

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

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

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

**STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.**

Before the Commission 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 as it pertains to telephone service.

**Introduction**

This rulemaking arose out of the Commission's decision in February 2015 to reclassify stand-alone basic telephone service as competitive in parts of the Verizon Pennsylvania and Verizon North (collectively Verizon) service territories.<sup>1</sup> As part of that proceeding, the Commission granted Verizon a 5-year waiver of certain Chapter 63 and Chapter 64 regulations in competitive wire centers.<sup>2</sup> The waiver was granted, pending a rulemaking to address the status of these regulations in competitive and noncompetitive areas on a permanent and industry-wide basis.

The Commission subsequently issued an Advance Notice of Proposed Rulemaking (ANOPR) regarding the relevant regulations at the above docket number. Comments and reply comments were received from interested parties.

The telecommunications landscape has changed dramatically in recent years. As I stated when we adopted the ANOPR, I view this rulemaking as a continuation of our efforts to modernize how we regulate telecommunications in Pennsylvania and as an important step towards ensuring that our regulations keep pace with today's telecommunications marketplace realities.

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<sup>1</sup> 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 centers. The Commission's decision changed how basic service is regulated in competitive areas in two main ways. First, Verizon no longer was 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 was 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*).

<sup>2</sup> The waiver also applied to competitive local exchange carriers operating in the competitive wire centers.

From the consumer's perspective, the marketplace realities include extensive choice among providers and services. The communications options for consumers have expanded well beyond traditional voice-only service offered by Incumbent Local Exchange Carriers (ILECs). With the proliferation of service bundles and the rise of alternative wireline and wireless service providers offering competing products and services, consumers have a wide array of choices to meet their communications needs.

Among these choices, consumers continue to migrate towards wireless service. At the time of our *Reclassification Order*, data from the Center for Disease Control and Prevention indicated that as of mid-2014, almost three out of five American households either had no landline service at all or had landline service, but relied mostly on wireless service.<sup>3</sup> More recent data shows that consumers continue to rely more and more on wireless service. As of mid-2019, almost four out of five adults in this country either had no landline service at all or had landline service but relied mostly on wireless service.<sup>4</sup> This data shows that consumers continue to view wireless service as a substitute for wireline voice service regardless of any technological differences that may exist between the services.

From the perspective of the ILECs, the marketplace realities mean stiff competition from competing carriers and a significant loss in access lines served in recent years.<sup>5</sup> Additionally, Pennsylvania's ILECs have increasingly transformed their networks from ones that are copper-based with a focus on voice service to networks that are fiber-based and capable of providing voice, data, and/or video services. During this transition, however, ILECs must keep their full networks running even though they serve fewer customers. And, regulations that apply to copper-based services remain applicable. Accordingly, ILECs continue to bear regulatory costs and obligations that many of their competitors do not. For example, Pennsylvania's ILECs have a carrier of last resort (COLR) obligation to serve all those who request service, while their competitors do not. Although certain state and federal support mechanisms provide financial assistance to ILECs to support their networks, only the ILECs have a COLR obligation, including in high-cost areas where there may no longer be a business case to serve.

Even with this changing landscape, the Commission has been clear that its reclassification decision did not equate to a complete de-regulation of stand-alone basic telephone service in competitive areas. As one example, the Commission in the *Reclassification Order* specified that its decision did not diminish Verizon's statutory obligation under Section

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<sup>3</sup> *Reclassification Order* at 35.

<sup>4</sup> Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, January–June 2019. National Center for Health Statistics. May 2020. Available from: <https://www.cdc.gov/nchs/nhis.htm>

<sup>5</sup> According to data collected by the Federal Communications Commission (FCC), Pennsylvania ILECs in recent years have continued to experience a decline in the number of access lines they serve. For example, in December 2017, there were 1.903 million ILEC end-user switched access lines in service in Pennsylvania. Just a year later, in December 2018, this number declined to 1.669 million end-user switched access lines in service. Meanwhile, during this same time frame, both interconnected VoIP subscriptions and mobile wireless subscriptions increased in Pennsylvania. See FCC's Voice Telephone Services Report as of 12/31/18 (rel. March 2020), <https://www.fcc.gov/voice-telephone-services-report> and selecting the State Level Subscriptions spreadsheet for PA. A decline in access lines also is evident with access line data collected by this Commission.

1501 of the Public Utility Code (Code) to provide adequate, efficient, safe, and reasonable service and facilities as well as reasonably continuous service.<sup>6</sup> The Commission further specified that in any wire center determined to be competitive, Verizon remained fully obligated to comply with this important consumer protection.

Clearly, Section 1501 of the Code remains an important consumer protection tool in Pennsylvania. Notwithstanding, I acknowledge there are circumstances where more specific standards contained in a regulation are helpful in determining what is considered reasonable conduct under Section 1501. Moreover, the Commission in the *Reclassification Order* recognized the need to maintain certain consumer protection regulations even in a competitive environment.

It is against this backdrop that our staff has submitted this NOPR for Commission action. Upon review and consideration, I agree with much of the staff recommendation in the NOPR. However, I do not support the NOPR, as is. In my view, the NOPR does not go far enough, as I believe there are additional opportunities to modernize our telephone regulations – particularly our Chapter 63 regulations – without compromising important consumer protections. Specifically, I support the following changes to our telephone service regulations:

Chapter 53 – Tariff Filing Requirements for ILECs and CLECs

- **Sections 53.57 – 53.60.** I would replace the term “CLEC” with “competitive telecommunications carrier” throughout these sections and define it in Section 53.57 as “an entity that provides telecommunications services subject to the jurisdiction of the Commission and in competition with a local exchange telecommunications company.” That way, the term reflects that Competitive Local Exchange Carriers or CLECs are not the only competitive carriers regulated by the Commission that are subject to these regulations. This term also avoids the potential confusion that could occur by using the term “alternative service provider,” which Chapter 30 of the Code defines as an entity that provides competing services but does not define as an entity that is subject to the Commission’s jurisdiction.
- **Section 53.58(d)(1).** I would modify this regulation governing competitive services to permit an ILEC or a competing telecommunications carrier to provide rates and terms of basic service in a product guide on the company’s website in lieu of maintaining a price list or formal tariff with the Commission for this service.
- **Section 53.58(e)(4).** I would eliminate this regulation containing standards for the reclassification of services from competitive to noncompetitive, in light of Section 3016(c) of the Code, which controls and contains the relevant standards. Therefore, this regulation is not needed.

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<sup>6</sup> 66 Pa. C.S. § 1501.

## Chapter 63 – Telephone Service

- **Section 63.12 (Minimizing interference).** I would eliminate Section 63.12 as obsolete in a telecommunications marketplace that is no longer based on copper loops. Also, Section 1501 of the Code and Section 63.63(a) of our regulations, which is a regulation I would retain, are adequate to ensure that our jurisdictional telephone public utilities provide reasonable service free from cross-talk and noise.
- **Section 63.13 (Periodic inspections).** I would eliminate Section 63.13. This regulation is duplicative of 63.64(a), which requires preventative maintenance and which I would retain.
- **Section 63.15 (Complaint procedures).** I would add language to this regulation to provide ILECs with the option to participate in a Warm Transfer Program for service-related disputes made to the Commission's Bureau of Consumer Services (BCS). With the Program, customers who contact BCS would be given the option of a transfer to a company representative in an effort to address the issues raised by the customer prior to BCS's addressing the matter as an informal complaint. Currently, the Commission's BCS successfully utilizes this program with the Verizon ILECs in Pennsylvania.
- **Section 63.22 (Service records).** I would eliminate this regulation except Section 63.22(a)(3) relating to outages affecting 300 or more customers. Otherwise, I believe the remaining provisions are overly burdensome and represent record keeping and reporting for the same of record keeping and reporting.
- **Section 63.24 (Service interruptions).** I would eliminate Section 63.24(a), as it is duplicative of Section 1501 of the Code. Also, I would modify this regulation to better reflect today's market realities. I would eliminate Section 63.24(b) and replace it with language that: (1) would eliminate the time-based trigger with an interruption of service that triggers the application of a credit; (2) would establish that the application of any credit for an interruption of service is within the discretion of the telephone public utility; and (3) would establish that any credit applied for an interruption of service must be applied on a non-discriminatory basis.
- **Section 63.31 (Classification of public utilities).** I would eliminate Section 63.31 as unnecessary under Chapter 30's alternative rate regulation regime.
- **Section 63.32 (Systems of accounts).** I would eliminate Section 63.32 as duplicative of FCC rules that already exist.
- **Section 63.53 (General provisions).** I would eliminate the reporting requirement in Section 63.53(b) as contrary to the statutory reporting provisions in Section 3015 of the Code and as outdated and no longer necessary.

- **Section 63.55 (Surveillance levels).** I would eliminate the reporting requirements in Sections 63.55(b) and (c) as contrary to the statutory reporting provisions in Section 3015 of the Code and as outdated and no longer necessary.
- **Section 63.57 (Customer trouble reports).** I would modify this regulation to better reflect today's market realities. I would eliminate Sections 63.57(a) and (b) and replace them with a requirement that telephone public utilities respond to out-of-service trouble reports in a time period agreed to by the customer. Also, I would eliminate the reporting requirements in Sections 63.57 (e) and (f) as contrary to the statutory reporting provisions in Section 3015 of the Code and as outdated and no longer necessary.
- **Section 63.58 (Installation of service).** I would revise Sections 63.58(a) and (b) so that the applicable installation times in these subsections apply unless a later date is "agreed to" by the customer.
- **Sections 63.63 (Transmission requirements and standards).** I would eliminate Sections 63.63 (b) through (d) as obsolete in a telecommunications landscape that is moving away from copper-base service. Also, Section 1501 of the Code and Section 63.63(a) together are adequate to ensure that our jurisdictional telephone public utilities provide reasonable service that is free from distortion, noise, and cross-talk.
- **Section 63.64 (Metering inspections and tests).** I would retain Sections 63.64(a) and (b) because they remain relevant in today's market. However, I would eliminate the remainder of this regulation – Sections 63.64(c) through (h) – as obsolete.
- **Section 63.65 (Safety).** I would retain the first part of this regulation that requires telephone public utilities to adopt and implement a safety program in conformance with Occupational Safety Health Act (OSHA) standards should be retained. However, I would revise the regulation to reflect that the most up-to-date OSHA standards will apply. Also, I would delete Sections 63.65(1) – (4) as unnecessary.

Also, the NOPR proposes to have different rules in competitive versus noncompetitive areas for telephone directories (Section 63.21) and installation of service (Section 63.58). In my view, I do not see a reasonable justification for different directory and installation of service rules in competitive versus noncompetitive areas. Therefore, I would apply Section 63.21, as proposed to be amended by the NOPR, in both competitive and noncompetitive wire centers. I also would apply Section 63.58 as I would modify it for both competitive and noncompetitive wire centers.

#### Chapter 64 – Standards and Billing Practices for Residential Telephone Service

I agree with staff's recommendation to eliminate certain Chapter 64 regulations in both competitive and noncompetitive areas, while amending other Chapter 64 regulations in both competitive and noncompetitive areas. Specifically, I agree with eliminating Sections 64.14(b) – (d) (Billing information), Section 64.15 (Advance payments), Section 64.22 (Billing service for

interexchange carriers), Section 64.182 (Restoration of service after termination), Section 64.191(e) (Public information), Section 64.201 (Reporting requirements) in part, and Section 64.211 (Availability of normal Commission procedures). I also agree with modifying the following Subchapter B – Payment and Billing Standards – regulations: Section 64.12 (Due date for payment), Section 64.13 (Billing frequency), and Section 64.14 (Billing information).

I also would make the following additional changes to Chapter 64 in all areas:

- As staff recommended for competitive areas only, I would retain Sections 64.31 and 64.32 and Section 64.41 in Subchapter C – Credit and Deposit standards in all areas and eliminate the rest of the subchapter in all areas. According to commenters in the ANOPR, the requirements in this subchapter are contrary to today’s business practices by both our jurisdictional carriers and the non-jurisdictional carriers against whom they compete.
- Consistent with my recommendation for service-related disputes, I would add language to Sections 64.152 and/or 64.153 of our informal complaint regulations to establish a Warm Transfer Program for billing-related disputes and provide all telephone public utilities with the option of participating in the program for billing-related disputes.
- I would retain Section 64.191(f) of our regulations governing public information to be made available to applicants for service as continuing to remain relevant. However, Section 64.191(g) is unnecessary in today’s market, and I would eliminate it.

Also, I do not agree with the staff recommendation to have different rules in competitive versus noncompetitive areas for certain Chapter 64 regulations, including some of our Subchapter B regulations governing billing and payment standards. I acknowledge that a 2-tiered regulatory structure for competitive and noncompetitive areas was adopted as part of our *Reclassification* Order, and that such an approach made sense at the time of our decision in that case. However, as a permanent, industry-wide solution, this 2-tiered structure is not viewed as workable by commenters to the ANOPR. Therefore, except for the regulations identified in Subchapter C above, the Chapter 64 regulations that staff recommends retaining in noncompetitive wire centers only I would retain in all areas.

I note there was criticism from commenters about many of our Chapter 64 regulations, including our Subchapter B billing regulations and our regulations governing suspension/termination and restoration of service. Although specific standards remain appropriate for the subject matters addressed in these subchapters, I support modernizing these regulations with the same surgical approach that I advocate for Chapter 63. However, based on the responses received in the ANOPR, I do not believe the Commission was provided with the input that it needed to take a surgical approach to revising Chapter 64.

## Conclusion

I note that while it is a factor, the presence of competition is not the only grounds for the Commission to modify or eliminate an existing regulation applicable to telephone service. Chapter 30 of the Code specifically authorizes the Commission to review and revise the quality of service standards contained in 52 Pa. Code. However, Chapter 30 provides that any review or revision of these regulations “shall take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand.”<sup>7</sup> In my view, the additional changes advocated by me are driven by multiple factors, including the presence of competition, the technological changes in the industry in recent years, and what matters to today’s consumers when it comes to their telecommunications services.

The additional modernization that I support also is intended to bring our ILECs closer to regulatory parity with their unregulated competitors. In fact, Chapter 30 specifically recognizes that “the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers.”<sup>8</sup> When the ILECs face regulatory burdens that their competitors do not, it places them at a competitive disadvantage and adversely affects their ability to function as fully-realized participants in what is an irrevocably competitive communications marketplace.

At the same time, I acknowledge the need for the Commission to balance the needs of utilities and consumers when making decisions. The surgical approach that I advocate here does just that; it would allow our jurisdictional carriers to better compete in today’s marketplace, while still maintaining what I view are necessary consumer protections. In my view, this would be a “win-win” for both the regulated community and Pennsylvania consumers.



**Date: July 16, 2020**

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**JOHN F. COLEMAN, JR.  
COMMISSIONER**

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<sup>7</sup> 66 Pa. C.S. § 3019(b)(2).

<sup>8</sup> 66 Pa. C.S. § 3011(13).