

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**PROPOSED RULEMAKING ORDER -
COMPETITIVE CLASSIFICATION OF
TELECOM RETAIL SERVICES**

**Public Meeting July 16, 2020
3001391-LAW
Docket No. L-2018-3001391**

**PENNSYLVANIA RURAL INCUMBENT
LOCAL EXCHANGE CARRIERS**

**3005224-LAW
Docket No. P-2018-3005224**

STATEMENT OF CHAIRMAN GLADYS BROWN DUTRIEUILLE

Before the Commission are two related recommendations. The first is a recommendation to adopt a Notice of Proposed Rulemaking (NOPR) regarding the Commission's regulations at 52 Pa. Code, Chapters 63 and 64 and Chapter 53, which govern telephone service. The second is a recommendation on a Petition asking for temporary waiver of multiple regulations for thirty-five carriers. The Petition also requests relief from 52 Pa. Code Section 63.21 which prescribes rules for telephone directories as well as intralata presubscription.

While I support most of the recommendations on Chapters 53, 63, and 64, I would have preferred for the NOPR to make additional modifications aimed at better reconciling the need to address more transient technological and market changes with the more permanent statutory obligation in Section 3019(b)(2) of the Public Utility Code, 66 Pa. C.S. § 3019(b)(2), requiring the Commission to address the safety, adequacy, reliability and privacy of telecommunications services and the ordering, installation, suspension, termination and restoration of any telecommunications service. Any review or revision shall take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand.

Because these are only proposals at this point, the public and interested stakeholders are urged to review my statement with a view to providing comments on these matters or any matter that they think this Commission should address in revising our 20th Century rules for the 21st century.

INTRODUCTION

While this rulemaking grew out of the Commission's decision in February 2015 to reclassify stand-alone basic telephone service as competitive in 153 of Verizon Pennsylvania and Verizon North (collectively Verizon) service territories,¹ this rulemaking stands in distinct contrast to that decision and should be guided by considerations beyond those in that decision.

¹ Verizon Pennsylvania LLC and Verizon North LLC (collectively Verizon) filed a petition requesting a competitive classification in 194 of their wire centers in Pennsylvania. The Commission granted the request for 153 of the wire

The rulemaking and recommendation before us recognizes that, while there has been a marked change in technology and market conditions in the telecommunications industry generally, the proliferation of new technologies and services often overlooks the fact that many areas in Pennsylvania still get those services, particularly stand-alone voice service, on fixed-wireline networks provided to two industries: cable and telephone. Of those networks, the cable industry generally offers voice service only as part of a bundled package of services that typically includes internet access and video.

For years now, and as recently as the March 2020 FCC Report on Local Competition and Wireless Service, the FCC has not considered wireless service a functional substitute for stand-alone wireline voice networks under federal law. The wireless industry, moreover, relies on wireline networks operated by carriers to carry the ever-increasing volume of traffic arising from the demand in customers for the voice, data, and video services they use.

The FCC considers wireline and wireless networks and service as distinct and, consistent with that view, has two ongoing programs focused on supporting the deployment of wireline and wireless networks. They are complementary, not functional equivalents. Pennsylvania, like other states, faces the challenge of updating its traditional copper network and analog technology, particularly in rural areas, to fiber networks that rely on digital technology. Pennsylvania's largest wireline provider limited fiber deployment several years ago although it continues to update those wire centers where fiber commitments were made before that limitation.

I agree that the *Reclassification Order* specified that a Section 3016 decision does not obviate the recipient's statutory obligation under Section 1501 of the Public Utility Code to provide adequate, efficient, safe, and reasonable service and facilities as well as service that is reasonably continuous and without unreasonable interruptions or delay.² I also agree that Section 3016 relief still requires a recipient to comply with important consumer protections set out in Chapters 53, 63, and 64 of our rules. However, the Comments received thus far do not contain detailed specific proposals on how to revise these regulations. The data in the current record does not establish that the temporary waivers granted in 2015 provided a quality of service in the competitive exchanges that is equivalent to that provided in noncompetitive wire centers.

centers. The Commission's decision changed how basic service is regulated in competitive areas in two main ways. First, Verizon no longer is required to maintain a tariff at the Commission containing the rates, terms and conditions of basic service offered in competitive areas. Second, the price that Verizon charges for basic service in competitive areas no longer is subject to Commission approval. See *Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services*, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered March 4, 2015) (*Reclassification Order*). While I dissented from that decision, that decision is now Commission policy and is not an issue in this proceeding. The rulemaking and current conditions are the issue in this proceeding.

² 66 Pa. C.S. § 1501.

The Commission should propose modification to the regulations as follows:

Chapter 53

- **Section 53.58(d)(1). Offering of Competitive Services.** I believe that the rate and terms set out in a “Product Guide” arising from Section 3016 relief should include “or its equivalent” here. That term is narrowly confined to the term used in the Verizon *Reclassification Order*. Such a one-size-fits-all approach may not encompass other providers’ practices. Any provider who files a tariff for basic service or secures Section 3016 relief should have been required to file a tariff or “Product Guide or its functional equivalent” with the Commission. Chapter 30 permits that. A tariff or Product Guide or its functional equivalent posted on the webpage overlooks the fact that not all Pennsylvanians have access to the internet, that the posting is only the current one, and that prior versions are unobtainable in those instances where a dispute arises under them unless there is a repository of those prior versions.
- **Section 53.58(e)(4). Offering of Competitive Services.** I support retaining the current criteria used to make a Section 3016 determination.

Chapter 63 Specific Provisions

- **Section 63.12 (Minimizing interference), Section 63.13 (Inspections), Section 63.63.** I agree that fiber networks should be included within these provisions to ensure technological neutrality, but I recommend that these provisions governing interference (63.12), inspections and preventive maintenance (63.13) and transmission standards (63.673) be meshed into one provision. Section 63.12 should be retained because network maintenance to minimize interference is still important and copper networks remain important in many parts of Pennsylvania. In addition, those newer fiber networks using internet protocol (IP) technology have their own interference challenges called latency and jitter. Section 63.13 inspections remain important regardless of technology because the accompanying inspections, tests, and preventive maintenance required to ensure reliability and service quality are not diminished just because a newer technology is partially replacing older technology in some portions of Pennsylvania. This interference is no less important just because it is not traditional interference. While the technical specifications set out in Section 63.63(b)-(d) on loop resistance, 1000 Hertz, and 15 decibels are important for copper and less so for fiber, the concerns about latency and jitter, typically expressed as milliseconds and buffering, will become increasingly important on updated networks. I propose that the scope of this provision cover the provider’s network from the Network Interface Device (NID) up to and through the Point of Presence (POP) or its equivalent on the provider’s network as Section 63.63(f).
- **Section 63.15 (Complaint procedures) and Sections 64.151-64.154 (informal complaint procedures) for Warm Transfer.** I support not adding a Warm Transfer option at this time for service-related disputes made to the Commission’s Bureau of Consumer Services (BCS). The mechanics and cost recovery for accomplishing this have not been extensively addressed in the Comments.

- **Section 63.24 (Service interruptions).** I would prefer a uniform response time to service interruptions on both weekdays and weekends, absent exigent circumstances determined by the Commission, of not less than three hours unless the customer agrees to a different time. Should there be no emergency and the stipulated or agreed upon time is not met, a service interruption of less than 24 hours should result in an automatic credit on regulated services of 10%, and 20% in those instances where the interruption exceeds 24 hours.
- **Section 63.31 (Classification of public utilities).** I agree with retaining these provisions because these classifications are related to the Annual Report filing requirements of the Commission.
- **Section 63.32 (Systems of accounts).** This provision should be retained given changes in federal separations. Separations allocates network costs between the states and the FCC. The FCC has changed the accounting methods for determining these costs but has given states the discretion to do an alternative accounting of their own. The preservation of this regulation gives the Commission regulatory flexibility.
- **Section 63.35 (Preservation of Records).** While I agree that the current dependence on federal rules based on the FCC's rules in 47 CFR Part 42 may be obsolete, I still believe that there is a need to preserve records for a reasonable period of time to ensure adequate information to facilitate oversight, review, and remediation. I would prefer to use the 4-year rule of Section 64.192.
- **Section 63.53 (General provisions).** This provision should be extended to provide "a Product Guide or its functional equivalent" to Section 63.53(a) and include operators within the operator-assisted services in Section 63.53(c) to facilitate faster resolution of consumer concerns.
- **Section 63.55 (Surveillance levels).** I support retaining these surveillance provisions.
- **Section 63.57 (Customer trouble reports).** I believe that subsection (a) should be retained but subsections (b) through (d) should be revised to address new industry participants, technological advancements, service standards and consumer demand. I would prefer a uniform response time to customer trouble reports on both weekdays and weekends, absent exigent circumstances determined by the Commission, unless the customer agrees otherwise.
- **Section 63.58. (Installation of Service).** I believe that the current provisions for installation of service in Section 63.58 should apply to both competitive and non-competitive wire centers.

- **Section 63.59. (Operator-assisted Calls and Representative Assistance).** A revision to ensure that consumers are able to reach a human representative within a reasonable period of time, five minutes, absent exigent circumstances is needed.
- **Section 63.60. (Automatic Dialing Announcing Devices (ADAD) and Robo-Calling).** I recommend retaining this provision and expanding it to address robo-calling.
- **Sections 63.63 (Transmission requirements and standards).** The current provision should be amended to include Section 63.12 and 63.13.
- **Section 63.64 (Metering inspections and tests).** The current provision should be revised to also apply to fiber networks-digital technology consistent with Section 3019(b)(2).
- **Section 63.65 (Safety).** This provision should be limited to the current Section 63.65(a) reference to OSHA standards, and should allow the Commission to establish additional parameters on a case-by-case basis, instead of detailed rules uniformly mandated.

Chapter 63 General Provisions

For the following topics I agree that present-day circumstances support revision and simplification of these rules. I would welcome comments on how to revise these sections.

- **Subchapter D. Underground Service**
- **Subchapter F. Extended Area Service**
- **Subchapter G. Public Coin Telephone Service**
- **Subchapter H. Interexchange Telecommunications Carriers**
- **Subchapter J. Confidentiality of Customer Communications and Information**

Chapter 64

I propose to modify the below regulations at 52 Pa. Code, Chapter 64, as follows:

- **Subchapter B, C, D, E, F, H.** I support retaining these existing regulations.
- **Section 64.14. Billing Information.** I support retaining the current regulations. However, Section 64.14(a)(5) governing itemized charges or toll calls should only apply to consumers who have stand-alone interexchange toll service. An itemized bill under Section 64.14(b) should be provided only upon customer request.
- **Section 64.191. Public Information.** I recommend retaining the customer confirmation letter provision in Section 64.191(f) and the statement of a consumer's rights and responsibilities in Section 64.191(g).

- **Section 64.201 Reporting Requirements.** I support retaining Sections 64.201(b)(1) and (3) in the current rules. Those provisions provide important information on the average number of residential accounts (b)(1) and the average number of overdue residential accounts (b)(2). That information gives the Commission needed information on drops in penetration rates (customers getting service) which can signal adequacy or affordability of service issues.
- **Section 64.211. Availability of Normal Commission Procedures.** This provision should be revised to inform consumers that any matter not otherwise covered by the scope of these detailed regulations may be brought to the Commission's attention, including the filing of a formal complaint, under Sections 303 and 1501 of the Public Utility Code.

Conclusion

While the additional regulatory revisions being proposed are partially driven by an effort to promote regulatory parity between Incumbent Local Exchange Carriers (ILECs) and other providers, absolute parity may not be attainable. That is because the legal and regulatory obligations of the ILECs and other providers is not at par. ILECs alone have the critical and important Carrier of Last Resort (COLR) obligation to serve all consumers within their respective territory. No other provider other than an ILEC has this obligation, an obligation that plays an indispensable role in promoting universal service mandated by state and federal law. While those ILECs do receive compensation in support of that mandate, challenges arising from reform of that support necessitate, in turn, a regulatory response that seeks to minimize the additional costs imposed on those ILECs. The regulatory revisions proposed collectively better ensure compliance with the Section 3019(b)(2) mandates of Chapter 30 to ensure the safety, adequacy, reliability and privacy of telecommunications services; and, the ordering, installation, suspension, termination and restoration of any telecommunications service. The proposed revisions also take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand.



DATE: July 16, 2020

Gladys Brown Dutrieuille
CHAIRMAN