.B. 3810; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial page (205916).

**§ 63.94. Coin telephone requirements.**

(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 nonpublic 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.

#### Authority

The provisions of this § 63.94 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301—1325, 1501—1511 and 2911—2915.

**Source**

The provisions of this § 63.94 adopted August 26, 1988, effective August 27, 1988, 18 Pa.B. 3810; amended June 10, 1994, effective June 11, 1994, 24 Pa.B. 2922; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial pages (205916) to (205918).

**§ 63.95. Coin telephone service in the public interest.**

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.

**Authority**

The provisions of this § 63.95 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301—1325, 1501—1511 and 2911—2915.

**Source**

The provisions of this § 63.95 adopted August 26, 1988, effective August 27, 1988, 18 Pa.B. 3810; amended June 10, 1994, effective June 11, 1994, 24 Pa.B. 2922; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial page (205918).

**§ 63.96. Service requirements for coin telephones.**

(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).

**Authority**

The provisions of this § 63.96 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301—1325, 1501—1511 and 2911—2915.

**Source**

The provisions of this § 63.96 adopted August 26, 1988, effective August 27, 1988, 18 Pa.B. 3810; amended June 10, 1994, effective June 11, 1994, 24 Pa.B. 2922; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial pages (205918) to (205920).

**§ 63.97. [Reserved].**

**Source**

The provisions of this § 63.97 adopted August 26, 1988, effective August 27, 1988, 18 Pa.B. 3810; amended April 3, 1992, effective April 4, 1992, 22 Pa.B. 1554; amended June 10, 1994, effective June 11, 1994, 24 Pa.B. 2922; reserved July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial pages (205920) and (232269).

**§ 63.98. Compliance.**

(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.

**Authority**

The provisions of this § 63.98 issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 504—506, 1301—1325, 1501—1511 and 2911—2915.

**Source**

The provisions of this § 63.98 adopted August 26, 1988, effective August 27, 1988, 18 Pa.B. 3810; amended June 10, 1994, effective June 11, 1994, 24 Pa.B. 2922; amended July 17, 1998, effective July 18, 1998, 28 Pa.B. 3394. Immediately preceding text appears at serial page (232269).

**Subchapter H. INTEREXCHANGE TELECOMMUNICATIONS  
CARRIERS**

Sec.

- 63.101. Statement of purpose and policy.
- 63.102. Definitions.
- 63.103. Jurisdiction of interexchange reseller carriers.
- 63.104. Disclosure requirements for competitive services.
- 63.105. Reclassification of services.
- 63.106. Noncompetitive services and tariffs.
- 63.107. Applications for authority.
- 63.108. Reporting requirements.
- 63.109. Enforcement.

**Authority**

The provisions of this Subchapter H issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 3009(d), unless otherwise noted; amended under 66 Pa.C.S. § 3018.

**Source**

The provisions of this Subchapter H adopted July 3, 1997, effective July 5, 1997, 27 Pa.B. 3217, unless otherwise noted; amended January 25, 2008, effective January 26, 2008, 38 Pa.B. 488. Immediately preceding text appears at serial pages (246484) to (246485) and (232271) to (232276).

**§ 63.101. Statement of purpose and policy.**

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

**§ 63.102. Definitions.**

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

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

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

*Competitive services*—Interexchange services other than noncompetitive services.

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

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

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

*Interexchange telecommunications carrier*—

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

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

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

#### Cross References

This section cited in 52 Pa. Code § 63.106 (relating to noncompetitive services and tariffs); and 52 Pa. Code § 63.108 (relating to reporting requirements).

### § 63.103. Jurisdiction of interexchange reseller carriers.

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

### § 63.104. Disclosure requirements for competitive services.

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

(b) An interexchange telecommunications carrier may maintain tariffs and file tariff supplements with the Commission that set forth the rates, charges and

service description information relating to each of its tariffed competitive services. If an interexchange telecommunications carrier files a tariff or a tariff supplement with the Commission for its competitive services, it shall become effective on 1-day's notice.

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

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

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

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

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

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

#### Cross References

This section cited in 52 Pa. Code § 63.107 (relating to applications for authority).

### § 63.105. Reclassification of services.

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

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



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

- (1) The ease of entry by potential competitors into the market for the specific service at issue.
- (2) The presence of other existing interexchange telecommunications carriers in the market for the specific service at issue.
- (3) The ability of other interexchange telecommunications carriers to offer the service at competitive prices, terms and conditions.
- (4) The availability of like or substitute service alternatives in the relevant geographic area for the service at issue.

#### Cross References

This section cited in 52 Pa. Code § 63.102 (relating to definitions).

### § 63.106. Noncompetitive services and tariffs.

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

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

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

- (1) An indication on each page of the tariff supplement that the page pertains to the noncompetitive service.
- (2) A description of the noncompetitive service.
- (3) The rates proposed for the noncompetitive service.
- (4) Supporting data justifying the proposed rates for the noncompetitive service.
- (5) An executive overview summarizing the reason for the filing which includes relevant information regarding the safety, adequacy, reliability and privacy considerations related to the proposed service.
- (6) Other reasonable justification or any relevant data that is requested by the Commission after its initial review.

(d) The interexchange telecommunications carrier is not required to submit cost justification, cost-of-service or revenue data relating to the proposed change as directed in subsection (c)(4) if one of the following applies:

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

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

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

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

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

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

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

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

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

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

(h) An interexchange telecommunications carrier requesting changes in the terms and conditions of its existing noncompetitive services, when the changes do

not result in any rate changes, shall be permitted to put them into effect at the end of the specified 16-day notice period without further review or approval by the Commission.

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

**§ 63.107. Applications for authority.**

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

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

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

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

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

(f) If a new interexchange telecommunications carrier chooses to detariff its competitive services, the information regarding the rates, terms and conditions for its competitive services shall be made available at the public disclosure locations established in § 63.104(c) (relating to disclosure requirements for competitive services). The new carrier shall post the information at the public disclosure

locations within 48 hours of the date that its application to commence interexchange service has been approved by the Commission.

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

**§ 63.108. Reporting requirements.**

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

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

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

#### **Subchapter I. [Reserved]**

§ 63.111. [Reserved].

§ 63.112. [Reserved].

§ 63.112a. [Reserved].

§§ 63.113—63.118. [Reserved].

#### **Subchapter J. CONFIDENTIALITY OF CUSTOMER COMMUNICATIONS AND INFORMATION**

Sec.

- 63.131. Purpose and general provisions.
- 63.132. Definitions.
- 63.133. Confidentiality.
- 63.134. Employee commitment to confidentiality of customer communications and customer information.
- 63.135. Customer information.
- 63.136. Use of certain customer communications or customer information for debt collection purposes.
- 63.137. Service monitoring and related matters.

#### **Authority**

The provisions of this Subchapter J issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501, unless otherwise noted.

#### **Source**

The provisions of this Subchapter J adopted July 24, 1992, effective September 23, 1992, 22 Pa.B. 3892, unless otherwise noted.

**§ 63.131. Purpose and 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.

(b) A telephone 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 company or its authorized employees 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 companies and telephone company employees 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 company service or activity which is otherwise prohibited by the Wiretap Act.

**Notes of Decisions***Wiretap Act*

The Public Utility Commission lacked jurisdiction to interpret the Wiretap Act and determine the legality of an instance of electronic surveillance. *The United Telephone Company of Pennsylvania v. Pennsylvania Public Utility Commission*, 676 A.2d 1244 (Pa. Cmwlth. 1996).

**§ 63.132. Definitions.**

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

*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 company of communications between the point of origin and the point of reception by a telephone company.

*Customer information*—Information regarding a customer of a telephone 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*—An individual who works directly for and is paid a salary by a telephone company 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 company property, the unauthorized or unlawful use of telephone company equipment or services and the unlawful conduct of telephone company employes which occurs during the course of employment.

*Service evaluation and monitoring*—Evaluation and monitoring of telephone company operations, including communications, to maintain or improve the quality of service to the customer. The term includes review of customer/employe relations, system checks and facility maintenance.

*Telephone 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 company shall establish a written statement of its fundamental policy and obligation to maintain the confidentiality of customer communications and customer information. The written statement shall declare the responsibility of each employe to maintain the confidentiality of customer communications and customer information in accordance with applicable State and Federal law.

### § 63.134. Employe commitment to confidentiality of customer communications and customer information.

A telephone company shall confirm with each employe 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.* A telephone company shall, at the time a person commences employment, instruct that person regarding telephone company policy covering the following points:

(i) State and Federal law generally prohibits the interception, disclosure and use of customer communications.

(ii) An employe 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 company where the action is taken in the normal course of employment.

(C) The protection of the telephone company, an interconnecting carrier, a customer or user of service from fraudulent, unlawful or abusive use of telephone service.

(D) Compliance with legal process or other requirements of law.

(iii) An employe 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 commitment.* An appropriate document shall be prepared outlining the policy summarized in paragraph (1) and stating that the telephone company employe has read and understands the policy. The telephone company shall present the document to each employe for signature. A telephone company manager shall witness and date the document, regardless of whether the employe has agreed to sign the document. One copy shall be filed with the employe's personnel papers and one copy given to the employe to keep and review.

(3) *Annual review.* A telephone company shall annually review with employes the commitment to confidentiality of customer communications and customer information, and shall make a record of that annual review.

#### Cross References

This section cited in 52 Pa. Code § 63.135 (relating to customer information).

### § 63.135. Customer information.

This section describes procedures for determining employe access to customer information and the purposes for which this information may be used by employes responding to requests for customer information from persons outside the telephone company and the recording of use and disclosure of customer information.

(1) *Employe access to and use of customer information.* Access to and use of customer information shall be limited to employes 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 company. An employe 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 company or to subsidiaries or affiliates of the telephone company, except in limited instances which are a necessary incident to:

- (i) The provision of service.

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(ii) The protection of the legal rights or property of the telephone company where the action is taken in the normal course of an employe's activities.

(iii) The protection of the telephone 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, employe 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 company service.

(3) *Limitation on disclosures to agents, contractors, subsidiaries or affiliates.* To comply with this subchapter, a telephone company may not allow disclosure of customer information to an agent, contractor, subsidiary or affiliate (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 employes 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 company by this subchapter and to maintain the same employe commitment to the protections in § 63.134 (relating to employe 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 company employe. 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 company employe.

(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 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 employe or other telephone company representative who will produce the information. The employe 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 employe shall then comply with the legal process.

(ii) If information, including applicable records, is unavailable, the employe 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 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. 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 company, subject to subparagraph (i).

(iii) Each instance in which customer information is disclosed to a governmental entity or the telephone company security department.

(iv) Each instance in which a record is required by other telephone company practices or procedures.

(7) *Annual notice of Customer Proprietary Network Information (CPNI) rights.* The telephone 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.

#### Cross References

This section cited in 52 Pa. Code § 63.143 (relating to code of conduct).

### § 63.136. Use of certain customer communications or customer information for debt collection purposes.

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.

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 com-

munication 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.

#### Source

The provisions of this § 63.137 amended June 29, 2012, effective June 30, 2012, 42 Pa.B. 3728. Immediately preceding text appears at serial pages (301445) to (301447).

### Subchapter K. COMPETITIVE SAFEGUARDS

Sec.

63.141. Statement of purpose and policy.

63.142. Definitions.

63.143. Code of conduct

63.144. Remedies.

#### Authority

The provisions of this Subchapter K issued under the Public Utility Code, 66 Pa.C.S. §§ 501, 1501 and 3001—3009, unless otherwise noted.

**Source**

The provisions of this Subchapter K adopted December 12, 2003, effective December 13, 2003, 33 Pa.B. 6047, unless otherwise noted.

**§ 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 for all services and facilities ILECs are obligated to provide CLECs under any applicable Federal or State law.

(2) Prevent the unlawful cross subsidization or support for competitive services from noncompetitive services by ILECs.

(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—*

(i) A telecommunications company that has been certificated or given provisional authority 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 in 66 Pa.C.S. § 3009(a) (relating to additional powers and duties), and its successors and assigns.

(ii) The term includes any of the CLEC'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 that has been classified as competitive by the Commission under the relevant provisions of 66 Pa.C.S. § 3005 (relating to competitive services).

*ILEC—Incumbent local exchange carrier—*

(i) A telecommunications company deemed to be an ILEC 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 ILEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service.

*LEC—Local exchange carrier—*A local telephone company that provides telecommunications service within a specified service area. LECs encompass both ILECs and CLECs.

*Market price—*Prices set at market-determined rates.



*Noncompetitive service*—Any protected telephone service as defined in 66 Pa.C.S. § 3002 (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.

**§ 63.143. Code of conduct.**

All LECs, unless otherwise noted, shall comply with the following requirements:

(1) *Nondiscrimination.*

(i) An ILEC may not give itself, including any local exchange affiliate or division or other corporate subunit that performs that function, or any CLEC any preference or advantage over any other CLEC 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 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 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 from bundling noncompetitive services with other noncompetitive services or with competitive services so long as the ILEC continues to offer any noncompetitive service contained in the bundle on an individual basis.

(iii) An ILEC shall offer to CLECs 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 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 may not state or imply that the continuation of any requested service from the ILEC is contingent upon taking other services offered by the ILEC that are not technically necessary to provide the requested service.

(4) *Cross subsidization.*

(i) An ILEC 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 shall simultaneously make available to CLECs network information not in the public domain that is used for sales purposes by the ILEC or the ILEC's competitive local exchange 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 network.

(B) Network information does not include information obtained during the processing of an order or service on behalf of the ILEC or the ILEC's competitive local exchange affiliate or division or other corporate subunit that performs that function.

(ii) An ILEC's employees, including its wholesale employees, shall use CLEC proprietary information (that is not otherwise available to the ILEC) received in the preordering, ordering, provisioning, billing, maintenance or repairing of any telecommunications services provided to the CLEC solely for the purpose of providing the services to the CLEC. ILEC employees may not disclose the CLEC proprietary information to other employees engaged in the marketing or sales of retail telecommunications services unless the CLEC provides prior written consent to the disclosure. This provision does not restrict the use of aggregated CLEC data in a manner that does not disclose proprietary information of any particular CLEC.

(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 wholesale employees who are responsible for the processing of a CLEC order or service of the operating support system on behalf of a CLEC may not be shared with the retail

portion of the ILEC's business, shall have offices physically separated from the ILEC'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.

#### Cross References

This section cited in 52 Pa. Code § 63.141 (relating to statement of purpose and scope).

### § 63.144. Remedies.

(a) A violation of this subchapter allegedly harming a party may be adjudicated using the Commission's *Interim Guidelines for Abbreviated Dispute Resolution Process*, at Doc. Nos. P-00991648 and P-00991649, which were published at 30 Pa.B. 3808 (July 28, 2000), or any successor Commission alternative dispute resolution process, to resolve the dispute. This action, however, does not preclude or limit additional available remedies or civil action, including the filing of a complaint concerning the dispute or alleged violations with the Commission under 66 Pa.C.S. § 701 (relating to complaints) and § 5.21(a) (relating to formal complaints generally).

(b) The Commission may also, when appropriate, impose penalties under 66 Pa.C.S. § 3301 (relating to civil penalties for violations) or refer violations of the code of conduct provisions in this subchapter to the Pennsylvania Office of Attorney General, the Federal Communications Commission or the United States Department of Justice.

## Subchapter L. UNIVERSAL SERVICE

Sec.

- 63.161. Statement of purpose and policy.
- 63.162. Definitions.
- 63.163. Universal service fund administration.
- 63.164. Commission oversight.
- 63.165. Calculation of contributions.
- 63.166. Administrator criteria.
- 63.167. Administrator's duties.
- 63.168. Auditor's duties.
- 63.169. Collection of universal service fund contributions.
- 63.170. End-user surcharge prohibited.
- 63.171. Enforcement.

#### Authority

The provisions of this Subchapter L issued under the Public Utility Code, 66 Pa.C.S. § 501, unless otherwise noted.

#### Source

The provisions of this Subchapter L adopted June 29, 2001, effective June 30, 2001, 31 Pa.B. 3402, unless otherwise noted.

63-66.3

**§ 63.161. Statement of purpose and policy.**

On July 8, 1993, the General Assembly enacted 66 Pa.C.S. Chapter 30 (relating to alternative form of regulation of telecommunications services) which provides for the regulatory reform of the telephone industry in this Commonwealth.

(1) The General Assembly's first declaration of policy in Chapter 30 is to "[m]aintain universal telecommunications services at affordable rates while encouraging the accelerated deployment of a universally available state-of-the-art, interactive, public switched broadband telecommunications network in rural, suburban and urban areas." See 66 Pa.C.S. § 3001(1) (relating to declaration of policy).

(2) The General Assembly assigned to the Commission and this Commonwealth's telecommunications providers responsibility for assuring and maintaining universal service in this Commonwealth. Given an increasingly competitive telecommunications marketplace, it is necessary to establish a competitively-neutral universal service funding mechanism to assure and maintain universal service and to promote the development of competition in telecommunications markets throughout this Commonwealth.

(3) The purpose of the Fund is to maintain the affordability of local service rates for end-user customers while allowing rural telephone companies to reduce access charges and intraLATA toll rates, on a revenue-neutral basis, thereby encouraging greater competition.

**§ 63.162. Definitions.**

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

*Assessment rate*—The percentage rate which when multiplied by each contributing telecommunications provider's total intraState end-user telecommunications retail revenue for the prior month will determine that provider's monthly contribution to the annual Fund budget. The assessment rate is computed annually under § 63.165 (relating to calculation of contributions).

*Basic universal service*—An evolving set of telephone services, as defined by the Commission, which represents the set of services essential for a resident of this Commonwealth to participate in modern society at any point in time.

*Contributing telecommunications providers*—Telecommunications carriers that provide intraState telecommunications services. Whether a provider or class of providers is a telecommunications carrier will be determined based upon whether the provider or class of providers is considered a telecommunications carrier under Federal law as interpreted by the Federal Communications

Commission except that wireless carriers are exempt from this subchapter under 66 Pa.C.S. § 102(2)(IV) (relating to definitions).

*End-user revenue*—Revenues received from telecommunications subscribers who consume the final service unadjusted for any expense or other purpose. Total intrastate end-user telecommunications retail revenue does not include those revenues received from access, resale (toll or local), or the sale of unbundled network elements or other services which are essentially wholesale in nature.

*Fund*—The Universal Service Fund.

*Fund recipient*—An entity which receives funds from the Fund. Incumbent local exchange carriers operating in this Commonwealth, with the exception of Verizon Pennsylvania and Verizon North, Inc. are eligible Fund recipients.

*Local service provider*—A telecommunications company to which retail customers subscribe for basic universal service.

### § 63.163. Universal service fund administration.

(a) The Commission will designate within the context of a competitive bidding process a third-party administrator and a fund auditor to maintain and audit the Fund consistent with this subchapter.

(b) The Fund shall be administered in a manner ensuring that the Fund is exempt from State, Federal, and local taxes. The Fund administrator shall seek tax exempt status from the Internal Revenue Service.

(c) The Fund shall be established and kept separate from any other Commonwealth general fund.

(d) The administrator shall be responsible for assessing contributing telecommunications providers for contributions to the Fund as provided for in § 63.165 (relating to calculation of contributions). The administrator shall also be responsible for receiving contributions, validating contributions and distributing payments to fund recipients.

(e) The administrator shall file with the Commission by September 1 of each year an annual report which shall include an income statement of the Fund's activity for the preceding calendar year, a list of recommendations pertaining to operations of the Fund, and a proposed budget and assessment rates for the upcoming year. A copy of the report will be served contemporaneously upon the Office of Consumer Advocate, Office of Small Business Advocate and all telecommunications carriers participating in the Fund.

(f) Interested parties shall be provided the opportunity to file comments to the administrator's report within 30 days of its submission to the Commission. Replies to comments shall be filed within 15 days thereafter. Comments should be addressed to the Pennsylvania Public Utility Commission's Secretary's Bureau, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265. The comments should be filed at Docket No. M-00001337.

**§ 63.164. Commission oversight.**

The Commission will issue an order within 90 days of receipt of the administrator's annual report, which establishes the size of the Fund, a budget, assessment rate for contributing telecommunications providers, and administrative guidelines for the upcoming calendar year.

**§ 63.165. Calculation of contributions.**

(a) Contributing telecommunications providers shall submit an affidavit to the administrator by March 31 of each year, identifying the provider's total intrastate end-user telecommunications retail revenue for the previous calendar year. A copy shall be served upon the Commission.

(b) In determining the annual assessment rate, the administrator will utilize the following calculation:

$$\frac{W + X + Y + Z}{A} \times \frac{B}{12} = C$$

W = Increase in funding requirement due to growth in access lines of recipient carriers. W equals the access line growth percentage for each recipient carrier multiplied by each recipient carriers' prior year net support (prior year funding minus prior year payment). The individual recipient carriers' required fund increases are totaled to yield W.  $W = ALG \times (PYF-PYP)$ .

X = Prior year's size of fund minus the estimated surplus from the prior year or plus any shortfall from the prior year.

Y = Surcharge for uncollectables is 1% times (X + W).

Z = Commission approved administrative and auditing expenses.

A = Aggregate Statewide end-user intraState retail revenue of all contributing telecommunications providers for the previous calendar year.

B = Individual contributing telecommunications provider's end-user intra-state retail revenue for the prior calendar year.

C = Individual contributing telecommunications provider's monthly contribution.

(c) To the extent the funding received from providers in any 1 year exceeds the disbursements required for the Fund plus the cost of administering the Fund (including 1% of the total size of the Fund to cover delinquent accounts and contingencies), the excess shall remain in the Fund, and the subsequent year's Fund size reduced by that surplus.

**Cross References**

This section cited in 52 Pa. Code § 63.162 (relating to definitions); 52 Pa. Code § 63.163 (relating to universal service fund administration); and 52 Pa. Code § 63.169 (relating to collection of universal service fund contributions).

**§ 63.166. Administrator criteria.**

The administrator shall meet the following criteria:

- (1) The administrator shall be neutral, impartial and independent from telecommunications service providers operating in this Commonwealth.
- (2) The administrator may not advocate specific positions before the Commission in nonuniversal service administrative proceedings related to telecommunications issues.
- (3) The administrator may not be an affiliate of any provider of telecommunications services. The administrator may not be closely associated with any provider of telecommunications services in a dependent or subordinate position.
- (4) If the administrator has a board of directors that includes members with direct financial interests in entities that contribute to or receive support from the Fund, no more than a third of the board members may represent any one category (for example, local exchange carriers or interexchange carriers) of contributing carriers or support recipients, and the Board's composition shall reflect the broad base of contributors to and recipients of Fund assets. For purposes of this restriction, a direct financial interest exists when the administrator or Board member:
  - (i) Is an employee of a telecommunications carrier.
  - (ii) Owns any equity interests in bonds or equity instruments issued by any telecommunications carrier.
  - (iii) Owns mutual funds that invest more than 50% of its assets in telecommunications securities.
- (5) If the administrator's board composition changes during its contractual period, the administrator shall notify the Commission immediately.

**§ 63.167. Administrator's duties.**

The administrator shall have the following duties:

- (1) Maintain a database to track contributing telecommunications providers.
- (2) Develop Commission-approved forms which all telecommunications service providers will submit to the administrator on a monthly basis with their monthly contributions.
- (3) Review the completed forms to ensure completeness and accuracy of reported revenue and Fund assessments and contact providers whose accounts contain unexplained variances in reported revenues or Fund assessments.
- (4) Assess late-payment charges of 1.5% per month pro rata per diem on contributions that are 30 days or more past due.
- (5) Send initial notices of delinquency to delinquent contributors when a payment is 30 days past due and follow up with at least one subsequent written notice, phone call, or both, to the contributor to pursue collection of Fund payments that are 60 days past due.

(6) Maintain logs of notices to delinquent contributors and refer to the Commission for further enforcement, on a monthly basis, all accounts more than 90-days past due.

(7) Immediately inform the Commission if the administrator has reason to believe that a contributing telecommunications provider has submitted false information to the administrator with the intent of obtaining fraudulent funding or underreported end-user revenue, or if any other irregularity occurs in the operation or administration of the Fund. Penalties that will be assessed to the contributing telecommunications provider are addressed in § 63.171 (relating to enforcement).

(8) Invest Fund moneys in interest-bearing instruments designed to minimize risk of loss while providing maximum liquidity. Return on investment shall be placed into the Fund. Permitted investments include:

(i) Marketable obligations directly and fully guaranteed by the United States government.

(ii) Federally-insured checking, money market accounts or certificates of deposit.

(iii) Other accounts expressly approved by the Commission.

(9) Promptly advise the Commission if the administrator projects any potential Fund shortfall or if Fund disbursements exceed receipts in a given month.

(10) In January of each year, mail reporting forms to each contributing telecommunications provider to acquire appropriate data to determine the following:

(i) Each contributing telecommunications provider's intraState end-user telecommunications retail revenue for the prior calendar year.

(ii) The Fund recipients' access line growth which translates into a dollar amount increase in the size of the next year's Fund.

(iii) Aggregate Statewide end-user intraState retail revenue of all contributing telecommunications providers for the previous calendar year.

(iv) Each contributing telecommunications provider's contribution for the following calendar year.

(11) Cooperate with the auditor selected by the Commission and provide data and information reasonably required to support audit activities.

(12) Promptly respond to Commission requests for information pertaining to Fund administration.

(13) Maintain adequate principal liability insurance coverage, criminal liability coverage, and a sufficient umbrella liability policy.

(14) Prepare reports of Fund activity for the Commission on a monthly basis detailing carrier assessments, delinquent payers, late-payment charges, fund disbursements, interest earned and cumulative results.

(15) Maintain records by contributor and by recipient.

(16) Provide additional reports as requested by the Commission.



(17) Maintain a statement of financial condition (balance sheet) and income statement for the total fund, and a sources and uses of funds statement, which will tie to the total Fund income statement.

(18) Deliver the balance sheet, income statement, and sources and uses of funds statement to the Fund auditor by May 1 of each year so that the auditor may prepare its report.

(19) Maintain a system of internal controls.

(20) Consider the auditor's report in preparing the annual report for submission to the Commission and include any undercollections or overcollections identified by the audit report in developing a proposed budget for the upcoming fiscal year.

(21) Submit the administrator's annual report by September 1 or 60 days following receipt of the audit report, whichever is later.

(22) With prior Commission approval, borrow monies to cover the short-term liabilities of the Fund caused by undercollections.

(23) At least 60 days before short-term borrowing is necessary, the administrator shall provide formal notice to the Commission which identifies the amount, the proposed lending source and the terms and conditions of the loan.

(24) Comply with the contract and Commission orders. Any dispute between the administrator and any contributing telecommunications provider shall be submitted to the Commission for resolution.

(25) Have access to the books of account of all telecommunications service providers to the limited extent necessary to verify their intraState end-user telecommunications retail revenues and other information used by the administrator in determining assessments and disbursements for the Fund.

(26) Treat competitive and financial information received as confidential and proprietary and only release that information upon order of the Commission.

(27) Operate on a fiscal year which shall be the same as the calendar year.

#### § 63.168. Auditor's duties.

(a) An independent external auditor chosen by the Commission will audit the Fund records covering both collections and disbursements for the fiscal year. The costs for conducting audits will be included in the computation of Fund requirements. Thereafter, an audit of the Fund collections and disbursements will be done annually.

(b) Following the audit, the Fund auditor will prepare and submit a report to the Commission and the administrator by July 1 of each year. The audit report should make recommendations regarding the finances of the Fund and should identify undercollections or overcollections experienced by the Fund in the previous year.

**§ 63.169. Collection of universal service fund contributions.**

(a) At the beginning of the calendar year, the administrator will provide monthly reporting forms to each contributing telecommunications provider. Each carrier will complete the form monthly using the calculation as described in § 63.165 (relating to calculation of contributions) and remit the form to the administrator along with its monthly contribution in full.

(b) Failure to make timely payment will result in the levy of a late payment charge of 1.5% per month pro rata per diem on the delinquent contribution.

(c) If a carrier's contribution to the Fund in a given year is less than \$120, that carrier will not be required to submit a contribution.

**§ 63.170. End-user surcharge prohibited.**

A telecommunications service provider may not implement a customer or end-user surcharge or any other direct or indirect charge to recover any contributions to the Fund.

**§ 63.171. Enforcement.**

A telecommunications service provider that fails to pay, in a timely manner, any contribution required under this subchapter may be prohibited from providing service in this Commonwealth and be subject to other penalty as authorized under law.

**Cross References**

This section cited in 52 Pa. Code § 63.167 (relating to administrator's duties).

**Subchapter M. CHANGING LOCAL SERVICE PROVIDERS****GENERALLY**

- Sec.  
63.191. Statement of purpose and policy.  
63.192. Definitions.

**MIGRATION**

- 63.201. General migration standards.  
63.202. Migration responsibilities of OLSPs, NLSPs and NSPs.  
63.203. Standards for the exchange of CSRs.  
63.204. Removal or lifting of LSPFs.  
63.205. Porting telephone numbers.  
63.206. Discontinuance of billing.

- 63.207. Carrier-to-carrier guidelines and performance assurance plans.

### INTERFERING STATIONS

- 63.211. Duties of NSPs and NLSPs when an interfering station condition is identified.  
63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.  
63.213. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing local service is provided by the OLSP and the applicant has shown proof of identity and of ownership or right of occupancy.  
63.214. Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.

### DISPUTES

- 63.221. Customer complaint procedures.  
63.222. Expedited process for resolution of migration disputes between service providers.

#### Authority

The provisions of this Subchapter M issued under the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; and section 612 of The Administrative Code of 1929 (71 P. S. § 232), unless otherwise noted.

#### Source

The provisions of this Subchapter M adopted August 12, 2005, effective August 13, 2005, 35 Pa.B. 4597, unless otherwise noted.

### GENERALLY

#### § 63.191. Statement of purpose and policy.

(a) The purpose of this subchapter is to establish general rules, procedures and standards governing the migration of customers between LSPs, including porting telephone numbers, resolving interfering stations, exchanging customer records and the transition of billing accounts. The primary objective of this subchapter is to establish standards to ensure that residential and business customers can migrate from one LSP to another LSP without confusion, delay or interruption to their local service.

(b) This subchapter applies to:

- (1) LSPs and NSPs for migration of residential and business customers between LSPs.
- (2) LSPs and NSPs when interfering station conditions are encountered.

(c) This subchapter does not apply to:

- (1) Mass migrations of customers brought about by the selling or transferring of a customer base of one LSP to another.
  - (2) An LSP that has properly proceeded with the abandonment of service to its customer base.
  - (3) DSL migration.
  - (4) Line sharing/splitting arrangements.
- (d) To the extent that other regulations do not address circumstances as described in subsection (c), this subchapter may provide guidance for those transactions.

### § 63.192. Definitions.

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

*Applicant*—

(i) A person, association, partnership, corporation or government agency making a written or oral request for the commencement of local service, other than a transfer of local service from one location to another within the local service area of the same LSP or a reinstatement of local service following a discontinuation or termination.

(ii) The term does not apply to a customer who is subject to special contractual arrangements and has otherwise agreed to different conditions of local service that do not contradict Commission rules or regulations.

*Appropriate retained documentation*—Proof accompanying a customer's order, request for a change in telephone service or service providers, or permission to obtain the customer's CSR that uses a unique identifier associated with the customer, such as the customer's city of birth, Social Security number, mother's birth name or tax identification code.

*Authorized agent*—An adult designated by an applicant or a customer to act on the behalf of the applicant or customer.

*CSR—Customer service record*—Documentation indicating the customer's name, address, contact telephone number, quantity of lines, services, features, network serving arrangements, and other information associated with a customer account.

*Commission review*—Includes informal or formal review, evaluation or adjudication, staff-level review or alternate dispute resolution.

*Customer*—The end user recipient of telephone service provided by an LSP.

*DSL—Digital subscriber line*—A dedicated, high-speed, always-on service, frequently used in the context of "ADSL" or "XDSL."

*Discontinuation of service*—The temporary or permanent cessation of service upon the request of a customer.

*Facilities*—The equipment (for example—local loop, network interface device, transport facilities, and the like) necessary to provide local service to a customer.

*Freeze*—A designation elected by a customer that restricts a third party's ability to change the customer's choice of preferred service providers.

*Interfering station*—Preexisting local service that prevents the reuse of existing telephone facilities by an NLSP to serve a new customer at a location where the prior customer did not notify the OLSP to disconnect the local service. The OLSP and the NLSP may be the same company.

*InterLATA*—Originating in one LATA and terminating in another LATA. For example—an interLATA telephone call is a call that is placed from a telephone in one LATA to a telephone located in another LATA.

*IntraLATA*—Originating and terminating within the same LATA. For example—an intraLATA telephone call is a call that is placed from a telephone in one LATA to a telephone located within the same LATA.

*LATA—Local access and transport area*—One of the 196 geographical areas designated in 1984 by the decree that broke up AT&T into seven telephone operating companies. At that time, a LATA was the area within which one of the existing local service providers could offer either local or long distance service.

*LOA—Letter of authorization*—A specific written or electronic record signed by a customer granting a NLSP the authority to act as the customer's agent.

*LSC—Local service confirmation*—Documentation issued by the NSP to inform the LSP of the confirmed scheduled completion date for work affecting the migration of local service.

*LSP—Local service provider*—A company, such as a local exchange carrier (LEC), that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods of providing local service to a customer.

*LSPF—Local service provider freeze*—A designation elected by a customer that restricts a third party's ability to change a customer's choice of preferred LSP.

*LSR—Local service request*—The electronic or paper form that contains all the information required to arrange for installation of, change in or disconnection of local services.

(i) The LSR is sent by an LSP to an NSP, for example—to request the activation of number portability, the installation of an unbundled loop facility, or the disconnection of loop facilities and migration of a number.

(ii) The NSP uses the LSR to create the internal directives, for example—a service order, to cause the work to be performed as ordered.

*Line loss notification*—The report the old NSP issues upon completion of a migration to inform the OLSP that the OLSP no longer provides local service to a customer on a particular line.

*Line sharing*—The sharing of facilities by an LSP and an NSP in the provision of voice and data services to a given location over the same facilities.

*Line splitting*—The sharing of facilities by two LSPs, when neither is the NSP, in the provision of voice and data services to a given location over the same facilities.

*Local loop*—The wires and cable between the customer's premise and the central office of the local telephone company.

*Local service*—Telecommunications service within a customer's local calling area.

(i) The term includes the customer's local calling plan, dial tone line, touch-tone and directory assistance calls allowed without additional charge.

(ii) The term also includes services covered by the Federal line cost charge, Pennsylvania Relay Surcharge, Federal Universal Service Fund Surcharge, Local Number Portability Surcharge, Public Safety Emergency Telephone Act (9-1-1) Fee and applicable Federal and State taxes.

*Migration*—The movement of a customer from one LSP to another LSP at the same service location.

*NLSP—New local service provider*—The company that will provide local service to a customer after a migration.

*NSP—Network service provider*—A telecommunications provider that interacts with LSPs and provides the facilities and equipment components needed to make up a customer's telecommunications service.

(i) An NSP may also be referred to as an underlying carrier.

(ii) An NSP may also be an LSP.

*Network serving arrangements*—The service platform (for example—resale, unbundled loop, full facilities, UNE-P) to provide local service to a customer. Network serving arrangements may also be referred to as service configuration information.

*OLSP—Old local service provider*—The company that provides local service to a customer prior to migration.

*Optional services*—

(i) Telecommunications services in addition to local service that are offered by LSPs at a cost per individual service or as part of a package of services.

(ii) Examples include toll blocking, 900/976 blocking, inside wiring maintenance plans and extensions off premise.

(iii) The term also includes vertical services.

*Preferred service provider*—The company chosen by a customer to provide particular telecommunications services. A preferred service provider is sometimes referred to as a "preferred carrier."

*Porting*—The process that allows customers to keep their telephone numbers when changing LSPs.

*Recording verifying permission*—An auditory documentation of a customer's voice made when the customer ordered local service, requested a change in

local service or local service providers or granted permission to a local service provider to obtain the customer's CSR.

*Service provider*—A generic term to include LSPs and NSPs.

*Termination of service*—Permanent cessation of service after a suspension without the consent of the customer.

*Third party verification*—The process by which an independent entity confirms that a customer ordered local service, authorized a change in local service or local service providers or granted permission to a local service provider to obtain the customer's CSR.

*UNEs—Unbundled network elements*—Various physical and functional parts of an NSP's infrastructure that may be leased to another LSP. These components include things such as local switching, local loops, interoffice transmission facilities, signaling and call-related databases, operator services, directory assistance, and the like.

*UNE-P—UNE-platform*—A combination of unbundled network elements that facilitates end-to-end service delivery. A typical arrangement includes at least a local loop and switching.

*Vertical services*—Telecommunications features available to local service customers at either an added cost or as part of a service package. Vertical services refer to the way in which a telephone line works and include customer calling features such as call forwarding and call waiting.

*Unbundled loop*—A local loop that is leased by one service provider from another service provider to provide local service to a customer.

*Working day*—A day except Saturday, Sunday or legal holiday.

## MIGRATION

### § 63.201. General migration standards.

- (a) A customer has the right to migrate from one LSP to another LSP.
- (b) The prospective NLSP shall communicate and explain to the customer the migration process and the migration timetable for the local service and for any other service the customer may order.
- (c) The OLSP, the NLSP and the NSP shall work together in good faith to minimize or avoid problems associated with migrating the customer's account.
- (d) The OLSP may not prohibit the NLSP from reusing facilities that are no longer needed by the OLSP to provide local service to the migrating customer or other customer. If the OLSP has a conflict over the use of the facilities, it may be resolved using the interfering station procedures under §§ 63.211—63.214 (relating to interfering stations) or the expedited dispute process under § 63.222 (relating to expedited process for resolution of migration disputes between service providers).

(e) At the end of each working day, the NLSP shall notify the 9-1-1 host carrier and the Directory Listings/White Pages providers of that day's changes to these databases.

(f) Each LSP and NSP shall maintain a company contact and escalation list for use in resolving migration problems and interfering station conditions. The companies shall update the lists to ensure that the information is current and accurate. LSPs and NSPs shall post the list on a publicly accessible website and supply the website address to the Commission. The Commission will post the address on its website.

**§ 63.202. Migration responsibilities of OLSPs, NLSPs and NSPs.**

(a) The OLSP shall be responsible for responding to the prospective NLSP's request for a CSR, consistent with the requirements of § 63.203 (relating to standards for the exchange of CSRs).

(b) The prospective NLSP shall be responsible for coordinating the migration of the customer's local service with its NSP, if any, and with the OLSP.

(c) The prospective NLSP shall provide the LSR information to affected service providers, as applicable.

(d) The timetable for issuing an LSC is as follows:

(1) By August 13, 2005, the NSP or OLSP shall issue an LSC or rejection within 3 working days from the date the NSP or OLSP receives an LSR from the prospective NLSP.

(2) After February 13, 2006, the NSP or OLSP shall issue an LSC or rejection within 2 working days from the date the NSP or OLSP receives an LSR from the prospective NLSP.

(3) After August 14, 2006, the NSP or OLSP shall issue an LSC or rejection within 1 working day from the date the NSP or OLSP receives an LSR from the prospective NLSP.

(e) The NLSP shall be responsible for coordinating a customer's service restoration that may become necessary due to problems with the migration.

(f) After a migration has been completed, the old NSP shall provide notification to the OLSP that the customer has migrated to the NLSP.

**§ 63.203. Standards for the exchange of CSRs.**

(a) Prospective NLSPs may not acquire CSRs without a verified customer authorization. The prospective NLSP shall use one of the following verification procedures and retain the authorization and verification for 2 years:

- (1) An LOA from the customer of record to review the customer's account.
- (2) A third-party verification of the customer's consent.
- (3) A recording verifying permission from the customer.
- (4) Oral authorization documented with appropriate retained documentation.



- (5) Additional verification procedures as may be authorized by the Federal Communications Commission (FCC) or the Commission.
- (b) The prospective NLSP shall indicate to the customer's current LSP that it has a verified authorization for access to the CSR. The NLSP is not required to provide a copy of the authorization or verification to the current LSP.
- (c) A current LSP may not contact a customer to retain or keep that customer as a result of a request from another LSP for the customer's CSR.
- (d) When a prospective NLSP has verified authorization from the customer to switch the customer's LSP, the prospective NLSP shall request the customer's CSR from the OLSP. The prospective NLSP is not required to provide proof to the OLSP of the authorization or verification at the time of migration. The prospective NLSP shall use one of the following types of verification and shall retain the authorization and verification for 2 years:
- (1) An LOA from the customer to switch LSPs.
  - (2) A third-party verification of the customer's request.
  - (3) An electronic verification of the customer's request to switch LSPs that contains unique identifying information.
  - (4) Additional verification procedures as may be authorized by the FCC or the Commission.
- (e) A customer's current LSP shall provide the following information when the CSR is requested to migrate a customer's local service:
- (1) Billing telephone number and working telephone number.
  - (2) Complete customer billing name and address.
  - (3) Complete service address, including floor, suite unit and any other unique identifying information.
  - (4) 9-1-1/E-9-1-1 information.
  - (5) Directory listing information, including address, listing type and all other pertinent information.
  - (6) Preferred service providers for interLATA, intraLATA, local service and other services.
  - (7) Provider freeze status by interLATA toll, intraLATA toll, local service and other services.
  - (8) Listing of all vertical services (for example—custom calling, hunting, and the like) to which the customer currently subscribes.
  - (9) Listing of all optional services (for example—900 blocking, toll blocking, remote call forwarding, off-premise extensions, and the like) to which the customer currently subscribes.
  - (10) Tracking number or transaction number (for example—purchase order number).
  - (11) Network serving arrangements (for example—resale, UNE-P, unbundled loop).
  - (12) Identification of NSPs.

(13) Identification of any line sharing/line splitting on the migrating customer's line.

(f) Timetable for providing CSRs, minimum requirements:

(1) By August 13, 2005, OLSPs shall provide 80% of requested CSRs within 2 working days.

(2) After February 13, 2006, OLSPs shall provide 80% of requested CSRs within 1 working day.

(3) After August 14, 2006, OLSPs shall provide 80% of requested CSRs the same day if the request is made by noon of that day, or by noon of the next working day if requested after noon.

#### Cross References

This section cited in 52 Pa. Code § 63.202 (relating to migration responsibilities of OLSPs, NLSPs and NSPs).

### § 63.204. Removal or lifting of LSPFs.

(a) An applicant shall authorize the removal of an existing LSPF before a prospective NLSP may process a change in LSP. The prospective NLSP shall inform the applicant of the following at the time of application:

(1) If the applicant has an LSPF, the applicant shall authorize the removal of the LSPF before the request for a change of the customer's LSP can be processed.

(2) The applicant or the applicant's authorized agent shall contact the OLSP to have an LSPF lifted. Before processing the lifting of the LSPF, the OLSP shall confirm appropriate verification data such as the customer's date of birth, Social Security number or mother's birth name with the applicant or the applicant's authorized agent.

(3) A prospective NLSP may not authorize the removal of an applicant's LSPF.

(b) When the prospective NLSP is also seeking to provide other services, (for example, interexchange, intraLATA, interLATA, interstate or international toll) covered by freezes, authorizations to lift the freezes may be transmitted in one process, if the applicant expressly requests that each freeze be lifted. The prospective NLSP shall inform the applicant of the distinctions among the services and of the requirement that service may not be migrated unless the customer expressly lifts each freeze.

(c) LSPs that offer LSPFs to their customers shall provide various methods to customers for lifting LSPFs, as required by the Federal Communications Commission as set forth in 47 CFR Part 64, Subpart K (relating to changes in preferred telecommunications service providers).

**§ 63.205. Porting telephone numbers.**

An OLSP or NSP may not refuse an otherwise valid request to port a number to a NLSP unless the number is for local service that has been terminated or discontinued under Chapter 64 (relating to standards and billing practices for residential telephone service) for residential customers or consistent with the LSP's tariff for other customer classes.

**§ 63.206. Discontinuance of billing.**

(a) LSPs shall minimize overlap in billing during the migration between LSPs.

(b) Within 42 days of the receipt of a line loss notification from the NSP, the customer's OLSP shall issue the customer a final bill for services rendered.

(c) Once the customer has paid the charges on the final bill, the OLSP shall immediately remove the customer from its billing system and discontinue billing, unless the OLSP provides other services to the customer.

(d) Subject to the terms of an applicable tariff or customer specific pricing arrangement, the OLSP shall stop billing the customer for any recurring charges associated with the migrated services as of the date of the migration.

(e) This subchapter does not affect a customer's debtor/consumer rights or an LSP's creditor's remedies, as may be otherwise permitted by law.

**§ 63.207. Carrier-to-carrier guidelines and performance assurance plans.**

For an LSP or NSP subject to State or Federal carrier-to-carrier guidelines or performance assurance plans, if the carrier-to-carrier guidelines or performance assurance plan provide a more explicit or a narrower window for performance than otherwise specified under this subchapter, the carrier-to-carrier guidelines or performance assurance plan shall control for that LSP or NSP.

**INTERFERING STATIONS****§ 63.211. Duties of NSPs and NLSPs when an interfering station condition is identified.**

(a) The NSP shall inform the prospective NLSP of an interfering station condition by the end of the next working day after the NSP identifies that an interfering station condition exists.

(b) The NSP shall review the LSR information with the prospective NLSP to determine possible errors:

(1) Upon confirmation that the LSR information is correct, the NSP shall inform the prospective NLSP that the LSR cannot be fulfilled because there is preexisting local service at the service location.

(2) If the LSR information is incorrect, the prospective NLSP shall correct the information and resubmit the corrected LSR to the NSP.

**Cross References**

This section cited in 52 Pa. Code § 63.201 (relating to general migration standards).

**§ 63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.**

(a) The prospective NLSP shall notify the applicant that there is preexisting local service at the service location within 1 business day of the date the NLSP receives notice of the interfering station condition. The prospective NLSP shall contact the applicant by telephone, email, first class mail or in person to request that the applicant verify the address at the service location.

(b) If the applicant fails to respond to the notice within 5 days, the prospective NLSP may cancel the application.

(c) If the applicant informs the prospective NLSP that the address is incorrect, the prospective NLSP shall correct the information on the application, submit a new LSR and provide the new local service installation date.

(d) If the applicant verifies that the address is correct, the prospective NLSP shall explain that new local service is not able to be installed using the same facilities due to preexisting local service at the address and request the applicant to provide proof of ownership or right of occupancy.

(e) If the applicant provides proof of ownership or right of occupancy, the prospective NLSP shall advise the applicant of the following options:

(1) The applicant may authorize the prospective NLSP to contact the OLSP to confirm abandoned service.

(2) The applicant may attempt to resolve the interfering station condition with the customer of record, if known to the applicant.

(3) The applicant may arrange for the installation of new facilities.

(i) If inside wiring is required, the applicant shall provide proof of installation before the prospective NLSP is able to proceed with the LSR.

(ii) If new facilities (for example—outside wiring or a network interface device (NID)), are required, the prospective NLSP shall advise the applicant that the applicant shall pay for the installation of the new facilities pursuant to tariff rates and that the installation may take longer than 5 days.

(4) The applicant may cancel the application.

**Cross References**

This section cited in 52 Pa. Code § 63.201 (relating to general migration standards).

**§ 63.213. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing local service is provided by the OLSP and the applicant has shown proof of identity and of ownership or right of occupancy.**

(a) Within 3 working days of the notification, the OLSP shall issue a termination notice to the customer of record in the OLSP's billing system. The notice

of termination must state the reason for termination, date of termination and what the customer of record is required to do to prevent termination. The termination date must be 7 days from the date of the mailing of the notice by first class mail.

(b) If the customer of record does not contact the OLSP, the OLSP shall terminate the customer's service and take appropriate action to release the customer's facilities to the prospective NLSP.

(c) If the customer of record contacts the OLSP by the termination date and does not agree to the termination of service, the OLSP shall notify the prospective NLSP of the inability of the OLSP to release the facilities to be used by the prospective NLSP.

#### Cross References

This section cited in 52 Pa. Code § 63.201 (relating to general migration standards).

### § 63.214. Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.

(a) The prospective NLSP shall contact the applicant and explain that the preexisting customer will not agree to the termination of service and that the prospective NLSP is not able to use the existing facilities.

(b) The prospective NLSP shall inform the applicant of the following options to obtain local service:

(1) The applicant may pursue any disputes between co-tenants, owners and occupants before an appropriate forum for the remedy. The prospective NLSP shall inform the applicant that neither the prospective NLSP, the OLSP nor the Commission is responsible for or available to resolve private disputes between customers and applicants.

(2) The applicant may arrange for the installation of new facilities.

(i) If inside wiring is required, the applicant shall provide proof of installation before the prospective NLSP is able to proceed with the LSR.

(ii) If new facilities (for example—outside wiring or a NID) are required, the applicant shall pay for the installation of the new facilities pursuant to tariff rates and the installation may take longer than 5 days.

#### Cross References

This section cited in 52 Pa. Code § 63.201 (relating to general migration standards).

## DISPUTES

### § 63.221. Customer complaint procedures.

(a) *Records of complaints.* An LSP covered by or operating under this title shall preserve written or recorded complaints showing the name and address of the applicant or complainant, the date and character of the complaint, the action

taken and the date of final disposition. Records of complaints for residential customers shall be kept in accordance with § 64.192 (relating to record maintenance).

(b) *Commission review.* If a customer or applicant expresses dissatisfaction with the LSP's decision or explanation, the LSP shall inform the customer or applicant of the right to have the dispute 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 Chapter 64, Subchapters G and H (relating to disputes; informal and formal complaints; and restoration of service) for residential service.

(c) *Investigations.* Within 1 working day of receiving a complaint covered by this subchapter from an applicant, customer or third party, the Commission will transmit a summary of the complaint to the LSP. When complaints are referred to the LSP through the Commission, the LSP and the Commission will work to process and resolve the complaints. An LSP shall make a full and prompt investigation of complaints made to it through the Commission by the applicant, customer or third party. For complaints involving commercial service, if the LSP needs more than 30 days to respond to the Commission, the LSP shall advise the Commission of that need within 30 days of the date it receives the complaint summary and indicate when it will send its response to the Commission.

(d) *Resolutions.* If a complaint is resolved between the LSP and the complaining party, the LSP shall advise the Commission within 10 working days of the resolution and submit a copy of the service order or other documentation of satisfaction which identifies the action taken by the LSP to resolve the complaint. The LSP may not consider the complaint closed until the Commission advises the LSP that the Commission has closed the complaint.

**§ 63.222. Expedited process for resolution of migration disputes between service providers.**

(a) The Commission will provide a nonadversarial, expedited dispute process to address migration disputes between service providers. The Commission will designate Commission staff as contact persons through which LSPs and NSPs may request expedited resolution for alleged problems between service providers or compliance with this title.

(b) An LSP or NSP that has a dispute under this subchapter with another LSP which cannot be resolved between the entities may refer the dispute to the expedited dispute process for a suggested resolution in a nonadversarial context.

(c) The Commission designee will review the dispute within 2 working days of the date the dispute was received, attempt to contact the involved entities and suggest a nonbinding resolution of the dispute, consistent with § 1.96 (relating to unofficial statements and opinions by Commission personnel).

(d) If the expedited dispute process fails to resolve the dispute, the parties may resort to the Commission's mediation process under §§ 69.391—69.397 (relating to mediation process) or formal dispute resolution processes.

(e) The expedited dispute process is neither mandatory nor a prerequisite to the Commission's mediation or formal dispute resolution processes.

#### Cross References

This section cited in 52 Pa. Code § 63.201 (relating to general migration standards).

### Subchapter N. LOCAL SERVICE PROVIDER ABANDONMENT PROCESS

Sec.

- 63.301. Statement of purpose and policy.
- 63.302. Definitions.
- 63.303. Pretermination provisions.
- 63.304. NSP termination process for wholesale customers.
- 63.305. Initiation of abandonment.
- 63.306. Abandoning LSP obligations for abandonment.
- 63.307. Abandonment process management.
- 63.308. Commission consideration and action.
- 63.309. Acquiring LSP provisions and obligations.
- 63.310. Abandoning LSP follow-up obligations.

#### Authority

The provisions of this Subchapter N is issued under the Public Utility Code, 66 Pa.C.S. 501, 1501 and 3001—3009, unless otherwise noted.

#### Source

The provisions of this Subchapter N adopted April 15, 2005, effective April 16, 2005, 35 Pa.B. 2289, unless otherwise noted.

#### § 63.301. Statement of purpose and policy.

- (a) *Purpose.* The purpose of this subchapter is to:
- (1) Provide for an orderly process when a NSP intends to terminate service to a LSP.
  - (2) Provide for an orderly process when a LSP seeks to stop the provision of existing service to residential and business customers under any of the following circumstances:
    - (i) A NSP that provides part or all of the services necessary to provide local service is intending to terminate a LSP's interconnection agreement.
    - (ii) The Commission has issued an order to revoke a LSP's certificate of public convenience.
    - (iii) A LSP has filed an application to abandon a certificate of public convenience for the provision of local service.

(3) Ensure that customers are provided ample notice and the opportunity to select a new LSP of their choice and thereby not lose local service when the LSP exits their market.

(4) Coordinate information flow and activities through a project management team.

(5) Ensure that an abandoning LSP provides sufficient network information so that customers are able to be migrated seamlessly.

(6) Ensure that an abandoning LSP coordinates with 9-1-1 service providers and the North American Numbering Plan Administrator.

(b) *Application.*

(1) This subchapter applies to a LSP that provides local service to residential or business customers.

(2) This subchapter applies to a NSP that provides wholesale local service to a LSP and intends to terminate the LSP's service for breach of an interconnection agreement.

### § 63.302. Definitions.

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

*Abandon*—To cease providing local service to existing customers. The term does not include discontinuance as a result of a customer's request or a temporary change in the provision of service that may arise from maintenance, repair or failure of a LSP's equipment or facilities.

*Abandoning LSP*—A LSP that seeks to abandon providing local service to existing customers.

*Acquiring LSP*—A LSP that voluntarily undertakes to provide local service to customers of the abandoning LSP after the abandoning LSP is permitted to alter or abandon providing local service.

*CSR—Customer service record*—Documentation indicating the customer's name, address, contact telephone number, quantity of lines, services, features and other information associated with a customer account.

*Customer*—The end-user recipient of telephone service provided by a LSP.

*Exit date*—The date upon which an abandoning LSP intends to cease providing telecommunications service.

*Full facilities*—The term used when the LSP has all the services and equipment (that is, central office switches, local loops, trunk lines, and the like) necessary to provide telephonic communications between telephones connected to it or to other central offices.

*Interconnection agreement*—An agreement to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

*LSP—Local service provider*—A company, such as a local exchange carrier (LEC), that provides local service by resale, by unbundled network elements



(with or without platform) or through its own facilities, or by a combination of these methods of providing local service to a customer.

*Local service*—Telecommunications service within a customer's local calling area.

(i) The term includes the customer's local calling plan, dial tone line, touch-tone and directory assistance calls allowed without additional charge.

(ii) The term also includes services covered by the Federal Line Cost Charge, Pennsylvania Relay Surcharge, Federal Universal Service Fund Surcharge, Local Number Portability Surcharge, Public Safety Emergency Telephone Act (9-1-1) Fee and applicable Federal and State taxes.

*Local service reseller*—A LSP that resells another company's wholesale telephone services to provide local service to customers.

*NANPA—North American Numbering Plan Administration*—The organization that holds overall responsibility for the neutral administration of North American telephone numbering resources, subject to directives from regulatory authorities in the countries that share the North American telephone numbering resources. NANPA's responsibilities include assignment of telephone numbering resources, and, in the United States and its territories, coordination of area code relief planning and collection of utilization and forecast data.

*NSP—Network service provider*—A telecommunications provider that interacts with LSPs and provides the facilities and equipment components needed to make up a customer's telecommunications service. A NSP may be referred to as an underlying carrier, and may also be a LSP.

*Preferred carrier freeze*—A designation elected by a customer that restricts a third party's ability to change a customer's choice of preferred telecommunication service provider.

*Resale*—The term used when a LSP does not have its own facilities, but purchases telecommunications services at wholesale rates to sell to the public. Typically, the telecommunications services are purchased from a NSP.

*UNE—Unbundled network element*—Various physical and functional parts of a NSP's infrastructure that may be leased to another LSP. These components include things such as local switching, local loops, interoffice transmission facilities, signaling and call-related databases, operator services, directory assistance, and the like.

*UNE-L—Local Loop*—The telephone line (copper or fiber), that runs from the local telephone company to a customer's premise. A LSP may own a local switch and lease the local loop from the NSP.

*UNE-P—UNE-Platform*—A combination of unbundled network elements that facilitates end-to-end service delivery. A typical arrangement includes at least a local loop and switching.

*Wholesale customer*—A LSP that provides local service by resale or by unbundled network elements (with or without platform).

**§ 63.303. Pretermination provisions.**

(a) *Wholesale customer billing dispute resolution process.* Wholesale customers shall have the opportunity to dispute charges for the provision of service with the NSP. A wholesale customer is obligated to pay amounts not under dispute. Disputes shall be raised by a LSP on a timely basis consistent with the language in applicable interconnection agreements.

(1) When disputing NSP charges, the wholesale customer shall provide the NSP with a written dispute notice unless other methods of delivery have been agreed to as part of an interconnection or other governing agreement.

(2) The dispute notice must be addressed to the NSP's designee.

(3) The dispute notice must provide the NSP with the amounts that form the grounds for the dispute as well as the specific accounts and bills that are being disputed.

(4) Within 5 calendar days of receiving a written dispute notice from a wholesale customer, the NSP shall provide written acknowledgement of the receipt of the notice to the wholesale customer's contact.

(5) Upon receiving a dispute notice from a wholesale customer, the NSP and the wholesale customer shall make a good faith effort to resolve the dispute within 30 calendar days unless a longer dispute resolution period is provided for in an interconnection or other governing agreement. During this dispute resolution period, the NSP may not pursue termination of the wholesale customer's service unless it is based on other indebtedness that is not disputed.

(6) If resolution of the dispute is not achieved to the satisfaction of the NSP and the wholesale customer at the conclusion of the dispute resolution period, either party may file a complaint with the Commission to resolve the dispute.

(7) The NSP and the wholesale customer shall seek to file a complaint with the Commission to resolve a billing dispute prior to the time when retail customers are to be notified of the pending abandonment.

(8) The NSP may not pursue termination of the wholesale customer's service while a complaint to resolve the dispute is pending with the Commission unless the termination is based on other indebtedness that is not disputed.

(b) *NSP payment default resolution process.*

(1) Prior to a NSP issuing a termination notice to a wholesale customer for a payment default, the NSP shall:

(i) Provide the wholesale customer with a written notice of payment default.

(ii) Send the default notice by first class mail unless other methods of delivery have been agreed to as a part of the interconnection or other governing agreement or are provided for in an applicable tariff.

(iii) Address the default notice to the wholesale customer's designee.

- (iv) Send a copy of the default notice to the Secretary of the Commission and to the Commission's Bureau of Consumer Services.
- (2) The default notice to a wholesale customer shall include the following:
  - (i) The amount owed that forms the grounds for the payment default as well as the specific accounts and invoices that are in default.
  - (ii) A statement of the terms of the interconnection or other governing agreement that forms the grounds for the NSP's notification of payment default.
  - (iii) Available methods the wholesale customer may use to cure the payment default.
  - (iv) The NSP's contact information to be used by the wholesale customer for payment of the NSP's bill.
- (3) Allow at least 30 calendar days from the date of the default notice for resolution of the payment default prior to issuing a termination notice. If interconnection or other governing agreements between the NSP and the wholesale customer allow for a longer dispute resolution period prior to the NSP issuing a termination notice, the time periods in the agreement govern.
- (4) Within 5 calendar days of receiving a written notice of payment default, the wholesale customer shall provide written acknowledgement of the receipt of the notice to the NSP's contact.

#### Cross References

This section cited in 52 Pa. Code § 63.304 (relating to NSP termination process for wholesale customers); and 52 Pa. Code § 63.305 (relating to initiation of abandonment).

#### § 63.304. NSP termination process for wholesale customers.

- (a) *Authorized reasons for a NSP to terminate service.* A NSP may terminate service to a wholesale customer for one or more of the following reasons:
  - (1) Failure of the wholesale customer to pay an undisputed delinquent amount for services necessary to provide customers with local service when that amount remains unpaid for 30 calendar days or more after the date of the bill unless the bill has been disputed in accordance with the provisions in § 63.303(a) or (b) (relating to pretermination provisions).
  - (2) Failure of the wholesale customer to abide by the terms and conditions of an interconnection or other governing agreement related to the provision of local service that has been approved by the Commission.
  - (3) Failure of the wholesale customer to comply with the terms of a payment agreement related to the provision of local service.
  - (4) Failure of the wholesale customer to comply with a Commission order related to the provision of local service.
- (b) *Unauthorized reasons for a NSP to terminate service.* Unless specifically authorized by the Commission, a NSP may not terminate service for the following reasons:

(1) Failure of a wholesale customer to pay a charge unrelated to the provision of local service, for example, a charge for a LSP's own directory advertising in a NSP's yellow pages directory.

(2) Failure of a wholesale customer to pay a charge that was not previously billed prior to the due date of the current bill.

(3) Failure of a wholesale customer to pay a charge that is under a payment agreement prior to the date of payment set forth in the agreement.

(4) Failure of a wholesale customer to pay a charge that is at issue in a complaint before the Commission unless termination is specifically authorized by the Commission.

(c) *Termination notice provisions.*

(1) A NSP shall provide a wholesale customer with a written termination notice at least 45 calendar days prior to the date that the NSP intends to cease providing the service that enables the wholesale customer to serve end-user customers.

(2) A NSP shall send the termination notice by first class mail unless other methods of delivery have been agreed to as part of the interconnection or other governing agreement or are provided for in an applicable tariff.

(3) A NSP shall address the termination notice to the wholesale customer's designee.

(4) A NSP shall send a copy of the termination notice to the Secretary of the Commission, to the Commission's Bureau of Consumer Services and the Law Bureau.

(5) A termination notice from a NSP to a wholesale customer shall include the following:

(i) The date of the notification and reason for termination.

(ii) The date services shall be terminated unless payment is received or other mutually acceptable arrangements are made.

(iii) The amount owed, if applicable.

(iv) A contact telephone number and name for the NSP.

(d) *Combined default/termination notice provisions.* A NSP, when authorized by the provisions of its interconnection or other agreement with a wholesale customer, may provide the wholesale customer with a single notice of default and of termination that specifies that termination shall occur in less than the minimum 75 calendar days provided for in § 63.303 and this section, provided that the termination may not occur in less than the 45-day termination period provided for in subsection (c)(1).

### § 63.305. Initiation of abandonment.

A LSP shall initiate abandonment of service when a LSP receives a notice from the NSP of a termination of a LSP's service consistent with the pretermination dispute provisions in § 63.303 (relating to pretermination provisions), when the Commission issues an order to revoke a LSP's certificate of public convenience

or when a LSP has made proper application to the Commission to abandon some or all of a LSP's local service customers.

(1) *NSP initiation.*

(i) A NSP that intends to terminate the service of a LSP that is a wholesale customer and serves residential or business customers shall provide prior notice to the LSP and the Commission electronically and by first class mail unless other methods of delivery have been agreed to as part of the interconnection or other governing agreement between the NSP and the LSP, not less than 45 calendar days in advance of the scheduled termination.

(ii) The Commission may require a NSP to extend a LSP's termination date until the LSP's customers have been properly notified.

(2) *Commission initiation.* The Commission may initiate the abandonment of a LSP's service through the issuance of a Commission order that revokes the LSP's certificate of public convenience.

(3) *LSP initiation.* A LSP may initiate the voluntary abandonment of some or all of its local service customers by filing with the Commission an application to abandon service to some or all of its existing customers. A LSP shall file an application to abandon service at least 35 calendar days prior to the exit date.

**§ 63.306. Abandoning LSP obligations for abandonment.**

(a) *General.* Upon receiving a termination notice from a NSP, or upon receiving a Commission order notifying a LSP of an effective date for revoking its certificate of public convenience, or upon a LSP's voluntary filing of an application to abandon service, the abandoning LSP shall make a good faith effort to secure an acquiring LSP to serve the customers it plans to abandon.

(b) *Abandonment plan.* The abandoning LSP shall file an abandonment plan with the Commission at least 35 calendar days in advance of abandoning service. The abandonment plan shall contain the following information:

(1) An identification of the telecommunications services, either facilities-based or through resale, to be abandoned or curtailed in the associated service territory.

(2) An explanation of reasons for the abandonment of service.

(3) A detailed outline of the procedures a LSP shall use to facilitate continuation of service for its affected customers. The abandoning LSP shall demonstrate that the abandonment will not deprive the public of necessary telecommunications services.

(4) The notices required by this section.

(5) A list of current customers that will be abandoned.

(6) The abandonment notice that is to be sent to customers.

(7) The beginning and ending dates for the period in which customers are to shop and select a new LSP (customer choice period). Customers shall be

allowed up to 20 calendar days after receiving a customer notice of abandonment to shop and select a new LSP.

(8) The beginning and ending dates for the customer migration period when the business arrangements are to be completed for the transfer of service to the new LSP. The customer migration period shall immediately follow the customer choice period, allow 10 calendar days for migration, and immediately precede the exit date.

(9) A proposed exit date. If the abandonment is initiated by termination by a NSP or by Commission order, the proposed exit date may not be later than the termination date provided by the NSP or the date the certificate of public convenience is to be revoked.

(10) Contact names and telephone numbers for a LSP's program manager, the regulatory contact and other pertinent contacts, for example, the contact for customer service records (CSR) or provisioning contacts.

(11) If applicable, the arrangements made for an acquiring carrier.

(12) The procedures to be taken with NANPA to transfer NXX codes or thousand number blocks (if applicable) while preserving number portability for numbers within the code.

(13) The name of the NSP and the current customer serving arrangements, for example, UNE-P, resale, UNE-L or Full Facilities.

(14) A list of customer names and contact information when the abandoning LSP is the only provider of facilities to a customer or group of customers.

(15) The number of customers to be impacted by the abandonment.

(16) The details of a transfer of assets or control that requires Commission approval under 66 Pa.C.S. § 1102(a)(3) (relating to enumeration of acts requiring certificate).

(17) A request to modify or cancel tariffs.

(18) A plan for processing customer deposits, credits and termination liabilities or penalties.

(19) A plan for unlocking the E-9-1-1 records.

(20) A plan for maintaining toll-free telephone access to an abandoning LSP's call center (including customer service and billing records) so that a customer is able to contact the LSP to inquire about or dispute final bills and refunds.

(c) *Transfer of customers' 9-1-1/E-9-1-1 records.*

(1) *Transfers to a new LSP.* An abandoning LSP shall unlock all of its telephone numbers in the 9-1-1/E-9-1-1 records to provide a new LSP with access to the abandoning LSP's customers' 9-1-1/E-9-1-1 records. The abandoning LSP shall unlock the 9-1-1/E-9-1-1 records in compliance with the National Emergency Numbering Association's (NENA) recommended data standards for service providers going out of business.

(2) *Transfers after abandonment.* An abandoning LSP shall submit a letter to the appropriate 9-1-1/E-9-1-1 service provider authorizing the 9-1-1/E-9-1-1

service provider to unlock remaining 9-1-1/E-9-1-1 records after the LSP has abandoned the market. The abandoning LSP shall provide this letter at least 30 days prior to abandoning the market.

(d) *Notification to the industry and NANPA.*

(1) *Industry abandonment notice.* An abandoning LSP shall provide written notice to:

(i) Telecommunications corporations providing the abandoning LSP with essential facilities or services or UNEs that affect the abandoning LSP's customers.

(ii) Telecommunications corporations providing the abandoning LSP with resold telecommunications services, if resold service is part of the telecommunications services provided to the abandoning LSP's affected customers.

(2) *NANPA abandonment notice.* An abandoning LSP which has NXX or thousand block number resources from NANPA shall provide written notice to NANPA identifying and authorizing the release of all of its used and unused number resources to an acquiring carrier, other LSPs or NANPA, as applicable. When number resources are to be released to an acquiring carrier, the notice to NANPA shall be provided at least 35 days prior to the abandoning LSP's exit date.

(3) The notice shall include identification of all working telephone numbers assigned to the customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers shall be available for reassignment.

(4) The abandoning LSP shall authorize the release of each individually assigned customer telephone number to the subsequent provider selected by the customer. The abandoning LSP may not abandon NXX codes or thousand block numbers if a number within the relevant range of numbers has not been completely ported.

(e) *Abandoning LSP notification to customers.*

(1) The abandoning LSP (and acquiring LSP if applicable) shall notify customers by letter at least 30 calendar days in advance of the exit date.

(2) The abandoning LSP shall provide customers with a list of all services (for example—local basic, regional toll and long distance toll) that the abandoning LSP is currently providing to the customer that will no longer be provided as of the exit date. The abandoning LSP shall direct customers to choose a new LSP to obtain whatever services they wish to have going forward.

(3) The abandoning LSP shall lift all existing preferred carrier freezes on the services to be abandoned.

(4) The notice of pending abandonment of service to residential and business customers shall contain the following:

(i) A printed message on the envelope and the notice containing the words "Important Notice, Loss of Local Telephone Service" printed in bold



letters with a font size of at least 14 points, conspicuously displayed on the front of the envelope to attract the attention of the reader.

(ii) A statement on the notice: “At this time, (LSP name) provides you with local telephone service, (list other services provided by the LSP that will no longer be provided upon abandonment of local service).”

(iii) A statement on the notice: “As of (the exit date) (LSP name) will no longer provide your local telephone service and you must take action.”

(iv) A statement on the notice: “To prevent the loss of your local telephone service, you must select another local telephone service provider on or before (list a specific date 10 calendar days prior to the exit date). If you act by this date there will be enough time for the new local service provider you choose to start your new service before your current service ends.”

(v) A statement on the notice: “Please remember that customers may choose the provider of their local telephone service. You may select any company that is offering service in your area.” Customers shall be notified that they can check their telephone directory yellow pages under “telephone service providers” or in the front of the directory under the heading of “other local phone companies” for information about LSPs serving their area.

(vi) If the abandoning LSP has arranged for an acquiring LSP to serve customers, the abandoning LSP customer notice provisions shall reflect these arrangements. Specifically, the written notice to customers shall be a joint notice from the abandoning and acquiring LSPs. The joint notice shall be sent to customers in an envelope from the abandoning LSP. The joint notice shall inform customers that they may select any LSP that serves their area by (date of the end of customer choice period) or they may take no action and their service will be transferred to the acquiring LSP no later than (exit date). The joint notice shall also include information about the acquiring LSP’s rates and terms and conditions of service.

(vii) A statement on the notice: “This is an important notice (the word “important” in bold) about the loss of your local telephone service. If you have any questions, need more information or have problems with changing your services, contact (LSP contact information including a toll-free telephone number).”

(viii) Information to customers outlining the procedure for obtaining refunds of credits and deposits, obtaining final bills and addressing questions or complaints.

(ix) Customers who had preferred carrier freezes on their accounts shall be directed to contact their new LSP to arrange for new preferred carrier freezes if they wish to have this protection going forward.



**§ 63.307. Abandonment process management.**

(a) The abandoning LSP shall appoint a program manager to coordinate the abandonment process. The program manager shall be selected from the abandoning LSP or, if applicable, the acquiring LSP.

(b) The program manager shall be accountable to each of the parties involved in the abandonment. The individual parties involved in the migration may be:

- (1) The abandoning LSP.
- (2) The acquiring LSP.
- (3) The abandoning LSP's customers.
- (4) The Commission.

(c) The parties involved in the abandonment shall appoint a project manager who will work with the program manager to ensure that the abandonment process flows in a seamless manner.

**§ 63.308. Commission consideration and action.**

(a) The Commission will post information of an impending abandonment on its website at [www.puc.state.pa.us](http://www.puc.state.pa.us) under "Local Service Telephone Provider Abandonment Notification."

(b) If necessary, Commission staff may establish an industry conference call to address potential problem areas and procedures with the abandoning LSP, as well as with the acquiring or other LSPs as applicable.

**§ 63.309. Acquiring LSP provisions and obligations.**

(a) An abandoning LSP and acquiring LSP may change the customer's local service provider without being considered to have engaged in slamming if the customer has not selected another LSP during the 20-day customer choice period and the acquiring LSP does not change a customer's preferred interexchange carrier designation without the customer's authorization. This provision does not relieve the abandoning LSP or the acquiring LSP of any requirements imposed by the Federal Communications Commission's (FCC) antislamming rules or State rules in § 64.23(b) (relating to 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)).

(b) If an acquiring LSP determines that it will be unable to migrate service to a customer by the abandoning LSP's exit date, the acquiring LSP shall notify the Commission, the customer and the abandoning LSP within 24 hours of the determination. If the customer is unable to select another available LSP, the abandoning LSP shall continue to provide service until the date on which a LSP is able to provide service or a date ordered by the Commission, whichever is earlier.

**§ 63.310. Abandoning LSP follow-up obligations.**

(a) An abandoning LSP shall track the progress of migrations and provide Commission staff with progress reports on the number of customers that have and have not migrated to a new LSP. The frequency of the updates will vary with the magnitude of the mass migration and will be determined by the Commission on a case by case basis.

(b) An abandoning LSP shall send a second abandonment notice to a customer who is not subject to acquisition by another LSP and has not taken action to select a new LSP. The second abandonment notice shall be sent after consultation with the Commission. The form of the second notice is left to the discretion of the abandoning LSP and may be the following:

- (1) First class mail.
- (2) A telephone call.
- (3) A bill insert.
- (4) Any other means of direct contact with the customer.

**Subchapter O. ABBREVIATED PROCEDURES FOR REVIEW AND APPROVAL OF TRANSFER OF CONTROL FOR TELECOMMUNICATIONS PUBLIC UTILITIES**

Sec.

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

**Authority**

The provisions of this Subchapter O issued under 66 Pa.C.S. §§ 502, 1102, 1103, 2101—2107 and 3019, sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and the regulations promulgated thereunder, section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)) and section 745.5 of the Regulatory Review Act, unless otherwise noted.

**Source**

The provisions of this Subchapter O adopted July 30, 2010, effective July 31, 2010, 40 Pa.B. 4254, unless otherwise noted.

**§ 63.321. Purpose.**

This subchapter establishes cost-effective review and approval periods that abbreviate the traditional unlimited time for approving an application seeking Commission approval of an acquisition, merger, stock sales or transfers, transfer

of assets or transfer of control of a telecommunications public utility requiring a certificate of public convenience under 66 Pa.C.S. § 1102(a)(3) (relating to enumeration of acts requiring certificate).

### § 63.322. Definitions.

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

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

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

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

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

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

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

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

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

*General rule transaction*—A transaction resulting in a change in rates or conditions of service or which, taken together with all previous internal corporate restructurings, changes the applicant’s controlling interest greater than 20%.

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

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

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

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

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

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

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

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

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

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

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

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

### § 63.323. Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) A verified statement on the effect of the transaction on existing Commonwealth tariffs. If applicable or in response to a request from staff, an applicant shall provide a red-line document identifying changes in existing Commonwealth tariffs before and after the transaction for which the applicant seeks approval from the Commission.

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

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

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

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

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

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

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

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

(e) *Continuing obligations for notification of general rule transactions.* When a Commission or Federal proceeding related to a transaction that is the subject of the general rule transaction is pending, the applicant to the transaction shall file



with the Commission and provide to the statutory advocates copies of all procedural motions, public responses to discovery, and orders or other actions addressing or terminating the proceeding. The applicant shall supplement the application with any FCC or U.S. DOJ public notice issued concerning the transaction.

(f) *Commission publication and reclassification of general rule transactions.*

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

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

(g) *Applicant notice to customers.*

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

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

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

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

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

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

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

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

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



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

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

- (1) The filing of a formal protest or complaint.
- (2) The filing involves an acquisition, merger or other transaction that raises novel or important issues.
- (3) The Commission determines that reclassification is necessary to protect the public interest.

(k) *Commission approval for a general rule transaction.* The Commission will issue a Secretarial letter or order after review of an unopposed application subject to this subchapter determining if the application is in the public interest and consistent with 66 Pa.C.S. §§ 1102(a) and 1103(a) no later than 60 days after expiration of the protest period established in the public notice in the *Pennsylvania Bulletin*.

- (1) The Commission will determine, for a merger or similar transaction, whether the transaction affirmatively promotes the service, accommodation, convenience, or safety to the public in some substantial way.
- (2) The Commission will make findings whether a transaction subject to 66 Pa.C.S. § 1103(a) is necessary for the service, accommodation, convenience, or safety of the public and state whether the Commission will issue a certificate of public convenience authorizing the transaction under 66 Pa.C.S. §§ 1102(a) and 1103.
- (3) The Commission will address the impact of the general rule transaction on competition.
- (4) The Commission will determine whether to impose conditions deemed necessary or proper under 66 Pa.C.S. § 1103 in conjunction with a determination on approving a general rule transaction.
- (5) The Commission or staff may extend the review and approval period, reject the filing or transaction, remove a transaction from the general transaction rule or take other action deemed appropriate to protect the public interest.
- (6) A staff action will be in writing and inform the applicant of the right of appeal. An appeal from an action of staff shall be governed by the procedures governing appeals from an action of staff under § 5.44 of the Commission's rules of practice and procedure.

(l) *Limitations on general rule transactions.*

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

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

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

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

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

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

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

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

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

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

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

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

advocates. An applicant shall provide an updated copy of any subsequent filings to the Commission and the statutory advocates in the following circumstances:

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

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

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

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

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

(i) A request by a statutory advocate.

(ii) A request by a carrier with a certificate of public convenience obtained under 66 Pa.C.S. § 1102(a) for a copy.

(iii) A request by the Commission or staff for a copy.

(iv) A request by a person or party for a copy.

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

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

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

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

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

(5) A summary description of the transaction.

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

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

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

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

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

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

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

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

(iii) The impact of the transaction on competition.

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

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

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

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

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

(15) A verified statement on the effect of the transaction on existing Commonwealth tariffs. If applicable or in response to a request from staff, an applicant shall provide a red-line document identifying changes in existing Commonwealth tariffs before and after the transaction for which the applicant seeks approval from the Commission.

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

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

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

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

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

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

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

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

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

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

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

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

(g) *Applicant notice to customers.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) *Limitations on pro forma transactions.*

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

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

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