

**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 October 28, 2021
3001391-LAW
Docket No. L-2018-3001391**

MOTION OF VICE CHAIRMAN JOHN F. COLEMAN, JR.

Before the Commission is a recommendation to adopt a Final Rulemaking Order (FRO) 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 proceeding 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.¹ 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.² 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 has provided numerous opportunities for interested parties to provide input during the rulemaking process. The Commission in July 2018 issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking feedback on a variety of options with our telecommunications regulations. After reviewing that feedback, the Commission followed-up with a Notice of Proposed Rulemaking (NPRM) in September 2020 seeking comment on the changes to our telecommunications regulations proposed in the NPRM.

I agree with the commentators on the necessity of updating our existing telecommunications regulations. Many of these regulations were promulgated when only one telecommunications company operated and provided monopoly local telephone service to all customers in its respective certificated service territory. During this era, consumers had no competitive choices and were unable to obtain voice service from any other local telephone company.

¹ 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. *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*).

² The waiver also applies to competitive local exchange carriers operating in the competitive wire centers.

In 1993, the General Assembly enacted the original Chapter 30 of the Public Utility Code (Code), which fundamentally restructured Pennsylvania's retail local telecommunications services market by allowing new market entrants to provide competitive local telephone service to residential customers and businesses within the service territories of the former monopoly providers. Likewise, three years later, the United States Congress passed the Telecommunications Act of 1996, which essentially restructured the local telecommunications market on a national level in a similar manner as Chapter 30 had already accomplished in Pennsylvania. Both legislative actions resulted in the creation of two types of local service providers or local exchange carriers (LECs)—the new-entrant competitive local exchange carriers (CLECs) and the former monopolistic incumbent local exchange carriers (ILECs) as both types of entities were able to provide telephone service in the same local calling area.

Since that time, a technological paradigm shift has occurred in the telecommunications marketplace, and other non-traditional competitive entrants (e.g., mobile wireless carriers, cable companies and satellite providers) now provide competitive voice service offerings. This increased competition has resulted in innovation, which led to a sweeping technological transition in how retail wired telecommunications services are provisioned. Currently, wireline service customers are served by two distinct but similar technologies – “end-user” switched access lines and interconnected VoIP “subscriptions.” Additionally, many consumers have “cut the cord” and now obtain their voice service exclusively from mobile wireless carriers.

The Commission acknowledges that competition works to enhance consumer choice and service and should be a consideration when evaluating regulations applicable to telecommunications service in Pennsylvania. However, I do not believe that competition singularly justifies eliminating all our Chapter 63 and 64 regulations at this time. Even though Section 1501 of the Code requires telecommunications carriers to provide reasonable service among other requirements and remains a critical regulatory backstop, I believe there are circumstances where *specific* and *uniform* standards better serve carriers and customers because of the greater predictability they provide. I believe this is true for both competitive and noncompetitive areas of the Commonwealth. Therefore, I continue to support a surgical approach to modernizing our regulations applicable to telephone service.

Upon review and consideration, I agree with many of the recommendations in the FRO. However, based upon my review of the comments and reply comments, I believe there are additional opportunities to modernize our Chapter 63 and 64 regulations without compromising the important consumer protections contained in the regulations.

Chapter 63

I recommend modifying the below regulations at 52 Pa. Code, Chapter 63, as follows:

Section 63.21 (Directories). I agree with the Office of Consumer Advocate or OCA that the Commission should not rescind this regulation at this time. As noted in the NPRM, not all end-user consumers of regulated telecommunications services may simultaneously have broadband access to electronic directory information. I also agree with the comments that the Commission needs to have an enforceable standard for directory distribution. However, I

believe this regulation is on the path to obsolescence. As noted in comments, print requests statewide have declined almost by half since 2017 despite the 50% reduction in automatic deliveries. And, at the current trend, requests for print would be near zero in another four years.³ Therefore, to address these issues raised in comments, I recommend revising Section 63.21 as follows:

- I recommend replacing proposed Section 63.21(b)(3) from the NPRM with the following: **DISTRIBUTION OF DIRECTORIES BEYOND AN “UPON REQUEST” BASIS SHALL BE AT THE DISCRETION OF THE PUBLIC UTILITY.**
- I recommend adding a new Section 63.21(f) that reads as follows: **THE PROVISIONS OF THIS SECTION SHALL BE IN EFFECT UNTIL JANUARY 1, 2026 WHEREUPON DIRECTORY DISTRIBUTION IS NO LONGER REQUIRED.**

Section 63.24 (Service interruptions). This regulation provides a schedule of mandatory credits for service outages. In the NPRM, we proposed to retain this regulation. However, upon further review, I agree with Verizon that this regulation is no longer necessary in today’s environment and should be rescinded. As noted by Verizon, a dissatisfied customer can obtain service from other carriers if the carrier does not adequately address the customer’s concerns by fixing the problem and/or by providing appropriate financial compensation for any resulting service interruption.⁴ Moreover, I believe Section 1501 provides sufficient regulatory coverage here. If an outage occurs and a customer is not reimbursed for service that is not received, the customer can pursue a Section 1501 action, which could result in the telephone utility being directed to issue a credit/refund to the customer for providing unreasonable service.⁵

Section 63.53 (General provisions). Section 63.53 contains various provisions related to quality of service. In the NPRM, we proposed to retain parts of this section, including Section 63.53(a) requiring telephone utilities to provide service in accordance with their tariffs. In response to comments and reply comments, staff in the FRO recommends modifying Section 63.53(a) to read as follows: **“A JURISDICTIONAL TELECOMMUNICATIONS PUBLIC UTILITY SHALL PROVIDE TELECOMMUNICATIONS SERVICE TO THE PUBLIC IN ITS CERTIFICATED SERVICE AREA IN ACCORDANCE WITH THE QUALITY OF SERVICE STANDARDS SET FORTH IN CHAPTER 15 OF THE PUBLIC UTILITY CODE.”** Upon review, I recommend that we rescind Section 63.53(a). Current Section 63.53(a) essentially restates an already-existing legal obligation and therefore, is unnecessary. Meanwhile, Section 63.53(a) as proposed to be amended by staff would essentially restate the statutory obligation to provide service in accordance with Code Chapter 15. As an existing statutory obligation, there is no need to repeat it in a regulation.

³ Thryv, Inc. Initial Comments at 4.

⁴ Verizon Comments at 20-21.

⁵ Section 1312 of the Code, 66 Pa. C.S. § 1312, addresses the Commission’s authority to direct refunds in a proceeding.

Section 63.55 (Surveillance levels). In the NPRM, we proposed to retain Section 63.55(a) addressing surveillance levels. However, in lieu of requiring a carrier to file reports to the Commission as set forth in Sections 63.55(b) and 63.55(c), we proposed to rescind those provisions and amend Section 63.55(a) to provide that a report of the investigation into a breach of a surveillance level shall be provided to the Commission upon request.

In response to comments and reply comments, staff in the FRO recommends a new Section 63.55(a) to read as follows: **“ON REQUEST FROM THE COMMISSION, A JURISDICTIONAL TELECOMMUNICATIONS PUBLIC UTILITY SHALL PROVIDE TO THE COMMISSION A REPORT DETAILING THE RESULTS OF ANY INVESTIGATION INTO A FAILURE TO MEET THE QUALITY OF SERVICE STANDARDS SET FORTH IN CHAPTER 15 OF THE PUBLIC UTILITY CODE AND ANY STEPS, STUDIES AND FURTHER ACTION UNDERTAKEN OR COMMENCED BY THE UTILITY TO DETERMINE THE CAUSE AND TO REMEDY THE INADEQUATE PERFORMANCE.”** I support this recommendation with one change to this language. Upon review, I believe the trigger for this reporting requirement should not just be violations of Chapter 15 of the Code, but also, violations of Subchapter E of Chapter 63 of the Commission’s regulations. That way, it is clear the Commission retains the authority to request investigative reports for violations of important quality of service regulations like service outage trouble reports.

Section 63.58 (Installation of service). Section 63.58 contains standards for installation of service. In the NPRM, we proposed to revise Section 63.58 so that the time requirements apply unless a later date is agreed to by the customer. The rationale for this change was to provide more flexibility in the carrier/customer relationship and allow a public utility and its customer to agree to a different installation date.

However, upon further review, I recommend that we rescind this regulation. In today’s market, carriers have every incentive to install service as quickly and competently as possible. Moreover, Code Section 1501 provides regulatory coverage for any failures in this regard. To the extent a telephone utility does not perform a service installation to the customer’s satisfaction, the utility’s conduct can be adequately addressed under Section 1501, which requires that service installations be reasonable among other things. I note that rescinding this regulation would be consistent with Verizon’s comments that this regulation is artificial, unnecessary and not based on customer expectations.⁶

Section 63.63 (Transmission requirements and standards) and Section 63.64 (Meter tests and inspections). In the NPRM, we proposed to retain and revise Section 63.63, which as revised would impose certain reliability requirements like requiring telephone service to be provided at adequate volume levels and free of excessive interference, distortion, noise and cross talk. In the NPRM, we also proposed to retain Section 63.64(a) and to amend Section 63.64(b), both of which address testing, inspections, and preventive maintenance. We also proposed to amend Sections 63.64(c), 63.64(e), and 63.64(f) and to rescind Sections 63.64(d), 63.64(g), and 63.64(h), all of which address metering.

⁶ Verizon Comments at 22.

Upon further review, I recommend that we rescind Section 63.63. In today's competitive market, carriers are incentivized to provide reliable service. If not, they will lose customers. Moreover, Code Section 1501 provides regulatory coverage for any failures in this regard, as failing to provide service that is free from distortion, noise and cross talk is a potential violation of Section 1501. I note that rescission is consistent with Verizon's comments that this regulation can be eliminated because Section 1501 is sufficient to ensure service of "good quality."⁷

Also, the Commission in the NPRM proposed to eliminate Section 63.12 addressing interference as a standalone regulation and proposed to address all relevant matters of interference in Section 63.63 of our regulations. However, upon further review, I see no need to address interference specifically in a regulation. Rather, interference issues can be addressed adequately under Section 1501, as the statutory "reasonable service" obligation includes the obligation to provide service that is free from interference.

Regarding Section 63.64, I support staying the course and adopting our proposed amendments to Sections 63.64(c), 63.64(e), and 63.64(f) and rescinding Sections 63.64(d), 63.64(g), and 63.64(h) addressing metering. Upon further review, however, I recommend rescinding Sections 63.64(a) and (b) as no longer necessary in today's competitive market. I believe that Section 1501 and competitive pressures are sufficient to ensure customers receive whatever inspections and maintenance are necessary to maintain service that is reliable and meets consumer expectations.⁸

Chapter 64

I recommend modifying the below regulations at 52 Pa. Code, Chapter 64, as follows:

Section 64.12 (Due date for payment). Section 64.12 describes how to identify the date when payment is received, whether remitted by mail or to the physical location of LEC office or an authorized payment agent. However, Section 64.12 does not address payments made electronically. I agree with the OCA in its comments that this regulation should be amended to state a convention for identifying the payment date for electronic payments, which I agree should be the date the consumer made the electronic payment. Just as consumers cannot control the length of time for delivery of a mailed payment, consumers may not know the utility's internal process for receipt and posting of an electronic payment.⁹

Section 64.14 (Billing information). Section 64.14 of the Commission's regulations contains the informational requirements for customer bills. In the NPRM, we proposed to retain parts of this section, including Section 64.14(c) addressing disclosure obligations regarding charges for new services that are requested. However, based upon input received in response to the NPRM, I recommend that we also rescind Section 64.14(c). As noted in comments, deletion of this rule makes sense in the current telecommunications marketplace, given the popularity and proliferation of service bundles.¹⁰

⁷ Id.

⁸ See id.

⁹ OCA Comments at 22-23.

¹⁰ TCC/CCL Comments at 19.

Subchapter C. CREDIT AND DEPOSIT STANDARDS POLICY. In the NPRM, we proposed to retain this subchapter. However, based upon input received in response to the NPRM, I recommend that we rescind Subchapter C except for a revised Section 64.31. Specifically, I propose to revise Section 64.31 to clarify that a LEC shall describe its credit and deposit standards, which must be reasonable under Section 1501 of the Code, in a tariff, product guide, or similar document. Based on the information contained in our Utilities Consumer Activities Report and Evaluation from recent years, I do not see credit/deposit standards as a major issue for our telephone utilities and their customers. Moreover, I believe Section 1501 along with the requirement that these rules be tariffed, etc., adequately protects Pennsylvania consumers against unreasonable telephone utility credit and deposit practices.

Subchapter D. INTERRUPTION AND DISCONTINUATION OF SERVICE. This subchapter addresses scheduled interruptions of service by the utility and voluntary discontinuations of service by the customer. Subchapter D contains notification procedures and refund amounts for service interruptions and contains the general procedures for customers to discontinue service. In the NPRM, we proposed to retain this subchapter. However, based upon input received in response to the NPRM, I recommend that we rescind Subchapter D in its entirety. Verizon in comments recommends that we rescind this Subchapter on the grounds that it is unnecessary and obsolete in today's competitive marketplace, and I agree.¹¹ To the extent a telephone utility does not provide adequate service in one of the areas addressed by Subchapter D, the utility's conduct can be adequately addressed under Code Section 1501.

Section 64.71 (General notice provisions) and Section 64.123 (Termination notice). These regulations contain the notice requirements for telephone suspension and termination notices. I recommend modifying Sections 64.71 and 64.123 to permit electronic transmittal of telephone suspension and termination notices as long as the customer consents specifically to receiving suspension and termination notices electronically. I note that TCC/CCL in comments recommends allowing electronic transmittal of termination notices, and I see no reason why we cannot and should not allow the same for suspension notices. I further note that the Commission allows a LEC to transmit bills electronically so this outcome is entirely consistent what we allow for billing.

Section 64.201 (Reporting requirements). In the NPRM, the Commission determined that the Section 64.201 reporting requirements for residential account information for non-basic and toll service data were no longer necessary in any area. At the same time, the Commission determined that the retention of the other Section 64.201 reporting requirements continued to provide useful information to assist our understanding of changes in the residential telecommunications services market. Consequently, the Commission in the Annex to the NPRM proposed to rescind Sections 64.201(b)(2)(ii), (iii), and (iv); 64.201(b)(4)(ii), (iii), and (iv); 64.201(b)(8)(ii), (iii), and (iv); 64.201(b)(9)(ii), (iii), and (iv); 64.201(b)(10)(ii), (iii), and (iv); and 64.201(b)(11), thereby limiting the Section 64.201 reporting requirements to basic local exchange service. I agree with this approach, as the retained reporting requirements could provide useful information to assist our understanding of changes in the residential telecommunications services market in general and the basic service market in particular.

¹¹ Verizon Comments at 31.

Conclusion

I thank all those who filed comments and/or reply comments on the proposed changes to modernize our telecommunications regulations.

The changes in the FRO and the changes I propose here are driven by multiple factors, including the presence of competition, industry technological changes, and consumer demand for convenience with their telecommunications services. I concede that there may be work left to do, as our Chapter 63 abandonment, change of control, and universal service fund regulations for example will remain unchanged after this proceeding. Nevertheless, this rulemaking represents a significant step forward in modernizing our telecommunications regulations, including eliminating regulatory obligations that are no longer necessary or appropriate and modifying regulatory obligations to better reflect today's market realities. In my view, the proposed changes from this proceeding bring Pennsylvania ILECs closer to regulatory parity with their competitors, which is one of the stated policy goals in Chapter 30 of the Code.¹²

At the same time, the Commission needs to balance the needs of utilities and consumers when making decisions. The surgical approach that we have taken with our telecommunications regulations does just that; it allows our jurisdictional carriers to better compete in today's marketplace, while still maintaining the consumer protections necessary to ensure the provision of reasonably continuous, modern, and safe service.

THEREFORE, I MOVE THAT:

1. The Commission adopt the Final Rulemaking Order and Annex at Docket No. L-2018-3001391, as modified by this Motion.
2. The Law Bureau prepare a Final Rulemaking Order and Annex consistent with this Motion.

Date: October 28, 2021



JOHN F. COLEMAN, JR., VICE CHAIRMAN

¹² Chapter 30 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. 66 Pa. C.S. § 3011(13).