

**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))

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))

FINDINGS, OPINION & ORDER NO. 5521

Summary of Proceedings

The Commission initiated this consolidated proceeding on November 17, 1998, by PSC Order No. 4949, reopening two earlier proceedings captioned, respectively, In the Matter of the Sale, Resale, and Other Provisions of Intrastate Telecommunications Services, PSC Regulation Docket No. 10 and In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Service Market, PSC Regulation Docket No. 45. The Commission reopened these dockets to consider amendment of the rules promulgated therein (the "*Docket 10 and 45 Rules*") for the purposes of harmonizing their provisions with each other and with the Commission's other regulations and governing law, lessening the regulatory burdens on regulated telecommunications carriers as well as on the Commission, and reflecting the changing regulatory environment.

The Commission arranged for the publication of notice of the proceeding and of the text of Staff's proposed amendments to the *Docket 10* and *Docket 45 Rules* as well as the text of those Rules in their current form, in the Register of Regulations as required by 29 Del. C. §§ 1133 and 10115 and also arranged for publication of legal notice of the proceeding in *The News Journal* and *Delaware State News* newspapers in accordance with 29 Del. C. § 10115. The Commission designated a Hearing Examiner who received comments and suggestions for further or differing proposed revisions to the Rules and who conducted public hearings on the proposed amendments, at which participants were given the opportunity to present evidence and comments, cross examine witnesses, and make further arguments. At this stage of the proceedings, Conectiv Communications, Inc. ("CCI"), the Division of Public Advocate ("DPA"), Telecommunications Resellers Association ("TRA"), Hyperion Telecommunications, Inc. ("Hyperion"), Sprint Communications Company, LP ("Sprint"), MCIMetro Access Transmission Corporation and MCIMetro Access Transmission, LLC ("MCI"), Bell Atlantic-Delaware, Inc., ("BA-Del"), AT&T Communications of Delaware, Inc. ("AT&T") and the Commission Staff ("Staff") submitted written comments and/or participated in the hearings

On September 7, 1999, the Hearing Examiner issued a Report to the Commission recommending the Commission adopt certain proposed amendments to the *Docket 10* and *45 Rules*. The Commission considered the Hearing Examiner's Report at its October 26, 1999 public meeting. On November 16, 1999, the Commission entered PSC Order No. 5277 remanding the proceeding to the Hearing Examiner to consider consolidation of the *Docket 10* and *Docket 45 Rules* and further revisions in light of specific policies identified by the Commission, and directed the Hearing Examiner to allow further opportunity for comment by participants.

On November 18, 1999, the Commission Staff submitted proposed consolidated *Rules for the Provision of Telecommunications Service* governing competitive provision of both intrastate and local exchange service to the Hearing Examiner. Thereafter, BA-Del, Sprint, AT&T and CCI submitted written comments concerning them. The Hearing Examiner conducted a public hearing on January 6, 2000 to consider argument on the Rules and comments thereto and to supplement the record with the latest filings. At the conclusion of the hearing, the Hearing Examiner closed the record which then consisted of 29 exhibits and 308 pages of transcripts of hearings. Staff and AT&T also submitted post-hearing letters arguing legal positions which the Hearing Examiner considered.

On January 26, 2000, the Hearing Examiner issued a second Report to the Commission recommending that the Commission adopt consolidated *Rules for the Provision of Telecommunications Service* and proposing such recommended Rules. Thereafter, the Commission afforded the participants an opportunity to submit written exceptions to the Report and Recommendations of the Hearing Examiner. Staff, the DPA, CCI, Sprint, AT&T and BA-Del all filed exceptions. The Commission considered the Hearing Examiner's Report, the Hearing Examiner's Proposed Rules and the exceptions of the participants at its public meeting of February 28, 2000.

Upon deliberation, the Commission by Order No. 5391, issued March 28, 2000, determined to repeal the present *Docket 10* and *45 Rules* in their entirety and to adopt the *Rules for the Provision of Telecommunications Services* as proposed by the Hearing Examiner with certain modifications and revisions approved by the Commission. The Commission further determined that the *Rules for the Provision of Telecommunications Services*, as approved by the Commission differed in substantive nature from the proposed revised *Docket 10* and *45 Rules* earlier published in the Register of Regulations, pursuant to Order No. 4949. Accordingly, notice of (1) the Commission's intent to repeal the *Docket 10* and *45 Rules* in their entirety, (2) its proposal to adopt consolidated *Rules for the Provision of Telecommunications Services*, (3) its withdrawal of the previously published proposed revised *Docket 10* and *45 Rules* were published in the Register of Regulations, as were the (1) text of the current *Docket 10* and *45 Rules* and (2) the *Rules for the Provision of Telecommunications Services*, all as required by 29 Del. C. § 1133 and 1115. The Commission also arranged for publication of legal notice of the proceeding in *The News Journal* and *Delaware State News* newspapers in accordance with 29 Del. C. § 10155.

Following publication of these notices, the Commission received further written comment from BA-Del, AT&T and the Association of Communications Enterprises ("ASCENT"), (formerly TRA). On August 1, 2000, the Commission held a duly noticed public hearing to consider final adoption of the *Rules for the Provision of Telecommunications Services*. No member of the public attended. Following deliberations, the Commission by unanimous vote of the three Commissioners participating, determined to adopt the "*Rules for the Provisions of Telecommunications Services*" attached hereto as Exhibit A.

On August 2, 2000, the Governor signed Senate Bill No. 396, amending Title 26 of the Delaware Code to add a new

subchapter 3 governing changes in customer selection of telecommunications service providers. This subchapter authorizes the Commission to promulgate regulations governing the implementation of customer preferred carrier change orders and preferred carrier freezes. The Commission adopts Part B of the *Rules for the Provision of Telecommunications Services* in furtherance of the authority granted it by the new statute.

Summary of Evidence and Information Submitted and Findings of Fact

The Hearing Examiner summarized the evidence and information submitted and recommended findings based thereon. The Commission adopts as its own and incorporates by reference herein the summary of evidence and information submitted and the findings as set out by the Hearing Examiner in his Report of January 26, 2000, except as specifically noted herein.

Rule 1: Definitions

BA-Del and the DPA proposed certain changes to the text of Rule 1, to eliminate surplus language and to clarify coverage of the Rule. The Commission does not accept BA-Del's proposal to revise Rule 1(b) to define "Carrier" to mean "any person or entity offering to the public telecommunications service that originates **and** terminates within the State of Delaware." The phrase "originates **or** terminates," employed by the Hearing Examiner, is not ambiguous and is preferable. (5-0) However, the Commission approves certain changes urged by the DPA and BA-Del to Rules 1(b)(iv), (j) and (m) to eliminate surplus language and foster consistency. (5-0)

Rule 3: Application and Conflict With Other Rules, Regulations, Tariffs and/or Pricelists

Both AT&T and BA-Del proposed alternate language to Rule 3(a) concerning application of the *Rules for the Provision of Telecommunications Service* to BA-Del, the Incumbent Local Exchange Carrier ("ILEC"). The Commission agrees that AT&T's proposed language is preferable to that recommended by the Hearing Examiner. (5-0).

The DPA proposed a new Rule 3(c) governing applicability of the *Rules* to payphone providers. The Commission finds that the *Rules* as adopted unambiguously exclude payphone service providers from coverage and hence rejects the DPA proposal. (5-0) However, the Commission adopts certain clarifications proposed by BA-Del to Rules 3(e) and (g). (5-0).

Rule 4 : Certification

The Hearing Examiner's proposed Rule 4(h), concerning filing of initial tariffs and price lists, allows Staff to require an applicant to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service, upon an investigation into unjust and unreasonable pricing practices. Staff proposes alternate text to Rule 4 (h) which would allow it to obtain cost data from an applicant at any time, upon written request. Staff argued that such a provision is a safeguard against predatory pricing practices. The carriers, other than BA-Del, opposed Staff's position. The Commission agrees with these carriers and the Hearing Examiner. The Commission rejects Staff's proposed modification to Rule 4(h). (4-1, McMahan opposed).

BA-Del pointed out that in Rule 4(a), as well as in other parts of his recommended *Rules* the Hearing Examiner uses the phrase "tariffs **and** price lists," not "tariffs **or** price lists." BA-Del urged that the phrase "tariffs or price lists" is more consistent with the Commission's intent and should be used consistently throughout the *Rules*. The Commission agrees (5-0).

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

BA-Del took exception to the Hearing Examiner's recommended Rule 5(a) which provides that a Carrier offering a new telecommunications service option or offering must provide ten days prior notice to the Commission. BA-Del recommended the Rule be revised to require twenty day notice, consistent with the 20-day notice statutorily required of Carriers who elect coverage under the Telecommunications Technology Investment Act ("TTIA") (as BA-Del has done). Staff and the remaining Carriers opposed BA-Del's position. These parties argued that the twenty day period applicable to BA-Del allows the Commission's Staff to accomplish the administrative review the TTIA requires upon receipt of a filing. Staff is not required to perform a similar level of review concerning the filings of competitive

Carriers. The Commission rejects BA-Del's proposal adopted Rule 5(a) as recommended by the Hearing Examiner. (5-0).

The Hearing Examiner's recommended Rule 5(b) imposed varying notice periods for revisions to existing tariffs or price lists depending upon whether the Carrier proposed to increase or decrease prices. He recommended that price decreases be allowed to go into effect upon three days notice but that implementation of price increases require twenty day notice to the Commission as well as mailed notice to all customers affected. The DPA supported the Hearing Examiner's proposed Rule 5(b). Prior to issuance of the Hearing Examiner's Report, no participant in the proceeding had urged adoption of differentiated notice periods for price increases as opposed to price decreases. Staff and AT&T urged that it would be inappropriate to adopt the Hearing Examiner's proposal on the current record. The Commission agrees and rejects the Hearing Examiner's proposal. The Commission adopts Staff's proposal that Carriers be required to provide three days notice to the Commission for all revisions to filed tariffs or price lists. (4-1, Twilley opposed).

Staff argued that Rule 5(d) (Investigation of Filings) should enunciate a pricing standard requiring that a Carrier's rates be accompanied by a statement that the rates are intended to generate sufficient revenue to cover the incremental cost of offering the service. The Commission rejected this proposal, consistent with its determination concerning Rule 4(h). Further, Rule 5(d) as adopted has been modified to employ the language as Rule 4(h). (5-0).

Staff also took exception to the Hearing Examiner's recommended Rule 5(e) governing special contracts. Staff proposed language requiring any Carrier entering a special (i.e., off-tariff or price list) contract with a customer be required to demonstrate affirmatively to the Commission that actual competition exists for the contract and that rates under the contract would at least equal incremental cost. The Commission rejects Staff's position, consistent with its earlier determination. (4-1, McMahon opposed).

Rule 7: Abandonment or Discontinuation of Service

Staff proposed alternate language to the Hearing Examiner's recommended Rule 7 which it argued was ambiguous. Bell Atlantic and AT&T supported the Staff's recommendation. The Commission adopts the language proposed by Staff. (5-0).

Rule 8: Services to be Provided by CLECs Providing Voice Telephone Service

Staff proposed clarification of Rule 8, listing minimum services to be provided by CLECs. The Commission approves Staff's recommended language. In addition, the DPA proposed amending subparagraph 8(f) to include directory de-listing as a required minimum service. Staff argued that de-listing appears to be a less essential service than directory listing and that its provision need not be mandated. The Commission adopts Staff's position. (5-0).

Rule 9: Resale Prohibitions

The DPA recommended revising the Hearing Examiner's proposed language regarding cross-class selling and other restrictions on resale. The Commission finds that the language proposed by the Hearing Examiner is sufficiently clear. (5-0).

Rule 14: Applicability

As recommended by AT&T, the Commission inserts Rule 14 governing applicability of the Part B Rules (5-0).

Rule 15: Verification of Orders for Telecommunications Services

The Commission corrects the typographical errors contained in the Hearing Examiner's recommended rules, as pointed out by BA-Del. (5-0).

Rule 19: Customer Protection

Rule 19(b) addresses steps a Carrier must take to resolve a customer's complaint concerning an unauthorized change in

the customer's preferred Carrier. BA-Del suggested modification to allow a Carrier to notify customers orally (not only in writing) of the customer's right to file a complaint with the Commission. The Hearing Examiner adopts BA-Del's position. (5-0).

Rule 19(d) (Refunds and Penalties), as proposed by the Hearing Examiner authorizes the Commission, to require a Carrier to refund or void all customer charges resulting from an unauthorized change in preferred Carriers, in the Commission's discretion, following appropriate administrative process. AT&T, Sprint and BA-Del all took exception to this provision. BA-Del argued that the "customer absolution" period (i.e., the refund period) should be limited to 30 days. AT&T and Sprint proposed alternate language which would likewise limit the absolution period to 30 days except where the Commission determines the circumstances warrant a longer refund period. These parties argued that the Federal Communications Commission ("FCC"), in its proceeding for the promulgation of policies and rules concerning unauthorized changes of consumer's long distance carriers (CC Docket No. 94-129) favored an absolution period limited to 30 days. Staff and the DPA supported the Hearing Examiner's Rule. Staff asserted that the FCC's Rule, in its then current version, did not prohibit refund to the customers for a period of longer than 30 days in appropriate circumstances. The Commission concludes that the text proposed by AT&T is not significantly different from the Hearing Examiner's recommended language. Accordingly, the Commission adopts Rule 19(d) as proposed by the Hearing Examiner. (5-0)

Subsequent to the Commission's consideration of the Hearing Examiner's Report and recommended *Rules for the Provision of Telecommunications Services*, BA-Del submitted additional comments requesting revision to Rule 18(e) (ii) which it claimed would facilitate the implementation of a voice response unit ("VRU") for implementation and lifting of preferred carrier freezes by customers. AT&T filed responsive comments and proposed an additional changes to Rule 19 authorizing creation of an independent third party administrator to govern slamming and cramming disputes. In the alternative, AT&T requested the Commission to open a new docket to explore creation of an independent third party administrator.

ASCENT submitted written comments opposing the bonding requirements of Rule 4 and suggesting certain "guiding principles" for the adjudication of slamming complaints.

The Commission considered these comments at its public hearing of August 1, 2000. The Commission deems it to be in the public interest to finally adopt the Rules it previously approved on March 28, without modification that could require further republication and additional administrative process. The Commission recognizes that the telecommunications industry is experiencing rapid change and that these *Rules* may require revision in the foreseeable future to accommodate changed circumstances. (5-0)

AND NOW, this 15th day of August, 2000, IT IS HEREBY ORDERED that:

1. The Commission adopts the *Rules for the Provision of Telecommunications Services* the exact text and citation of which are attached hereto as Exhibit A. (3-0)
2. The Commission repeals the "*Rules for the Provision of Competitive Intrastate Telecommunications Services*" adopted by PSC Order 3283 (June 18, 1991) entered In the Matter of the Sale, Resale and Other Provisions of Intrastate Telecommunications Services, PSC Regulation Docket No. 10 and the "*Interim Rules Governing Competition in the Market for Local Telecommunications Services*" adopted by PSC Order 4468 (April 8, 1997) issued In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Market, PSC Regulation Docket No. 45. (3-0)
3. The Secretary shall transmit this Order, together with the exact text of the *Rules for the Provision of Telecommunications Service* to the Registrar of Regulations for Publication on September 1, 2000.
4. The effective date of this Order shall be the later of September 10, 2000 or ten days after the date of publication in the Registrar of Regulations of the final text of the *Rules for the Provision of Telecommunications Services*.
5. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/ Robert J. McMahon

Chairman

/s/ Joshua M. Twilley

Vice Chairman

/s/ Arnetta McRae

Commissioner

/s/ Donald J. Puglisi

Commissioner

/s/ John R. McClelland

Commissioner

ATTEST:

/s/ Karen J. Nickerson

Secretary

EXHIBIT "A"

PUBLIC SERVICE COMMISSION OF DELAWARE

RULES

FOR THE PROVISION OF

TELECOMMUNICATIONS SERVICES

PART A

CERTIFICATION AND REGULATION OF CARRIERS

Rule 1. Definitions.

(a) Rules shall mean these Rules, including PARTS A and B, governing the provision of telecommunications services in Delaware.

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

(i) any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation;

(ii) a company that provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public;

(iii) providers of domestic public land mobile radio service provided by cellular technology excluded from the Commission's jurisdiction under 26 Del. C. § 202(c); and

(iv) Payphone service providers regulated by this Commission under Rules promulgated in

- (c) CPCN shall mean a Certificate of Public Convenience and Necessity issued by the Commission.
- (d) Commission shall mean the Public Service Commission of Delaware.
- (e) Competitive Local Exchange Carrier ("CLEC") shall mean a Carrier, other than the Incumbent Local Exchange Carrier, offering and/or providing local telecommunications exchange services within the State of Delaware.
- (f) Incumbent Local Exchange Carrier ("ILEC") shall mean in Delaware Bell Atlantic-Delaware, Inc., and any successor thereto.
- (g) Facilities-based Carrier shall mean a Local Exchange Carrier that directly owns, controls, operates, or manages plant and equipment through which it provides local exchange services to consumers within the local exchange portion of the public switched network.
- (h) Local Exchange Carrier ("LEC") shall mean a Carrier offering and/or providing local telecommunications exchange services (i.e., CLECs and ILECs); including both facilities-based and non-facilities-based Carriers.
- (i) Local Telecommunications Exchange Service shall mean non-toll, intrastate Telecommunications Services provided over a Local Exchange Carrier's network, including, but not limited to, exchange access services and basic local services.
- (j) Resale shall mean the sale to an end user of any telecommunications service purchased from another Carrier.
- (k) Telecommunications shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form and content of the information as sent and received.
- (l) Telecommunications Service shall mean the offering of telecommunications for a fee directly to the public within the State of Delaware (originating or terminating within the State, without regard to how the Carrier decides to route the traffic), or to such classes of users as to be effectively available to the public, regardless of the facilities used.

"Telecommunications Service" does not include:

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

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

(iii) The one-way distribution of entertainment services or informational services with no more than incidental customer interaction required for selection of such entertainment or information services; and

(iv) Telecommunications service provided by either primary cellular technology or by domestic public land mobile radio service, even in the event that such transmission originates or terminates in a wireline telephone.

Rule 2. Applicability.

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

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

a. The ILEC.

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

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

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

All Carriers shall provide telephone service in accordance with the Telephone Service Quality Regulations the Commission adopted in PSC Regulation Docket No. 20, by Order No. 3232 (January 15, 1991) as

such may from time to time be amended, except to the extent these Rules impose obligations or grant privileges inconsistent therewith.

(c) Negotiation and Mediation Guidelines.

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

(d) Rules of Practice and Procedure

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

(e) Other Rules and Statutes.

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

(f) Tariffs or Price Lists.

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

Rule 4. Certification.

(a) Certification Requirement.

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

(b) Application.

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

(c) Notice.

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

(d) Business License and Registered Agent.

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

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

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

(f) Bonds.

i. Applicants with assets under \$250,000.

An applicant with total assets less than \$250,000 must post a \$10,000 performance bond with Delaware surety and renew such bond annually until the Carrier's assets exceed \$250,000.

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

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

(g) Minimum Financial Requirements for LECs.

(i) Any applicant for certification as a facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available;

(ii) Any applicant for certification to do business as a non-facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available;

(iii) Any applicant that has profitable

interstate operations or operations in other states may meet the minimum financial requirements of subparagraphs (i) and (ii) above by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirements; and

(iv) An applicant may demonstrate cash or cash equivalent by the following:

(A) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

(B) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

(C) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(D) Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least (12) months beyond certification of the applicant by the Commission;

(E) Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(F) Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding a controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

(G) Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for

a period of at least twelve (12) months beyond certification of the applicant by the Commission;

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

(h) Initial Tariffs or Price Lists.

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

(i) customer deposits and advances;

(ii) prompt reconciliation of customer billing problems and complaints; and

(iii) timely correction of service problems.

(i) Demonstration of Fitness.

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

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

(ii) A brief narrative description of the applicant's proposed operations in Delaware, any present operations in all other states, and states for which service applications are pending;

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

(iv) A specific description of the applicant's engineering and technical expertise showing its qualifications to provide the intended service, including the names, addresses, and qualifications of the officers, directors, and technical or engineering personnel or contractors who will be operating and/or maintaining the equipment to be used to provide such service; and

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

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

a. Notice Required for New Service Options and Offerings.

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

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

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

(c) Service of Notice.

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

(i) the Public Advocate; and

(ii) all interested persons that submit a written request to the Commission to receive such notice.

A Carrier shall file with the Commission a certificate of service as part of its notice requirement. To the extent that any such documents contain information claimed to be proprietary and interested persons have submitted a written request for notice, but have not executed an appropriate

proprietary agreement, the Carrier shall provide an expurgated version of the notice to such parties.

a. 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.

b. Special Contracts

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

Rule 6. Discrimination Prohibited.

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

Rule 7. Abandonment or Discontinuation of Service.

A Carrier may abandon or discontinue service, in whole or in part, in accordance with the terms of 26 Del. C. § 203A(c). The Carrier shall provide notice of its application to discontinue or abandon service to its customers subscribing to such service and to the Division of Public Advocate. Such notice shall describe the options available to the customers. The Carrier's application to abandon or discontinue a service shall contain proposed provision for payment of all relevant outstanding liabilities (deposits and advance payments), if any, to customers within the State of Delaware.

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

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

- a. access to the public switched network;
- b. dial tone line services;
- c. local usage services;

- d. access to all available long distance Carriers;
- e. TouchTone services;
- f. White page listing;
- g. Access to 911 enhanced emergency system;
- h. Local directory assistance service;
- i. Access to telecommunications relay service.

Rule 9. Resale Prohibitions.

(a) Cross-Class Selling.

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

(b) Other.

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

Rule 10. Reports to the Commission.

a. Annual and Periodic Reports.

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

(i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware;

(ii) the information used to determine Delaware income tax liability;

(iii) financial and operating information for the smallest management unit that includes

Delaware;

(iv) intrastate revenues (net of uncollectible) by service category;

(v) intrastate access and billing and collection cost by service category;

(vi) total number of customers by service category;

(vii) total intrastate minutes of use by service category;

(viii) total intrastate number of calls by service category;

(ix) a description of service offered;

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

(xi) verification of deposits, customer advances, the bond requirement and the bond with surety, where applicable.

(b) Accounting System.

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

(c) Attestation.

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

(d) Time for Filing.

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

i. Annual Report: one hundred twenty (120) days after the end of the reported period; and

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

Rule 11. Enforcement.

(a) Commission Oversight.

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

(b) Violation and Penalties.

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

(c) Proceedings.

Upon application by any person affected, including the Division of the Public Advocate or another Carrier, or upon its own motion, the Commission may conduct a proceeding to determine whether a Carrier has violated any provision of these Rules. Such proceedings shall be conducted according to the Commission's Rules of Practice and Procedure.

(d) Investigations.

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

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

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

customer complaints received.

Rule 12. Waiver of Rules Upon Petition.

A Carrier may petition the Commission for waiver of a Rule or Rules on a temporary or permanent basis by demonstrating to the satisfaction of the Commission that a waiver is in the public interest or for other good cause, including unreasonable hardship or burden. The Carrier shall comply with all Rules until the petition for waiver has been granted.

PART B

CUSTOMER ELECTION OF PREFERRED CARRIER

Rule 13. Additional Definitions.

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

(a) Submitting Carrier shall mean a Carrier that: (i) requests on the behalf of a customer that the customer's telecommunications Carrier be changed; and (ii) seeks to provide retail services to an end user customer. A Carrier may be treated as a Submitting Carrier, however, if it is responsible for any unreasonable delays in the submission of Carrier change requests or for the submission of unauthorized Carrier change requests, including fraudulent authorizations.

(b) Executing Carrier shall mean a Carrier that effects a request that a customer's telecommunications Carrier be changed. A Carrier may be treated as an executing Carrier, however, if it is responsible for any unreasonable delays in the execution of unauthorized Carrier changes, including fraudulent authorizations.

(c) Preferred Carrier shall mean the Carrier providing service to the customer at the time of the adoption of these Rules, or such Carrier as the customer thereafter designates as the customer's Preferred Carrier.

a. Preferred Carrier Change Order shall mean generally any order changing a customer's designated Carrier for local exchange service, intraLATA intrastate toll service or both.

Rule 14. Applicability.

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

Rule 15. Verification of Orders for Telecommunications Service.

No Carrier shall submit a Preferred Carrier Change Order unless and until the Order has been first confirmed in accordance with one of the following procedures:

(a) The Carrier has obtained the customer's written authorization in a form that meets the requirements of Rule 16; or

(b) The Carrier has obtained the customer's electronic authorization to submit the Preferred Carrier Change Order. Such authorization must be placed from the telephone number(s) on which the Preferred Carrier is to be changed and must confirm the information required in Rule 16(e). Carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the Preferred Carrier change, including automatically recording the originating automatic numbering identification; or

(c) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the Preferred Carrier Change Order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number). The independent third party must: (1) not be owned, managed, controlled, or directed by the Carrier or the Carrier's marketing agent; (2) must not have any financial incentive to confirm Preferred Carrier Change Orders for the Carrier or the Carrier's marketing agent; and (3) must operate in a location physically separate from the Carrier or the Carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a Preferred Carrier change.

Rule 16. Letter of Agency Form and Content.

(a) A Carrier may use a letter of agency to obtain written authorization and/or verification of a customer's request to change his or her Preferred Carrier selection. A letter of agency that does not conform with this Rule is invalid.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this Rule having the sole purpose of authorizing a Carrier to initiate a Preferred Carrier change. The letter of agency must be signed and dated by the customer to the telephone line(s) requesting the

Preferred Carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c), a letter of agency authorizing a preferred Carrier selection affecting the customer's intrastate service provider only, may be combined with checks that contain only the required letter of agency as prescribed above together with the necessary information to make the check a negotiable instrument. Such a letter of agency check shall not contain any promotional language or material. Such a letter of agency check shall contain in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a Preferred Carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The customer's billing name and address and each telephone number to be covered by the Preferred Carrier change order;

(ii) The decision to change the Preferred Carrier from the current Carrier to the soliciting Carrier;

(iii) That the customer designates the Submitting Carrier to act as the customer's agent for the Preferred Carrier change;

(iv) That the customer understands that only one Carrier may be designated as the customer's local exchange or intrastate Carrier for any one telephone number; and

(v) That the customer understands that any Preferred Carrier selection the customer chooses may involve a charge to the customer for changing the customer's Preferred Carrier.

(f) Any Carrier designated in a letter of agency as a Preferred Carrier must be the Carrier directly setting the rates for the customer.

(g) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current telecommunications Carrier.

(h) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency.

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

(a) A Submitting Carrier shall maintain and preserve records of verification of customer authorization for a minimum period of two years after obtaining such verification.

(b) An Executing Carrier shall not verify the submission of a change in customer's selection of a provider of telecommunications service received from a Submitting Carrier. An Executing Carrier shall promptly execute, without an unreasonable delay, any changes that have been verified and submitted by a Submitting Carrier.

(c) Where a Carrier provides more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll), that Carrier must obtain separate authorization from the customer for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorization obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in these Rules.

Rule 18. Preferred Carrier Freezes.

(a) A Preferred Carrier freeze prevents a change in a customer's Preferred Carrier selection unless the customer has given the Carrier from which the freeze was requested his or her express consent. All Carriers who offer Preferred Carrier freezes must comply with the provisions of this Rule.

(b) All Local Exchange Carriers that offer Preferred Carrier freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's Carrier selections.

(c) Preferred Carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a Preferred Carrier

freeze. The Carrier offering the freeze must obtain separate authorization for each service for which a Preferred Carrier freeze is requested.

(d) All Carrier-provided solicitation and other materials regarding Preferred Carrier freezes must include:

(i) An explanation, in clear and neutral language, of what a Preferred Carrier freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a Preferred Carrier freeze; and explanation that these steps are in addition to the Commission's verification rules for changing a customer's Preferred Carrier selections; and an explanation that the customer will be unable to make a change in Carrier selection unless he or she lifts the freeze; and

(iii) An explanation of any charges associated with the Preferred Carrier freeze.

(e) No Carrier shall implement a Preferred Carrier freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The Local Exchange Carrier has obtained the customer's written and signed authorization in a form that meets the requirements of these Rules; or

(ii) The Local Exchange Carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the Preferred Carrier freeze is to be imposed, to impose a Preferred Carrier freeze. The electronic authorization should confirm appropriate verification data (e.g. the customer's date of birth or social security number) and the information required in these Rules. Carriers electing to confirm Preferred Carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the Preferred Carrier freeze request, including automatically recording the originating automatic number identification; or

(iii) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the Preferred Carrier freeze and confirmed that appropriate verification data (e.g. the customer's date of birth or social security number) and the information required in these Rules. The independent third party must: (A) not be owned, managed, or directly controlled by the Carrier or the Carrier's marketing agent; (B) must not have any financial incentive to confirm Preferred Carrier freeze requests for the Carrier or the Carrier's marketing agent; and (C) must operate in a location physically separate from the Carrier or the Carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a Preferred Carrier freeze.

(f) A Carrier may accept a customer's written and signed authorization to impose a freeze on his or her Preferred Carrier selection. A written authorization that does not conform to this Rule is invalid and may not be used to impose a Preferred Carrier freeze.

(i) The written authorization shall comply with these Rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The customer's billing name and address and the telephone number(s) to be covered by the Preferred Carrier freeze;

(B) The decision to place a Preferred Carrier freeze on the telephone number (s) and particular service(s). The authorization must contain a separate statement for each service to be frozen;

(C) That the customer understands that she or he will be unable to make a change in Carrier selection unless she or he lifts the Preferred Carrier freeze; and

(D) That the customer understands that

any Preferred Carrier freeze may involve a charge to the customer.

(g) All Carriers who offer Preferred Carrier freezes must, at a minimum, offer customers the following procedures for lifting a Preferred Carrier freeze:

(i) A Local Exchange Carrier administering a Preferred Carrier freeze must accept a customer's written and signed authorization stating her or his intent to lift a Preferred Carrier freeze; and

(ii) A Local Exchange Carrier administering a Preferred Carrier freeze must accept a customer's oral authorization stating her or his intent to lift a Preferred Carrier freeze and must offer a mechanism that allows a submitting Carrier to conduct a three-way conference with the Carrier administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a Preferred Carrier freeze, the Carrier administering the freeze shall confirm appropriate verification data (e.g., the customer's date of birth or social security number) and the customer's intent to lift the particular freeze.

Rule 19. Customer Protection.

(a) Procedures To Be Followed By The Customer.

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

(b) Procedures To Be Followed By Carriers.

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

complaint with the Commission and shall provide the customer with the Commission's address and telephone number.

(c) Carriers to Maintain Record of Complaints.

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

(i) name, address, and telephone number of complainant and the date and manner received by the Carrier; and

(ii) a chronological summary of the dispute and its current status, including any resolution and date of resolution.

(d) Refund and Penalties.

In the event the Commission determines that a Carrier has caused a customer's Carrier for a service to be changed without the customer's authorization obtained in exact compliance with these Rules, or has caused the customer to be billed for charges imposed without exact compliance with these Rules, then the Commission may require the Carrier to promptly refund or void to the customer any charges the Carrier has caused to be billed as a result of the unauthorized change or charge, and/or any other remedies available for violation of these Rules as allowed by law.