

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

NOTICE OF FINAL RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings, pursuant to the authority set forth in Section 8 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code § 2-1831.05(b)(7)), gives notice of the adoption of the following amendments to Chapter 28 of Title 1 of the District of Columbia Municipal Regulations (DCMR). These rules prescribe the rules of trial practice and procedure in matters before OAH.

These rules were first published in the *D.C. Register* on October 1, 2004, at 51 DCR 9322. No comments were received, and there are no changes to the published rules. These rules will be effective upon the publication of this notice of final rulemaking in the *D.C. Register*.

Section 2805.5 of 1 DCMR Chapter 28 is added as follows:

2805.5 Notwithstanding the provisions of Section 2811.5 of these Rules, when a case is commenced by filing a request for a hearing with this administrative court, the time limit for filing such a request permitted under applicable law, other than these Rules, shall control. In the case of a time limit established by a District of Columbia agency rule, other than these Rules, the agency rule shall apply if in effect prior to October 1, 2004.

Section 2805.7 of 1 DCMR Chapter 28 is added as follows:

2805.7 Any request for a hearing under this Rule appealing a proposed tax assessment shall be filed with this administrative court, and a service copy of the request for hearing served upon the agency issuing the proposed tax assessment, in order for the case to be commenced before this administrative court. The request for hearing filed with this administrative court shall be accompanied by a copy of the proposed tax assessment.

Section 2805.8 of 1 DCMR Chapter 28 is added as follows:

2805.8 Any request for a hearing under this Rule appealing a determination regarding unemployment compensation shall be filed with this administrative court in order for the case to be commenced before this administrative court. Any agency accepting claims for unemployment compensation and each party to the matter shall file a copy of the claims examiner's decision with this administrative court no later than three (3) business days from the transmittal date of the hearing request to the agency and parties by this administrative court.

Section 2811.1 of 1 DCMR Chapter 28 is amended to read as follows:

2811.1 Except as specified in Section 2805.5 of these Rules, this Rule applies to all periods of time prescribed or allowed by these Rules, by order of this administrative court, or by any applicable law.

Section 2811.6 of 1 DCMR Chapter 28 is amended to read as follows:

2811.6 Whenever these Rules or an order of this administrative court require or allow an act to be done at or within a specified time, this administrative court, for good cause shown, may order the period enlarged or reduced if a request is made before expiration of the period, or, if the period has expired, may enlarge it if the failure to act was the result of excusable neglect; however this Section does not authorize the reduction or enlargement of any period prescribed by law, or any period provided under Rules 2805, 2829, 2832, 2833 or 2835 of this Chapter.

Section 2823.1 of 1 DCMR Chapter 28 is amended to read as follows:

2823.1 In addition to the right to seek a subpoena under Rule 2822, in every case in which an evidentiary hearing has been ordered, each party shall disclose, by filing with this administrative court and serving upon each other party, the documentary exhibits it wishes to offer at the hearing or otherwise seeks to have considered by the presiding Administrative Law Judge. Unless otherwise ordered, such disclosure shall be made at least ten (10) calendar days before the date on which the evidentiary hearing is scheduled, except that, in unemployment compensation cases, such disclosure shall be made at least three (3) business days before the date on which the evidentiary hearing is scheduled. This Section does not limit the right of any party to obtain information as permitted by other applicable law. This disclosure obligation contained in this Section shall not be deemed to be discovery for purposes of these Rules.

Section 2840.1 of 1 DCMR Chapter 28 is amended to read as follows:

2840.1 Unless a federal law or regulation or District of Columbia statute requires that a particular federal or District of Columbia procedure be observed, these Rules and any final or interlocutory order of this administrative court shall take precedence and supersede in the event of a conflict with other authority on any issue involving or relating to procedures of this administrative court. All procedural authorities promulgated by any agency relating to adjudicated cases filed with this administrative court pursuant to Section 6 of the Act are hereby superseded. In determining whether an issue involves or relates to procedures of this administrative court, the presiding Administrative Law Judge shall follow the doctrine set forth in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), and related case law. These Rules shall be deemed to involve or relate to procedures of this administrative court unless otherwise found in an order issued under

JAN 28 2005

the authority of Section 2840.2 or on judicial review of a decision of this administrative court.

Section 2840.19 of 1 DCMR Chapter 28 is added as follows:

2840.19 If no applicable District of Columbia law or agency rule, other than these Rules, provides a time period within which to appeal an agency action or decision consistent with Rule 2805, such appeal must be filed within thirty (30) days of the agency's transmitting its decision to the party filing a request for a hearing under Rule 2805.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., WEST TOWER, SUITE 200
WASHINGTON, DC 20005

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 990, IN THE MATTER OF DEVELOPMENT OF LOCAL
EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE
DISTRICT

The Public Service Commission of the District of Columbia, pursuant to its authority under D.C. Code, 2001 Ed. § 34-802 and § 34-2002(d), hereby gives notice of the amendment of Chapter 27 of Title 15 DCMR. The Notice of Proposed Rulemaking to amend these rules was published in the *D.C. Register* on November 19, 2004, at 51 *D.C. Reg.* 10648. These amendments modify procedural rules for the abandonment of competitive local exchange carrier certification and for the exit of competitive local exchange carriers from all or a portion of the District of Columbia telecommunications market. The final version of these rules contains technical modifications that were not present in the Notice of Proposed Rulemaking. Final action adopting these rules was taken January 7, 2005 by Commission Order No. 13477. The final rules will become effective upon publication of this notice in the *D.C. Register*. Additional copies of the final rules may be obtained by writing Christine D. Brooks, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., 2nd Floor, West Tower, Washington, DC 20005.

**CHAPTER 27 REGULATION OF CERTIFIED TELECOMMUNICATIONS
SERVICE PROVIDERS**

2704 ABANDONMENT OF CERTIFICATION

2704.1 Any CLEC certificated by the Commission that proposes to abandon the CLEC certification in the District shall file an abandonment of certification application with the Commission not later than ~~thirty (30)~~ sixty (60) days prior to the proposed date of the abandonment of certification. The application shall contain, in the following order and specifically identified, the following information:

(a) The applicant's name, address, telephone number, fax number, the name under which the applicant is providing service in the District, the date and order number of the Commission order that authorized the applicant to provide telecommunications services in the District, and the proposed abandonment date;

(b) A complete explanation of the reasons for the proposed abandonment of certification;

JAN 28 2005

- (c) A description of the arrangements made for payment of any outstanding taxes, fees, or other amounts owed to the Commission or any other agency of the District of Columbia;
- (d) A plan for the applicant to remove, maintain, or transfer any facilities in the District that would otherwise be abandoned; and
- (e) An affidavit verifying that all of the information in the application is true and correct.
- 2704.2 If, at the time of the filing of the abandonment of certification application, the CLEC is providing service to customers, the applicant also shall file an abandonment of service application pursuant to 15 DCMR § 2705 or 15 DCMR § 2706, as appropriate.
- 2704.3 The CLEC shall serve a copy of its abandonment of certification application on the Office of the People's Counsel on the same day that the application is filed with the Commission.
- 2704.4 The applicant shall return any customer deposits and satisfy in full any outstanding taxes, fees, or debts owed to the Commission or other District agencies within fifteen (15) days of the abandonment of certification application filing date. Upon full payment of these debts and/or fees, the applicant shall notify the Commission that all debts and/or fees have been paid by filing an affidavit explaining how and when these payments were made.
- 2704.5 Within thirty (30) days after receiving the abandonment of certification application, the Commission shall either approve the application, reject the application, or request supplemental information. If the Commission requests supplemental information, the applicant will be afforded fifteen (15) days to provide the Commission with such supplemental information.
- 2704.6 The Commission shall approve an abandonment of certification application if:
- (a) The CLEC has developed and implemented a comprehensive plan for returning customer deposits and satisfying outstanding debts owed the Commission or other District agencies operating in the District, if any; and
- (b) Approving the abandonment of certification application would serve the public interest.
- 2704.7 No CLEC shall abandon its certification absent Commission approval. Upon receiving Commission approval, the applicant shall void any

existing interconnection agreements by notifying the Commission and any telecommunications service provider with which the applicant has signed an interconnection agreement of the abandonment of certification. Upon receiving Commission approval, the applicant shall also withdraw all existing tariffs on file with the Commission.

- 2705.1 Any CLEC certificated by the Commission that proposes to abandon the provisioning of telecommunications services in the District shall file an application with the Commission not later than ninety (90) days prior to the proposed date of abandonment of service. This Section 2705 shall apply if a CLEC proposes to abandon the provisioning of telecommunications services in the District, either in whole or in part (including, but not limited to, for a class of customers {such as residential customers or business customers} or customers located in specified geographic areas). However, this Section does not apply where a CLEC in the ordinary course of business is proposing only to (a) terminate service to an individual customer for reasons uniquely applicable to that customer (for instance, because the customer has failed to pay charges due to the CLEC); (b) withdraw a feature of a service (for instance, caller ID or call waiting); (c) limit availability of a service so that the service is available only to the CLEC's customers who already subscribe to that service; or (d) change a rate, term or condition for a service. The application shall contain, in the following order and specifically identified, the following information:
- 2705.4 The applicant shall return all customer deposits for customers affected by the proposed abandonment of service, with accrued interest (less any amounts due to the applicant), and, if the applicant proposes to abandon its provisioning of telecommunications services in the District in whole, satisfy its outstanding debts owed to the Commission or other District agencies, within seventy-five (75) days of the abandonment of service application filing date. Upon full payment of these amounts, the applicant shall notify the Commission that all such amounts have been paid.
- 2705.6 Within ninety (90) days after receiving the abandonment application, the Commission shall either approve the application, reject the application, or request supplemental information. If, within ninety (90) days after receiving the abandonment application, the Commission does not either approve the application, reject the application, or request supplemental information, the application shall be deemed to have been approved. If the Commission requests supplemental information, the applicant has fifteen (15) days to provide the Commission with such supplemental information. If the Commission requests supplemental information and, by the later of thirty (30) days after receiving the supplemental information or ninety (90) days after receiving the abandonment application, the Commission does not either approve the application, reject the application, or request

DISTRICT OF COLUMBIA REGISTER

additional supplemental information, the application shall be deemed to have been approved.

2706.3(b)(11) A statement setting out (a) the format in which the Exiting CLEC's customer service records ("CSRs") are being kept, (b) what data elements are in these CSRs, and (c) how the CSRs can be obtained by other carriers²;

2706.3(b)(11)(N) Identification of any line sharing/line splitting on the migrating customer's line.

2706.2(c) "Exiting CLEC" means a CLEC that proposes to abandon the provisioning of telecommunications services to the local exchange voice services market, or a portion of the local exchange voice services market (including, but not limited to, a class of customers {such as residential customers or business customers} or customers located in specified geographic areas).

2799 "Abandonment of Service Application" means an application to abandon provisioning of telecommunications services in the District, either in whole or in part (including, but not limited to, for a class of customers {such as residential customers or business customers} or customers located in specified geographic areas).