

**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; REOPENED AUGUST 9, 2005; )  
REOPENED NOVEMBER 5, 2013; REOPENED )  
MAY 13, 2014) )

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, REOPENED AUGUST 9, )  
2005; REOPENED NOVEMBER 5, 2013; )  
REOPENED MAY 13, 2014) )

**ORDER NO. 8517**

**AND NOW**, this 13th day of May, 2014, the Delaware Public Service Commission (the "Commission") determines and Orders the following changes to 26 *Del. Admin. C.* 4001 - Rules For The Provision of Telecommunications Services, Part A (the "Regulations")<sup>1</sup>:

**BACKGROUND**

1. On April 25, 2013, the General Assembly of the State of Delaware enacted House Bill 96 to amend Title 26 of the Delaware Code relating to the jurisdiction of the Commission and public utilities providing telecommunication services which became effective on July 15, 2013. See 26 *Del. C.* §§704 - 709; 26 *Del. C.* §§201, 202, 203(A), 204, 215 and 301.

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<sup>1</sup> The proposed changes affect only Part A of the Regulations. No changes have been made to Part B of the Regulations.

2. Pursuant to 29 *Del. C.* §10114 and 26 *Del. C.* §§209 and 703(3), the Commission amends the Regulations as set forth on Exhibit A attached hereto. A redlined version of the existing rules are set forth on Exhibit B attached hereto.

3. The purpose of the changes to the Regulations is to make them consistent with the changes in Title 26 as required by enactment of House Bill 96.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

4. The Commission has revised the Regulations as necessary to effect the revised provisions of Title 26 approved by the General Assembly in House Bill 96.

5. The Commission has statutory authority to promulgate and revise the Regulations pursuant to 29 *Del. C.* §10114, 26 *Del. C.* §209(a)(1) and 26 *Del. C.* §§209 and 703(3).

6. Pursuant to 29 *Del. C.* §10115, the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the Delaware Register of Regulations.

7. Pursuant to 29 *Del. C.* § 10115(a)(2) & (b), the Secretary shall cause the form of public notice attached as Exhibit "C" to be published in two-column format, outlined in black, in the following two newspapers on the following dates:

The News Journal (May 28, 2014)

Delaware State News (May 29, 2014)

8. The Secretary shall also ensure, pursuant to 29 *Del. C.* § 10115, that a copy of such notice is sent to the Registrar of Regulations for its publication in the Register of Regulations. In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advanced notice of this Commission's rule-making proceedings. The Secretary shall file a certification of the completion of these tasks by June 15, 2014.

9. Interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before August 7, 2014.

10. Pursuant to 26 *Del. C.* §209(a), the Commission, through its designated Hearing Examiner, will hold a public hearing on the proposed amendments on Wednesday, July 23, 2014, beginning at 10:00 AM in the Third Floor Conference Room of the Carvel State Office Building, 820 North French Street, Wilmington, Delaware.

11. Pursuant to 26 *Del. C.* § 502 and 29 *Del. C.* § 10117, the Commission designates Hearing Examiner Mark Lawrence as the Hearing Examiner for this matter. Hearing Examiner Lawrence is specifically authorized to conduct further hearings or direct submission of additional documents if deemed necessary or appropriate.

12. 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.



E X H I B I T "A"

**Public Service Commission**

**4001 Rules for the Provision of Telecommunications Services (Dockets 10 and 45)**

|           |   |
|-----------|---|
| Docket 10 | The Sale, Resale and Other Provisions of Intrastate Telecommunications Services                                 |
| Docket 45 | Regulations For The Facilitation of Competitive Entry into the Telecommunications Local Exchange Service Market |

Effective: December 10, 2001

**PART A**

**CERTIFICATION AND REGULATION OF CARRIERS**

**1.0 Definitions**

**“Alternative Provider of Telephone Service”** means, but is not limited to, a provider of a wire line telephone service, commercial mobile service as defined in Section 3.32(d) of the Communications Act of 1934, or Voice over Internet Protocol service as defined in 26 *Del. C.* §202(1)(2).

**“Basic Services”** shall mean (1) individual residential local exchange access line and residential local usage at a location where there is no “Alternative Provider of Telephone Service” available to retail residential customers and (2) switched access service.

**“Bundled Services”** means a combination of retail services offered as a package, either at a single price or with the availability of the price for 1 or more services contingent on the purchase of other services, and includes any telephone service or any non-telephone services offered by an affiliate of a telephone company or an unregulated entity.

**“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:

- 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;
- 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;
- Providers of domestic public land mobile radio services provided by cellular technology excluded from the Commission’s jurisdiction under 26 *Del.C.* §202(c); and
- Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12.

**“Competitive Services”** shall mean (1) all telecommunications services which are not classified as basic services in the definition above; (2) any bundled service, even if the bundles service includes 1 or more basic services; or (3) any new service other than switched access service, offered after July 15, 2008.

**“Competitive Telecommunications Service Provider”** means a provider of any telecommunications services described in 26 *Del. C.* §705 excluding basic services defined in 26 *Del. C.* §705(a)(1).

**“CPCN”** shall mean a Certificate of Public Convenience and Necessity issued by the Commission.

**“Commission”** shall mean the Public Service Commission of Delaware.

**“Exclusive Telecommunications Service Provider”** means a provider of any telecommunications services described in 26 *Del. C.* §705(a)(1) and has elected to be governed under 26 *Del. C.* §704.

**“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.

**“Rules”** shall mean these Rules, including PARTS A and B, governing the provision of telecommunications services in Delaware.

**“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.

**“Telecommunications Service Provider”** shall mean any Carrier offering telecommunications services 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:

- 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);
- 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;
- 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
- 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 wire line telephone.

## **2.0 Applicability**

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

## **3.0 Exclusive Telecommunications Service Provider And Competitive Telecommunications Service Provider**

3.1 The Exclusive Telecommunications Service Provider or Competitive Telecommunications Service Provider may elect or re-elect to be 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.

3.2 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.

3.3 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).

- 3.4 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. See 1001 General Regulations.
- 3.5 Tariffs or Price Lists. A tariff or price list is required for Basic Services and shall be filed with the Commission and made available on the Telecommunications Service Provider's website. Any changes to that tariff or price list shall be filed with the Commission with 7-day notice. Any telecommunications service provider may file its tariffs for Competitive Services with the Commission. The effective date may be the date of filing.
- 3.6 An Exclusive Telecommunications Service Provider and Competitive Telecommunications Service Providers electing to be governed by the TTIA are exempt from obtaining Commission approval for mergers as set forth in 26 *Del. C.* §215(a)(1) or transfers of control as set forth in 26 *Del. C.* §215(b) if the transactions are between parent and subsidiary corporations or between entities of which 50% of the beneficial ownership is held by the same persons or entities prior to such merger or transfer of control, otherwise an application for Commission approval is required. All other Telecommunications Service Providers are required to make filings in accordance with 26 *Del. C.* §215.

#### **4.0 Certification**

##### **4.1 Certification Requirement.**

No person or entity shall offer public intrastate 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.

##### **4.2 Application.**

An applicant for a CPCN shall file with the Commission in the format described in 26 Del. Admin C. §1001-1.6.3, 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. 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.

4.3 Notice.

The applicant shall serve a notice of the filing of such 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 one (1) newspaper having general circulation throughout the county or counties where service is to be offered in a form to be prescribed by the Commission.

4.4 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.

4.5 Demonstration of Fitness.

4.5.1 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:

4.5.1.1 The applicant's certified financial statements current with twelve (12) months of the filing, and, where applicable, the most recent annual report to shareholders and SEC Form 10-K;

4.5.1.2 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;

4.5.1.3 A description of the relevant operations experience of applicant's personnel principally responsible for the proposed Delaware operations;

4.6 Initial Tariffs or Prices.

4.6.1 An applicant must file initial tariffs or price lists for Basic Services.

**5.0 New Options or Offerings; Changes to Existing Rates, Prices or Terms and Conditions**

5.1 Tariff or Price Lists Changes for Basic Services must be filed with the Commission.

5.2 Tariff or Price Lists Changes for Competitive Services are not required.

**6.0 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.

**7.0 Abandonment or Discontinuation of Service**

Telecommunication Service Providers shall provide a letter notice of its abandonment or discontinuation of service for Competitive Services. The Exclusive Telecommunications Service Provider of Basic Service defined in 26 *Del. C.* §705(a)(1) may abandon service pursuant to 26 *Del. C.* §203A.

**8.0 Services to be Provided by Telecommunication Service Provider Providing Local Telecommunications Exchange Service**

8.1 Any Telecommunication Service Provider providing local telecommunications exchange service shall offer the following telecommunication services to its customers:

- 8.1.1 Access to the public switched network;
- 8.1.2 Access to 911 enhanced emergency system; and
- 8.1.3 Access to telecommunications relay service.

**9.0 Enforcement**

9.1 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.

9.2 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.

9.3 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 proceeding shall be conducted according to the Commission's Rules of Practice and Procedure.

9.4 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.

9.5 Customer Complaints as Grounds 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.

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

E X H I B I T "B"

**Public Service Commission**

**4001 Rules for the Provision of Telecommunications Services (Dockets 10 and 45)**

|           |   |
|-----------|---|
| Docket 10 | The Sale, Resale and Other Provisions of Intrastate Telecommunications Services                                 |
| Docket 45 | Regulations For The Facilitation of Competitive Entry into the Telecommunications Local Exchange Service Market |

Effective: December 10, 2001

**PART A**

**CERTIFICATION AND REGULATION OF CARRIERS**

**11.0 Definitions**

"Alternative Provider of Telephone Service" means, but is not limited to, a provider of a wire line telephone service, commercial mobile service as defined in Section 3.32(d) of the Communications Act of 1934, or Voice over Internet Protocol service as defined in 26 Del. C. §202(1)(2).

"Basic Services" shall mean (1) individual residential local exchange access line and residential local usage at a location where there is no "Alternative Provider of Telephone Service" available to retail residential customers and (2) switched access service.

"Bundled Services" means a combination of retail services offered as a package, either at a single price or with the availability of the price for 1 or more service contingent on the purchase of other services, and includes any telephone service or any non-telephone services offered by an affiliate of a telephone company or an unregulated entity.

"Carrier" shall mean any person or entity offering to the public Telecommunications service that originates or terminates with the State of Delaware. The term "Carrier" does not include:

- 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;
- 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;
- Providers of domestic public land mobile radio services provided by cellular technology excluded from the Commission's jurisdiction under 26 *Del.C.* §202©; and
- Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12.

"Competitive Services" shall mean (1) all telecommunications services which are not classified as basic services in the definition above; (2) any bundled service, even if the bundled service includes 1 or more basic services; or (3) any new service other than switched access service, offered after July 15, 2008.

"Competitive Telecommunications Service Provider" means a provider of any telecommunications services described in 26 Del. C. § 705 excluding basic services defined in 26 Del. C. §705(a)(1).

"CPCN" shall mean a Certificate of Public Convenience and Necessity issued by the Commission.

"Commission" shall mean the Public Service Commission of Delaware.

~~"Competitive Local Exchange Carrier ("CLEC")" shall mean a Carrier, other than the Incumbent Local Exchange Carrier, offering and/or providing local telecommunications exchange services Inc., and any successor thereto.~~

**“Exclusive Telecommunications Service Provider” means a provider of any telecommunications services described in 26 Del. C. §705(a)(1) and has elected to be governed under 26 Del. C. §704.**

~~**“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.**~~

~~**“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.**~~

**“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.**

~~**“Resale” shall mean the sale to an end-user of any telecommunications service purchased from another Carrier.**~~

**“Rules” shall mean these Rules, including PARTS A and B, governing the provision of telecommunications services in Delaware.**

**“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.**

**“Telecommunications Service Provider” shall mean any carrier the offering of telecommunications services 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:**

- 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);
- 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;
- 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
- 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.

## **12.0 Applicability**

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

## **13.0 Exclusive Telecommunications Service Provider and Competitive Telecommunications Service Provider Application of and Conflict With Other Rules, Regulations, Tariffs and/or Price Lists**

~~13.1 The Exclusive Telecommunications Service Provider or Competitive Telecommunications Service Provider may elect or re-elect to be 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 thereafter. The ILEC~~

~~13.1.1 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~~

~~13.1.2 The ILEC has Carrier of last resort obligations in its service territory.~~

13.2 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.

13.3 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).

13.4 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. See 1001 General Regulation.

~~13.5 Other Rules and Statutes.~~

~~These Rules shall prevail over any inconsistent requirements imposed by prior Order or regulation of the Commission, except for Rule 3.1 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.~~

~~13.6~~13.5 Tariffs or Price Lists.

~~A tariff or price list is required for Basic Services and shall be filed with the Commission and made available on the Telecommunication Service Provider's website. Any changes to that tariff or price list shall be filed with the Commission with 7-day notice. Any telecommunications service provider may file its tariffs for Competitive Services with the Commission. The effective date may be the date of filing. 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 3.1 preceding, unless where expressly authorized by a Commission Order granting a waiver.~~

~~13.6 An Exclusive Telecommunications Service Provider and Competitive Telecommunications Service Providers electing to be governed by the TTIA are exempt from obtaining Commission approval for mergers as set forth in 26 Del. C. §215(a)(1) or transfers of control as set forth in 26 Del. C. §215(b) if the transactions are between parent and subsidiary corporations or between entities of which 50% of the beneficial ownership is held by the same persons or entities prior to such merger or transfer of control, otherwise an application for Commission approval is required. All other Telecommunications Service Providers are required to make filings in accordance with 26 Del. C. §215.~~

**14.0 Certification**

14.1 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 CPVN is granted.

14.2 Application.

An applicant for a CPCN shall file with the Commission in the format described in 26 Del. Admin. C. §1001-1.6.3, 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.

14.3 Notice.

The applicant shall serve a notice of the filing of such 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.

14.4 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.

~~14.5 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 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.~~

~~14.6 Bonds.~~

~~14.6.1 All applicants must post a \$10,000 performance bond with Delaware surety and renew such bond annually.~~

~~14.6.2 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 of 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.~~

~~14.6.3 In order to comply with Rule 4.6.1 or 4.6.2, an applicant or carrier may file an irrevocable stand-by Letter of Credit in lieu of a bond executed by a Delaware corporate surety. Such Letter of Credit shall:~~

~~14.6.3.1 allow a draw or demand against such Letter in the amount prescribed by Rule 4.6.1;~~

~~14.6.3.2 be irrevocable, and not subject to modification, except upon the consent of the Commission;~~

~~14.6.3.3 be issued by a federal or state chartered financial institution which does business in Delaware or be subject to an agreement with a confirming bank doing business in Delaware that such confirming bank will honor drafts or demands under such Letter;~~

- ~~14.6.3.4~~ be consistent with provisions of 6 ~~Del.C.~~ §§5-101 through 5-117 and include terms that make Delaware law govern the relationship between the issuer and the Commission as beneficiary;
- ~~14.6.3.5~~ name the Commission as the beneficiary under such Letter; and
- ~~14.6.3.6~~ contain terms obligating the issuer to honor demands upon presentation of an Order, ruling, or decision from the Commission which finds, determines, or reports that the carrier is: (1) liable for a specified monetary sanction for its failure to perform an obligation imposed by the Public Utility Act, a Commission rule or regulation, or an Order of the Commission (Rule 4.6.1); or (2) is liable to refund an amount representing prepaid deposits or advances paid by customers of the carrier (Rule 4.6.2).
- ~~14.6.3.7~~ The form and terms of the Letter of Credit shall be subject to approval by the Commission Staff.

~~14.7~~ — Minimum Financial Requirements for LECs.

- ~~14.7.1~~ 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;
- ~~14.7.2~~ 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;
- ~~14.7.3~~ Any applicant that has profitable interstate operations or operations in other states may meet the minimum financial requirements of subparagraphs 4.7.1 and 4.7.2 above by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirements; and
- ~~14.7.4~~ An applicant may demonstrate cash or cash equivalent by the following:
  - ~~14.7.4.1~~ Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's check;
  - ~~14.7.4.2~~ Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;
  - ~~14.7.4.3~~ 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;
  - ~~14.7.4.4~~ 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;
  - ~~14.7.4.5~~ Line 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;
  - ~~14.7.4.6~~ 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;
  - ~~14.7.4.7~~ 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;
  - ~~14.7.4.8~~ 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.

~~14.8~~ — Initial Tariffs or Price Lists.

- ~~14.8.1~~ 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:~~

~~14.8.1.1 customer deposits and advances;~~

~~14.8.1.2 prompt reconciliation of customer billing problems and complaints; and~~

~~14.8.1.3 timely correction of service problems.~~

~~14.9.1.4.5~~ 14.5 Demonstration of Fitness.

~~14.9.1.4.5.1~~ 14.5.1 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:

~~14.9.1.4.5.1.1~~ 14.5.1.1 The applicant's certified financial statements current with twelve (12) months of the filing, and, where applicable, the most recent annual report to shareholders and SEC Form 10-K;

~~14.9.1.4.5.1.2~~ 14.5.1.2 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;

~~14.9.1.4.5.1.3~~ 14.5.1.3 A description of the relevant operations experience of applicant's personnel principally responsible for the proposed Delaware operations;

~~14.9.1.4.5.1.4~~ 14.5.1.4 A specific description of the applicant's engineering and technical expertise showing its qualifications to provide the intended service, including the names, addresses, 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

~~14.9.1.4.5.1.5~~ 14.5.1.5 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.

4.6 Initial Tariffs or Prices.

4.6.1 An applicant must file initial tariffs or price lists for Basic Services.

**9 DE Reg 1390 (03/01/06)**

**15.0 New Options or Offerings; Changes to Existing Rates, Prices or Terms and Conditions**

~~15.1 Notice Required for New Service Options and Offerings-~~

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

~~15.2 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.~~

~~15.3 Service of Notice.~~

~~15.3.1 A Carrier filing a new service or changes to an existing service pursuant to this Rule shall serve the filing on:~~

~~15.3.1.1 the Public Advocate; and~~

~~15.3.1.2 all interested persons that submit a written request to the Commission to receive such notice.~~

~~15.3.1.2.1 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 Commission shall provide an expurgated version of the notice to such parties.~~

~~5.4 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.~~

~~5.5 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.~~

~~15.1 Tariff or Price Lists Changes for Basic Services must be filed with the Commission.~~

~~15.2 Tariff or Price Lists Changes for Competitive Services are not required.~~

**6.0 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.

**7.0 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(e). 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. Telecommunication Service Providers shall provide a letter notice of its abandonment or discontinuation of service for Competitive Services. The Exclusive Telecommunications Service Provider of Basic Service defined in 26 *Del. C.* §705(a)(1) may abandon service pursuant to 26 *Del. C.* §203A.~~

**8.0 Services to be Provided by CLECs Providing Voice Telephone Service**

8.1 Any Telecommunications Service Provider ~~CLEC~~ providing local telecommunications exchange service voice telephone service shall offer, at a minimum, the following telecommunication services to its customers:

8.1.1 access to the public switched network;

~~8.1.2 dial tone line services;~~

8.1.3 local usage services;

~~8.1.4 access to all available long distance Carriers;~~

~~8.1.5 TouchTone services;~~

~~8.1.6 White page listing;~~

~~8.1.7~~ 8.1.2 Access to 911 enhanced emergency system;

~~8.1.8 Local directory assistance service;~~

~~8.1.9~~ 8.1.3 Access to telecommunications relay service.

**9.0 Resale Prohibitions**

~~9.1 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.~~

~~Other.~~

~~With respect to any restrictions on resale other than cross class selling as described in paragraph 9.1 above, a Carrier may impose a restriction only if the Commission determines that the restriction is reasonable and nondiscriminatory.~~

## ~~10.0 Reports to the Commission.~~

### ~~10.1 Annual and Periodic Reports.~~

~~10.1.1 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:~~

~~10.1.1.1 the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware;~~

~~10.1.1.2 the information used to determine Delaware income tax liability;~~

~~10.1.1.3 financial and operating information for the smallest management unit that includes Delaware;~~

~~10.1.1.4 intrastate revenues (net of uncollectible) by service category;~~

~~10.1.1.5 intrastate access and billing and collection cost by service category;~~

~~10.1.1.6 total number of customers by service category;~~

~~10.1.1.7 total intrastate minutes of use by service category;~~

~~10.1.1.8 total intrastate number of calls by service category;~~

~~10.1.1.9 a description of service offered;~~

~~10.1.1.10 a description of each complaint received by service category (in the form of a single Complaints Log; and~~

~~10.1.1.11 verification of deposits, customer advances, the bond requirement and the bond with surety, where applicable.~~

### ~~10.2 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.~~

### ~~10.3 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.~~

### ~~10.4 Time for Filing.~~

~~10.4.1 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;~~

~~10.4.1.1 Annual Report one hundred twenty (120) days after the end of the reported period; and~~

~~10.4.1.2 Special and additional reports as may be prescribed by the Commission unless good cause to the contrary is demonstrated.~~

### ~~10.5 Forbearance from Filing Applications for Approval Under 26 Del. C. §215(a) and 215(b).~~

~~10.5.1 A qualified carrier (as defined below) need not file an application for approval of the financial and asset transactions set forth in 26 Del. C. §215(a)(1), (a)(2), or (a)(3).~~

~~10.5.2 Except in the case of transactions described below, a qualified carrier (as defined below) need not file for approval of mergers or consolidations under 26 Del.C. §215(a)(1) or transfers of control under 26 Del.C. §215(b). However, if the other entity involved in such proposed transaction is a carrier certificated in this State that, in the preceding year, reported annual gross intrastate revenues of \$2,500,000 dollars, a qualifying carrier must continue to file an appropriate~~

- ~~application for merger or transfer of control under 26 *Del. C.* §215(a)(1) and 215(b). An entity is involved in the transaction if:~~
- ~~10.5.2.1 it is a party to the merger agreement;~~
  - ~~10.5.2.2 it is the entity to be acquired in the merger or transfer of control by the qualified carrier or its corporate parent;~~
  - ~~10.5.2.3 it is the entity acquiring the qualified carrier; or~~
  - ~~10.5.2.4 it will, as a result of the transaction, be owned by the same corporate owner as the qualified carrier.~~
- ~~10.5.3 A qualified carrier is a carrier:~~
- ~~10.5.3.1 that does not provide or offer local exchange and intrastate exchange access voice services;~~
  - ~~10.5.3.2 that is currently certificated and that has held such certification for at least one year;~~
  - ~~10.5.3.3 that had less than \$2,500,000 in annual gross intrastate revenues, as reported in the carrier's timely filed Annual Gross Revenue return submitted under 26 *Del. C.* §215(e); and~~
  - ~~10.5.3.4 that does not operate its network from a principal place of business in Delaware.~~
- ~~10.5.4 A qualified carrier shall include in its Annual Report under Rule 10.1, the date and natural of any mergers or transfers of control occurring the preceding calendar year.~~
- ~~10.5.5 If any transfer of control, merger, or other similar transaction shall result in the change of the corporate, or trade, name of the certificated qualified carrier, the qualified carrier must file, within 10 days after such transaction, a statement identifying the new name of the certificated carrier.~~
- ~~10.5.6 The forbearance from filing granted by Rule 10.5.1 and 10.5.2 do not relieve any carrier of the obligation to file for abandonment of service under 26 *Del. C.* §203a, nor does such forbearance remove the obligation that any new entity created by a merger, transfer of control, or other transaction obtain a Certificate of Public Convenience and Necessity from the Commission.~~

**9-DE Reg 1390 (03/01/06)**

**11.09.0 Enforcement**

- 11.19.1 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.
- 11.29.2 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.
- 11.39.3 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 proceeding shall be conducted according to the Commission's Rules of Practice and Procedure.
- 11.49.4 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.

| 41.59.5 Customer Complaints as Grounds 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.~~

| 42.010.0 **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 cause, including unreasonable hardship or burden. The Carrier shall comply with all Rules until the petition for waiver has been granted.

**E X H I B I T "C"**

**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; REOPENED AUGUST 9, 2005; )  
REOPENED NOVEMBER 5, 2013; REOPENED )  
MAY 13, 2014) )

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, REOPENED AUGUST 9, )  
2005; REOPENED NOVEMBER 5, 2013; )  
REOPENED MAY 13, 2014) )

IN THE MATTER OF THE PROPOSED ADOPTION) )  
OF REGULATIONS GOVERNING THE MINIMUM )  
SERVICE REQUIREMENTS FOR THE PROVISION) PSC REGULATION DOCKET NO. 20  
OF TELEPHONE SERVICE FOR PUBLIC USE )  
WITHIN THE STATE OF DELAWARE )  
(OPENED DECEMBER 13, 1988; REOPENED )  
May 13, 2014) )

**PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE  
PUBLIC SERVICE COMMISSION'S  
"RULES FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES"**

**TO: ALL TELECOMMUNICATIONS CARRIERS, ALL  
CONSUMERS, AND OTHER INTERESTED PERSONS**

In 2001, the Delaware Public Service Commission (the "Commission") adopted "Rules for the Provision of Telecommunications Services" at 26 Del. Admin. C. 4001, Part A ("Telecom Rules") to

govern its regulatory oversight of telecommunications carriers operating within Delaware. The Telecom Rules apply to all current telecommunications carriers.

By Order Nos. 8517 and 8518 dated May 13, 2014 (the "Orders"), the Commission now proposes to amend the Telecom Rules (the "Amendments"). The Amendments are a result of enactment of House Bill 96 by the General Assembly of Delaware which became effective on July 15, 2013. As enacted, House Bill 96 amends Title 26 of the Delaware Code to reduce the jurisdiction of the Commission over public utilities providing telecommunication services to reflect the competitive environment that now exists for telecommunications services, but retains Commission oversight of basic services.

The text of the Amendments are attached to the Orders. The Orders and related exhibits are reproduced in the June 2014 edition of the Delaware Register of Regulations and may also be reviewed online at the Commission's website at [www.state.de.us/delpsc](http://www.state.de.us/delpsc). You may also obtain a paper copy of the Orders at the Commission's Dover office for a fee of \$0.25 per page.

Interested parties may file written comments, suggestions, briefs, compilations of data, or other materials concerning the Amendments. Such material (10 copies) may be submitted to the Commission on or before August 7, 2014 at the following address:

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building  
Suite 100  
Dover, Delaware, 19904  
Attn: PSC Reg. Dckts. Nos. 10 & 45

The Commission will conduct a public hearing on the Amendments on Wednesday, July 23, 2014, beginning at 10:00 AM and will take place in the Third Floor Conference Room of the Carvel State Office Building, 820 North French Street, Wilmington, Delaware. You may submit additional materials at the hearing.

If you are handicapped and need assistance or aids in participating in this matter, please contact the Commission to discuss any needed assistance or aids. You may contact the Commission with questions or requests about this matter at the Commission's toll-free telephone number (800) 282-8574 (Delaware only) or (302) 739-4333 (including text telephone). You may also send inquiries by Internet e-mail addressed to [psc@state.de.us](mailto:psc@state.de.us).