

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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

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

ORDER NO. 5767

AND NOW, to-wit, this 24th day of July, 2001;

WHEREAS, in PSC Order No. 3283 (June 18, 1991) entered *In The Matter of the Sale, Resale and Other Provisions of Interstate Telecommunications Services*, PSC Regulation Docket No. 10, the Commission issued its *Rules For The Provision of Competitive Intrastate Telecommunications Services* to govern telecommunications carriers offering intrastate telecommunications services for public use within the State; and

WHEREAS, by PSC Order No. 4468 (April 8, 1997) entered *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 issued *Interim Rules Governing Competition In The Market For Local Telecommunications Services* to govern competitive local exchange telecommunications services within the State; and

WHEREAS, by PSC Order No. 4949 (Nov. 17, 1998) entered *In the Matter of the Sale, Resale, and Other Provisions of Intrastate Telecommunications Services (Opened May 1, 1984; Reopened November 17, 1998)*, 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 (Opened November 21, 1995; Reopened November 17, 1998)*, PSC Regulation Docket No. 45, the Commission reopened the

proceedings on the Dockets 10 and 45 Rules to consider amendments to lessen the regulatory burdens on telecommunications carriers, as well as on the Commission; to reflect the changing regulatory environment; to harmonize, where appropriate, the provisions of the Dockets 10 and 45 Rules; and to conform, where practicable, the requirements of these Rules with other regulatory provisions; and

WHEREAS, by PSC Order No. 5521 (Aug. 15, 2000), the Commission repealed the *Rules for the Provision of Competitive Intrastate Telecommunications Services* adopted by PSC Order No. 3283 (June 18, 1991) entered *In the Matter of the Sale, Resale and Other Provisions of Intrastate Telecommunications Services*, and adopted by PSC Order No. 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; and the Commission, at the same time, adopted new *Rules for the Provision of Telecommunications Services*; and

WHEREAS, the Commission Staff has recently reviewed the *Rules for the Provision of Telecommunication Services* and has proposed amendments to those Rules to address concerns raised by Staff which impact the certification of competitive local exchange carriers and intrastate carriers, including application and bonding requirements; to reflect changes that have occurred in federal and state telecommunications laws which impact the existing *Rules for the Provision of Telecommunications Services*; to ensure that carriers comply with federal and state law; and to conform, where practicable, the requirements of these Rules with other regulatory provisions; and

WHEREAS, the Commission is authorized by 26 Del. C. § 209 to fix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed, and followed thereafter by any public utility; and

WHEREAS, the Commission deems it appropriate to consider amendment of the *Rules for the Provision of Telecommunication Services* as proposed by its Staff, pursuant to the procedures for amendment of agency regulations set forth in 29 Del. C. §§ 10113-10119.

Now, therefore, **IT IS HEREBY ORDERED THAT:**

1. The Commission proceedings captioned *In The Matter of the Sale, Resale and Other Provisions of Interstate 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, are hereby reopened to consider amendment of the *Rules for the Provision of Telecommunications Services* as promulgated in Order No. 5521. These proceedings shall be consolidated and conducted as a single proceeding for this purpose.

2. William F. O'Brien is designated as the Hearing Examiner for this proceeding pursuant to the terms of 26 Del. C. § 502 and 29 Del. C. § 10116, to organize, classify, and summarize all materials and other testimony filed in this proceeding, and to make findings and recommendations to the Commission concerning the proposed amendments on the basis of the materials and information submitted. Hearing Examiner O'Brien is specifically authorized to solicit additional comments and to conduct, upon due notice, such public hearings as may be required to develop further materials and evidence. Francis J. Murphy, Esquire, is designated as Staff Counsel for this matter.

3. The Commission seeks public comment and input concerning the content of the proposed amendments to the *Rules for the Provision of Telecommunications Services*, and to comply with the requirements of 29 Del. C. §§ 10113 and 10115, the Commission hereby issues the Notice of Proposed Rules Amendment attached hereto as Exhibit "A" for publication in the Register of Regulations and in two (2) newspapers of general circulation in the State.

4. Pursuant to 26 Del. C. § 209 and 29 Del. C. § 10111 et seq., the Commission promulgates the proposed revised *Rules for the Provision of Telecommunications Services* in the form attached hereto as Exhibit "B". Exhibit "B" reflects the existing *Rules for the Provision of Telecommunications Services* and the proposed amendments. Proposed additions to the text of the existing *Rules for the Provision of Telecommunications Services* are identified by underlining (except for headings) and proposed deletions by striking.

5. The Commission Secretary shall file the Notice of Proposed Rules Amendment, together with copies of the existing text of the *Rules for the Provision of Telecommunications Services* and the proposed amendments thereto, with the Registrar of Regulations for publication in the Register of Regulations, as required by 29 Del. C. § 10115, on August 1, 2001. In addition, the Commission Secretary shall, contemporaneous with such filing, cause a copy of the Notice attached as Exhibit "A" and the proposed revised *Rules for the Provision of Telecommunications Services* attached as Exhibit "B" to be sent by United States Mail to: (1) all prior participants in PSC Regulation Dockets 10 and 45; (2) all persons who have made timely requests for advance notice of such proceedings; and (3) the Division of the Public Advocate.

6. The Commission Secretary shall cause the publication of the attached Notice of Proposed Rules Amendment attached hereto as Exhibit "A" to be made in The News Journal and the Delaware State News newspapers on the following dates, in two column format, outlined in black:

August 1, 2001 (The News Journal)

August 2, 2001 (Delaware State News)

7. The telecommunications service providers regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del. C. § 114.

8. 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/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

Joann T. Conaway

Commissioner

ATTEST:

/s/ Karen J. Nickerson

Secretary

E X H I B I T "A"

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

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

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

**NOTICE OF PUBLIC COMMENT PERIOD AND PROPOSED AMENDMENTS
TO THE DELAWARE PUBLIC SERVICE COMMISSION'S
RULES FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES**

On July 24, 2001, the Delaware Public Service Commission ("the Commission") entered an Order promulgating proposed revisions to the Commission's *Rules for the Provision of Telecommunications Services*. The proposed amendments to the *Rules* are intended: 1) to address concerns raised by Staff which impact the certification of competitive local exchange carriers and intrastate carriers, including application and bonding requirements; 2) to reflect other changes that have occurred in federal and state telecommunications laws which impact the existing *Rules*; 3) to ensure that carriers comply with federal and state law; and 4) to conform, where practicable, the requirements of the *Rules* with other regulatory provisions.

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

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Twelve (12) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before August 31, 2001.** Persons

who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before August 31, 2001.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations will be available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the Commission's secretary, Karen J. Nickerson, by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by Internet e-mail at knickerson@state.de.us.

PART A
CERTIFICATION AND REGULATION OF CARRIERS

Rule 1. Definitions.

- (a) Rules shall mean these Rules, including PARTS A and B, governing the provision of telecommunications services in Delaware.
- (b) Carrier shall mean any person or entity offering to the public Telecommunications service that originates or terminates within the State of Delaware. The term "Carrier" does not include:
- (i) any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation;
 - (ii) a company that provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public;
 - (iii) providers of domestic public land mobile radio service provided by cellular technology excluded from the Commission's jurisdiction under 26 *Del. C.* § 202(c); and
 - (iv) Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12.
- (c) CPCN shall mean a Certificate of Public Convenience and Necessity issued by the Commission.
- (d) Commission shall mean the Public Service Commission of Delaware.
- (e) Competitive Local Exchange Carrier ("CLEC") shall mean a Carrier, other than the Incumbent Local Exchange Carrier, offering and/or providing local telecommunications exchange services within the State of Delaware.

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

"Telecommunications Service" does not include:

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

- (ii) telephone or telecommunications answering services, paging services, and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission;
- (iii) The one-way distribution of entertainment services or informational services with no more than incidental customer interaction required for selection of such entertainment or information services; and
- (iv) Telecommunications service provided by either primary cellular technology or by domestic public land mobile radio service, even in the event that such transmission originates or terminates in a wireline telephone.

Rule 2. Applicability.

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

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

(a) The ILEC.

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

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

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

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

(c) Negotiation and Mediation Guidelines.

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

(d) Rules of Practice and Procedure

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

(e) Other Rules and Statutes.

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

(f) Tariffs or Price Lists.

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

Rule 4. Certification.

(a) Certification Requirement.

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

(b) Application.

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

(c) Notice.

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

(d) Business License and Registered Agent.

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

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

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

(f) Bonds.

(i) ~~Applicants with assets under \$250,000~~ Performance Bonds.

~~All~~ applicants ~~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-basis for the same period;

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

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

(h) Initial Tariffs or Price Lists.

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

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

(i) Demonstration of Fitness.

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

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

intended service, including the names, addresses, and qualifications of the officers, directors, and technical or engineering personnel or contractors who will be operating and/or maintaining the equipment to be used to provide such service; and

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

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

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

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

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

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

(c) Service of Notice.

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

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

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

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

(d) Investigation of Filings.

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

(e) Special Contracts

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

Rule 6. Discrimination Prohibited.

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

Rule 7. Abandonment or Discontinuation of Service.

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

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

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

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

Rule 9. Resale Prohibitions.

(a) Cross-Class Selling.

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

(b) Other.

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

Rule 10. Reports to the Commission.

(a) Annual and Periodic Reports.

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

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

- (ii) the information used to determine Delaware income tax liability;
- (iii) financial and operating information for the smallest management unit that includes Delaware;
- (iv) intrastate revenues (net of uncollectible) by service category;
- (v) intrastate access and billing and collection cost by service category;
- (vi) total number of customers by service category;
- (vii) total intrastate minutes of use by service category;
- (viii) total intrastate number of calls by service category;
- (ix) a description of service offered;
- (x) a description of each complaint received by service category (in the form of a single Complaints Log); and
- (xi) verification of deposits, customer advances, the bond requirement and the bond with surety, where applicable.

(b) Accounting System.

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

(c) Attestation.

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

(d) Time for Filing.

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

- i. Annual Report: one hundred twenty (120) days after the end of the reported period; and
- ii. Special and additional reports: as may be prescribed by the

Commission unless good cause to the contrary is demonstrated.

Rule 11. Enforcement.

(a) Commission Oversight.

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

(b) Violation and Penalties.

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

(c) Proceedings.

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

(d) Investigations.

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

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

The Commission may hold a proceeding to determine whether to suspend

or revoke the certificate of, or otherwise penalize any Carrier for reason of customer complaints. The Commission may investigate any customer complaints received.

Rule 12. Waiver of Rules Upon Petition.

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

PART B

CUSTOMER ELECTION OF PREFERRED CARRIER

Rule 13. Additional Definitions.

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

~~(a) 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.~~

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

~~(d)~~(b) Preferred Carrier Change Order shall mean generally any order changing

a customer's designated Carrier for local exchange service, intraLATA intrastate toll service or both.

Rule 14. Applicability.

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

Rule 15. Verification of Orders for Telecommunications Service.

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

~~(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~~

~~(c). 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~~ the requirements set forth in 47 C.F.R. § 64.1130 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 (c) 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) Submission and execution of changes in customer carrier selection shall comply with 47 C.F.R. § 64.1120. 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~~47 C.F.R. § 64.1190.

~~(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.~~
- ~~(c) 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~~

~~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~~shall require the Carrier to promptly refund or void to the customer any charges the Carrier has caused to be billed as a result of the unauthorized change or charge, and/or any other remedies available for violation of these Rules as allowed by law. 26 Del. C. § 924(c). The Commission's remedies are in addition to those required under 47 C.F.R. § 64.1170 to the extent the FCC's remedies have not provided a refund or credit to the subscriber in the amount of 100% of all charges the Carrier caused to be billed as a result of the unauthorized change or charge.