

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) )

ORDER NO. 4949

AND NOW, to-wit, this 17th day of November, 1998;  
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 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 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, the Commission Staff has reviewed both the Rules For  
The Provision of Competitive Intrastate Telecommunication Services (the  
?Docket 10 Rules?) and the Rules Governing Competition In The Market For  
Local Telecommunications Services (the ?Docket 45 Rules?) and has proposed  
amendment of those Rules to lessen 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 Docket 10 and Docket 45 Rules; 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 Docket 10 and Docket 45 Rules as proposed by its Staff,  
pursuant to the procedures for amendment of agency regulations set forth  
by 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

re-opened to consider amendment of the Rules promulgated therein. These proceedings shall be consolidated and conducted as a single proceeding for this purpose.

2. That Robert P. Haynes 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 Haynes 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. Barbara MacDonald, Esquire, is designated as Staff Counsel for this matter.

3. That the Commission seeks public comment and input concerning the content of the proposed amendments to the Docket 10 and Docket 45 Rules, and for this purpose and to comply with the requirements of 29 Del. C. ?? 1133 and 10115, the Commission hereby issues the Notices of Proposed Rule Amendment attached hereto as Exhibits ?A? and ?B? for publication, respectively, in the Register of Regulations and in two (2) newspapers of general circulation in the State.

4. That the Commission Secretary shall file the Notice of Proposed Rule Amendment, together with copies of the existing text of the Docket 10 and Docket 45 Rules 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 December 1, 1998. In addition, the Commission Secretary shall, contemporaneous with such filing, cause a copy of the Notice attached as Exhibit ?A? and the existing Docket 10 and Docket 45 Rules and the proposed amendments thereto 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.

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

December 1, 1998 (for The News Journal)

December 2, 1998 (for the Delaware State News)

5. That 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.

6. That 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

E X H I B I T ?A?

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MARKET (OPENED NOVEMBER 21, 1995; )  
REOPENED NOVEMBER 17, 1998) )

NOTICE OF PROPOSED RULE AMENDMENT

The Delaware Public Service Commission (the "PSC") proposes to formulate and adopt amendments to its existing "Rules for the Provision of Competitive Intrastate Telecommunications Services first adopted In The Matter of The Sale, Resale and Other Provisions Of Intrastate Telecommunications Services," PSC Regulation Docket No. 10 ("the Docket 10 Rules") and to its existing "Interim Rules Governing Competition in the Market for Local Telecommunications Services" first adopted 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 "Docket 45 Rules"). The proposed amendments are intended to reflect changes in the regulatory environment since the Rules' adoption; to harmonize the provisions of the Docket 10 Rules and Docket 45 Rules, where appropriate; and to conform the provisions of these Rules with other regulatory provisions, where practicable. The rule amendments will, overall, lessen the regulatory burdens and costs, both to regulated carriers and the PSC. Significant proposed changes with respect to the Docket 10 Rules include allowing carriers to file price lists in place of tariffs; eliminating the requirement that tariffs be accompanied by cost studies; allowing changes to existing tariff rates to be implemented upon three days notice, rather than on fourteen or five days notice; adding a new rule to govern Primary Interexchange Carriers' ("PIC") changes consistent with the Federal Communications Commission's PIC change rules; and adding a new rule governing enforcement.

Significant proposed amendments with regard to the Docket 45 Rules include eliminating the requirement that competitive local exchange carriers file cost data with rate changes unless specifically requested to do so by the Commission Staff, and revising the rules governing customer selection of a local exchange carrier to minimize the possibility of unauthorized changes in carrier.

The PSC derives its legal authority to make and amend regulations governing the conduct of public utilities from 26 Del. C. §§ 201 and 209. In addition, under 26 Del. C. § 703, the PSC is authorized to modify its regulation of telecommunications services where such modifications will, among other things, promote efficiency in public and private resource allocations and encourage economic development. The process under which the PSC acts to make and amend regulations is set forth by 29 Del. C. §§ 10111 through 10119.

The text of both the present Docket 10 Rules and the proposed amendments and changes thereto, are attached hereto as Attachment 1. In that attachment, regular type denotes the presently existing text of the rules. Underlined text indicates the text of proposed additions or changes.

Struck-through text indicates present text proposed to be deleted. The text of both the present Docket 45 rules and the proposed amendments and changes thereto are attached as Attachment 2.

In that attachment, regular type denotes the presently existing text of the rules. Underlined text indicates the text of proposed additions or changes. Struck-through text indicates present text proposed to be deleted. The text of the existing and proposed Regulations Docket 10 and Regulation Docket 45 Rules, along with summaries of the proposed changes, may be inspected at the Commission's office, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904 during the Commission's normal business hours, Monday to Friday, 8:00 AM to 4:30 PM. Copies are available at a fee of \$0.25 per page. The existing and proposed rules may also be inspected and copied at the Commission's website - <http://www.state.de.us/govern/agencies/pubservc/delpsc.htm>

The PSC solicits written comments, compilations of data, briefs, or other written materials addressing the proposed amendments. Twelve (12) copies of such written materials shall be filed with the Commission at its office at the above address on or before January 8, 1999. In addition, any comments should include proposed text of any further or alternate amendments to the Docket 10 Rules or Docket 45 Rules supported by the party submitting comments. After the filing of such comments, the Commission's designated Hearing Examiner in this proceeding may solicit additional comments or further proposed amendments on the basis of the materials and information submitted.

The Hearing Examiner shall conduct a public hearing upon the proposed amendments and all comments and materials received on February 8, 1999, commencing at 10:00 AM at the Commission's Dover office.

Any person who wishes to otherwise participate in this proceeding should notify the Commission in writing on or before January 8, 1999. Copies of comments filed and copies of any proposed amendments will be available for public inspection at the Commission's Dover office. Only persons who file comments or request to participate will be provided notice of further proceedings.

Telecommunications service providers subject to the jurisdiction of the PSC are notified that they may be charged for the costs of this proceeding under 26 Del. C. §114.

Individuals with disabilities who wish to participate in these proceedings may contact the Commission to discuss auxiliary aids or services needed to facilitate such participation. Contact may

be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll free number is 800-282-8574.

E X H I B I T ?B?

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10 Rules and Docket 45 Rules, where appropriate; and to conform the provisions of these Rules with other regulatory provisions, where practicable. The rule amendments will, overall, lessen the

regulatory burdens and costs, both to regulated carriers and the PSC.

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Attachment 1

DELAWARE PSC RULES

FOR THE PROVISION OF COMPETITIVE

INTRASTATE TELECOMMUNICATIONS SERVICES

Applicability: Any person (Carrier) offering intrastate telecommunications services for public use within the State of Delaware (originating and terminating within the State, without regard to how the person decides to route the traffic) is subject to the regulation of the Public Service Commission (hereafter, "Commission") of the State of Delaware.

Persons subject to these regulations (i.e., Carriers offering service for public use) include resellers of WATS and other bulk telecommunications services and facilities-based carriers. Persons providing telephone service through customer owned, coin operated (or pay) telephones (COCOTS) are governed by the Commission Rules in Regulation Docket No. 12 regarding (COCOTS) as the same may from time to time be amended. The Commission reserves the right to exempt any person otherwise subject to these Rules from the operation of any portion of such rules for good cause shown after notice and hearing. To the extent that existing tariffs or price lists of intrastate telecommunications service providers are The Diamond State Telephone Company as of the effective date of these Rules establish rules and regulations inconsistent with these Rules, then, and in that event, PSC Regulation Docket No. 10 Rules the tariff shall control.

Rule 1 - Definitions

a. "COCOT" means Customer Owned, Coin Operated (i.e., pay) Telephone.

b. "Telecommunications Service" or "Telephone Service" means the transmittal of information, by means of electronic or electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all

instrumentalities ancillary thereto, equipment, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission including directory, information and operator service. "Telephone Service" does not include , however:

1. the rent, sale, or lease, or exchange for other value received, of customer premises equipment. except for customer premises equipment owned or provided by a telecommunications carrier certificated prior to the effective date of these Regulations and only then to the extent that the regulation of its provision is not Federally preempted.
2. 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.
3. Community antenna television service or Cable Television Service to the extent that such service is utilized solely for the one-way distribution of such entertainment or informational services with no more than incidental subscriber interaction required for selection of such entertainment services.

c. "REGULATED TELECOMMUNICATIONS CARRIERS" or ?Carriers? - means persons who provide telephone service for public use within the State of Delaware. For purposes of regulation by the Delaware Public Service Commission the term "Regulated Telecommunications Carrier" or ?Carrier? specifically does not include:

1. telephone service that is provided by or owned and operated by any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation.
  2. a company which provides telecommunications services provided by a company 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.
  3. providers of telephone service provided by either primarily cellular technology or by domestic public land mobile radio service.
- d. "INTRASTATE" means telecommunications services that originate and terminate within the State of Delaware, without regard to how the call is switched or routed.

Rule 2 - Certification Requirement. All persons (Carriers) wishing to provide public intrastate telecommunications services within the State of Delaware are required to file with the Commission an original and ten (10) copies of an Application for Certificate of Public Convenience and Necessity. Such application shall contain all the information and exhibits, hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately service the public interest and that the public convenience and necessity requires or will require the operation of such business.

Rule 3 - Notice. Notice of the filing of such an application shall be given at the time determined by the Commission Staff of the filing, to each certificated telephone company (excluding each holder of a COCOT Certificate), the Public Advocate, and to such other entities as may be required by the Commission. Each applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.

Rule 4 - License Requirement. Each applicant for a Certificate shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including that it has having received authority to do business issued by the Secretary of State all licenses required by the Division of Revenue of the State of Delaware and by local authorities within the area of proposed operation within the State.

Rule 5- Traffic. Persons (Carriers) seeking to provide intrastate telecommunications service within the State of Delaware shall be required in their filings to set forth an effective plan for identifying and billing intrastate versus interstate traffic, and shall pay the appropriate Local Exchange Company for access at its 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 local exchange company 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.

Rule 6 - Additional Requirements. Applicants shall be required to present substantial evidence supporting their financial, operational and technical ability to render service within the State of Delaware. Such evidence shall include, but is not limited to:

- a. Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.
- b. Brief narrative description of Applicant's proposed

business in Delaware and its operations in other states. Identifications of states in which Applicant presently is providing service, and for which service applications are pending.

c. Upon written request of the Commission Staff, the three year construction, maintenance, engineering and financial plans for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such services.

d. Relevant operational experience of each principal officer responsible for Delaware operations.

e. Specific description of Applicant's engineering and technical expertise showing Applicant's qualification to provide the intended service including the names, addresses and qualifications of the officers, directors and technical or engineering personnel who will be operating and/or maintaining the equipment to be used to provide such service.

f. Upon written request of the Commission Staff, the description and map of the Applicant's owned, leased, and optioned facilities existing and planned to exist within the State of Delaware in the next three years. Also, map showing points of presence within the State of Delaware. All such descriptions and maps shall at all times be kept current and are to be updated as changes are known to the Applicant during the processing for the application and thereafter if the application is approved.

g. If the Applicant does not require deposits, advance payments, prepayments, financial guarantees or the like from customers and charges only for service after it has been provided, then a no bond shall be required. Otherwise, Applicant shall file a bond with a corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The Bond need not be filed with the application but no certificate will be issued to an Applicant and no Applicant may commence business until Applicant files such Bond with the Commission. The amount of the Bond will be the greater of (1) 150% of the projected balance of deposits and advances at the end of three years of operations or (2) \$50,000. If at any time the actual amount of deposits and advances held by the holder of a Certificate issued after the effective date of this regulation exceeds the amount projected, the amount of the Bond with surety shall be increased to comply with the requirement in the preceding sentence. Continuation of the Bonding requirement after the first three years will be at the discretion of the Commission which upon application may dispense with the Bond requirement for good cause shown.

h. Applicants, with total assets less than \$250,000, must post a \$10,000 performance bond with Delaware

surety and renew such bonds annually until their assets exceed \$250,000.

h.i. Copies of the Applicant's authority to do business in Delaware State Business License issued by Delaware's Secretary of State. Delaware Division of Revenue.

Rule 7 - Tariffs and Cost Studies. Each application for a Certificate of Public Convenience and Necessity shall include proposed initial tariffs or price lists, rules, regulations, terms and conditions of service specifically adapted for the State of Delaware.

Carriers filing rates for new services or changing rates for existing services should provide a statement to the Commission that such rates generate sufficient revenues to cover the incremental cost of offering such service.

Carriers do not need to provide cost data showing that rates are generating sufficient revenue to cover the incremental cost of offering a service unless specifically requested to do so upon written request by the Commission Staff. Initial tariffs shall be accompanied by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to enter the Delaware market for each of the proposed services. Copies of Applicant's tariffs or price lists, and terms and conditions of service in other jurisdictions must be provided to the Commission upon request. Applicant's tariffs must include specific policies for customer deposits and advances, for prompt reconciliation of customer billing problems and complaints, and for timely correction of service problems. Applicants Applications must provide and keep current the name, address and telephone number of Applicant's Delaware Resident Agent.

ule 8 - New Options or Offerings

a. Competition exists - Persons (Carriers) seeking to introduce a service option or offering under this section shall file information sufficient to establish the existence of actual competition for the services and customer categories to which the tariff or price list applies.

After initial certification, a person (Carrier) may introduce new options or offerings ten (10) days after making a tariff or price list filing with the Commission. A change to an existing tariff or price list can be implemented upon fourteen (14) three (3) days notice. for price increases and five (5) days notice for price decreases. The tariff or price list filing shall be accompanied by cost support as required in Rule 7 cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to propose the option, offering or tariff change.

b. Competition does not exist After initial certification, a person (carrier) may introduce new options or offerings, or change an existing tariff, 60 days after making a tariff filing with the Commission. The tariff filing shall be accompanied by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to propose the option, offering or tariff change. New options, offerings or tariff changes may be suspended in appropriate cases but normally will be allowed to take effect upon 60 days notice: however, the Commission may for good cause shown waive this requirement and allow the tariffs to go into effect upon shorter notice.

Rule 9 - Abandonment or Discontinuation of Service. No person (carrier) shall abandon or discontinue service, or any part thereof, established within the State of Delaware without prior Commission approval and without having previously made provision, approved by the Commission, for payment of all relevant outstanding liabilities (deposits) to customers within the State of Delaware.

Rule 10 - Reports to be provided to the Commission. All persons (carriers) certificated to provide Intrastate telephone service for public use after the effective date of these Rules shall provide such information concerning Delaware operations to the Public Service Commission as the Commission may from time to time request.

a. The accounting system to be used is the Uniform System of Accounts of the Federal Communications Commission or other uniform system of accounts previously approved in writing by the Chief of Technical Services Accountant of the Commission.

b. All reports required by these Rules to be submitted to the Commission shall be attested to by an officer or manager of the carrier, under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the carrier's operation.

c. All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified herein, or unless good cause is demonstrated by the carrier:

1. Annual reports: one hundred twenty (120) days after the end of the reported period.

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

d. The annual report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include (i) the same after-the-fact

information that management is provided concerning the measurement of performance provided in Delaware, (ii) the information used to determine the Delaware Income Tax liability, and (iii) financial and operating information for the smallest management unit that includes Delaware. Additional information to be provided includes:

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

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

NOTE: All reports filed pursuant to the requirement of this section may be deemed to be non-public records within the contemplation of the exemption from public record status accorded by 29 Del. C. § 10002 (d)(2) for trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature. Such reports to receive confidential treatment must be clearly and conspicuously marked on the title page as containing proprietary information. Each page with the report containing information deemed by the Company to be proprietary in nature shall be so marked.

Rule 11 - Discrimination Prohibited. No person (Carrier) shall unreasonably discriminate among persons requesting a tariffed service within the State of Delaware. The Commission directs that the operating rule shall be service pursuant to tariff or price list. If, in specific instances, a Carrier wishes to provide service pursuant to contract as a response to direct competition, that Carrier is required to demonstrate affirmatively that (i) the request is in response to actual rather than potential competition and (ii) that the proposed contract structure and rates are at least equal to incremental cost.

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. Sections 217, 218.

Rule 12 - Suspension or Revocation of Certificate. Excessive subscriber complaints against a person (Carrier) shall be a basis for suspension or revocation of a carrier's

Certificate of Public Convenience and Necessity if, after hearing, the Commission determines such complaints to be meritorious. In all proceedings, the Commission shall give to the person (Ccarrier) notice of the allegations made against it and afford the Ccarrier with an opportunity to be heard concerning those allegations, prior to the suspension or revocation of the Ccarrier's Certificate of Public Convenience and Necessity or other formal action. The burden of establishing the adequate provision of service is upon the utility.

Rule 13- Blockage. Persons (Ccarriers) who intentionally or otherwise carry intrastate telecommunications traffic for sale or resale within the State of Delaware on facilities or equipment available to the public are required:

- a. To file for a Certificate of Public Convenience and Necessity under these Rrules, unless already certified by the Commission; or
- b. To immediately block such intrastate traffic so that certification is no longer required.

Rule 14 - Service Quality. All persons subject to these Rules shall provide telephone service in accordance with such Telephone Service Quality Regulations as the Commission has adopted in PSC Regulation Docket No. 20, Order No.3232. An Applicant seeking to be exempted from any portion of those Rules should file an appropriate application for exemption with the Commission, pursuant to Rule 1.2.3 of the rules adopted by the Commission in Order No. 3232 (PSC Regulation Docket No. 20). Upon a Commission determination that a specific service of a person (Ccarrier) meets the requirements of Rule 8.a establishing the existence of actual competition, then the shortened notice requirements in Rule 8.a shall apply to that specific service of that person (Ccarrier) and the 60-day notice requirement of Rule 3.5.1.G, as adopted in the Commission's Order No. 3232 (Docket No. 20) shall no longer apply to it., pending future Commission action.

Rule 15 - PIC Changes - No Carrier shall submit to a LEC a primary interexchange carrier (PIC) change order generated by telemarketing unless the order has first been confirmed in accordance with the following procedures:

- a. The Carrier has obtained the customer?s written authorization in a form that meets the requirements of Rule 16 of these Rules; or
- b. The Carrier has obtained the customer?s electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in paragraph (a) of this Rule 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 PIC change, including automatically recording the originating ANI; or

c. An appropriately qualified and independent third party operating in a location physically separate from telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number); or

d. Within three business days of the customer's request for a PIC change, the Carrier must send each new customer an information package by first class mail containing at least the following information concerning the requested change:

1. The information is being sent to confirm a telemarketing order placed by the customer within the previous week:

2. The name of the customer's current Carrier;

3. The name of the newly requested Carrier;

4. A description of any terms, conditions, or changes that will be incurred;

5. The name of the person ordering the change;

6. The name, address, and telephone number of both the customer and the soliciting Carrier;

7. A postpaid postcard which the customer can use to deny, cancel or confirm a service order;

8. A clear statement that if the customer does not return the postcard the customer's long distance service will be switched within 14 days after the date the information package was mailed to [name of soliciting carrier];

9. The name, address, and telephone number of a contact point at the Commission for consumer complaints; and

10. Carriers must wait 14 days after the form is mailed to customers before submitting their PIC change orders to LECs. If customers have canceled their orders during the waiting period, Carriers, of course, cannot submit the customer's orders to LECs.

Rule 16 - Letter of agency form and content

a. A Carrier shall obtain any necessary written authorization from a subscriber for a primary interexchange change by using a letter of agency as specified in this section. Any letter that does not conform with this section is invalid.

b. The letter of agency shall be a separable document (an easily separate document containing only the authorizing language described in paragraph (e) of this section whose sole purpose is to authorize an carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.

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

d. Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the paragraph (e) of this

section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary interexchange carrier change by signing the check. The letter of agency language also 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:

1. The subscriber's billing name and address and each telephone number to be covered by the primary interexchange order;

2. The decision to change the primary interexchange carrier from the current interexchange carrier to the prospective interexchange carrier;

3. That the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier charge.

4. A subscriber can select a different primary interexchange carrier for intrastate, intraLATA or international calling. The letter of agency must contain separate statements regarding those choices. Any Carrier designated as a primary interexchange carrier can be both a subscriber's interstate or interLATA primary interexchange carrier and a subscriber's intrastate or intraLATA primary interexchange carrier; and

5. That the subscriber understands that any primary interexchange carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary interexchange carrier.

f. Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier.

g. 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 the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

#### Rule 17- Enforcement

a. Commission Oversight: Nothing in these Rules shall be deemed to limit the authority granted the Commission under the Telecommunications Regulatory Authorization Act of 1992, 26 Del. C. ?? 701-703.

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, 218.

c. Proceedings: Upon application by any person affected, including the Office of the Public Advocate or another Carrier or upon its own motion, the Commission may conduct a proceeding to determine whether a Carrier has violated any provision of the Rules. Such proceeding shall be conducted according to the requirements of 29 Del. C. c. 101, the Delaware Administrative Procedures Act.

d. For the purpose of determining whether it is necessary or advisable to commence a proceeding described by Rule 17(c) above, 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 with the Rules, including such data as shall demonstrate that the Carrier's services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

e. Subscriber Complaints as Ground for Proceeding or Investigation: The Commission may hold a proceeding to determine whether to suspend or revoke the certificate of, or otherwise penalize, any Carrier for reason of subscriber complaints. The Commission may investigate any subscriber complaints received.

f. Exemption: If unreasonable hardship results to a Carrier from the application of the Rules hereof, or if unreasonable difficulty is involved in compliance, the Carrier may make application to the Commission for temporary or permanent exception from such Rule or Rules. The Carrier shall submit with such application a full and complete statement of its reasons for such application.

g. Proprietary Information: Under Delaware's Freedom of Information Act, 29 Del. C. ch. 100 (?FOE?), all information filed with the Commission is considered of public record unless it contains ?trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature.? 29 Del. C. ?10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as ?proprietary?, or ?confidential? or other words of similar effect. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.

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

CERTIFICATION AND REGULATION OF  
COMPETITIVE LOCAL EXCHANGE CARRIERS

Effective \_\_\_\_\_

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DELAWARE PUBLIC SERVICE COMMISSION  
REVISED INTERIM RULES

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

CERTIFICATION AND REGULATION OF COMPETITIVE  
LOCAL EXCHANGE CARRIERS

Section 1: Definitions

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

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

(7) Interconnection - the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.

(8) Facilities-based Carrier - a local exchange carrier which directly owns, controls, operates, or manages plant and equipment through which it provides local exchange service to consumers within the local exchange portion of the public switched network.

(9) Intrastate Telecommunications Services - telecommunications services that originate and terminate within the State of Delaware, without regard to how the call is switched or routed.

(10) Local Exchange Carrier or Carrier (LEC) - an entity offering and/or providing local telecommunications exchange services (i.e. CLECs and ILECs) and ILECs; includes both facilities-based and non-facilities-based providers. Providers of telephone service by either ,COCOTS, call aggregating, cellular technology or by domestic public land mobile radio service shall not be considered local exchange carriers for purposes of these Rules.

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

a. telephone service that is provided by or owned by any political subdivision, public or private institution of higher education, or municipal and operated by any political subdivision, public or private institution of higher education, or municipal corporation of this State, or operated by their lessees or operating agents for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation.

b. telecommunications services provided by a company solely to itself or its affiliates, or between points in the same building or between closely located buildings which are affiliated through solely to itself or its affiliates, or between points in the same building or between closely located buildings which are affiliated through substantial common ownership. and where such services do not include access to the public switched network.

c. the rent, sale, or lease, or exchange for other value received, of customer premises equipment except for customer premises equipment owned or provided by a telecommunications carrier certificated prior to the

effective date of these regulations and only then to the extent that the regulation of its provision is not Federally preempted except for customer premises equipment owned or provided by a telecommunications carrier certificated prior .

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

e. community antenna television service or Cable Television Service to the extent that such service is utilized solely for the one-way distribution of such entertainment services with no more than incidental subscriber interaction required for selection of such entertainment service.

f. COCOTs and call aggregators.

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

(13) Rules - These Interim PSC Regulation Docket No. 45 Rules Governing Competition In The Market For Local Telecommunications Services.

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

(15) Telecommunications - the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

## Section 2: Application of Rules to ILEC

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

## Section 3: Certification of Competitive Local Exchange Carriers

(1) Certification Requirement. All entities wishing to provide local telecommunications exchanges services within the State of Delaware are required to file with the Commission an original and twelve (12) ten (10) copies of an Application for Certificate of Public Convenience and Necessity. Such application shall contain all the information and exhibits, hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial and operational ability to adequately service the public interest and that the public convenience and necessity requires or will require the operation of such business.

(2) Notice. Notice of the filing of such an application shall be given by the Applicant at the time of filing to the Public Advocate, and to such other entities as may be

required by the Commission. Each applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.

(3) License Requirement. Each applicant for a Certificate shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware., including having received all licenses required by the Division of Revenue of the State of Delaware and by local authorities within the area of proposed operation within the State.

(4) Additional Requirements. Each applicant shall be required to present substantial evidence supporting their financial, operational, managerial and technical ability to render service within the State of Delaware. Such evidence shall include, but is not limited to:

a. Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.

b. Brief narrative description of Applicant's proposed business in Delaware and its operations in other states. Identifications of states in which Applicant presently is providing service, and for which service applications are pending.

c. One-year construction, maintenance, engineering and financial plans for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such services. The plan will be filed within six (6) months of the date on which final certification is granted. All such plans will be considered proprietary.

d. Relevant operational experience of each principal officer responsible for Delaware operations.

e. Specific description of Applicant's engineering and technical expertise showing Applicant's qualification to provide the intended service including the names, addresses and qualifications of the officers, directors and technical or engineering personnel who will be operating and/or maintaining the equipment to be used to provide such service.

f. Description and map of the Applicant's owned, leased, and optioned facilities existing within the State of Delaware. Also, map showing points of presence or location where Applicant is serving customers within the State of Delaware. All such descriptions and maps shall be updated annually.

g. If the applicant does not require deposits, advance payments, prepayments, financial guarantees or the like from customers and charges only for service after it has been provided, then no bond shall be required. Otherwise, applicant shall file a bond with a corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The Bond need not be filed with the application but no certificate will be issued to an Applicant and no Applicant may commence business until Applicant files

such Bond with the Commission. The amount of the Bond will be the greater of (1) 150 percent of the projected balance of deposits and advances at the end of three (3) years of operations; or (2) \$50,000. If at any time the actual amount of deposits and advances held by the holders of a Certificate issued after the effective date of this regulation exceeds the amount projected, the amount of the Bond with surety shall be increased to comply with the requirement in the preceding sentence. Continuation of the Bonding requirement after the first three (3) years will be at the discretion of the Commission which, upon application, may dispense with the Bond requirement for good cause shown.

h. All new applicants seeking CPCNs for authority to become facilities-based CLECs shall demonstrate in their applications that they possess a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs.

i. All new applicants seeking CPCNs for authority to become non-facilities-based CLECs shall demonstrate in their applications that they possess a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs.

j. Applicants for CPCNs as CLECs who have profitable interstate operations or operations in other states may meet the minimum financial requirement by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirement.

k. Demonstration of cash or cash equivalent can be satisfied by the following:

1. Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

2. Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

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

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

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

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

7. Guarantee, issued by a corporation,

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

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

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

#### Section 4: Post-Certification Requirements of CLECs

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

(2) Abandonment or Discontinuation of Service. A CLEC may abandon or discontinue a service or any part thereof, established within the State of Delaware after having provided the Commission and its customers subscribing to such service with thirty (30) days' written notice. Such notice shall also contain proposed provision for payment of all relevant outstanding liabilities (deposits and advance payments), if any, to customers within the State of Delaware. If the Commission takes no action within the thirty (30) day notice period, then the abandonment or discontinuation shall be deemed approved. Prior to the expiration of the thirty (30) day notice period, the Commission may act to continue the provision of service for up to an additional sixty (60) days.

(3) Reports to be provided to the Commission. All CLECs certificated to provide local telecommunications exchange service for public use after the effective date of these

Rules shall provide such information concerning Delaware operations to the Public Service Commission as the Commission may from time to time request. Information provided pursuant to this paragraph and designated "proprietary" or "confidential" in accordance with Section 5, paragraph 5(7) of these Rules shall be afforded proprietary treatment subject to the provisions of the Rules, Commission regulations and Delaware law.

a. The accounting system to be used shall be in accordance with Generally Accepted Accounting Principles or any uniform system of accounts approved in writing by the Chief of Technical Services of the Commission.

b. All reports required by these rules to be submitted to the Commission shall be attested to by an officer or manager of the CLEC, under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the CLEC's operation.

c. All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified herein, or unless good cause is demonstrated by the CLEC:

1. Annual reports: one hundred twenty (120) days after the end of the reported period.

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

d. The annual report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include (i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware, (ii) the information used to determine the Delaware Income Tax liability, and (iii) financial and operating information for the smallest management unit that includes Delaware. Additional information to be provided includes:

1. Intrastate revenues (net of uncollectibles) by service category;

2. Intrastate access and billing and collection cost by service category;

3. Total number of customers by service category;

4. Total local minutes of use by service category;

5. Total local number of calls by service category;

6. A description of service offered;

7. A description of each complaint received by service category (in the form of a single Complaints log);

and,

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

(4) Discrimination Prohibited. No CLEC carrier shall unreasonably discriminate among persons requesting a tariffed service within the State of Delaware.

(5) Blockage. CLECs cannot interconnect or resell to carriers who are not authorized to provide service in the State of Delaware.

(6) Pricing Standard. All CLECs shall provide local end user services at rates that generate sufficient revenue to cover the incremental cost of offering such service.

a. CLECs filing rates for new services or changing rates for existing services should provide a statement to the Commission that such rates generate sufficient revenue to cover the incremental cost of offering such service.

b. CLECs do not need to provide cost data showing that rates are generating sufficient revenue to cover the incremental cost of offering a service unless specifically requested to do so upon written request by the Commission staff.

(7) Universal Service Fund. The Commission may, upon completion of an appropriate proceeding, require CLECs and other telecommunications carriers to contribute to a Universal Service Fund.

(8) Services to be Provided. CLECs shall offer access to the public switched network and at a minimum, the following telecommunication services to its customers:

- ? Dial tone line services
- ? Local usage services
- ? Access to all available long distance carriers
- ? TouchTone service
- ? White pages listing
- ? Access to 911 enhanced emergency system

- ? Local directory assistance service
- ? Access to telecommunications relay service

(9) Written Authorization Forms Required. A CLEC must obtain a customer's written authorization in order to change his or her local exchange service provider. Such written authorizations must be separate from inducements such as prizes and contests.

The written authorization forms provided by the CLEC must be limited strictly to authorizing a change in local service and it must be clearly identified as an authorization form for such change.

If a consumer's CLEC service is changed, within ten working (10) days of when service has been changed the customer must be notified of the changes in writing or by independent third-party verification of the change. Furthermore, the customer shall have the opportunity to cancel the LEC change request without charge if requested by the customer within fifteen working (15) days of initiating a CLEC change request. If the customer cancels the LEC change within fifteen working days, the costs of the cancellation would be borne by the LEC who's service the customer was canceling.

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

(11) Resale Prohibitions.

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

available only to residential customers or a limited class of residential

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

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

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

## Section 5: Enforcement

(1) Commission Oversight: Nothing in these Rules shall be deemed to limit the authority granted the Commission under the Telecommunications Regulatory Authorization Act of 1992, 26 Del. C. ??701-703.

(2) Violation and Penalties: Failure of a CLEC to comply with any provision of these Rules may result in the suspension or revocation of its CPCN, and/or of the imposition of monetary or other penalties as authorized by 26 Del. C. ? 217, 218.

(3) Proceedings: Upon application by any person affected, including the Office of the Public Advocate or another carrier, or upon its own motion, the Commission may conduct a proceeding to determine whether a CLEC has violated any provision of the Rules. Such proceedings shall be conducted according to the requirements of 29 Del. C. c. 101, the Delaware Administrative Procedures Act.

(4) Investigations: For the purpose of determining whether it is necessary or advisable to commence a proceeding described by Rule 5(3) above, the Commission or its Staff may, at any time, investigate whether a CLEC is in compliance with the Rules. Upon request, the CLEC shall provide to the Commission or its Staff

sufficient information to demonstrate its compliance with the Rules, including such data as shall demonstrate that the CLEC's services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

(5) Subscriber Complaints as Ground for Proceeding or Investigation:

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

(6) Exemption: If unreasonable hardship results to a CLEC from the application of any of the Rules contained in Section 3

(Certification of Competitive Local Exchange Carriers) and Section 4 (Post Certification Requirements of CLECs) hereof, or if unreasonable difficulty is involved in compliance, the CLEC may make application to the Commission for temporary or permanent exemption from such Rule or Rules. The CLEC shall submit with such application a full and complete statement of its reasons for such application.

(7) Proprietary Information: Under Delaware's Freedom of Information

Act, 29 Del. C. ch. 100 (?FOE?), all information filed with the Commission is considered of public record unless it contains ?trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature.? 29 Del. C. ?10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as ?proprietary? or ?confidential? or words of similar effect. The Commission shall preemptively deem all information so designated to be exempt from public record status.

However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.

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

