

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Sections 209 and 703(3) (26 **Del.C.** §§209 and 703(3))
26 **DE Admin. Code** 4001

FINAL

ORDER

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

IN THE MATTER OF THE RULES FOR THE
PROVISION OF TELECOMMUNICATIONS
SERVICES

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT
45 OPENED NOVEMBER 21, 1995; JOINTLY
REOPENED NOVEMBER 17, 1998; JULY 24,
2001; AUGUST 9, 2005; NOVEMBER 5, 2013;
MAY 13, 2014; AUGUST 19, 2014 AND
DECEMBER 5, 2019)

PSC REGULATION DOCKET
NOS. 10 AND 45

IN THE MATTER OF THE REGULATIONS FOR
THE IMPLEMENTATION OF THE
TELECOMMUNICATIONS TECHNOLOGY
INVESTMENT ACT

(OPENED JULY 20, 1993; REOPENED
DECEMBER 5, 2019)

PSC REGULATION DOCKET NO. 41

ORDER NO. 9580

AND NOW, this 22nd day of April 2020, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on April 17, 2019, the Governor of the State of Delaware signed into law Senate Bill No. 18 (82 *Del. Laws ch. 11*) ("SB 18"), which, among other things, amended Title 26 of the Delaware Code by removing certain statutory requirements for Commission-regulated telecommunications service providers that are no longer consistent with recent decisions of the Federal Communications Commission, including significant changes to the Telecommunications Technology Investment Act ("TTIA") (See 26 *Del.C.* §§ 215, 704-707); and

WHEREAS, in part, SB 18 amends: (1) §215(h) to permit telecommunications carriers to undergo transfers of control and to issue securities without Commission approval; and (2) the TTIA to narrow the definition of "Basic Services" to only switched access services and to allow carriers to change their rates for Basic Services without Commission approval; and

WHEREAS, on December 5, 2019, by Order No. 9506, the Commission re-opened the captioned dockets and proposed to revise its telecommunications rules to reflect the SB 18 amendments and to otherwise clarify and simplify its regulations by: (1) amending its *Rules for the Provision of Telecommunications Services*, codified at 26 *Del. Admin. C. § 4001* ("§ 4001") (*i.e.*; Regulation Docket Nos. 10 and 45); (2) moving the remaining TTIA requirements (as amended by SB 18) from 26 *Del. Admin. C. § 4005* ("§ 4005") to § 4001; and (3) repealing its *Regulations for the Implementation of the Telecommunications Technology Investment Act*, codified at § 4005 (Regulation Docket No. 41); and

WHEREAS, by Order No. 9506, the Commission set the hearing date on the proposed changes for the regular meeting it had scheduled for February 26, 2020, and directed the Commission Secretary to cause notice of the proposed changes and the hearing date in *The News Journal* and *Delaware State News* newspapers and in the *Delaware Register of Regulations*; and

WHEREAS, in late December 2019, the Commission cancelled its February 26, 2020 meeting and, therefore, by Order No. 9532 (Jan. 8, 2020), set a new hearing date on the proposed changes for March 18, 2020, and directed the Commission Secretary to publish notice of the new hearing date in the February 1, 2020 edition of the *Register of Regulations* and in *The News Journal* and *Delaware State News* newspapers on January 23, 2020; and

WHEREAS, the proposed regulations appeared the January 1, 2020 edition of the *Delaware Register of Regulations* and the new hearing date appeared in the February 1, 2020 edition of the *Delaware Register of Regulations*; and

WHEREAS, in accordance with 29 *Del.C.* § 10118(a), which requires the opportunity for public written comment to be extended for a minimum of 15 days after the final public hearing on a proposed regulation, the Commission included in the

form of notice a time period for written public comment ending on April 3, 2020; and

WHEREAS, on February 4, 2020, Verizon Delaware LLC ("Verizon") submitted written comments supporting the proposed changes as consistent with the SB 18 and as appropriately clarifying and reorganizing the structure of the rules to correspond with their more limited scope; and

WHEREAS, on March 18, 2020, the Commission conducted a duly-noticed hearing on the proposed changes during which: (1) Staff witness Lisa Driggins testified that the proposed amendments comply with the changes made by SB 18 and adoption thereof would be in the public interest; (2) Douglas Smith, Verizon's Vice President, State Government Affairs, stated that Verizon fully supports the proposed amendments, noting they are consistent with existing law; and (3) the Commission voted to adopt the proposed amendments to the regulations on the condition that no public comments were filed by the April 3, 2020 deadline objecting to the proposed amendments; and

WHEREAS, other than Verizon, no person filed comments by the April 3, 2020 deadline for public written comment; and

WHEREAS, the Commission is also making several non-substantive numbering and formatting changes to the *Rules for the Provision of Telecommunications Services*, consistent with the *Delaware Administrative Code Drafting and Style Manual*, September 2014 Edition;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That pursuant to 26 *Del.C.* §§ 209 and 703(3), the Commission hereby amends its *Rules for the Provision of Telecommunications Services* (i.e.; 26 *Del. Admin. C.* § 4001) as proposed herein and repeals its *Regulations for the Implementation of the Telecommunications Technology Investment Act* (i.e.; 26 *Del. Admin. C.* § 4005). Marked-up versions of the regulations are attached as **Exhibits "A" and "B"**.

2. That pursuant to 29 *Del. C.* § 10118(e), the Secretary of the Commission shall transmit a copy of this Order, including Exhibits "A" and "B" to the Registrar of Regulations for publication in the June 1, 2020 edition of the *Delaware Register of Regulations*. An exact copy of the regulations, as amended, shall be published in the *Delaware Register of Regulations* as the Commission's official regulation as defined in 29 *Del. C.* § 1132.

3. That the effective date of the changes to the regulations shall be the later of June 11, 2020, or ten days after publication in the *Delaware Register of Regulations*.

4. 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:

Dallas Winslow, Chairman

/s/ Kim Drexler, Commissioner

Joann T. Conaway, Commissioner

/s/ Harold B. Gray, Commissioner

Manubhai C. Karia, Commissioner

ATTEST: Donna Nickerson, Secretary

***Please Note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

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

~~Docket 10 The Sale, Resale and Other Provisions of Intrastate
Telecommunications Services~~

~~Docket 45 Regulations For The Facilitation of Competitive Entry into the
Telecommunications Local Exchange Service Market~~

Effective: ~~[TBD]~~ December 10, 2004 [June 11, 2020]

**PART A [PART A]
CERTIFICATION AND REGULATION OF CARRIERS**

1.0 Definitions

"Basic Service" shall mean switched access service.

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

- Any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation;
- A company that provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public;
- Providers of domestic public land mobile radio service provided by cellular technology excluded from the Commission's jurisdiction under 26 **Del.C.** §202(c);
- Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12; and
- Providers of Voice over Internet Protocol or other IP-enabled service as defined in 26 **Del.C.** §202(i).

"Competitive Service" shall mean any service that is not classified as a Basic Service.

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

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

"Local Telecommunications Exchange Service" shall mean non-toll, intrastate Telecommunications Services provided over a Local Exchange Carrier's network, including, but not limited to, exchange access services and basic local services.

"Rules" shall mean these Rules, ~~including PARTS A and B,~~ governing the provision of telecommunications services in Delaware.

"Telecommunications" shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form and content of the information as sent and received.

"Telecommunications Service" 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:

- The rent, sale, lease, or exchange for other value received, of customer premises equipment, except for specialized terminal equipment as defined in 48 U.S.C. § 610(g);
- Telephone or telecommunications answering services, paging services, and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission;
- The one-way distribution of entertainment services or informational services with no more than incidental customer interaction required for selection of such entertainment or information services; and
- Telecommunications service provided by either primary cellular technology or by domestic public land mobile radio service, even in the event that such transmission originates or terminates in a wireline telephone.

18 DE Reg. 653 (02/01/15)

2.0 Applicability

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

18 DE Reg. 653 (02/01/15)

3.0 Application With Other Rules or Regulations

~~[3.1]~~ Rules of Practice and ~~[Procedure Procedure.]~~ The practice and procedure governing any proceedings required or authorized by these Rules shall be as set forth by the Commission's Rules of Practice and Procedure adopted in PSC Docket No. 99-9, by Order No. 5057 (April 6, 1999) as the same may be hereafter from time to time amended. See 1001 General Regulations.

18 DE Reg. 653 (02/01/15)

4.0 Certification

4.1 Certification Requirement.

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

4.2 Application.

An applicant for a CPCN shall file with the Commission in the format described in 26 **DE Admin. Code** §1001-1.6.3, together with the statutory filing fee set forth in 26 **Del.C.** §114, as the same may from time to time be amended. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately serve the public 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.

4.3 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 one (1) newspaper having general circulation throughout the county or counties where service is to be offered in a form to be prescribed by the Commission.

4.4 Business License and Registered Agent.

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

4.5 Initial Tariffs or Price Lists.

~~[4.5.1]~~ An applicant shall file proposed initial rates, prices, rules, regulations, terms and conditions of service for switched access services. Any revisions to this tariff must be filed with the Commission. An applicant ~~may need not file tariffs or price lists for other services or provide a website link to its tariff or price list which the Commission will post on its website.~~

4.6 Demonstration of Fitness.

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

- 4.6.1.1 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;
- 4.6.1.2 A brief narrative description of the applicant's proposed operations in Delaware, any present operations in all other states, and states for which service applications are pending;
- 4.6.1.3 A description of the relevant operations experience of applicant's personnel principally responsible for the proposed Delaware operations;

9 DE Reg 1390 (03/01/06)

18 DE Reg. 653 (02/01/15)

5.0 Abandonment or Discontinuation of Service

A Carrier may abandon or discontinue ~~service~~ Competitive Services, in whole or in part, ~~at any time; provided, however that such Carrier shall provide the Commission with contemporaneous notice of abandonment or discontinuance of all of its Competitive Services in the State.~~ A Carrier may abandon or discontinue Basic Services in accordance with the terms of 26 **Del.C.** § 706(d) for carriers electing to be governed under subchapter VIIA of Title 26 or § 203(A)(c), for non-electing carriers 26 **Del.C.** §203A(d).

18 DE Reg. 653 (02/01/15)

6.0 Services to be Provided By Carriers Providing Local Telecommunications Exchange Service

6.1 Any Carrier providing local telecommunications exchange service shall provide to its customers:

- 6.1.1 Access to 911 enhanced emergency system;
- 6.1.2 Access to telecommunications relay service.

7.0 Regulation

- 7.1 Except for the determination of rate changes, the offering of Basic Services is subject to the provisions of subchapters I and V of chapter I of Title 26, §§201, 202, 203A(c), 204, 206, 212, 217, 218, and 222 of Title 26, and all Commission procedures, rules, and regulations except to the extent inconsistent with subchapter VII of chapter I of Title 26.
- 7.2 Rate changes for Basic Services do not require Commission approval.
- 7.3 Rates for switched access service must be established according to prevailing federal jurisdiction.
- 7.4 Competitive Services are not subject to tariff or other filing requirements and Carriers are not required to provide notice to the Commission for any new competitive service.
- 7.5 Commission approval is not required for any reorganization or merger, mortgage or transfer of property, issuance of securities, assumption of obligation of another, or transfer of control of a Carrier.

~~7.0-12.0~~ **Reserved**

PART B CUSTOMER ELECTION OF PREFERRED CARRIER

13.0 Additional Definitions

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

- 13.1 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.
- 13.2 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.

14.0 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.

15.0 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 procedures set forth in 47 C.F.R. § 64-1120.

16.0 Letter of Agency Form and Content

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 the requirements set forth in 47 C.F.R. § 64.1130 is invalid.

17.0 Submission and Execution of Changes in Customer Carrier Selections

Submission and execution of changes in customer carrier selection shall comply with 47 C.F.R. § 64.1120.

18.0 Preferred Carrier Freezes

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 47 C.F.R. § 64.1190.

19.0 Customer Protection

- 19.1 Procedures To Be Followed By The Customer.

[19.1.1] 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.

19.2 Procedures To Be Followed By Carriers.

[19.2.1] 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.

19.3 Carriers to Maintain Record of Complaints.

19.3.1 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:

19.3.1.1 name, address, and telephone number of complainant and the date and manner received by the Carrier; and

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

19.4 Refund and Penalties.

[19.4.1] 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 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.

5 DE Reg. 1265 (12/01/01)

9 DE Reg 1390 (03/01/06)

23 DE Reg. 1045 (06/01/20) (Final)