

COMMONWEALTH OF PENNSYLVANIA



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January 8, 2015

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Joint Petition of Verizon Pennsylvania LLC and Verizon
North LLC for Competitive Classification of all Retail
Services in Certain Geographic Areas, and for a Waiver of
Regulations for Competitive Services
Docket No. P-2014-2446303; P-2014-2446304

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Barrett C. Sheridan'.

Barrett C. Sheridan
Assistant Consumer Advocate
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Enclosures

cc: Honorable Joel H. Cheskis
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Verizon Pennsylvania LLC and :
Verizon North LLC for Competitive Classification : Docket Nos. P-2014-2446303,
of all Retail Services in Certain Geographic Areas, : P-2014-2446304
and for Waiver of Regulations for Competitive :
Services :

MAIN BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: January 8, 2015

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Verizon Pennsylvania LLC and Verizon North LLC (hereinafter Verizon or Company) have filed a Joint Petition for Competitive Classification of all Retail Services in Certain Geographic Areas and for Waiver of Regulation for Competitive Services (Petition). Verizon seeks competitive classification of certain non-competitive protected services pursuant to Section 3016 of the Pennsylvania Public Utility Code. Specifically, Verizon seeks to have its basic local calling service for residential and business customers deemed competitive in 194 of its wire centers that are in the Philadelphia, Pittsburgh, Erie, Harrisburg/York and Scranton/Wilkes Barre metropolitan and suburban areas. Competitive classification would allow Verizon to price these services at its discretion. Verizon has not requested competitive classification of intrastate switched access services or special access services, which are also “protected services” under Chapter 30 of the Public Utility Code.

Verizon also requests that the Commission waive enforcement of numerous regulations in Chapters 63 and 64 in Title 52 of the Pennsylvania Code related to the provision of safe and adequate telecommunications service and establishing the consumer protections which ensure that consumers can maintain their telecommunications service. Verizon acknowledges that it would still be subject to the Public Utility Code provisions regarding safety, adequacy, and reliability of telecommunications services or business activities pursuant to Section 1501 of the Public Utility Code. Verizon also acknowledged at hearings that it retains the obligation to connect all customers in its service territory. Verizon’s Petition, while calling for the waiver of the regulations that implement these key provisions of the Public Utility Code, does not offer any process by which these statutory standards can be assured for consumers.

Verizon argues that now is the time to take up this request given the decrease in the number of switched access lines it serves in Pennsylvania and the number of lines served by alternative providers. Verizon argues that these changes have resulted from technological advances that have allowed for the convergence of networks and changes in consumer buying patterns associated with the demand for mobility, data transmission, and video services. Based on the decrease in switched access lines, Verizon argues that these alternative services must be “like or substitute” service to basic local calling service and if there are at least two alternative providers other than Verizon or a Verizon affiliate in a wire center, the wire center can be classified as competitive. Verizon asserts that for each of the 194 wire centers it has identified for competitive classification, there are at least two alternative, unaffiliated providers of like or substitute services, specifically providers of cable or wireless service.

The Office of Consumer Advocate (OCA) submits that Verizon has failed to demonstrate that its request meets the requirements of Section 3016 of the Public Utility Code and is consistent with the policy objectives of Chapter 30 to maintain universal service at affordable rates. As an initial matter, Verizon’s reliance on a decrease in the number of switched access lines it serves presents an incomplete picture of the changes in the telecommunications marketplace and the level of competition within that marketplace for protected basic local service. As OCA witness Dr. Robert Loube explained, although Verizon may be losing customers to wireless providers, many of the customers leaving Verizon wireline offerings are moving to Verizon wireless offerings. OCA St. 1 at 45. Equally important, though, while many customers have changed their pattern of consumption due to the availability of wireless services and the variety of bundle offerings by Verizon and alternative providers, this does not necessarily mean that these services are adequate substitutes to provide “competitive discipline”

to the price of basic local service. The changes in consumption patterns associated with the desire for mobility, the desire to use a variety of applications available on new cell phones and the desire to purchase video and data transmission services does not provide the competitive discipline to prevent Verizon from increasing prices above competitive levels. Similar consumption patterns are occurring across the country and in other states where Verizon has been provided competitive classification of basic local service Verizon has increased the price of the service and sustained these price increases above even Verizon's definition of a competitive price level. See, OCA St. 1 at 33-42; OCA St. 1-S at 6-7.

Verizon's reliance upon competition in the market for bundles of services also does not address the fundamental question in this proceeding. In making this argument to support its case, Verizon fails to acknowledge that its own bundles of service are not regulated and not subject to the regulation that Verizon seeks to eliminate here. OCA witness Loube explained that regulation of protected basic service is not the cause of the line loss reported by Verizon. Dr. Loube testified:

Therefore where there is competition, Verizon has the same freedom from regulation that its rivals enjoy. For example, Verizon has a triple-play offering in areas where FiOS is available. In those areas, loss of lines cannot be due to the current regulation of the non-competitive basic local exchange service. Instead, loss of lines may be due to: (1) Verizon's pricing of FiOS; (2) the quality of FiOS and whether it is considered to be equal to the quality of the cable company offering; or (3) Verizon may be having difficulty overcoming the cable company's head start due to Verizon's timing of its infrastructure investment. In areas where FiOS is not available, Verizon's decision to not upgrade its service offering to FiOS accounts for customers who want triple-play service moving away from Verizon. Again the regulation of basic local service is not the cause of the loss of lines and the reclassification of basic local service will not solve Verizon's problems. Third, Mr. Vasington fails to acknowledge that Verizon's VoIP service is also not rate regulated by the

Commission and therefore, Verizon has the same pricing freedom as its rivals with respect to VoIP services.

OCA St. 1 at 45-46. Indeed, the regulatory requirements of Chapter 30 regarding broadband deployment have allowed Verizon to build a superior infrastructure that can provide the services customers wish to purchase. The requirements of Chapter 30 have placed Pennsylvania ahead of many other states in this regard. OCA St. 1 at 46.

As detailed below, Verizon has failed to demonstrate that its request for competitive classification of 194 wire centers and for the waiver of significant provisions of the Commission's regulations governing telecommunications service meet the statutory standards or is in the public interest. Verizon has failed to demonstrate that the cable and wireless services that it relies upon in support of its request are "like or substitute" services for basic local service that will provide the competitive discipline necessary to ensure reasonable and affordable prices. Verizon has also failed to demonstrate that even if cable and wireless could be considered adequate substitutes for basic local service, that there are two, unaffiliated providers of such services throughout the wire centers identified for competitive classification. Verizon has not identified any of the providers that it asserts provide competition and has not attempted to confirm whether competitive offerings are available to all customers within the wire centers. OCA witness Loubé showed that in many of these wire centers, there are significant numbers of census blocks that appear to be unserved by competitors.

Verizon has also failed to show whether the market is sufficiently competitive to achieve the objectives of Chapter 30 to maintain universal telecommunications service at affordable prices. In the OCA's view, the provision of protected basic local service pursuant to the pricing protections of Chapter 30 is at the heart of maintaining universal service in

Pennsylvania and meeting the policy objectives of Chapter 30. Without a sufficiently competitive market that provides the necessary competitive discipline, competitive classification should not be granted. OCA witness Dr. Loube has clearly shown that sufficient competition does not exist to constrain pricing at competitive levels and that in other states where competitive classification has been granted, Verizon has increased the price of basic local service above competitive levels and sustained these price increases.

Finally, Verizon has failed to address the impact of its request on consumers, particularly those most dependent upon basic local service. Any price increase that would result from the competitive classification would have a direct impact on Lifeline customers whose prices would increase dollar-for-dollar. Moreover, Verizon has not addressed the impact of waiving the Chapter 64 regulations, which are designed to assist consumers in maintaining telecommunications service, nor has Verizon provided any alternative mechanism to address these essential consumer protections. Verizon also has not addressed the impact of waiving the critical Chapter 63 regulations that ensure safe and reliable telecommunications service as well as ensure quality of service. There is simply no support to grant such broad and long lasting waivers as requested by Verizon.

After an evaluation of Verizon's request, OCA witness Loube summarized his conclusions and recommendations as follows:

My evaluation shows (1) that cable and wireless services are not like or a substitute for basic local exchange service, (2) that Verizon retains the ability to increase price above competitive levels in the basic local exchange service market, (3) that the existence of other similar services will not restrain Verizon from increasing price above competitive levels, (4) that markets in which one firm can increase price above competitive levels should not be declared competitive, (5) that the Pennsylvania Public Utility Commission ("Commission") should not approve Verizon's

request for reclassification of services, (6) that the Commission should not approve Verizon's request for waiver of certain portions of Chapter 63 and all of Chapter 64 of the Commission's Regulations, and (7) if the Commission does approve the reclassification application, then the Commission should cap Lifeline rates at their current levels in order to protect low-income consumers from the expected future rate increases.

OCA St. 1 at 4.

As detailed in this Main Brief, Verizon's Petition should be denied. Verizon has simply failed to support its broad and sweeping requests to fundamentally change the provision of protected basic local service in the 194 wire centers in the Philadelphia, Pittsburgh, Erie, Harrisburg/York and Scranton/Wilkes-Barre metropolitan and suburban areas.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural History

On October 6, 2014, Verizon Pennsylvania LLC and Verizon North LLC (collectively referred to as Verizon or the Companies) filed with the Pennsylvania Public Utility Commission a Petition pursuant to Section 3016(a) of the Public Utility Code seeking to declare as competitive all protected or noncompetitive retail services offered by Verizon within their Philadelphia, Erie, Scranton-Wilkes Barre, Harrisburg, Pittsburgh, Allentown and York service regions. The Petitions also requested waivers of Chapter 63, Subchapters B (Services and Facilities); C (Accounts and Records); G (Public Coin Services); E (Quality of Service); and F (Extended Area Service); and the entirety of Chapter 64 (Standards and Billing Practices for Residential Telephone Service) of the Commission's regulations. Pursuant to Section 5.14 of the Commission's regulations, notice of the filing was published in the Pennsylvania Bulletin on October 11, 2014 establishing a ten (10) day period for submitting formal Protests. On October

6, 2014, the Commission assigned the filing to the Office of Administrative Law Judge for an expedited process resulting in a certification of the record to the full Commission after the submission of main and reply briefs.

On October 17, 2014, the OCA filed a Protest and Public Statement. On October 20, 2014, AT&T Corp. and Teleport Communications America, LLC (collectively AT&T) filed a Petition to Intervene, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed an Answer and Petition to Intervene, the Communications Workers of America and International Brotherhood of Electrical Workers (CWA) filed a Protest and Answer and Full Service Network (FSN) filed a Petition to Intervene. On October 21, 2014, the Pennsylvania Telephone Association (PTA) filed a Petition to Intervene and the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, Verification, Public Statement and Notice of Appearance. On October 23, 2014, Verizon filed an Answer to AT&T's Petition to Intervene.

At hearings in this matter on December 17, 2014, the OCA submitted into the record the Direct, Rebuttal, and Surrebuttal Testimonies and accompanying exhibits of Dr. Robert Loube¹. The OCA submits this Main Brief in accordance with the procedural schedule adopted by Administrative Law Judge Joel Cheskis in support of its position that Verizon's Petition should not be adopted.

B. Burden of Proof

¹ Dr. Robert Loube is the Vice President of Rolka Loube Associates. His consulting practice centers on providing expert advice to state agencies involved in telecommunications regulation. Prior to joining Rolka Loube Associates, Dr. Loube worked at the Federal Communications Commission, the Public Service Commission for the District of Columbia and the Indiana Utility Regulatory Commission on issues associated with incremental cost, rate design, competition, universal service and separations. OCA St. 1 at 1. Dr. Loube received his Ph.D in Economics from Michigan State University in 1983. See, OCA St. 1, Exh 1.

“The term ‘burden of proof’ is comprised of two distinct burdens, the burden of production and the burden of persuasion.” Hurley v. Hurley, 754 A.2d 1283, 1285 (Pa. Super. Ct. 2000). The burden of production dictates which party has the duty to introduce enough evidence to support a cause of action. Id. at 1286. The burden of persuasion determines which party has the duty to convince the finder-of-fact that a fact has been established. Id. “The burden of persuasion never leaves the party on whom it is originally cast.” Id. See also Pa. PUC v. Equitable Gas Co., 57 Pa. PUC 423, 471 (1983).

“It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” Lower Frederick Twp. v. Pa. PUC, 409 A.2d 505, 507 (1980). The Supreme Court of Pennsylvania has stated that even where a party establishes a prima facie case by producing enough evidence to support a cause of action, the party does not satisfy its burden of persuasion unless the elements of that cause of action are proven with substantial evidence. Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983). Thus, a utility has an affirmative burden to produce enough evidence to establish every component of its request.

The OCA submits that Verizon must affirmatively demonstrate the reasonableness of every element of its claims and demonstrate that its request is consistent with the law and policies set forth in Chapter 30. As discussed in more detail below, the OCA submits that Verizon has not met its burden of proving that it has satisfied the requirements of §3016(a), or that its request for waiver of portions of Chapter 63 and all of Chapter 64 meet the requirements for such a waiver.

III. ARGUMENT

A. Verizon's Petition for Determination of Whether Protected Services in Certain Wire Centers are Competitive Under 66 Pa. C.S. § 3016(a)

1. Legal Standard

At issue is whether the Commission should grant or deny Verizon's petition request and change the classification of Verizon's protected, basic local calling services to competitive. The General Assembly has reserved to the Commission this important decision, where protected services are at issue.² 66 Pa.C.S. § 3016(a). Verizon requests that the Commission classify as competitive Verizon's retail basic local calling services as offered in the 194 identified wire centers to residential and business customers. Verizon Petition at ¶ 11. Protected services include those retail services, not otherwise classified by the Commission as competitive, which enable residential or business consumers to complete a local call. 66 Pa.C.S. § 3012.³

The service at issue here is basic local exchange service (basic service). Verizon's Petition excludes its carrier-to-carrier switched and special access services from its request for relief. Verizon Petition at ¶ 11. Section 3016(a)(1) directs the Commission to consider whether Verizon has "demonstrated" the "availability of like or substitute services" from "alternative service providers" in the wire centers covered by Verizon's Petition.⁴ Alternative service providers are those entities that provide telecommunications services, that is

² In contrast, Section 3016(b) allows Verizon to "declare any retail nonprotected service as competitive by filing its declaration with the commission" and providing notice to other interested parties. 66 Pa.C.S. § 3016(b).

³ The OCA notes that Verizon did not present evidence with regard to non-recurring charges concerning "ordering, installation, restoration and disconnection of these services" which are also defined as protected services under Section 3012.

⁴ The phrase "availability of like and substitute services" is common to both Section 3016(a) and its predecessor Section 3005(a)(1). Compare, 66 Pa.C.S. § 3005(a)(1) (repealed), § 3016(a)(1). However, the word "demonstrated" was added as part of Section 3016(a)(1) in 2004.

“[t]he offering of the transmission of messages or communications for a fee to the public,” in competition with Verizon. 66 Pa.C.S. § 3012.

Section 3016(a)(3) further states that “[i]n making its determination, the commission shall consider all relevant information submitted to it, including the availability of like or substitute services....” Clearly, the “other relevant information” may and should include information such as competitor’s market share and the potential impact on the continued availability and affordability of existing services. See, OCA St. 1 at 13-15, 25-33. Of critical importance, 3016(a)(3) does not stand-alone, as the Commission must also consider the policy goals of the Commonwealth to “maintain universal telecommunications service at affordable rates.” 66 Pa.C.S. § 3011(2). Similarly, the promotion of competitive services should not jeopardize “the provision of universal telecommunications services at affordable rates.” 66 Pa.C.S. § 3011(8). To preserve these public policy goals, the Commission’s review should be broad in scope.

Pursuant to Chapter 30, the main difference between noncompetitive and competitive services is how rates for Verizon’s public utility telecommunications services are determined.⁵ Verizon’s Chapter 30 Plan provisions and price change opportunity (PCO) formulas govern rates and revenues from Verizon’s noncompetitive services. OCA St. 1 at 8. Rates for noncompetitive services must meet the statutory criteria of Chapter 30 while also meeting the just and reasonable requirements applicable to all public utility rates. See, 66 Pa.C.S. §§ 1301, 3019(h). In contrast, the Commission “may not fix or prescribe the rates, tolls,

⁵ Noncompetitive service is defined as “[a] regulated telecommunications service or business activity that has not been determined or declared to be competitive.” 66 Pa.C.S. § 3012. Competitive service is defined as “[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).” 66 Pa.C.S. § 3012.

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.” 66 Pa.C.S. § 3019(g). In other words, classification of protected retail telecommunications services as competitive would allow Verizon to price basic service at its discretion, so long as the price is not less than the cost to provide the competitive telecommunications services. 66 Pa.C.S. § 3016(d)(1); OCA St. 1 at 8-9. Competitive classification does not diminish the Commission’s concern to preserve universal telecommunications services on affordable terms.

Section 3016(a) allows Verizon to request classification of protected services as competitive throughout its service territory “or a particular geographic area, exchange or group of exchanges or density cell within its service territory... based on the demonstrated availability of like or substitute services or other business activities provided or offered by alternative service providers.” 66 Pa.C.S. § 3016(a)(1). Verizon has selected 194 wire centers in “certain urban and suburban, population-dense areas” Verizon St. 1 at 4. Section 3016(a)(3) states that the Commission “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 competitive.*” 66 Pa.C.S. § 3016(a)(3)(emphasis added). “The burden of proving that a protected or retail noncompetitive service or other business activity is competitive rests” with Verizon. 66 Pa.C.S. § 3016(a)(4). In other words, whether and where the Commission might classify Verizon’s protected, retail local calling services as competitive depends on whether Verizon has met its burden of proof. Verizon maintains the burden of proof as the proponent of a rule or order in this proceeding. 66 Pa.C.S. §332. In addition, Chapter 30 explicitly requires that only those wire centers that have been “proved to be competitive” can be classified as competitive. 66 Pa.C.S. §3016(a).

2. Facts Relating to the Competitive Standard of Section 3016(a)

In order to obtain a determination by the Commission that basic local telephone service is competitive under Section 3016(a), Verizon must prove that there is the “demonstrated availability” of “like or substitute services” for customers in each wire center. The Commission shall further consider “all relevant information submitted to it” when making its determination. The OCA submits that based on this test and the other relevant information presented in this proceeding Verizon’s Petition must fail.

a. Like or Substitute Services

Section 3016(a) requires Verizon to demonstrate the availability of like or substitute services or business activities. What constitutes like services or substitute services is not defined by Chapter 30. In this case, Verizon has argued that cable telephony and wireless services are substitute services for Verizon’s basic service. Thus, the Commission must determine whether the cable telephony and wireless services that Verizon cites as available in each of the wire centers are like or substitute services for Verizon’s basic service. Verizon already has the freedom under Chapter 30 to offer the functionality of local calling services as part of a competitively priced bundle of other services, bundles that may include data and video. 66 Pa.C.S. § 3016(e); OCA St. 1 at 21-22. Based on the record evidence, the OCA submits that Verizon has not proven the availability of services which are sufficiently like or substitutes for Verizon’s basic service.

Verizon offers no measure for determining what services are like services compared to Verizon’s protected, basic local exchange service, other than to say they need not be identical. See, OCA St. 1 at 17; Verizon St. 2.0 at 10. Verizon witness Vasington does offer a definition for substitute services. According to Verizon, the voice services provided by cable

and wireless providers, sold in combination with data, video, and other features are substitute services sufficient to impose competitive discipline on Verizon's pricing of basic service. Id.

As explained by Dr. Loube, what constitutes like services relative to Verizon's protected, basic local calling service should meet or exceed the objective qualities of adequate, reliable, and safe voice service. OCA St. 1 at 10. Neither cable telephony nor wireless service are like or superior to Verizon's basic service on these criteria. Nor are such cable telephony or wireless services adequate substitutes, that would impose the necessary competitive discipline and constrain Verizon from pricing basic local service above competitive levels. OCA St. 1 at 9. Verizon's premise – that the decrease in Verizon protected, local calling service accounts and increase in the number cable telephony and wireless subscribers are prima facie evidence that such services are competitive substitutes – is both flawed and lacking in support, as both Dr. Loube and Ms. Baldwin cogently testified.

i. The Measure Of Like Services Should Include Objective Considerations Particularly Within The Commission's Expertise

The OCA submits that like services compared to Verizon's basic service "must be at least as good as basic local exchange service in meeting the standards of safety, adequacy, and reliability, and can be superior to basic local exchange service." OCA St. 1 at 10. To qualify as like services, the Commission should consider whether the voice services offered by those cable telephony and wireless providers identified by Verizon meet or exceed the adequate, reliable and safety standards of Section 1501. Id.; 66 Pa.C.S. § 1501. As Dr. Loube explained, the public benefits from the Commission's oversight of the quality of service and consumer protections. See TR at 96-98. Pursuant to Section 3019(b)(3), the Commission has the power and duty to

protect all customers of telephone public utilities.⁶ 66 Pa.C.S. § 3019(b)(3). The OCA submits that services of lesser quality, reliability, and/or safety should not be accepted as like the quality of Verizon's protected, basic local calling services, for the purpose of Section 3016(a).

As explained by Dr. Loube, adequate voice service is characterized by the ability to transmit voice communications within a specific frequency range and without transmission delay or latency. OCA St. 1 at 11. Verizon's telephone network is designed to meet these transmission standards. Like services should also meet or exceed the safe voice service aspects of Verizon's protected basic local calling services. Dr. Loube identified six elements that characterize safe voice service: 1) the ability of the public to reach 911, first responders and other emergency response authorities, 2) the ability to participate in public alert systems and to provide emergency information to the public in adverse conditions, 3) the protection of essential public safety and national security communications services, 4) the provision of assistance to law enforcement, 5) ensuring network security, and 6) ensure that there is adequate backup power at the central office. *Id.* at 11-12. To qualify as reliable voice service equivalent to basic local exchange service, Dr. Loube emphasized that reliable voice service must be able to work during emergencies, whether due to commercial power outages or periods of very high demand. *Id.* at 12.

Dr. Loube assessed the potential for alternative services to meet or exceed the adequate voice service, safe voice service, and reliable voice service qualities of Verizon's protected basic local exchange service. The provision of adequate voice service may be the

⁶ Section 3019(b) states that "[t]he 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: ... (3) Subject to the provisions of section 3015(e) [limits on reporting requirements], to establish such additional requirements as are consistent with this chapter as the commission may determine to be necessary to ensure the protection of customers." 66 Pa.C.S. § 3019(b)(3).

simplest for comparative services to meet. Dr. Loube explained that satellite telephone service would not qualify due to latency in transmission but some VoIP voice services, where transmitted as wideband audio, could “be considered a like service with regard to the adequate voice criteria.” OCA St. 1 at 11.

Both Dr. Loube and CWA-IBEW witness Baldwin testified that wireless networks and service do not currently provide safe voice service at the same high level as Verizon’s basic local service, particularly when E911 dispatchers need to identify the wireless caller’s location. Id. at 12; CWA-IBEW St. 1 at 30-31. This is not simply a theoretical problem. Dr. Loube identified December 2013 letters from county officials in Dauphin, Cumberland and Westmoreland counties⁷ sent to the FCC that identified this shortcoming and need for wireless technology improvements. Id. at 12, fn. 14.

Both cable and wireless networks fail to meet or exceed the reliable voice service standard. As Dr. Loube explained, cable networks and wireless networks “do not have the ability to remain viable when there are commercial electrical outages and therefore, services provided over these networks are not like services.” OCA St. 1 at 12. Federal Communications Commission (FCC) Chairman Tom Wheeler has recognized the need to take steps so that consumers, whether using “cable coax or telecommunications fiber – can reach 911 and other emergency services even when the power goes out.” CWA-IBEW St. 1 at 36-37, quoting Chairman Wheeler’s October 31, 2014 blog post. The websites for Comcast and other cable providers expressly caution consumers that their VoIP services, including 911 calling, may not function after extended outages. CWA-IBEW St. 1 at 35. An FCC consumer guide alerts consumers that VoIP services “may not work during a power outage, or when the Internet

⁷ Verizon’s Petition includes wire centers located in these three counties.

connection fails or becomes overloaded.” Id. at 36. Unlike Verizon’s wireline network, wireless networks are not designed to handle high spikes in demand. OCA St. 1 at 12-13. Such spikes do overload wireless networks, whether due to emergencies such as in the aftermath of the Boston Marathon bombing tragedy or large public events. Id. at 12-13; Tr. at 99. Based on these performance shortcomings of cable and wireless networks, the Commission should conclude that neither cable telephony nor wireless services are like Verizon’s protected, basic local exchange service in quality and function. OCA St. 1 at 13.

Verizon has approached the like or substitute services threshold test differently, without identifying a test or measure to determine whether an alternative service provider’s telecommunications service is like Verizon’s retail, protected basic local exchange services. OCA St. 1 at 17. In rebuttal, Mr. Vasington addressed Dr. Loube’s criticism that wireless services and cable telephony services are not equivalent to Verizon’s basic local exchange service as safe voice service and reliable voice service. With regard to public safety, Verizon asks the Commission to focus only on whether a wireless customer or cable telephony customer can dial and reach 911 public safety responders. Verizon St. 2.0 at 4-5. However, the delivery of 911 calls over wireless or cable networks are only part of the minimum performance public safety and reliability criteria identified by Dr. Loube. Verizon has not refuted that public safety responders cannot identify the location of wireless calls to 911 with the same level of accuracy as Verizon’s basic local exchange service. Nor has Verizon countered the criticisms that cable networks and wireless networks are vulnerable to service outages due to loss of commercial power or that wireless networks and cable networks can be overwhelmed by high demand..

When tested for the ability to provide adequate, safe and reliable voice telephone services, the OCA submits that Verizon has not shown that cable telephony or wireless services,

where available, are at least as good as Verizon's basic local service. The Commission should reject Verizon's claim that the cable telephony and wireless service are like services for the purpose of Section 3016(a).

ii. Cable Telephony and Wireless Services from Unaffiliated Carriers Meet Different Consumer Needs And Preferences And Are Not Substitute Services For Verizon Basic Service

Section 3016(a) requires Verizon to demonstrate the availability of like or substitute services in the areas covered by its Petition. As explained by Dr. Loubé, the multi-function services purchased by consumers from cable and wireless providers may compete with Verizon's bundled services but cannot be considered as substitutes sufficient to impose competitive discipline on Verizon's pricing for basic service. Indeed, as Dr. Loubé testified and as discussed below, Verizon basic local exchange consumers in other states that granted Verizon such pricing freedom have experienced increases, notwithstanding the supposed competitive pressure of services from cable and wireless providers. OCA St. 1 at 33-42.

Verizon witness Vasington defined substitute services as:

A service is considered a "substitute" when consumers consider the competitor's service to be similar enough that consumers would increase their use of the competitor's service in response to an increase in the incumbent's price above competitive levels (or a decrease in the incumbent's service quality or output).

Verizon St. 1.0 at 5. While Dr. Loubé agreed with most of Mr. Vasington's position, Dr. Loubé disagreed that services may be substitutes just because the consumption of one service goes up when the output of the other service goes down. As Dr. Loubé explained, those two events could be completely unrelated. OCA St. 1 at 9. Dr. Loubé provided the following example:

For example, Verizon could reduce its output of basic local exchange service by installing fiber to the premises, and induce its

basic local exchange service customers to switch to its FiOS digital voice service. The customer would then become VoIP customers and not basic local exchange service customers. This decrease in basic local exchange service customers would not necessarily cause an increase in the demand for services of competitors.

OCA St. 1 at 9-10. Indeed, Dr. Loubé identified that a decrease in Verizon's basic service customer counts could be equally attributable to Verizon's own cross-marketing of its affiliated Verizon FiOS digital voice service, a fact conceded by Verizon. *Id.* at 10; see Verizon St. 2.0 at 12.

Dr. Loubé and CWA-IBEW witness Ms. Baldwin each analyzed Verizon's claim that cable telephony and wireless services are economic substitutes for Verizon's basic local service. Dr. Loubé determined that both cable telephony and wireless service have "unique characteristics that make them significantly different from basic local exchange service." Not only does wireless service offer "the ability to receive a call in many different places," Dr. Loubé noted that wireless service and devices may double as cameras and video screens, as well as the use of many other service applications. OCA St. 1 at 10.⁸ Dr. Loubé noted that cable services support both video content and high speed data services. *Id.* Dr. Loubé contrasted these multi-function wireless and broadband services with basic local exchange service that only provides voice communications and possible dial-up access to the internet. *Id.* The OCA does not agree

⁸ The Company argues for an expansive view of this standard such that mobile service and bundles that include voice and other services may be considered "substitutes" under the law. *See*, VZ St. 2.0 at 10-13. The Company argues that the most competitive pressure for basic service customers comes from bundle offerings, "which are clearly viewed by a **significant margin of customers** as substitutes for basic exchange service." VZ St. 2.0 at 15 (Emphasis added). The argument fails to recognize that bundled service is not a substitute for customers that are not interested in a bundled service. Likewise, a customer that does not have an interest in bundled services cannot "substitute" a bundle for basic service.

with Verizon that these services are appropriate substitutes for Verizon's basic service, for the purposes of Section 3016(a). Id.

Pivotal to Verizon's definition of substitute services is that consumers would change their supplier for basic local service should Verizon increase its price above competitive levels, based on the availability of cable telephony and wireless service in the wire center. However, if the consumer's purchasing decision turns on features or functionalities which are unique to the alternate service, such as the mobility offered by wireless service, then those services cannot be considered economic substitutes. Verizon witness Vasington conceded that point in reply to discovery, stating:

[M]any consumers value the inherent mobility of wireless services, while others value the particular bundles of video, data and phone service that cable companies offer. **Verizon's basic service does not meet the needs of those consumers at any price.**

OCA St. 1 at 15, fn. 19, quoting Verizon reply to OCA-I-6 (emphasis added).

In rebuttal, Verizon witness Vasington tried to redirect the focus away from whether wireless service is an economic substitute to whether wireless service can function as a fixed calling service, citing to AT&T's offer of a fixed wireless service. Verizon St. 2.0 at 5. Dr. Loube noted, however, that Verizon witness Vasington provided no evidence that fixed wireless as a substitute for wireline service is more than a theoretical possibility. OCA St. 1-S at 8. Verizon's own, unsuccessful effort to substitute Verizon's fixed wireless Voice Link service in portions of New York contradict Mr. Vasington's suggestion that consumers accept fixed wireless as a substitute for Verizon wireline basic local calling service. OCA St. 1-S at 8. Most importantly, Verizon claims that the increase in consumer consumption of all wireless services is proof that all such services are substitute services for Verizon's protected, basic local calling

service. Dr. Loube explained that Verizon has failed to provide support that wireless services are appropriate economic substitutes:

My basic argument was to show that price is not the reason that consumers are shifting towards the use of wireless devices. To contradict my argument, Mr. Vasington would have to show that an increase in the price of basic local exchange service would have accelerated the shift to the use of wireless service or that a decrease in the price of basic local exchange would have slowed down the shift towards the use of wireless service. Mr. Vasington provided no evidence supporting such a showing, and I have not seen any evidence that would support a showing that price is the determining factor in the change in consumption habits.

OCA St. 1-S at 7.

As Dr. Loube testified, based on Verizon's own admissions, the available wireless services and cable telephony services that Verizon cite as support for its Petition are not in fact appropriate economic substitutes. OCA St. 1 at 15-16. The OCA does not disagree that consumers have chosen to subscribe to cable telephony services or wireless services. However, as Dr. Loube explained, these consumer choices are not driven by the price for those services relative to Verizon's price for basic local exchange service. OCA St. 1 at 15. Instead, Dr. Loube determined that such consumer choices were driven by those features or functions which are unique to wireless or cable services and cannot be duplicated or met through the purchase of Verizon's basic local exchange service. Id. at 15-16, fn. 19.

CWA-IBEW witness Baldwin disputed Verizon's position that available cable telephony or wireless services constrain Verizon from decreasing Verizon's service quality and so are substitute services. CWA-IBEW St. 1S at 7-8; see Verizon St. 1.0 at 5. Ms. Baldwin noted that Verizon has publicly stated that only some Verizon wireline consumers will receive telephone service over Verizon's modernized fiber-to-the-premise FiOS network. CWA-IBEW

St. 1S at 7-8. For the remaining wire centers, Ms. Baldwin described Verizon's approach to quality of service as "a race to the bottom" – it has not upgraded its network, the physical plant and service quality are deteriorating, the work force is likely understaffed (as evidenced by Verizon's slow repair out-of-service dial tone lines), and consumers are not being well served." CWA-IBEW St. 1S at 7. For Verizon consumers in those wire centers, Ms. Baldwin explained that any consumer switch to an alternative service "that is minimally reliable and meets at least some of their needs for service," does not signify that the alternative services are competitive substitutes for what should be Verizon well-maintained, reliable affordable basic service. CWA-IBEW St. 1S at 8. Rather, such switches are "because competitive forces are insufficient to cause Verizon to provide adequate service quality for its basic local service." CWA-IBEW St. 1S at 8.

The OCA submits that the fact that consumers have changed their consumption patterns and purchase more cable, wireless and even Verizon competitively-priced bundles that include basic service, or Verizon's FiOS Digital Voice, does not support the conclusion that such alternatives, where available, provide competitive discipline for Verizon's provision of affordable basic local service. OCA St. 1-S at 6. The changes in consumption reflect changes in the tastes and wants of consumers, rather than based on the price difference between Verizon's basic service and the alternatives. *Id.* Although Verizon offered a definition of "substitute service," Verizon has not provided evidence that the cable telephony and/or wireless services from at least one unaffiliated wireless carrier which Verizon claims are available in the wire centers will function as substitute services for the purposes of Section 3016(a). The General Assembly has already provided Verizon with the flexibility to price packages and bundles inclusive of basic service, subject to certain limitations. 66 Pa.C.S. § 3016(d), (e). In deciding

Verizon's Petition, the Commission should not promote competitive services at the risk of jeopardizing universal telecommunications service at affordable rates. 66 Pa.C.S. § 3011(8).

b. Demonstrated Availability of Alternatives

As noted above, under the statutory test, the first requirement for reclassification of a service is the "demonstrated availability of like or substitute services" from alternative service providers. As set forth in Section II.A.2.a (above), the services relied upon by Verizon in its Petition are not "like or substitute" services for purposes of Section 3016(a). Even if one were to agree with Verizon that cable or wireless service could be considered a like or substitute service, Verizon has not "demonstrated availability" of these services by alternative providers throughout the wire centers by Verizon's own definition.

In its Petition, Verizon argues that if it shows that there is cable telephone service and at least one unaffiliated wireless service provider in a wire center, then the wire center should be found competitive. The OCA submits that, even under the Company's test, it has failed to prove that each of these two services is available in each wire center for which it has requested competitive designation. As such, the Company's request fails to meet the legal standard and must be rejected.

As OCA witness Dr. Loube testified, it is important to determine whether all customers in an exchange have access to the like or substitute services and not just some of the consumers in the wire center. OCA St. 1 at 13. Dr. Loube explained:

First, there is a need for greater specificity with regard to the number and types of alternative providers that must be available to consumers in order to demonstrate that like services from other providers are available to most consumers and not just to some of the consumers in an exchange. For example, there should be criteria that 100% of the households in the wire center can choose from among at least two alternative providers unaffiliated with

Verizon and at least 100% of the households can choose a facilities-based alternative provider that owns its own wireline network facilities. These criteria ensure that all customers will have the opportunity to benefit from competition. Without these criteria Verizon would have the incentive and the ability to increase price where there are no alternative providers and decrease price where there are alternative providers.

OCA St. 1 at 13-14.

The Company did not provide evidence as to the names of the alternative providers in each wire center, nor did it establish the availability of alternative suppliers to all customers throughout each wire center. Rather, to prove the existence of cable telephone service in each wire center the Company argues that “information from Warren Communications New Advanced TV Factbook shows that cable telephony is available in all of these exchanges.” Petition at ¶12; Verizon St. 1.0 at 24. To prove that wireless coverage exists in all of the wire centers at issue here, Verizon cites the National Broadband map for support. Petition at ¶12, VZ St. 1.0 at 24.

The OCA submits that the Company’s testimony falls short of the needed specificity with regard to the number and types of alternative providers that must be available to consumers in order to demonstrate that like services from other providers are available to most, and not just some, of the consumers in an exchange. When a thorough analysis of the wire centers is conducted, it becomes evident that many customers will not, in fact, have the competitive alternatives that Verizon relies on to support its Petition. In his testimony, OCA witness Dr. Loube demonstrated that for many of the wire centers identified for reclassification, customers will in fact not have a land line based “cable telephony” alternative. Dr. Loube examined the wire centers for cable alternatives and testified as follows:

An examination of census block data reveals that in 181 of 194 wire centers covered by the application there is at least one populated census block that is unserved by a cable provider. The table below summarizes the number of wire centers by the number of unserved populated census blocks in the wire center.

Table 1: Wire Centers by the Number unserved populated census blocks					
Number of unserved populated census blocks	1-9	10-19	20-49	50-99	100 or more
Number of Wire Centers	54	50	59	16	2

OCA St. 1-S at 8-9 (Footnotes omitted).

The above table demonstrates that 181 of the 194 wire centers identified in the Petition contain populated census blocks that are unserved by a cable provider. A complete list of the wire centers summarized in the above table is attached to OCA witness Loube's Surrebuttal Testimony as OCA Surrebuttal Exhibit RL-2. In OCA Exhibit RL-2, Dr. Loube identified each of the 181 wire centers that contain unserved populated census blocks and provides the exact number of census blocks that are unserved.

The mere "presence" of a cable operator in part of a wire center, does not ensure the availability of the service to all customers. Nor does the Company's basis for wireless coverage guarantee actual wireless alternatives. As Dr. Loube testified in response to Verizon:

Mr. Vasington's assertions that cable and wireless service is available in every wire center are not sufficient for the purposes of this proceeding. In this proceeding, it is necessary to determine whether the alternative services are available to all of the customers in a wire center or just to a select number of customers

in the wire center. With regard to cable providers, those providers are not required to build out to their entire franchise areas because in their contracts there is usually a clause that permits the cable provider to stop building when the number of houses per street-mile is below a specific number. Therefore, even if a cable company has a franchise in each wire center, there is no guarantee that there is cable service to all customers in the cable franchise. Second, even if there is a cable franchise in each wire center, there is no guarantee that the cable franchise(s) covers the entire wire center.

With regard to wireless deployment, Mr. Vasington relies on information in the FCC's Sixteenth Wireless Competition Report. However, he fails to mention that the deployment information in that report is based on data from Mosaik Solutions and that the FCC states: "This [deployment] analysis likely overstates the coverage actually experienced by consumers, because Mosaik Solutions (Mosaik) reports advertised coverage as reported to it by many mobile wireless service providers, each of which uses a different definition or determination of coverage."⁹ In Pennsylvania with its numerous hills and mountains the different definitions of coverage could cause the information in the FCC report to miss the fact that many customers are without wireless service even though the report is generally accurate.

OCA St. 1 at 47-48.

Dr. Loubé explained that the existence of a cable provider in every Verizon wire center does not imply that cable service is ubiquitous. OCA St. 1-S at 8. Cable franchises are not required to match the geographic boundaries of Verizon wire centers and cable providers are not required to offer service throughout their franchise areas. OCA St. 1-S at 9. The Company acknowledged that, where a cable provider serves a wire center, there is no guarantee that all customers in that wire center will have cable access. Tr. at 136-137. Verizon further confirmed on cross-examination that it did not attempt to determine whether the cable provider in each wire center serves all, or even a majority, of households in the wire center. Tr. at 137. Rather,

⁹ FCC, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Sixteenth Report, March 21, 2013, page 5 and footnote 5.

Verizon witness Vasington stated that the Company relied on a search through the Warren Communications Advanced TV Factbook to determine where cable telephony was not available. TR. at 132-133. From there, the Company cross-referenced the locations that came up as not having cable telephony with its wire centers. Tr. at 133. The Company did not provide any field research to ensure that customers had access to the alternatives they rely upon in support of their Petition.

With regard to wireless coverage, the Company relied on overly broad coverage maps that do not take into consideration specific coverage issues that may exist in each wire center. CAUSE-PA witness Miller explained the problems with the Company's evidence regarding wireless coverage in each wire center, as follows:

As proof that wireless service is available in the affected areas, Verizon provides a printout of the National Broadband Map showing AT&T's coverage area and a separate map of the wire centers affected by its Petition. Verizon then asks the Commission to compare the two side by side, asserting that this high-level comparison is sufficient to show that at least one wireless carrier provides service in the area. But even the most cursory examination of the available evidence in the field shows that this analysis is grossly over simplistic. In fact, a closer look at AT&T's service map, provided to the public on their website, explains that the areas represented on the map as having coverage indicates only that coverage "should be sufficient for on-street, in-the-open and some in-building coverage.

CAUSE-PA St. 1 at 11-12.

Verizon argues that not all customers need to have access to competitive options in order for a service to be considered competitive. Verizon St. 2.0 at 17-18. Verizon argues that competition at the margins protects "infra marginal" customers, even if they do not have access to this competition. Verizon St. 2.0 at 17-18. The OCA submits, however, that without such a criteria, Verizon has the ability and incentive to increase price where consumers have no

competitive alternatives. As the record demonstrates, there are substantial “gaps” within the wire centers that the Company seeks to have reclassified, leaving customers without sufficient alternative providers and no adequate protection.

Verizon has been unable to demonstrate that all customers in the impacted wire centers will have the competitive options needed to ensure basic local service remains available at reasonable and affordable prices. Verizon has assumed that the existence of cable companies and broadband coverage, based on internet searches and wireless coverage maps, satisfies the “availability” requirement of Section 3016(a) without actual evidence of customer options. The OCA submits that the Verizon has not demonstrated the availability of alternative, competitive options or providers in the wire centers at this time and the Petition must be denied.

c. The Commission Should Consider Other “Relevant Information”.

i. Competitiveness of the Market.

a) Introduction

Under Section 3016(a), the Commission “shall consider all relevant information submitted to it” in making its determination. The OCA submits that the Commission must review the competitiveness of the relevant market in making its determination. Testimony has been produced by OCA witness Dr. Loube and CWA-IBEW witness Baldwin that demonstrate that the market for basic service will not be competitive and that Verizon will have the ability to sustain prices above competitive levels should the Commission grant Verizon’s request. See, OCA St. 1 at 17-33; see also, CWA-IBEW St. 1.0 at 16-27, 39-47.

The OCA submits that the Commission must consider the testimony concerning the competitiveness of the market for basic service to ensure that the market for such a service is sufficiently competitive to ensure reasonable and affordable prices. The evidence of record

demonstrates that the market for basic service is distinct from the market for many of the cable and wireless services relied upon by Verizon. In the market for basic local service, the OCA presented evidence by Dr. Loube that Verizon maintains the ability to sustain price increases beyond a competitive level. Indeed, in jurisdictions where Verizon has been granted pricing freedom, the Company has increased rates for basic local service above a competitive level and maintained those price increases.

To properly address the relevant considerations, the OCA submits that the Commission must address those areas of concern identified by OCA witness Loube. Those considerations are as follows:

- The Commission should evaluate and obtain market share data. The market share data would lead to a criterion that states that competition does not exist if the largest two wireline providers serve more than 90 percent of the residential wireline customers. See, OCA St. 1 at 14; See also, CWA-IBEW St. 1.0 at 43-47.
- There is a need to determine a reasonable competitive price. See, OCA St. 1 at 14.
- There is a need to review Verizon's pricing behavior in areas where this Commission has deregulated prices or in areas of other states that have deregulated prices to determine whether the alleged competition has in fact been able to restrain Verizon from increasing price above competitive levels. See, OCA St. 1 at 14.
- The Commission should review any joint operating agreements among incumbent carriers and alternative providers to determine whether such agreements provide an incentive to reduce the level of competition among the parties to the agreements. See, OCA St. 1 at 14.
- The Commission must determine whether it can assure customers in the wire centers that Verizon will not increase its rates in a manner that increases the total bill above an affordable level. See, OCA St. 1 at 14.

The OCA submits that a review of this information and criteria show that adequate competition does not exist to properly restrain pricing if Verizon is provided competitive designation and pricing freedom for basic service in the requested wire centers.

b) The Market For Basic Service Is Not Competitive

A review of the market for basic services shows that Verizon can maintain prices above competitive levels. Further, a review of other jurisdictions where price regulation of basic service was eliminated shows that, indeed, Verizon has increased prices for this service above competitive levels and has sustained these higher, non-competitive price levels.

In assessing whether the market for basic service is competitive, the Commission should ensure that no company is able to maintain a price substantially above marginal cost. OCA St. 1 at 17. In this proceeding, the market at issue is basic local exchange service in the wire centers that Verizon has asked to be re-classified as competitive. OCA St. 1 at 18. In order to determine the appropriate market for consideration in this proceeding, Dr. Loube utilized the hypothetical monopolist test adopted by the U.S. Department of Justice and the Federal Trade Commission for reviewing mergers. OCA St. 1 at 19. The DOJ/FTC test finds that market power exists where a merged firm “likely would impose at least a small but significant and non-transitory increase in price (“SSNIP”) on at least one product in the market.” OCA St. 1 at 19-20; See also, CWA-IBEW St. 1.0 at 20, 26.

Using the DOJ/FTC market test, Dr. Loube was able to test the Verizon claim that basic telephone service has converged with a number of separate services for the purpose of review of its Petition. Verizon St. 1.0 at 8-9. Specifically, Verizon argues that basic telephone service competes in the same market as cable and telephone company “bundles” and wireless services. Verizon St. 1.0 at 28-35; OCA St. 1 at 20.

Dr. Loube identified the communications markets, as follows:

The communications markets could be defined as three separate markets. These markets are the basic local exchange market, the bundle market and the wireless market. The basic local exchange

market is dominated by Verizon with a small number of fringe companies providing the same service. The bundle market is dominated by Verizon and the cable company with a small number of fringe providers. It is characterized by a company that can provide very high speed data service, video service along with voice service. The FCC has found that 100 GBs of service per month is part of bundle service. Even though wireless providers provide video service, their price of 100 GBs of service per month is very high, and the FCC did not consider wireless providers to be carriers that compete with wireline telephone carriers when it determined its CAF II universal service rules. The third market is the wireless market. This market's dominant characteristics are the mobility of the cell phone and the applications available on the cell phone.

OCA St. 1 at 21 (Footnotes omitted).

The FTC/DOJ merger guideline market definition can be used to test Verizon's argument that cable and telephone company bundles and wireless availability form the same market with Verizon's basic telephone service. Dr. Loube testified as follows:

The relevant question here is can Verizon impose a small but significant price increase in basic local exchange service market, or alternatively would competitive pressure from the bundle service market and the wireless market be sufficient to restrain Verizon? The answer is here is not speculative. Verizon can and has imposed such a price increase.

OCA St. 1 at 25. CWA-IBEW witness Susan M. Baldwin framed the proper inquiry in a similar manner, and related it to the wireless market, as follows:

Verizon has not demonstrated that it cannot profitably sustain a small but significant price increase for basic local exchange service. In other words, if the current provider is able to profit from a price increase, it has market power, the ability to sustain a "small but significant increase in price" for these services without attracting entry by competitors and losing market share. So, in the case of wireless service, for example, the question isn't whether some consumers choose to use wireless service, it is whether the availability of wireless service constrains the price of wireline service. One "think tank" newsletter puts it this way: "the correct inquiry is not whether two different products can do a similar task

for some consumers some of the time, but rather whether the use of one product will restrain adequately the exercise of market power for the other.”

CWA-IBEW St. 1.0 at 26-27 (Footnote omitted).

Dr. Loubé testified that the incremental cost of basic local exchange service in Verizon’s service territory is \$21.09. OCA St. 1 at 32. Dr. Loubé further testified that in the Philadelphia and Pittsburgh regions, Verizon’s rates for basic local exchange service range from \$22.28 to \$22.90, thus placing the current rates above a competitive level. OCA St. 1 at 32. Dr. Loubé further explained that the Company’s own analysis shows a competitive price for basic service that is often below the current price Verizon charges for this service. Dr. Loubé explained:

Mr. Vasington has addressed the subject of the competitive price of basic local exchange service in his direct testimony and in a response to an OCA data request. In his direct testimony, Mr. Vasington asserts “Verizon’s prices must compete with the incremental charges (if any) for VoIP, not the full cost of broadband plus VoIP.” According to Mr. Vasington, those incremental charges are between \$0.00 and \$32.46, with Comcast’s incremental charge at \$10.00. Because Comcast is the dominant alternative provider in Pennsylvania, its incremental charge would be the competitive price according to Mr. Vasington’s direct testimony. This charge is less than half of Verizon’s combined rate (the sum of the unlimited service rate, the SLC and the ARC) for basic local exchange service, and if incremental charge is the competitive price level it means that Verizon’ rates are over twice the current competitive price.

OCA St. 1 at 32-33 (Footnotes omitted).

As Verizon witness Vasington testified, Verizon’s basic service must compete with the incremental cost of voice service in competitive “bundled” offerings. VZ St. 1.0 at 38. For Pennsylvania’s largest cable provider, Comcast, Verizon has calculated the incremental charge for voice service as \$10 for two of Comcast’s bundles. Verizon St. 1.0 at 38. When

asked if Verizon had ever lowered rates to \$10, or at all, in states where basic service has been reclassified, Company witness Vasington replied that the Company had not lowered rates. Tr. at 121. Verizon has not provided any evidence that the market for bundles or other services have restrained the price for basic service to a competitive price level. To the contrary, the evidence suggests that no competitive pressure exists for basic service pricing.

The evidence in this case shows that Verizon's current pricing is above marginal cost. In addition, there is evidence that Verizon has been able to maintain at least a "small but significant and non-transitory increase in price" where basic residential services have been classified as competitive. The OCA submits that the Company has not demonstrated that the market for basic service is competitive, and therefore classification as "competitive" in this case is not warranted.

ii. The Commission Should Consider The Price Impact Of Competitive Classification In Other States.

If sufficient competitive alternatives exist, it would follow that the price of basic service should decrease to the competitive price level identified by Verizon witness Vasington. In states where competitive classification of basic service has occurred, however, prices have increased for this service, thus showing that the market for basic service is distinct from bundled cable and telephone products and wireless service relied upon by Verizon.

The OCA submits that the Commission should consider Verizon's reclassification proceedings in Virginia in 2007, where basic residential local exchange service was reclassified as competitive. See, OCA St. 1 at 33-41. In that case, the Virginia State Corporation Commission (VSCC) established a test to determine what exchanges were competitive, and determined that 39 exchanges in four metropolitan areas met that test. OCA St.

1 at 36. Dr. Loube examined the evolution of the telecommunications market in Virginia between the time of the re-classification and today and found that the conditions were similar to those in Pennsylvania. OCA St. 1 at 38-39. Despite the similar development of the overall telecommunications market, however, the price for residential, basic telephone service has increased in Virginia. Dr. Loube testified as follows:

The evidence shows that Verizon has been able to increase its prices to a level that is more than 5% above competitive market levels, and even though it has been losing customers, Verizon has not lowered its prices. Because it must be assumed that Verizon is rational, it can only be concluded that loss in sales was not enough to reduce the profitability associated with the price increase.

OCA St. 1 at 39.

Dr. Loube thoroughly analyzed the price increases in Virginia, and explained the increased rates as follows:

Q. What evidence exists that shows that Verizon has increased its prices in Virginia?

A. The evidence exists for two Verizon exchanges, Richmond and Smithfield. The base year evidence was obtained from the FCC urban rate survey. As of October 2007, the basic local exchange rate in both exchanges was \$16.37. The subscriber line charge ("SLC") was \$6.28 in Richmond and \$6.50 in Smithfield. Rates for 2014 were obtained from Verizon price lists filed with the VA Commission and Verizon filings with the FCC. For the Richmond exchange, deregulated by the VA Competition Order in December 2007, the basic local exchange rate had increased to \$22.37 by 2014.

OCA St. 1 at 39-40 (Footnotes omitted). With regard to the Smithfield exchange, Dr. Loube testified as follows:

Rates in the Smithfield exchange were not deregulated until December 30, 2010. By January 2014, the basic local exchange service rate had increased to \$19.87 from \$16.37. This represents a 21% increase or an average annual rate of 6.7%.

OCA St. 1 at 40. Dr. Loube concluded that the evidence points to a sustained price increase above competitive levels, as follows:

For both exchanges these increases were substantial and occurred over a number of years. At the beginning of the period, Verizon's combined rates of \$22.63 in Richmond and \$22.87 in Smithfield were above the competitive price of \$21.09. Verizon maintained these prices above competitive levels and has been constantly raising the prices so the difference between the Verizon price and the competitive price increased. The evolution of the telecommunications markets, Verizon loss of sales and the shift of consumers to closely related markets did not prevent Verizon from raising prices.

OCA St. 1 at 40.¹⁰

OCA witness Loube testified that Verizon provided data on five additional states that had deregulated residential rates: Rhode Island, California, Delaware, Florida, and Texas.

OCA St. 1 at 41. In each state, Verizon increased its prices following the deregulation of the basic service rate. OCA St. 1 at 41. Specifically, Rhode Island's rate groups saw increases of 6.6% and 6.9% in 2006. OCA St. 1 at 41. California saw increases of 5.2% since the end of 2010. OCA St. 1 at 41. Delaware's two rate groups saw increases of 9.9% and 10.0% since June 2013. OCA St. 1 at 42. Florida experienced an increase of 24.3% since November 2011. OCA St. 1 at 42. In Texas, most customers experienced increases of 26% to 41%, with some customers seeing an increase of 134%. OCA St. 1 at 42.

The OCA submits that the experience in Virginia, Rhode Island, California, Delaware, Florida, and Texas confirms that the basic telephone service is a distinct market and that sufficient competition does not exist to restrain prices. The experience further demonstrates that Verizon's claim in this proceeding that the market for basic service has converged with

¹⁰ In the Virginia proceeding, the Virginia Commission restricted the size of the residential service increase to \$1.00 on an annual basis through December 31, 2014. See, OCA St. 1 at 37.

bundled services and wireless service is not correct. Taking the above considerations into account, the OCA submits that the Commission should not approve the Petition at this time as the market for basic service remains separate and apart from the services in which competitive pressures may exist.

iii. Impact On Universal Service

As part of its review of Verizon's Petition, the Commission must also consider the impact on the preservation of universal telecommunications service and affordability. See 66 Pa.C.S. § 3011(8), (12); OCA St. 1 at 14-15. The OCA submits that the Commission must consider the impact that competitive classification of Verizon basic service would have on the availability and affordability of basic service for all Pennsylvania consumers as well as those low income consumers who qualify for federal Lifeline assistance.

As Dr. Loube explained, the Commission should be concerned regarding the affordability of basic service for all Pennsylvania citizens. *Id.* at 14-15. If the cable telephony and wireless services that Verizon claims are available and like or substitute services in the covered wire centers do not in fact constrain Verizon's ability to increase prices above affordability levels, then Pennsylvania consumers will be harmed. Thus, Dr. Loube recommended that the Commission determine what an affordable urban bill would be in Pennsylvania, based upon the general principles set forth by OCA witness Roger Colton's December 2008 testimony in the Commission's intrastate access investigation proceeding at Docket No. I-00040105 and determine whether the Commission can assure that Verizon will not increase rates in a manner that increases the total bill above the affordable level. OCA St. 1 at 15.

The OCA submits that the Commission should also recognize and consider the impact that grant of competitive pricing flexibility to Verizon would have on Verizon's Lifeline consumers. OCA St. 1 at 52-53. Consumers who qualify for Lifeline do so based on income at or below 135% of federal poverty guidelines or participation in certain benefit programs. The federal Lifeline discount provides a \$9.25 credit to make their bill for basic service more affordable. As Dr. Loube testified, should Verizon increase rates for competitive basic service, the Verizon Lifeline consumer's bill for basic service would increase dollar for dollar. Id. Dr. Loube highlighted this as a concern, based on the record of Verizon affiliates in other states increasing the rates for basic service after grant of pricing flexibility or deregulation. Id. at 53.

CAUSE witness Mitch Miller raised the same concern regarding the affordability of basic service for Verizon Lifeline consumers. CAUSE St. 1 at 20-22. "[A]ny increase in the cost of basic service, without an equal rise in the amount of the [Lifeline] discount, will necessarily increase the price of the service for the Lifeline recipient." Id. at 20. As Mr. Miller explained, Verizon's Lifeline consumers may opt for Verizon's basic service with the federal Lifeline discount because they value the reliability of Verizon's service compared to alternatives or because they do not have alternatives available for Lifeline service. Id.

The OCA submits that the affordability of basic service, for Verizon consumers in general and Verizon Lifeline consumers in specific, must be part of the Commission's considerations in its review of Verizon's Petition. As recommended by Dr. Loube, if the Commission grants the reclassification, which the OCA does not recommend, the Commission should cap all Lifeline rates at their current levels to protect those consumers from the burden of paying rates that are not just, are not reasonable and are not affordable. OCA St. 1 at 53.

B. Verizon's Petition For Waiver Of Certain Regulations

In its Petition, Verizon requests a waiver of certain regulations until December 2025 in any wire center that the Commission deems competitive. The regulations that Verizon seeks to have waived are: Title 52, Chapter 63, Subchapters B (Services and Facilities); C (Accounts and Records); G (Public Coin Services); E (Quality of Service); and F (Extended Area Service); and the entirety of Chapter 64 (Standards and Billing Practices for Residential Telephone Service). Verizon argues that some of these regulations are outdated and that others are no longer necessary due to the alleged presence of competition and the resulting market forces. The OCA submits that this proceeding is an inappropriate forum to decide the issue of Chapter 63 and Chapter 64 waivers, particularly given the accelerated timeline for this proceeding. The OCA further submits that Verizon has failed to carry its burden of proof that these regulations should be waived.

1. Legal Standard

The legal standard for determining whether a waiver of regulations is appropriate is addressed in Chapter 63 and Chapter 64. The legal standard for analyzing a waiver of Chapter 64 regulations is found in §64.212 (a) and (b) (Applications for Modification or Exception) and applies to all of Chapter 64. This section provides:

(a) If unreasonable hardship to a customer or to a LEC results from compliance with this chapter, application may be made to the Commission for modification of the section or for temporary exemption from its requirements. The adoption of this chapter by the Commission will in no way preclude the Commission from altering or amending this chapter under applicable statutory procedures, nor will the adoption of this chapter preclude the Commission from granting exemptions in exceptional cases.

(b) A customer, customer designee or LEC that files an application under this section shall provide notice to persons who may be affected by the modification or waiver. Notice may be made by a bill insert or in another reasonable manner.

52 Pa. Code §64.212 (a) and (b).

Chapter 63, does not contain general waiver provision. Subchapter E (Telephone Service Quality Standards), however, which Verizon seeks to have waived, contains a specific provision for analyzing a proposed waiver of that subsection, in §63.53 (e) – temporary exemption request & standard. It reads in relevant parts:

(e) If unreasonable hardship to a person or to a utility results from compliance within this subchapter, application may be made to the Commission for modification of the section or for temporary exemption from its requirements. The adoption of this subchapter by the Commission will not preclude the altering or amending of the provisions in a manner consistent with applicable statutory procedures, nor will the adoption of this subchapter preclude the Commission from granting temporary exemptions in exceptional cases. A person or utility that files an application under this section shall provide notice to a person who may be affected by the modification or temporary exemption. Notice may be made by a bill insert or in another reasonable manner.

52 Pa. Code §63.53 (e). As can be seen, substantially similar tests are established by §64.212 (a) and (b) and §63.53 (e).

As these provisions make clear, under Chapters 63 and Chapter 64, the standard for determining whether a request for regulatory waiver is appropriate is whether the regulations are causing an unreasonable hardship to a person or utility, and whether the waiver is temporary in nature. The regulations also provide for exemptions in exceptional cases.

The protections offered to consumers by Chapter 63 and 64 contain inter alia standards for quality of service, billing for residential customers, and safety. The OCA submits that Verizon's Petition fails to make the claim, and the record evidence does not support, a conclusion that Verizon or Verizon's customers are suffering from an unreasonable hardship as a result of the Commission's Chapter 63 and Chapter 64 regulations that Verizon is seeking to have waived. Verizon, moreover, requests that Chapter 63 and Chapter 64 regulations be waived

for a period of 10 years, until December 2025. The OCA submits that a 10 year waiver is not consistent with the nature of a temporary waiver. The OCA further submits that Verizon has not shown any exceptional circumstances justifying a waiver in this proceeding.

CAUSE-PA expert witness Mitch Miller addressed the issue of customer reliance on existing regulations and on the challenges of trying to educate consumers on changing expectations.

It has taken years to educate consumers about their rights under Chapters 63 and 64 and, as evidenced by the thousands of complaints handled by BCS each year [...] customers have come to expect and rely on those rights. Nevertheless, in one single swipe, Verizon's Petition may undo the rights of consumers, on which customers have come to rely.

CAUSE-PA St. No. 1 at 16.

A decade long waiver of regulations would so firmly entrench the business practices of Verizon as to alter consumer expectations to such a degree that they would become permanent, not a temporary departure of the standard as contemplated by the Commission's regulations. Verizon does not claim, and the evidence does not support, a finding that Verizon or its customers face an unreasonable hardship under the present regulatory regime. Thus, the OCA submits that Verizon has failed to meet the legal standard for determining whether a waiver of regulations is appropriate under Chapter 63 and Chapter 64.

2. Waiver Request in General

In general, the OCA does not oppose efforts to review the Commission's regulations periodically in order to ensure that consumers are able to receive service consistent with present conditions. The OCA acknowledges that over time some regulations may need to be updated or eliminated to respond to technological and market conditions in the underlying industry and to ensure that consumers are adequately protected. Such reviews, however, should

occur at the proper time and in an appropriate proceeding with notice to all affected parties and sufficient time to evaluate the impacts on consumers.

Verizon's selection of this compressed proceeding as a vehicle to achieve regulatory changes through major waivers of the Commission's regulations must be rejected. Verizon's decision to piggyback a substantial regulatory waiver request onto a competitive classification application with an exceptionally accelerated time frame is not only unnecessary, but hinders the development of sufficient record evidence to analyze both the underlying competitiveness claims and the appropriateness of the regulatory waiver request.

Equally important, Verizon does not even attempt to analyze the impact on consumers or Pennsylvania's telephony market of the Chapter 63 or Chapter 64 regulatory changes that it requests. Nor does Verizon state why these changes should be taken up in this application rather than in a general rulemaking where all parties would have an opportunity to comment on the requested rule change.

As OCA expert witness Dr. Loube stated:

It is inappropriate to examine these regulations in this proceeding because this proceeding must be completed within 150 days and that timeframe will not allow for a complete analysis of the implications of waiving these particular regulations at this time.

OCA St. No. 1 at 51. He went on to identify additional limitations inherent in using this accelerated competitive classification proceeding to make determinations about regulatory waivers:

Moreover, there may be other interested parties who are not aware that Verizon has added the waiver request to its application for reclassification and are, therefore, not participating in this proceeding. Because it is important that all interested parties be allowed to participate, the examination of these regulation[s] should be removed from this proceeding and includ[ed in] a

separate proceeding that focuses only the Commission's regulations.

OCA St. No. 1 at 51.

While the OCA recognizes that the telecommunications technology continues to develop, the OCA submits that Verizon's request for a waiver as part of this accelerated proceeding denies the Commission and the public an opportunity to fully participate in the rulemaking process and fully evaluate the impacts on consumers. The OCA submits that the regulations Verizon seeks to have waived provide critical protections to consumers. As CAUSE-PA expert witness Mitch Miller stated in his direct testimony:

Verizon attempts to characterize Chapters 63 and 64 as outdated relics of the past. (Vz. St. 1.0, Vasington, at 39-40). But this couldn't be further from the truth. The regulations contained in these chapters remain relevant - and critical - to the delivery of reliable and affordable telecommunication services in Pennsylvania, and for the continued protection of consumers who rely on the Commission to ensure the continued availability of this most essential and basic utility service.

CAUSE-PA St. No. 1 at 16.

OCA witness Dr. Loube also addressed the negative impact that the removal of Chapter 63 and Chapter 64 regulations will have on consumers:

The removal of the regulations will undermine the ability of the Division of Consumer Services to investigate consumer complaints and thus reduce the Division's ability to protect consumers. These regulations establish the standards for determining whether Verizon's service is safe, adequate and reliable. Without these regulations, the Division will not have any guidelines or standards that it can use to determine if Verizon's services are no longer safe, adequate and reliable.

OCA St. 1 at 51.

Also of significant concern is Verizon's assertion that Section 1501 provides sufficient protection to consumers on its own if Chapters 63 and 64 are waived. Verizon frames its argument in such a way that it suggests Section 1501 is meant as a replacement for Chapters 63 and 64 instead of these Chapters being the complimentary enforcement regulations that make Section 1501 workable. Prior to the implementation of Chapters 63 and 64, the Commission had the authority to regulate telecommunication services under section 1501, but lacked the necessary rules to do so effectively. The standards for service provided by Section 1501 were enforced through difficult and lengthy investigations until Chapters 63 and 64 were adopted by the Commission and implemented by Bureau of Consumer Services (BCS).

As CAUSE-PA expert witness and former Director of BCS Mitch Miller testified:

Following [the] adoption [of Chapters 63 and 64], BCS began investigating and writing decisions on utility consumer complaints and service termination cases based on the specific provisions of these regulations. But, before then, the Commission had to engage in a full blown investigation of telecommunication services if it wished to enforce the standards in the statute. And, in the meantime, individuals with legitimate and substantial service quality complaints were left without remedy.

CAUSE-PA St. No 1 at 17. Mr. Miller went on to explain that it was only after the consumer protection sections of Chapters 63 and 64 were implemented that BCS was able to adequately address consumer complaints. As he testified in his direct testimony:

Prior to that, as I will explain more fully below, the basic standard for utility service set forth in Title 66 provided an insufficient standard by which to hold telecommunication providers [sic]. After the regulations were passed and implemented, we were able to begin holding regulated telecommunications providers responsible for meeting basic levels of service reliability and affordability.

CAUSE-PA St. No 1 at 17.

Verizon further argues that because the number of “justified” complaints has gone down that Chapters 63 and 64 are no longer necessary. The OCA, however, disagrees with this assertion. As explained by CAUSE-PA expert witness Mitch Miller, there are many reasons why complaint levels are down and the success of Chapters 63 and 64 are key contributors. As he testified:

A principal reason that the Chapter 63 and 64 standards were enacted was to address the service issues that plague the least profitable customer class -mainly, economically vulnerable populations who cannot afford to pay for premium services. In support of its assertion that it will police its own quality standards, Verizon only notes evidence of the downward trend in "justified" complaints. But the Commission has always encouraged parties to a dispute to settle, rather than diminish Commission resources to fully investigate and try each case. Indeed, the downward trends in complaints in 2013 and 2014 appears to be a continuation of a trend which began in 2009 as a result of changes in BCS intake practices.

CAUSE-PA St. No. 1 at 18. Verizon’s attempt to use the success of the Commission’s Chapters 63 and 64 regulations as proof of their obsolescence is not only illogical but counterfactual.

The OCA understands that technological developments have had an impact on Pennsylvania’s telephony market and that regulations should be reviewed periodically in order to ensure that consumers are adequately protected and that the regulations are up to date. The OCA, however, submits that Verizon has failed to meet the legal standard required in order to grant a regulatory waiver. The OCA further submits that this proceeding is an inappropriate forum to consider rules changes.

3. Specific Chapter 63 Regulations

In its Petition, Verizon requests a waiver of five subparts of Chapter 63, Subchapters B (Services and Facilities); C (Accounts and Records); G (Public Coin Services); E (Quality of Service); and F (Extended Area Service). The OCA submits that Verizon's blanket approach to the waiver of whole subparts in Chapter 63 must be rejected. The OCA submits that while certain subparts and individual subsections in Chapter 63 may need to be updated by the Commission at some point, this accelerated competitive classification proceeding is an inappropriate forum to consider regulatory waiver requests, particularly such broad requests.

For example, Verizon requests a waiver of all of Chapter 63 (B) (Services and Facilities) which contains rules that may need to be updated at the appropriate time such as obligations for multiparty lines, but multiple subsections reference the customer service relationship and are critical to adequate consumer protections.

Chapter 63 (B) also contains critical safety measures. As CWA-IBEW witness Mr. Gardler testified:

[Chapter 63 (B)] regulations require Verizon to install and maintain the network in a way that is safe for the people who work on the network and members of the public who may come in contact with our facilities. These regulations include standards for electrical interference, emergency response, compliance with the National Electrical Safety Code, among others.

CWA-IBEW St. No. 3 at 4.

Like Chapter 63 (B), Chapter 63 (E) (Quality of Service) references standards of telephone service including important regulations that still provide significant protections to consumers. One of those critical requirements is that Verizon must restore service to customers

after an interruption in service. As CWA-IBEW witness Gardler testified regarding Subchapter E:

By my reading, that regulation requires Verizon to respond to customer trouble reports in a timely manner. Some customer request for repair are pushed out for days and sometimes over a week.

CWA-IBEW St. No. 3 at 6.

Even Verizon acknowledges that significant consumer protections are affected should this subpart be waived but claims that “arguably” the protections offered in 63 (B) and (E) are contained within Section 1501. VZ St. 1 at 40. As addressed above, Chapters 63 and 64 regulations allow the Commission to implement the consumer protections guaranteed in Section 1501.

4. Specific Chapter 64 Regulations

The Commission’s regulations make clear the critical importance of the protections offered by Chapter 64:

The purpose of [Chapter 64] is to establish and enforce uniform, fair and equitable residential telephone service standards governing account payment and billing, credit and deposit practices, suspension, termination and customer complaint and to assure adequate provision of residential telephone service; to restrict unreasonable suspension or termination of or refusal to provide service; and to provide functional alternatives to suspension, termination or refusal to provide service.

52 Pa. Code§ 64.1 (statement of purpose and policy).

Chapter 64 provides numerous critical protections for consumers, and particularly low income individuals, many of whom rely heavily on these protections in order to ensure that they are able to maintain access to basic telecommunication services. Of particular concern are

subparts B (payment and billing), C (credit and deposit), and E (termination of service). As

CAUSE-PA expert witness Mitch Miller testified:

A major portion of the protections offered under Chapter 64, including subchapters B (payment and billing), C (credit and deposit), and E (termination of service), provide protections that low income individuals rely on heavily to ensure that they are able to access telecommunication services. Waiver of these regulations would have a devastating impact on low income and other vulnerable populations, as it would jeopardize their ability to access payment arrangements and/or other relief from the Commission to ensure that they can retain basic calling service.

CAUSE-PA St. No. 1 at 19.

The OCA submits that Chapter 64 provides consumers with the protections they need to establish and maintain essential telecommunications services. Verizon's request that the entirety of Chapter 64 be waived would expose consumers to significant harm and should be rejected.

C. Related Issues Raised by Other Parties

1. Price Change Opportunity

In his direct testimony, OCA witness Dr. Loube questioned the impact of a grant of Verizon's Petition on those Verizon customers whose rates for protected services would still be set according to Verizon PA's and Verizon North's respective Price Change Opportunity (PCO) provisions of their Chapter 30 Plans. This issue was not addressed in Verizon's Petition. Dr. Loube raised the issue so the Commission might consider the impact of grant of Verizon's Petition on the affordability of service for residential and business consumers in the other wire centers. OCA St. No. 1 at 50.

Dr. Loube set forth the following hypothetical:

Hypothetically, if the pool of residential and business customers purchasing non-competitive basic local service is reduced from some 500 wire centers to 300 wire centers, and revenues from intrastate access service remain about the same, Verizon might impose larger rate increases on those residential and business basic local service customers in the remaining 300 wire centers, subject to the limitations under their Chapter 30 Plans, to produce the allowed revenue increase.

OCA St. No. 1 at 49-50. Dr. Loube suggested, that in the event this hypothetical came to pass, “to avoid this possible unfair shift, it may be appropriate to remove a pro rata share of switched access revenues from Verizon’s future PCO calculations.” *Id.* at 50.

In rebuttal, Verizon witness Vasington confirmed that the Verizon PCO formula historically “has included all switched access revenues in the base of the calculation, including revenue attributable to lines that purchase competitive retail services.” Verizon St. 2.0 at 19. Mr. Vasington also stated that one premise in Dr. Loube’s hypothetical, that ‘revenues from intrastate access service remain about the same,’ would not occur. As Mr. Vasington stated, “Verizon’s intrastate switched access revenue continues to decline as the FCC’s [Federal Communications Commission’s] intercarrier compensation order is implemented.” *Id.*

The OCA submits that the Commission should consider the future impact of a grant of competitive classification on Verizon’s still protected basic service rates, as set pursuant to the Verizon PCO formulas. Verizon’s rebuttal tempers the OCA’s concern to a point, based on the information regarding Verizon’s access revenues presently available. However, the OCA remains concerned that the Commission’s decision in this proceeding should not impose unanticipated harms on Verizon’s basic service customers.

2. Wholesale Issues

The OCA is not presenting arguments on this issue, but reserves the right to reply if necessary.

3. Originating Access Rates and Section 3016(f)

As an intervenor in this proceeding, AT&T argues that the Commission should grant Verizon's petition, conditioned on the Commission also ordering Verizon to reduce its intrastate originating access charges to parity with interstate levels. AT&T Direct at 5. If the access reductions are not ordered, then AT&T recommends that the Commission deny Verizon's Petition to avoid a violation of Section 3016(f) by Verizon. *Id.*; 66 Pa.C.S. § 3016(f). According to AT&T, if the Commission grants Verizon's request for classification of Verizon's basic service as competitive without access reductions, then from day one, Verizon's non-competitive originating access services would illegally subsidize Verizon's competitively classified basic service. AT&T Direct at 5. In support of its request for access rate reductions, AT&T contends that AT&T's customers would benefit, there would be industry benefits, and there would be a "minimal" or "very small" increase to the rates for Verizon's protected basic service customers to preserve revenue neutrality for Verizon. *Id.* at 17-18; AT&T Surrebuttal at 6-7; see 66 Pa.C.S. § 3017(a).

The OCA opposes AT&T's request for a Commission order directing Verizon to reduce intrastate originating access charges in this proceeding. AT&T's request for relief is beyond the scope of Verizon's Petition which was filed pursuant to Section 3016(a) and is by statute subject to a narrow focus and 150 day window for Commission resolution. AT&T's position that the Commission must consider Verizon's future compliance with the no cross-subsidization provision of Section 3016(f) as part of its review of Verizon's Petition is without

merit. Moreover, these very issues are pending before the Commission in AT&T's complaint case at Docket No. C-200027195 and has been fully litigated in that docket.

AT&T's position is that Verizon's originating access charges are or will be unjust and unreasonable, due to the cross-subsidization that AT&T states will exist when Verizon is granted competitive classification of basic service. Verizon's intrastate originating access charges are protected services and tariffed rates. See 66 Pa.C.S. § 3012. Verizon's Chapter 30 Plan governs how rates for protected services are set, subject to those provisions of Chapter 13 preserved by Section 3019(h). 66 Pa.C.S. § 3019(h). If AT&T believes that Verizon's originating access are unjust and unreasonable in violation of Section 1301 and Section 3016(f), then the procedure is to file a formal complaint as allowed by Section 701. 66 Pa.C.S. § 701, 1301, 3016(f). Verizon's Chapter 30 Plans also state that challenges to Verizon's compliance with Section 3016(f) should be brought as formal complaints.¹¹ OCA St. 1-S at 4. The OCA submits that AT&T's petition to intervene, as filed in this narrow focused and time limited proceeding, cannot be treated as a proxy for an appropriately filed and noticed formal complaint.

Should the Commission consider the merits of AT&T's request for access rate reductions, the Commission should deny AT&T's request. As the proponent of a rule or order, the burden of proving the existence of the alleged subsidy and unjust and reasonableness of Verizon's originating access charge rates lies with AT&T. 66 Pa.C.S. § 332(a). The Commission should find that AT&T has not met this burden. AT&T has not provided any cost study to support its claim. OCA St. 1 at 5. Instead, AT&T has recited historic practices of setting access charges to provide support to maintain basic local service rates at affordable

¹¹ See e.g., Verizon Pennsylvania Inc.'s Petition and Plan for Alternative Form of Regulation under Chapter 30 and Act 183, Docket Nos. P-00930715, et seq., Alternative Regulation Plan of Verizon Pennsylvania Inc. as of December 2011, Part 2 Competitive Services Deregulation Plan, at 16.

levels. See, AT&T Direct at 5, 7-8. OCA witness Dr. Loube, however, applied the industry definition of subsidy, “that service is subsidized if its price is less than the incremental costs and the service pays a subsidy if its price is above stand-alone cost,” to address AT&T’s claim. OCA St. 1-R at 6; OCA St. 1-S at 15; TR. at 113-14. As Dr. Loube testified in rebuttal, AT&T had not produced any evidence that Verizon’s originating access charges are above their stand-alone cost of service or that Verizon’s basic local exchange service rates are below the incremental cost of those services. OCA St. 1-R at 6-7. Dr. Loube cited to evidence presented by the OCA in other Commission access investigation that counter AT&T’s subsidy claim. Id. at 6-8. Dr. Loube also contested AT&T’s position that Verizon’s originating access rate is ‘well above’ its incremental cost. Id. at 8. Dr. Loube further contested AT&T’s position regarding the appropriate cost allocation of joint and common costs. OCA St. 1-S at 10-15. Dr. Loube noted that AT&T’s claim that Verizon’s basic local service rates are too low implicates concerns regarding preservation of universal service and affordability of service in rural areas which historically have higher network costs than service in urban areas. Id. at 16-17. In summary, if AT&T’s arguments are to be considered, AT&T has not met its burden of proof based on the record in this proceeding that Verizon’s originating access rates must be reduced and must be reduced to parity with Verizon’s interstate originating access levels.

As to AT&T’s claim that such access reductions would provide industry benefits and minimal harm to Verizon’s basic service consumers, the record does not support AT&T. In cross-examination, AT&T witness Nurse conceded that call pumping and phantom traffic industry concerns are more related to terminating access rate arbitrage. See AT&T Direct at 12; TR. 52-53. Mr. Nurse was unaware of any complaints filed accusing Verizon of call pumping. Tr. 53. As to the impact of any increase to basic service rates to preserve revenue neutrality,

AT&T tried twice to calculate the per-line rate impact, roughly doubling its estimate the second time. TR. at 54-55, 72. However, AT&T did not use the line count for basic service consumers whose rates are set by Verizon's Price Change Opportunity formulas. TR. at 55. Instead, AT&T used the line count for only those basic service lines that would be classified as competitive, pursuant to Verizon's Petition. TR. at 55, 74. AT&T's claims regarding the industry benefits and minimal impact of its proposed access reductions on Verizon's basic service customers are not supported by credible record evidence.

As set forth in this OCA Main Brief, the OCA opposes grant of Verizon's Petition. In the event that the Commission does change the classification of Verizon's basic service to competitive for one or more wire centers, the OCA submits that the Commission must deny AT&T's request for corresponding access reductions. The OCA submits that the issue of access reductions and revenue neutral rate adjustments are clearly complex and have not been adequately developed upon the record in this proceeding, where no notice of proposed rate changes have been provided and no proposed tariffs are pending.

III. CONCLUSION

For the reasons detailed in this Main Brief, the OCA submits that Verizon has failed to demonstrate that the 194 wire centers in the Philadelphia, Erie, Scranton-Wilkes Barre, Harrisburg, Pittsburgh, Allentown and York service regions should be classified as competitive. In addition, Verizon has failed to show that the waivers of Chapter 63, Subchapters B (Services and Facilities); C (Accounts and Records); G (Public Coin Services); E (Quality of Service); and F (Extended Area Service); and the entirety of Chapter 64 (Standards and Billing Practices for Residential Telephone Service) are justified. As such, the OCA submits that Verizon's petition should be denied.

Respectfully Submitted,



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DATED: January 8, 2015

CERTIFICATE OF SERVICE

Joint Petition of Verizon Pennsylvania LLC :
And Verizon North LLC for Competitive : Docket Nos. P-2014-2446303
Classification of all Retail Services in Certain : P-2014-2446304
Geographic Areas, and for a Waiver of :
Regulations for Competitive Services :

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 8th day of January 2015.

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