

**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** 4005

FINAL

ORDER

4005 Regulations for the Implementation of the Telecommunications Technology Investment Act (Docket 41)

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).**

4005 Regulations for the Implementation of the Telecommunications Technology Investment Act (Docket 41)

Repealed, effective [TBD] June 11, 2020]

1.0 Applicability.

~~These rules shall apply only to telecommunications service providers that elect, pursuant to Section 704 of Subchapter VII of Title 26 of the **Delaware Code Annotated**, hereinafter, the "Act", to have rates and prices governed by the Telecommunications Technology Investment Act ("TTIA").~~

~~2.0 Definition of Terms.~~

~~2.1 Basic service shall mean those local exchange carrier telecommunications services: (1) which are offered in the absence of services or products with the same or similar capabilities offered by another service provider; (2) for which significant barriers exist impeding entry into the market; (3) which are provided for the purpose of completing local telephone calls; (4) which are for the purpose of providing access to the local exchange carrier's network; or (5) which are purchased as necessary components for other providers of telecommunications services to offer, exclusive of stand-alone resale offerings, their telecommunications services. Unless and until the Commission shall determine otherwise pursuant to §706 of this title, "basic services" shall include the following:~~

- 2.1.1 Residence, business, public and semipublic "dial tone line" services;
- 2.1.2 Residence, business and public "local usage services;"
- 2.1.3 "Switched access" services;
- 2.1.4 "Exchange access component of centrex" service;
- 2.1.5 "White pages listings; whether listed, non-listed or private;"
- 2.1.6 "Local directory assistance service;"
- 2.1.7 "Telecommunications relay service;"
- 2.1.8 "911 enhanced emergency system;"
- 2.1.9 "Direct inward dialing" for PBX trunks;
- 2.1.10 "Basic service elements;"
- 2.1.11 "TouchTone service;"
- 2.1.12 "ISDN service" and features;
- 2.1.13 "Basic rate interfaces;"
- 2.1.14 "Primary rate interfaces;"
- 2.1.15 Services categorized as "basic serving arrangements" except for "high capacity special services" (1.544mb and above); and
- 2.1.16 "Complementary network services" except as provided by a local exchange carrier to end users or for stand-alone resale.

The Commission may, after notice and hearing, classify other telecommunications services as basic services.

2.2 Discretionary services.

- Services provided by a telecommunications service provider that are classified by the Commission neither as basic services nor as competitive services.

2.3 Competitive services.

Services may be classified as competitive if similar or substitute functions and features are offered and available from suppliers other than the electing telecommunications service provider within the relevant geographic areas in which the electing telecommunications service provider offers such services. The provision of services in this category may require the use of plant and/or other resources of the electing telecommunications service provider which are also used by the telecommunications service provider jointly or in common for purposes of producing and/or furnishing services classified as basic, discretionary, or competitive. For any service provided by a telecommunications service provider to be classified by the Commission as competitive, the Commission shall have determined that all of the market conditions set forth in Section 705 (c) of the TTIA and Rule 4.1.3.1 exist with respect to such service. In addition, the Commission may consider any other factors it deems relevant and in the substantial public interest in making its determination regarding classification of a service as competitive, including, but not limited to, those factors enumerated in Rule 4.1.3.1. All competitive services shall be presumed to receive above-the-line regulatory treatment unless expressly assigned by the Commission to below-the-line treatment upon a finding, made pursuant to these Rules, that all of the criteria required for the transfer of a service or activity from above-the-line to below-the-line regulatory treatment have been satisfied.

2.4 Just and Reasonable Rates.

Pursuant to §706(a)(1) and (2), rates for basic and discretionary services must be just and reasonable. A just and reasonable rate for a basic service: (a) shall be non-discriminatory; (b) shall be based on the direct cost of providing the service; and (c) may include a reasonable profit. A just and reasonable rate for a discretionary service: (a) shall be non-discriminatory; and (b) shall equal or exceed the incremental cost of providing such service.

2.5 Similar or substitute.

- A service or product shall not be deemed to have similar or substitute capabilities as service provided by an electing telecommunications service provider, or to be a similar or a substitute service or product, unless: (1) an unaffiliated provider is able to offer the alternative service or product in the relevant geographic area; (2) the service or product is capable of providing comparable functions or benefits as the telecommunications service provider's service to which it is being compared; and (3) customers are likely to perceive the services as similar or a substitute.

2.6 Present and viable.

The terms "present" and "viable" may be defined differently depending on the characteristics of the market for the service in question. Therefore, the Commission shall, on a case-by-case basis, determine the definitions of these terms.

2.7 ~~Barriers to market entry.~~

~~Barriers to market entry may include any significant legal, regulatory, or economic factors that inhibit entry into the market, including, but not limited to, certification or franchise requirements, requirements for easements or rights-of-way, pre-qualification financial requirements, or exceptionally high start-up costs. The Commission shall, on a case-by-case basis, determine the definition of these terms.~~

2.8 ~~Exogenous costs; unforeseen cost changes.~~

~~Costs that reflect an unforeseen change in the telecommunications service provider's costs of providing telecommunications services, which change occurs for reasons beyond the control of the electing telecommunications service provider. Such change may include, but not be limited to, legal or regulatory changes which affect such costs, the method of accounting for such costs, or taxes applicable to the service provider.~~

2.9 ~~Day.~~

~~Any reference to a certain number of days shall be interpreted to mean calendar days unless otherwise noted.~~

2.10 ~~Notice.~~

~~Unless otherwise specified, notice shall, at a minimum, consist of concurrent service of all documents required to be filed with the Commission on: (a) the Public Advocate; and (b) all interested persons that submit a written request to the Commission to provide such notice, pursuant to an appropriate proprietary agreement, to the extent that any such documents contain information claimed to be proprietary. To the extent such proprietary documents are filed, and interested persons have submitted a written request for notice but have not executed an appropriate proprietary agreement, the telecommunications service provider shall provide an expurgated version of the notice to such parties.~~

2.11 ~~Newspaper notice.~~

~~- Newspaper notice shall consist of publication of the required information, in a format and manner consistent with the provisions of 26 ~~Del.C.~~ §102A.~~

2.12 ~~Telecommunications Service Provider; Electing Telecommunications Service Provider.~~

~~A telecommunications service provider, otherwise subject to regulation by the Commission under Chapter I, Subchapter III of Title 26 of the **Delaware Code Annotated**, who elects in accordance with Section 704 of the TTIA, to be governed by the provisions of the TTIA.~~

2.13 ~~Incremental cost.~~

~~Incremental Cost shall be defined as long run, forward-looking, incremental costs calculated in accordance with the principles, guidelines, and requirements set forth in Section 7.~~

2.14 ~~Service.~~

~~As used herein, the term "service" shall include any discrete, identifiable telecommunications service, specifically delineated as such in the telecommunications service provider's tariff and/or price lists, and/or legally classified as a competitive service, or determined by Order of the Commission to be specifically delineated in such tariff and/or price lists, in accordance with the TTIA and these rules.~~

3.0 Annual Price Index Filings.

3.1 ~~Annual Price Index Report.~~

~~The telecommunications service provider shall submit to the Commission and interested parties on an annual basis a Price Index Report (the "PI Report"). The filing of the PI Report shall be subject to the following requirements.~~

3.2 ~~Timing and notice of PI Report.~~

~~No later than March 31 of each year, the electing telecommunications service provider shall file with the Commission its Annual PI Report which shall identify the beginning and ending values for the GDP-PI as defined in Rule 3.4.1 and based thereon provide a calculation of the new PI to be applicable for the coming 12-month period. The telecommunications service provider shall give notice of the details of such filings in accordance with Rule 2.10 and newspaper notice in accordance with Rule 2.11. The Commission will, to the extent possible, approve or adjust the PI Report no later than 120 days after such filing.~~

3.3 ~~Extension for filing a PI Report.~~

~~The Commission may, for good cause shown, grant an extension to a telecommunications service provider for filing its annual PI Report. The telecommunications service provider shall notify the Commission promptly, file a~~

request for a delay and suggested revised dates. The Commission may set a new date on which the filing will be submitted.

3.4 Rate adjustment mechanism for basic services.

Rates for basic services may be adjusted consistent with the new PI throughout the calendar year upon approval by the Commission, but a rate for a basic service may not be changed based on the PI more than once in any calendar year.

3.4.1 Price Index. The Price Index ("PI") shall initially be set at 100 and shall be computed annually according to the following formula:

$$PI_{\text{new}} = PI_{\text{old}} \times [1 + (\Delta GDP-PI - X \pm Z)]$$

where

PI_{new} = PI for current year

PI_{old} = Calculated PI for previous year

$\Delta GDP-PI$ = Percentage change in Gross Domestic Product fixed weight Price Index (expressed as decimal), for the most recent 12-month period available at the time of filing, as published by the United States Department of Commerce.

X = The productivity offset factor, where the productivity offset shall be 3% applied annually.

Z = The combined positive and negative effects of exogenous changes in the telecommunications service provider's costs of providing telecommunications services, measured as a percentage of previous years' revenues that are explicitly the result of unforeseen changes in the telecommunications service provider's cost as defined in Rule 2.8.

3.4.2 Exogenous cost adjustments.

Upon the application of any ratepayer or the telecommunications service provider, rates for basic services may be adjusted with approval by the Commission in order to reflect exogenous costs, as defined in Rule 2.8. Application by a service provider for exogenous cost adjustments, whether increases or decreases, may be filed once per calendar year in conjunction with the annual PI Report, as detailed in Rule 3.1.

3.4.3 Filing Requirements for PI Report.

The PI shall be based upon the GDP-PI as defined in Rule 3.4.1 and appropriate exogenous cost adjustments (also referred to as "Z" adjustments), as provided for in Rule 2.8. The PI Report shall contain supporting documentation and calculations (including documentation and calculations to support Z adjustments), and the telecommunications service provider shall, to the extent possible, respond to any requests for additional information propounded by the Commission's Staff within ten (10) business days of the receipt of such request by the telecommunications service provider.

3.4.4 Rate Increases for Basic Services.

Increases in rates for basic services may not exceed that permitted by the application of the PI set forth in Rule 3.2. At its option, the telecommunications service provider filing the PI Report may seek, simultaneous with the filing of the Report, Commission approval for basic service rate increases permitted by application of the PI. The Commission shall render a decision on such proposed rate increases within 120 days of filing.

In the event that the telecommunications service provider chooses to seek approval of basic service rate increases permitted by application of the PI at any time other than simultaneous with its annual PI Report, the provider shall file the rate change with the Commission and shall give notice in accordance with Rules 2.10 and 2.11. The Commission shall render a decision on such proposed rates within 120 days from such filing.

3.4.5 Rate Decreases for Basic Services.

In years when the PI_{new} is less than PI_{old} , the telecommunications service provider shall decrease rates by no less than the change in the PI; provided, however, that the Commission may, for good cause shown, permit the requesting service provider to aggregate the resulting negative rate change and (1) apply the amount to less than all basic services; provided, however, that the aggregated amount shall be allocated equitably among residential, business and interexchange classes of customers, or (2) hold it in reserve and apply it in subsequent years, along with an amount representing interest at the rate established in Regulation Docket No. 11 for the period in which the telecommunications service provider reserved the rate decrease. In years when the PI_{new} is less than the PI_{old} the telecommunications service provider shall seek, simultaneous with the filing of the Report, Commission approval for basic service rate decreases indicated by the application of PI, or approval for aggregating or reserving such decreases as permitted by

subparagraphs (1) and (2) of this Rule 3.4.5. The Commission shall render a decision on such proposal within 120 days from such filing.

Notwithstanding the provisions of this Rule 3.4.5, the telecommunications service provider, consistent with Section 707(c)(2), may elect to decrease rates in circumstances where the PI would permit otherwise and may decrease rates in an amount greater than would be required by the PI.

3.5 ~~Rate cap for discretionary services.~~

~~Discretionary service prices may not be increased by a telecommunications service provider until after one (1) year following the utility's initial election under Price Regulation. Discretionary service prices may be increased by not more than 15% per calendar year. All prices for discretionary services shall be filed with the Commission and made available for public inspection.~~

3.6 ~~Rate adjustments or other changes to the terms and conditions for competitive services.~~

~~Rates or terms and conditions for competitive services may be determined by the telecommunications service provider, subject to the provisions of 26 Del.C. §709. The telecommunications service provider shall provide information regarding prices, terms and conditions for competitive services to the Commission and shall, within 72 hours of a change thereto, give written notice to the Commission of such change or of a departure from such prices or terms and conditions.~~

3.7 ~~Prohibition against cross-subsidization.~~

~~In compliance with Section 710(a) of the Act, cross-subsidization of competitive services with revenue generated from basic services or discretionary services is prohibited.~~

3.8 ~~Exogenous cost filing requirements.~~

~~Any proposal for recovery of exogenous costs through an adjustment to the PI mechanism must include all of the following information:~~

~~3.8.1 a description of the exogenous event or condition;~~

~~3.8.2 the date on which it occurred or became known;~~

~~3.8.3 the amount of the flow-through requested;~~

~~3.8.4 whether it is an increase or a decrease;~~

~~3.8.5 an indication of how the increase or decrease would be spread to each of the service categories (i.e., Basic, Discretionary and Competitive);~~

~~3.8.6 specifically how it would be spread to rates in the Basic category; and~~

~~3.8.7 the extent to which such an event or condition has a unique and specific effect on local exchange telecommunications utilities and/or Delaware regulated public utilities by virtue of their status as such.~~

3.9 ~~Filing requirements for discretionary services.~~

~~The telecommunications service provider shall submit with its annual P.I. Report discretionary service data including:-~~

~~• a list of all discretionary services;~~

~~• the prices for the service;~~

~~• a list of the basic services used separately or in combination in order to deliver the services;~~

~~• the total incremental cost associated with the provision of the discretionary service that is separate from the incremental cost associated with any underlying basic service; and~~

~~• the total revenues and incremental costs for competitive services as a whole.~~

3.10 ~~Filing requirements for competitive services.~~

~~The telecommunications service provider shall submit with its annual PI Report competitive service data sufficient to establish that no cross-subsidization of competitive services with revenues from basic or discretionary services exists. Such data shall include:~~

~~• a list of all competitive services;~~

~~• the rates for each service;~~

~~• a list of the basic and/or discretionary services used separately or in combination in order to deliver the competitive service;~~

~~• the total incremental cost associated with the provision of the competitive service that is separate from the incremental cost associated with any underlying basic and/or discretionary services; and~~

~~• the total revenues and incremental costs for competitive services as a whole.~~

3.11 ~~Unbundling requirements for competitive services.~~

~~For each competitive service, the electing telecommunications service provider shall provide, to any requesting telecommunications service provider, nondiscriminatory access to all components of each basic or~~

discretionary service that is/are used to deliver the competitive service, on an unbundled basis at any technically feasible point, at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

3.12 ~~Review of annual PI Report.~~

~~Interested persons shall have thirty (30) days following the annual PI Report date in which to submit written comments, and the telecommunications service provider shall file a response with the Commission within fifteen (15) days of the end of the comment period. The Commission may extend the comment period for good cause shown.~~

3.13 ~~Application by Purchasing Service Provider for Determination that a Purchased Basic Service Rate is Just and Reasonable.~~

~~Upon application by a provider of telecommunications service, the rate charged for a basic service which is purchased as a necessary component by such provider of telecommunications services may be adjusted by the Commission at any time upon a showing by such telecommunications service provider that the rate is not just and reasonable, provided that the rate so established is consistent with Rule 7 of these Rules.~~

3.14 ~~Revenue Neutral Changes.~~

~~Notwithstanding any provisions within Section 3 of these Rules, upon application by a telecommunications service provider, the rate structure for a basic service may be adjusted by the Commission where such adjustments would neither increase nor decrease the total revenue to the service provider from that particular basic service.~~

4.0 Service classification and reclassification.

- Telecommunications services will be regulated in accordance with the provisions of §§705-709 of the TTIA and shall each be classified or reclassified as specified below.

4.1 ~~Classification of new services.~~

- ~~Services shall be classified according to the specifications set forth below. Phrases used to identify specific services within the foregoing classifications shall be given meanings commonly ascribed to them in proceedings before the Commission. If the Commission determines that any of such phrases have uncertain meaning, the Commission shall, by order after duly noticed hearing, adopt an appropriate definition.~~

4.1.1 ~~Basic services.~~

- ~~An electing telecommunications service provider shall file with the Commission tariffs setting forth therein rates, terms, and conditions for all basic services.~~

4.1.1.1 ~~Basic services test. Any new service or any existing service for which reclassification has been proposed pursuant to Section 5.0, which exhibits any one or more of the following characteristics shall be classified as a basic service: (a) the service is offered in the absence of services or products with similar or substitute capabilities (as defined in Rule 2.5) offered by another service provider not affiliated with the telecommunications service provider; (b) it is a service for which significant barriers exist that impede entry into the market; (c) it is a service provided for the purpose of completing local telephone calls; (d) the service provides access to a local exchange carrier's network; or (5) the service is purchased as a necessary component, feature, or function for other providers of telecommunications services in order to offer (exclusive of stand-alone resale offerings) their telecommunications services.~~

4.1.1.2 ~~Initial list of basic services.~~

~~Unless and until the Commission shall determine otherwise, basic services shall include all of the following services:~~

4.1.1.2.1 ~~residence, business, public and semi-public dial tone line services;~~

4.1.1.2.2 ~~residence, business, and public local usage services;~~

4.1.1.2.3 ~~switched access services;~~

4.1.1.2.4 ~~exchange access component of Centrex service;~~

4.1.1.2.5 ~~white page listings (whether listed, non-listed, or private);~~

4.1.1.2.6 ~~local directory assistance services;~~

4.1.1.2.7 ~~telecommunications relay service;~~

4.1.1.2.8 ~~911 enhanced emergency system;~~

4.1.1.2.9 ~~direct inward dialing for PBX trunks;~~

4.1.1.2.10 ~~basic service elements;~~

4.1.1.2.11 ~~TouchTone service;~~

4.1.1.2.12 ~~ISDN service and features;~~

- 4.1.1.2.13 basic rate interfaces;
 - 4.1.1.2.14 primary rate interfaces;
 - 4.1.1.2.15 services categorized as basic serving arrangements except for high capacity special services (1.544 mb and above); and
 - 4.1.1.2.16 complementary network services except as provided by a local exchange carrier to end users or for stand-alone resale.
- 4.1.1.3 ~~Other services.~~
The Commission may, after notice and hearing, classify other telecommunications services as basic services.
- 4.1.2 ~~Discretionary services.~~
- The telecommunications service provider shall file with the Commission a price list for all discretionary services. A full description of all terms and conditions for all discretionary services shall be provided to the Commission.
- 4.1.2.1 ~~Discretionary services test.~~
"Discretionary services" shall mean those telecommunications services that the Commission determines to be neither "basic services" nor "competitive services."
- 4.1.3 ~~Competitive services.~~ The telecommunications service provider shall provide to the Commission a price list accompanied by a full description of terms and conditions for all competitive services. Such price list shall be made available for public inspection at the offices of the Commission. Competitive services shall be classified consistent with the following requirements.
- 4.1.3.1 ~~Competitive services test.~~
In order for any existing or new service provided by a telecommunications service provider to be classified as competitive, the following market conditions must exist with respect to such service: (1) similar or substitute services or products, as defined in Rule 2.5., are offered and generally available within the relevant geographic area from at least one unaffiliated provider; (2) there is at least one unaffiliated provider that is present and viable, as determined by the Commission; and (3) there are no significant barriers to market entry, as defined in Rule 2.7.
- 4.1.3.2 ~~Other competitive service measures.~~
The Commission may also consider any other factors it deems relevant and in the substantial public interest in making determinations regarding the classification of services as competitive.

5.0 Service Reclassification.

Reclassification of existing services may occur as specified below subject to the requirement that no service may be reclassified by the Commission less than twelve (12) months after an initial election by a telecommunications service provider made pursuant to Section 704(a) of the Act.

5.1 Petitions to reclassify a service.

A telecommunications service provider, the Public Advocate, or any party may file a petition with the Commission to reclassify a service. The Commission may also undertake such activity on its own motion. Any party, including the Commission's Staff, proposing any such reclassification shall have the burden of supporting its proposal, except with respect to the reclassification of a competitive service, in which case the telecommunications service provider shall bear the burden of demonstrating that said service continues to be a competitive service.

5.2 Petition filing requirements.

Any petition for reclassification of a service made by any party must include, at a minimum, the following information:

- 5.2.1 a description of the service to be reclassified;
- 5.2.2 the present category in which the service is classified;
- 5.2.3 the present and, if appropriate, the proposed rates of the service; and
- 5.2.4 a showing that the subject service meets all tests and requirements of the category into which it has been proposed to be classified.

5.3 Notice requirements.

- Any petition for reclassification shall be filed by the petitioning party concurrently with the Commission and the telecommunications service provider, no less than thirty (30) days prior to the proposed implementation date for the reclassified service. The petitioning party shall publish newspaper notice pursuant to Rule 2.11. Such notice shall specifically describe the proposed filing and the effect of Commission approval of such filing, and

shall state that written comments may be filed with the Commission for its consideration. In addition, the petitioning party shall serve a copy of the petition for reclassification on all interexchange telecommunications carriers and service providers who have submitted a written request for such notice with the petitioning party and the Commission and on the Division of the Public Advocate.

5.4 ~~Opportunity for comment by interested parties. Interested persons may file comments with the Commission regarding any petition for reclassification and may also request that the Commission hold an evidentiary hearing on such petition. Comments shall be due twenty (20) days following the date of publication of newspaper notice. The Commission may, for good cause shown, extend the comment period for a specific petition. However, the Commission shall issue a final order on a petition to reclassify a service within one hundred twenty (120) days after the petition date.~~

5.5 ~~Rates for reclassified services.~~

~~Where the Commission has reclassified a service as a Basic service or a Discretionary service, the Commission may determine whether the current rate is just and reasonable.~~

6.0 Reporting Requirements.

6.1 ~~Reports.~~

~~A telecommunications service provider shall provide the Commission with any and all reports required by the Commission, unless a petition is filed and approved pursuant to Rule 7.2.~~

6.2 ~~Petition to discontinue reports.~~

~~A telecommunications service provider may petition the Commission to discontinue the provision of a report upon a showing that such report is no longer necessary in order for the Commission to fulfill its obligation under the Act.~~

7.0 Incremental Cost Price Floor and Cross Subsidization Prohibitions.

7.1 ~~Definition of Incremental Costs to be used to Determine a Service Price Floor. Calculations of incremental costs using the methodology described in this rule shall be used by the telecommunications service provider.~~

7.1.1 ~~The incremental costs used to determine a price floor for a service and to insure the absence of service cross-subsidization as required by Section 710 of the Act will be Total Service Long Run Incremental Costs ("TSLRIC"), defined as the difference in the forward looking total costs of the service provider less the forward looking total costs of the service provider without the service or services at issue.~~

7.1.2 ~~TSLRIC for determination of product or service price floors shall be performed on the basis of the individual service and shall include the forward looking volume sensitive costs plus the product or service specific fixed costs. These forward looking volume sensitive costs and the product or service specific fixed costs shall be known as direct costs.~~

7.2 ~~Additional Use of Incremental Costs in the Calculation of a Price Floor for Discretionary and Competitive Services. Incremental costs using the methodology described herein shall be used by the telecommunications service provider to meet the requirements of Sections 708 (a)(2) and 709 (2) of the TTIA. To meet these requirements a telecommunications service provider shall demonstrate:~~

7.2.1 ~~That the revenue resulting from the proposed rate for a Discretionary Service equals or exceeds the revenue resulting from the sum of the rate(s) for the Basic Services which another telecommunications service provider typically uses in its provision, plus any additional incremental costs incurred by the electing telecommunications service provider and not associated with the rate(s) for the Basic Services that are used to provide the Discretionary Service. In determining when another telecommunications service provider "typically uses" a Basic Service in its provision of a competing Discretionary Service, the Commission shall consider the current practices of other providers, whether technically feasible, economically reasonable alternatives exist for the underlying Basic Services, and such other factors as the Commission deems appropriate.~~

~~7.2.2 That the revenue resulting from the proposed rate for a Competitive Service equals or exceeds the revenue resulting from the rate(s) for Basic and Discretionary Services which another telecommunications service provider typically uses in its provision, plus any additional incremental costs incurred by the electing telecommunications service provider and not associated with the rate(s) for such Basic and Discretionary Services that are used to provide the Competitive Service. In determining when another telecommunications service provider "typically uses" a Basic or Discretionary Service in its provision of a competing Competitive Service, the Commission shall consider the current practices of other providers, whether technically feasible, economically reasonable alternatives exist for the underlying Basic and Discretionary Services and such other factors as the Commission deems appropriate.~~

~~7.2.3 Individual customer contracts that include Discretionary or Competitive Services with underlying Basic or Discretionary Services that competitors typically use to compete with BA-Del must satisfy the requirements of Rules 7.2.1 and 7.2.2, as applied to the complete contract price.~~

~~7.3 Total Service Long Run Incremental Cost Study Methodology.~~

~~7.3.1 General Methodology.~~

~~The telecommunications service provider will perform TSLRIC studies in compliance with the Act using the following:~~

~~7.3.1.1 Long Run.~~

~~Long run shall be defined to mean a period of time over which all optimal capacity expansions or contractions can be accomplished.~~

~~7.3.1.2 Forward Looking.~~

~~Forward looking shall be defined to mean that the telecommunications service provider will include in its incremental cost studies the technology, or mix of technologies, that would be chosen in the long run as the most economically efficient choice for replacement of existing plant, equipment, or other investments.~~

~~7.3.1.3 Network Topology.~~

~~Existing network topology will be assumed to exist over the long run, unless the telecommunications service provider has documented plans to change such topology. If a planned, rather than actual, network topology is used, it shall be used for all cost studies performed in compliance with this section. The technologies that provide the most efficient means of supplying the necessary capacity, given this topology, should be assumed.~~

~~7.3.1.4 Currently Available Technologies.~~

~~The telecommunications service provider's economical choice of forward looking technologies may be restricted to those technologies available in the marketplace and for which vendor prices can be obtained at the time the study is performed.~~

~~7.3.1.5 Increment to be Studied.~~

~~For purposes of all studies performed in compliance with this Rule, the relevant increment of output shall be the level of output necessary to satisfy the total current or forecasted demand of the service being studied.~~

~~7.3.1.6 Planning Period.~~

~~The planning horizon for service offerings shall be no less than 5 years and no greater than 8 years, unless otherwise authorized by the Commission.~~

~~7.3.1.7 Assumptions.~~

~~The telecommunications service provider shall fully document all assumptions used to compute the proposed TSLRIC prices.~~

~~7.3.2 Administrative Requirements.~~

~~The telecommunications service provider shall produce available documentation for all incremental cost studies performed in compliance with this Rule. Such documentation shall be substantively equivalent to that provided by Bell Atlantic-Delaware, Inc. in connection with incremental cost studies at the time of the adoption of these rules. The telecommunications service provider shall provide a copy of all documentation produced to the Division of the Public Advocate.~~

~~7.4 The Application of the TSLRIC Price Floor and Imputation Standard.~~

~~7.4.1 The revenue associated with a particular Basic service offering must be sufficient to meet its TSLRIC price floor, unless otherwise authorized by the Commission.~~

~~7.4.2 The revenue associated with a particular Discretionary service offering must be sufficient to meet its TSLRIC price floor and imputation standard.~~

~~7.4.3 The revenue associated with a particular Competitive service offering must be sufficient to meet its TSLRIC price floor and imputation standard.~~

~~7.4.4 The revenue associated with an individual customer contract must be sufficient to meet the contract's TSLRIC price floor and applicable imputation standard.~~

2 DE Reg. 280 (08/01/98)

23 DE Reg. 1048 (06/01/20) (Final)