

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in  
Pennsylvania (CAUSE-PA)**

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**The Pennsylvania Utility Law Project**

*On Behalf of the Coalition for Affordable  
Utility Services and Energy Efficiency in  
Pennsylvania (CAUSE-PA)*

Harry S. Geller, Esq.  
PA ID: 22415  
Elizabeth R. Marx, Esq.  
PA ID: 309014

**118 Locust Street  
Harrisburg, PA 17101  
717-236-9486  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)**

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## **I. INTRODUCTION/ARGUMENT SUMMARY**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, files this brief in support of its positions, and the positions advanced by its witnesses Mr. Mitchell Miller and Ms. Rachel Pinsker, Esq., through their written testimony and accompanying exhibits.

The evidence produced by Verizon Pennsylvania, LLC and Verizon North, LLC (collectively “Verizon”) in the captioned proceeding was insufficient to meet the requisite burden to reclassify the wire centers identified in its Petition. To the contrary, and as discussed below at length, the record reveals that Pennsylvania’s alternative telecommunications offerings are not sufficiently comparable to protected telecommunication service in terms of reliability and quality, affordability, and safety to act as a “like or substitute.”

Moreover, the evidence shows that Verizon failed to meet the requisite burden to waive Chapters 63 and 64 of the Pennsylvania Code. These regulations form a critical safety net for Pennsylvanian’s most vulnerable populations. Wholesale waiver of Chapters 63 and 64 would, in fact, cause untold harm on consumers, particularly those who are most vulnerable, who regularly rely on the Commission to resolve complaints and would thwart their ability to establish and/or maintain telecommunication service.

The Commission has an unwavering duty to uphold the public good by ensuring that all Pennsylvanians have access to reliable, affordable, and safe telecommunications service. This fact has been recognized time and time again with each evolution of telecommunication technology, and has been inextricably woven into the language and intent of Chapter 30. Verizon has asked the Commission to take a giant step toward full deregulation of the

telecommunications market, based almost exclusively on the theory that loss of market share necessarily means that alternatives are sufficiently robust to fully support a competitive market. But in reality, after a review of the body of facts presented on the record in this case, one must conclude that if Verizon's Petition were granted, vulnerable Pennsylvanians would be unable to access critical telecommunication service and the Commission would lose its authority to address those shortcomings. CAUSE-PA therefore strongly urges the Commission to reject Verizon's Petition and, instead, to engage in an independent exploration and examination of the telecommunications market – in coordination with interested stakeholders – to assess the true state of competition in Pennsylvania.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

On October 6, 2014, Verizon filed a Petition seeking to reclassify 194 Pennsylvania wire centers, which are primarily centered in or adjacent to the urban centers of Philadelphia, Pittsburgh, York, Harrisburg, and Erie, pursuant to 66 Pa. C.S. § 3016(a). Verizon further requested that the Commission waive Chapter 63 and Chapter 64 regulations in those same wire centers until December 31, 2025. On that same day, the Commission's Secretary's Bureau issued a Secretarial Letter which directed Verizon to publish a prescribed Notices on or before Saturday, October 11, 2014. The Secretarial Letter also directed that formal protests, petitions to intervene, and/or answers to Verizon's Petition be filed on or before Tuesday, October 21, 2014.

On October 20, 2014, CAUSE-PA filed a Petition to Intervene and Answer consistent with the Secretarial Letter on behalf of economically vulnerable Pennsylvanians who have limited economic means to access utility services. On October 23, 2014, The Honorable Joel Cheskis, Administrative Law Judge, held a prehearing conference, at which he granted CAUSE-PA full intervener status without objection from Verizon or any party.

On December 17, 2014, a final hearing was held before the Honorable Joel Cheskis. At this hearing, CAUSE-PA submitted the stipulated, pre-served direct and surrebuttal testimony of Mitchell Miller, former Director of the Bureau of Consumer Services, and stipulated direct testimony of Rachel Pinsker, Esq., Senior Attorney at the Pennsylvania Coalition Against Domestic Violence. All three pieces of testimony were admitted to the record. The Office of Consumer Advocate (OCA), the Communication Workers of America (CWA) and the International Brotherhood of Electrical Workers (IBEW) (collectively, CWA-IBEW), the Full Service Network, and AT&T Corp. also actively participated in the proceeding and submitted written testimony in support of their positions.

### **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)**

Verizon failed to meet its burden of proof to demonstrate that competitive telecommunication services that are “like or substitute” to protected services<sup>1</sup> are available within the geographic areas it seeks to reclassify as competitive. In fact, the record is replete with evidence demonstrating that reclassification in the targeted areas would create significant barriers for many residential consumers attempting to access telecommunication service, particularly for economically vulnerable Pennsylvanians. Such a result is contrary to the clear and explicit language in Chapter 30 and conflicts with the demonstrated intent of the General Assembly to ensure that all Pennsylvanians will be able to access telecommunication service.

#### **1. Legal Standard**

Verizon asserts that to have a service area declared competitive, it needs only to provide evidence of “the presence of two or more unaffiliated alternative network providers in each wire center.”<sup>2</sup> Verizon submits that evidence of line loss and number porting undeniably proves that cable and wireless services are “substitute” because “a service is considered ‘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

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<sup>1</sup> In relevant part, Chapter 30 defines protected services as “Service provided to residential consumers or business consumers that is necessary to complete a local exchange call.” 66 Pa. C.S. § 3011. The terms “basic service” or “basic calling service” are used interchangeably with the term “protected services” throughout this brief.

<sup>2</sup> Vz. St. 1, Vasington, at 4.

competitive levels.”<sup>3</sup> But there are many reasons for customer migration. As Mitchell Miller pointed out in his direct testimony,

[C]ustomers ...may want to consolidate their bills under one provider or wish to increase their mobility by adopting wireless calling service. Neither of these reasons for customer migration are sufficient to prove that the alternatives adopted by these customers are “like or substitute” within the meaning of Chapter 30. In fact, there are many barriers that prevent individuals and families from selecting the alternatives set forth in Verizon’s Petition, which means that - for those individuals – alternative services are not truly available within the meaning of Chapter 30.<sup>4</sup>

Verizon’s account of the applicable standard for reclassification is, at best, a mischaracterization of the standard in Chapter 30, and borders on a complete reframing of the statutory requirements.<sup>5</sup> Limiting the scope of inquiry to the mere *presence* of other calling services in a given geographic area ignores both the letter and the intent of Chapter 30 that

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<sup>3</sup> Vz. St. 1, Vasington, at 5. Verizon does not offer any explanation of how it defined “substitute”, and cites no comparable law, economic principle, or industry standard to support the application of its definition. Verizon’s witness went so far afield from the actual legal standard in his direct testimony to suggest that the Commission “step back from the ‘trees’ of the standard and the evidence to look at the ‘forest’ of revolutionary changes that have taken place.” (Vz. St. 1.0, Vasington, at 9). But, as Mr. Miller points out, “the standard and the evidence produced in support thereof are the only relevant inquiries in this proceeding.” (CAUSE-PA Statement 1, Miller, at 8). Regardless of what changes may have taken place in the marketplace, the Commission cannot approve a request for reclassification if the services offered are not “like or substitute.”

<sup>4</sup> CAUSE-PA St. 1, Miller, at 10.

<sup>5</sup> Notably, Verizon attempts to reframe the applicable standard – “like or substitute services” – with the same language that was proposed to the legislature in House Bill 1608 in the 2013 – 2014 legislative session. This proposal was roundly rejected by the Pennsylvania House of Representatives’ Consumer Affairs Committee after lengthy hearings in which experts from interested stakeholders provided significant written and oral testimony. *See* Pa. H.B. 1608, P.N. 2209, at 7 (introduced July 1, 2013).

The proposed legislation would have changed the reclassification requirements to allow a local exchange telecommunications company to classify its urban service areas as competitive by filing a simple declaration. It also would have allowed companies to petition the Commission for reclassification of rural areas “by filing an affidavit and declaration that two or more alternative service providers operate in the exchange, as demonstrated by local number portability records or other relevant information.” *Id.* After HB 1608 failed to gain traction in Committee, House Resolution 1096 was introduced, but was not voted on before the close of the 2014 session. HR 1096 would direct the Legislative Budget and Finance Committee “to study and report on the extent of competition in this Commonwealth’s communications industry and the impact of the transition to new technologies on the availability and affordability of clear and reliable voice service for all Pennsylvanians.” Pa. H.R. 1096, P.N. 4323 (introduced Oct. 20, 2014). Verizon’s attempt to seek Commission approval for reclassification based on an interpretation of the applicable standard that was recently rejected by the General Assembly appears to be a thinly veiled attempt at circumnavigating the General Assembly.

telecommunication service remain universally available in Pennsylvania. As Commissioner James Cawley explained in testimony before the Pennsylvania House of Representatives Consumer Affairs Committee, if areas currently subject to regulatory oversight were to be reclassified based on the mere presence of alternatives – without proof of the quality or affordability of those alternatives – the result would be “flagrant discrimination as to process charged, technology made available, areas served, and quality and reliability of service.”<sup>6</sup> In essence, it would enable Verizon to “effectively price vulnerable Pennsylvanians out of the market for reliable telecommunication service.”<sup>7</sup>

Indeed, Chapter 30 explicitly requires that – to reclassify an area as competitive – a local exchange carrier (in this case, Verizon) has the burden of “proving that a protected or retail noncompetitive service is competitive” based on the “demonstrated availability of like or substitute services” within a given geographic area.<sup>8</sup> In examining whether a carrier has met that burden, the Commission is *required* to “consider all relevant information submitted to it.”<sup>9</sup>

To identify what is “relevant” to the Commission’s determination of a reclassification petition under section 3016, we must examine the intent of the legislature in passing Chapter 30 to ensure that the resulting inquiry is in line with the Chapter’s goals. In Chapter 30, the General

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<sup>6</sup> *Prepared Testimony of James H. Cawley, Commissioner, Before the Pennsylvania House of Representatives Consumer Affairs Committee*, HB 1608, PN 2209 (Nov. 21, 2013), available at [http://www.puc.pa.gov/General/pdf/Testimonv/Cawlev-HB1608\\_112113.pdf](http://www.puc.pa.gov/General/pdf/Testimonv/Cawlev-HB1608_112113.pdf).

<sup>7</sup> CAUSE-PA St. 1, Miller, at 9.

<sup>8</sup> 66 Pa. C.S. § 3016(a)(1), (4).

<sup>9</sup> 66 Pa. C.S. § 3016(a)(3).

Assembly included specific statements of policy which, in relevant part, provide that “it is the policy of this Commonwealth to:

- (2) *Maintain universal telecommunications service at affordable rates* while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas.
- (3) *Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis.*
- (5) Provide diversity in the supply of existing and future telecommunications services and products in telecommunications markets throughout this Commonwealth *by ensuring that rates, terms and conditions for protected services are reasonable* and do not impede the development of competition.
- (7) Encourage the provision of telecommunications products and services that enhance the quality of life of people with disabilities.
- (8) Promote and encourage the provision of competitive services by a variety of service providers on equal terms throughout all geographic areas of this Commonwealth without jeopardizing the provision of universal telecommunication service at an affordable rate.<sup>10</sup>

In providing these basic tenets of policy as an introduction to Chapter 30, the General Assembly set forth an approach to telecommunications that would ensure that all Pennsylvanians would be able to access service. And, thus, facts related to the provision of quality, safe, and affordable telecommunication service are clearly relevant to a reclassification determination. The lack of impediment to, and promotion and encouragement of a competitive market is also a part of the General Assembly’s policy statement; however, the General Assembly was clear in declaring that *the desire to reach full competition should not be achieved without due*

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<sup>10</sup> 66 Pa. C.S. § 3011.

*consideration of the impact that reclassification would have on the nondiscriminatory delivery and universal accessibility of telecommunication services.*<sup>11</sup>

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

The facts on the record show that while alternative services *may be present*<sup>12</sup> in many of the geographic areas subject to the Petition, the service is not comparable to the current protected telecommunication services in terms of quality, reliability, safety, and affordability and, thus, are not sufficiently “like or substitute services.” The facts further show that competition in Pennsylvania is not hindered by existing regulation of protected services, and that Verizon continues to maintain a large market share in Pennsylvania. In balance, the relevant facts are clearly in favor of continued regulatory protection for basic telecommunication services.

### *a. Reliability*

Both wireless and cable telephony (interconnected VoIP<sup>13</sup>) services lack critical aspects of interconnectivity, which make the services unreliable.<sup>14</sup>

The reliability of wireless service within the wire centers at issue in Verizon’s Petition is questionable. Verizon primarily relied on an AT&T wireless service coverage map to show that

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<sup>11</sup> 66 Pa. C.S. § 3011 (5), (8).

<sup>12</sup> The record evidence raises legitimate question about the presence of service in each of the 194 wire centers that Verizon seeks to reclassify. *See* CAUSE-PA St. 1, Miller, at 11-12 (explaining that wireless coverage maps are inaccurate, and only indicates that service “should be sufficient for on-street, in-the-open and some in-building coverage.”).

<sup>13</sup> Cable telephony - which Verizon puts forth as a “like or substitute” to protected telecommunication service - is interconnected VoIP. *Vz. St. 2.0, Vasington*, at 4. To purchase interconnected VoIP service, a customer must have a broadband Internet service. *See infra*, section III.2.c (affordability). The FCC imposes very limited regulation on interconnected VoIP; primarily, it requires interconnected VoIP service providers to offer 911 service, though the shortcomings of this requirement (of which there are many) are discussed in this section. *See Vz. St. 2.0, Vasington*, at 4; CAUSE-PA St. 1, Miller, at 12-13.

<sup>14</sup> CAUSE-PA St. 1, Miller, at 11-14; CAUSE-PA St. 2, Pinsker, at 9-10.

wireless service is available in the wire centers at issue, but this map is misleading. (Vz. St. 1.0, Attachment B). In fact, according to AT&T's explanation of its coverage map, "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.'"<sup>15</sup> This means that "even if an individual has [AT&T] service, and lives in an area with coverage, she or he will receive 'sufficient' (not quality) service on the street, but not necessarily in their home."<sup>16</sup>

Even if a wireless customer is able to get service within their home or building, she or he may not have the same level of connectivity that they enjoy from protected service. Chief among the connectivity issues for wireless service is the ability to contact emergency services by dialing 911 – and for emergency services to respond swiftly and efficiently. As Mitchell Miller explained in direct testimony,

Emergency 911 services are not able to pinpoint the exact location of a wireless caller or place an immediate call-back to a 911 caller whose call was dropped, making it difficult for emergency responders to reach an individual in distress. This can pose significant issue for apartment buildings, where a police officer or emergency medical technical would need to go from door to door to find the person who placed the call.<sup>17</sup>

Thus, unlike a wireline caller – who can pick up the phone and be sure to receive swift and efficient emergency services – a wireless caller may be unable to (1) place a call from within their home, and (2) receive an effective response from emergency services.

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<sup>15</sup> *Id.* at 12 (citing ATT, *Domestic Wireless Voice Coverage*, <http://www.att.com/maps/wireless-coverage.html#fbid~sAIIQpE6rIH> (click on "Learn More About Legend" below map of United States)).

<sup>16</sup> CAUSE-PA St. 1, Miller, at 12.

<sup>17</sup> CAUSE-PA St. 1, Miller, at 11 (citing FCC, *911 Wireless Services Consumer Guide*, <http://transition.fcc.gov/cgb/consumerfacts/wireless911srvc.pdf>).

Interconnected VoIP services pose different, but equally alarming reliability issues, particularly with the ability to connect to 911 emergency services. The FCC has issued extensive consumer information about VoIP service deficiencies:

- VoIP 911 calls may not connect to the PSAP [Public Safety Answering Point], or may ring to the administrative line of the PSAP, which may not be staffed after hours, or by trained 911 operators;
- VoIP 911 calls may correctly connect to the PSAP, but not automatically transmit the user's phone number and/or location information;
- VoIP customers may need to provide location or other information to the VoIP providers, and update this information if they change locations, for their VoIP service to function properly;
- VoIP service may not work during a power outage, or when the Internet connection fails or becomes overloaded.<sup>18</sup>

In response to this information, Verizon cited the FCC's statement that "all *interconnected* VoIP providers must automatically provide 911 service to all their customers as a standard, mandatory feature without customers having to specifically request the service."<sup>19</sup> Verizon's witness then cited Comcast's website, which claims that "Comcast's E911 works the same as 911... ." <sup>20</sup> While this testimony may be intended to prove that 911 service is required to be offered by interconnected VoIP providers, it does nothing to address the inherent problems with the reliability of VoIP in connecting to 911, which the FCC detailed in its *VoIP and 911 Service Guide* cited above.<sup>21</sup> These concerns about the reliability of 911 connections through VoIP service are palpable, and pose significant health and safety issues for Pennsylvanians who have opted to rely on the service as their primary mode of

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<sup>18</sup> CAUSE-PA, St. 1, Miller, at 12-13 (*quoting* FCC, VoIP and 911 Service Guide, <http://www.fcc.gov/guides/voip-and-911-service>).

<sup>19</sup> Vz. St. 2.0, Vasington, at 4 (emphasis added).

<sup>20</sup> Vz. St. 2.0, Vasington, at 4.

<sup>21</sup> *Id.*

communication – or who may be forced to rely on the service if they are priced out of the market for more reliable service.<sup>22</sup> It is therefore wholly unreasonable – and against the clear weight of evidence, to assert as Verizon has done that VoIP service offers sufficiently comparable service which ensures that customers have the ability to seamlessly connect with 911 emergency services and that the Commission must lift all regulation of currently protected service.

The problems identified by the FCC regarding VoIP / 911 interconnectivity are just the tip of the iceberg, and only account for issues with FCC regulated VoIP providers, which must be fully interconnected.<sup>23</sup> Many non-interconnected VoIP service providers are not capable of placing calls to third parties who do not also use the service,<sup>24</sup> and therefore cannot connect to PSAP at all.<sup>25</sup> While Verizon claims to have limited its petition to only rely on interconnected VoIP services,<sup>26</sup> it includes a significant amount of pricing data from non-interconnected VoIP service providers in its presentation of evidence to support its claim that the alternatives to basic service are widely available<sup>27</sup> and, thus, it is important to be aware of the severe reliability deficiencies of non-interconnected VoIP services.

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<sup>22</sup> CAUSE-PA, St. 1, Miller, at 12-13.

<sup>23</sup> See Vz. St. 2.0, Vasington, at 4; CAUSE-PA St. 1, Miller, at 12-13.

<sup>24</sup> Vz. St. 1.0, Vasington, at 15 (explaining that many forms of VoIP “only allow you to call other people using the same service.”)

<sup>25</sup> CAUSE-PA St. 1, Miller, at 12.

<sup>26</sup> Vz. St. 2.0, Vasington, at 4.

<sup>27</sup> Vz. St. 1.0, Vasington, at 36-37.

Access to reliable telecommunication service is important for all Pennsylvanians, but is particularly important for Pennsylvanian’s most vulnerable populations, such as victims of domestic violence and other crimes, as well as economically vulnerable individuals and families.

Rachel Pinsker, a Senior Attorney at the Pennsylvania Coalition Against Domestic Violence, provided expert testimony in this proceeding which offers significant insight into the deficiencies of wireless service for victims of domestic violence and others who may be similarly endangered. The need for reliable service is particularly crucial for this population, which is unfortunately a large subset of the state’s population. As Ms. Pinsker explained:

[I]t is critical for victims of domestic violence – and other similarly situated, including victims of sexual assault, stalking, and harassment – to be able to seamlessly connect to Pennsylvania’s emergency 911 system and for that system to respond quickly and efficiently. But, as the evidence produced by other experts in this proceeding shows, many of the alternatives that Verizon cites in its Petition are not equipped with sufficient 911 interconnectivity.

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Reliability of telecommunication service is also critical for victims of domestic violence in establishing economic independence from an abuser, as it allows them to communicate with a current or future employer, childcare, counseling services, financial institutions, legal assistance, utility providers, family and friends, and other agencies or community resources.<sup>28</sup>

Ms. Pinsker went on to explain that, in her 15 years of representing victims of domestic violence in Protection From Abuse and other civil proceedings in Lancaster, Harrisburg, and Philadelphia (all within the wire centers Verizon seeks to reclassify), she had “countless clients” who were reliant on wireless service, but who would run out of minutes before the end of the month.<sup>29</sup> She explains, “For many of these clients..., I was forced to

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<sup>28</sup> CAUSE-PA St. 2, Pinsker, at 6.

<sup>29</sup> CAUSE-PA St. 2, Pinsker, at 8-9.

rely on the postal service as my primary means of communication, which was often useless in an emergency or time-sensitive situation. ... [M]any would turn to pre-paid wireless phones – which would mean frequent phone number changes and – once again – reliance on the postal service for time-sensitive and emergency communications.”<sup>30</sup>

Verizon claims that the “preference” of these “infra-marginal groups” – such as victims of domestic violence and others who are similarly endangered – are irrelevant “for purposes of assessing the availability of like or substitute services for purposes of competitive classification under Chapter 30” and argues that “all infra-marginal customers of any demographic group benefit from competition.”<sup>31</sup> Verizon explains that, “In every competitive market, there are certain infra-marginal customers who do not switch providers or consider alternatives for whatever reasons, but the mere presence of such customers does not mean that the market is not competitive or that the service needs to be regulated.”<sup>32</sup>

But Verizon’s argument presupposes that service reliability – and the ability to seamlessly connect with third parties and emergency services – is a “*preference*” rather than a necessity.<sup>33</sup> Verizon’s analysis – and insistence on disregarding what it calls “infra-marginal” customers – can lead to dangerous consequences, as it would force highly vulnerable customers to pay higher costs for service in order to access service with very

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<sup>30</sup> *Id.*

<sup>31</sup> Vz. St. 2.0, Vasington, at 17, 33-34.

<sup>32</sup> Vz. St. 2.0, Vasington, at 17.

<sup>33</sup> Vz. St. 2.0, Vasington, at 34 (citing a Colorado PUC decision which found that “the *preference* of any demographic group is not evidence that the market lacks the availability of comparable [services].”) (emphasis added).

basic reliability standards, such as fully functional 911 services. As Ms. Pinsker explains, “if alternative services are not in actuality reliable, safe, and affordable, then they are not truly available to victims of domestic violence or those who are similarly endangered.”<sup>34</sup>

In all, Verizon fails to provide evidence on the record to ensure that wireless and cable telephony services are sufficiently reliable to be considered a like or substitute service for *all Pennsylvanians*, and particularly for those Pennsylvanians who are most vulnerable. Quite the contrary – the evidence on the record shows that the lack of reliability of wireless and cable telephony services presents significant risks to public safety and, thus, should not be considered “like or substitute” to protected services.

*b. Affordability*

Universal Service – the ability for all consumers to access basic utility services – is a polestar principle of Chapter 30.<sup>35</sup> Indeed, Universal Service has been a critical component to each and every major state and federal telecommunications law “[s]ince the dawning of the telecommunications industry in the early 20<sup>th</sup> century.”<sup>36</sup>

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<sup>34</sup> CAUSE-PA St. 2.0, Pinsker, at 7.

<sup>35</sup> 66 Pa. C.S. § 3011 (2), (3), (8), (12). The Commonwealth’s commitment to providing Universal Services is much broader than the provision of services to individuals through the Lifeline program. Rather, it is a mandate that service be “affordable to all citizens of Pennsylvania.” (OCA St. 1, Lobe, at 15).

<sup>36</sup> CAUSE-PA St. 1, Miller, at 22. In direct testimony, Mitchell Miller explained how Universal Services – the provision of affordable, nondiscriminatory service to all Pennsylvanians -- has been inextricably woven into federal and state telecommunications law and regulation:

Since the dawning of the telecommunications industry in the early 20<sup>th</sup> century, the federal and state governments have recognized a compelling need for the public to have access to reliable and affordable phone service. In fact, the initial Communications Act of 1934 referenced ‘universal service’ in its preamble, and called for ‘rapid, efficient, Nation-wide, and world-wide ... service with adequate facilities at reasonable charges [to] all people of the United States.’

But as with reliability and safety, the record in this case fails to prove that wireless and cable telephony (VoIP) services are affordable alternatives to protected service. In fact, the record evidence suggests that the alternatives set forth by Verizon as adequate “like or substitute services” are significantly more expensive than the current service and, thus, are likely unaffordable for many Pennsylvanians who already struggle to make ends meet. Before reclassifying 194 wire centers, which would have the potential to price a significant percentage of the population out of the competitive telecommunications market, it is critical for the Commission to conduct a more searching inquiry into the affordability of alternatives. To that end, CAUSE-PA strongly supports the suggestion of Dr. Robert Loube that there is “a need to determine a reasonable competitive price” in urban areas – as it previously did with suburban areas – before reclassifying the wire centers at issue.<sup>37</sup> As Dr. Loube explained,

The OCA has previously presented testimony that total bills greater than \$31.00 in rural areas are not affordable. Using the general principles discussed in [this] testimony, the Commission should determine what an affordable *urban* bill would be in Pennsylvania.<sup>38</sup>

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The Telecommunications Act of 1996, the first major overhaul of the 1934 Communications Act – further defined the meaning of universal access to include quality, reasonably priced services for all individuals, including those in high-cost regions and low-income individuals. Non-discriminatory service provision was a hallmark to universal services. To ensure that these goals were met, the 1996 Act mandated the creation of a universal service fund to which all telecommunications providers were required to make financial contributions. In Pennsylvania, those same goals are present in Chapter 30 – both in its initial enactment in 1993 and its reenactment of Act 183 of 2004 – as well as in the regulations promulgated by the Commission in Chapters 63 and 64 of the Pennsylvania Code to implement Chapter 30.

CAUSE-PA St. 1, Miller, at 22-23.

<sup>37</sup> OCA St. 1, Loube, at 14-15.

<sup>38</sup> OCA St. 1, Loube, at 15 (citing Direct Testimony of Roger Colton, *Investigation Regarding Intrastate Access Charges and IntraLata Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Dec. 10, 2008)).

To fully address this critical aspect of telecommunication service, what follows is an exploration of the record facts regarding the cost of cable telephony and wireless service, in turn, as opposed to the cost of protected service. As Mr. Miller explained in direct testimony, this comparison shows that, “Unlike VoIP, cable, and wireless services, Verizon’s basic, stand-alone wireline service is available without the purchase of other services or expensive equipment or adherence to lengthy contracts. ... In all, a broader inquiry is necessary when determining whether alternative services meet the standard for reclassification because, for many of the most vulnerable populations in Pennsylvania, alternatives to basic wireline service remain ... unaffordable.”<sup>39</sup>

#### Cable Telephony / VoIP

Verizon asks the Commission to compare the cost of basic, stand-alone calling service to the incremental cost of adding voice service to an existing cable service package.<sup>40</sup> The logic behind the proposed comparison is based upon the underlying premise that many Pennsylvanians have high-speed Internet service, and can easily add voice service to that existing plan.<sup>41</sup> Verizon cites that, as of 2013, 74% of Pennsylvania households subscribed to a high-speed Internet service.<sup>42</sup> But this logic ignores the fact that 26% are without such service...*over one-quarter of the population.*<sup>43</sup> The households which are without service – typically the most vulnerable populations (elderly, disabled, and economically vulnerable) – would need to first

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<sup>39</sup> CAUSE-PA St. 1, Miller, at 15.

<sup>40</sup> Vz. St. 1.0, Vasington, at 15, 36-38.

<sup>41</sup> Vz. St. 1.0, Vasington, at 15-18.

<sup>42</sup> Vz. St. 1.0, Vasington, at 15-18.

<sup>43</sup> CAUSE-PA St. 1, Miller, at 14-15.

purchase high speed Internet and then add voice service in order to have calling functionality (which, as discussed above, does not offer comparable quality or reliability).<sup>44</sup> Moreover, Verizon does not attempt to quantify the percentage of individuals with high-speed Internet within the geographical areas at issue in this Petition, making it impossible for the Commission to fully assess the percentage of the population that would bear the higher cost of purchasing both high-speed Internet and voice service. In fact, data put forth by Mr. Miller regarding adult poverty rates in the geographical affected areas by this Petition suggest that the rate of high-speed Internet subscribers in these regions are lower than the state average.<sup>45</sup>

By Verizon's own account, the least cost cable package to include both the requisite high-speed Internet and voice services is the Comcast "Double Play" (data and voice) Plan, which is marketed at \$49.99/mo.<sup>46</sup> Verizon asks that the Commission reduce that price to just \$10.00/mo. for the sake of comparison with protected service. *Id.* But in reality, the customer must pay the full \$49.99 per month to maintain voice service, and so the full price of service must be used as the benchmark for comparing the cost to maintain protected voice service.

The most appropriate comparison, however, is that offered by Mr. Miller in his Surrebuttal Testimony, which compares the stand-alone cable telephony to protected service. As Mr. Miller points out, Comcast currently offers a stand-alone service at an introductory rate of

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<sup>44</sup> CAUSE-PA St. 1, Miller, at 14-15.

<sup>45</sup> CAUSE-PA St. 1-SR, Miller, at 10 (citing US Census Bureau, *Pennsylvania: State and County Quickfacts*, <http://quickfacts.census.gov/qfd/states/42000.html>) Mr. Miller pointed out that the adult poverty rate – which for this purpose is defined as 100% of the federal poverty income guidelines, is 26.5% in Philadelphia, 37.1% in York, 16.9% in Erie, and 22.6% in Pittsburgh. *Id.*

<sup>46</sup> Vz. St. 1.0, Vasington, at 38.

\$29.99/month.<sup>47</sup> Hidden in the fine print for this service are some critical terms and conditions that must also be factored into this comparison:

- Not available in all areas.
- Comcast's service charge for XFINITY Voice Unlimited, ranges based on area, from \$39.95/mo to \$44.95/mo (subject to change).
- \$29.95 activation fee may apply
- Service (including 911/emergency services) may not function after an extended power outage.
- Transcription services [for hearing impaired] are not error free and the accuracy of the transcription can be affected by a number of factors.
- Standard data charges may apply.<sup>48</sup>

Mr. Miller explains that, “In contrast, local area unlimited calling service from Verizon ranges from just \$6.77 to \$9.01, and does not come with additional costs or other service limiting terms, such as a gap in emergency services in the event of a power outage.”<sup>49</sup>

### Wireless Service

Verizon puts forth very little data with respect to the price of wireless service. It cites to an AT&T plan which starts at \$20/mo, a T-Mobile plan which starts at \$50/mo., and a Republic Wireless plan which starts at \$10/mo. and relies on the availability of a wireless internet connection (WiFi).<sup>50</sup> Verizon also cites to a plan for AARP members, which offers a home cellular service product for \$10/mo.<sup>51</sup> Of the plans that Verizon set forth as proof of available alternatives, the only two plans which are truly comparable in price to protected service are the

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<sup>47</sup> CAUSE-PA St. 1-SR, Miller, at 12.

<sup>48</sup> CAUSE-PA St. 1-SR at 12 (*citing* XFINITY, <http://www.comcast.com/home-phone-service.html>).

<sup>49</sup> *Id.* (*citing* Verizon, <http://www.verizon.com/home/phone/freedom-essentials-callingplans/>).

<sup>50</sup> Vz. St. 1.0, Vasington, at 34-35.

<sup>51</sup> *Id.*

Republic Wireless plan, which requires that the consumer have access to WiFi to avoid additional costs, and the AARP product, which is limited to the elderly population who are members of AARP. Without further evidence of the affordability of wireless service for all Pennsylvanians, the Commission must reject Verizon’s request for reclassification, as Verizon has failed to meet its statutory burden in showing that alternatives are available to all affected Pennsylvanians.

### Lifeline Service

If Verizon’s request is approved, the cost of basic service will go up.<sup>52</sup> In turn, as the cost of basic service increases, the cost of Lifeline services will also increase “dollar for dollar” along with the basic service rates.<sup>53</sup> “Given that in every instance where Verizon has been allowed to increase its rates, Verizon has increased its rates, the reclassification will most likely lead to an increase in Lifeline rates.”<sup>54</sup>

Verizon attempts to divert the Commission’s attention away from this inevitable rate increase by purporting that many Lifeline customers have already opted to rely on wireless services, which it claims is irrefutable proof that Lifeline customers have access to wireless alternatives.<sup>55</sup> But, as Mr. Miller explained, wireless Lifeline services can far exceed the costs of protected services: “[T]he fact that many [Lifeline customers] have switched to an alternative technology for their primary communication does not mean that all are able to do so. Wireless

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<sup>52</sup> Ample record evidence shows that rates have sharply increased in states which have adopted partial or full competitive classification. (OCA St. 1, Loubé, at 33-42); *see also infra* Experiences in Other States.

<sup>53</sup> OCA St. 1, Loubé, at 52; CAUSE-PA St. 1, Miller, at 20-21.

<sup>54</sup> OCA St. 1, Loubé, at 53.

<sup>55</sup> Vz. St. 1.0, Vasington, at 44; Vz. St. 2.0, Vasington, at 18-19.

Lifeline options come with a finite amount of minutes which are often used well before the end of the period. ... [which] can significantly complicate the ability for low income individuals to access assistance from service providers and, necessarily, delays the communication of time-sensitive information.”<sup>56</sup> These additional costs are not present for protected services, which offer Lifeline customers the ability to connect with critical service providers at any time – without added cost.

In all, the assessment above of the recorded evidence regarding the cost of alternative telecommunication services reveals a lack of sufficient evidence and, to the contrary, suggests that the alternatives exceed the cost of protected services. As Mr. Mitchell summarized, “the affordability of packaged services is beyond the reach of many low-income consumers who struggle to find money for food, shelter, heat, and electricity – let alone cable, Internet, or wireless service.”<sup>57</sup> Without further information about the affordability of these additional costs, it is impossible for the Commission to ensure the availability of Universal telecommunication services in Pennsylvania. And, as such, it must deny Verizon’s Petition.

*c. Safety/Privacy*

As Mr. Pinsker points out in direct testimony, “Verizon does not present any evidence to address the safety of the alternatives it presents as like or substitute.”<sup>58</sup> Instead, Verizon continually relies on customer migration as proof that wireless and VoIP are sufficient to act as a substitute to protected service. But whether a service is safe for all Pennsylvanians – not only

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<sup>56</sup> CAUSE-PA St. 1, Miller, at 22; CAUSE-PA St. 2, Pinsker, at 8-9.

<sup>57</sup> CAUSE-PA St. 1-SR, Miller, at 11.

<sup>58</sup> CAUSE-PA St. 2, Pinsker, at 9.

those who have adopted an alternative service<sup>59</sup> -- is quintessential to the determination of whether a service is “like or substitute.” To the contrary, there is a significant amount of data on the record to show that wireless and cable telephony services do not offer a comparable level of safety to that of protected telecommunication services. Access to 911 emergency services, discussed at length above, is a primary example. Particularly for the most vulnerable Pennsylvanians, the safety risks associated with these alternatives are even broader. For many if not all Pennsylvanians, privacy – particularly in communications with third parties - is intricately linked to safety.

VoIP and wireless services “are easily subject to interference and/or interception by a third party. Applications and devices are readily available on the market that allow third parties to listen in on calls, track the movement of callers, and – when smartphones or computers are involved – can expose personal data, such as calendar information, emails, browsing history, and account information, allowing an abuser to continue to abuse, harass, and stalk their victim long after separation.”<sup>60</sup>

As a practical matter, these risks make wireless and VoIP services unavailable to those who are concerned about their safety and personal privacy, particularly those who are most at risk of harm, including victims of domestic violence, sexual assault, stalking, and harassment.<sup>61</sup> Verizon again argues that these risks only apply to “infra-marginal” customers and, therefore, are irrelevant. However, this conclusion – as explained above – would leave a substantial and

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<sup>59</sup> It is important to remember that over half of the households who have adopted wireless have also kept their wireline service. (Vz. Cross EX. 4, at 1).

<sup>60</sup> CAUSE-PA St. 2, Pinsker, at 9-10 (internal citations omitted).

<sup>61</sup> CAUSE-PA St. 2, Pinsker, at 9-10.

vulnerable portion of the population without an available alternative. Like reliability, safety is not a preference. It is a basic necessity for all Pennsylvanians, including those who are at an increased risk of harm due to their status as a victim of domestic violence or other similar crime.

*d. Market Share*

Verizon relies almost exclusively on data showing its loss in total telecommunication market share as proof of competition, and argues that – as a result of robust competition – it cannot compete with other providers.<sup>62</sup> In fact, Verizon’s expert claimed that “it is readily apparent that customers are in charge, and customers are driving companies to invest and innovate in figuring out how best to meet customers’ evolving needs and demand.”<sup>63</sup> But a close examination of Verizon’s proprietary data shows that Verizon still enjoys a lion’s share of the telecommunications market, including protected services,<sup>64</sup> and that reclassification of protected services does not put customers in charge. Reclassifying 194 wire centers would further cement its market stronghold in Pennsylvania, and would effectively drive out Verizon’s few competitors.<sup>65</sup> As Dr. Loube explained at length, the persistence of Verizon’s market share in other states – despite increasing costs and decreasing lines – is strong evidence that the telecommunications market is an “oligopoly” as opposed to a purely competitive market.<sup>66</sup>

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<sup>62</sup> Vz. St. 1.0, Vasington, at 7-9

<sup>63</sup> *Id.* at 9.

<sup>64</sup> Vz. St. 1.0, Vasington, at 20-21.

<sup>65</sup> OCA St. 1, Loube, at 7, 18-25.

<sup>66</sup> *Id.*

Several states have deregulated their telecommunication services – in whole or in part – as competitive, and have removed price controls, allowing the market to self-regulate the service and price offerings of all telecommunications providers. The experiences in these states provides the Commission with important insight into the potential consequences of reclassification. Verizon provided information about its rates in six states in which deregulation has moved forward: Virginia, Rhode Island, California, Delaware, Florida, and Texas. In each of these states, the rate for formerly protected service increased more than 5%. “With only one exception, the rate is above the competitive price level,” despite Verizon’s continued loss in customers to other services.<sup>67</sup> As Dr. Loubé pointed out, “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.”<sup>68</sup>

The experience of other states has demonstrated that “market share reductions” are not equivalent to the existence of a truly competitive market resulting in declining prices. It is therefore critical that the Commission pause, prior to declaring a wholesale waiver of regulations, and first engage in a thorough exploration of the state of the market in Pennsylvania.

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<sup>67</sup> OCA St. 1, Loubé, at 18-19, 39-42.

<sup>68</sup> OCA St. 1, Loubé, at 39.

## **b. Verizon's Petition for Waiver of Certain Regulations**

### **1. Legal Standard**

To waive regulatory requirements set forth in Chapters 63 and 64, Verizon must demonstrate that it will experience unreasonable hardship. The Commission may also grant a waiver in exceptional circumstances.

In its Petition, Verizon claims that the Commission derives its authority to waive Chapters 63 and 64 pursuant to 66 Pa. C.S. § 3011(13), Declaration of Policy, which states that it is the policy of the Commonwealth to “Recognize that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers.”<sup>69</sup> But, beyond restating this policy, Verizon does not cite to any legal standard for which the Commission may rest its determination. Indeed, this policy declaration is woefully vague, and provides little guidance for the Commission to base its determination. In particular, the General Assembly’s use of the phrase “*should be reduced to levels more consistent with ... competing alternative service providers*” leaves the debate wide open with respect to the applicable legal standard. It is critical that the Commission turn to other provisions of law regarding regulatory waiver to establish the applicable standard for its inquiry.

The applicable standard for requests from a regulated telecommunication company to waive applicable regulations is, in part, set forth in the Pennsylvania Code. For Chapter 64 waiver, a petitioner (in this case, Verizon) must show that compliance with the regulations would

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<sup>69</sup> 66 Pa. C.S. § 3011(13).

cause “unreasonable hardship.”<sup>70</sup> The Commission is also empowered to waive the regulatory requirements of Chapter 64 in “exceptional cases.”<sup>71</sup> There is not a similar provision in Chapter 63 regarding regulatory waiver. However, turning to other regulatory waiver standards throughout the Code, such as those contained in Chapter 56, one can see that the Commission’s regulations are regularly subject to waiver based on the same “unreasonable hardship” or “exceptional circumstances” standard.<sup>72</sup>

CAUSE-PA strongly asserts that the standard set forth in Chapter 64 – unreasonable hardship or exceptional circumstances - applies in this case. When faced with a similar discrepancy between a vague statutory provision regarding regulatory waiver and a more specific regulation, the Commission adopted the more specific regulatory standard.<sup>73</sup> In determining whether to waive Chapter 56 regulations as applied to Philadelphia Gas Works (PGW), the Commission agreed with the exception of the Office of Small Business Advocate (OSBA), which argued that “although Section 2212(c) [of Title 66] authorizes the Commission to suspend or waive any provision of the Code [with respect to a city natural gas supplier], it does not provide the *standards* for permitting a waiver or suspension.”<sup>74</sup> The Commission explained that

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<sup>70</sup> 52 Pa. Code § 64.212(a).

<sup>71</sup> 52 Pa. Code § 64.212(a).

<sup>72</sup> See, e.g., 52 Pa. Code § 56.222.

<sup>73</sup> See *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Opinion and Order, Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061, P-00042117, at 25-26 (Sept. 30, 2004).

<sup>74</sup> *Id.* at 25-27.

it applied the more specific regulatory standard “in order to utilize a more direct source of authority to waive or to suspend Chapter 56 Regulations.”<sup>75</sup>

That same logic that the Commission used to resolve a discrepancy between statute and regulation must also be applied to this case: While the General Assembly authorized regulatory waiver in the policy statement of Chapter 30, it did not include an applicable standard and, thus, the Commission must apply the standard that it incorporated in its applicable regulations.

## **2. Waiver Request in General**

Verizon makes several unsupported assertions about the lack of parity in the market as a result of its compliance with Chapters 63 and 64, but has not put forth any evidence that it will suffer “unreasonable hardship” as a result of the regulations or that exceptional circumstances apply.<sup>76</sup> Instead, Verizon focuses on characterizing the regulatory frameworks in Chapters 63 and 64 as outdated relics of the past, which it asserts “have sat untouched for decades.”<sup>77</sup> However, this point only bolsters the argument against regulatory waiver, as it highlights that Verizon has not experienced any unreasonable hardship as a result of its compliance with the applicable regulations, and suggests the more appropriate course of action to address these regulations would be for the Commission to engage in the rulemaking process to repeal outdated regulations. Indeed, rather than determining whether to wholesale waive regulations in this statutorily expedited proceeding, the issue of telecommunication regulation would be best

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<sup>75</sup> *Id.* at 27 (note that a separate Constitutional argument raised by the OSBA was denied as moot; however, that finding does not upset the conclusions drawn from this case for the purpose of the Petition at issue).

<sup>76</sup> Vz. Pet. at ¶¶ 15-18; Vz. St. 1.0, Vasington, at 39-40.

<sup>77</sup> Vz. St. 1.0, Vasington, at 40.

handled in a proper rulemaking proceeding, wherein all interested parties would be afforded a proper level of due process

In fact, while not required to defeat a request for waiver – as the burden falls squarely on Verizon to show that they would suffer unreasonable hardship – significant and substantial evidence on the record shows that consumers continue to rely on the protections in these regulations, and that waiver of the regulations at this time would result in unreasonable hardship to those customers. “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. ... 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.”<sup>78</sup> This evidence is discussed at length below.<sup>79</sup>

### **3. Specific Chapter 63 Regulations**

CAUSE-PA has taken no position on the waiver of specific Chapter 63 regulations, but reiterates its general argument against waiver.

### **4. Specific Chapter 64 Regulations**

Chapter 64 provides essential protections for consumers, specifically subchapter B (payment and billing), C (credit and deposit), and E (termination of service), which are relied on by all residential customers. “Waiver of these regulations would have a devastating impact on

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<sup>78</sup> CAUSE-PA St. 1, Miller, at 16-17.

<sup>79</sup> See *infra* Specific Chapter 64 Regulations.

low income and other vulnerable populations [such as disabled and/or elderly individuals], as it would jeopardize their ability to access ... relief from the Commission to ensure that they can retain basic calling service.”<sup>80</sup>

Verizon continues to assert that the overall rate of complaints has decreased dramatically over the years, which it claims is proof that Chapter 64 regulations are no longer necessary. Again, lack of necessity is not the standard for regulatory waiver. Nevertheless, this argument is still fundamentally flawed, as it skews the available data. As Mitchell Miller explained at length in his testimony, the only significant decrease in the justified complaint rate was between 2008 and 2009, when BCS and Verizon piloted a “warm transfer” program, in which Verizon customers contacting BCS would be transferred to Verizon before BCS would address the complaint.<sup>81</sup> From 2009 until 2013, these “warm transfer” calls were not counted as consumer complaints.<sup>82</sup> While this program was successful in lowering the rate of justified complaints, the

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<sup>80</sup> CAUSE-PA, St. 1, Miller, at 19. Mitchell Miller, former Director of the Bureau of Consumer Services, explained further:

For example, subchapter C of Chapter 64 allows customers an opportunity to negotiate a payment agreement after service has been suspended for missed payment(s). As reflected in the most recent full UCARE report, payment arrangements remain an avenue of relief relied on by Pennsylvanians across the state, many of whom are low income or similarly vulnerable, to maintain their access to basic telecommunication service.

...

If the regulation allowing for payment agreements were waived, there would be nothing to compel Verizon to provide a payment arrangement to the hundreds of customers who request such an accommodation to maintain essential, potentially life-saving telecommunication service.

CAUSE-PA St. 1, Miller, at 20 and note 15 (*citing* Pa. PUC, BCS, Utility Consumer Activities & Report Evaluation (UCARE), at Appx G, T.4 (2012), [http://www.puc.state.pa.us/filing\\_resources/consumer\\_activities\\_report\\_evaluation.aspx](http://www.puc.state.pa.us/filing_resources/consumer_activities_report_evaluation.aspx)).

<sup>81</sup> CAUSE-PA St. 1, Miller, at 18-19; CAUSE-PA St. 1-SR, Miller, at 7-8.

<sup>82</sup> CAUSE-PA St. 1, Miller, at 18-19; CAUSE-PA St. 1-SR, Miller, at 7-8.

decrease is attributable to the added process – not a change in Verizon’s service delivery that would render the complaint process unnecessary.<sup>83</sup>

In fact, a closer look at the rate of *justified* complaints – as opposed to the *number* of complaints, which Verizon continually cites as evidence of reduced customer dissatisfaction – shows that the rate of justified complaints has remained relatively *unchanged* since over the past decade, and have steadily outmatched the rates of justified complaints in the electric and natural gas utilities.<sup>84</sup> “Put simply, a decline in the rate of justified consumer complaints – followed by a consistently low rate of justified complaints – means that regulation is working to ensure that companies are dealing with customers fairly. ... Unlike the rate of justified complaints in other industries, the rate of justified complaints for Verizon has continued to be high, suggesting that Verizon’s internal policies and procedures are still insufficient to address customer complaints upon initial contact. Thus, *the need for Chapter 64 regulations to resolve customer complaints in the regulated telecommunication industry remains important, even as the number of consumers receiving regulated service declines.*”<sup>85</sup>

Verizon claims that, if waived, the Commission could continue to monitor critical aspects of Verizon’s service, and address customer complaints through Title 66, section 1501.<sup>86</sup>

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<sup>83</sup> CAUSE-PA St. 1, Miller, at 18-19; CAUSE-PA St. 1-SR, Miller, at 3-8; *see also* Vz. St. 2.0, at 22.

<sup>84</sup> CAUSE-PA St. 1-SR, Miller, at 3-8 and T.1 (justified complaint rate – 2005-2012) (citing Pa. PUC, BCS, Utility Consumer Activities & Report Evaluation (UCARE) (2002-2012)).

<sup>85</sup> CAUSE-PA St. 1-SR, Miller, at 6-7 (emphasis added).

<sup>86</sup> Vz. Pet. at ¶ 18 (citing 66 Pa. C.S. § 1501).

But this general statutory requirement is insufficient to fill the large gaps in consumer protection that would result from a waiver of Chapter 64. Mitchell Miller, who was responsible for directing the implementation of Chapters 63 and 64, explains:

The Commission has always had the authority to regulate telecommunication services under section 1501. However, *the standards for service provided by this broad statute were largely unenforceable until Chapters 63 and 64 were adopted by the Commission and implemented by BCS under my direction.* Following adoption, 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 a remedy.<sup>87</sup>

In all, the evidence on the record shows that consumers continue to rely on the protections in these regulations, and that waiver of the regulations at this time would result in unreasonable hardship to those customers.

### **c. Related Issues Raised by Other Parties**

CAUSE-PA has taken no position on these issues in this proceeding.

#### **1. Price Change Opportunity**

CAUSE-PA has taken no position on these issues in this proceeding.

#### **2. Wholesale Issues**

CAUSE-PA has taken no position on these issues in this proceeding.

#### **3. Originating Access Rates and Section 3016(f)**

CAUSE-PA has taken no position on these issues in this proceeding.

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<sup>87</sup> CAUSE-PA St. 1, Miller, at 17-18 (emphasis added).

#### IV. CONCLUSION

For the reasons set forth above, CAUSE-PA urges the Commission to deny Verizon's requests to reclassify 194 wire centers and to waive the regulatory requirements in Chapters 63 and 64.

Respectfully Submitted,



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Elizabeth R. Marx, Esq.  
PA ID: 309014  
Harry S. Geller, Esq.  
PA ID: 22415

**The Pennsylvania Utility Law Project**  
**118 Locust Street**  
**Harrisburg, PA 17101**  
**717-236-9486**  
**pulp@palegalaid.net**

*Counsel for the Coalition for Affordable  
Utility Services and Energy Efficiency in  
Pennsylvania (CAUSE-PA)*

**Appendix A: Proposed Findings of Fact**

1. Verizon Pennsylvania LLC and Verizon North LLC (collectively “Verizon”) are incumbent local telecommunications companies in Pennsylvania. Joint Petition ¶ 4.
2. On October 6, 2014, Verizon filed a Joint Petition seeking the competitive classification of basic dial-tone service and other protected services under 66 Pa. C.S. § 3016(a) in 194 wire centers, and asserted that “like or substitute” service is available in these areas. Joint Petition Exhibit A.
3. Telecommunication service is of significant importance to the safety, welfare, and economic stability of all Pennsylvanians – particularly those with limited financial means – as it enables an individual to contact emergency services; seek employment; contact a place of work, school, or childcare center; reach out to supportive government and social service agencies, friends, and/or family; engage in civil or criminal court proceedings; and attend to other sensitive matters. CAUSE-PA Pet. to Intervene and Answer, at ¶ 16.
4. CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA Pet. to Intervene and Answer, at ¶ 7.
5. The reclassification of wire centers and waiver of Chapter 64 regulations could significantly impact the ability of individuals residing in the affected geographic areas to access basic telecommunication service. CAUSE-PA St. 1, Miller, at 8.
6. Wireless telephone service is not necessarily available to callers inside a building or structure, even in areas which providers indicate that coverage is available. CAUSE-PA St. 1, Miller, at 15; VZ St. 1.0, Vasington, Attachment B.
7. Emergency 911 services are not capable of accurately identifying a wireless caller’s location. CAUSE-PA, St. 1, Miller, at 11.
8. Emergency 911 services cannot reliably connect with individuals calling through a cable telephone service provider (also referred to as interconnected VoIP service provider). CAUSE-PA, St. 1, Miller, at 12-13.
9. The ability to reliably connect with emergency 911 services is a critical component to telecommunication service, and is not merely a customer preference. CAUSE-PA St. 2.0, Pinsker, at 7; Vz. St. 2.0, Vasington, at 34.
10. Cable telephone service and wireless telephone service pose unique safety and privacy risks to vulnerable populations, including victims of domestic violence and others who may be similarly endangered. CAUSE-PA St. 2, Pinsker, at 9-10.

11. Universal service – the ability for all consumers to access affordable telecommunication services – is a critical component to a decision regarding reclassification. CAUSE-PA St. 1, Miller, at 22-23.
12. Wireless and cable telephone service are more expensive than protected telecommunication service. Vz. St. 1.0, Vasington, at 15-18; CAUSE-PA St. 1, Miller, at 14-15; CAUSE-PA St. 1-SR, Miller, at 10.
13. Packaged or bundled communication services, including telephone, cable and/or high-speed Internet - are beyond the reach of many low-income customers who struggle to find resources to pay for basic essentials, including food, shelter, heat and electricity. CAUSE-PA St. 1-SR, Miller, at 11.
14. There is insufficient evidence on the record to show whether wireless and cable telephone service is affordable in the geographic areas at issue in the Petition. OCA St. 1, Loube, at 14-15.
15. If reclassified as competitive, the price of currently protected service is likely to rise above an affordable and competitive rate. OCA St. 1, Loube, at 7, 18-25.
16. Wireless and cable telephone services are not a “like or substitute” for protected telecommunication service because these services do not offer comparable reliability, affordability, and safety for its users. CAUSE-PA St. 1, Miller, at 11-15.
17. Wireless and cable telephone services are not “available” to many of Pennsylvania’s most vulnerable populations who reside in the affected geographic areas, including low-income, elderly, disabled, and victims of domestic violence or others who are similarly situated. CAUSE-PA St. 1, Miller, at 10.
18. Verizon’s Joint Petition seeks a waiver until December 31, 2025, of the Commission’s regulations at 52 Pa. Code Chapter 63 Subchapters B, C, E, F, and G and all of Chapter 64. Joint Petition ¶ 15.
19. Consumers rely on the protections in Chapter 64, and regularly contact the Commission’s Bureau of Consumer Services for relief under this Chapter. CAUSE-PA St. 1, Miller, at 16.
20. Since implementation of Chapter 64, the rate of Verizon’s justified complaints has remained relatively unchanged. CAUSE-PA, St. 1, Miller, at 18-19; CAUSE-PA St. 1-SR, Miller, at 3-8 and T.1.
21. Over the last decade, Verizon’s justified complaint rate has significantly outmatched the justified complaint rate for the electric and natural gas industries. CAUSE-PA St. 1-SR, Miller, at 3-8 and T.1.

22. Verizon has not presented any evidence to show that it would suffer an unreasonable hardship from continued compliance with any Commission regulations. See Vz. St. 1.0, Vasington, at 39-42.
  23. Waiver of Chapter 64 regulations would result in unreasonable hardship for consumers attempting to connect with or maintain local calling service. CAUSE-PA St. 1, Miller, at 16; CAUSE-PA St. 1-SR, Miller, at 3.
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### **Appendix B: Proposed Conclusions of Law**

1. Verizon has the burden of proof in this proceeding. 66 Pa. C.S. §§ 332(a) and 3016(f).
2. Verizon must prove that “like or substitute” services to protected service are available in each of wire centers it seeks to reclassify. 66 Pa. C.S. § 3016(a).
3. The Commission must make its determination based on an evaluation of all relevant evidence presented throughout the course of the proceeding, which includes an inquiry into whether the alternatives set forth are sufficiently like or substitute such that any Pennsylvanian may adopt the service without risk to personal or financial safety. 66 Pa. C.S. § 3016(a)(3).
4. Verizon has failed to meet its burden of proof that “like or substitute” services to protected service are available to Pennsylvanians residing in any of the 194 wire centers.
5. This Commonwealth’s telecommunications policy includes the following: “[I]t is the policy of this Commonwealth to: ... (2) Maintain universal telecommunications service at affordable rates ...; (3) Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis; ... (6) Ensure the efficient delivery of technological advances and new services throughout the Commonwealth in order to improve the quality of life of all Commonwealth residents ...; [and] (8) Promote and encourage the provision of competitive services by a variety of service providers on equal terms ... without jeopardizing the provision of universal telecommunications service at affordable prices.” 66 Pa. C.S. § 3011.
6. Any waiver of any provision in Chapter 64 must be based on a showing on “unreasonable hardship” to the party requesting the waiver. 52 Pa. Code § 64.212.
7. Verizon has failed to meet its burden of proving that it would suffer an unreasonable hardship if it were required to continue complying with the requirements of Chapters 63 and 64.
8. Verizon has failed to meet its burden of proving that it cannot reasonably comply with the requirements of Chapters 63 and 64.

**Appendix C: Proposed Ordering Paragraphs**

IT IS ORDERED:

24. That the Joint Petition filed by Verizon Pennsylvania LLC and Verizon North LLC on October 6, 2014, seeking the competitive classification of all retail services in 194 wire centers is hereby denied.
25. That the Joint Petition filed by Verizon Pennsylvania LLC and Verizon North LLC on October 6, 2014, seeking a waiver of Commission regulations at 52 Pa. Code Chapter 63 Subchapters B, C, E, F, and G and all of Chapter 64 is hereby denied.
26. That a copy of this Final Order shall be served on the Bureau of Investigation and Enforcement and all parties of record in this proceeding. The Order shall also be posted on the Commission's website.