

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE DEVELOPMENT)
OF REGULATIONS FOR THE)
FACILITATION OF COMPETITIVE ENTRY) PSC REGULATION DOCKET NO. 45
INTO THE TELECOMMUNICATIONS LOCAL)
EXCHANGE SERVICE MARKET)

FINDINGS, OPINION AND ORDER NO. 4468

AND NOW, to-wit, this 8th day of April, 1997, the
Commission enters the following Findings, Opinion and Order.

A. BACKGROUND

1. The General Assembly has declared the public policy
of this state with regard to telecommunications services:

(a) Basic telecommunications services shall
be universally available at affordable
prices;

(b) To foster economic development in this
State, responsible and reasonable
investment in and development of
telecommunications systems employing
advanced technology shall be encouraged
as an integral part of the State's
infrastructure;

- (c) The availability of customer choices among a continuously developing variety of telecommunications shall be encouraged; and
- (d) The growth of competitive markets for the provision of telecommunications services shall be encouraged and, where they exist or develop in the future, the availability, price, terms of service and quality should be determined by such competitive markets.

26 Del. C. § 702.

To achieve these goals, the General Assembly has also directed:

- (a) In a competitive marketplace, some utility regulation may be necessary in protecting the public interest. However, where competition helps promote efficiency in the use of resources, deployment of technology or fosters productivity and

innovation, such competition shall be authorized and encouraged by the Commission;

(b) Where competitive market pressures are inadequate for regulation of price, as well as availability and terms of service for particular telecommunications services, the Commission is authorized and encouraged to develop and implement alternate methods of regulation which will encourage the providers of such services to take advantage of technological advances and efficiencies;

(c) The Commission is authorized and encouraged to respond to the changing technology and structure of the telecommunications industry by modifying its regulation of telecommunications services where such modifications will foster the universal availability of basic

telecommunications services; protect the public interest; promote efficiency in public and private resource allocation, or encourage economic development. Such authorized modifications include, but are not limited to, such regulatory features as: Incentive regulation, earnings sharing, categorization of services for the purposes of pricing, price caps, price indexing, ranges of authorized returns, detariffing and deregulation. In conjunction with alternative methods of regulation, the Commission is encouraged to consider appropriate safeguards to:

- (1) protect customers of service which the Commission has not found to be competitive; and
- (2) protect the further development of competition in the State.

The Commission is specifically

authorized to depart from rate base,
rate of return regulation.

26 Del. C. § 703(1)-(3).

2. The Commission opened this docket by Order No. 4080, dated November 21, 1995. Its purpose is to develop and implement regulations to facilitate fair and efficient competition in the market for the provision of local exchange telecommunications service. In view of the clear importance of encouraging competitive entry into that market, the Commission determined to conduct this rulemaking docket in two phases. Phase I, which is concluded by this Order, considered the adoption of an interim set of rules to permit preparations for an entry into the local exchange market, while Phase II will develop final, comprehensive rules and regulations. This is the Commission's Final Order concluding Phase I and adopting interim rules.

3. By Order No. 4080, the Commission directed publication in two newspapers of general circulation of a notice of proposed rulemaking ("NOPR") seeking public comment and input from interested persons concerning proposed rules and regulations necessary to implement fair and efficient competition in the market for local exchange telecommunications services in Delaware. Several interested entities filed such comments on or before February 15, 1996, as required by the public notice. The entities

who actively participated in this docket, by the filing of comments or otherwise, were Bell Atlantic-Delaware, Inc. ("BA-Del"), AT&T Communications of Delaware, Inc. ("AT&T"), Cable Television Association of Maryland, Delaware and the District of Columbia ("CTA"), Delmarva Power & Light Company ("DPL"), Eastern TeleLogic Corp. ("ETC"), MCImetro Access Transmission Services, Inc. ("MCI"), MFS Intelenet of Delaware, Inc. ("MFS"), Sprint Communications Company, L.P. ("Sprint"), Telecommunications Resellers Association ("TRA"), The Office of the Public Advocate ("OPA"), and The Public Service Commission Staff ("Staff"). Following the filing of comments, the Hearing Examiner developed a procedural schedule directing Staff to file proposed Phase I Rules to be followed by a period for discovery and the filing of direct and rebuttal testimony by the active participants. Staff filed proposed Phase I Rules on June 5, 1996, and on July 3, 1996 the participants filed their direct testimony.

4. On July 18, 1996, the Hearing Examiner suspended the procedural schedule for approximately thirty (30) days to await promulgation of the Federal Communications Commission's ("FCC") regulations for the implementation of the Telecommunications Act of 1996 (the "Act")¹. Those regulations were issued August 8, 1996.

¹Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151 et seq.

The Hearing Examiner then conducted a conference on August 26, 1996 to discuss a procedure for the conclusion of this docket.

5. Following the August 26, 1996 conference, the participants informally consulted and proposed: (a) that the Hearing Examiner approve an expedited schedule to consider rules related to the certification and regulation of competitive local exchange carriers ("CLECs"); and (b) that the issue of interim number portability ("INP") should be addressed in a separate docket. At that time, the participants could reach no conclusion concerning whether the issue of rates for the wholesale purchase of BA-Del's services for resale should be addressed in a later phase of this docket or by other means. Subsequently, by Order No. 4308, dated September 24, 1996, the Commission initiated Regulation Docket No. 46 to consider the adoption of rules and regulations governing implementation of interim and long-term number portability and, by Order No. 4371, dated December 30, 1996, initiated Docket No. 96-324 to consider approval or disapproval of BA-Del's Statement of General Available Terms and Conditions ("SGAT"), including the wholesale rates proposed in that statement.²

²In this proceeding, the OPA proposed a rule requiring BA-Del to reduce rates for basic services to offset new revenues BA-Del receives from interconnection and collocation. The Hearing Examiner recommended rejection of this proposed rule considering it to be beyond the scope of this proceeding. We note that in Docket No. 96-324, the OPA has introduced testimony and submitted

briefing addressing its contention that new revenues flowing to BA-Del from interconnection and collocation should be considered as "exogenous" changes under 26 Del. C. § 707(c)(6). We believe the issue is better addressed in that docket.

6. The Hearing Examiner, by letter dated September 6, 1996, accepted the participants' proposal concerning expedited consideration of interim rules related to the certification and regulation of CLECs and approved a procedural schedule to accomplish this goal. Pursuant to that procedural schedule, Staff filed revised proposed rules on October 4, 1996, in response to which the participants filed initial and reply comments. After reviewing these comments, Staff made additional revisions to its proposed rules. The Hearing Examiner considered these revised rules, and the submissions of all participants and issued, on December 18, 1996, his Report with recommended Interim Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers in Delaware. Thereafter, several participants and Staff filed exceptions to the Hearing Examiner's Report, taking issue with certain aspects of the recommended rules. The Commission considered the matter at its regular meeting held on Tuesday, January 21, 1997, at the Commission's offices in Dover, Delaware.

B. DISCUSSION

7. The purpose of this phase of this Docket is to promulgate interim rules governing the competitive provision of local exchange service. The carriers subject to the rules adopted herein will be providing basic telephone services to residential and business customers. The Commission is mindful of the General Assembly's directive that the growth of competitive markets for telecommunications services are to be encouraged and that where it exists competition, not regulation, should govern the provision of such service. 26 Del. C. § 702. Nevertheless, the Commission is equally mindful of the General Assembly's mandate that "basic telecommunications services [such as the services to be regulated under the rules promulgated here] shall be universally available at affordable prices," 26 Del. C. § 702(1), and its charge to the Commission to regulate price, availability and terms for telecommunications services "where competitive market pressures are inadequate". 26 Del. C. § 703(2). Accordingly, in this Docket, the Commission is faced with the task of promulgating rules which foster competitive entry while continuing to safeguard the fundamental public interest in reliable, high quality, reasonably priced local telephone service.

8. At the same time, the Commission believes that the directives and authorizations set forth in 26 Del. C. §§ 702 and

703 empower the Commission to enact an entry and rate regulatory regime which need not necessarily track every statutory directive set forth in subchapters II and III of the Public Utility Act of 1974, 26 Del. C. ch. 1. Thus, for example, the rules adopted herein permit certification without the necessity of Commission pre-approval of tariffs (26 Del. C. § 301); allow changes in rates without sixty (60) day notice to the Commission and without public notice (26 Del. C. § 304); and excuse the new local exchange providers from traditional rate-of-return regulation.³ The Commission, in exercising the authority granted by Section 702, adopts an alternative method of regulation to govern new entrants. It believes that an alternate form will foster competition in the market for local exchange services.⁴

³Similarly, the Commission believes that it can exercise the grants of authority under 26 Del. C. § 703 by rule-making processes and that the provisions of 26 Del. C. §§ 201(c)-(d) provide a complementary deregulatory process.

⁴By adopting these rules, the Commission emphasizes that it is not holding that the market for local exchange services is "competitive," a term with many meanings and several ramifications. It is not necessary for the Commission to make such a determination. It is enough that the rules will foster the goals set forth by 26 Del. C. § 702.

9. Several participants took issue with Staff's proposed rules on the ground that they were too extensive, thus perpetuating a burdensome regulatory regime inimical to an emerging competitive market. For instance, many participants objected to provisions in the proposed rules which (a) imposed a pricing standard; (b) required the filing of tariffs; (c) obligated applicants to demonstrate minimum financial capability and provide descriptions of facilities and financial and operational data; and (d) authorized the Commission to investigate and sanction violations. Many participants supported alternative rules proposed by the OPA, which would have eliminated many of these elements. Staff contended, however, that while the marketplace may eventually effectively supplant regulation, at this time competition is more theoretical than real. At least during the interim period Staff argued that the Commission should continue to play an important role in overseeing the development of competition and safeguarding the interests both of the public and of potential competitors.

10. As detailed herein, the Commission is persuaded by Staff's position. The interim rules adopted by this Order, the Commission believes, do not impose an undue regulatory burden on potential entrants, but preserve a reasonable opportunity for the Commission to monitor the practices of entrants, prevent abuses, and track developments in the local exchange service marketplace.

These interim rules, by their terms, are to be re-examined by the Commission in approximately eighteen (18) months. (Section 5(8)).

If, at that time, it appears that the rules, or any part of them, are unnecessary or unduly burdensome, the Commission may consider appropriate modifications. Accordingly, the Commission, by unanimous affirmative vote, adopts the interim rules recommended by the Hearing Examiner, modified as discussed below. The interim rules approved and adopted are attached to this Order as Exhibit A.

11. For the rules which have not been modified below, the Commission agrees with, and adopts, the findings and rationale of the Hearing Examiner. For those rules now modified by the Commission, the rationale is set out below.

Section 1(11)(b) Definition of Local Telecommunications
Exchange Service

12. Section 1(11) defines local telecommunications exchange service and itemizes certain services which are excluded from the definition. Subparagraph (b) of this rule explains that telecommunications services provided by a company to itself or within a building or complex of buildings are not considered local telecommunications exchange services. BA-Del suggested a modification to the Hearing Examiner's recommended rule clarifying that such exception is intended to govern only those situations where the services provided do not include access to the public switched network. Staff agreed that BA-Del's suggested modification clarified the rule's intended meaning and recommended we adopt it. The remaining participants had no objection. Accordingly, we adopt BA-Del's proposed language. (5-0) The rule, thus modified, is set forth in Section 1(11) of Exhibit A hereto.

Section 3(4) Certification Requirements

13. This section imposes a number of filing requirements on competitive local exchange carriers seeking a Certificate of Public Convenience and Necessity ("CPCN") to provide local exchange services in Delaware. The Hearing Examiner's recommended version of this rule did not adopt certain requirements for filing of materials which Staff contended would be necessary or helpful to Staff and the Commission in overseeing the development of competition and safeguarding the public interest. In particular, Staff excepted to the Hearing Examiner's decision not to adopt a requirement that potential competitive local exchange carriers ("CLECs") file a three-year construction maintenance, engineering and financial plan for all services intended to be provided within the State. Staff contended that this information posed no undue burden on applicants because it should be readily available in a prudently managed business. Further, Staff contended that such plans would form a useful indicator of an applicant's commitment to provide reliable, high-quality local exchange service in Delaware.

14. In contrast, a number of the remaining participants contended a requirement to file such plans would be unduly burdensome and would provide little useful information to the Commission in any event, because the carriers are likely frequently to modify their plans. The Commission agrees that it is unreasonable to require a new entrant to file three-year plans.

Such plans are unlikely to forecast accurately the CLEC's actions.

However, the Commission deems that it is appropriate to require a CLEC applicant to file one-year construction maintenance, engineering and financial plans. Such plans will be a useful measure of the applicant's ability and commitment to provide local exchange service in Delaware. The rule, thus modified, is set forth in Section 3(4)(c) of Exhibit A. (5-0)

15. Staff further took exception to the Hearing Examiner's rejection of Staff's proposals that CLEC applicants meet certain minimum cash availability requirements. Staff contended that its proposed minimum cash requirements were necessary to safeguard the public interest as competitive markets develop and that the amounts proposed would not constitute barriers to entry to qualified firms. The Commission agrees that applicants seeking certificates to provide local exchange service in Delaware should be required to demonstrate that they possess sufficient available resources to finance their entry efforts. Accordingly, the Commission agrees with Staff that applicants seeking to become facilities-based CLECs must demonstrate that they possess \$100,000 in cash or cash equivalents, while applicants seeking to become non-facilities-based carriers must demonstrate access to a minimum of \$25,000 of cash or cash equivalents. Staff's proposed rules set forth a variety of options by which applicants could make this

showing. We agree with Staff that, given such flexibility in compliance, the requirements will not deter entry. Accordingly, we adopt Staff's proposed Rule 3(4)(h)-(k) concerning minimum financial requirements. (5-0). The rule, as so modified, is set forth in Exhibit A.

16. CTA and Delmarva both took exception to the Hearing Examiner's recommendation that CLEC applicants also be required to file descriptions and maps of their facilities in Delaware. CTA contended that this requirement is in itself burdensome and unnecessary, while Delmarva took exception to that part of the Hearing Examiner's recommendation which would require that the maps be kept current at all times. The Commission agrees with Staff that applicants should be required to provide maps of existing facilities in Delaware. This requirement is not unduly burdensome and such maps will be useful to Staff and the Commission in performing their oversight function. However, the Commission concludes that Delmarva's exception is well-taken. It is not reasonable to require a carrier to resubmit maps each time its facilities are expanded or modified. Delmarva suggested that the Commission require annual updating of the maps and the Commission agrees that this approach is more reasonable. The mapping requirement, as so modified, is set forth by Section 3(4)(e) of Exhibit A. (5-0)

Section 4(1) Introduction of New Options or Offerings

17. The Hearing Examiner's recommended rule would have required CLECs to provide fourteen (14) days' notice to the Commission when the CLEC seeks to introduce a new service or change an existing tariff. BA-Del took exception to this recommendation, contending that the prior notice period should be twenty (20) days and that the Commission should be given the authority to suspend the proposed tariff for a further period of seventy (70) days. BA-Del contended that the Telecommunications Technology Investment Act ("TTIA"), the statute which BA-Del has elected to govern its operations, imposes such a twenty (20) day notice period with the possibility of a further suspension when it seeks to offer a new service to be classified as "competitive" under the TTIA. See 26 Del. C. § 704(a)(3). BA-Del argued that to impose less stringent requirements on CLECs would put BA-Del at a competitive disadvantage. At the Commission's hearing, Staff pointed out that though the TTIA requires BA-Del to give twenty (20) days' notice for introduction of new "competitive" services, the TTIA imposes no notice at all when BA-Del changes the rate or term of an existing "competitive" service. Thus, in this respect, the Hearing Examiner's proposed rules disadvantage the CLECs in comparison to BA-Del. Moreover, at the hearing, AT&T indicated that it would not object to a twenty (20) day notice period for the introduction of

new services if it, like BA-Del, were required to give no notice of rate changes or other modifications.

18. Although BA-Del urges modification based on the concept of equal treatment and AT&T raised no objection thereto with respect to these limited issues under discussion, the Commission does not believe that it must determine, in this matter, whether it should impose precisely matching requirements, in all instances, on BA-Del and the new entrants. As BA-Del acknowledges, its argument rests on the premise that the emergence of new providers into the local exchange market will transform many of BA-Del's local exchange services, now classified as "basic," into "competitive" services. The Commission does not believe that, in this docket, it need necessarily either endorse or reject such a proposition.⁵ Rather, in accepting BA-Del's proposal, the Commission simply finds that the notice period implied under the TTIA, appears to be a reasonable one for use in supervision of new entrants during the interim period of these rules. This is particularly so as Staff indicated at the hearing that provision of a ninety (90) day period in which the new tariff might be suspended would be helpful to it in performing its review of new services.

⁵A reclassification of most local exchange services would seemingly require notice, a hearing, and an inquiry into the statutory criteria for "competitive" services. See 26 Del. C. § 705(c).

Accordingly, the Commission accepts BA-Del's proposal. The modified rule is set forth at Section 4(1) of Exhibit A. (5-0)

Section 4(2) Abandonment or Discontinuation of Service

19. The Hearing Examiner recommended that a CLEC be permitted to abandon or discontinue a service after providing the Commission and customers written notice thirty (30) days in advance of the abandonment. Staff recommended an additional clause allowing the Commission to require the continuation of the service for up to an additional sixty (60) days, if necessary. We believe this is a reasonable provision allowing the Commission the flexibility it may need in unusual circumstances to safeguard the public interest. Accordingly, we have adopted Staff's recommendations, as reflected by Section 4(2) of Exhibit A. (5-0).

Section 4(3) Reporting Requirements

20. The Hearing Examiner rejected Staff's proposal to require certificated CLECs to report annually certain financial and operational data and, instead, recommended that the rules require annual reports which summarize intrastate number of customers, intrastate minutes of use, and intrastate revenues and expenses only. Staff excepted to this recommendation. Staff contended that the financial and operational reporting requirements it proposed are not burdensome and track, albeit with lesser obligations, the requirements already imposed by the Commission on intrastate toll carriers through Regulation Docket No. 10. Staff contended that the information to be included in the reports is necessary for it to monitor and exercise oversight of the local exchange market. We agree with Staff and find that the requirements imposed by its proposed rules are not unduly burdensome and that the information to be gathered thereby will be useful to the Staff and this Commission in performing their duties. Accordingly, we adopt modified rules, as set forth at Section 4(3) of Exhibit A, imposing the reporting requirements recommended by Staff. (5-0).

21. The Hearing Examiner had recommended that this Section also provide that the information to be filed with annual reports will be given confidential treatment. The interim rules adopted hereby provide, at Section 5(7), for the filing of

proprietary or confidential information in accordance with the Freedom of Information Act, 29 Del. C. ch. 100. We accept the Hearing Examiner's suggestion that Section 4(3) also makes clear that information filed with annual reports may be eligible for proprietary treatment. Thus, Section 4(3) as adopted, contains such clarifying language. (5-0).

Section 4(12) Applicability of Existing Regulations

22. The Hearing Examiner recommended language in the rules stating that CLECs will be subject to all previously established regulations relating to telecommunication service providers in Delaware except to the extent that such rules might be inconsistent with the new local exchange rules. AT&T recommended that we modify this language slightly to add the phrase "and/or the Act" in order to clarify that CLECs are not required to comply with existing regulations to the extent that they are inconsistent with the Telecommunications Act of 1996. Staff, on the other hand, argued that the Hearing Examiner's recommended language should be rejected altogether, and that instead, CLECs should be made subject only to the requirements of PSC Regulation Docket No. 20, having the applicability of other Commission rules and regulations to be determined under the terms of those rules and regulations. We reject Staff's position, finding it unduly complicated. Instead, we accept AT&T's modification. The language adopted by the Commission is set forth at Section 4(12) of Exhibit A. (5-0)

23. The OPA proposed a rule regulating termination of service by a carrier. The Hearing Examiner observed that this subject is addressed in the rules governing Minimum Service Requirements for the Provision of Telephone Service for Public Use issued in PSC Regulation Docket No. 20. The OPA evidently is concerned that these rules may not adequately address service

issues specific to a competitive environment. Without prejudging whether these concerns are valid, the Commission agrees with the Hearing Examiner that it is not appropriate to prolong this phase of this docket to reconsider Docket No. 20 rules. Instead, the OPA, like any other interested person, may petition the Commission at any time to adopt, amend, or repeal these or any other regulations under 29 Del. C. § 10114.

C. CONDUCT OF PHASE II

24. Order No. 4080 created two phases for this Docket. Phase I, which the Commission concludes by this Order, was for the purpose of adopting interim rules governing competitive entry into the local exchange telecommunications market. As explained above, the participants, by agreement, further narrowed the scope of Phase I to focus only on rules governing certification and Commission oversight of CLECs. Other topics which the participants once contemplated might be addressed in Phase I, such as resale rates, and number portability, have since been taken up by other dockets. By their own terms, the rules the Commission hereby adopts will be eligible for re-evaluation in approximately eighteen (18) months. Thus, we instruct Staff to submit for the Commission's approval, eighteen (18) months from the date of this Order, a Public Notice of Proposed Rulemaking soliciting comment evaluating these Interim Rules and suggesting how they may be revised or replaced to achieve permanent rules to govern the competitive provision of local exchange telecommunications services.

25. At the Commission's January 21, 1997 public session, BA-Del requested the Commission to consider, as part of the interim rules, a requirement that CLECs provide dialing parity on the same terms as apply to BA-Del under Order No. 4382 issued January 7, 1997 in PSC Regulation Docket No. 42. The Hearing Examiner did not

address this issue in his Report, though BA-Del had timely raised it.⁶ Section 251(b)(3) of the Act requires all local exchange carriers ("LECs") to provide "dialing parity." The FCC has promulgated regulations under this section requiring LECs to provide dialing parity no later than February 8, 1999, and possibly much earlier. See In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Dkt. No. 96-98, Second Report and Order, FCC 96-333 (rel. Aug. 8, 1996); 47 C.F.R. §§ 51.209, 51.211. The same rules also require a local exchange carrier to file with this Commission an implementation plan setting forth how that carrier will provide intraLATA dialing parity. 47 C.F.R. § 51.213.

26. While the Commission envisions that the CLEC's customer selection process will presumably follow that adopted for BA-Del in Regulation Docket No. 42, the Commission does have uncertainty whether the cost recovery mechanism developed in the context of the incumbent's cost can be easily transferred to, or melded into, the context of diverse CLECs, which may either own their own switches or purchase switching from BA-Del.

⁶In Order No. 4382 (Jan. 7, 1997) in Regulation Docket 42, the Commission deferred consideration of dialing parity for CLECs to this docket.

27. Accordingly, within fifteen (15) days of this Order, BA-Del may request the Hearing Examiner to conduct limited proceedings under Phase II of this docket to consider whether the Interim Rules should be amended to address the issue of dialing parity. The Hearing Examiner is authorized to develop a procedural schedule concerning the conduct of such proceedings and is instructed to submit a report with his recommendations within six (6) months of the date of this Order.

28. At the same time, the Commission realizes that CLECs may, as the FCC's rules contemplate, file their toll dialing parity implementation plans with the Commission. The Commission anticipates that, in the course of reviewing such plans, it may be called upon to approve or reject both customer presubscription methods and cost recovery mechanisms for the submitting CLEC. If time restraints require consideration of an implementation plan before the adoption of generic dialing parity rules for CLECs, the Commission anticipates that the participants in this docket will voice their positions in the implementation plan approval process. Similarly, the Commission believes that the experience in considering implementation plans may add to the form or content of the generic dialing parity rules.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Interim Rules Governing Competition In The Market for Local Telecommunications Services attached hereto as Exhibit A are hereby approved and adopted and shall govern the certification and regulation of competitive local exchange carriers until such time as they may be modified or withdrawn by the Commission.

2. That the Interim Rules shall become effective thirty (30) days from the date of this Order.

3. Eighteen (18) months from the date of this Order, Staff shall submit to the Commission a Public Notice of Proposed Rulemaking soliciting comments evaluating these Interim Rules and suggesting any modifications or additions advisable to achieve permanent rules to govern the competitive provision of local exchange telecommunications services. This does not preclude the adoption of other interim rules governing local exchange telecommunications service in the interim.

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

BY ORDER OF THE COMMISSION:

Chairman

Vice Chairman

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

EXHIBIT A

DELAWARE PUBLIC SERVICE COMMISSION

INTERIM RULES
GOVERNING COMPETITION IN THE MARKET
FOR LOCAL TELECOMMUNICATIONS SERVICES
PSC REGULATION DOCKET NO. 45

CERTIFICATION AND REGULATION OF
COMPETITIVE LOCAL EXCHANGE CARRIERS

Effective _____

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DELAWARE PUBLIC SERVICE COMMISSION
REVISED INTERIM RULES

Governing Competition in the Market
for Local Telecommunications Services
PSC Regulation Docket No. 45

CERTIFICATION AND REGULATION OF COMPETITIVE
LOCAL EXCHANGE CARRIERS

Section 1: Definitions

- (1) The Act - means the federal Communications Act of 1934, amended by the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56.
- (2) COCOT - customer owned, coin operated (i.e., pay) telephone.
- (3) CPCN - Certificate of Public Convenience and Necessity.
- (4) Commission - the Delaware Public Service Commission.
- (5) Competitive Local Exchange Carrier (CLEC) - a telecommunications services provider, other than the incumbent local exchange carrier, offering and/or providing local telecommunications exchange services, pursuant to a Certificate of Public Convenience and Necessity that is issued pursuant to this Order.
- (6) Incumbent Local Exchange Carrier (ILEC) - telecommunications services provider that is the incumbent and historical

wireline provider of local telecommunications services within a local service territory as of the effective date of these Regulations, and any intrastate regulated affiliate or successor to such entity which is engaged in the provisioning of local telecommunications services; the ILEC in Delaware is Bell Atlantic-Delaware until further action by the Commission.

- (7) Interconnection - the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.
- (8) Facilities-based Carrier - a local exchange carrier which directly owns, controls, operates, or manages plant and equipment through which it provides local exchange service to consumers within the local exchange portion of the public switched network.
- (9) Intrastate Telecommunications Services - telecommunications services that originate and terminate within the State of Delaware, without regard to how the call is switched or routed.
- (10) Local Exchange Carrier or Carrier - an entity offering and/or providing local telecommunications exchange services; includes both facilities-based and non-facilities-based providers. Providers of telephone service by either cellular technology

or by domestic public land mobile radio service shall not be considered local exchange carriers for purposes of these Rules.

- (11) Local Telecommunications Exchange Service - Local telecommunications exchange service includes non-toll, intrastate telecommunications services provided over a local exchange carrier's network, including but not limited to, exchange access services, private line services, basic local services, and public pay phone services.

Local telecommunications exchange service, however, does not include:

- a. telephone service that is provided by or owned and operated by any political subdivision, public or private institution of higher education, or municipal corporation of this State, or operated by their lessees or operating agents for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation.
- b. telecommunications services provided by a company solely to itself or its affiliates, or between points in the same building or between closely located buildings which are affiliated through substantial common ownership, and

where such services do not include access to the public switched network.

- c. the rent, sale, or lease, or exchange for other value received, of customer premises equipment except for customer premises equipment owned or provided by a telecommunications carrier certificated prior to the effective date of these regulations and only then to the extent that the regulation of its provision is not Federally preempted.
- d. 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.
- e. community antenna television service or Cable Television Service to the extent that such service is utilized solely for the one-way distribution of such entertainment services with no more than incidental subscriber interaction required for selection of such entertainment service.

(12) Resale - the sale to an end user of any telecommunications service purchased from another carrier.

- (13) Rules - these Interim Rules Governing Competition In The Market For Local Telecommunications Services.
- (14) Telecommunications - the transmission, between or among points specified by the user, of information of a user's choosing, without change in the form or content of the information as sent and received.
- (15) Telecommunications Service - the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Section 2: Application of Rules to ILEC

- (1) The ILEC will remain subject to the Telecommunications Technology Act (TTIA), 26 Del. C. Sub. Ch. VII-A, during the term of its initial election thereunder.
- (2) The ILEC shall have carrier of last resort obligations in its service territory until a final decision is reached regarding universal service issues.

Section 3: Certification of Competitive Local Exchange
 Carriers

- (1) Certification Requirement. All entities wishing to provide local telecommunications exchanges services within the State of Delaware are required to file with the Commission an original and twelve (12) copies of an Application for Certificate of Public Convenience and Necessity. 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, managerial and operational ability to adequately service the public interest and that the public convenience and necessity requires or will require the operation of such business.
- (2) Notice. Notice of the filing of such an application shall be given by the Applicant at the time of filing to the Public Advocate, and to such other entities as may be required by the Commission. Each applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.

- (3) License Requirement. Each applicant for a Certificate shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including having received all licenses required by the Division of Revenue of the State of Delaware and by local authorities within the area of proposed operation within the State.
- (4) Additional Requirements. Each applicant shall be required to present substantial evidence supporting their financial, operational, managerial and technical ability to render service within the State of Delaware. Such evidence shall include, but is not limited to:
- a. Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.
 - b. Brief narrative description of Applicant's proposed business in Delaware and its operations in other states. Identifications of states in which Applicant presently is providing service, and for which service applications are pending.

- c. One-year construction, maintenance, engineering and financial plans 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 services. The plan will be filed within six (6) months of the date on which final certification is granted. All such plans will be considered proprietary.
- d. Relevant operational experience of each principal officer responsible for Delaware operations.
- e. Specific description of Applicant's engineering and technical expertise showing Applicant's qualification to provide the intended service including the names, addresses and qualifications of the officers, directors and technical or engineering personnel who will be operating and/or maintaining the equipment to be used to provide such service.
- f. Description and map of the Applicant's owned, leased, and optioned facilities existing within the State of Delaware. Also, map showing points of presence or location where Applicant is serving customers within the State of Delaware. All such descriptions and maps shall be updated annually.

g. If the applicant does not require deposits, advance payments, prepayments, financial guarantees or the like from customers and charges only for service after it has been provided, then no bond shall be required. Otherwise, applicant shall file a bond with 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 certificate will be issued to an Applicant and no Applicant may commence business until Applicant files such Bond with the Commission. The amount of the Bond will be the greater of (1) 150 percent of the projected balance of deposits and advances at the end of three (3) years of operations; or (2) \$50,000. If at any time the actual amount of deposits and advances held by the holders of a Certificate issued after the effective date of this regulation exceeds the amount projected, the amount of the Bond with surety shall be increased to comply with the requirement in the preceding sentence. Continuation of the Bonding requirement after the first three (3) years will be at the discretion of

the Commission which, upon application, may dispense with the Bond requirement for good cause shown.

- h. All new applicants seeking CPCNs for authority to become facilities-based CLECs shall demonstrate in their applications that they possess a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs.
- i. All new applicants seeking CPCNs for authority to become non-facilities-based CLECs shall demonstrate in their applications that they possess a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs.
- j. Applicants for CPCNs as CLECs who have profitable interstate operations or operations in other states may meet the minimum financial requirement by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirement.
- k. Demonstration of cash or cash equivalent can be satisfied by the following:
 - 1. Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

2. Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;
3. 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;
4. Letter 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;
5. 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;
6. Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding 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;

7. 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;
8. Guarantee, issued by a qualified subsidiary, affiliate of 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.

- (5) Tariffs. Each application for a Certificate of Public Convenience and Necessity shall include proposed initial tariffs, rules, regulations, terms and conditions of service specifically adapted for the State of Delaware. Copies of Applicant's tariffs, and terms and conditions of service in other jurisdictions must be provided to the Commission upon request. Applicant's tariffs must include specific policies of customer deposits and advances, for prompt reconciliation of customer billing problems and complaints, and for timely correction of service problems. Applicants must provide and

keep current the name, address and telephone number of Applicant's Delaware Resident Agent.

Section 4: Post-Certification Requirements of CLECs

- (1) New Options or Offerings. A CLEC may introduce new options or offerings, or change an existing tariff, by filing a supplemental or revised tariff with the Commission. A CLEC intending to offer a new telecommunications service shall provide the Commission with notice of its intention to do so no less than twenty (20) days before the proposed implementation date. The Commission may extend the proposed implementation date for any new service for good cause shown; provided, however, that notwithstanding such extension, the CLEC may offer its new service as described in its original filing unless the Commission shall have, by final Order entered within ninety (90) days of such original filing determined that the proposed new service as described is not in compliance with these Rules. A CLEC filing notice of the offering of a new service pursuant to this Rule shall serve a copy of such notice on all interexchange telecommunications carriers and service providers who have requested it as well as the Office of the Public Advocate.

- (2) Abandonment or Discontinuation of Service. A CLEC may abandon or discontinue a service or any part thereof, established within the State of Delaware after having provided the Commission and its customers subscribing to such service with thirty (30) days' written notice. Such notice shall also contain proposed provision for payment of all relevant outstanding liabilities (deposits), if any, to customers within the State of Delaware. If the Commission takes no action within the thirty (30) day notice period, then the abandonment or discontinuation shall be deemed approved. Prior to the expiration of the thirty (30) day notice period, the Commission may act to continue the provision of service for up to an additional sixty (60) days.
- (3) Reports to be provided to the Commission. All CLECs certificated to provide local telecommunications exchange service for public use after the effective date of these Rules shall provide such information concerning Delaware operations to the Public Service Commission as the Commission may from time to time request. Information provided pursuant to this paragraph and designated "proprietary" or "confidential" in accordance with paragraph 5(7) of these Rules shall be

afforded proprietary treatment subject to the provisions of the Rules, Commission regulations and Delaware law.

- a. The accounting system to be used shall be in accordance with Generally Accepted Accounting Principles or any uniform system of accounts approved in writing by the Chief of Technical Services of the Commission.
- b. All reports required by these rules to be submitted to the Commission shall be attested to by an officer or manager of the CLEC, under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the CLEC's operation.
- c. All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified herein, or unless good cause is demonstrated by the CLEC:
 1. Annual reports: one hundred twenty (120) days after the end of the reported period.
 2. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

d. 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 the Delaware Income Tax liability, and (iii) financial and operating information for the smallest management unit that includes Delaware. Additional information to be provided includes:

1. Intrastate revenues (net of uncollectibles) by service category;
 2. Intrastate access and billing and collection cost by service category;
 3. Total number of customers by service category;
 4. Total local minutes of use by service category;
 5. Total local number of calls by service category;
 6. A description of service offered;
 7. A description of each complaint received by service category (in the form of a single Complaints Log);
- and,

8. Verification of deposits, customer advances, the bond requirement and the bond with surety.

- (4) Discrimination Prohibited. No CLEC carrier shall unreasonably discriminate among persons requesting a tariffed service within the State of Delaware.
- (5) Blockage. CLECs cannot interconnect or resell to carriers who are not authorized to provide service in the State of Delaware.
- (6) Pricing Standard. All CLECs shall provide local end user services at rates that generate sufficient revenue to cover the incremental cost of offering such service.
- (7) Universal Service Fund. The Commission may, upon completion of an appropriate proceeding, require CLECs and other telecommunications carriers to contribute to a Universal Service Fund.
- (8) Services to be Provided. CLECs shall offer access to the public switched network and at a minimum, the following telecommunication services to its customers:
- Dial tone line services
 - Local usage services

- Access to all available long distance carriers
- TouchTone service
- White pages listing
- Access to 911 enhanced emergency system
- Local directory assistance service
- Access to telecommunications relay service

(9) Written Authorization Forms Required. A CLEC must obtain a customer's written authorization in order to change his or her local exchange service provider. Such written authorizations must be separate from inducements such as prizes and contests. The written authorization forms provided by the CLEC must be limited strictly to authorizing a change in local service and it must be clearly identified as an authorization form for such change.

(10) Negotiation and Mediation Guidelines. All CLECs must abide by the Commission's Guidelines for Negotiations, Mediation, Arbitration and Approval of Agreements between Local Exchange Telecommunications Carriers (Order No. 4245).

11) Resale Prohibitions.

(a) Cross-Class Selling. A CLEC that 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 CLEC.

(b) Other. With respect to any restrictions on resale not permitted under this paragraph, a CLEC may impose a restriction only if the Commission determines that the restriction is reasonable and nondiscriminatory.

(12) Previous Regulation Dockets. CLECs shall be subject to all previously established rules relating to telecommunications service providers in Delaware, except where such rules are inconsistent with these Rules, and/or the Act. As consistent with the provisions of existing rules and regulations, CLECs may petition the Commission to waive any provision in such rules previously established and regulations, as may be permitted by those rules or regulations.

(13) Customer Complaint Investigations. CLECs shall cooperate with Commission investigations of customer complaints.

Section 5: Enforcement

- (1) Commission Oversight: Nothing in these Rules shall be deemed to limit the authority granted the Commission under the Telecommunications Regulatory Authorization Act of 1992, 26 Del. C. §§701-703.
- (2) Violation and Penalties: Failure of a CLEC 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, 218.
- (3) Proceedings: Upon application by any person affected, including the Office of the Public Advocate or another carrier, or upon its own motion, the Commission may conduct a proceeding to determine whether a CLEC has violated any provision of the Rules. Such proceedings shall be conducted according to the requirements of 29 Del. C. c. 101, the Delaware Administrative Procedures Act.
- (4) Investigations: For the purpose of determining whether it is necessary or advisable to commence a proceeding described by Rule 5(3) above, the Commission or its Staff may, at any time, investigate whether a CLEC is in compliance with the Rules. Upon request, the CLEC shall provide to the Commission or its Staff sufficient information to demonstrate its compliance with the Rules, including such data as shall demonstrate that

the CLEC's services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

- (5) Subscriber 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 CLEC for reason of subscriber complaints. The Commission may investigate any subscriber complaints received.
- (6) Exemption: If unreasonable hardship results to a CLEC from the application of any of the Rules contained in Section 3 (Certification of Competitive Local Exchange Carriers) and Section 4 (Post Certification Requirements of CLECs) hereof, or if unreasonable difficulty is involved in compliance, the CLEC may make application to the Commission for temporary or permanent exemption from such Rule or Rules. The CLEC shall submit with such application a full and complete statement of its reasons for such application.
- (7) Proprietary Information: Under Delaware's Freedom of Information Act, 29 Del. C. ch. 100 ("FOIA"), all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature."

29 Del. C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.

- (8) Re-evaluation of Rules after 18 Months: The Commission will re-evaluate these Rules and the need for any revisions thereto approximately eighteen (18) months from the date of approval by the Commission of said Rules.