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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2496 Session of  
2012

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SANTONI, SONNEY, STABACK, STEVENSON, SWANGER AND VEREB,  
JUNE 21, 2012

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 21, 2012

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AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania  
2 Consolidated Statutes, in alternative form of regulation of  
3 telecommunications services, further providing for  
4 definitions; providing for nonrural exchanges; and further  
5 providing for continuation of commission-approved alternative  
6 regulation and network modernization plans, for alternative  
7 forms of regulation, for competitive services, for  
8 interexchange telecommunications carriers and for additional  
9 powers and duties.

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

12 Section 1. The definitions of "competitive service,"  
13 "noncompetitive service" and "protected service" in section 3012  
14 of Title 66 of the Pennsylvania Consolidated Statutes are  
15 amended and the section is amended by adding definitions to  
16 read:

17 § 3012. Definitions.

18 The following words and phrases when used in this chapter  
19 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 \* \* \*

3 "Competitive exchange." As follows:

4 (1) A nonrural exchange declared competitive under  
5 section 3016(c) (relating to competitive services).

6 (2) A rural exchange declared competitive under section  
7 3016(c) as of January 1, 2016.

8 "Competitive service." A [service or business activity  
9 determined to be competitive by the commission on or prior to  
10 December 31, 2003, and a] service or business activity  
11 determined or declared to be competitive pursuant to section  
12 3016 (relating to competitive services).

13 \* \* \*

14 "Noncompetitive service." A regulated telecommunications  
15 service or business activity that has not been determined or  
16 declared to be competitive and is not offered in a competitive  
17 exchange.

18 \* \* \*

19 "Nonrural exchange." An exchange with more than 500 working  
20 lines per square mile.

21 \* \* \*

22 "Protected service." The following telecommunications  
23 services provided by a local exchange telecommunications company  
24 in an exchange that is not a competitive exchange, unless the  
25 commission has determined the service to be competitive:

26 (1) Service provided to residential consumers or single-  
27 line business consumers that is necessary to complete a local  
28 exchange call and that is not offered as part of a package as  
29 described under section 3016(e) (2) (relating to competitive  
30 services), including touch-tone service.

- 1           [(2) Touch-tone service.]  
2           (3) Switched access service.  
3           (4) Special access service.  
4           (5) Ordering, installation, restoration and  
5           disconnection of these services.

6           \* \* \*

7           "Rural exchange." An exchange that is not a nonrural  
8           exchange.

9           \* \* \*

10          Section 2. Title 66 is amended by adding a section to read:  
11          § 3012.1. Nonrural exchanges.

12          If, on January 1, 2012, a local exchange telecommunications  
13          company maintained a classification in its tariffs based on dial  
14          tone line cells or other density-based classifications, all  
15          exchanges in cells defined as containing more than 500 working  
16          lines per square mile shall be nonrural exchanges.

17          Section 3. Section 3013(c) of Title 66 is amended to read:  
18          § 3013. Continuation of commission-approved alternative  
19                  regulation and network modernization plans.

20          \* \* \*

21          (c) Grandfather provision.--All services [previously  
22          determined to be competitive as of December 31, 2003,]  
23          determined or declared to be competitive as of January 1, 2013,  
24          shall remain competitive services [unless reclassified by the  
25          commission under section 3016(c) (relating to competitive  
26          services)].

27          \* \* \*

28          Section 4. Section 3015(a)(1), (e)(1), (f) and (h) of Title  
29          66 are amended and subsection (a)(1) is amended by adding a  
30          subparagraph to read:

1 § 3015. Alternative forms of regulation.

2 (a) Inflation offset.--

3 (1) Except as otherwise provided in paragraphs (2) and  
4 (3), a local exchange telecommunications company with an  
5 alternative form of regulation containing a price stability  
6 mechanism that files an amended network modernization plan  
7 under section 3014(b) (1), (2) or (3) (relating to network  
8 modernization plans) shall be subject to a modified inflation  
9 offset in its price stability mechanism in adjusting its  
10 rates for noncompetitive services, effective upon the filing  
11 of an amended network modernization plan under section  
12 3014(e), as follows:

13 \* \* \*

14 (v) If a telecommunications carrier opts to  
15 designate all of its nonrural exchanges as competitive  
16 under section 3016(c) (relating to competitive services),  
17 the carrier may opt to eliminate its price stability  
18 mechanism and any amounts banked under its price  
19 stability mechanism and its rates for noncompetitive  
20 services shall be subject to all of the following  
21 limitations:

22 (A) The carrier may propose revenue-neutral  
23 adjustments to the rates of its noncompetitive  
24 services subject to commission approval at any time.

25 (B) Rates for noncompetitive services may be  
26 adjusted once annually limited to the annual  
27 percentage change in the Gross Domestic Product Price  
28 Index.

29 \* \* \*

30 (e) General filing requirements.--The commission's filing

1 and audit requirements for a local exchange telecommunications  
2 company that is operating under an amended network modernization  
3 plan shall be limited to the following:

4 (1) Network modernization plan reports filed pursuant to  
5 section 3014(f) through June 30, 2016.

6 \* \* \*

7 (f) Other reports.--

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

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

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

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

29 (3) If a telecommunications carrier opts to designate  
30 all of its nonrural exchanges as competitive under section

1     3016(c), the carrier shall not be required to file the  
2     reports listed under subsection (e) (2), (4), (5) or (6).

3     \* \* \*

4     (h) Conformance of plan.--Upon approval of a local exchange  
5 telecommunications company of network modernization plan  
6 amendments pursuant to section 3014(e), the local exchange  
7 telecommunications company's alternative form of regulation plan  
8 shall be deemed amended consistent with this [section] chapter.

9     Section 5. Sections 3016(b), (c) and (d) (2) and (4), 3018(b)  
10 (3), (c) and (d) and 3019(b), (c), (f) (1), (4) and (6) of Title  
11 66 are amended to read:

12 § 3016. Competitive services.

13     \* \* \*

14     (b) Declaration of retail nonprotected services as  
15 competitive.--Notwithstanding the provisions of subsection (a),  
16 a local exchange telecommunications company may declare any  
17 retail nonprotected service as competitive by filing its  
18 declaration with the commission and serving it on the Office of  
19 Consumer Advocate, Office of Small Business Advocate and each of  
20 the parties to the commission's proceeding in which the  
21 company's network modernization plan that was in effect on  
22 December 31, 2003, was approved by the commission, provided that  
23 a local exchange telecommunications company may not use this  
24 declaration process for any service that the commission  
25 previously has reclassified as noncompetitive under [either  
26 subsection (c) or] prior law. A declaration of a retail  
27 nonprotected service as competitive shall be effective upon  
28 filing by the local exchange telecommunications company with the  
29 commission.

30     (c) [Reclassification.--

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

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

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

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

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

1 services and opt-in process.--

2 (1) A local exchange telecommunications carrier may opt  
3 to classify any of its nonrural exchanges as competitive  
4 exchanges by filing a declaration stating that the exchange  
5 is classified as competitive.

6 (2) A local exchange telecommunications carrier may opt  
7 to classify any of its rural exchanges as competitive  
8 exchanges by filing a declaration stating that the exchange  
9 is classified as competitive. A declaration under this  
10 paragraph shall take effect after December 31, 2015.

11 (3) All services, except for switched access offered by  
12 a local exchange telecommunications carrier in a competitive  
13 exchange, shall be deemed competitive services.

14 (4) (i) Except as provided under subparagraph (ii), a  
15 local exchange telecommunications carrier shall offer a  
16 basic local calling service that is not required to be  
17 purchased as part of a bundled or packaged service  
18 offering to any residential customer who subscribes to  
19 the service at the same location on the effective date of  
20 this paragraph, until the date the customer requests that  
21 the service be disconnected or January 1, 2016, whichever  
22 is earlier.

23 (ii) The requirement under subparagraph (i) shall  
24 continue past January 1, 2016, in any rural exchange if  
25 the commission determines that basic local calling  
26 service or a comparable service, that provides the  
27 ability to receive and transmit voice communications,  
28 including E-911 communications, is not offered by at  
29 least two service providers.

30 (iii) For purposes of this paragraph, basic local



1 calling service may be provided over any technology.

2 (iv) For purposes of this paragraph, "basic local  
3 calling service" shall mean a service that continues to  
4 provide the customer with the ability to transmit and  
5 receive voice communications, including E-911  
6 communications.

7 (5) Prior to January 1, 2015, the Legislative Budget and  
8 Finance Committee shall provide a report to the General  
9 Assembly on the availability of voice services in this  
10 Commonwealth.

11 (d) Additional requirements.--

12 \* \* \*

13 (2) The commission may not require tariffs for  
14 competitive service offerings to be filed with the commission  
15 and contracts for competitive services shall not be required  
16 to be filed or approved under section 507 (relating to  
17 contracts between public utilities and municipalities).

18 \* \* \*

19 (4) [The commission] A local exchange telecommunications  
20 carrier may [require a local exchange telecommunications  
21 company to] maintain price lists with the commission  
22 applicable to its competitive services. Price changes that  
23 are filed in a company's tariff for competitive services will  
24 go into effect on a one-day notice.

25 \* \* \*

26 § 3018. Interexchange telecommunications carriers.

27 \* \* \*

28 (b) Rate regulation.--

29 \* \* \*

30 (3) Nothing in this chapter shall be construed to limit

1 the authority of the commission to regulate the privacy of  
2 interexchange service [and the ordering, installation,  
3 restoration and disconnection of interexchange service to  
4 customers].

5 [(c) Reclassification.--The commission may reclassify  
6 telecommunications services provided by an interexchange  
7 telecommunications carrier as noncompetitive if, after notice  
8 and hearing, it determines, upon application of the criteria set  
9 forth in this chapter, that sufficient competition is no longer  
10 present.]

11 (d) Construction.--Nothing in this chapter shall be  
12 construed:

13 [(1) To limit the authority of the commission to resolve  
14 complaints regarding the quality of interexchange  
15 telecommunications carrier service.]

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

23 § 3019. Additional powers and duties.

24 \* \* \*

25 (b) Powers and duties retained.--The commission shall retain  
26 the following powers and duties relating to the regulation of  
27 all telecommunications carriers and interexchange  
28 telecommunications carriers, including the power to seek  
29 information necessary to facilitate the exercise of these powers  
30 and duties:

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

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

19           (3) Subject to the provisions of section 3015(e)  
20 (relating to alternative forms of regulation), to establish  
21 [such] additional requirements with respect to protected  
22 services as are consistent with this chapter as the  
23 commission determines to be necessary to ensure the  
24 protection of customers.

25           (4) To condition the sale, merger, acquisition or other  
26 transaction required to be approved under section 1102(a)(3)  
27 (relating to enumeration of acts requiring certificate) of a  
28 local exchange telecommunications company or any facilities  
29 used to provide telecommunications services to ensure that  
30 there is no reduction in the advanced service or broadband

1 deployment obligations for the affected property or  
2 facilities.

3 (c) [(Reserved).] Limitations.--

4 (1) The commission shall not have any of the following  
5 powers and duties relating to the regulation of a  
6 telecommunications carrier, interexchange telecommunications  
7 carrier or alternative service provider:

8 (i) To prohibit, require or otherwise direct any  
9 telecommunications carrier's, interexchange  
10 telecommunications carrier's or alternative service  
11 provider's choice of technology for any purpose. The  
12 commission shall have no authority to regulate any  
13 service provided by a telecommunications carrier or  
14 interexchange telecommunications carrier over a  
15 technology that the commission did not actively regulate  
16 as of January 1, 2012, or to regulate any service,  
17 provider or technology to any greater degree than it  
18 regulates the services provided by the local exchange  
19 telecommunications company in a particular exchange.

20 (ii) To approve under section 1102(a)(3) (4) either  
21 of the following:

22 (A) Any reorganization of or transaction between  
23 a telecommunications carrier and a parent, subsidiary  
24 or an affiliated entity of which at least 20% of the  
25 beneficial ownership is held directly or indirectly  
26 by the same persons or entities.

27 (B) Any sale, conveyance or lease of realty or  
28 personalty that does not involve the transfer of  
29 customers of any service regulated by the commission.

30 (iii) To impose upon competitive services any new or

1 existing quality of service standards, including  
2 standards contained in 52 Pa. Code Ch. 63 (relating to  
3 telephone service).

4 (iv) To impose upon competitive services any new or  
5 existing standards on billing practices or other  
6 communications with retail customers, including standards  
7 contained in 52 Pa. Code Ch. 64 (relating to standards  
8 and billing practices for residential telephone service).

9 (v) To regulate competitive services or facilities,  
10 including regulating the services under section 1102(a)  
11 (2) or Chapter 15 (relating to service and facilities).

12 (2) If any provision of this chapter or other law that  
13 establishes powers or duties for the commission that are  
14 prohibited under paragraph (1) conflicts with paragraph (1),  
15 the provisions of paragraph (1) shall control.

16 \* \* \*

17 (f) Lifeline service.--

18 (1) All eligible telecommunications carriers  
19 certificated to provide local exchange telecommunications  
20 service shall provide Lifeline service to all eligible  
21 telecommunications customers who subscribe to such service. A  
22 telecommunications carrier may use any available technology  
23 to provide lifeline service without subjecting that  
24 technology to greater commission regulation than would apply  
25 if the service were provided by a company not subject to the  
26 commission's jurisdiction.

27 \* \* \*

28 [(4) Eligible telecommunications carriers shall inform  
29 existing customers of the availability of Lifeline service  
30 twice annually by bill insert or message. The notice shall be

1 conspicuous and shall provide appropriate eligibility,  
2 benefits and contact information for customers who wish to  
3 learn of the Lifeline service subscription requirements.]

4 \* \* \*

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

9 \* \* \*

10 Section 6. This act shall take effect in 60 days.