

No. 1993-67

AN ACT

HB 84

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for an alternative form of regulation of telecommunications services; providing protection for public utility employees who report a violation or suspected violation of Federal, State or local law; providing protection for such employees who participate in investigations, hearings, inquiries or court actions; and prescribing remedies and penalties.

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

Section 1. Title 66 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 30
ALTERNATIVE FORM OF REGULATION
OF TELECOMMUNICATIONS SERVICES

Sec.

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§ 3001. Declaration of policy.

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

(1) Maintain universal telecommunications service at affordable rates while encouraging the accelerated deployment of a universally available, state-of-the-art, interactive, public-switched broadband telecommunications network in rural, suburban and urban areas, including deployment of broadband facilities in or adjacent to the public rights-of-way abutting public schools, including the administrative offices supporting public schools; industrial parks; and health care facilities, as defined in the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

(2) Ensure that customers pay only reasonable charges for local exchange telecommunications services which shall be available on a nondiscriminatory basis.

(3) Ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of providers of telecommunications services.

(4) 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 noncompetitive services, including access services, are reasonable and do not impede the development of competition.

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

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

(7) Promote and encourage the provisions of competitive services by a variety of service providers on equal terms throughout all geographic areas of this Commonwealth.

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

(9) 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 carrying out its network modernization implementation plan.

§ 3002. 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:

“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/rate of return regulation, to be determined by the commission. The term includes the use of any index, formula, rate stability plan, zone of rate freedom or streamlined form of rate regulation.

“Basic service functions.” Those basic components of the local exchange carrier network which are necessary to provide a telecommunications service and which represent the smallest feasible level of unbundling capable of being tariffed and offered as a service.

“Broadband.” A communication channel using any technology and having a bandwidth equal to or greater than 1.544 megabits per second.

“Competitive service.” A service or business activity determined to be competitive under this chapter or any telecommunications service determined by the commission to be competitive under this chapter.

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

“Local exchange telecommunications company.” A carrier authorized by the commission to provide local telecommunications services.

“Noncompetitive service.” The term includes any protected telephone service as defined under this chapter or a service that has been determined by the commission as not a competitive service.

“Optional calling plan.” A discount toll plan required by the commission to be offered by either a local exchange carrier or an interexchange carrier when justified by call usage for a telephone route. The provision of service under an optional calling plan shall be considered noncompetitive service unless determined otherwise by the commission.

“Protected telephone service.” The term includes the following telecommunications services provided by a local exchange telecommunications company, unless the commission determines, after notice and hearing, that the service is competitive:

- (1) Telecommunications service provided to business or residential consumers that is necessary for completing 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.

“Special-access service.” Service provided over dedicated, nonswitched facilities by local exchange telecommunications companies to interexchange carriers or other large volume users which provide connection between an interexchange carrier or private network and a customer’s premises.

“Streamlined form of rate regulation.” A simplified method of rate regulation of small local exchange telecommunications companies serving less than 50,000 access lines which utilizes a methodology other than traditional rate base/rate of return regulation and procedures other than those provided in Chapter 13 (relating to rates and rate making). Forms of simplified regulation may include, but are not limited to, the use of an index, formula, rate stability plan, zone of rate freedom or other abbreviated ratemaking procedures.

“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 common line charge.

"Telecommunications service." A utility service, involving the transmission of messages, which is subject to this title.

"Universal broadband availability." Access to broadband service by each bona fide telephone customer of a local exchange telecommunications company within five days after a request for broadband service is received by any telecommunications company.

§ 3003. Local exchange telecommunications company request for alternative regulation and network modernization implementation plan.

(a) Petition.—When a local exchange telecommunications company seeks to be regulated under an alternative form of regulation, it shall submit to the commission a petition requesting the alternative form of regulation. In the petition, the company shall submit its proposal and supporting data for an alternative form of regulation. The petition shall also identify all competitive services which the local exchange telecommunications company proposes at that time.

(b) Network modernization implementation plan.—The petition shall also include the company's network modernization implementation plan under which:

(1) Each local exchange telecommunications company shall commit to universal broadband availability and shall commit to converting 100% of its interoffice and distribution telecommunications network to broadband capability by December 31, 2015. The plan shall identify the local exchange telecommunications company's present and projected deployment of digital switches in central offices, fiber optic trunk line capability between central offices, intelligent network signaling capability and integrated services digital network (ISDN) availability in central offices.

(2) Each local exchange telecommunications company shall reasonably balance deployment of its broadband network between rural, urban and suburban areas within its service territory.

(3) The deployment of broadband facilities shall be in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools; industrial parks; and health care facilities, as defined in the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

(4) A local exchange telecommunications company shall file a network modernization implementation plan with its petition for alternative form of regulation with the commission which identifies and describes in detail the company's implementation plan for complying with paragraphs (1), (2) and (3). The plan shall specify interim target dates at not more than five-year intervals for deployment of its broadband network.

(5) Joint ventures between local exchange telecommunications companies and other entities may be included as part of a local exchange telecommunications company's network modernization implementation plan where the joint ventures accelerate, improve or otherwise assist a local exchange telecommunications company in carrying out its network modernization implementation plan. The joint ventures may be proposed by any interested party. Consistent with parallel provisions in Federal antitrust statutes and Federal judicial opinions interpreting those Federal statutes, no joint ventures by public utilities or other entities engaged in such joint ventures shall constitute a restraint of trade or commerce in this Commonwealth.

(6) The network modernization implementation plan shall be updated and filed with the commission biennially. The commission shall review and approve the plan updates as long as the updates are found to be consistent with and in furtherance of the local exchange telecommunications company's currently effective implementation plan.

(c) Filing.—The company shall file its petition, plan and supporting data concurrently with the Office of Consumer Advocate, the Office of Small Business Advocate and any interexchange telecommunications carrier that has requested notice of the filings from the local exchange telecommunications company. At the same time, the company shall give notice to its ratepayers through a billing insert or bill message, to its employees and to the public of the filing of its petition for an alternative form of regulation and network modernization implementation plan in accordance with the commission's rules and regulations.

(d) Updating.—The commission shall require any local exchange telecommunications company which has not filed a petition and plan within five years of the effective date of this chapter to show cause why it has not done so.

§ 3004. Commission review and approval of petition and plan.

(a) Authorization.—In determining just and reasonable rates in accordance with section 1301 (relating to rates to be just and reasonable), the commission may authorize a local exchange telecommunications company to set rates based on an alternative form of regulation pursuant to a plan approved by the commission under this chapter.

(b) Review and approval of petition and plan.—The commission shall, after notice and hearing, review the petition and plan for an alternative form of regulation and approve the petition and plan, approve them with modifications or deny them as not reasonably designed to meet the requirements of this chapter. If the commission denies the petition and plan or approves them with modifications, the commission shall set forth in its order each specific reason for the denial or modification. If the commission does not act within nine months of the filing date of the petition and plan, the

petition and plan shall be deemed approved. If the commission approves the petition and plan with modifications, the local exchange telecommunications company may, at its option, withdraw its petition and plan and continue to be regulated under its existing form of regulation or a streamlined form of regulation for which it qualifies. If a local exchange telecommunications company's petition and plan are withdrawn and a subsequent petition and plan are not submitted within five years from the effective date of this chapter, the commission shall require the local exchange telecommunications company to show cause why it has not done so. If the commission rejects a petition and plan submitted by a local exchange telecommunications company, that company shall file another petition and plan within six months of the commission's final order.

(c) Commission review of network modernization implementation plan.—The commission shall review each local exchange telecommunications company's network modernization implementation plan to determine if the plan is consistent with the provisions of this chapter and in the public interest. In reviewing a network modernization implementation plan, the commission may require a local exchange telecommunications company to show cause why a specific joint venture opportunity has not been included in the plan. The commission may require that a local exchange telecommunications company provide universal broadband availability having a bandwidth greater than 1.544 megabits per second.

(d) Criteria for commission review.—The commission shall approve the petition, after notice and hearing, only if it finds that the petition meets the following criteria:

(1) Ensures the continued affordability of protected telephone service.

(2) Assures that the rates for noncompetitive services are just, reasonable and not unduly discriminatory through the use of a price stability mechanism or other alternative form which may include indices, formulas, rate stability plans, zones of rate freedom or streamlined rate making plans. Subject to commission approval, a price stability mechanism that allows total annual revenues from noncompetitive services to increase or decrease from the previous year's total revenues from noncompetitive services as a result of tariff rate changes based on the annual change in the Gross Domestic Product Price Index, as calculated by the United States Department of Commerce, minus 2.25% may meet the requirements of this section. Tariffs to recover the additional revenues shall be subject to commission approval under section 1308 (relating to voluntary changes in rates).

(3) Provides for the rate deregulation of all competitive services, including the deregulation of rates, tolls, charges, rate structures, rate base, rate of return or earnings of competitive services. Notwithstanding the

classification of a local exchange telecommunications service as competitive, a local exchange telecommunications company may not de-average standard message toll service rates unless authorized to do so by the commission.

(4) Will not unduly or unreasonably prejudice or disadvantage a customer class or providers of competitive services.

(5) Is in the public interest.

(6) Enhances economic development in this Commonwealth while maintaining affordable rates.

(7) Contains a comprehensive program of service quality standards in accordance with section 1501 (relating to character of service and facilities), including procedures for commission review.

(8) Specifically identifies the benefits to be derived from the alternative form of regulation, including, but not limited to, the reduction of regulatory delays and costs.

(9) Complies with section 3007 (relating to determination of access charges) under this chapter.

(10) Will permit the deployment of new voice, data and video services to rural, suburban and urban areas throughout the local exchange telecommunications company service territory.

(11) Considers the adequacy of local calling areas in view of relevant local communities of interest.

(12) Assures that low-income individuals are able to connect to and maintain in-home access to protected telephone services. The residential budget usage option service offered by the local exchange company on the effective date of this chapter shall not be eliminated.

(13) Assures that the provision of telecommunications products and services enhances the quality of life of people with disabilities.

(14) Ensures that the economic risks associated with the provision of a competitive service by a local exchange telecommunications company or its affiliates shall not be borne by those customers who do not purchase such services.

(15) Assures that a local exchange telecommunications company shall provide aggregate customer and network information on a nondiscriminatory basis to any other provider, unless prohibited by law.

(e) Burden of proof.—The burden of proof shall be on the local exchange telecommunications company requesting an alternative form of regulation.
§ 3005. Competitive services.

(a) Identification of competitive service.—The commission is authorized to determine, after notice and hearing, whether a telecommunications service or other service or business activity offered by a local exchange company is a competitive service. A local exchange telecommunications company may petition the commission for a determination of whether a telecommunications

service or other service or business activity offered is competitive, either in conjunction with a petition to be regulated under an alternative form of regulation or at any time after the granting of the petition. Requests for a competitive classification not filed as part of a petition for an alternative regulatory framework shall have an effective date of not less than 60 days from the filing date. The commission shall enter an order approving or disapproving the petition within 180 days of the filing date. In making the determination, the commission shall consider all relevant evidence submitted to it, including evidence presented by providers of competitive services. In a proceeding to determine whether a telecommunications service or other service or business activity offered is a competitive service, the following shall apply:

(1) The commission shall make findings which, at a minimum, shall include evidence of ease of market entry, including the existence and impact of cross-subsidization, rights-of-way, pole attachments and unavoided costs; presence and viability of other competitors, including market shares; the ability of competitors to offer those services or other activities at competitive prices, terms and conditions; the availability of like or substitute services or other activities in the relevant geographic area; the effect, if any, on protected services; the overall impact of the proposed regulatory changes on the continued availability of existing services; whether the consumers of the service would receive an identifiable benefit from the provision of the service or other activity on a competitive basis; the degree of regulation necessary to prevent abuses or discrimination in the provision of the service or other activity and any other relevant factors which are in the public interest. If a local exchange telecommunications company introduces a telecommunications service or other service or business activity that has not previously been offered, the service or other activity will not be deemed competitive unless it is so determined by the commission under the provisions of this chapter.

(2) The burden of proving that a telecommunications service or other service or business activity offered is competitive rests on the party seeking to have the service classified as competitive.

(b) Regulations.—The commission shall establish regulations to prevent local exchange telecommunications companies from engaging in unfair competition and require that local exchange telecommunications companies provide reasonable nondiscriminatory access to competitors for all services and facilities necessary to provide competing services to consumers.

(c) Reports.—The commission shall determine, by rule, regulation or order, what reports are necessary to monitor the accounting for and competitiveness of a competitive service.

(d) Reclassification.—The commission shall have the authority to reclassify a telecommunications service or other service or business activity

that it has previously found to be competitive if, after notice and hearing, it determines, upon application of the criteria set forth in this chapter, that sufficient competition is no longer present, that the local exchange company has engaged in unfair competition with respect to the service or that the local exchange company has failed to provide nondiscriminatory access in the provision of the service. If the commission finds that a reclassification is necessary, the commission must determine whether the rate for the telecommunications service or other service or business activity is just and reasonable in accordance with section 1301 (relating to rates to be just and reasonable). If the telecommunications service or other service or business activity subsequently becomes competitive, the local exchange telecommunications company shall petition the commission to make a determination of competitiveness for the service under the provisions of this chapter.

(e) *Additional determinations.*—The commission shall determine whether local exchange telecommunications companies are complying with the following provisions:

(1) The local exchange telecommunications company shall unbundle each basic service function on which the competitive service depends and shall make the basic service functions separately available to any customer under nondiscriminatory tariffed terms and conditions, including price, that are identical to those used by the local exchange telecommunications company and its affiliates in providing its competitive service.

(2) The price which a local exchange telecommunications company charges for a competitive service shall not be less than the rates charged to others for any basic service functions used by the local exchange telecommunications company or its affiliates to provide the competitive service. Revenues from the rates for access services reflected in the price of competitive services shall be included in the total revenues produced by the noncompetitive services.

(3) Tariffs or price lists for competitive services filed with the commission shall either be in the public records or, if the commission determines that the rates are proprietary, be filed under seal and made available under the terms of an appropriate protective agreement of the type used in cases before the commission.

(f) *Service and notice.*—At the time a local exchange telecommunications company files a petition for an alternative form of regulation to classify any service or other activity as competitive or to reclassify an existing service or other activity as competitive or for the transfer of any assets of services or other activities classified as competitive by the commission, the local exchange telecommunications company shall serve a copy on all interexchange telecommunications carriers who have requested notice of the filings from the local exchange telecommunications company as well as the

Office of Consumer Advocate and the Office of Small Business Advocate. At the same time, the local exchange telecommunications company must give notice to the public, its employees and its ratepayers through a billing insert or bill message in accordance with the commission's rules and regulations.

(g) Prohibitions.—The local exchange telecommunications company shall be prohibited from engaging in the following:

(1) The local exchange telecommunications company shall not maintain or impose any resale or sharing restrictions on any service which the commission finds to be competitive.

(2) A local exchange telecommunications company may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services. The commission shall establish regulations which must be followed by local exchange telecommunications companies for the purpose of allocating costs for accounting and rate making among telephone services in order to prevent subsidization or support for competitive services.

(h) Subsidiary.—For local exchange telecommunications companies serving over 1,000,000 access lines, the commission may require that a competitive service be provided through a subsidiary which is fully separated from the local exchange telecommunications company if the commission finds that there is a substantial possibility that the provision of the service on a nonseparated basis will result in unfair competition.

§ 3006. Streamlined form of rate regulation.

(a) Streamlined form of rate regulation petition.—In accordance with sections 3003 (relating to local exchange telecommunications company request for alternative regulation and network modernization implementation plan) and 3004 (relating to commission review and approval of petition and plan), local exchange telecommunications companies serving less than 50,000 access lines within this Commonwealth may petition the commission to establish a streamlined form of rate regulation to be applicable to their operations. The streamlined form of rate regulation shall be designed to decrease regulatory delays and costs and may include, but is not limited to, use of an index formula, price stability plan, zone of rate freedom or a combination thereof. The streamlined form of rate regulation may be proposed to revise or decrease notice periods, suspension periods and other procedures currently required by Chapter 13 (relating to rates and rate making) consistent with due process requirements. The streamlined form of rate regulation shall be proposed to be applicable to all of the local exchange companies' rates and services within the commission's jurisdiction.

(b) Required service.—Petitions for a streamlined form of rate regulation shall be served on the Office of Consumer Advocate, the Office of Small Business Advocate and any interexchange carrier that has requested notice of

the filings from the local exchange telecommunications company. At the same time, the company shall give notice to its ratepayers and the public of the filing of its petition.

(c) Commission review.—The commission shall review a streamlined form of rate regulation for a local exchange telecommunications company within nine months of the filing of the petition. If the commission does not act within nine months of the filing of the petition, the plan shall be deemed approved. The commission shall approve a streamlined form of rate regulation for a local exchange telecommunications company upon reaching the following findings:

- (1) The proposal reduces regulatory delays and costs.
- (2) The proposal is consistent with general due process requirements.
- (3) The proposal is consistent and in compliance with all of the provisions of this chapter.
- (4) The proposal is in the public interest.

(d) Filing requirements.—For local exchange telecommunications companies serving less than 50,000 access lines in this Commonwealth, filing requirements and audit requirements are limited to an annual financial report, including rate of return data for surveillance purposes; an annual deaf, speech-impaired and hearing-impaired relay information report; an annual service report; an annual access line report; an annual State tax adjustment computation for years in which a tax change has occurred; a biennial extended-area service traffic study; and any additional special reports or studies for which the commission determines that the benefits generated will justify the attendant expense and administrative time requirements of preparing them.

(e) Implementation.—Upon commission approval of a streamlined form of rate regulation, the streamlined form of regulation shall be implemented and shall govern the regulation of the local exchange telecommunications company and shall, consistent with the provisions of this chapter, supersede any conflicting provisions of this title or other laws of this Commonwealth.

(f) Rate increases.—For local exchange telecommunications companies serving less than 50,000 access lines in this Commonwealth, a formal complaint to deny rate increases for protected services, unless signed by at least 20 customers of the local exchange telecommunications company, shall not stop the implementation of the rate increases, pending the adjudication of the formal complaint by the commission.

§ 3007. Determination of access charges.

Local exchange telecommunications companies serving more than 250,000 access lines in this Commonwealth as of the effective date of this chapter shall comply with the following provisions:

- (1) Local exchange telecommunications companies shall have an effective per-minute switched-access service price that shall not exceed

12¢ for the first five years from the implementation date of the petition and plan, unless the company can justify a higher rate based on the total cost of switched-access services. The per-minute switched-access service price includes both originating and terminating rates and excludes nonrecurring rates. A local exchange telecommunications company with an effective per-minute switched-access service price greater than 12¢ on the implementation date of the petition and plan shall provide for a revenue-neutral phasedown to not more than 12¢ in not more than three equal annual increments commencing with the implementation of the petition and plan. Upon the sixth year from the implementation date of the plan, the commission shall review the per-minute switched-access service price and, after notice and hearing, determine a just and reasonable per-minute switched-access service price.

(2) Local exchange telecommunications companies with an effective per-minute switched-access service price at or below 12¢, including both originating and terminating rates and excluding nonrecurring rates, may not increase switched-access prices either in conjunction with the filing or consideration of a petition and plan or for four years from the approval date of a petition, not to extend beyond December 31, 1999, unless the company can show that, absent an increase, total switched-access revenues would be below total switched-access cost. Revenue-neutral access tariff rate changes and restructures may be proposed subject to commission approval.

(3) Upon the commission's evaluation of the consistency of tariff rates and structures with the interstate access service tariff, revenue-neutral tariff rate changes and restructures may be proposed by local exchange telecommunications companies in order to implement the results of the commission evaluation. No rate change or restructure shall be approved if it constitutes or promotes unfair competition. Rate changes and restructures for access services submitted in accordance with this paragraph are subject to commission approval, after notice and hearing.

(4) Any existing limits, by tariff or otherwise, on the amount of revenue that a local exchange telecommunications company may recover from the carrier common line rate shall continue at the effective date of this chapter. At the conclusion of any phasedown period provided in paragraph (1), the annual revenues to be derived from carrier common line rates shall be no more than the total carrier common line revenues applicable to the final 12 months of any phasedown period.

§ 3008. Interexchange telecommunications carrier.

(a) Competitive and noncompetitive services.—Telecommunications services provided by interexchange telecommunications carriers shall be deemed to be competitive services after January 1, 1994, except for the provision of the following interexchange services which will be deemed to be noncompetitive services unless determined otherwise by the commission:

(1) Interexchange service to aggregator telephones.

(2) Optional calling plans required by the commission to be offered when justified by usage over an interexchange route.

(b) Rate regulations.—The commission shall 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. The commission may require that the interexchange telecommunications carriers file and maintain tariffs or price lists for competitive telecommunications services. Nothing in this chapter shall 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 shall have the authority to 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) Service quality standards.—The commission may establish service quality standards for interexchange telecommunications carriers. Nothing in this chapter shall limit the authority of the commission to promulgate service quality standards for interexchange telecommunications carriers or to resolve complaints regarding the quality of interexchange telecommunications carrier service. Notwithstanding the classification of telecommunications services as competitive, interexchange carriers shall not be permitted to de-average standard message toll service rates unless authorized to do so by the commission.

(e) Authority of commission not limited.—Nothing in this chapter shall 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.

§ 3009. Additional powers and duties.

(a) General rule.—The commission may certify more than one local exchange telecommunications company to provide local telecommunications service. Such 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 local exchange telecommunications companies and interexchange telecommunications carriers:

(1) The commission shall have the power to audit the accounting and reporting systems of local exchange telecommunications companies and their transactions with affiliates in accordance with this title and the commission's present or future rules and regulations to provide a proper allocation of investments, costs or expenses for all telecommunications services or other services or business activities, competitive and noncompetitive.

(2) Nothing in this chapter shall limit the authority of the commission to ensure that local exchange telecommunications companies do not make or impose unjust preferences, discriminations or classifications for protected telephone service and other noncompetitive services.

(3) The commission shall establish such additional requirements and regulations as it determines to be necessary to ensure the protection of consumers.

(4) Notwithstanding any other provisions of this chapter, all services provided by a local exchange telecommunications company or interexchange telecommunications carrier shall remain subject to all provisions of this title and other laws of this Commonwealth regarding the safety, adequacy, reliability and privacy of telecommunications services or other services or business activities. All new services or changes to existing noncompetitive services must be reviewed by the commission prior to their being offered to the public to insure compliance with all applicable provisions regarding safety, adequacy, reliability and privacy of telecommunications services. The commission shall have the authority to reject or modify any such service to the extent the commission finds, after notice and opportunity for hearing, that the service is not in compliance with any such provision. Nothing in this chapter shall affect the commission's authority to regulate with respect to the ordering, installation, suspension, termination and restoration of any service.

(5) A local exchange carrier shall not disclose information relating to any customer's pattern of use, equipment and network information and any accumulated records about the customer to any other person unless required by law. This prohibition, however, shall not prevent the disclosure of such information pursuant to court order, nor shall it preclude the releasing of aggregate data which does not identify particular persons.

(c) Consistency with other requirements.—In providing video programming, a local exchange telecommunications company shall be subject to all the same laws, regulations and requirements of service as mandated upon other providers of video programming which are not local exchange telecommunications companies.

(d) Rules and regulations.—The commission may promulgate rules and regulations to administer and enforce this chapter.

(e) Report.—Not later than two years following the effective date of this

chapter, the commission shall submit a report to the Governor and the General Assembly reviewing the implementation of the provisions of this chapter. The report shall include, but not be limited to, an evaluation of any alternative or streamlined form of regulation approved by the commission, the progress of local exchange telecommunications companies in implementing their network modernization implementation plans and the success of the deregulation of competitive services permitted by this chapter. In its recommendations, the commission may also propose any legislative or other changes, which it deems appropriate, to the Governor and the General Assembly.

(f) **Method for fixing rates.**—The commission shall 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. The commission may require that the local exchange telecommunications company file and maintain tariffs or price lists for competitive telecommunications services.

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

§ 3316. Protection of public utility employees.

(a) **Persons not to be discharged.**—*No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee made or was about to make a good faith report, verbally or in writing, to the employer, the commission, the Office of Consumer Advocate, the Office of Small Business Advocate or the Office of Attorney General on an instance of wrongdoing or waste.*

(b) **Discrimination prohibited.**—*No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by the commission, the Office of Consumer Advocate, the Office of Small Business Advocate or the Office of Attorney General to participate in an investigation, hearing or inquiry held by the commission or the Office of Attorney General or in a court action relating to the public utility.*

(c) **Civil action.**—*A person who alleges a violation of this section may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.*

(d) **Necessary showing of evidence.**—*An employee alleging a violation of this section must show by a preponderance of the evidence that, prior to the alleged reprisal, the employee or a person acting on behalf of the employee had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer, the commission, the Office of Consumer Advocate, the Office of Small Business*

Advocate or the Office of Attorney General.

(e) Defense.—It shall be a defense to an action under this section if the defendant proves by a preponderance of the evidence that the action by the employer occurred for separate and legitimate reasons, which are not merely pretextual.

(f) Enforcement.—A court, in rendering a judgment in an action brought under this section, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court shall also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

(g) Penalties.—A person who, under color of an employer's authority, violates this section shall be liable for a civil fine of not more than \$500. A civil fine which is ordered under this section shall be paid to the State Treasurer for deposit into the General Fund.

(h) Notice.—An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations under this section.

(i) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Employee.” A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for a public utility.

“Employer.” A person supervising one or more employees, including the employee in question, a superior or an agent of a public utility.

“Good faith report.” A report which is made without malice or consideration of personal benefit and which is made with reasonable cause to believe in its truth.

“Waste.” An employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from a public utility.

“Wrongdoing.” A violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation or of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

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. The addition of 66 Pa.C.S. Ch. 30 shall expire on December 31, 2003, unless sooner reenacted by the General Assembly.

Section 5. This act shall take effect immediately.

APPROVED—The 8th day of July, A.D. 1993.

MARK S. SINGEL
ACTING GOVERNOR