

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE SALE, RESALE,)
AND OTHER PROVISIONS OF INTRASTATE)
TELECOMMUNICATIONS SERVICES) PSC REGULATION DOCKET NO. 10
(OPENED MAY 1, 1984; REOPENED)
NOVEMBER 17, 1998; REOPENED)
JULY 24, 2001))

IN THE MATTER OF THE DEVELOPMENT OF)
REGULATIONS FOR THE FACILITATION OF)
COMPETITIVE ENTRY INTO THE TELECOM-) PSC REGULATION DOCKET NO. 45
MUNICATIONS LOCAL EXCHANGE SERVICE)
MARKET (OPENED NOVEMBER 21, 1995;)
REOPENED NOVEMBER 17, 1998; REOPENED)
JULY 24, 2001))

FINDINGS, OPINION, AND ORDER NO. 5833

A. BACKGROUND

1. In PSC Order No. 5767 (July 24, 2001), the Public Service Commission ("Commission") reopened Regulation Dockets Nos. 10 and 45 (as captioned above) in order to consider certain amendments to its *Rules For The Provision of Competitive Intrastate Telecommunications Services* ("Rules"), as proposed by Commission Staff. The proposed amendments address Staff's concerns regarding the application and bonding requirements for certification of competitive local exchange carriers and intrastate carriers. In addition, the proposed amendments reflect certain changes that have occurred in federal and state telecommunications laws.

2. By Order No. 5767, the Commission assigned the reopened dockets to a Hearing Examiner and directed the Commission Secretary

to publish public notice of the reopening of the proceeding.¹ (Exhibit No. 1.) The public notice also included a deadline of August 31, 2001, for the filing of initial comments.

3. Verizon Delaware Inc. ("Verizon") and AT&T Communications of Delaware, Inc. ("AT&T") filed initial comments in support of Staff's proposed amendments to the regulations. (Exhibits Nos. 4 and 5, respectively.) The Association of Communications Enterprises ("ASCENT") filed comments objecting to the bonding requirement (proposed Rule 4(f)(i)) and requesting the addition of a waiver provision for financially viable carriers. (Exhibit No. 6.) The Cable Telecommunications Association of Maryland, Delaware & District of Columbia did not file comments but notified the Commission of its intent to participate in the proceeding. (Exhibit No. 7.) No other entity filed comments or requested participation in the proceedings.

4. Because the initial comments raised only one issue, which already had been addressed in the 2000 proceeding,² the Hearing Examiner established an abbreviated schedule. That schedule included an allowance for rebuttal comments, a proposed decision by

¹ The Commission Secretary caused notice of the proposed revised rules to be published in the *Register of Regulations*, on August 1, 2001, as required by 29 Del. C. § 10115. In addition, the Commission Secretary mailed notice to: (1) all prior participants in PSC Regulation Dockets 10 and 45; (2) all persons who have made timely requests for advance notice of such proceedings; and (3) the Division of the Public Advocate.

² Exhibit No. 6 at 1.

the Hearing Examiner, an exceptions period, and a single hearing to be conducted directly before the Commission, on November 6, 2001.

5. Pursuant to the procedural schedule, Staff submitted rebuttal comments on October 3, 2001. (Exhibit No. 3.) No other participant filed rebuttal comments. An ASCENT representative, however, informed the Hearing Examiner, by telephone, that ASCENT did not intend to participate in the November 6, 2001 hearing.

6. On November 6, 2001, the Commission conducted a hearing, pursuant to 26 Del. C. § 209(a). Staff moved into the record the affidavits of publication of notice (Exhibit No. 1), its proposed rules (Exhibit No. 2), and its rebuttal comments (Exhibit No. 3), as well as the initial comments of the other participants (Exhibits Nos. 4 through 7.) No member of the public offered any comments at the hearing.

B. SUMMARY OF THE PROPOSED AMENDMENTS

7. Under Part A of the Rules, which is entitled "Certification and Regulation of Carriers," Staff proposes changes to Rule 4(b) and Rule 4(f)(i). Rule 4(b) governs applications from intrastate or local exchange carriers for a Certificate of Public Convenience and Necessity ("CPCN"), which authorizes such providers to offer service in Delaware. Staff proposes to add the following language to Rule 4(b):

If the applicant fails to provide the required information and exhibits within six months of the application, the Commission may take action to close this docket and the applicant will forfeit its application fee.

(Exhibit No. 2, at 8.)

8. Staff proposes the Rule 4(b) change in order to place a time constraint on an applicant's response to deficiency letters from Staff. (Exhibit No. 3 at 2.) According to Staff, it spends an inordinate amount of time following up on the failure of some applicants to respond to deficiency letters. *Id.*

9. Current Rule 4(f)(i) requires applicants with assets totaling less than \$250,000 to post a \$10,000 performance bond, which must be renewed annually. Staff seeks to change the bonding requirement to include all applicants, regardless of their size. (Exhibit No. 2 at 10.) The bonding requirement ensures that there are funds available to cover advance payments made by customers, as well as abandonment fees that are due when a carrier declares bankruptcy or abandons service. (Exhibit 3 at 3.) Because telecommunications providers of all sizes are at risk to declare bankruptcy, or abandon service, Staff wishes to apply the bonding requirement to all carriers.

10. The remaining proposed revisions serve to update Part B, "Customer Election of Preferred Carrier," to reflect changes that have occurred in federal and state telecommunications laws. (Exhibit No. 2 at 25-40.) The proposed revisions to Rules 15, 16, 17, and 18, which relate to changing a customer's preferred carrier, ensure that the Commission does not have to update its *Rules* every time the Federal Communications Commission ("FCC") makes a change to its rules. When the Commission last approved the *Rules*, in PSC Order No. 5521 (August 15, 2000), Part B mirrored the FCC rules. Since that time, however, changes have been made to the FCC rules.

With the proposed revisions, the Delaware *Rules* will simply cite the corresponding section of the FCC rules. In addition, Staff deleted certain definitions under Rule 13 for terms that are no longer used in the proposed *Rules*.

11. Staff also proposes a revision to Rule 19(d), "Refund and Penalties." Currently, Rule 19(d) *allows* the Commission to require a carrier, who has caused an unauthorized change in a customer's choice of carrier (*i.e.*, "slamming"), to refund any charges that result from the unauthorized change. The proposed rule *mandates* that the Commission require a refund under such circumstances, as provided in 26 Del. C. § 924(c). In addition, the proposed Rule 19(d) refers to the FCC's slamming rules and provides that the Commission's remedies are in addition to those included in the FCC's rules.

C. SUMMARY OF THE COMMENTS

12. In a one-page letter, Verizon indicated that it supports the proposed revisions. (Exhibit No. 4.) In particular, Verizon noted that by simply citing the FCC Rules, the Commission will ensure that Delaware rules will change in concert with changes to the FCC rules, without having to expend state resources to effect each change. Verizon also asserted that the references to the FCC rules will ensure that the Commission's rules are consistent with the FCC rules and that carriers, therefore, would not have to comply with two sets of potentially different rules.

13. Also in a one-page letter, AT&T indicated that it supports Staff's recommendations and noted that the references to

the FCC rules in the proposed Rules make Delaware's "slamming" provisions consistent with the FCC's. (Exhibit No. 5.)

14. In its initial comments, ASCENT objected to the bonding requirement under proposed Rule 4(f)(i). (Exhibit No. 6.) ASCENT urged the Commission to include a provision that would allow a company to seek a waiver of the bonding requirement once the company is able to demonstrate financial viability and responsible customer service for a sustained period of time. ASCENT argued that the proposed revision to the bonding requirements aggravates the current problems that carriers have with the bonding rules by retaining the perpetual bonding requirement on smaller carriers while imposing a new bonding requirement on the larger carriers. According to ASCENT, a waiver provision would alleviate the current problems.

15. In its rebuttal comments, Staff argued that the bonding requirement serves many purposes and that a waiver provision would not be appropriate. (Exhibit No. 3.) The bond protects the customers' advance payments in the event that a carrier declares bankruptcy or abandons service in Delaware. In addition, the bonding requirement may serve to discourage carriers from seeking certification when they do not intend to provide service to Delawareans. *Id.* According to Staff, a number of companies have filed applications just so they can proclaim that they are certified in all fifty states, even though they have no intention of providing service in Delaware.

16. In addition, Staff noted that the bond ensures collection of the statutory \$150 abandonment fee, which is due the Commission

upon abandonment of service. *Id.* As of the filing of its rebuttal comments, Staff asserted that thirty-six companies had abandoned service in Delaware in 2001. Since 1998, the Commission has processed 162 applications to abandon service. Frequently, the Commission is unable to collect abandonment fees, especially when a company files for bankruptcy. *Id.*

17. Staff argued that a waiver for companies that are financially viable would be inappropriate because a company that is financially viable today may fail in the future. *Id.* As an example, Staff cited the stock price of Winstar Communications, Inc., which dropped from its high of \$54.63 in 2000 to 14 cents in April 2001, when it filed for bankruptcy protection.

D. FINDINGS AND OPINION

18. The Commission has the authority and jurisdiction to promulgate and amend regulations under 26 Del. C. § 209(a) and 29 Del. C. § 10111 et seq.

19. Pursuant to 26 Del. C. § 209(a), the Commission may fix “just and reasonable” regulations governing any public utility. For the reasons provided by Staff, and summarized above, the Commission determines that all of the proposed revisions to the *Rules* (Exhibit No. 2) are just and reasonable.

20. With one exception, the participants in this docket support all of the proposed revisions. As outlined above, ASCENT objects to the proposed bonding requirement, which would apply to all applicants, rather than just those with less than \$250,000 in

assets. ASCENT recommended a waiver provision that would apply to those carriers that could demonstrate sustained financial viability.

21. Staff, however, argued that the larger applicants, including those that are financially viable at the time of the application, are also at risk for either bankruptcy or for abandonment of service in Delaware. The protection that a bond offers, therefore, is necessary for even the larger carriers and, consequently, no waiver for carriers who demonstrate financial viability is appropriate. The Commission agrees with Staff and, therefore, accepts Staff's proposed bonding requirement and denies ASCENT's request for a waiver provision.

E. ORDERING PARAGRAPHS

Now, therefore, this 6th day of November, 2001, **IT IS ORDERED:**

1. That the Commission adopts the *Rules for the Provision of Telecommunications Services*, as amended, the exact text and citation of which are attached hereto as Exhibit "A."

3. That the Secretary shall transmit this Order, together with the exact text of the *Rules for the Provision of Telecommunications Service* to the Registrar of Regulations for Publication on December 1, 2001.

4. That the effective date of this Order shall be the later of December 10, 2001, or ten days after the date of publication in the *Register of Regulations* of the final text of the *Rules for the Provision of Telecommunications Services*.

5. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Joann T. Conaway
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

PUBLIC SERVICE COMMISSION OF DELAWARE

RULES

FOR THE PROVISION OF

TELECOMMUNICATIONS SERVICES

Effective: December 10, 2001

PART A
CERTIFICATION AND REGULATION OF CARRIERS

Rule 1. Definitions.

- (a) Rules shall mean these Rules, including PARTS A and B, governing the provision of telecommunications services in Delaware.
- (b) Carrier shall mean any person or entity offering to the public Telecommunications service that originates or terminates within the State of Delaware. The term "Carrier" does not include:
 - (i) any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation;
 - (ii) a company that provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public;
 - (iii) providers of domestic public land mobile radio service provided by cellular technology excluded from the Commission's jurisdiction under 26 Del. C. § 202(c); and

- (iv) Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12.
- (c) CPCN shall mean a Certificate of Public Convenience and Necessity issued by the Commission.
- (d) Commission shall mean the Public Service Commission of Delaware.
- (e) Competitive Local Exchange Carrier ("CLEC") shall mean a Carrier, other than the Incumbent Local Exchange Carrier, offering and/or providing local telecommunications exchange services within the State of Delaware.
- (f) Incumbent Local Exchange Carrier ("ILEC") shall mean in Delaware Bell Atlantic-Delaware, Inc., and any successor thereto.
- (g) Facilities-based Carrier shall mean a Local Exchange Carrier that directly owns, controls, operates, or manages plant and equipment through which it provides local exchange services to consumers within the local exchange portion of the public switched network.
- (h) Local Exchange Carrier ("LEC") shall mean a Carrier offering and/or providing local telecommunications exchange services (i.e., CLECs and ILECs); including both facilities-based and non-facilities-based Carriers.
- (i) Local Telecommunications Exchange Service shall mean non-toll, intrastate Telecommunications Services provided over a Local Exchange Carrier's network,

including, but not limited to, exchange access services and basic local services.

(j) Resale shall mean the sale to an end user of any telecommunications service purchased from another Carrier.

(k) Telecommunications shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form and content of the information as sent and received.

(l) Telecommunications Service shall mean the offering of telecommunications for a fee directly to the public within the State of Delaware (originating or terminating within the State, without regard to how the Carrier decides to route the traffic), or to such classes of users as to be effectively available to the public, regardless of the facilities used.

"Telecommunications Service" does not include:

(i) the rent, sale, lease, or exchange for other value received, of customer premises equipment, except for specialized terminal equipment as defined in 48 U.S.C. § 610(g);

(ii) telephone or telecommunications answering services, paging services, and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission;

- (iii) The one-way distribution of entertainment services or informational services with no more than incidental customer interaction required for selection of such entertainment or information services; and
- (iv) Telecommunications service provided by either primary cellular technology or by domestic public land mobile radio service, even in the event that such transmission originates or terminates in a wireline telephone.

Rule 2. Applicability.

These Rules shall apply to all Carriers, as defined by these Rules, and shall be construed consistently with Rule 3 of these Rules.

Rule 3. Application of and Conflict With Other Rules, Regulations, Tariffs and/or Price Lists.

(a) The ILEC.

(i) The ILEC will remain subject to the Telecommunications Technology [Investment] Act (TTIA), 26 Del. C. sub. Ch. VII-A, and any implementing regulations promulgated by the Commission during the term of its election thereunder. During such term, the ILEC shall not be subject to the requirements of these Part A. Rules; and

(ii) The ILEC has Carrier of last resort obligations in its service territory.

(b) Telephone Service Quality Regulations (Docket No. 20).

All Carriers shall provide telephone service in accordance with the Telephone Service Quality Regulations the Commission adopted in PSC Regulation Docket No. 20, by Order No. 3232 (January 15, 1991) as such may from time to time be amended, except to the extent these Rules impose obligations or grant privileges inconsistent therewith.

(c) Negotiation and Mediation Guidelines.

All Carriers must abide by the Commission's Guidelines for Negotiations, Mediation, Arbitration and Approval

of Agreements between Local Exchange Telecommunications Carriers (Order No. 4245).

(d) Rules of Practice and Procedure

The practice and procedure governing any proceedings required or authorized by these Rules shall be as set forth by the Commission's Rules of Practice and Procedure adopted in PSC Docket No. 99-9, by Order No. 5057 (April 6, 1999) as the same may be hereafter from time to time amended.

(e) Other Rules and Statutes.

These Rules shall prevail over any inconsistent requirements imposed by prior Order or regulation of the Commission, except for Rule 3(a) preceding and where expressly authorized by a Commission Order granting a waiver. All Carriers remain subject to any and all applicable provisions of state and federal law.

(f) Tariffs or Price Lists.

To the extent that a tariff or price list of any Carrier is inconsistent with these Rules, then, and in that event, these Rules shall control, subject to Rule 3(a) preceding, unless where expressly authorized by a Commission Order granting a waiver.

Rule 4. Certification.

(a) Certification Requirement.

No person or entity shall offer public intrastate or local exchange telecommunications service within the State of Delaware without first obtaining from the Commission a Certificate of Public Convenience and Necessity authorizing such service. A Carrier offering telecommunications service within the State of Delaware without a CPCN duly issued by this Commission is acting unlawfully and shall immediately cease offering such service until a CPCN is granted.

(b) Application.

An applicant for a CPCN shall file with the Commission an original and ten (10) copies of an Application for Certificate of Public Convenience and Necessity, together with the statutory filing fee set forth in 26 *Del. C.* § 114, as the same may from time to time be amended. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and

operational ability to adequately serve the public and that the public convenience and necessity requires or will require the operation of such business. If the applicant fails to provide the required information and exhibits within six months of the application, the Commission may take action to close this docket and the applicant will forfeit its application fee.

(c) Notice.

The applicant shall serve a notice of the filing of such an application upon the Public Advocate, and to such other entities as may be required by the Commission. The applicant shall provide public notice of the filing of the application in two (2) newspapers having general circulation throughout the county or counties where service is to be offered in a form to be prescribed by the Commission.

(d) Business License and Registered Agent.

An applicant shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including that it has received authorization to do business issued by the Secretary of State. An applicant shall provide the name, address, and telephone number of its Delaware Resident Agent. Following certification, all Carriers shall promptly notify the Commission in writing of changes of Resident Agent or the name, address, or telephone number thereof.

(e) Identification and Billing of Intrastate and Interstate Traffic.

An applicant shall be required to set forth an effective plan for identifying and billing intrastate versus interstate traffic, and shall pay the appropriate LEC for access at the LEC's prevailing access charge rates. If adequate means of categorizing traffic as interstate versus intrastate are not or cannot be developed, then, for purposes of determining the access charge to be paid to the LEC for such undetermined traffic, the traffic shall be deemed to be of the jurisdiction having the higher access charges and billed at the higher access charges.

(f) Bonds.

(i) Performance Bonds.

All applicants must post a \$10,000 performance bond with Delaware surety and renew such bond annually.

(ii) Carriers requiring deposits, or any form of payment in advance for service.

No Carrier shall require its customers in Delaware to pay a deposit or pay or otherwise provide any security or advance as a condition of service unless that Carrier first has filed with the Commission a bond, issued by a corporate surety licensed to do business in Delaware, guaranteeing the repayment of all customer deposits and advances upon the termination of service. The bond need not be filed with the application, but no CPCN will be issued until such bond is filed with the Commission. The amount of the bond shall be the greater of: (A) 150% of the projected balance of deposits and advances at the end of three years of operation; or (B) \$50,000. If at any time the actual amount of deposits and advances held by a Carrier exceeds the bond, then the Carrier promptly shall file with the Commission a bond with surety to comply with the requirement of the preceding sentence. A Carrier may petition for waiver of the bond requirement three years from the date

the certificate was issued and such waiver will be granted upon a demonstration of an adequate operating history and financial resources to insure the repayment to customers of any advance payments or deposits held.

(g) Minimum Financial Requirements for LECs.

- (i) Any applicant for certification as a facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available;
- (ii) Any applicant for certification to do business as a non-facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available;
- (iii) Any applicant that has profitable interstate operations or operations in other states may meet the minimum financial requirements of subparagraphs (i) and (ii) above by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirements; and
- (iv) An applicant may demonstrate cash or cash equivalent by the following:
 - (A) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

- (B) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;
- (C) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- (D) Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least (12) months beyond certification of the applicant by the Commission;
- (E) Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- (F) Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding a controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

(G) Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(H) Guarantee, issued by a qualified subsidiary, affiliate of the applicant, or a qualified corporation holding controlling interests in the applicant irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

(h) Initial Tariffs or Price Lists.

An applicant shall file proposed initial rates, prices, rules, regulations, terms and conditions of service specifically adopted for the State of Delaware. Upon an investigation into unjust and unreasonable pricing practices, the Commission Staff may require the applicant to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service. Copies of the applicant's rates and terms and condition of service in other jurisdictions must be provided to the Commission upon request. Any applicant's tariff or price lists must include at a minimum specific policies regarding:

(i) customer deposits and advances;

- (ii) prompt reconciliation of customer billing problems and complaints; and
- (iii) timely correction of service problems.

(i) Demonstration of Fitness.

An applicant shall be required to demonstrate to the Commission its financial, operational, and technical ability to render service within the State of Delaware. Such demonstration shall include, but is not limited to, the following:

- (i) The applicant's certified financial statements current within twelve (12) months of the filing, and, where applicable, the most recent annual report to shareholders and SEC Form 10-K;
- (ii) A brief narrative description of the applicant's proposed operations in Delaware, any present operations in all other states, and states for which service applications are pending;
- (iii) A description of the relevant operations experience of applicant's personnel principally responsible for the proposed Delaware operations;
- (iv) A specific description of the applicant's engineering and technical expertise showing its qualifications to provide the intended service, including the names, addresses, and qualifications of the officers, directors, and technical or engineering personnel or contractors who will be operating and/or maintaining the equipment to be used to provide such service; and

(v) A description, including location, of the applicant's facilities that the applicant will use to provide the proposed service in the next three years. Upon written request of the Commission Staff, the applicant shall provide a one year construction, maintenance, engineering, and financial plan for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such service.

Rule 5. New Options or Offerings; Changes to Existing Rates, Prices or Terms and Conditions.

(a) Notice Required for New Service Options and Offerings.

No Carrier shall offer new telecommunication service options or offerings except ten (10) days after filing with the Commission the proposed tariff or price list.

(b) Notice Required to Revise Existing Tariff or Price List.

No Carrier shall revise an existing tariff or price list except three (3) days after filing with the Commission the proposed tariff or price list.

(c) Service of Notice.

A Carrier filing a new service or changes to an existing service pursuant to this Rule shall serve the filing on:

- (i) the Public Advocate; and
- (ii) all interested persons that submit a written request to the Commission to receive such notice.

A Carrier shall file with the Commission a certificate of service as part of its notice requirement. To the extent that any such documents contain information claimed to be

proprietary and interested persons have submitted a written request for notice, but have not executed an appropriate proprietary agreement, the Carrier shall provide an expurgated version of the notice to such parties.

(d) Investigation of Filings.

A filing made pursuant to this rule shall not preclude the Commission or its Staff from an informal or formal investigation into the filing in order to protect fair competition, including requiring the Carrier to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service.

(e) Special Contracts

A Carrier shall file under this rule all contracts with a customer to the extent the contract changes the terms or conditions generally offered to the public in the carrier's tariff or price list on file with the Commission.

Rule 6. Discrimination Prohibited.

No Carrier shall unreasonably discriminate among persons requesting a service within the State of Delaware. Any finding of unreasonable discrimination shall be grounds for suspension or revocation of the Certificate of Public Convenience and Necessity granted by the Commission, as well as the imposition of monetary and other penalties pursuant to 26 Del. C. §§ 217 and 218.

Rule 7. Abandonment or Discontinuation of Service.

A Carrier may abandon or discontinue service, in whole or in part, in accordance with the terms of 26 Del. C. § 203A(c). The Carrier shall provide notice of its

application to discontinue or abandon service to its customers subscribing to such service and to the Division of Public Advocate. Such notice shall describe the options available to the customers. The Carrier's application to abandon or discontinue a service shall contain proposed provision for payment of all relevant outstanding liabilities (deposits and advance payments), if any, to customers within the State of Delaware.

Rule 8. Services to be Provided By CLECs Providing Voice Telephone Service.

Any CLEC providing voice telephone service shall offer, at a minimum, the following telecommunication services to its customers:

- (a) access to the public switched network;
- (b) dial tone line services;
- (c) local usage services;
- (d) access to all available long distance Carriers;
- (e) TouchTone services;
- (f) White page listing;
- (g) Access to 911 enhanced emergency system;
- (h) Local directory assistance service;
- (i) Access to telecommunications relay service.

Rule 9. Resale Prohibitions.

- (a) Cross-Class Selling.

A Carrier that by tariff or price list makes a service available only to residential customers or a limited class of residential customers may prohibit the purchaser from offering such services to classes of customers that are not

eligible for such services from the providing Carrier.

(b) Other.

With respect to any restrictions on resale other than cross-class selling as described in paragraph (a) above, a Carrier may impose a restriction only if the Commission determines that the restriction is reasonable and nondiscriminatory.

Rule 10. Reports to the Commission.

(a) Annual and Periodic Reports.

All Carriers shall file with the Commission an Annual Report as described below and such other reports or information as the Commission may from time to time require to fulfill its statutory obligations. The Annual Report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include:

- (i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware;
- (ii) the information used to determine Delaware income tax liability;
- (iii) financial and operating information for the smallest management unit that includes Delaware;
- (iv) intrastate revenues (net of uncollectible) by service category;

- (v) intrastate access and billing and collection cost by service category;
- (vi) total number of customers by service category;
- (vii) total intrastate minutes of use by service category;
- (viii) total intrastate number of calls by service category;
- (ix) a description of service offered;
- (x) a description of each complaint received by service category (in the form of a single Complaints Log); and
- (xi) verification of deposits, customer advances, the bond requirement and the bond with surety, where applicable.

(b) Accounting System.

All Carriers shall use an accounting system in accordance with Generally Accepted Accounting Principles or such other uniform system of accounts previously approved in writing by the Chief of Technical Services of the Commission.

(c) Attestation.

All Carriers shall file all reports required by these Rules with a sworn statement by the person under whose direction the report was prepared, that the information provided in the report is true and correct to the best of the person's knowledge and belief.

(d) Time for Filing.

All periodic reports to be filed with this Commission must be received on or before the following due dates, unless otherwise specified herein, or unless good cause is demonstrated by the Carrier:

- i. Annual Report: one hundred twenty (120) days after the end of the reported period; and
- ii. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

Rule 11. Enforcement.

(a) Commission Oversight.

The Commission shall have the authority and the discretion to take such action, upon complaint, motion, or formal or informal investigation, to remedy any alleged violations of these Rules. The Commission shall have available to it all remedies and enforcement powers bestowed by statute and consistent with due process.

(b) Violation and Penalties.

Failure of a Carrier to comply with any provision of these Rules may result in the suspension or revocation of its CPCN, and/or of the imposition of monetary or other penalties as authorized by 26 Del. C. §§ 217 and 218.

(c) Proceedings.

Upon application by any person affected, including the Division of the Public Advocate or another Carrier, or upon its own motion, the Commission may conduct a

proceeding to determine whether a Carrier has violated any provision of these Rules. Such proceedings shall be conducted according to the Commission's Rules of Practice and Procedure.

(d) Investigations.

For the purpose of determining whether it is necessary or advisable to commence a proceeding, the Commission or its Staff may, at any time, investigate whether a Carrier is in compliance with these Rules. Upon request, the Carrier shall provide to the Commission or its Staff sufficient information to demonstrate its compliance or noncompliance with the Rules, including such data as shall demonstrate that the Carriers' services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

(e) Customer Complaints as Ground for Proceeding or Investigation.

The Commission may hold a proceeding to determine whether to suspend or revoke the certificate of, or otherwise penalize any Carrier for reason of customer complaints. The Commission may investigate any customer complaints received.

Rule 12. Waiver of Rules Upon Petition.

A Carrier may petition the Commission for waiver of a Rule or Rules on a temporary or permanent basis by demonstrating to the satisfaction of the Commission that a waiver is in the public interest or for other good cause, including

unreasonable hardship or burden. The Carrier shall comply with all Rules until the petition for waiver has been granted.

**PART B
CUSTOMER ELECTION OF PREFERRED CARRIER**

Rule 13. Additional Definitions.

For purposes of this PART B, in addition to the Definitions set forth by PART A, the following definitions shall apply:

- (a) Preferred Carrier shall mean the Carrier providing service to the customer at the time of the adoption of these Rules, or such Carrier as the customer thereafter designates as the customer's Preferred Carrier.
- (b) Preferred Carrier Change Order shall mean generally any order changing a customer's designated Carrier for local exchange service, intraLATA intrastate toll service or both.

Rule 14. Applicability.

Any Carrier offering intrastate and/or local exchange service for public use within the State of Delaware, including the ILEC, Bell Atlantic-Delaware, Inc., shall be subject to the provisions of these Part B Rules.

Rule 15. Verification of Orders for Telecommunications Service.

No Carrier shall submit a Preferred Carrier Change Order unless and until the Order has been first confirmed in accordance with one of the procedures set forth in 47 C.F.R. § 64-1120.

Rule 16. Letter of Agency Form and Content.

A Carrier may use a letter of agency to obtain written authorization and/or verification of a customer's request to change his or her Preferred Carrier selection. A letter of agency that does not conform with the requirements set forth in 47 C.F.R. § 64.1130 is invalid.

Rule 17. Submission and Execution of Changes in Customer Carrier Selections.

Submission and execution of changes in customer carrier selection shall comply with 47 C.F.R. § 64.1120.

Rule 18. Preferred Carrier Freezes.

A Preferred Carrier freeze prevents a change in a customer's Preferred Carrier selection unless the customer has given the Carrier from which the freeze was requested his or her express consent. All Carriers who offer Preferred Carrier freezes must comply with the provisions of 47 C.F.R. § 64.1190.

Rule 19. Customer Protection.

(a) Procedures To Be Followed By The Customer.

A customer who believes his or her Carrier or Carriers have been changed, without the customer's authorization, and/or that the customer has been billed for charges not authorized by the customer, should first attempt to resolve the matter with the Carrier or Carriers responsible for the unauthorized changes and/or charges. If the customer is not satisfied with the resolution offered by the Carrier, the customer may file a complaint with the Commission.

(b) Procedures To Be Followed By Carriers.

A Carrier who is informed by a customer that the customer believes the Carrier has caused or allowed a change in the customer's Carrier without the customer's authorization, or that the Carrier has caused or allowed the customer to be billed for charges not authorized by the customer shall attempt to resolve the complaint promptly and in good faith. If the customer and Carrier are not able to resolve the complaint, then the Carrier shall inform the customer orally or in writing of the right to file a complaint with the Commission and shall provide the customer with the Commission's address and telephone number.

(c) Carriers to Maintain Record of Complaints.

Each Carrier shall maintain a record of the complaints received by it alleging that the Carrier

has caused or allowed a customer's Carrier to be changed without the customer's authorization or has caused or allowed the customer to be billed for charges not authorized by the customer. The Carrier shall maintain the record of each complaint for a period of two years following initial notification of the complaint. Upon request by the Commission or its staff, a Carrier shall furnish a copy of its complaint records and such other information as the Commission Staff may require. A Carrier's complaint records shall include at least the following information:

- (i) name, address, and telephone number of complainant and the date and manner received by the Carrier; and
- (ii) a chronological summary of the dispute and its current status, including any resolution and date of resolution.

(d) Refund and Penalties.

In the event the Commission determines that a Carrier has caused a customer's Carrier for a service to be changed without the customer's authorization obtained in exact compliance with these Rules, or has caused the customer to be billed for charges imposed without exact compliance with these Rules, then the Commission shall require the Carrier to promptly refund or void to the customer any charges the Carrier has caused to be billed as a result of the unauthorized change or charge, and/or any other remedies available for violation of these Rules as allowed by law. 26 Del. C. § 924(c). The Commission's remedies are in addition to those required under 47 C.F.R. § 64.1170 to the extent the FCC's remedies have not provided a refund or credit to the subscriber in the amount of 100% of all charges the Carrier caused to be billed as a result of the unauthorized change or charge.