

No. 2004-183

## AN ACT

HB 30

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for residential telephone service rates based on duration or distance of call and for local exchange service increases and limitations; adding and repealing provisions relating to alternative form of regulation of telecommunications services; establishing the Broadband Outreach and Aggregation Fund; providing for Voice over Internet Protocol; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 1325, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008 and 3009 of Title 66 of the Pennsylvania Consolidated Statutes are repealed.

Section 2. Title 66 is amended by adding sections to read:

§ 3010. *(Reserved)*.

§ 3011. *Declaration of policy.*

*The General Assembly finds and declares that it is the policy of this Commonwealth to:*

*(1) Strike a balance between mandated deployment and market-driven deployment of broadband facilities and advanced services throughout this Commonwealth and to continue alternative regulation of local exchange telecommunications companies.*

*(2) Maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas, including deployment of broadband facilities in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks and health care facilities.*

*(3) Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis.*

*(4) Ensure that rates for protected services do not subsidize the competitive ventures of telecommunications carriers.*

*(5) Provide diversity in the supply of existing and future telecommunications services and products in telecommunications markets throughout this Commonwealth by ensuring that rates, terms and conditions for protected services are reasonable and do not impede the development of competition.*

(6) *Ensure the efficient delivery of technological advances and new services throughout this Commonwealth in order to improve the quality of life for all Commonwealth residents.*

(7) *Encourage the provision of telecommunications products and services that enhance the quality of life of people with disabilities.*

(8) *Promote and encourage the provision of competitive services by a variety of service providers on equal terms throughout all geographic areas of this Commonwealth without jeopardizing the provision of universal telecommunications service at affordable rates.*

(9) *Encourage the competitive supply of any service in any region where there is market demand.*

(10) *Encourage joint ventures between local exchange telecommunications companies and other entities where such joint ventures accelerate, improve or otherwise assist a local exchange telecommunications company in implementing its network modernization plan.*

(11) *Establish a bona fide retail request program to aggregate and make advanced services available in areas where sufficient market demand exists and to supplement existing network modernization plans.*

(12) *Promote and encourage the provision of advanced services and broadband deployment in the service territories of local exchange telecommunications companies without jeopardizing the provision of universal service.*

(13) *Recognize that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers.*

**§ 3012. Definitions.**

*The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:*

*“Advanced service.” A retail telecommunications service that, regardless of transmission medium or technology, is capable of supporting a minimum speed of 200 kilobits per second (Kbps) in at least one direction at the network demarcation point of the customer’s premises.*

*“Aggregator telephone.” A telephone which is made available to the transient public, customers or patrons, including, but not limited to, coin telephones, credit card telephones and telephones located in hotels, motels, hospitals and universities.*

*“Alternative form of regulation.” A form of regulation of telecommunications services other than the traditional rate base or rate of return regulation, including a streamlined form of regulation, as approved by the commission.*

**“Alternative service provider.”** *An entity that provides telecommunications services in competition with a local exchange telecommunications company.*

**“Bona fide retail request.”** *A written request for service which meets the requirements of section 3014(c) (relating to network modernization plans), is received by a local exchange telecommunications company and through which end users commit to subscribe to an advanced service.*

**“Bona fide retail request program.”** *A program established by a local exchange telecommunications company pursuant to section 3014(c) (relating to network modernization plans).*

**“Broadband.”** *A communication channel using any technology and having a bandwidth equal to or greater than 1.544 megabits per second (Mbps) in the downstream direction and equal to or greater than 128 kilobits per second (Kbps) in the upstream direction.*

**“Broadband availability.”** *Access to broadband service by a retail telephone customer of a local exchange telecommunications company.*

**“Broadband Outreach and Aggregation Program.”** *A program established by the Department of Community and Economic Development pursuant to section 3014(i) (relating to network modernization plans).*

**“Business Attraction or Retention Program.”** *A program established by a local exchange telecommunications company pursuant to section 3014(d) (relating to network modernization plans).*

**“Central office.”** *A local exchange telecommunications company switch used to provide local exchange telecommunications service.*

**“Community.”** *Those customers of a local exchange telecommunications company served by an existing or planned remote terminal or, where no remote terminal exists or is planned, a central office switch.*

**“Competitive service.”** *A service or business activity determined to be competitive by the commission on or prior to December 31, 2003, and a service or business activity determined or declared to be competitive pursuant to section 3016 (relating to competitive services).*

**“Department.”** *The Department of Community and Economic Development of the Commonwealth.*

**“Education Technology Fund” or “E-Fund.”** *The fund established under section 3015(d) (relating to alternative forms of regulation).*

**“Education Technology Program.”** *The program established by the Department of Education pursuant to section 3014(j) (relating to network modernization plans).*

**“Eligible telecommunications carrier.”** *A carrier designated by the Pennsylvania Public Utility Commission pursuant to 47 CFR 54.201 (relating to definition of eligible telecommunications carriers, generally) or successor regulation as eligible to receive support from the Federal Universal Service Fund.*

***“Eligible telecommunications customer.”*** A customer of an eligible telecommunications carrier who qualifies for Lifeline service discounts pursuant to the requirements of 47 CFR 54.409 (relating to consumer qualification for Lifeline) or successor regulation.

***“Fund.”*** The Broadband Outreach and Aggregation Fund established under section 3015(c) (relating to alternative forms of regulation).

***“Gross Domestic Product Price Index”*** or ***“GDP-PI.”*** The Gross Domestic Product Fixed Weight Price Index as calculated by the United States Department of Commerce or a successor price index.

***“Health care facility.”*** The term shall have the same meaning given to it in the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

***“Industrial development agency.”*** An industrial development agency under the act of May 17, 1956 (1955 P.L.1609, No.537), known as the Pennsylvania Industrial Development Authority Act, that has been certified by the Pennsylvania Industrial Development Authority under section 5.2 of that act.

***“Inflation offset.”*** The part of the price change formula in the price stability mechanism that reflects an offset to the Gross Domestic Product Price Index or Successor Price Index.

***“Interexchange services.”*** The transmission of interLATA or intraLATA toll messages or data outside the local calling area.

***“Interexchange telecommunications carrier.”*** A carrier other than a local exchange telecommunications company authorized by the commission to provide interexchange services.

***“Lifeline service.”*** A discounted rate local service offering, as defined in 47 CFR 54.401 (relating to Lifeline defined) or successor regulation, but excluding any offering funded in part by Federal Universal Service Fund Tier Three funding under 47 CFR 54.403 (relating to Lifeline support amount) or successor regulation.

***“Local development district.”*** A multicounty economic and community development organization established to provide regional planning and development services to improve the economy and quality of life in a particular region through a variety of activities, including, but not limited to, the fostering of public and private partnerships and providing assistance to businesses.

***“Local exchange telecommunications company.”*** An incumbent carrier authorized by the commission to provide local exchange telecommunications services. The term includes a rural telecommunications carrier and a nonrural telecommunications carrier.

***“Local exchange telecommunications service.”*** The transmission of messages or communications that originate and terminate within a prescribed local calling area.

***“Network modernization plan.”*** A plan for the deployment of broadband service by a local exchange telecommunications company under this chapter or any prior law of this Commonwealth.

***“Noncompetitive service.”*** A regulated telecommunications service or business activity that has not been determined or declared to be competitive.

***“Nonprotected service.”*** Any telecommunications service provided by a local exchange telecommunications company that is not a protected service.

***“Nonrural telecommunications carrier.”*** A local exchange telecommunications company that is not a rural telephone company as defined in section 3 of the Telecommunications Act of 1996 (Public Law 104-104, 110 Stat. 56).

***“Optional calling plan.”*** A discounted toll plan offered by either a local exchange telecommunications company or an interexchange telecommunications carrier.

***“Political subdivision.”*** Any county, city, borough, incorporated town, township, municipality, municipal authority or county institution district.

***“Price stability mechanism.”*** A formula which may be included in a commission-approved alternative form of regulation plan that permits rates for noncompetitive services to be adjusted upward or downward.

***“Protected service.”*** The following telecommunications services provided by a local exchange telecommunications company unless the commission has determined the service to be competitive:

- (1) Service provided to residential consumers or business consumers that is necessary to complete a local exchange call.***
- (2) Touch-tone service.***
- (3) Switched access service.***
- (4) Special access service.***
- (5) Ordering, installation, restoration and disconnection of these services.***

***“Remote terminal.”*** A structure located outside of a central office which houses electronic equipment and which provides transport for telecommunications services to and from a central office.

***“Rural telecommunications carrier.”*** A local exchange telecommunications company that is a rural telephone company as defined in section 3 of the Telecommunications Act of 1996 (Public Law 104-104, 110 Stat. 56).

***“School entity.”*** An intermediate unit, school district, joint school district, area vocational-technical school, independent school, licensed private academic school, accredited school and any other public or nonpublic school serving students in any grade from kindergarten through 12th grade.

***“Special access service.”*** Service provided over dedicated, nonswitched facilities by local exchange telecommunications companies to

*interexchange telecommunications carriers or other large volume users which provides connection between an interexchange telecommunications carrier or private network and a customer's premises.*

*"Switched access service." A service which provides for the use of common terminating, switching and trunking facilities of a local exchange telecommunications company's public switched network. The term includes, but is not limited to, the rates for local switching, common and dedicated transport and the carrier charge.*

*"Telecommunications Act of 1996." The Telecommunications Act of 1996 (Public Law 104-104, 110 Stat. 56).*

*"Telecommunications carrier." An entity that provides telecommunications services subject to the jurisdiction of the commission.*

*"Telecommunications service." The offering of the transmission of messages or communications for a fee to the public.*

*"Universal broadband availability." Access to broadband service by each telephone customer of a local exchange telecommunications company.*

**§ 3013. Continuation of commission-approved alternative regulation and network modernization plans.**

*(a) General rule.—An alternative form of regulation plan and network modernization plan approved by the commission for a local exchange telecommunications company as of December 31, 2003, shall remain valid and effective except as may be amended at the election of the local exchange telecommunications company as authorized by this chapter. The commission shall allow a previously approved plan to be amended to conform to any changes made under this chapter and shall not require any other changes to the plan.*

*(b) Limitation on changes to plans.—Except for changes to existing alternative form of regulation and network modernization plans as authorized by this chapter, no change to any alternative form of regulation or network modernization plan may be made without the express agreement of both the commission and the local exchange telecommunications company.*

*(c) Grandfather provision.—All services previously determined to be competitive as of December 31, 2003, shall remain competitive services unless reclassified by the commission under section 3016(c) (relating to competitive services).*

*(d) Commission oversight.—The commission will continue to exercise oversight of alternative form of regulation and network modernization plans for local exchange telecommunications companies as provided in this chapter.*

**§ 3014. Network modernization plans.**

*(a) Continuation of approved plan.—A local exchange telecommunications company that does not elect an option under subsection (b) shall remain subject to its network modernization plan in*

*effect as of December 31, 2003, without revision or modification except by agreement under section 3013(b) (relating to continuation of commission-approved alternative regulation and network modernization plans) and as provided in this section through December 31, 2015.*

*(b) Options for amendment of network modernization plan.—Local exchange telecommunications companies shall have the following options:*

*(1) (i) A rural telecommunications carrier that elects to amend its network modernization plan pursuant to this subsection shall remain subject to the carrier's network modernization plan in effect as of December 31, 2003, as amended pursuant to this subsection, through December 31, 2008. Prior to implementation of such election, the rural telecommunications carrier shall comply with the notification requirements of subsection (e).*

*(ii) The rural telecommunications carrier shall commit to accelerate 100% broadband availability by December 31, 2008, in its amended network modernization plan. Any rural telecommunications carrier electing this option shall not be required to offer a bona fide retail request program or a business attraction or retention program.*

*(2) (i) A rural telecommunications carrier that elects to amend its network modernization plan pursuant to this subsection shall remain subject to the carrier's network modernization plan in effect as of December 31, 2003, as amended pursuant to this subsection, through December 31, 2013, or December 31, 2015, as applicable. Prior to implementation of such election, the rural telecommunications carrier shall comply with the notification requirements of subsection (e).*

*(ii) The rural telecommunications carrier shall commit:*

*(A) to accelerate broadband availability to at least 80% of its total retail access lines in its distribution network by December 31, 2010, and 100% of its total retail access lines in its distribution network by December 31, 2013; or*

*(B) to accelerate broadband availability to at least 80% of its total retail access lines in its distribution network by December 31, 2010, and 100% of its total retail access lines in its distribution network by December 31, 2015; and*

*(C) to offer a bona fide retail request program and a business attraction or retention program pursuant to subsections (c) and (d). Under no circumstances may the rural telecommunications carrier reduce its existing broadband availability commitment.*

*(3) (i) A nonrural telecommunications carrier that elects to amend its network modernization plan pursuant to this subsection shall remain subject to such carrier's network modernization plan in effect as of December 31, 2003, as amended pursuant to this subsection, including meeting its 100% broadband availability*

*commitment. Prior to implementation of such election, the nonrural telecommunications carrier shall comply with the notification requirements of subsection (e).*

*(ii) The nonrural telecommunications carrier shall commit:*

*(A) to provide broadband availability to 100% of its total retail access lines in its distribution network by December 31, 2013, or December 31, 2015; and*

*(B) to offer a bona fide retail request program and a business attraction or retention program pursuant to subsections (c) and (d). Under no circumstances may such nonrural telecommunications carrier reduce its existing broadband availability commitment.*

*(4) A local exchange telecommunications company that elects under paragraph (1), (2) or (3) shall also commit to universal broadband deployment in or adjacent to public rights-of-way abutting all public schools, including the administration offices supporting public schools, industrial parks and health care facilities in its service territory on or before December 31, 2005, except that a local exchange telecommunications company serving more than ten exchanges in this Commonwealth may elect to extend this commitment from December 31, 2005, to December 31, 2006, for any exchange with less than 4,000 access lines.*

*(5) A local exchange telecommunications company that elects under paragraph (1), (2) or (3) may amend its network modernization plan to extend the period of time within which broadband service must be made available to a customer to up to ten business days after the customer's request for broadband service.*

*(6) A local exchange telecommunications company operating under an amended network modernization plan may subsequently petition the commission for approval of further modification of its amended network modernization plan, which the commission may grant upon good cause shown.*

*(7) A rural telecommunications carrier serving less than 50,000 access lines in this Commonwealth making an election pursuant to paragraph (1) and filing its amended network modernization plan with the commission pursuant to subsection (e) shall be granted by the commission a suspension of section 251(c)(2), (3), (4), (5) and (6) obligations under the Telecommunications Act of 1996. This suspension of obligations shall expire December 31, 2008, unless extended by the commission. Should the commission, following a hearing, determine that the rural telecommunications carrier has failed to timely meet its commitments pursuant to this paragraph, the suspension of obligations shall expire upon entry of the commission order making such determination. Expiration of the suspension of obligations shall not impact the rural telephone company exemption of*



*the rural telecommunications carrier under section 251(f)(1) of the Telecommunications Act of 1996.*

*(8) A local exchange telecommunications company may accelerate its broadband availability commitment by electing an additional option pursuant to paragraph (1), (2) or (3), as applicable, at a later date. The local exchange telecommunications company shall be subject to the applicable modified inflation offset in its price stability mechanism as set forth in section 3015(a)(1) (relating to alternative forms of regulation) effective upon the filing of an amended network modernization plan under subsection (e).*

*(c) Bona fide retail request program.—A local exchange telecommunications company that elects to amend its network modernization plan pursuant to subsection (b)(2) or (3) shall no later than 90 days after the effective date of its amended plan implement a bona fide retail request program in areas where it does not provide broadband. Not later than 30 days in advance of program implementation, the local exchange telecommunications company shall file with the commission and provide the department with a written description of the program, a sample request for advanced services form for use in the program and the form of any advanced services term subscription agreements customers will be required to execute in connection with receiving the requested services. A bona fide retail request program shall consist of the following:*

*(1) Any person, business, local development district, industrial development agency or other entity seeking advanced services pursuant to a bona fide retail request program shall submit a written request for such services to the local exchange telecommunications company or to the department in accordance with subsection (d). The written request may be in the form of a petition which includes the information required by paragraph (2), in the form provided by the department under subsection (d) which includes the information required by paragraph (2) or in the form of individual requests each of which includes the information required by paragraph (2). If individual requests are received, the local exchange telecommunications company shall aggregate requests for the same service and initiate appropriate action pursuant to this subsection when the required number of requests have been received.*

*(2) To be considered a bona fide retail request, the written request must include:*

*(i) a request that a minimum of 50 retail access lines or 25% of retail access lines within a community, whichever is less, each be provided the same advanced service or comparable advanced services having a bandwidth within 100 kilobits per second (Kbps) of each other. Notwithstanding the foregoing comparable bandwidth limitation, where a request includes individual customer requests for advanced services having equal to or less than 1.544 megabits per*

*second (Mbps) bandwidth in the downstream direction, all lines in the request shall be counted in meeting the minimum line requirement of this subparagraph;*

*(ii) the name, address, telephone number and signature of each existing retail customer requesting the advanced service, the advanced service being requested and the number of access lines for which the advanced service is being requested;*

*(iii) the name, address and telephone number of a designated contact person where the request is made by or on behalf of more than one person or business; and*

*(iv) a commitment by each customer who signs the request to subscribe to the requested service for one year, subject to the local exchange telecommunications company's identification of the price and terms of the service and the customer's agreement to the price and terms.*

*(3) In administering the bona fide retail request program, the local exchange telecommunications company shall:*

*(i) establish an Internet website and toll-free telephone number to address customer inquiries regarding the program;*

*(ii) mail a request form to a customer upon request;*

*(iii) confirm its receipt of any completed request in writing to the customer and identify the service requested;*

*(iv) as part of the written confirmation, if available, or in a subsequent written communication to the customer, provide the customer the applicable rate, the contract term, the status of the request and a term subscription agreement for execution; and*

*(v) notify the customers in a community, within 30 days of receipt of a bona fide request, of the expected date of the availability of the requesters' service.*

*(4) When a bona fide retail request has been received that meets the requirements of paragraph (2), the local exchange telecommunications company shall provide the requested advanced service, or other reasonably comparable service having a bandwidth within 100 kilobits per second (Kbps) of the requested service, to the community as soon as practicable, but in no event later than 365 days of the date the requirements of paragraph (2) have been met or within the period approved by the commission under paragraph (5) or (6) where:*

*(i) the local exchange telecommunications company provides the requested advanced service to other customers in its service territory;*

*(ii) no service is available to the requesting customers from an alternative service provider at or within 100 kilobits per second (Kbps) of the data speed requested or such service is available at a price that exceeds the then current price offered by the local exchange telecommunications company by more than 50%;*

(iii) *the community is situated within the service territory of the local exchange telecommunications company; and*

(iv) *the local exchange telecommunications company does not have to provide fiber to the customer's premises to furnish the requested advanced service.*

(5) *Where, as a result of property acquisition, including acquiring rights-of-way, or new construction, a local exchange telecommunications company is unable to provide the requested advanced service within the one-year period set forth in paragraph (4), the company may petition the commission for an extension of up to six months, with service upon the customer or customers who made the bona fide retail request and the department if the department submitted the request on behalf of the customer or customers. The commission may delegate its authority to rule on such petitions to a bureau director or other appropriate employee who shall grant the petition for good cause shown.*

(6) *Where the total number of bona fide retail requests received by any local exchange telecommunications company or affiliated companies that meet the requirements of paragraphs (2) and (4) exceed 40 requests in any 12-month period or where there are more than 20 such requests that require property acquisition, including acquiring rights-of-way, or new construction in any 12-month period, the local exchange telecommunications company or companies may provide a verified certification to the commission that one or both of the previously stated criteria are met, with service upon the customer or customers who made the additional requests and upon the department if the department submitted any such requests. Upon receipt of the certification, the commission or the commission through its designated staff shall permit the local exchange telecommunications company or companies to extend the time for such deployments for a period of no more than 12 months unless the commission determines an additional time period to be just and reasonable. If a deployment is extended, it shall be counted in determining the maximum number of deployments provided for under this subsection in any 12-month period covering the month to which it is extended.*

(7) *No advanced service requested and deployed by a local exchange telecommunications company under the bona fide retail request program which has a bandwidth of less than 1.544 megabits per second (Mbps) in the downstream direction shall be counted as a credit toward the local exchange telecommunications company's broadband deployment obligation under its network modernization plan amended pursuant to subsection (b)(2) or (3).*

(8) *With regard to requests submitted under this subsection, a retail customer may challenge the action of a local exchange*

*telecommunications company pursuant to section 701 (relating to complaints).*

*(9) Local exchange telecommunications companies with bona fide retail request programs shall provide semiannual reports to the commission and the department of the number of requests for advanced services received during the reporting period by exchange or density cell and the action taken on requests meeting the requirements of this subsection.*

*(10) A local exchange telecommunication company's bona fide retail request program established under this subsection shall continue through December 31, 2015, or such earlier date as the local exchange telecommunications company achieves 100% broadband availability throughout its service territory.*

*(11) In addition to adjudicating any complaints brought by customers under paragraph (8), the commission shall monitor and enforce the compliance of participating local exchange telecommunications companies with their obligations under this subsection.*

*(d) Business attraction or retention program.—*

*(1) Not later than 90 days after amending its network modernization plan under subsection (b)(2) or (3), the local exchange telecommunications company shall establish a business attraction or retention program to permit the department to aggregate customer demand where necessary and facilitate the deployment of advanced or broadband services to qualifying businesses which the department seeks to attract to or retain in this Commonwealth and whose requests for such services are submitted by or through the department.*

*(2) Each local exchange telecommunications company which amends its network modernization plan under subsection (b)(2) or (3) not later than 90 days after the effective date of its amended plan shall designate a single point of contact to receive all written advanced or broadband service requests forwarded by the department, provide associated contact information to the department and provide the department and the commission with a written description of its participation in the program and a sample request for advanced or broadband services form for use in the program.*

*(3) The department may submit a request to the applicable local exchange telecommunications company by or on behalf of qualifying businesses in areas that the department deems priority areas for economic development, including and giving preference to keystone opportunity zones, keystone opportunity expansion zones, enterprise zones, keystone opportunity improvement zones and other areas identified by the department as lacking adequate access to advanced or broadband services which would be important in order to promote economic development projects in those areas.*

*(4) The department shall establish an advisory committee that shall consist of representatives of each local exchange telecommunications company with a business attraction or retention program, local development districts and other local economic and industrial development agencies to assist the department in developing protocols and procedures for implementing these programs pursuant to this subsection.*

*(5) Qualifying business or businesses' requests for advanced services submitted by the department that are provisioned through the bona fide retail request program shall be processed in accordance with subsection (c) and shall be allocated 50% of the maximum number of annual deployments referenced in subsection (c)(6). Other requests shall be allocated 50% of the number of such deployments, provided, however, that any allocated deployments that are unused may be utilized by the department or nondepartment applicants, as applicable.*

*(6) For qualifying business or businesses whose request for advanced services is determined by the local exchange telecommunications company to be better processed outside of the bona fide retail request program, the local exchange telecommunications company shall make a proposal to the requesting business or businesses to provide the requested advanced or broadband service and subsequently shall provision such service. The local exchange telecommunications company shall advise the department and the business or businesses within 30 days of the date the contract is signed of the date by which the requested advanced or broadband service will be provided, which date shall be not later than one year after the date the contract is signed unless the business or businesses agree to a longer period or the local exchange telecommunications company obtains commission approval of an extension under the same procedure set forth in subsection (c)(5).*

*(7) No advanced service requested of and deployed by a local exchange telecommunications company under the Business Attraction or Retention Program which has a bandwidth of less than 1.544 megabits per second (Mbps) in the downstream direction shall be counted as a credit toward the local exchange telecommunication company's broadband deployment obligation under its network modernization plan amended under subsection (b)(2) or (3).*

*(8) Each local exchange telecommunications company which is required to participate in the department's Business Attraction or Retention Program shall continue its participation through December 31, 2015, or such earlier date as it achieves 100% broadband availability throughout its service territory.*

*(9) The department shall oversee local exchange telecommunications company participation in the Business Attraction or Retention Program, including the timely completion of qualifying*

*advanced or broadband services requests submitted by or through the department which are processed within or outside of the participating local exchange telecommunications companies' bona fide retail request programs.*

*(10) The commission shall monitor and enforce the compliance of participating local exchange telecommunications companies with their obligations under the Business Attraction or Retention Program.*

*(e) Notice of filing of amendments.—A local exchange telecommunications company that elects to amend its network modernization plan under subsection (b) shall notify the commission in writing of such election and, within 60 days following such notification, file its amended network modernization plan with the commission. Copies of the written notice of election and of the amended network modernization plan shall be served by the local exchange telecommunications company on the Office of Consumer Advocate and the Office of Small Business Advocate. Concurrent with the filing of the amended plan with the commission, the local exchange telecommunications company shall publish notice of such filing in a newspaper or newspapers of general circulation in its service territory or by bill message or insert. An amended plan compliant with the requirements of this chapter shall be approved by the commission within 100 days of its filing. If the commission fails to act within 100 days, the amended plan shall be deemed approved.*

*(f) Network modernization plan report.—*

*(1) A local exchange telecommunications company operating under a network modernization plan shall continue to file with the commission biennial reports on its provision of broadband availability in the form and detail required by the commission as of July 1, 2004, unless such reporting requirements are subsequently reduced by the commission.*

*(2) Nothing in this subsection shall be construed to impede the ability of the commission to require the submission of further information to support the accuracy of or to seek an explanation of the reports specified in this subsection.*

*(3) Under no circumstances shall the commission compel the public release of maps or other information describing the actual location of a local exchange telecommunications company's facilities.*

*(g) Assistance to political subdivisions.—A local exchange telecommunications company shall commit in its amended network modernization plan to make technical assistance available to political subdivisions located in its service territory in pursuing the deployment of additional telecommunications infrastructure or services by the local exchange telecommunications company.*

*(h) Prohibition against political subdivision advanced and broadband services deployment.—*

*(1) Except as otherwise provided for under paragraph (2), a political subdivision or any entity established by a political subdivision may not provide to the public for compensation any telecommunications services, including advanced and broadband services, within the service territory of a local exchange telecommunications company operating under a network modernization plan.*

*(2) A political subdivision may offer advanced or broadband services if the political subdivision has submitted a written request for the deployment of such service to the local exchange telecommunications company serving the area and, within two months of receipt of the request, the local exchange telecommunications company or one of its affiliates has not agreed to provide the data speeds requested. If the local exchange telecommunications company or one of its affiliates agrees to provide the data speeds requested, then it must do so within 14 months of receipt of the request.*

*(3) The prohibition in paragraph (1) shall not be construed to preclude the continued provision or offering of telecommunications services by a political subdivision of the same type and scope as were being provided on the effective date of this section.*

*(i) Broadband Outreach and Aggregation Program.—*

*(1) The department shall establish a Broadband Outreach and Aggregation Program for the purpose of making expenditures and providing grants from the Broadband Outreach and Aggregation Fund established under section 3015(c) (relating to alternative forms of regulation) for:*

*(i) Outreach programs for political subdivisions, economic development entities, schools, health care facilities, businesses and residential customers concerning the benefits, use and procurement of broadband services; and*

*(ii) Seed grants to aggregate customer demand for broadband services in communities or political subdivisions with limited access to such services and to permit customers in such communities or political subdivisions to request such services from a telecommunications provider.*

*(2) The department shall annually report to the commission on all payments to and expenditures from the Broadband Outreach and Aggregation Fund, and the commission shall verify the accuracy of the contributions from the participating local exchange telecommunications companies.*

*(j) Education Technology Program.—*

*(1) The Department of Education shall establish an Education Technology Program for the purpose of providing grants to school entities from the Education Technology Fund (E-Fund) established under section 3015(d).*

**(2) The Department of Education shall authorize grants from the E-Fund for the following purposes:**

**(i) Purchase or lease of telecommunications services, infrastructure or facilities to establish and support broadband networks between, among and within school entities and not for the provision of telecommunications services to the public for compensation.**

**(ii) Purchase or lease of premises telecommunications network equipment and end-user equipment to enable the effective use of broadband networks between, among and within school entities and not for the provision of telecommunications services to the public for compensation.**

**(iii) Distance learning initiatives that use the foregoing broadband networks.**

**(iv) Technical support services for the activities described in subparagraphs (i) through (iii).**

**(3) Each applicant school entity shall be required to provide 100% matching funds to support each E-Fund grant request. Funds received from Federal technology programs such as the universal service support mechanism for schools and libraries set forth in 47 CFR Pt. 54 (relating to universal service or successor regulations), in-kind contributions and any other technology expenditures shall be applied toward the matching fund requirement.**

**(4) No later than 90 days after the effective date of this section, the Department of Education shall prescribe the grant process and the form and manner of the E-Fund application. Grants shall be limited to the funds available in the Education Technology Fund. In awarding grants, the Department of Education shall give priority to applications:**

**(i) that are submitted by school entities that seek funds for discounted broadband services under subsection (l) or for broadband infrastructure, facilities or equipment from local exchange telecommunications companies which contribute to the E-Fund;**

**(ii) that seek funds for regional networks that serve multiple school districts which are filed on behalf of multiple school districts and school entities; or**

**(iii) that are submitted by school entities that do not have broadband service, provided, however, that nothing in this subsection shall preclude the department from awarding funds to school entities for telecommunications services, infrastructure or facilities that provide bandwidths greater than 1.544 megabits per second (Mbps).**

**The Department of Education shall assure that the applications funded each year are geographically dispersed throughout the Commonwealth.**

**(k) Balanced deployment.—A local exchange telecommunications company shall reasonably balance deployment of its broadband network between rural, urban and suburban areas within its service territory, as**



*those areas are applicable, in accordance with its approved network modernization plan.*

*(l) Broadband discounts to schools.—Each local exchange telecommunications company that elects to amend its network modernization plan pursuant to this section:*

*(1) Shall offer school customers which meet the eligibility standards described in 47 CFR 54.501 (relating to eligibility for services provided by telecommunications carriers) and which agree to enter into a minimum three-year contract a 30% discount, or greater discount at the local exchange telecommunications company's discretion, in the otherwise applicable tariffed distance-sensitive per-mile rate element and also will waive the associated nonrecurring charges for available intrastate broadband services where used for educational purposes and not for the provision of telecommunications services to the public for compensation. The discount or waiver shall not be required where application of it to a particular service would conflict with applicable law.*

*(2) Will assist school customers in applying for e-rate funding under 47 CFR 54.505 (relating to discounts).*

*(m) Inventory of available services.—*

*(1) The department shall compile, periodically update and publish, including at its Internet website, a listing of advanced and broadband services, by general location, available from all advanced and broadband service providers operating in this Commonwealth irrespective of the technology used.*

*(2) All providers of advanced and broadband services shall cooperate with the department.*

*(3) The department may not disclose maps or other information describing the specific location of any telecommunications carrier's or alternative service provider's facilities.*

*(n) Construction.—Nothing in this section shall be construed:*

*(1) As giving the commission the authority to require a local exchange telecommunications company to provide specific services or to deploy a specific technology to retail customers seeking broadband or advanced services.*

*(2) As prohibiting a local exchange telecommunications company from participating in joint ventures with other entities in meeting its advanced services and broadband deployment commitments under its network modernization plan.*

**§ 3015. Alternative forms of regulation.**

*(a) Inflation offset.—*

*(1) Except as otherwise provided in paragraphs (2) and (3), a local exchange telecommunications company with an alternative form of regulation containing a price stability mechanism that files an amended network modernization plan under section 3014(b)(1), (2) or (3)*

*(relating to network modernization plans) shall be subject to a modified inflation offset in its price stability mechanism in adjusting its rates for noncompetitive services, effective upon the filing of an amended network modernization plan under section 3014(e), as follows:*

*(i) If a nonrural telecommunications carrier files an amended network modernization plan under section 3014(b)(3) that commits to deploy 100% broadband availability by December 31, 2013, then the carrier's inflation offset shall be zero.*

*(ii) If a nonrural telecommunications carrier files an amended network modernization plan under section 3014(b)(3) that commits to deploy 100% broadband availability by December 31, 2015, then the carrier's inflation offset shall be equal to 0.5%.*

*(iii) If a rural telecommunications carrier files an amended network modernization plan under section 3014(b)(1) that commits to deploy 100% broadband availability by December 31, 2008, or under section 3014(b)(2)(ii)(A) that commits to deploy 100% broadband availability by December 31, 2013, then the carrier's inflation offset shall be zero.*

*(iv) If a rural telecommunications carrier files an amended network modernization plan under section 3014(b)(2)(ii)(B) that commits to deploy 100% broadband availability by December 31, 2015, then the carrier's inflation offset shall be equal to 0.5%.*

*(2) Utilizing network modernization plan reports filed with the commission by local exchange telecommunications companies under section 3014(f), the commission shall monitor and enforce companies' compliance with their interim and final 100% commitments for broadband availability in their amended network modernization plans. In the event that a local exchange telecommunications company is found by the commission, after notice and evidentiary hearings held on an expedited basis, to have failed to meet such an interim or final 100% commitment, then the commission shall require the local exchange telecommunications company to refund to customers in its next price stability filing an amount that is just and reasonable under the circumstances. Such amount shall not exceed an amount determined by multiplying the percentage shortfall of the broadband availability commitment on an access-line basis required to be met during the period from the start of the amended plan or from the date of the last prior interim commitment, as applicable, times the increased revenue that was obtained during this period as a result of the modified inflation offset provided in this section that reduced the inflation offset applicable in the local exchange telecommunications company's alternative regulation plan in effect on the effective date of this section, plus interest calculated under section 1308(d) (relating to voluntary changes in rates). Any such refund required under this subsection shall be separate from and in addition to any civil or other penalties that the*

*commission may impose on a local exchange telecommunications company under Chapter 33 (relating to violations and penalties).*

*(3) Where annual rate adjustments made under a nonrural telecommunications carrier's price stability mechanism are calculated using revenues from protected services, an average rate adjustment for protected residential customer local exchange telecommunications service lines shall be determined by dividing the total protected service revenues associated with such lines, as adjusted by the price stability formula, by the number of such lines, and the rate adjustment for any individual line shall not vary from this average rate adjustment by more than 20%.*

*(b) Rate changes for rural telecommunications carriers.—*

*(1) In addition to the rate change provisions in its alternative form of regulation plan, a rural telecommunications carrier operating without a price stability mechanism that files with the commission an amended network modernization plan under section 3014(b)(1) or (2) shall be permitted at any time to file proposed tariff changes with the commission, effective 45 days after filing, setting forth miscellaneous changes, including increases and decreases, in rates for noncompetitive services, excluding basic residential and business rates, provided such rate changes do not increase the rural telecommunications carrier's annual intrastate revenues by more than 3%.*

*(2) The commission tariff filing requirements and review associated with such proposed rate changes shall be limited to schedules submitted by the rural telecommunications carrier detailing the impact of the rate changes on the carrier's annual intrastate revenues.*

*(3) A rural telecommunications carrier that implements noncompetitive rate changes consistent with the procedure set forth in its alternative form of regulation plan shall be required only to file such financial and cost data with the commission to justify such changes as is required under its commission-approved alternative form of regulation plan.*

*(4) Notwithstanding the provisions of paragraph (1), (2) or (3), for any rural telecommunications carrier serving less than 50,000 access lines in this Commonwealth and operating under an alternative form of regulation plan, a formal complaint to deny rate changes for noncompetitive services unless signed by at least 20 customers of the rural telecommunications carrier shall not prevent implementation of the rate changes pending the adjudication of the formal complaint by the commission.*

*(c) Broadband Outreach and Aggregation Fund.—*

*(1) There is hereby established within the State Treasury a special fund to be known as the Broadband Outreach and Aggregation Fund for the purposes enumerated in section 3014(i).*

**(2) A local exchange telecommunications company that files an amended network modernization plan under section 3014(b)(2) or (3) shall be assessed by the commission for contribution to the fund and to the E-fund established under subsection (d) an amount of 20% of the first year's annual revenue effect:**

**(i) of any rate increase permitted by the elimination or reduction of the offset under subsection (a) and placed into effect; or**

**(ii) of any rate increase placed into effect under subsection (b)(1) if the local exchange telecommunications company is operating without a price stability mechanism.**

**For purposes of this paragraph, the term "first year's annual revenue effect" means the projected or actual increased revenues received by the local exchange telecommunications company during the one-year period from the effective date of its rate increase. The commission shall begin the assessments provided for in this paragraph on June 30, 2005, and thereafter shall make such assessments annually on June 30 until June 30, 2010, for assessments that include amounts for the fund and the e-fund and until June 30, 2015, for assessments that include amounts for only the fund. Each assessment shall be based on the first year's annual revenue effect of any covered rate increase effective after the date of the last annual assessment.**

**(3) An amount not to exceed 50% of such assessment shall be allocated to the fund. The remainder of the assessment shall be allocated to the E-fund provided for under subsection (d) until its termination on June 30, 2011. After the E-fund termination, the maximum assessment percentage shall be reduced from 20% to 10%, and contributions shall be made only to the fund until the local exchange telecommunications company achieves 100% broadband availability. Contributions of allocated amounts shall be paid to the fund and the E-fund by the local exchange telecommunications company in equal quarterly installments.**

**(4) In no event shall the total amount of the fund exceed \$5,000,000 annually, and in the event of such overfunding the department shall credit the overcollection to the next year's contribution amount.**

**(5) A local exchange telecommunications company that elects to amend its network modernization plan pursuant to section 3014 (b)(1) shall not be required to contribute to the fund.**

**(6) The moneys in the Broadband Outreach and Aggregation Fund are hereby appropriated upon approval of the Governor to the department for the purposes enumerated in paragraph (1). The department may use up to 3% of the money in the fund for administration.**

**(7) The fund shall continue until July 1, 2016, at which time the fund shall terminate, and the department shall return any funds**

*remaining in the fund on a pro rata basis to the local exchange telecommunications companies that contributed to the fund.*

*(d) Education Technology Fund (E-Fund).—*

*(1) There is hereby established within the State Treasury a special fund to be known as the Education Technology Fund (E-Fund) for the purposes enumerated in paragraph (4).*

*(2) All E-fund assessments imposed by the commission under subsection (c)(2) and paragraph (3), moneys specifically appropriated by the General Assembly for the purposes of this subsection and any funds, contributions or payments which may be made available to the fund by the Federal Government, another State agency or any public or private source for the purpose of implementing this subsection shall be deposited in the E-Fund.*

*(3) Beginning in 2005 and continuing through 2010, the commission shall, no later than June 30, annually assess each nonrural telecommunications carrier that files an amended network modernization plan under section 3014(b)(3) an amount to be deposited in the E-Fund. Each carrier's annual assessment shall be payable in two equal installments due on October 31 of each year and January 31 of the following year and shall be based on the relative proportion of the retail access lines served by the nonrural telecommunications carrier in relation to the number of retail access lines served by all nonrural telecommunications carriers that have filed an amended network modernization plan under section 3014(b)(3). For fiscal years 2005-2006 and 2006-2007, the total annual assessment amount shall be \$7,000,000. For fiscal years 2007-2008, 2008-2009, 2009-2010 and 2010-2011, the total annual assessment amount shall be the difference between \$7,000,000 and any amount remaining in the E-Fund from prior fiscal years which remains unencumbered or unexpended. A nonrural telecommunications carrier's assessments required under this paragraph may not be recovered via a surcharge on customers' bills or in rates for noncompetitive services as exogenous change adjustment under the provisions of the carrier's price stability mechanism and subsection (a)(3) where applicable.*

*(4) Additional local exchange telecommunications company contributions to the E-fund shall be made pursuant to the provisions of subsections (c)(2) and (3).*

*(5) The Department of Education shall expend the moneys of the E-Fund for the purpose of providing grants to school entities as prescribed by section 3014(j).*

*(6) The moneys of the Education Technology Fund are hereby appropriated upon approval of the Governor to the Department of Education for the purposes enumerated in paragraph (5). The Department of Education may use up to 3% of the money for administration. Appropriations by the General Assembly to the fund*

*shall be continuing appropriations and shall not lapse at the close of any fiscal year.*

*(7) The E-Fund shall continue until June 30, 2011, at which time the fund shall terminate and the Department of Education shall return any funds remaining therein on a pro rata basis to the local exchange telecommunications companies that contributed to the fund.*

*(e) General filing requirements.—The commission's filing and audit requirements for a local exchange telecommunications company that is operating under an amended network modernization plan shall be limited to the following:*

*(1) Network modernization plan reports filed pursuant to section 3014(f).*

*(2) An annual financial report consisting of a balance sheet and income statement.*

*(3) An annual deaf, speech-impaired and hearing-impaired relay information report.*

*(4) An annual service report.*

*(5) Universal service reports.*

*(6) An annual access line report.*

*(7) An annual statement of gross intrastate operating revenues for purposes of calculating assessments for regulatory expenses.*

*(8) An annual State tax adjustment computation for years in which a tax change has occurred, if applicable.*

*(9) For those companies with a bona fide retail request program, a bona fide retail request report under section 3014(c)(9). These reports shall be submitted in the form determined by the commission.*

*(f) Other reports.—*

*(1) Notwithstanding any other provision of this title to the contrary, no report, statement, filing or other document or information, except as specified in subsection (e), shall be required of any local exchange telecommunications company unless the commission, upon notice to the affected local exchange telecommunications company and an opportunity to be heard, has first made specific written findings supporting conclusions in an entered order that:*

*(i) The report is necessary to ensure that the local exchange telecommunications company is charging rates that are in compliance with this chapter and its effective alternative form of regulation.*

*(ii) The benefits of the report substantially outweigh the attendant expense and administrative time and effort required of the local exchange telecommunications company to prepare it.*

*(2) Nothing in this subsection shall be construed to impede the ability of the commission to require the submission of further information to support the accuracy of or to seek an explanation of the reports specified in subsection (e).*

(g) *Rate change limitations.*—Nothing in this chapter shall be construed to limit the requirement of section 1301 (relating to rates to be just and reasonable) that rates shall be just and reasonable. The annual rate change limitations set forth in a local exchange telecommunications company's effective commission-approved alternative form of regulation plan or any other commission-approved annual rate change limitation shall remain applicable and shall be deemed just and reasonable under section 1301.

(h) *Conformance of plan.*—Upon approval of a local exchange telecommunications company of network modernization plan amendments pursuant to section 3014(e), the local exchange telecommunications company's alternative form of regulation plan shall be deemed amended consistent with this section.

**§ 3016. Competitive services.**

(a) *Commission determination of protected, retail nonprotected and retail noncompetitive services as competitive.*—

(1) A local exchange telecommunications company may petition the commission for a determination of whether a protected or retail noncompetitive service or other business activity in its service territory or a particular geographic area, exchange or group of exchanges or density cell within its service territory is competitive based on the demonstrated availability of like or substitute services or other business activities provided or offered by alternative service providers. The commission, after notice and hearing, shall enter an order granting or denying the petition within 60 days of the filing date or within 150 days of the filing date where a protest is timely filed, or the petition shall be deemed granted.

(2) The local exchange telecommunications company shall serve a copy of its petition on the Office of Consumer Advocate, the Office of Small Business Advocate and each of the parties to the commission's proceeding in which the company's network modernization plan that was in effect on December 31, 2003, was approved by the commission.

(3) In making its determination, the commission shall consider all relevant information submitted to it, including the availability of like or substitute services or other business activities, and shall limit its determination to the service territory or the particular geographic area, exchange or group of exchanges or density cell in which the service or other business activity has been proved to be competitive.

(4) The burden of proving that a protected or retail noncompetitive service or other business activity is competitive rests on the local exchange telecommunications company.

(b) *Declaration of retail nonprotected services as competitive.*—Notwithstanding the provisions of subsection (a), a local exchange telecommunications company may declare any retail nonprotected service as competitive by filing its declaration with the

*commission and serving it on the Office of Consumer Advocate, Office of Small Business Advocate and each of the parties to the commission's proceeding in which the company's network modernization plan that was in effect on December 31, 2003, was approved by the commission, provided that a local exchange telecommunications company may not use this declaration process for any service that the commission previously has reclassified as noncompetitive under either subsection (c) or prior law. A declaration of a retail nonprotected service as competitive shall be effective upon filing by the local exchange telecommunications company with the commission.*

*(c) Reclassification.—*

*(1) A party may petition the commission for a determination of whether a service or other business activity previously determined or declared to be competitive is noncompetitive. The commission, after notice and hearing, shall enter an order deciding the petition within 60 days of the filing date or 90 days of the filing date where a protest is timely filed, or the petition shall be approved.*

*(2) The petitioner shall serve a copy of the petition on the affected local exchange telecommunications company if the petitioner is not the company, the Office of Consumer Advocate, the Office of Small Business Advocate and each of the parties to the commission's proceeding in which the company's network modernization plan that was in effect on December 31, 2003, was approved by the commission.*

*(3) In making its determination, the commission shall consider all relevant information submitted to it, including the availability of like or substitute services or other business activities, and shall limit its determination to the particular geographic area, exchange or density cell in which the service or other business activity has been proved to be noncompetitive.*

*(4) The burden of proving that a competitive service or other business activity should be reclassified as noncompetitive rests on the party seeking the reclassification.*

*(5) If the commission reclassifies a service or other business activity as noncompetitive, the commission shall determine a just and reasonable rate for the reclassified service or business activity in accordance with section 1301 (relating to rates to be just and reasonable).*

*(d) Additional requirements.—*

*(1) The prices which a local exchange telecommunications company charges for competitive services shall not be less than the costs to provide the services.*

*(2) The commission may not require tariffs for competitive service offerings to be filed with the commission.*



(3) *A local exchange telecommunications company at its option may tariff its rates subject to rules and regulations applicable to the provision of competitive services.*

(4) *The commission may require a local exchange telecommunications company to maintain price lists with the commission applicable to its competitive services. Price changes that are filed in a company's tariff for competitive services will go into effect on a one-day notice.*

(e) *Pricing flexibility and bundling.—*

(1) *Subject to the requirements of subsection (d)(1), a local exchange telecommunications company may price competitive services at the company's discretion.*

(2) *A local exchange telecommunications company may offer and bill to customers on one bill bundled packages of services which include nontariffed, competitive, noncompetitive or protected services, including services of an affiliate, in combinations and at a single price selected by the company. A local exchange telecommunications company may file an informational tariff for a bundled package effective on a one-day notice.*

(3) *When an alternative service provider is offering local exchange telecommunications services within an exchange of a rural telecommunications carrier, the rural telecommunications carrier may reduce its prices on services offered within the exchange below the rates set forth in its otherwise applicable tariff in order to meet such competition. A rural telecommunications carrier may not offset revenue reductions resulting from such competitive pricing by increasing rates charged to other customers through its price stability mechanism or otherwise.*

(f) *Prohibitions.—*

(1) *A local exchange telecommunications company shall be prohibited from using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services.*

(2) *Paragraph (1) shall not be construed to prevent the marketing and billing of packages containing both noncompetitive and competitive services to customers.*

### **§ 3017. Access charges.**

(a) *General rule.—The commission may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis.*

(b) *Refusal to pay access charges prohibited.—No person or entity may refuse to pay tariffed access charges for interexchange services provided by a local exchange telecommunications company.*

(c) *Limitation.—No telecommunications carrier providing competitive local exchange telecommunications service may charge access rates higher*

*than those charged by the incumbent local exchange telecommunications company in the same service territory unless such carrier can demonstrate that the higher access rates are cost justified.*

**§ 3018. Interexchange telecommunications carriers.**

*(a) Competitive and noncompetitive services.—Interexchange services provided by interexchange telecommunications carriers shall be competitive services.*

*(b) Rate regulation.—*

*(1) The commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return, operating margin or earnings for interexchange competitive services or otherwise regulate interexchange competitive services except as set forth in this chapter.*

*(2) An interexchange telecommunications carrier may file and maintain tariffs or price lists with the commission for competitive telecommunications services.*

*(3) Nothing in this chapter shall be construed to limit the authority of the commission to regulate the privacy of interexchange service and the ordering, installation, restoration and disconnection of interexchange service to customers.*

*(c) Reclassification.—The commission may reclassify telecommunications services provided by an interexchange telecommunications carrier as noncompetitive if, after notice and hearing, it determines, upon application of the criteria set forth in this chapter, that sufficient competition is no longer present.*

*(d) Construction.—Nothing in this chapter shall be construed:*

*(1) To limit the authority of the commission to resolve complaints regarding the quality of interexchange telecommunications carrier service.*

*(2) To limit the authority of the commission to determine whether an interexchange telecommunications carrier should be extended the privilege of operating within this Commonwealth or to order the filing of such reports, documents and information as may be necessary to monitor the market for and competitiveness of interexchange telecommunications services.*

**§ 3019. Additional powers and duties.**

*(a) General rule.—The commission may certify more than one telecommunications carrier to provide local exchange telecommunications service in a specific geographic location. The certification shall be granted upon a showing that it is in the public interest and that the applicant possesses sufficient technical, financial and managerial resources.*

*(b) Powers and duties retained.—The commission shall retain the following powers and duties relating to the regulation of all telecommunications carriers and interexchange telecommunications carriers, including the power to seek information necessary to facilitate the exercise of these powers and duties:*

*(1) To audit the accounting and reporting systems of telecommunications carriers relating to their transactions with affiliates pursuant to Chapter 21 (relating to relations with affiliated interests). A telecommunications carrier shall file affiliated interest and affiliated transaction agreements unless such agreements involve services declared to be competitive. The filings shall constitute notice to the commission only and shall not require approval by the commission.*

*(2) To review and revise quality of service standards contained in 52 Pa. Code (relating to public utilities) that address the safety, adequacy, reliability and privacy of telecommunications services and the ordering, installation, suspension, termination and restoration of any telecommunications service. Any review or revision shall take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand.*

*(3) Subject to the provisions of section 3015(e) (relating to alternative forms of regulation), to establish such additional requirements as are consistent with this chapter as the commission determines to be necessary to ensure the protection of customers.*

*(4) To condition the sale, merger, acquisition or other transaction required to be approved under section 1102(a)(3) (relating to enumeration of acts requiring certificate) of a local exchange telecommunications company or any facilities used to provide telecommunications services to ensure that there is no reduction in the advanced service or broadband deployment obligations for the affected property or facilities.*

*(c) (Reserved).*

*(d) Privacy of customer information.—*

*(1) Except as otherwise provided in this subsection, a telecommunications carrier may not disclose to any person information relating to any customer's patterns of use, equipment and network information and any accumulated records about customers with the exception of name, address and telephone number.*

*(2) A telecommunications carrier may disclose such information:*

*(i) Pursuant to a court order or where otherwise required by Federal or State law.*

*(ii) To the carrier's affiliates, agents, contractors or vendors and other telecommunications carriers or interexchange telecommunications carriers as permitted by Federal or State law.*

*(iii) Where the information consists of aggregate data which does not identify individual customers.*

*(e) Unreasonable preferences.—Nothing in this chapter shall be construed to limit the authority of the commission to ensure that local exchange telecommunications companies do not make or impose unreasonable preferences, discriminations or classifications for protected services and other noncompetitive services.*

**(f) Lifeline service.—**

**(1) All eligible telecommunications carriers certificated to provide local exchange telecommunications service shall provide Lifeline service to all eligible telecommunications customers who subscribe to such service.**

**(2) All eligible telecommunications customers who subscribe to Lifeline service shall be permitted to subscribe to any number of other eligible telecommunications carrier telecommunications services at the tariffed rates for such services.**

**(3) Whenever a prospective customer seeks to subscribe to local exchange telecommunications service from an eligible telecommunications carrier, the carrier shall explicitly advise the customer of the availability of Lifeline service and shall make reasonable efforts where appropriate to determine whether the customer qualifies for such service and, if so, whether the customer wishes to subscribe to the service.**

**(4) Eligible telecommunications carriers shall inform existing customers of the availability of Lifeline service twice annually by bill insert or message. The notice shall be conspicuous and shall provide appropriate eligibility, benefits and contact information for customers who wish to learn of the Lifeline service subscription requirements.**

**(5) When a person enrolls in a low-income program administered by the Department of Public Welfare that qualifies the person for Lifeline service, the Department of Public Welfare shall automatically notify that person at the time of enrollment of his or her eligibility for Lifeline service. This notification also shall provide information about Lifeline service, including a telephone number of and Lifeline subscription form for the person's current eligible telecommunications carrier or, if the person does not have telephone service, telephone numbers of eligible telecommunications carriers serving the person's area that the person can call to obtain Lifeline service. Eligible telecommunications carriers shall provide the Department of Public Welfare with Lifeline service descriptions and subscription forms, contact telephone numbers and a listing of the geographic area or areas they serve, for use by the Department of Public Welfare in providing the notifications required by this paragraph.**

**(6) No eligible telecommunications carrier shall be required to provide after the effective date of this section any new Lifeline service discount that is not fully subsidized by the Federal Universal Service Fund.**

**(g) Method for fixing rates.—The commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return or earnings of competitive services or otherwise regulate competitive services except as set forth in this chapter.**

**(h) Implementation.**—*The terms of a local exchange telecommunications company's alternative form of regulation and network modernization plans shall govern the regulation of the local exchange telecommunications company and, consistent with the provisions of this chapter, shall supersede any conflicting provisions of this title or other laws of this Commonwealth and shall specifically supersede all provisions of Chapter 13 (relating to rates and rate making) other than sections 1301 (relating to rates to be just and reasonable), 1302 (relating to tariffs; filing and inspection), 1303 (relating to adherence to tariffs), 1304 (relating to discrimination in rates), 1305 (relating to advance payment of rates; interest on deposits), 1309 (relating to rates fixed on complaint; investigation of costs of production) and 1312 (relating to refunds).*

**(i) Protection of employees.**—

**(1)** *No telecommunications carrier may discharge, threaten, discriminate or retaliate against an employee because the employee made a good faith report to the commission, the Office of Consumer Advocate or the Office of Attorney General regarding wrongdoing, waste or a potential violation of the commission's orders or regulations or of this title.*

**(2)** *A person who alleges a violation of this section must bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages within 180 days after the occurrence of the alleged violation. The evidentiary burdens upon such person and the person's telecommunications carrier in such action shall be as set forth in section 3316(d) and (e) (relating to protection of public utility employees), provided, however, that upon an employee's meeting the employee's burden of proof under section 3316(d), a rebuttable presumption shall arise that the alleged reprisal by the employer constitutes a violation of this section.*

Section 3. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 4. Section 2471 of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, is repealed to the extent it is inconsistent with this act.

Section 5. This act shall take effect as follows:

- (1)** The amendment of 66 Pa.C.S. § 3014(h)(3) shall take effect January 1, 2006.
- (2)** This section shall take effect immediately.
- (3)** The remainder of this act shall take effect immediately.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL