

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE )  
DEVELOPMENT OF REGULATIONS )  
FOR THE IMPLEMENTATION OF THE ) PSC REGULATION DOCKET NO. 41  
TELECOMMUNICATIONS TECHNOLOGY )  
INVESTMENT ACT )

**FINDINGS, OPINION & ORDER NO. 4821**

1. BACKGROUND

By Order No. 3647, dated July 20, 1993, the Delaware Public Service Commission (“the Commission”) established this docket “to consider the development and implementation of such regulations as may be necessary to fully and effectively implement the revised regulatory scheme” called for by the Telecommunications Technology Investment Act (“TTIA”), 26 Del. C. Subchapter VII-A. The Commission’s Order designated a Hearing Examiner to conduct the proceedings in this docket and to report thereon to the Commission. On January 22, 1998, the Hearing Examiner issued his Report including proposed “Rules and Regulations for Implementing the Telecommunications Technology Investment Act.” The Hearing Examiner’s Report and proposed Rules are attached hereto as Exhibit “A.” The Commission gave the participants to this proceeding the opportunity to file exceptions to the Hearing Examiner’s Report. The Public Service Commission Staff (“Staff”), AT&T Communications of Delaware, Inc. (“AT&T”), MCI Telecommunications Corp. (“MCI”), Bell Atlantic-Delaware, Inc. (“BA-Del”) and the Division of the Public Advocate (“DPA”) all filed timely exceptions.

## 2. SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

The record before the Hearing Examiner consisted of 42 exhibits and a 1366 page verbatim transcript of evidentiary hearings and oral argument in addition to competing texts of the proposed rules and written argument in the form of briefs. The Hearing Examiner's Report thoroughly summarizes the evidence and information contained in this record and includes recommended findings and conclusions based thereon. The Commission adopts as its own, and hereby incorporates herein as if fully set forth, the Hearing Examiner's summary of the proceedings, his summary of the evidence and information submitted, and his recommended findings of fact and conclusions of law, except to the extent otherwise noted herein.

## 3. DISCUSSION

### 1. Legal and Policy Issues

During the course of the proceedings, the parties pursued certain legal and policy positions which appear no longer to be in issue. Thus, BA-Del took the position that the Commission lacks authority to promulgate rules under the TTIA. The Hearing Examiner thoroughly considered this issue and concluded that BA-Del's position was not sound. BA-Del has not taken an exception to this conclusion. The Commission accordingly concludes, for the reasons set forth in the Hearing Examiner's report, that promulgation of Rules to implement the TTIA is an appropriate exercise of its rule-making authority.

Earlier in this docket the Commission determined that Section 710 of the TTIA required the adoption of adequate methodologies to ascertain both appropriate cost allocation and reasonable method(s) for determining incremental costs. PSC Order No. 3783, ordering ¶ 5 (May 17, 1994). In his report, the Hearing Examiner recommended that, if (as he recommended) a TS-

LRIC pricing standard was adopted for basic services and an imputation standard was applied, then the Commission need not adopt a specific rule embracing a cost allocation methodology since such a rule would be redundant. No party filed any exceptions to this recommendation. Given the lack of any insistence on a cost allocation methodology, and given the duty of a telecommunications provider to file annual reports detailing total costs and revenues for discretionary and competitive services, the Commission will not now adopt a specific rule for allocation of non-direct costs.

## 2. Rules

The Commission adopts the rules proposed by the Hearing Examiner, in their entirety, except as modified by the following determinations set out below. Because the Commission concludes that the modifications it adopts here do not make substantive, significant revisions and because staff's initial proposals and the Hearing Examiner's recommendations were not published in the Delaware Register<sup>1</sup>, the Commission does not believe these rules must be deemed new proposals which must be renoticed under 29 Del. C. § 10118(c).

Thus, the Commission accepts the recommendations of the Hearing Examiner and adopts his proposed Rules with the following modifications. (5-0) The Rules, as adopted, are attached hereto as Exhibit B.

### Rule 2.1. Basic Service

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<sup>1</sup>This docket commenced and hearings were held prior to the implementation of the Delaware Register and the modifications to the rule-making process brought about by 71 Del. Laws Ch. 48 (June 1, 1997).

This Rule provides a definition of basic services. The Rule proposed by the Hearing Examiner tracks the language of § 705(a) of the TTIA; however, BA-Del pointed out that in one section, the Hearing Examiner had omitted the word “local” which appears in the statute. We agree that this is a significant omission. Accordingly, we adopt Rule 2.1 as proposed by the Hearing Examiner except that paragraph (3) of that Rule shall read: “(3) Which are provided for the purpose of completing local telephone calls.” (5-0)

MCI proposed deleting criteria (1) and (2) of this Rule. These criteria are set forth in the statute and we believe they are properly replicated in the Rule.

Rule 2.2. Discretionary Services

This Rule provides a definition of Discretionary services. The Hearing Examiner’s proposed Rule limited this category to services “furnished exclusively to end-users.” BA-Del asserted that because BA-Del statutorily is required to offer all telecommunications services, including discretionary services, for resale, the proposed Rule would, in effect, eliminate the discretionary services category.

We agree that the cited language is unduly limiting and carries results unintended under the TTIA. We therefore adopt the following language for Rule 2.2:

Services provided by a telecommunications services provider that are classified by the Commission neither as basic services nor as competitive services.

(5-0)

Rule 2.3. Competitive Services

This rule sets forth criteria under which services may be classified as “competitive.” The Rule recommended by the Hearing Examiner provided that such classification would be appropriate if a competitor offers the “same” functions and features in the “same” geographic area. Bell

Atlantic argued that this test is unnecessarily restrictive and suggested the following language, which we adopt:

Services may be classified as competitive if similar or substitute functions and features are offered and available from suppliers other than the electing telecommunications service provider within the relevant geographic areas in which the electing telecommunications service provider offers such services.

(5-0). No party took exception to the language of the remainder of the Rule which we adopt as proposed by the Hearing Examiner.

Rule 2.4. Just and Reasonable Rates

This Rule defines just and reasonable rates for basic and discretionary services. The Hearing Examiner's proposed Rule limited the definition to apply only to "new" basic and discretionary services. AT&T took exception to this limitation as inconsistent with the statute. We agree that the definition should not be limited to apply only to new services. Accordingly, we adopt the following language:

Pursuant to § 706(a)(1) and (2), rates for basic and discretionary services must be just and reasonable. A just and reasonable rate for a basic service: (a) shall be non-discriminatory; (b) shall be based on the direct cost of providing the service; and (c) may include a reasonable profit. A just and reasonable rate for a discretionary service: (a) shall be non-discriminatory; and (b) shall equal or exceed the incremental cost of providing such service.

(5-0)

Rule 2.5. Same or Similar; Substitute

This Rule defines criteria under which a service or product may be found to have the "same or similar" capabilities as another service. Again, Bell Atlantic proposed revising the Hearing Examiner's Rule to eliminate the requirements that services have "the same" capabilities or functions and that alternate services be provided at "substantially equivalent" rates terms and

conditions. BA-Del argued that services could function as substitutes in the market place without meeting these criteria. For its part, Staff proposed revising the Rule to clarify that the alternate service or product must be offered in a comparable geographic area.

We agree with BA-Del that the language proposed by the Hearing Examiner is too narrow. We similarly agree with Staff that the Rule should make reference to the geographic area in which the alternate service is provided; however, we believe that in this respect the Rule should track the language of § 705 of the TTIA. Accordingly, we adopt the following language:

A service or product shall not be deemed to have similar or substitute capabilities as service provided by an electing telecommunications service provider, or to be a similar or a substitute service or product, unless: (1) an unaffiliated provider is able to offer the alternative service or product in the relevant geographic area; (2) the service or product is capable of providing comparable functions or benefits as the telecommunications service provider's service to which it is being compared; and (3) customers are likely to perceive the services as similar or a substitute.

(5-0). Since the text of the Rule no longer refers to "same" capabilities, the caption shall be amended as well and shall be "Similar or Substitute."

Rule 2.13. Incremental Cost

The Hearing Examiner's text of this Rule contains a cross reference to "Rule 8" of the proposed Rules. Staff pointed out that this appears to be a typographical error since the reference is to the substance of Rule 7 and the Proposed Rules contain no Rule 8. We agree to make this correction. (5-0)

Rule 2.15. Essential Service

In this section, the Hearing Examiner proposed a definition of "Essential Service." The text of the Proposed Rules do not further employ this term. Accordingly, Staff suggested that it be deleted. We agree. (5-0)

Section 3.0. Annual Price Index Filings

Section 3.0 deals, generally, with the mechanisms for adjusting rates under the TTIA. Rules 3.1 through 3.4 address filing requirements and price adjustment mechanisms applicable to basic services. The parties took a variety of exceptions to the Hearing Examiner's proposed Rules in this area. In particular, both Staff and BA-Del suggested substantial modification to the Hearing Examiner's Rule 3.4.3 concerning application of the price index. Both Staff's and BA-Del's proposed revisions are offered to provide the Commission and BA-Del additional flexibility in implementing rate changes indicated by application of the price index. We accepted Staff's version (3 voting in favor, 2 opposed). BA-Del suggested revising Rule 3.1 to give itself the ability, with Commission approval, to implement price adjustments throughout the year, rather than only at the time of its price index filing. We agreed that such increased flexibility is appropriate and accepted BA-Del's language. (5-0)

On further discussion, the Commission recognized that the Commission's goal of allowing a greater degree of flexibility in the implementation and timing of price adjustments indicated under the price index formula would be furthered by allowing the parties an opportunity to jointly propose a single consistent revised version of Section 3.0. We directed the Staff to undertake to submit such a proposed revision to us, after consultation with the other parties (5-0), and further directed Staff that, to the extent our previous votes concerning Rule 3.4.3 and 3.1 might have been inconsistent with the language of a unified revision of this portion of the Rules, it need not defer to those earlier votes. (5-0)

After the first deliberation, Staff submitted revised versions of Rules 3.1 through 3.4 to which the other parties do not object. We are satisfied that this submission accurately reflects our intentions and hereby adopt these revised rules. (5-0)

Rules 3.1 through 3.4 shall read:

- 3.1. Annual Price Index Report. The telecommunications service provider shall submit to the Commission and interested parties on an annual basis a Price Index Report (the “PI Report”). The filing of the PI Report shall be subject to the following requirements.
- 3.2. Timing and notice of PI Report. No later than March 31 of each year, the electing telecommunications service provider shall file with the Commission its Annual PI Report which shall identify the beginning and ending values for the GDP-PI as defined in Rule 3.41 and based thereon provide a calculation of the new PI to be applicable for the coming 12-month period. The telecommunications service provider shall give notice of the details of such filings in accordance with Rule 2.10 and newspaper notice in accordance with Rule 2.11. The Commission will, to the extent possible, approve or adjust the PI Report no later than 120 days after such filing.
- 3.3. Extension for filing a PI Report. The Commission may, for good cause shown, grant an extension to a telecommunications service provider for filing its annual PI Report. The telecommunications service provider shall notify the Commission promptly, file a request for a delay and suggested revised dates. The Commission may set a new date on which the filing will be submitted.
- 3.4. Rate adjustment mechanism for basic services. Rates for basic services may be adjusted consistent with the new PI throughout the calendar year upon approval by the Commission, but a rate for a basic service may not be changed based on the PI more than once in any calendar year.
  - 3.4.1. Price Index. The Price Index (“PI”) shall initially be set at 100 and shall be computed annually according to the following formula:

$$PI_{\text{new}} = PI_{\text{old}} \times [1 + (\Delta \text{GDP-PI} - X \pm Z)]$$

where

$$PI_{\text{new}} = \text{PI for current year}$$

$$PI_{\text{old}} = \text{Calculated PI for previous year}$$

$\Delta$ GDP-PI = Percentage change in Gross Domestic Product fixed weight Price Index (expressed as decimal), for the most recent 12-month period available at the time of filing, as published by the United States Department of Commerce.

X = The productivity offset factor, where the productivity offset shall be 3% applied annually.

Z = The combined positive and negative effects of exogenous changes in the telecommunications service provider's costs of providing telecommunications services, measured as a percentage of previous years' revenues that are explicitly the result of unforeseen changes in the telecommunications service provider's cost as defined in Rule 2.8.

3.4.2. Exogenous cost adjustments. Upon the application of any ratepayer or the telecommunications service provider, rates for basic services may be adjusted with approval by the Commission in order to reflect exogenous costs, as defined in Rule 2.8. Application by a service provider for exogenous cost adjustments, whether increases or decreases, may be filed once per calendar year in conjunction with the annual PI Report, as detailed in Rule 3.1.

3.4.3. Filing Requirements for PI Report. The PI shall be based upon the GDP-PI as defined in Rule 3.4.1 and appropriate exogenous cost adjustments (also referred to as "Z" adjustments), as provided for in Rule 2.8. The PI Report shall contain supporting documentation and calculations (including documentation and calculations to support Z adjustments), and the telecommunications service provider shall, to the extent possible, respond to any requests for additional information propounded by the Commission's Staff within ten (10) business days of the receipt of such request by the telecommunications service provider.

3.4.4. Rate Increases for Basic Services. Increases in rates for basic services may not exceed that permitted by the application of the PI set forth in Rule 3.2. At its option, the telecommunications service provider filing the PI Report may seek, simultaneous with the filing of the Report, Commission approval for basic service rate increases permitted by application of the PI. The Commission shall render a decision on such proposed rate increases within 120 days of filing.

In the event that the telecommunications service provider chooses to seek approval of basic service rate increases permitted by application of the PI at any time other than simultaneous with its annual PI Report, the provider shall

file the rate change with the Commission and shall give notice in accordance with Rules 2.10 and 2.11. The Commission shall render a decision on such proposed rates within 120 days from such filing.

- 3.4.5. Rate Decreases for Basic Services. In years when the  $PI_{new}$  is less than  $PI_{old}$ , the telecommunications service provider shall decrease rates by no less than the change in the PI; provided, however, that the Commission may, for good cause shown, permit the requesting service provider to aggregate the resulting negative rate change and (1) apply the amount to less than all basic services; provided, however, that the aggregated amount shall be allocated equitably among residential, business and interexchange classes of customers, or (2) hold it in reserve and apply it in subsequent years, along with an amount representing interest at the rate established in Regulation Docket No. 11 for the period in which the telecommunications service provider reserved the rate decrease. In years when the  $PI_{new}$  is less than the  $PI_{old}$  the telecommunications service provider shall seek, simultaneous with the filing of the Report, Commission approval for basic service rate decreases indicated by the application of PI, or approval for aggregating or reserving such decreases as permitted by subparagraphs (1) and (2) of this Rule 3.4.5. The Commission shall render a decision on such proposal within 120 days from such filing.

Notwithstanding the provisions of this Rule 3.4.5, the telecommunications service provider, consistent with Section 707(c)(2), may elect to decrease rates in circumstances where the PI would permit otherwise and may decrease rates in an amount greater than would be required by the PI.

We note that adoption of these revised Rules also entails revision, for consistency, of other portions of Section 3. Thus, the Hearing Examiner's proposed Rule 3.7 defining "Z adjustments" under the price index formula is deleted as it is redundant with new Rule 3.4.3. Similarly, the language of Hearing Examiner's Rules 3.10 and 3.11 (now renumbered as Rules 3.9 and 3.10) required minor revisions to their language to make them consistent. We hereby adopt those revisions. (5-0)

Rule 3.6. Rate Adjustments or Other Changes to the Terms and Conditions for Competitive Services

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This Rule requires, among other things, that the telecommunications service provider shall provide written notice to the Commission within 72 hours of a change to the prices, terms or conditions for competitive service. BA-Del took exception to this provision but withdrew its exception at the time of the Commission's consideration. We therefore adopt the Hearing Examiner's proposed Rule. (5-0)

Rule 3.8. Prohibition Against Cross-Subsidization

This Rule sets forth the statutory prohibition against cross-subsidization. The Hearing Examiner's proposed Rule additionally addressed other matters. Staff proposed to delete this additional language as it duplicated provisions in other sections of these Rules. We agree. The text of the Rule shall be:

In compliance with Section 710(a) of the Act, cross-subsidization of competitive services with revenue generated from basic services or discretionary services is prohibited.

Rule 3.9 (now Rule 3.8) Exogenous Cost Filing Requirements

This Rule sets out the filing requirements that a telecommunications service provider must make to show the occurrence of an exogenous cost under the price index formula. BA-Del took exception to that portion of the Rule which required a telecommunications service provider to include information concerning the extent to which the claimed exogenous event is a unique and specific event affecting local exchange telecommunications providers and/or Delaware public utilities. Staff explained that this requirement is intended to give the Commission the information it requires to differentiate between cost changes which are reflected in the GDP-PI and those which are not. We agree with Staff that the requirement is appropriate. (5-0)

The DPA suggested specifying that the Rule provide that exogenous cost increases or decreases must be spread equitably between the basic, discretionary and competitive service categories. We decline to make this change as we believe this consideration can be taken into account at the time of the cost change. (5-0)

Rule 3.10 (now 3.9)     Filing Requirements for Discretionary Services

The Hearing Examiner's proposed Rule requires, in subparagraph (3), the telecommunications service provider to submit with its annual price filing "a list of basic services used to deliver [Discretionary] services." The Rule further provides as an example of such underlying basic services, "loops, switching functions, etc." While not objecting to the requirement that it submit a list of underlying services, BA-Del argued that it is unnecessary to provide examples of such services in the Rule and that, in particular, "loops" and "switching functions" are arguably not "services" at all. Further, BA-Del proposed clarifying the initial sentence of proposed Rule 3.10. We agree with BA-Del on both points, though we do not reach the issue of whether "loops" and "switching functions" are or are not "services." Accordingly, we adopt the following language:

The telecommunications service provider shall submit, with its annual PI Report, discretionary service data including:

\* \* \*

- (3) A list of basic services herein used separately or in combination in order to deliver the services.

(5-0)

Rule 3.11 (now 3.10) Filing Requirements for Competitive Services

BA-Del again suggested omitting the parenthetical in subparagraph (3) of this Proposed Rule which lists “loops” and “switching functions” as examples of “basic services” that may be used to deliver a competitive service. For the reasons stated above, we will delete this language from the Rule though, again the Commission does not reach the issue of whether “loops” and “switching functions” are or are not services. (5-0)

Rule 3.12 (now 3.11) Unbundling Requirements For Competitive Services

The Hearing Examiner’s proposed Rule requires telecommunications service providers to provide access to “all components of their basic and competitive services on an unbundled basis at any technically feasible point on rates that are just, reasonable and non-discriminatory.” BA-Del proposed striking the requirement that access be provided to “components” of basic or discretionary services (rather than to the services themselves) and further proposed striking the requirements that such access be provided at a technically feasible point and on rates that are just, reasonable and non-discriminatory. BA-Del explained that it was concerned that these provisions might ultimately be interpreted in a manner inconsistent with the requirements imposed by the Telecommunications Act of 1996. Staff urged that the Hearing Examiner’s language be adopted as proposed. We agree. Accordingly, we adopt the Hearing Examiner’s proposed Rule. (5-0)

Proposed AT&T Rule 3.13

AT&T proposed adding a new Rule to Section 3 allowing “interested persons” to obtain discovery from the telecommunications service provider within ten days of a price index filing. We agree with BA-Del that this Rule is unnecessary. We reserve to the Commission the right to allow discovery in appropriate cases. (5-0)

Rule 4.1.3.1      Competitive Services Test

This Rule defines the criteria by which a service may be judged to be “competitive.” The Hearing Examiner adopted standards which track the language of the TTIA. MCI suggested revising these criteria to require a complete absence of barriers to entry and pricing at economic cost. The Commission believes it more appropriate to track the statutory criteria and accordingly adopts the Hearing Examiner’s proposed Rule. (5-0)

Rule 5.3.      Notice Requirements

The Hearing Examiner’s proposed Rule requires a party petitioning for service reclassification to publish notice thereof. AT&T and the Public Advocate suggested that the Rule be revised to reflect the requirement of § 706(a)(4) of the TTIA that notice also be served on interested interexchange telecommunications carriers and the Division of the Public Advocate. The Commission agrees this modification should be made. The Commission directed Staff to propose the necessary language, which it has done. We therefore adopt proposed revisions to Rule 5.3. The Rule shall read:

Any petition for reclassification shall be filed by the petitioning party concurrently with the Commission and the telecommunications service provider, no less than thirty (30) days prior to the proposed implementation date for the reclassified service. The petitioning party shall public newspaper notice pursuant to Rule 2.11. Such notice shall specifically describe the proposed filing and the effect of Commission approval of such filing, and shall state that written comments may be

filed with the Commission for its consideration. In addition, the petitioning party shall serve a copy of the petition for reclassification on all interexchange telecommunications carriers and service providers who have submitted a written request for such notice with the petitioning party and the Commission, and on the Division of the Public Advocate.

(5-0)

Rule 5.4. Opportunity for Comment by Interested Parties

The Hearing Examiner's Proposed Rule set forth time periods within which interested parties may file comments concerning petitions for reclassification and within which the Commission is to render a decision. BA-Del suggested revisions to these time periods. The parties conferred prior to the Commission's consideration and submitted a jointly proposed modification to the Rule which the Commission accepts. The language of the Rule shall be:

Interested persons may file comments with the Commission regarding any petition for reclassification and may also request that the Commission hold an evidentiary hearing on such petition. Comments shall be due twenty (20) days following the date of publication of newspaper notice. The Commission may, for good cause shown, extend the comment period and the effective date for a specific petition. However, the Commission shall issue a final order on a petition to reclassify a service within one hundred twenty (120) days after the petition date.

(5-0)

Rule 7.1. Definition of Incremental Costs Used for the Determination of a Service Price Floor and the Determination of a Service Price Floor and the Determination of an Absence of Category Cross-Subsidization

As pointed out by AT&T, the caption of this Rule contains typographical errors. It shall be revised to read "Definition of Incremental Costs to be Used to Determine a Service Price Floor."

(5-0)

Rule 7.2. Additional Use of Incremental Costs In the Calculation of a Price Floor For Discretionary and Competitive Services

Rules 7.2.1 and 7.2.2 set forth the imputation test governing rates for discretionary and competitive services. Under the Hearing Examiner's proposed formulation, the revenue resulting from a proposed rate must equal or exceed the revenue resulting from the sum of the rates which another telecommunications provider "must use" in provision of the service, plus additional factors. AT&T suggested replacing the phrase "must use" with the phrase "typically uses" since, in absolute terms, no service provider "must use" any service. AT&T further suggested a definition of the phrase "typically uses" with which the other parties are in agreement. We therefore adopt AT&T's proposed revisions to Rules 7.1 and 7.2. The Rules shall read:

Rule 7.2.1. That the revenue resulting from the proposed rate for a Discretionary Service equals or exceeds the revenue resulting from the sum of the rate(s) for the Basic Services which another telecommunications service provider typically uses in its provision, plus any additional incremental costs incurred by the electing telecommunications service provider and not associated with the rate(s) for the Basic Services that are used to provide the Discretionary Service. In determining when another telecommunications service provider "typically uses" a Basic Service in its provision of a competing Discretionary Service, the Commission shall consider the current practices of other providers, whether technically feasible, economically reasonable alternatives exist for the underlying Basic Services, and such other factors as the Commission deems appropriate.

Rule 7.2.2 That the revenue resulting from the proposed rate for a Competitive Service equals or exceeds the revenue resulting from the rate(s) for Basic and Discretionary Services which another telecommunications service provider typically uses in its provision, plus any additional incremental costs incurred by the electing telecommunications service provider and not associated with the rate(s) for such Basic and Discretionary Services that are used to provide the Competitive Service. In determining when another telecommunications service provider “typically uses” a Basic or Discretionary Service in its provision of a competing Competitive Service, the Commission shall consider the current practices of other providers, whether technically feasible, economically reasonable alternatives exist for the underlying Basic and Discretionary Services and such other factors as the Commission deems appropriate.

(5-0)

Rule 7.2.3 applies the imputation test to individual customer contracts. The Hearing Examiner’s proposed rule requires each service in an individual customer contract to meet the imputation standard. BA-Del suggested revising the Rule to apply the standard to the contract as an aggregate rather than to the individual services provided therein. Staff agreed with this change and we believe it to be reasonable. Rule 7.2.3 shall read:

Individual customer contracts that include Discretionary or Competitive Services with underlying Basic or Discretionary Services that competitors typically use to compete with BA-Del must satisfy the requirements of Rule 7.2.1 and 7.2.2, as applied to the complete contract price.

(5-0)

Rule 7.3. Total Service Long Run Incremental Cost Study Methodology

Rule 7.3.1 establishes the general methodology for performing TSLRIC cost studies. The DPA took exception, arguing that the Commission should adopt the incremental cost rules proposed by the DPA’s consultant as the appropriate costing methodology, instead of TSLRIC. The

Commissioners conclude that use of TSLRIC as proposed by the Hearing Examiner is appropriate.

(5-0)

Rule 7.3.1.7. Cost of Money

The Hearing Examiner's proposed Rule required that the telecommunications service provider fully document its assumptions concerning the cost of money. The Commission believes this Rule to be too narrowly phrased. Instead, the telecommunications service provider should be required to fully document all assumptions used, not merely the cost of money. Accordingly, the Commission adopts the following Rule.

Assumptions. The telecommunication service provider shall fully document all assumptions used to compute the proposed TSLRIC prices.

(5-0)

Rule 7.3.2. Administrative Requirements.

This Rule imposes certain requirements on the telecommunications service provider to provide cost study and other information. Both Staff and BA-Del propose changes intended to clarify the scope of the Rule. The DPA requested an express requirement that it should receive copies of all materials produced. The Commission adopts Staff's proposed rephrasing together with the DPA's comments. The Rule we adopt is:

The telecommunications service provider shall produce available documentation for all incremental cost studies performed in compliance with this Rule. Such documentation shall be substantively equivalent to that provided by Bell Atlantic-Delaware, Inc. in connection with incremental cost studies at the time of the adoption of these rules. The telecommunications service provider shall provide a copy of all documentation produced to the Division of the Public Advocate.

(5-0)

Rule 7.4. The Application of the TSLRIC Price Floor and Imputation Standard.

Rule 7.4.1. requires that, in applying the TSLRIC price floor and imputation standard, the revenue associated with a particular Basic Service offering must be sufficient to meet its TSLRIC price floor, unless otherwise authorized by the Commission. The DPA proposed elimination of this Rule for the reason that it is inappropriate to authorize the Commission to allow any basic service to be priced below cost. The Commission rejects this position and accepts the Rule as proposed by the Hearing Examiner. (5-0)

Notice to DPA. The DPA requested the Hearing Examiner's rules 3.0, 5.3 and 7.3.2 be amended to require a telecommunications service provider to serve the DPA with all documentation provided to Staff. The Rules as adopted require such service. (5-0)

**NOW, THEREFORE, it is hereby ORDERED this 9th day of June, 1998:**

1. The Rules and Regulations for Implementing the Telecommunications Technology Investment Act attached hereto as Exhibit "B" shall be and hereby are adopted.
2. The Secretary of the Commission shall arrange for publication of this Order and the Rules in the Delaware Registrar of Regulations at the earliest possible date.
3. The effective date of this Order shall be ten (10) days from the date of the publication of this Order and the Rules in the Delaware Registrar of Regulations.
4. The Commission reserves jurisdiction to enter such other and further orders in this matter as it may deem appropriate.

BY ORDER OF THE COMMISSION:

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Chairman

/s/ Joshua M. Twilley

Vice Chairman

/s/ Arnetta McRae  
Commissioner

/s/ John R. McClelland  
Commissioner

ATTEST:

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Commissioner

/s/ Karen J. Nickerson  
Acting Secretary

# EXHIBIT "B"

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Commission will, to the extent possible, approve or adjust the PI Report no later than 120 days after such filing.

3.3 Extension for filing a PI Report. The Commission may, for good cause shown, grant an extension to a telecommunications service provider for filing its annual PI Report. The telecommunications service provider shall notify the Commission promptly, file a request for a delay and suggested revised dates. The Commission may set a new date on which the filing will be submitted.

3.4. Rate adjustment mechanism for basic services. Rates for basic services may be adjusted consistent with the new PI throughout the calendar year upon approval by the Commission, but a rate for a basic service may not be changed based on the PI more than once in any calendar year.

3.4.1. Price Index. The Price Index (“PI”) shall initially be set at 100 and shall be computed annually according to the following formula:

$$PI_{\text{new}} = PI_{\text{old}} \times [1 + (\Delta\text{GDP-PI} - X \pm Z)]$$

where

$$PI_{\text{new}} = \text{PI for current year}$$

$$PI_{\text{old}} = \text{Calculated PI for previous year}$$

$\Delta\text{GDP-PI}$  = Percentage change in Gross Domestic Product fixed weight Price Index (expressed as decimal), for the most recent 12-month period available at the time of filing, as published by the United States Department of Commerce.

$X$  = The productivity offset factor, where the productivity offset shall be 3% applied annually.

$Z$  = The combined positive and negative effects of exogenous changes in the telecommunications service provider’s costs of providing telecommunications services, measured as a percentage of previous years’ revenues that are explicitly the result of unforeseen changes in the telecommunications service provider’s cost as defined in Rule 2.8.

3.4.2. Exogenous cost adjustments. Upon the application of any ratepayer or the telecommunications service provider, rates for basic services may be adjusted with approval by the Commission in order to reflect exogenous costs, as defined in Rule 2.8. Application by a service provider for exogenous cost adjustments, whether increases or decreases, may be filed once per calendar year in conjunction with the annual PI Report, as detailed in Rule 3.1.

3.4.3. Filing Requirements for PI Report. The PI shall be based upon the GDP-PI as defined in Rule 3.4.1 and appropriate exogenous cost adjustments (also referred to as “Z”

adjustments), as provided for in Rule 2.8. The PI Report shall contain supporting documentation and calculations (including documentation and calculations to support Z adjustments), and the telecommunications service provider shall, to the extent possible, respond to any requests for additional information propounded by the Commission's Staff within ten (10) business days of the receipt of such request by the telecommunications service provider.

3.4.4. Rate Increases for Basic Services. Increases in rates for basic services may not exceed that permitted by the application of the PI set forth in Rule 3.2. At its option, the telecommunications service provider filing the PI Report may seek, simultaneous with the filing of the Report, Commission approval for basic service rate increases permitted by application of the PI. The Commission shall render a decision on such proposed rate increases within 120 days of filing.

In the event that the telecommunications service provider chooses to seek approval of basic service rate increases permitted by application of the PI at any time other than simultaneous with its annual PI Report, the provider shall file the rate change with the Commission and shall give notice in accordance with Rules 2.10 and 2.11. The Commission shall render a decision on such proposed rates within 120 days from such filing.

3.4.5. Rate Decreases for Basic Services. In years when the  $PI_{new}$  is less than  $PI_{old}$ , the telecommunications service provider shall decrease rates by no less than the change in the PI; provided, however, that the Commission may, for good cause shown, permit the requesting service provider to aggregate the resulting negative rate change and (1) apply the amount to less than all basic services; provided, however, that the aggregated amount shall be allocated equitably among residential, business and interexchange classes of customers, or (2) hold it in reserve and apply it in subsequent years, along with an amount representing interest at the rate established in Regulation Docket No. 11 for the period in which the telecommunications service provider reserved the rate decrease. In years when the  $PI_{new}$  is less than the  $PI_{old}$  the telecommunications service provider shall seek, simultaneous with the filing of the Report, Commission approval for basic service rate decreases indicated by the application of PI, or approval for aggregating or reserving such decreases as permitted by subparagraphs (1) and (2) of this Rule 3.4.5. The Commission shall render a decision on such proposal within 120 days from such filing.

Notwithstanding the provisions of this Rule 3.4.5, the telecommunications service provider, consistent with Section 707(c)(2), may elect to decrease rates in circumstances where the PI would permit otherwise and may decrease rates in an amount greater than would be required by the PI.

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- (5) the total revenues and incremental costs for competitive services as a whole.

3.11. Unbundling requirements for competitive services. For each competitive service, the electing telecommunications service provider shall provide, to any requesting telecommunications service provider, nondiscriminatory access to all components of each basic or discretionary service that is/are used to deliver the competitive service, on an unbundled basis at any technically feasible point, at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

3.12. Review of annual PI Report. Interested persons shall have thirty (30) days following the annual PI Report date in which to submit written comments, and the telecommunications service provider shall file a response with the Commission within fifteen (15) days of the end of the comment period. The Commission may extend the comment period for good cause shown.

3.13. Application by Purchasing Service Provider for Determination that a Purchased Basic Service Rate is Just and Reasonable. Upon application by a provider of telecommunications service, the rate charged for a basic service which is purchased as a necessary component by such provider of telecommunications services may be adjusted by the Commission at any time upon a showing by such telecommunications service provider that the rate is not just and reasonable, provided that the rate so established is consistent with Rule 7 of these Rules.

3.14. Revenue Neutral Changes. Notwithstanding any provisions within Section 3 of these Rules, upon application by a telecommunications service provider, the rate structure for a basic service may be adjusted by the Commission where such adjustments would neither increase nor decrease the total revenue to the service provider from that particular basic service.

§ 4.0 Service classification and reclassification. Telecommunications services will be regulated in accordance with the provisions of §§705-709 of the TTIA and shall each be classified or reclassified as specified below.

4.1 Classification of new services. Services shall be classified according to the specifications set forth below. Phrases used to identify specific services within the foregoing classifications shall be given meanings commonly ascribed to them in proceedings before the Commission. If the Commission determines that any of such phrases have uncertain meaning, the Commission shall, by order after duly noticed hearing, adopt an appropriate definition.

4.1.1. Basic services. An electing telecommunications service provider shall file with the Commission tariffs setting forth therein rates, terms, and conditions for all basic services.

4.1.1.1. Basic services test. Any new service or any existing service for which reclassification has been proposed pursuant to Section 5.0, which exhibits any one or more of the following characteristics shall be classified as a basic service: (a) the service is offered in the absence of services or products with similar or substitute capabilities (as defined in

Rule 2.5) offered by another service provider not affiliated with the telecommunications service provider; (b) it is a service for which significant barriers exist that impede entry into the market; (c) it is a service provided for the purpose of completing local telephone calls; (d) the service provides access to a local exchange carrier's network; or (5) the service is purchased as a necessary component, feature, or function for other providers of telecommunications services in order to offer (exclusive of stand-alone resale offerings) their telecommunications services.

4.1.1.2. Initial list of basic services. Unless and until the Commission shall determine otherwise, basic services shall include all of the following services:

- (1) residence, business, public and semi-public dial tone line services;
- (2) residence, business, and public local usage services;
- (3) switched access services;
- (4) exchange access component of Centrex service;
- (5) white page listings (whether listed, non-listed, or private);
- (6) local directory assistance services;
- (7) telecommunications relay service;
- (8) 911 enhanced emergency system;
- (9) direct inward dialing for PBX trunks;
- (10) basic service elements;
- (11) TouchTone service;
- (12) ISDN service and features;
- (13) basic rate interfaces;
- (14) primary rate interfaces;
- (15) services categorized as basic serving arrangements except for high capacity special services (1.544 mb and above);

and

- (16) complementary network services except as provided by a local exchange carrier to end users or for stand-alone resale.

4.1.1.3. Other services. The Commission may, after notice and hearing, classify other telecommunications services as basic services.

4.1.2. Discretionary services. The telecommunications service provider shall file with the Commission a price list for all discretionary services. A full description of all terms and conditions for all discretionary services shall be provided to the Commission.

4.1.2.1 Discretionary services test. "Discretionary services" shall mean those telecommunications services that the Commission determines to be neither "basic services" nor "competitive services."

4.1.3. Competitive services. The telecommunications service provider shall provide to the Commission a price list accompanied by a full description of terms and conditions for all competitive services. Such price list shall be made available for public inspection at the offices of the Commission. Competitive services shall be classified consistent with the following requirements.

4.1.3.1. Competitive services test. In order for any existing or new service provided by a telecommunications service provider to be classified as competitive, the following market conditions must exist with respect to such service: (1) similar or substitute services or products, as defined in Rule 2.5., are offered and generally available within the relevant geographic area from at least one unaffiliated provider; (2) there is at least one unaffiliated provider that is present and viable, as determined by the Commission; and (3) there are no significant barriers to market entry, as defined in Rule 2.7.

4.1.3.2. Other competitive service measures. The Commission may also consider any other factors it deems relevant and in the substantial public interest in making determinations regarding the classification of services as competitive.

§ 5.0 Service Reclassification. Reclassification of existing services may occur as specified below subject to the requirement that no service may be reclassified by the Commission less than twelve (12) months after an initial election by a telecommunications service provider made pursuant to Section 704(a) of the Act.

5.1 Petitions to reclassify a service. A telecommunications service provider, the Public Advocate, or any party may file a petition with the Commission to reclassify a service. The Commission may also undertake such activity on its own motion. Any party, including the Commission's Staff, proposing any such reclassification shall have the burden of supporting its proposal, except with respect to the reclassification of a competitive service, in which case the telecommunications service provider shall bear the burden of demonstrating that said service continues to be a competitive service.

5.2 Petition filing requirements. Any petition for reclassification of a service made by any party must include, at a minimum, the following information.

- (1) a description of the service to be reclassified;
- (2) the present category in which the service is classified;
- (3) the present and, if appropriate, the proposed rates of the service; and
- (4) a showing that the subject service meets all tests and requirements of the category into which it has been proposed to be classified.

5.3. Notice requirements. Any petition for reclassification shall be filed by the petitioning party concurrently with the Commission and the telecommunications service provider, no less than thirty (30) days prior to the proposed implementation date for the reclassified service. The petitioning party shall publish newspaper notice pursuant to Rule 2.11. Such notice shall specifically describe the proposed filing and the effect of Commission approval of such filing, and shall state that written comments may be filed with the Commission for its consideration. In addition, the petitioning party shall serve a copy of the petition for reclassification on all interexchange telecommunications carriers and service providers who have submitted a written request for such notice with the petitioning party and the Commission and on the Division of the Public Advocate.

5.4. Opportunity for comment by interested parties. Interested persons may file comments with the Commission regarding any petition for reclassification and may also request that the Commission hold an evidentiary hearing on such petition. Comments shall be due twenty (20) days





