

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**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**

**Public Meeting February 26, 2015  
2446303-OSA  
Docket Nos. P-2014-2446303 and  
P-2014-2446304**

**JOINT MOTION OF CHAIRMAN ROBERT F. POWELSON AND  
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

**I. Overview**

Verizon Pennsylvania LLC and Verizon North LLC (collectively referred to as Verizon) filed with the Commission a Joint Petition pursuant to Section 3016(a) of the Public Utility Code, 66 Pa. C.S. Sections 3011, *et seq.* (Code), seeking to declare as competitive all protected or noncompetitive retail services offered by Verizon within certain areas in their Philadelphia, Erie, Scranton/Wilkes-Barre, Harrisburg, Pittsburgh, Allentown and York service regions. The Petition also requests an eleven year waiver of all Chapter 64 and parts of Chapter 63 of the Commission's regulations in Title 52 of the Pennsylvania Code.

Section 3016(a) of Chapter 30 permits the Commission, after a review of all relevant evidence presented, to declare a "protected service" as competitive where an incumbent local exchange company (ILEC) has demonstrated the "availability of like or substitute services or other business activities provided or offered by alternative service providers[.]"<sup>1</sup>

During the past twelve years since the reenactment of Chapter 30, most of Verizon's jurisdictional retail services that were previously considered noncompetitive, protected services have been classified or declared "competitive" under Code Section 3016(a) or predecessor provisions. Verizon's current list of competitive services includes all residential services except basic stand-alone telephone service a/k/a basic local exchange service<sup>2</sup> and all services to business customers generating \$10,000 or more in annual revenues (i.e., enterprise/large business

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<sup>1</sup> 66 Pa. C.S. §§ 3016(a)(1) and (3). These general factors replaced those of the predecessor statute enacted in 1994, which, at 66 Pa.C.S. § 3005, required multiple findings, including "evidence of ease of market entry, including the existence and impact of cross- subsidization, rights-of-way, pole attachments and unavoided costs; presence and viability of other competitors, including market shares; the ability of competitors to offer those services or other activities at competitive prices, terms and conditions; the availability of like or substitute services or other activities in the relevant geographic area; the effect, if any, on protected services; the overall impact of the proposed regulatory changes on the continued availability of existing services; whether the consumers of the service would receive an identifiable benefit from the provision of the service or other activity on a competitive basis; the degree of regulation necessary to prevent abuses or discrimination in the provision of the service or other activity and any other relevant factors which are in the public interest." When reenacting Chapter 30 in 2004 (Act 183), the General Assembly removed these requirements and substituted a more simple and streamlined standard.

<sup>2</sup> Historically, basic local exchange service is the transmission of a customer's telephone calls within the customer's local calling area and includes dial-tone and the customer's local calling plan among other features.

customers).<sup>3</sup> Moreover, all service bundles<sup>4</sup> to residential and business customers are competitive.

In its Joint Petition, Verizon requests a Commission determination that all remaining services are competitive in 194 of its 504 wire centers in Pennsylvania. The noncompetitive, protected services at issue in this case consist of basic telephone service to residential and business customers generating less than \$10,000 annual revenue. Verizon's request focuses upon Pennsylvania's major population centers, where, ostensibly, the presence of competition is the greatest.

Chapter 30 lists five protected services.<sup>5</sup> Verizon has not requested that access services (either switched or special) be declared competitive and, therefore, the following protected services relevant to this case are:

- Service provided to residential consumers or business consumers that is necessary to complete a local exchange call.
- Touch-tone service.

These services are interrelated and, when taken together, allow local calling via a touchtone phone.<sup>6</sup> Thus, Verizon is requesting a determination that basic local exchange service, including the ordering, installation, restoration, and disconnection of the service, is competitive in the relevant wire centers.

At the outset, it is important to note what this case is not about. This case is not a request by Verizon to cease offering basic local exchange services in the wire centers for which a competitive determination is being sought. Verizon in its Petition is not seeking to abandon any service and we provide no such permission.<sup>7</sup> Nor has Verizon presented plans to cease operation of its legacy copper network, in which circumstance Verizon would be required to comply with applicable federal law requirements.<sup>8</sup> These requirements include providing public notice of any plans to abandon and the opportunity of any interested party to comment on any proposed copper network abandonment.<sup>9</sup>

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<sup>3</sup> See, *Re: Nextlink Pennsylvania, Inc.*, 93 PA PUC 172, 281, 196 PUR4th. 172, (1999), *aff'd sub nom.*, *Bell Atlantic-Pennsylvania, Inc. v. PA Public Utility Comm'n*, 763 A.2d 440 (Pa. Cmwlth. 2000), *reargument den.* (Jan. 5, 2001).

<sup>4</sup> The Commission's regulations define a bundled service package as "a package of services offered and billed on one bill by an LEC, as defined in this section, which included nontariffed, competitive, noncompetitive or protected services, including services of an affiliate, in combinations and at a single price selected by the LEC." 52 Pa. Code §64.2.

<sup>5</sup> 66 Pa. C.S. § 3012 (Definition of "protected service").

<sup>6</sup> We note that Verizon has previously grandfathered rotary dialing. To the extent any rotary dial customers remain, this service is also classified as basic local exchange service.

<sup>7</sup> Any such request for abandonment would be governed by Chapter 11 of the Public Utility Code, 66 Pa. C.S. §§ 1101, *et seq.*

<sup>8</sup> See 47 U.S.C. § 214.

<sup>9</sup> *Technology Transitions*, GN Docket No. 13-5, Order, Report And Order And Further Notice Of Proposed Rulemaking, Report And Order, Order And Further Notice Of Proposed Rulemaking, Proposal For Ongoing Data Initiative released January 31, 2014 and Notice Of Proposed Rulemaking And Declaratory Ruling released November 25, 2014.

The case also will not diminish Verizon's statutory duty to provide "adequate, efficient, safe, and reasonable service and facilities" as well as service that is "reasonably continuous and without unreasonable interruptions or delay..."<sup>10</sup> In any wire center determined to be competitive, Verizon will remain fully obligated to comply with this important customer protection. Further, as part of its Section 1501 obligation, Verizon also remains the carrier of last resort (COLR) in its service territories, including in any wire centers determined to be competitive. As we have previously found, an ILEC's COLR obligation is rooted in this important statutory section.<sup>11</sup>

Several other important regulatory requirements, also wholly unaffected by any ruling on Verizon's Petition, include:

- Verizon's 911 obligations;
- Verizon's Chapter 30 Plan commitments, including the provision of ubiquitous broadband service;
- Verizon's Lifeline responsibilities under Chapter 30;<sup>12</sup>
- The wholesale obligations of federal law under which many competitive local exchange carriers (CLECs) and interexchange carriers (IXCs) operate;<sup>13</sup>
- Verizon's intrastate switched and special access rates and services and the ordering, installation, restoration, and disconnection of such access services; and
- Verizon's payment of regulatory assessments<sup>14</sup> and contribution to the Pennsylvania Universal Service Fund.<sup>15</sup>

Nothing about our consideration of Verizon's Petition here affects these important legal and policy safeguards.

The requested ruling is legally straightforward. Verizon has filed a Petition seeking that basic local exchange service in certain wire centers be declared competitive in accordance with the provisions of Chapter 30. According to Verizon, there is sufficient competition to allow the marketplace to control prices and quality of service. If the Petition is granted, Verizon would be permitted under Sections 3016(d)(1) and 3016(e)(1) of the Code to price all competitive services at its discretion as long as the price it charges is not less than the cost to provide the service. Verizon would also be permitted to de-tariff basic local exchange service, in accordance with Code Section 3016(d)(2). If the Petition is granted, Verizon would no longer have to comply with certain of our Chapter 63 and Chapter 64 regulations, including certain quality of service standards in Chapter 63, Subchapter E.

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<sup>10</sup> This obligation exists under 66 Pa. C.S. § 1501 and related case law.

<sup>11</sup> *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, I-00040105, Opinion and Order entered July 18, 2011 at 111 (*July 2011 Rural Access Order*).

<sup>12</sup> 66 Pa.C.S. § 3019(f).

<sup>13</sup> 47 U.S.C. § 251 and related case law.

<sup>14</sup> 66 Pa.C.S. § 510. Based upon "gross intrastate operating revenues."

<sup>15</sup> 52 Pa. Code § 63.165. Based upon "total intrastate end-user telecommunications retail revenues."

## II. Competitive Service Determination

Our first order of business in this case is to determine whether the 194 wire centers identified in the Joint Petition should be classified as competitive under the standards set by the General Assembly in Code Section 3016(a). Key to this determination is whether Verizon has satisfied its burden of proof by meeting the criteria set forth in the statute. Under the statutory standard, a wire center is competitive when Verizon demonstrates the availability of like or substitute services offered by alternative service providers in the wire center after the consideration of all relevant information.<sup>16</sup>

### A. Like or Substitute Services (Relevant Market)

We agree with Verizon that competing services do not need to be identical to meet the test of “like or substitute” set forth in Code Section 3016(a). The two terms are not defined in Chapter 30, and should be construed according to their common and approved usage.<sup>17</sup> Black’s Law Dictionary, 7<sup>th</sup> Ed. defines “substitute” as “one who takes the place of another” and defines “substitution” as “the process by which one person or thing takes the place of another person or thing.” Black’s Law Dictionary, 7<sup>th</sup> Ed. defines “like” as “similar or substantially similar.” Based on these definitions, “similar” or “substantially similar” does not mean identical under its ordinary meaning, while the definition of “substitute” under its ordinary meaning does not require that the one thing replacing another be identical.

Verizon argues that a relevant measure is whether the services are similar *in the eyes of the consumer*. We agree with Verizon that the most probative evidence on the record reflecting consumer preference is *actual consumer purchasing decisions*, because what matters is whether the products are “good substitutes for one another in the eyes of the buyers.”<sup>18</sup> In this case, the incontrovertible evidence, including evidence of actual consumer purchasing decisions, shows that the numerous competitive choices offered by cable telephony, wireless, and other service providers are like or substitute services for the ILECs’ copper network-based, basic local exchange service.

Verizon argues that competition exists in the current telecommunications market in the requested wire centers because of cascading access line losses, sea changes in customer preferences, the marketplace’s embrace of new forms of communicating, and the rise of many new entrants with independent service platforms. The credible record evidence is that customer demand in the Verizon service territories for communication services, including basic voice, is being met by other carriers using other technologies. With the proliferation of service bundles that typically includes a basic voice service component and the rising popularity of both wireline and wireless providers offering competing products and services, Verizon argues that consumers now have an array of options to meet their communications needs.

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<sup>16</sup> See 66 Pa. C.S. § 3016(a).

<sup>17</sup> Under the principles of statutory interpretation, terms that are not defined in a statute are to be construed according to their common and approved usage. *Barasch v. Pa. Pub. Util. Comm’n*, 505 Pa. 430, 490 A.2d 806 (1985).

<sup>18</sup> Verizon MB at 12, citing IBEW St. 1.0 at 18-19.

As of mid-2014, non-ILEC wireline providers (mostly cable telephony providers) served almost one-half of the wirelines in Pennsylvania, a percentage that continues to grow.<sup>19</sup> In addition, a CLEC presence in Pennsylvania remains prominent, including a majority share of the business lines in the Commonwealth.<sup>20</sup> Overall, landline subscribership is down, but number of lines served by carriers other than Verizon is up.<sup>21</sup>

At the same time, Verizon indicates customer acceptance of wireless service has exploded. 44 percent of households nationally have no landline service whatsoever (no ILEC, CLEC or cable voice).<sup>22</sup> Moreover, approximately 15 percent of American households received all, or almost all, calls on wireless telephones despite also having a landline telephone.<sup>23</sup> Together, Verizon argues that these statistics mean that almost three out of five American households either have no landline service at all or have a landline service, but rely mostly on wireless.

We note that these statistics are illustrative of the current telecommunications landscape within Pennsylvania and nationwide. Consequently, these statistics should not be construed as probative evidence of the presence of competition within Verizon's Petition area. Under Section 3016(a)(3) of the Code, we must limit our determination regarding the competitiveness of Verizon's basic local exchange service to the area addressed by the Petition. Rather, these statistics are evidence that in Pennsylvania, which includes the 194 wire centers subject to the Petition, and nationwide, consumers view cable telephony and wireless voice service as adequate replacements for their basic local exchange service.

In addition, Internet-based voice services (often referred to as "over the top VoIP") are widely accepted replacements for the traditional voice minutes offered by landline basic local exchange service. We note that Skype, Vonage, MagicJack, Gmail voice and similar service providers are an important aspect of the marketplace. As previously noted, 100 percent of the wire centers subject to the Petition are broadband-enabled,<sup>24</sup> which means that all of the Verizon subscribers in these wire centers have access to Internet-based voice services.

As Verizon also points out, voice is now not even the exclusive, or maybe even dominant, form of communicating.<sup>25</sup> Wireless text and emails are now among the primary means of communication, and have severely cut into the amount of voice minutes on the networks, often in complete substitution for voice calling.

At the same time these competing services have gained significant traction in the marketplace, the record evidence also shows a significant reduction in demand for Verizon's basic local exchange service.<sup>26</sup> And, while some of these customers have stayed with Verizon under a Verizon package or bundle or FiOS Digital Voice, most have switched to a wireless,

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<sup>19</sup> VZ MB at 2, citing VZ St. 2.0 at 16.

<sup>20</sup> VZ MB at 2, citing VZ St. 1.0 at 11.

<sup>21</sup> VZ St. 1 at 12.

<sup>22</sup> VZ St. 1 at 11; VZ Cross Exh. 4. Data is as of Mid-2014.

<sup>23</sup> VZ MB at 2-3, citing VZ St. 1 at 11; VZ Cross Exh. 4.

<sup>24</sup> VZ MB at 3, citing VZ St. 1.0 at 10.

<sup>25</sup> VZ St. 1.0 at 8-9.

<sup>26</sup> VZ MB at 15-17, citing VZ St. 2.0 at 12, 16.

cable telephony, or over-the-top VoIP provider or a CLEC.<sup>27</sup> Taken together, this evidence shows that consumers have substitutes for basic local exchange service in the marketplace and are willing to use them. Otherwise, the number of Verizon basic service customers would have remained relatively stable. Yet, since 2006, the number of Verizon basic local exchange service customers has decreased very dramatically, while, at the same time, the number of customers choosing competitive alternatives has increased significantly.<sup>28</sup>

Several parties have argued that competing cable telephony and wireless voice services are not like or substitute services, based on certain differences with those services. For cable telephony, these parties raise concerns about the adequacy of back-up power during commercial power outages. These parties also argue about the lack of available basic local exchange service from alternative providers without having to concurrently subscribe to an underlying broadband access internet access service. For wireless service, the 911 locational accuracy of wireless is claimed to be inferior enough that it is a different service.

We do not agree that these differences are a reasonable basis to find that these services are not like or substitute services. Excluding cable telephony solely based upon power requirements or excluding wireless voice based solely upon 911 locational accuracy seemingly creates a standard that can only be met if a competing service is identical in all respects, including the technology and network used. In today's market, such a standard would pre-determine the outcome, considering that the new wireline networks being constructed are fiber-based and utilize IP protocol and packet switching, while voice service provided over a wireless network, whether fixed or mobile, is also provisioned differently than traditional wireline voice service. Such a standard also would contradict the actual statutory standard, which does not require that the services be identical, but rather, only that they are similar.

Such an outcome also does not mesh with actual customer behavior in the marketplace. The overwhelming record evidence shows that consumers clearly view these services as substitutes for Verizon's basic local exchange service, regardless of any technological differences that may exist with the services. For the vast number of customers, for example, who have migrated to wireless voice, their cellular company offers adequate voice service, regardless of the limitation of battery issues and locational (911) accuracy. As Verizon points out, 70 percent of 911 calls now originate from cell phones.<sup>29</sup>

It is also argued by parties that there exists a core of vulnerable customers who only desire Verizon basic local exchange service and who will be disproportionately impacted if Verizon's Petition is granted. However, the record evidence is that 92 percent of low-income customers prefer wireless service over wireline service.<sup>30</sup> And, for the elderly, the record shows that they are more than willing to subscribe to cable television services, putting them in play for cable telephony, and are also willing to cut the cord from wireline service.<sup>31</sup> Thus, the actual record evidence provided undercuts the parties' speculation that these customer groups

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<sup>27</sup> VZ MB at 16, citing VZ St. 2.0 at 12.

<sup>28</sup> VZ MB at 16, citing VZ St. 2.0 at 16.

<sup>29</sup> VZ RB at 4., citing VZ St. 2.0 at 4.

<sup>30</sup> VZ MB at 22-23, citing VZ St. 2.0 at 19. 92% of lifeline customers in Pennsylvania subscribe to wireless service rather than wireline.

<sup>31</sup> VZ MB at 22, citing VZ St. 2.0 at 35.

disproportionately favor basic local exchange service and thus, will be disproportionately impacted if the Petition is granted.

In sum, we believe the credible record evidence proves that *in the eyes of consumers*, the voice services offered by competing providers, including cable telephony and wireless providers in the wire centers subject to the Petition, fulfill the same functions as the ILEC's basic local exchange service. These competing services are "*similar enough*" that consumers are willing and able to switch to them. Therefore, we believe these services are like or substitute services to basic local exchange service under Code Section 3016(a).

## **B. Availability**

Verizon avers that its Petition is limited to those wire centers that are located in Pennsylvania's population-dense areas in which competition is vigorous. To support that competition is vigorous, Verizon provides evidence of the wide array of competitive alternatives that exist in the marketplace and consumers' demonstrated willingness to migrate to them.<sup>32</sup>

In each of the 194 wire centers for which it seeks reclassification, Verizon asserts that both cable telephony and wireless voice (from at least one unaffiliated commercial mobile radio service provider; i.e., not Verizon Wireless) is widely available.<sup>33</sup> Verizon argues that two-thirds of the households in its Petition area obtain service from alternative providers.<sup>34</sup> Therefore, Verizon submits that market forces, and not regulation, should govern its services and set the rates it charges in the wire centers subject to the Petition.

Several parties challenge Verizon's claims of market competitiveness. For example, the Communications Workers of America/International Brotherhood of Electric Workers (CWA/IBEW) allege that a sufficient market does not exist in the majority of the areas subject to the Petition to take the place of price regulation.<sup>35</sup> CAUSE-PA argues that Verizon's proprietary data reveals that it still maintains a large share of the telecommunications market, particularly the market for protected services. CAUSE-PA echoes the Office of Consumer Advocate's (OCA) statement that the ability to retain market share despite increasing costs and decreasing access lines indicates that the telecommunications market is, at best, an oligopoly. CAUSE-PA argues that the Commission must launch an investigation into the market in the areas subject to Verizon's Petition to determine if it is competitive, as opposed to granting Verizon's Petition in this proceeding.<sup>36</sup>

We believe there are a significant number of alternative service providers offering voice services to consumers in the wire centers subject to the Petition. Upon review of the credible record evidence, cable telephony is abundantly available, and there is coverage by at least one

<sup>32</sup> VZ St. 1.0 at 3-4, Attachment A; VZ MB at 1.

<sup>33</sup> VZ St. 1.0 at 4-5, 10-11 and 24-26; VZ St. 2.0 at 3-4; VZ MB at 1-4 and 6-10; Tr. at 36-37.

<sup>34</sup> VZ MB at 13; VZ RB at 3.

<sup>35</sup> CWA/IBEW MB at 15-19.

<sup>36</sup> CAUSE-PA MB at 24-25.

unaffiliated wireless provider.<sup>37</sup> Meanwhile, CLEC services are widely available in the relevant wire centers.<sup>38</sup> In short, both residential and business customers in the areas subject to the Petition have many options when it comes to choosing a provider of voice service. As discussed in more detail below, we note that there may be pockets of customers in wire centers subject to the Petitions who do not have access to cable telephony. Therefore, in accordance with the below discussion, we will be denying a competitive determination for wire centers where 3 percent or more of households do not have access to cable telephony.

### **C. Arguments Against a Competitive Service Determination**

As previously noted, Code Section 3016(a) directs the Commission to consider information that is relevant to determining whether a wire center or service is competitive. In this case, some of the parties have offered evidence, which they argue should be considered to determine whether competition exists in the wire centers for which Verizon seeks a competitive determination. We resolve these arguments as follows.

#### **1. Rural Areas**

CWA/IBEW argue that, based on a comparison of the Center for Rural PA's map<sup>39</sup> and the map of wire centers included in the Joint Petition,<sup>40</sup> 12 wire centers are actually located in rural areas.<sup>41</sup> Therefore, argues CWA/IBEW, these wire centers should be excluded from the Petition because they do not meet Verizon's description of them as being "urban and suburban, population-dense areas."

We do not believe that this argument is relevant to our determination in this case because there is nothing in Chapter 30 that limits the competitive designation to suburban and urban areas. Rather, the key inquiry is the presence of alternative service providers offering like or substitute services. Even if this issue were relevant, Verizon points out that all of the wire centers subject to the Petition are located in areas the Center for Rural PA considers "urban" based on in its "Pennsylvania Rural Counties" Map.<sup>42</sup> Therefore, we will not exclude any areas from consideration based upon a classification by the Center for Rural PA as "rural."

#### **2. Service Quality and Fiber Deployment**

CWA/IBEW argues that certain wire centers should be excluded due to alleged poor service quality.<sup>43</sup> CWA/IBEW further argues that the failure to deploy Fiber-to-the-Home

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<sup>37</sup> VZ St. 1.0 at 4-5, 10-11 and 24-26; VZ St. 2.0 at 3-4; VZ MB at 1-4 and 6-10; Tr. at 36-37. Moreover, all of the wire centers subject to Verizon's Petitions are broadband-enabled at speeds which give households in those areas access to countless "over the top" VoIP providers. VZ St. 1.0 at 11, 15, 17, 18; VZ MB at 3.

<sup>38</sup> VZ St. 1.0 at 18-20, 26-28.

<sup>39</sup> CWA/IBEW Exh. 1.

<sup>40</sup> Verizon St. 1.0, Attach. C, enlarged, labeled versions of which are provided in CWA-IBEW St. 1S, Sch. SMB-18.

<sup>41</sup> CWA/IBEW MB at 11 (Table 1).

<sup>42</sup> VZ RB at 7-8, citing VZ Supplemental Exh. 1.

<sup>43</sup> CWA/IBEW MB at 20-28 (Tables 4 and 5).

(FTTH) should result in the exclusion of the other wire centers.<sup>44</sup> CWA reasons that poor service quality and lack of fiber deployment are reflective of a lack of competition.

CAUSE-PA argues that Verizon's reliance on the substantial decline in the rate of justified consumer complaints as evidence that it is meeting the needs of customers is inapposite. CAUSE-PA points out that in 2009, the Commission's Bureau of Consumer Services (BCS) implemented changes in its intake practices, specifically by implementing the "warm transfer program" in which Verizon Customers contacting BCS are transferred to a Verizon representative prior to BCS addressing any remaining Complaint. CAUSE-PA asserts that this added process, and not Verizon's service delivery, is what has been successful in lowering justified complaints.<sup>45</sup>

We do not believe that either service quality or the extent of fiber deployment is a relevant criterion under Code Section 3016(a) for determining whether a wire center is competitive. Service quality or fiber deployment data is not evidence of the availability of like or substitute services offered by alternative service providers in the wire centers subject to the Petition. Simply put, we believe service quality or fiber deployment has no reasonable bearing on the availability of like or substitute services from competitors. Therefore, we see no basis to exclude any wire centers from being considered competitive based solely on quality of service or fiber deployment data.

### 3. Market Share

According to CWA/IBEW, wire centers where Verizon is the dominant voice provider in terms of market share should be excluded from the Petition.<sup>46</sup> If one supplier has a market share of 50 percent or more, CWA/IBEW argues that such a market share is a strong indication that actual competition does not exist. Thus, the wire centers appearing in Table 3 of its Main Brief should not be deemed competitive.

Verizon argues that Chapter 30 says nothing about market share within the context of a Section 3016(a) reclassification proceeding and therefore, is irrelevant in determining whether a wire center should be classified as competitive. However, even if relevant, Verizon asserts that the market share numbers are inflated by 13-14 percent, due to the witness inaccurately imputing that one-third of all Verizon cord cutters receive service from Verizon Wireless.<sup>47</sup>

Verizon further asserts that market share tells us less about market competitiveness when that market share is the result of regulation, as is the case here, and that market share alone, is not indicative of market competitiveness, when considering the multiple providers here that provide like or substitute services and do not face any significant barriers to entry.<sup>48</sup> Verizon also notes the wire centers with the highest Verizon "share" are those with high penetration of FiOS voice

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<sup>44</sup> CWA/IBEW MB at 24-25 (Table 6).

<sup>45</sup> CAUSE-PA MB at 30-31, citing CAUSE-PA St. 1-SR at 7-8.

<sup>46</sup> CWA/IBEW MB at 16-17.

<sup>47</sup> VZ RB at 13.

<sup>48</sup> VZ St. 2.0 at 31-32.

packages, demonstrating customer demand for bundled services and a willingness of customers to switch to unregulated services offered by Verizon.<sup>49</sup>

We find that market share alone is not determinative of whether a wire center should be classified as competitive. Again, what matters most for purposes of Code Section 3016(a) is whether competitive service offerings is “available” in a wire center, not the extent to which consumers are actually taking advantage of those competitive offerings. This is consistent with the Commission's position regarding the energy supply markets where, despite the less-than-majority percentages of customers actually receiving supply service from competitive suppliers, these markets are considered competitive.<sup>50</sup> Therefore, without some other evidence showing that cable telephone or wireless service is not widely available in a wire center, Verizon’s market share alone is not a valid reason to deny the competitive classification of a wire center.

Even if market share were a determinative criterion, we view the CWA/IBEW market share analysis as flawed in several respects. First, we do not believe it is appropriate to include an estimated market share of a non-PAPUC regulated affiliate – Verizon Wireless – as part of Verizon PA's market share. Rather, any market share data should be limited to Verizon PA and Verizon North, as the entities requesting the relief here in the form of a competitive determination. By including Verizon Wireless market share data, CWA/IBEW has over stated Verizon’s market share by approximately 13-14 percent for each of the wire centers that are the subject of the Petition. Second, we do not support using a simple majority market share standard to determine market dominance. Rather, a much greater showing should be required in order to reject a competitive classification of a wire center based on Verizon's market share alone. Since this matter was first raised in the briefing stage, the record does not support any specific penetration level.

Finally, CWA's/IBEW’s reliance on the 50 percent cap for EGS market share of default service load to support a 50 percent standard for measuring telephone competition is misplaced. The 50 percent load caps in place for certain wholesale auctions pertaining to default electric supply service were never intended to serve as a measuring stick for determining whether PA's electric generation markets are competitive. Rather, the 50 percent caps were intended to balance the need to ensure supplier diversity versus price. Moreover, the General Assembly restructured PA's electric market by statute and created a competitive generation market, which remains competitive today, even though the EDC, as the default service provider, remains the dominant supplier of electricity in all but one of the major EDC service territories in PA. Consequently, the Commission does not believe it is appropriate to use the 50 percent electric load cap to help define the extent of competition in the telecommunications market.

#### **4. Access to Cable Telephony**

Next, the Commission must consider the issue of access to cable telephony within the designated wire centers. CWA/IBEW argues that the wire centers appearing in Table 2 of its

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<sup>49</sup> VZ RB at 13.

<sup>50</sup> Customer may have brand loyalty, for example. Steadfast Chevy consumers, who would not drive another brand, nevertheless benefit from the competitive market participation of other automobile manufacturers.

Main Brief<sup>51</sup> should be excluded from any competitive classification ordered by the Commission because they represent wire centers where 3% or more of the households do not have access to cable. According to CWA/IBEW, Verizon witness Mr. Vasington agreed that he did not rely on any U.S. Census data and did not rely on any data to determine how many households and businesses in a wire center actually had access to cable telephony.<sup>52</sup> CWA/IBEW further argues that Verizon's analysis failed to accurately identify the availability of cable telephony to all customers in a wire center and further argues that the mere availability of cable telephony somewhere in a wire center (an area which may encompass more than 100 square miles; Tr. 139:18-23) does not mean that customers actually have access to it.<sup>53</sup>

The OCA argues that *each and every* customer in a wire center must have access to cable telephony before a wire center is determined to be competitive.<sup>54</sup> OCA witness Dr. Loube analyzed data published by the FCC and the U.S. Census Bureau to determine the availability of broadband cable by census block groups (CBG) located within each wire center.<sup>55</sup>

According to Verizon, 98 percent of the households in the petition area have access to cable telephony using the CWA/IBEW study data.<sup>56</sup> Verizon also states that 100 percent cable coverage in a wire center is not required for a competitive classification. Verizon reasons that even those customers who cannot switch to cable telephony or who are unwilling to switch to cable telephony still benefit from the competitive market. According to Verizon, this is because prices and service quality for all customers are set on the margin or for those customers who are most likely to switch.<sup>57</sup>

Verizon also questions the accuracy of the data relied upon by the OCA witness in tabulating those wire centers claimed to have less than 100 percent cable telephony coverage.<sup>58</sup> As one example, Verizon highlights the Locust wire center in downtown Philadelphia, where Verizon does not believe it is likely that households in dense urban or suburban areas are unserved by cable. As another example, Verizon notes that Dr. Loube did not remove from his analysis unpopulated areas that would not be expected to have telephone service at all.<sup>59</sup>

We reject the argument that cable service must be 100% available in a wire center in order for it to be declared competitive. We agree with Verizon that, even without personal access to cable service, all customers in wire centers benefit from the competitive pressures created by the widespread availability of cable and wireless service. We believe that the discipline afforded by competition coupled with Verizon's continued COLR obligation helps ensure that all consumers located in the wire centers subject to the Petition will have access to affordable basic telephone service.

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<sup>51</sup> CWA/IBEW MB at 14.

<sup>52</sup> CWA/IBEW MB at 13 (citing to Tr. 150-151).

<sup>53</sup> CWA/IBEW MB at 14.

<sup>54</sup> OCA MB at 22-23, citing OCA St. 1.0 at 13-14.

<sup>55</sup> OCA St. 1-S at 8-10 (Table 1).

<sup>56</sup> VZ MB at 8-9.

<sup>57</sup> VZ St. 2.0 at 17-18; Tr. 40-41.

<sup>58</sup> VZ MB at 8-9.

<sup>59</sup> VZ MB at 7, citing Tr. 111.

In addition, cable companies have no COLR obligation and build out their networks based upon a business case where it is profitable. We are reluctant to use a 100 percent standard because we believe it holds the competitive determination hostage to the cable companies' proprietary deployment plans. We also acknowledge that it has become increasingly difficult to identify with precision alternative service providers, including cable telephony providers. This is especially true when attempting to identify competitors at the wire center level.<sup>60</sup>

We also acknowledge a need to be as granular as is reasonably possible when determining a cable telephony coverage standard, given its role as the primary facilities-based competitor of residential communications services in many of these wire centers. Therefore, we will consider cable telephony as sufficiently available for purposes of this case when 97 percent or more of the households in a wire center have access to cable telephony. Based on the data presented about cable telephony availability, we will not classify the 41 wire centers listed in the CWA/IBEW's Table 2<sup>61</sup> as competitive, given the percentage of households there that appear to be without access to cable telephony.

As previously noted, this is a case of first impression as it relates to basic local exchange service. Availability is clearly part of the competitive test set forth in Code Section 3016, but the statute establishes no threshold or bright-line test on availability. The 97% cable overlay standard that we adopt in this Joint Motion is based upon the record developed by the parties in this case under a compressed time schedule. As telecommunications technology and market dynamics continue to evolve, parties are free to present alternative standards in accordance with the Commission's administrative procedures, and we reserve the opportunity to revisit the standard in future proceedings.

## **5. Affordability**

The OCA argues that the basic local exchange service market is not competitive based on the current cost of the service.<sup>62</sup> According to the OCA, 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 and other parties also argue that the Commission should consider the price impacts and the impact on universal telecommunications service and affordability when determining market competitiveness.

Verizon responds that price is not relevant to the statutory standard, which is to make the determination of competitiveness based upon the availability of competitive alternatives.<sup>63</sup> Verizon further responds that the General Assembly has already declared the pricing of a competitive service is within the carrier's discretion (under Code Section 3016(d) and Section 3016(e)), and that once Verizon's basic local exchange service is classified as competitive in a wire center, prices should be regulated by market forces.<sup>64</sup>

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<sup>60</sup> VZ St. 1.0 at 22-23.

<sup>61</sup> CWA/IBEW MB at 14-15.

<sup>62</sup> OCA MB at 29.

<sup>63</sup> VZ St. 2.0 at 30-31.

<sup>64</sup> VZ St. 2.0 at 17.

We do not believe that the price of Verizon's basic local exchange service, including concerns about future pricing of the service, is a relevant criterion in determining market competitiveness under Code Section 3016(a). Chapter 30 dictates that a decision on reclassification is to be based on the demonstrated availability of like or substitute services offered by alternative service providers and on "all relevant information." In our view, pricing and cost study evaluations regarding Verizon's basic local exchange service are not relevant information to this determination.

Rather, what may be relevant to determining market competitiveness under Code Section 3016(a) is the current pricing of competing services if such services are priced in a manner that influences consumer purchasing decisions. As the record in this case shows, however, price has not been a deterrent for the large number of consumers in Pennsylvania and nationwide who have replaced tariffed basic local exchange service with an untariffed Verizon bundle, cable telephony, or wireless voice service.

Moreover, the General Assembly in other contexts has declared that competitive market forces are more effective than economic regulation in controlling the cost of service.<sup>65</sup> This is evident, for example, with the numerous product offerings and consumer savings present in Pennsylvania's competitive electricity market. Similarly, the increased competition that we have seen and, most likely, will continue to see in the telecommunications market benefits customers by keeping prices in check and spurs innovation. As the record shows, there are many different providers of voice service offerings in the wire centers subject to the Petition that will gain market share if Verizon prices its services too expensively in the eyes of consumers.

Nevertheless, we are mindful of the statement in Code Section 3011(2) that it is the policy of the Commonwealth to "maintain universal telecommunications service at affordable rates."<sup>66</sup> Although we view the testimony on the potential impact of a competitive determination of basic local exchange service on price as speculative at this time, the Commission believes it is important to monitor the issue going forward.

Therefore, the Commission intends to undertake data collection to help assess how the market is doing, post-determination, including the impact of our decision, if any, on the affordability of basic local exchange service. As part of the data collection, Verizon will continue to comply with the annual reporting requirements at Section 64.201 of the Commission's regulations for basic local exchange service customers. In addition, we will also require Verizon to maintain price lists at the Commission for basic local exchange service in competitive wire centers, including for residential dial tone rates and local usage rates.<sup>67</sup>

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<sup>65</sup> See 66 Pa. C.S. § 2802(5).

<sup>66</sup> 66 Pa. C.S. § 3011(2).

<sup>67</sup> In accordance with 66 Pa.C.S. § 3016(d)(4), the Commission may require a LEC to maintain price lists at the Commission applicable to competitive services.

## 6. Universal Service

The OCA, CWA-IBEW, and CAUSE-PA all emphasize the Commission's duty under Chapter 30 to maintain universal service. Accordingly, the OCA argues that the Commission must consider the impact of Verizon's Petition upon universal service.<sup>68</sup>

We acknowledge that maintaining universal service is one of the key policy objectives of Chapter 30.<sup>69</sup> However, we do not believe that declaring wire centers competitive here will adversely impact that policy objective. For one thing, as previously discussed, Verizon will continue to have the COLR obligation in competitive wire centers. The COLR obligation has been described by the Commission as follows:

ILECs are required universally to provide adequate, safe and reliable service and facilities for the convenience of the public and the interconnected telecommunications carriers throughout their respective service areas. Such COLR obligations extend to the provision of retail telecommunications services anywhere within the RLEC's service territory, include service quality requirements and public safety obligations in terms of handling 911/E911 call traffic, and telecommunications carrier connectivity requirements that are governed by both Pennsylvania and federal law. Other competitive wireline (CLECs) and wireless carriers often depend and rely on the RLECs' switched access and "last mile" transport and distribution facilities for respectively originating or completing wireline and wireless call traffic. Under applicable federal law that is enforced by this Commission, the RLECs also have federal eligible telecommunication carrier (ETC) designations and thus qualify for the receipt of certain types and amounts of support from the federal USF.<sup>70</sup>

Consistent with this obligation, Verizon affirmed that Verizon PA and Verizon North will continue to connect all customers located in their service territory upon request. Verizon also points out that in other states where it has been granted pricing flexibility for basic local exchange service, it has not changed its product offerings.<sup>71</sup>

We interpret this testimony to be a commitment by Verizon to continue serving all customers in competitive wire centers and to continue offering basic local exchange services to customers in competitive wire centers. We view offering basic stand-alone telephone service as part of Verizon's COLR obligation existing under state and/or federal law. We shall require this result absent a clear, future ruling by this Commission or the FCC to the contrary.

Moreover, as previously discussed, we believe prices for basic service are better regulated by market forces than economic regulation. As the record shows, consumers have a choice of many different service providers in the wire centers subject to the Petition that they can

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<sup>68</sup> OCA MB at 35.

<sup>69</sup> See 66 Pa. C.S. § 3011(2).

<sup>70</sup> *July 2011 Rural Access Order* at 111. While this ruling was focused upon the rural ILECs, the subject of that investigation, these same legal obligations apply to Verizon as an incumbent non-rural local exchange company.

<sup>71</sup> Tr. at 122-23.

use to replace their basic local exchange service if Verizon prices its service too expensively in the eyes of consumers.

## 7. Conclusion

We believe the credible record evidence largely shows that both residential and business customers in the areas subject to the Petition have a plethora of options when it comes to choosing a provider of voice service. We believe the credible record evidence also illustrates the available competitive alternatives are similar enough in the eyes of consumers that they are like or substitute services for basic telephone service.

We note, however, that consistent with our discussion on availability of competitive alternatives, we shall exclude the 41 wire centers listed in CWA/IBEW's Table 2 of its Main Brief from the requested competitive determination. Overall, our decision classifies as competitive 153 of the 194 wire centers included in the Petition.

### III. Regulatory Impact of a Competitive Determination

Once a wire center is determined to be competitive, the next inquiry is the regulatory impact of such a determination. Chapter 30 is clear that the primary impact of a competitive determination is as follows: (1) Verizon may price the service at its discretion; and (2) Verizon may maintain a price list of a competitive service rather than maintaining a Commission-approved tariff.<sup>72</sup> Thus, a competitive determination provides Verizon with pricing flexibility over basic local exchange service and allows Verizon to de-tariff the service. A competitive determination, however, does not mean complete de-regulation of the service.<sup>73</sup>

With the exception of rate regulation, the Commission's Title 66 authority is retained over landline telecommunications services<sup>74</sup> determined to be competitive. This includes retaining jurisdiction over quality of service and the ordering, installation, restoration, and discontinuation of basic local exchange service.<sup>75</sup> The only specific mandates by the General Assembly for competitive services are that rates may not be regulated by the Commission,<sup>76</sup> and the Commission cannot require tariffs for competitive services. Instead, the Commission may require that a price list for competitive services be maintained at the Commission, which, as previously discussed, the Commission is ordering here.<sup>77</sup>

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<sup>72</sup> See 66 Pa. C.S. §§ 3016(d) and (e).

<sup>73</sup> "Deregulation" is the pervasive elimination of all regulation, including both price and service regulation.

<sup>74</sup> The Commission has only limited jurisdiction in the telecommunications space. We do not retail rate regulate either wireless services or cable (VoIP) by state statute. See 66 Pa.C.S. § 102 and 73 P.S. § 2251.1 *et seq.* These are the principal sources of competition to Verizon.

<sup>75</sup> See 66 Pa. C.S. § 3019(b)(2).

<sup>76</sup> 66 Pa.C.S. §3016(e)(1) ("Subject to the requirements of subsection (d)(1) [establishing cost of service as the price floor], a local exchange telecommunications company may price competitive services at the company's discretion.").

<sup>77</sup> The Commission, however, may require the filing of price lists or informational tariffs. 66 Pa.C.S. § 3016 (d)(4) ("The commission may require a local exchange telecommunications company to maintain price lists with the commission applicable to its competitive services. Price changes that are filed in a company's tariff for competitive services will go into effect on a one-day notice.").

This outcome is akin to the general notion of “de-tariffing,” which is the elimination of the requirement to file and maintain tariffs. Tariffs include not only rates for service set by the regulatory authority, but also, the terms and conditions of service approved by the regulatory authority.<sup>78</sup>

We note that a tariff is a legally enforceable contract-like document that defines company and customer duties and obligations, as noted in Code Section 102. The Pennsylvania Commonwealth Court explained in *Stiteler* that “[t]ariffs filed with a state regulatory agency, such as the PUC, are not mere contracts but have the force of law and are binding on the consumer and the utility.”<sup>79</sup> With no tariff governing competitive services, the question becomes what then defines company and customer duties and obligations in a competitive environment.

To ensure that the terms and conditions of basic local exchange service are memorialized for customers in competitive wire centers, we will direct Verizon to use the Terms and Conditions of service contained in its “Product Guide” as the governing document for basic telephone service customers in competitive wire centers in the Verizon PA and Verizon North service territories.<sup>80</sup> Thus, the Product Guide will be the controlling document that defines company and customer duties and obligations for competitive services, including basic service in competitive wire centers. We direct Verizon to notify its customers in writing of this change from tariff to contract status.

We believe that Verizon should undertake affirmative action to ensure customer agreement with terms and conditions of service contained in its Product Guides even if they remain the same as were previously tariffed. These non-tariff agreements<sup>81</sup> will become an implied-in-fact contract based upon the provision of service and the payment of the invoices each month. This type of contract is created by the conduct of the parties rather than by a specific verbal or written contract. A letter with a negative option (“contact us if you do not accept the website terms...”) may form the basis of constructive knowledge by the customer. Affirmative acceptance by the customer will not be required, although Verizon may wish to do so to ensure proper contract formation.

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<sup>78</sup> Tariffs are defined under 66 Pa. C.S. § 102 as including not only rates and rate schedules, but also, “rules, regulations and practices” of the utility. Moreover, the Commission’s regulation at 52 Pa. Code § 53.25 specifies that a telephone utility’s tariff shall set forth “all rules and regulations” which apply generally to all classes of service. Therefore, we interpret the Section 3016(d)(2) language specifying that the Commission may not require tariffs for competitive services as applying to not only rates, but also, to terms and conditions of service.

<sup>79</sup> *Stiteler v. Bell Tele. Co.*, 379 A.2d 339, 341 (Pa. Cmwlth. 1977); see also *Behrend v. Bell Tele. Co.*, 363 A.2d 1152, 1164 (Pa. Super. 1976) (“Tariffs lawfully established, including limitations of liability, have the effect of law and are binding on both utility and subscriber.”)

<sup>80</sup> *Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc.*, R-2011-2244373, (Final Order entered November 14, 2011).

<sup>81</sup> See current Verizon “Product Guide” at [http://www.verizon.com/Tariffs/Sections.aspx?docnum=PAVICA0&type=T&sch=Y&se=Y&att=N&typename=IT&tims\\_status=E&entity=VI](http://www.verizon.com/Tariffs/Sections.aspx?docnum=PAVICA0&type=T&sch=Y&se=Y&att=N&typename=IT&tims_status=E&entity=VI) (As of February 19, 2015).

While rates will not be regulated in competitive wire centers, we shall require Verizon to maintain at the Commission price lists for basic local exchange services, including dial-tone and usage rates, and to file changes upon one day's notice as we have done with other competitive services.<sup>82</sup> In the event of a change in local service rates in a competitive exchange, Verizon shall be required to give 30 days' advance notice to retail customers receiving such service. This same 30 days' notice of a retail price change shall be given to CLECs purchasing discounted local service in competitive wire centers.<sup>83</sup>

#### **IV. Waiver Request**

##### **A. Overview**

Verizon requests a waiver until December 31, 2025 of the following subchapters of Chapter 63 of the Commission's regulations found in Title 52 of the Pennsylvania Code: B (Services and Facilities), C (Accounts and Records), E (Quality of Service), F (Extended Area Service), and G (Public Coin Services). Only these provisions are addressed by our ruling here. All remaining portions of Chapter 63 shall remain in full force in the competitive wire centers, including the competitive code of conduct (K) universal service (L), changing local service provider procedures (M). Verizon also requests an eleven-year waiver for all of Chapter 64 of the Commission's regulations.

Various parties, including the OCA, CWA/IBEW, and CAUSE-PA oppose the waiver request. The OCA and CAUSE-PA argue that the regulations for which Verizon seeks a waiver provide critical protections upon which consumers continue to rely. CWA/IBEW and CAUSE-PA also argue that any reform of Chapters 63 and 64 should be done via a rulemaking. Full Service Network, Inc. (FSN) does not oppose Verizon's request for waivers, but asserts that any waivers must be equally applicable to CLECs like FSN so that all regulated local exchange carriers are subject to the same regulatory requirements.<sup>84</sup>

As we have previously discussed, complete deregulation is not required under Pennsylvania law where a service is declared "competitive." Consequently, whether to grant Verizon's requested waiver of certain of Chapter 63 and all Chapter 64 regulations in competitive wire centers is discretionary, with the Commission considering the relevant circumstances. The issue presented here is whether the Commission should revise the degree and type of service regulation to be imposed upon the provision of basic service in wire centers determined to be competitive.

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<sup>82</sup> *Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc.*, R-2011-2244373 and *Pennsylvania Public Utility Commission v. Verizon North LLC*, R-2011-2244375, Final Order entered November 14, 2011 at Ordering ¶¶ 5, 6 and 9. ("... the "Price List and Product Guide" that it files on its own website in place of the original informational tariff (Tariff 500). Thereafter, Verizon ... shall submit any changes to the price list it maintains with the Commission using sequentially numbered supplements.... That any web-based price lists for the competitive services that are the subject of this proceeding and are maintained by or on behalf of Verizon ... shall be timely and accurate and shall reflect the corresponding price lists for the same competitive services submitted to the Commission."); VZ MB at 35.

<sup>83</sup> FSN MB at 6-7.

<sup>84</sup> FSN MB at 13-14.

We acknowledge that these regulations have not been revised for many years, beyond our effort in 2006 to comply with certain statutory changes to reporting requirements in Chapter 30.<sup>85</sup> Verizon is requesting that we waive part of our Chapter 63 regulations, including our regulations on service quality, and all of our Chapter 64 regulations on billing and collections, etc. in competitive wire centers. In deciding this case, we will exercise our discretion to address what billing and quality of service rules should apply where basic local exchange service is determined to be competitive.

Fundamentally, the General Assembly has given the Commission the tools needed to level the regulatory playing field by reducing regulation for the incumbent carrier where “like and substitute” services are available from alternative suppliers. Specifically, the General Assembly in its 2004 Chapter 30 amendments declared that one of the key policy objectives of Chapter 30 is to reduce the regulatory obligations imposed on traditionally regulated companies “to levels more consistent with those imposed upon competing alternative service providers.”<sup>86</sup> Here, granting a waiver from certain Chapter 63 and 64 regulations in competitive wire centers brings Verizon closer to regulatory parity with competing providers whose retail services are not subject to Commission jurisdiction.

We believe that many of the monopoly-era regulations in Chapters 63 and 64 that do not apply to Verizon’s competitors do not make sense in a competitive marketplace. Where sufficient competition does exist, regulation is not needed and should be reduced or even discontinued. Here, the record clearly demonstrates that sufficient competition exists in the 153 wire centers subject to our action today to substantially reduce our regulation.

We find that the burdens of complying with outdated regulations with which Verizon’s competitors do not have to comply is an “unreasonable hardship” that justifies granting a waiver. Therefore, in accordance with our authority at Code Section 3019(b)(2)<sup>87</sup> and Section 64.202 of our regulations,<sup>88</sup> the Commission agrees to waive the application of certain of the Commission’s Chapters 63 and 64 regulations in wire centers found to be competitive except where such regulations are preserved below. Our action on the waiver request is not intended to serve as an abandonment of our regulatory responsibilities, but rather, is an attempt to streamline our regulation of Verizon’s basic local exchange service to reflect the competitive environment that exists in the wire centers subject to the Petition.

As discussed in more detail below, the waiver period will be for a period of five years, pending data collection and a rulemaking to address the status of these chapters for noncompetitive and competitive services on a permanent and industry-wide basis.

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<sup>85</sup> *Rulemaking re: PUC Filing and Reporting Requirements on Local Exchange Carriers*, L-00050176, Final Rulemaking Order entered August 21, 2006.

<sup>86</sup> 66 Pa. C.S. § 3011(13).

<sup>87</sup> 66 Pa. C.S. § 3019(b)(2) provides the Commission with the authority to review and revise quality of service standards addressing telephone service.

<sup>88</sup> 52 Pa. Code § 64.202 permits at LEC to petition the Commission for a waiver when compliance with a regulation results in unreasonable hardship to the LEC.

## **B. Chapter 63 Waiver Request**

### **1. Subchapter B (Services and Facilities) (Sections 63.12-63.24)**

We specifically waive the following Subchapter B regulations: Section 63.12 (Minimizing interference and inductive effects), Section 63.16 (Traffic measurements), Section 63.17 ([Reserved]), Section 63.18 (Multiparty line subscribers), Section 63.19 (Interoffice lines), Section 63.21 (Directories), Section 63.23 (Construction and maintenance safety standards) and 63.24 (Service interruptions).

The subchapter B provisions that we are waiving include provisions that are outdated, such as Section 63.23, which requires compliance with National Electrical Safety Code standards from 1981. The Subchapter B provisions that we are waiving also include provisions relating to services that no longer exist, including multiparty lines, and provisions relating to traffic measurements and record keeping that are largely manual in nature and pre-date the use of computers.<sup>89</sup> Moreover, for directories, we note that Verizon no longer provides a residential White Pages directory in paper form automatically to customers. Rather, residential White Pages directory information is available on Verizon's website and, upon request, in paper form or through CD-ROM, at no charge. This practice shall continue throughout the waiver period.

CWA-IBEW argues that the Section 63.24 provision requiring bill credits for service outages should not be waived.<sup>90</sup> However, we believe the market is sufficiently competitive that customers can obtain service from other providers if Verizon service quality to consumers is unacceptable, and Verizon does not adequately address the customer's concerns by fixing the problem and providing appropriate financial compensation for any service interruption. In addition, we note that Verizon PA's and Verizon North's Product Guide, Section 1, Original Sheet 6, that will be applicable to basic telephone service in competitive wire centers addresses this issue by also providing credits for service interruptions.

However, we retain Section 63.13 (Periodic inspections), which governs preventative maintenance, and Section 63.14 (Emergency equipment and personnel), which governs measures to be taken by utilities in an emergency, including battery back-up. We believe these regulations are not outdated and remain relevant to service reliability in a competitive world. We also retain Section 63.15 (Complaint procedures) and Section 63.22 (Service records) because we believe they too remain relevant to the Commission-approved complaint process that still applies in competitive wire centers and to the reporting requirements that we are keeping. We also retain Section 63.20 (Line extensions), which we believe is relevant to Verizon's Section 1501-based COLR obligation that remains in competitive wire centers.

Moreover, although we agree to waive Section 63.23, we agree with CWA/IBEW that this regulation deals directly with safety and reliability and is intended to protect utility workers and members of the public who come in contact with Verizon's facilities. Thus, we believe the goal of this provision remains relevant in today's market. Therefore, we grant our waiver of Section 63.23 conditionally, upon the following requirement: that Verizon shall construct and

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<sup>89</sup> VZ MB at 29.

<sup>90</sup> CWA/IBEW St. 4.0 at 6.

maintain its public utility equipment, facilities, and wire or cable crossings in accordance with the safety standards set forth in the current National Electrical Safety Code.<sup>91</sup>

## **2. Subchapter C (Accounts and Records) (Sections 63.31-63.37)**

The provisions in this subchapter are basically applicable to rate-of-return concepts that no longer apply to the Verizon companies. The establishment of Verizon's overall revenue requirement has been subject to a non-cost, revenue-based form of regulation for the last twenty or so years, in accordance with Section 3015 of Chapter 30.<sup>92</sup> Therefore, these regulations applicable to rate-of-return concepts are no longer applicable, and we specifically waive Section 63.31 (Classification of public utilities), Section 63.32 (System of accounts), Section 63.33 (Integrity of service accounts to be preserved), Section 63.34 (Reclassification of telephone plant to original cost), and Section 65.35 (Preservation of records).

We will retain, however, Section 63.36 (Filing of annual financial reports). Determining that a wire center is competitive under Code Section 3016(a) does not change the statutory reporting mandates in Chapter 30 (Code Section 3015(e)), which includes requiring LECs to file an annual financial report with the Commission. Moreover, we continue to have responsibility for Verizon's overall financial performance. Therefore, this regulation remains necessary, and we will keep it. We will also retain Section 63.37 regarding the funding of telephone relay service, as these surcharges continue even when a wire center is deemed competitive. Thus, Section 63.37 remains relevant and should continue in effect.

## **3. Subchapter E (Telephone Quality of Service Standards) (Sections 63.51-63.65)**

The provisions in this subchapter contain, among other things, the performance standards for trouble reports, service installations, operator calls, and dial tone. We specifically waive the following Subchapter E regulations: Section 63.51 (Purpose), Section 63.52 (Exceptions), Section 63.53 (General provisions), Section 63.54 (Record retention), Section 63.56(a)-(e) (Measurements), Section 63.58 (Installation of service), Section 63.59 (Operator-handled calls),<sup>93</sup> Section 63.60 (Automatic Dialing Announcing Devices (ADAD)), Section 63.61 (Local dial service), Section 63.62 (Direct distance dial service), Section 63.63 (Transmission requirements and standards), Section 63.64 (Metering inspections and tests) and Section 63.65 (Safety). We believe these regulations should no longer apply in a competitive world.

Overall, we believe the market is sufficiently competitive that a customer can obtain service from other providers if Verizon's service quality is unacceptable. In essence, customers can "vote with their feet," which we believe provides sufficient incentive for Verizon to provide

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<sup>91</sup> The Commission has authority to condition a waiver of our regulations pursuant to the Public Utility Code, including Sections 501 and 1501.

<sup>92</sup> 66 Pa. C.S. § 3015.

<sup>93</sup> Pursuant to a prior ruling, a waiver is already in place for Section 63.59(b)(2) related to customer calls to the business office. That waiver is in place until a rulemaking is undertaken, so a waiver for this provision, at least with respect to calls to the business office, is not necessary. See *Pa. Public Utility Commission, Law Bureau Prosecutory Staff v. Verizon Pennsylvania Inc.* Docket No. M-2008-2077881, Opinion and Order entered October 12, 2012 at 32-25.

quality service in most cases. Therefore, we believe the aforementioned quality of service regulations are no longer needed in competitive wire centers.

Although customers in competitive wire centers can opt for other providers if they find service unacceptable, these customers also have the option to complain to the Commission about their service, if issues arise. Waiving these regulations does not in any way modify Verizon's statutory obligation under Code Section 1501 to provide adequate, efficient, safe, and reasonable service to customers in competitive wire centers. This point was confirmed in Verizon PA's and Verizon North's Chapter 30 Plans and in the testimony in this case.<sup>94</sup>

Neither does a waiver of these regulations impact the Commission's authority to adjudicate a customer complaint alleging poor service quality. As previously discussed, the Commission's Title 66 authority remains over the quality of basic local exchange service in competitive wire centers. Thus, our authority to adjudicate a Section 1501 "reasonableness of service" complaint serves as a regulatory back-stop on quality of service, if need be.

We note the CWA/IBEW single out Section 63.65 governing worker safety as a regulation to retain.<sup>95</sup> Upon review, we believe workplace safety is adequately regulated at the federal level. Section 63.65 simply incorporates the National Electrical Safety Code for poles and conduit, which are themselves regulated by the FCC and the workplace safety regulations of the Occupational Safety Health Act (OSHA), respectively. We see no reason to continue our enforcement of this provision that is enforceable by other agencies that are in charge of such standards (the FCC and OSHA).

Nevertheless, our waiver of this regulation should not be construed as a concession that the Commission does not have jurisdiction or authority to enforce federal law standards, where appropriate. Our waiver of this regulation also should not be construed as impacting our ability under Code Section 1501 to address safety issues, including safety issues that result from a violation of a federal safety standard. In other words, the Commission still retains its jurisdiction and authority under Code Section 1501 to hear an allegation that a violation of FCC and/or OSHA workplace safety regulations also violates Code Section 1501.

Regarding our waiver of Section 63.58 (Installation of service), we believe information on the timing of service installations, including any standards applicable to service installation times, should be readily available to customers in some form other than a regulation. This will help manage reasonable customer expectations on the subject. Therefore, we grant our waiver of Section 63.58 conditionally upon the requirement that Verizon include in its Product Guide applicable to competitive services its rules regarding the timing of service installations and any commitments that Verizon is willing to make to customers on the subject.<sup>96</sup>

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<sup>94</sup> VZ St. 1.0 at 41.

<sup>95</sup> CWA/IBEW MB at 40.

<sup>96</sup> The Commission has authority to condition a waiver of our regulations pursuant to the Public Utility Code, including Sections 501, 1501 and 3019(b)(2).

At the same time, we recognize the need to maintain via regulations certain consumer protections related to service outages, especially as transition basic telephone service from a regulated service to a competitive one. Accordingly, we will retain the following regulations: Section 63.55 (Surveillance levels), Section 63.56 (f) and (g) (Measurements), and Section 63.57 (Trouble reports). We view these regulations as necessary to assist the Commission in ensuring Verizon's continued compliance with Code Section 1501 and to manage reasonable customer expectations regarding service outages even in a competitive environment.

We acknowledge the changing telecommunications landscape and how competition has changed reasonable customer expectations regarding service, including the handling of service outages. We believe the existing Section 63.57(b) language provides Verizon with sufficient flexibility to accommodate this changing landscape. Specifically, for outage calls that are non-emergency in nature, Section 63.57(b) expressly permits Verizon and the customer to "agree to another arrangement" than the "substantial action within 24 hours" time frame. We believe this flexibility makes perfect sense in a competitive environment, particularly for those customers that have wireless service and thus, do not rely exclusively on the ILEC's wireline service and would prefer to schedule a repair appointment at a more convenient time than within 24 hours of reporting the trouble.

Lastly, the Commission, as part of its approval of a prior settlement against Verizon PA,<sup>97</sup> granted Verizon PA's request to waive Section 63.59(b)(2) for purposes of calls to the business office.<sup>98</sup> In lieu of following Section 63.59(b)(2), the Commission ordered Verizon PA, for calls to its business office, to comply with the telephone access reporting requirements at 52 Pa. Code § 54.153(b)(1) applicable to electric distribution companies until such time that Section 63.59(b)(2) either is changed or repealed.<sup>99</sup> In light of our granting a waiver of Section 63.59, in full, pending a rulemaking, we will no longer require Verizon to comply with the telephone access reporting requirements in Section 54.153(b)(1) of our regulations.

#### **4. Subchapter F (Extended Area Service) (Section 63.71-63.77) and Subchapter G (Public Coin Service) (Sections 63.91-63.98)**

We specifically waive the following Subchapter F regulations: Section 63.71 (Definitions), Section 63.72 (Traffic usage studies), Section 63.72a (InterLATA traffic studies), Section 63.73 (Optional calling plans), Section 63.74 (EAS polls), Section 63.75 (Subscriber polls), Section 63.76 (EAS complaints), Section 63.77 (Evaluation criteria), Section 63.91 (Purpose), Section 63.92 (Definitions), Section 63.93 (Conditions of service), Section 63.94 (Coin telephone requirements), Section 63.95 (Sufficiency of public telephone service), Section 63.96 (Service requirements for coin telephones), Section 63.97 ([Reserved]) and Section 63.98 (Compliance).

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<sup>97</sup> Docket No. M-2008-2077881 (Opinion and Order entered October 12, 2012).

<sup>98</sup> Section 63.59(b)(2) contains the standards for the speed of answering calls seeking repair service or calls to the business office.

<sup>99</sup> By Order entered on January 10, 2013 at Docket No. P-2012-2333159, this same relief was granted to Verizon North.

These regulations in particular are very outdated. Our extended area service (EAS) regulations, which were developed before the existence of competition in the local market, are no longer enforced by the Commission. The EAS regulations are vestige of an era of predominantly per-minute long distance charges and have been replaced and rendered obsolete by flat rate pricing (e.g., nation-wide calling for a fixed rate), bundled service packages, and competitive alternatives that are not measurable, including wireless and VoIP providers. Similarly, Verizon notes that it no longer provides payphone services in Pennsylvania and that payphones also have been rendered obsolete, particularly by wireless services.<sup>100</sup>

### **C. Chapter 64 Waiver Request**

Chapter 64 contains regulations pertaining to telephone utility interactions with customers, including billing and payment, credit and deposit, suspension, termination, and restoration of service, and complaint handling among other things. According to Verizon, these regulations are no longer needed in a competitive environment. Verizon notes that the cable telephony and wireless providers with whom it competes are not subject to the regulations. Verizon further notes that competitive pressures serve to discipline its interactions with customers, thereby making the regulations no longer necessary.<sup>101</sup>

In response, both the OCA (in main and reply briefing) and CAUSE-PA<sup>102</sup> argue that Chapter 64 contains important protections for consumers, and in particular, low-income consumers. Both the OCA and CAUSE-PA highlight the protections in Subchapters B, C, and E as especially important. Therefore, these parties believe Verizon's waiver request for Chapter 64 should be denied.

We agree that Chapter 64 contains consumer protections related to billing and collections, etc. that were necessary in a monopoly market where Verizon was the lone, dominant facilities-based provider of local voice service. We also agree that some of these protections may be necessary even in a competitive market.

However, with many of these regulations, we believe their importance has diminished in areas where the competitive market provides sufficient incentive for Verizon to meet reasonable customer expectations. We also believe that Verizon's Product Guide applicable to competitive services in Pennsylvania may adequately address certain issues, thereby providing additional support for a waiver.

As with service quality, waiving our Chapter 64 regulations does not mean that the Commission is abandoning its oversight of Verizon's billing and collections practices in competitive wire centers. Similar to quality of service, Verizon is still required by Code Section 1501 to provide reasonable service in competitive wire centers, which includes reasonable billing services. Although the Commission is precluded under Code Section 3016(e) from hearing a complaint solely about a charge for a competitive service, the Commission is not precluded from hearing a customer complaint about certain billing-related issues that, for example, were

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<sup>100</sup> VZ MB at 29.

<sup>101</sup> VZ St. 2.0 at 21-23; VZ MB at 31-33.

<sup>102</sup> CAUSE-PA MB at 30-31.

previously covered by Chapter 64, Subchapters B (Payment and Billing Standards) or C (Credit and Deposit Standards Policy).

Therefore, the Commission agrees to waive the application of Chapter 64 regulations in wire centers determined to be competitive except where such regulations are preserved below.

**1. Subchapter A (Preliminary Provisions) (Sections 64.1 and 64.2)**

Section 64.1 is the statement of purpose and policy regarding Chapter 64. Section 64.2 contains definitions. We believe that most of Section 64.1 is relevant even in a competitive exchange. Therefore, we will waive the first sentence, but retain the rest of the statement of policy. Section 64.2 will be retained to the extent certain provisions elsewhere are retained and that retention implicates the definitions contained in Section 64.2.

**2. Subchapter B (Payment and Billing Standards) (Sections 64.11-64.24)**

Subchapter B governs payment and billing. Specifically, we waive the following Subchapter B regulations as no longer needed in a competitive environment: Section 64.11 (Method of Payment), Section 63.12 (Due date for payment), Section 64.13 (Billing frequency), Section 64.14 (Billing information), Section 64.15 (Advance payments), Section 64.16 (Accrual of late payment charges), Section 64.17 (Partial payments for current bills), Section 64.18 (Application of partial payments between past and current bills), Section 64.19 (Rebilling), Section 64.20 (Transfer of accounts), Section 64.21 ([Reserved]), and Section 64.22 (Billing service for interexchange carriers). We note, for example, that Verizon Product Guide, Section 1 Original Sheets 5 and 6, applicable to basic local exchange services in competitive wire centers in both Verizon service territories in Pennsylvania addresses several of these Subchapter B payment-related issues, including method of payment and late payment charges.

We recognize that Subchapter B includes some important consumer protections related to slamming and cramming that remain relevant in a competitive market. Therefore, we do not support waiving Section 64.23 (cramming/slamming). We also note that Verizon is required to comply with the federal truth-in-billing requirements at 47 C.F.R. § 64.2401 applicable to bills issued by telecommunications carriers containing charges for intrastate or interstate services. The stated purpose of these regulations is to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service. These rules are also intended to aid customers in understanding their telecommunications bills and to provide them with the tools they need to make informed choices in the market for telecommunications service.<sup>103</sup>

CWA/IBEW points out that this subchapter contains a provision addressing bundled services – Section 64.24. CWA/IBEW notes that this regulation allows bundled service customers who fail to pay their bills in full to retain their basic service component as opposed to having their entire package terminated.<sup>104</sup> We agree that Section 64.24 contains important consumer protections that remain relevant in a competitive market, where there has been a

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<sup>103</sup> 47 C.F.R. § 64.2400(a).

<sup>104</sup> CWA/IBEW St. 1.0 at 11.

proliferation of bundled service packages. Therefore, we deny Verizon's waiver request for this specific regulation.

### **3. Subchapter C (Credit and Deposit Standards Policy) (Sections 64.31-64.41)**

Subchapter C governs credit and deposit standards. Specifically, we waive the following Subchapter C regulations as no longer necessary: Section 64.31 (LEC credit and deposit policies), Section 64.32 (Credit standards), Section 64.33 (Payment of outstanding balance), Section 64.34 (Written procedures), Section 64.35 (Deposit requirements for existing customers), Section 64.36 (Method of making deposit), Section 64.37 (Refund of deposits), Section 64.38 (Application of deposit to bills), Section 64.39 (Periodic review), Section 64.40 (Refund statement), and Section 64.41 (Interest).

We recognize that especially as we transition from a regulated to competitive market for basic local exchange service, there is value in ensuring that interested customers have access to relevant information about their services, including Verizon's credit/deposit standards. We believe making this information readily available in some form other than a regulation will help to manage reasonable customer expectations. We take notice of Section 1, Original Sheet 1 of Verizon PA's and Verizon North's Product Guide, which applies to competitive services and which specifies that Verizon will use a credit check to determine creditworthiness. To the extent that the Product Guide does not address Verizon's policies and procedures applicable to applicants for service that are not deemed creditworthy, we believe such information should be added to the Product Guide. Therefore, we grant our waiver of this subchapter conditionally, upon the following requirement that Verizon provide information in its Product Guide about what happens if an applicant for service is not deemed to be creditworthy.

### **4. Subchapter D (Interruption and Discontinuation of Service) (Sections 64.51-64.53)**

Subchapter D governs temporary service interruptions and discontinuation of service. Specifically, we waive the following Subchapter D regulations because they are no longer necessary: Section 64.52 (Refunds for service interruptions) and Section 64.53 (Discontinuance of service). We note that Verizon's Product Guide, Section 1 Original Sheet 6, applicable to basic local exchange services in competitive wire centers in both Verizon service territories in Pennsylvania addresses refunds for service interruptions and customer-initiated discontinuation of service.

Regarding Section 64.51 (Temporary interruption), CWA/IBEW argues that it should be retained.<sup>105</sup> Section 64.51 allows Verizon to interrupt service to a customer under emergency conditions and for critical maintenance purposes. The regulation requires Verizon to give notice to customers (if possible) and to keep the interruption as short as possible. We agree that Verizon must have the ability to interrupt service to perform essential maintenance or repair work, and should make sure that work is done quickly and safely. Therefore, we agree that this regulation should not be waived.

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<sup>105</sup> CWA/IBEW MB at 41.

## **5. Subchapter E – Suspension of Service (64.61-64.111)**

### **Subchapter F – Termination of Service (64.121-64.123)**

### **Subchapter H – Restoration of Service (64.181 and 64.182)**

Subchapter E governs grounds for suspension of service and notice procedures prior to suspension of service. Specifically, Subchapter E regulations are as follows: Section 64.61 (Authorized suspension of service), Section 64.62 (Days suspension or termination of service are prohibited), Section 64.63 (Unauthorized suspension of service), Section 64.71 (General notice provisions), Section 64.72 (Suspension notice information), Section 64.73 (Notice when dispute pending), Section 64.74 (Procedures upon customer contact before suspension), Section 64.75 (Exception for suspension based on occurrences harmful to person or property), Section 64.81 (Limited notice upon noncompliance with report or order), Section 64.101 (General provision), Section 64.102 (Postponement of suspension pending receipt of certificate), Section 64.103 (Medical certification), Section 64.104 (Length of postponement), Section 64.105 (Restoration of service), Section 64.106 (Duty of customer to pay bills), Section 64.107 (Suspension upon expiration of medical certification), Section 64.108 (Right of LEC to petition the Commission), Section 64.109 (Suspension prior to expiration of medical certification), and Section 64.111 (Third-party notification).

Subchapter F governs grounds for termination of service and the termination process. Specifically, the Subchapter F regulations are Section 64.121 (Authorized termination of service), Section 64.122 (Unauthorized termination of service when dispute pending), and Section 64.123 (Termination notice). Subchapter H governs restoration of service after both suspension of service (Section 64.181) and termination of service (Section 64.182).

Upon review, we will waive the following Subchapter E regulations pertaining to grounds for suspension of service and certain notice procedures: Section 64.61, Section 64.63, except for subsection (10) relating to medical certificates, Section 64.72, Section 64.73, Section 64.74, and Section 64.81. We shall also waive all provisions in Subchapters F and H. In short, we believe these provisions are no longer needed in a competitive telecommunications world. We note that grounds for suspension/termination of service are addressed in Verizon PA's and Verizon North's Product Guide applicable to competitive services in Pennsylvania at Section 1, Original Sheets 4 and 4.1, while termination of service is addressed in Section 29 of the Product Guide.

We deny Verizon's waiver request for the following Subchapter E regulations, which we believe remain relevant in competitive wire centers: Section 64.62 (Days suspension or termination of service is prohibited), Section 64.71 containing notice requirements prior to suspension of service, and Section 64.75 that creates an exception to suspension of service based on occurrences harmful to persons or property. As part of providing reasonable service, we believe that Verizon should continue to comply with the days services cannot be suspended or terminated under Section 64.62 and the written notice requirement prior to suspending service under Section 64.71. We also retain the Subchapter E emergency provisions at Sections 64.101-64.111, given the potential impacts of suspension of service on customers with serious medical

conditions. Without any data showing decreasing customer reliance on these emergency-related provisions, we are reluctant to waive them.

## **6. Subchapter G – Disputes; Informal and Formal Complaints (64.131-64.171)**

Subchapter G governs informal and formal complaint procedures. Specifically, Subchapter G regulations are as follows:

- General Provisions-Section 64.131 (Dispute procedures), Section 64.132 (Time for registering dispute), Section 64.133 (Termination stayed), and Section 64.134 (Effect of failure to timely register a termination dispute).
- Telephone Company Dispute Procedures-Section 64.141 (General rule) and Section 64.142 (Contents of written summary by the LEC).
- Informal Complaint Procedures- Section 64.151 (Time for filing), Section 64.152 (Informal complaint filing procedures), Section 64.81 (Limited notice upon noncompliance with report or order), Section 64.153 (Commission informal complaint procedures), and Section 64.154 (Bureau of Consumer Services).
- Formal Complaints- Section 64.161 (General rule), Section 64.162 (Time for filing), and Section 64.163 (Formal complaint procedures).
- Payment of Bills Pending Resolution of Disputes and Complaints- Section 64.171 (Duties of parties; undisputed portion of bills; interest on overpayments).

We do not support granting a waiver of Subchapter G. For starters, we note that customers have a right to file either an informal complaint or a formal complaint with the Commission about their service.<sup>106</sup> Therefore, we believe that having a process in place at the Commission for handling both formal and informal complaints remains necessary. Otherwise, if we were to waive these regulations, the Commission and interested parties for example, would be without a process governing the handling of informal complaints. Therefore, in the absence of any alternative proposal to take the place of the processes in Subchapter G, we do not support a waiver of the Subchapter G.

Nevertheless, in an attempt to streamline the process and ensure that any service or billing-related issues of Verizon customers are addressed as quickly as possible, we will make what is called the “warm transfer” option available for all informal complaints made to the Commission’s BCS by retail customers in competitive wire centers against Verizon.<sup>107</sup> Under this process, a retail customer who calls BCS to file an informal complaint against Verizon

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<sup>106</sup> See 66 Pa. C.S. § 308.1 (The commission shall promulgate regulations by which a consumer may make informal complaints). See also 66 Pa. C.S. § 701 (. . . any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.).

<sup>107</sup> Currently, this process is only available for service-related complaints.

would be given the option to transfer the call to Verizon to attempt to resolve the customer's issue instead of filing an informal complaint.

## **7. Subchapter I – Public Information; Record Maintenance (64.191 and 64.192)**

Subchapter I contains two provisions: Section 64.191 (Public information) and Section 64.192 (Record maintenance). We shall waive Section 64.191(f) and (g)<sup>108</sup> and Section 64.192 as no longer necessary in a competitive environment. However, we shall retain Section 64.191(a)-(d). These regulatory provisions govern applications for service and specify what the LEC must disclose to a potential customer about its available services. We believe this regulation is still relevant in competitive wire centers and is similar to the requirement of fair marketing, which we also require of electric generation suppliers and natural gas suppliers.<sup>109</sup>

## **8. Subchapter J – Annual Reporting Requirements (64.201 and 64.202)**

Subchapter J contains two provisions: Section 64.201 (Reporting requirements) and Section 64.202 (Petition for waiver). We shall waive parts of Section 64.201 as no longer necessary in a competitive environment. However, we believe the parts of this regulation requiring the reporting of certain information related to basic local exchange service remains relevant and should apply in competitive wire centers. Therefore, we will require Verizon in competitive wire centers to continue to comply with Section 64.201(a) and the following Section 64.201(b) provisions: (b)(2)(i), (b)(4)(i), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9)(i), and (b)(10)(i). All remaining Section 64.201(b) provisions are waived.

We also shall retain Section 64.202, given that some Chapter 64 regulations remain in place and thus, the waiver issue remains relevant.

## **9. Subchapter K – General Provisions (64.211-64.213)**

Subchapter K contains three provisions: Section 64.211 (Availability of normal Commission procedures), Section 64.212 (Applications for modification or exception), and Section 64.213 (Repealers). We shall waive this general provision section but not Sections 64.212 and 64.213. Because certain Chapter 64 provisions are kept, Section 64.212, governing waiver requests, and Section 64.213, governing the effect of tariff provisions that are inconsistent, potentially still have use.

### **D. Waiver Process**

As previously discussed, the relevant regulations will be waived for five years in competitive wire centers, pending data collection and a rulemaking to address the status of these chapters for noncompetitive and competitive services on a permanent and industry-wide basis.

<sup>108</sup> The Commission previously granted Verizon a waiver of Section 64.191(e) based on the same competitive market realities of increasing competition that are the basis of the Petitions. *Joint Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for a Waiver of the Commission's Order Dated May 9, 1997, et al.*, Docket Nos. I-00940034 and P-00072348 (Tentative Order entered September 24, 2008, that per Secretarial Letter dated January 22, 2009 became Final October 6, 2008).

<sup>109</sup> See, e.g., 52 Pa. Code § 54.43(1) and 52 Pa. Code § 62.114(1).

Moreover, as discussed in more detail below, the waiver shall also apply to CLECs operating in competitive wire centers.

We believe that granting a waiver of certain regulations in wire centers determined to be competitive does not violate applicable law governing the promulgation of regulations.<sup>110</sup> Our conclusion is based on the limited scope of the waiver, as applying only to Verizon and CLECs operating in wire centers that are found to be competitive. Moreover, the waivers are not permanent. Rather, the waivers are granted for five years, pending data collection and a rulemaking to determine what service regulations, if any, should apply in competitive and non-competitive wire centers.

On data collection, we will be seeking two years-worth of data to help us and interested parties assess how the market is doing in wire centers determined to be competitive. The Commission will subsequently seek comment from interested parties on the specific data/information that we should require to assess how the market is faring. At this juncture, we plan on seeking data from Verizon related to two main topics: affordability of basic service and quality of service. On affordability, the Commission will be seeking comment on what additional information, if any, should be collected in addition to the information contained in Verizon's price list and the information in the Section 64.201 annual report for basic service. In terms of timing, we expect responses to the data/information requests will cover years 2015 and 2016 individually and will be due on or around April 1, 2017.

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

### **A. Price Change Opportunity (PCO)**

OCA submits that a *pro rata* share of switched access revenues attributable to Verizon's competitively reclassified wire centers should be removed from the calculations it makes in future PCO Filings when submitting future rate change requests for the geographic areas not covered by its Petition. OCA acknowledges that its concerns are somewhat tempered by Verizon's statement that its intrastate switched access revenues will decline as it implements the *USF/ICC Transformation Order*. Nonetheless, OCA asseverates that the Commission should consider the future impact that a grant of competitive reclassification would have on Verizon's remaining customers whose rates for protected services would still be set according to Verizon PA's and Verizon North's PCO formulas.<sup>111</sup>

Verizon refutes the OCA's assertion that its PCO formula should be adjusted as a condition of granting its Petition. Verizon points out that this formula has always included all of its intrastate switched access revenue in the "total noncompetitive revenue" base, including switched access revenue attributable to lines that purchase competitive retail services. Verizon argues that nothing in Chapter 30 requires the PCO formula to be altered when a geographic area is deemed competitive. Further, Verizon points out that its intrastate terminating switched access revenues will continue to decline as the FCC's *USF/ICC Transformation Order* is implemented,

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<sup>110</sup> See, the Regulatory Review Act, 71 P.S. §§ 745.1 *et seq.*, the Commonwealth Documents Law, 45 P.S. §§ 1201 *et seq.*, and the Commonwealth Attorneys Act, 71 P.S. §§ 732-204.

<sup>111</sup> OCA MB at 46-47.

thereby reducing the impact of switched access revenues on the PCO Formula.<sup>112</sup> Verizon points out that the Commission and the OCA will have the ability to review Verizon's future PCO filings and to address any concerns at that time.<sup>113</sup>

Upon review, we do not believe it is necessary to address this issue as part of this proceeding. Rather, the impact of converting these wire centers to a competitive status upon the rates established under Verizon's price cap formula in non-competitive exchanges shall be addressed in Verizon's next PCO filings (Verizon PA and North).

## **B. Wholesale Issues**

FSN contends that granting Verizon's petition and permitting Verizon to de-tariff basic local exchange service has the potential to adversely impact carriers like FSN who offer products and services on a resale basis.<sup>114</sup> FSN argues that if the Commission approves Verizon's Petition to determine the relevant wire centers as competitive, it should direct Verizon to continue to make all reclassified retail services available at the currently applicable wholesale discount rate. FSN also asserts that Verizon should be directed to provide wholesale customers like FSN with thirty days' notice of any changes to its retail products reclassified as competitive, as opposed to only a one days' notice.<sup>115</sup>

Verizon responds that it does not request any changes to its wholesale and interconnection obligations, nor does it seek reclassification of any wholesale services, including switched or special access, as competitive. Further, Verizon seeks no change to the wholesale services and unbundled network elements it makes available to CLECs pursuant to 47 U.S.C §§ 251 and 252. Accordingly, Verizon argues that wholesale issues need not be addressed under this proceeding.<sup>116</sup>

On the notice issue, Verizon asserts that if its Petition is granted and it chooses to de-tariff the services it reclassifies as competitive, it will continue to file price lists for any such services. Verizon argues that it is authorized under Chapter 30 to file changes to such price lists on a one days' notice. Verizon points out that its Price Lists are publicly available and that it maintains the rates, terms, and conditions of its de-tariffed competitive services on its website.<sup>117</sup>

For starters, we note agreement by Verizon and FSN that any waiver of our regulations discussed above that is applicable in the wire centers subject to the Petition should apply to CLECs as well.<sup>118</sup> We agree. We also confirm that Verizon seeks no change to the wholesale services and unbundled network elements it makes available to CLECs pursuant to 47 U.S.C §§ 251 and 252. Therefore, we need not address this issue at this time.

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<sup>112</sup> Verizon MB at 33-34.

<sup>113</sup> Verizon RB at 17.

<sup>114</sup> FSN MB at 14-15.

<sup>115</sup> FSN RB at 1.

<sup>116</sup> Verizon MB at 34.

<sup>117</sup> Verizon RB at 17-18.

<sup>118</sup> Verizon RB at 17.

Regarding the notice required for changes to price lists that implicate a reseller's wholesale discount rate provided by Verizon, we shall require Verizon to file with the Commission rate sheets for basic services upon one day's notice as we have done with other competitive services. In the event of a change in local service rates in a competitive exchange, Verizon shall be required to give 30 days' advance notice to retail customers receiving such service. This same 30 days' notice of a retail price change shall be given to CLEC's purchasing discounted local service in the wire centers. That way, Verizon is providing the same notice to both its affected retail customers and affected CLECs, whose wholesale prices are tied to Verizon's retail rates.

### **C. Originating Intrastate Switched Access Charges**

AT&T attempts to use this proceeding to get the Commission to address originating access charge reform. In an attempt to reduce originating access charges in the Verizon service territories, AT&T argues that to obtain a competitive designation, Verizon must show in advance that it will not violate Code Section 3016(f)(1), which states that noncompetitive service revenues cannot subsidize competitive service revenues. AT&T argues that once the wire centers subject to the Petition are declared competitive, Verizon's local exchange service will be improperly subsidized by noncompetitive intrastate access revenues, in violation of Section 3016(f)(1). To cure this deficiency, AT&T asserts that Verizon's intrastate originating access rates should be reduced immediately to parity with interstate originating access rates.<sup>119</sup> For consistency, AT&T further asserts that the Commission should simultaneously require all RLECs to reduce their originating access rates as soon as possible and should require CLECs to mirror Verizon's newly reformed rate structure.<sup>120</sup>

Verizon responds that this proceeding is not the appropriate forum for AT&T to seek originating access reform and notes that AT&T already has a separate open proceeding with the Commission at Docket No. C-200027195 to discuss such matters.<sup>121</sup> Verizon points out that issues relating to access rates are complex, combative, and have an industry-wide impact. As such, Verizon contends that the record need not be made complicated by their inclusion.

Verizon further responds that even if AT&T were allowed to raise the issue, AT&T has not met its burden of proof that Verizon has violated Section 3016(f)(1).<sup>122</sup> Specifically, AT&T has not provided any cost studies or actual evidence of an improper subsidy here. Rather, AT&T's "evidence" consists of nothing more than a description of regulatory history without any cost studies or current facts or data. AT&T believes the "price of admission" for a competitive classification is to "give up" any subsidies in competitive areas. However, AT&T has not provided any credible supporting evidence that there are any subsidies to be given up.

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<sup>119</sup> AT&T MB at 5-12.

<sup>120</sup> AT&T St. 1.0 at 9, n. 3 and 17, n. 11.

<sup>121</sup> VZ MB at 36.

<sup>122</sup> VZ MB at 36-37 and VZ RB at 19-20.

OCA opposes AT&T's request that the Commission direct Verizon to reduce intrastate originating access charges in this proceeding.<sup>123</sup> In the OCA's view, such a request is beyond the scope of Verizon's reclassification Petition, which was filed pursuant to Section 3016(a) and is subject to a narrow focus within a window of time. Further, OCA notes that many of the issues AT&T attempts to raise are pending before the Commission in AT&T's complaint case at Docket No. C-200027195. OCA points out that Verizon's originating access charges are protected services at tariffed rates and argues that AT&T must file a formal complaint if it feels that such rates are unjust and unreasonable and are in violation of Sections 1301 and 3016(f) of the Code. Further, OCA contends that AT&T has set forth no cost studies in support of its claims regarding cross subsidization.

According to PTA, AT&T's attempt to expand the scope of Verizon's Petition to include the issue of intrastate originating access charge reform is improper and should be rejected by the Commission regardless of whether it grants Verizon's Petition. PTA argues that AT&T provides no support for its claim that originating access charges are tied to the prohibitions set forth under Section 3016(f) of the Code or that intrastate originating access charge reform is a prerequisite to granting Verizon's Petition. Further, PTA argues that the record does not support any of AT&T's claims regarding the originating access rates of RLECs and other non-Verizon entities, including those who are not parties to this proceeding. In PTA's view, the Commission should refrain from considering or addressing the matter of originating switched access reform until the FCC does so.<sup>124</sup>

We agree with Verizon, the PTA and the OCA that the originating access issue raised by AT&T is beyond the scope of this proceeding and should not be addressed as part of our decision on the Petition. As noted, Verizon's Petition does not seek a finding that its intrastate switched and special access rates and services and the ordering, installation, restoration, and disconnection of such access services are competitive. We have previously deferred the generic topic of originating access to the FCC's open docket on this matter and are not inclined to revise that position.<sup>125</sup>

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<sup>123</sup> VZ MB at 48-49.

<sup>124</sup> PTA MB at 2 and 5-7.

<sup>125</sup> See also, *Implementation of the Federal Communications Commission's Order of November 18, 2011 As Amended Or Revised And Coordination With Certain Intrastate Matters*, M-2012-2291824, Consolidated Short Form And Protective Order entered May 10, 2012 at 8 ("In view of the drastic impacts that the *FCC Order* has had on the measured intrastate access reforms adopted with our July 18, 2011 Order, and in view of the further FCC actions contemplated in the area of intercarrier compensation for originating traffic, we are reluctant at this time to engage in any actions affecting intrastate switched carrier access rates for originating traffic."); *Id.*, Opinion And Order entered August 9, 2012.

## VI. Summary

Verizon filed with the Commission a Joint 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 certain areas in their Philadelphia, Erie, Scranton/Wilkes-Barre, Harrisburg, Pittsburgh, Allentown and York service regions. Essentially, Verizon seeks a determination that its basic local exchange service is competitive in 194 wire centers in Pennsylvania. Verizon in its Petition also requests an eleven year waiver of all of Chapter 64 and parts of Chapter 63 of the Commission's regulations.

Section 3016(a) of Chapter 30 permits the Commission, after a review of all relevant evidence presented, to declare a "protected service" as competitive where an ILEC has demonstrated the availability of like or substitute services or other business activities provided or offered by alternative service providers. Thus, the key inquiry for competitive determination purposes is whether "like or substitute services" to basic local exchange service are sufficiently available in the wire centers subject to the Petition.

We believe the overwhelming record evidence is that competing cable telephony and wireless voice services are "like or substitute services" to basic local exchange service. In determining what constitutes a "like substitute service, what matters most is whether the products are "good substitutes for one another in the eyes of the buyers."<sup>126</sup> In this case, the incontrovertible evidence shows that, *in the eyes of consumers*, the numerous competitive choices offered by cable telephony and wireless providers are like or substitute services for the incumbent LEC's basic local exchange service. Thus, regardless of any technological or economic differences that may exist between Verizon's traditional basic voice service and the competing cable telephony and wireless voice services, the bottom line is that consumers clearly view these competing services as adequate replacements for basic service.

We also believe Verizon has demonstrated widespread availability of cable telephony and wireless voice service in 153 of the 194 wire centers subject to the Petition. The record evidence shows that in these wire centers, at least 97 percent or more of the households have access to cable telephony, while wireless voice service are ubiquitously available. Therefore, we will classify as competitive 153 wire centers and will not classify as competitive 41 wire centers that appear in CWA/IBEW's Table 2 of its Main Brief.

Chapter 30 is clear that the primary impact of a competitive determination is two-fold: Verizon may price a competitive service at its discretion (as long as it is above cost) and Verizon may maintain a price list of a competitive service rather than maintaining a Commission-approved tariff.<sup>127</sup> A competitive determination, however, does not equate to complete deregulation of the service. Thus, with the exception of rate regulation and tariffing, the Commission's Title 66 authority remains over basic local exchange service in competitive wire centers, including over the ordering, installation, restoration, and discontinuation of the service. Moreover, in accordance with Chapter 30, Verizon will be required to maintain at the

<sup>126</sup> Verizon MB at 12, citing IBEW St. 1.0 at 18-19.

<sup>127</sup> See 66 Pa. C.S. §§ 3016(d) and (e).

Commission price lists for its de-tariffed basic local exchange service in competitive wire centers.

We are also granting Verizon's request to waive certain Chapter 63 and Chapter 64 regulations from applying in competitive wire centers. The waiver period will be for a period of five years, pending data collection and a rulemaking to address the status of these chapters for noncompetitive and competitive services on a permanent and industry-wide basis. The waiver will also apply to competitive LECs operating in the 153 wire centers determined to be competitive.

For starters, granting the waiver brings Verizon closer to regulatory parity with competing providers whose retail services are not subject to Commission jurisdiction. Moreover, many of the regulations that we are waiving no longer make sense in a competitive environment. Here, the record clearly demonstrates that sufficient competition exists in the wire centers subject to the Petition. Where sufficient competition exists, we believe regulation is not needed and should be either reduced or even discontinued. Thus, we find that the burdens of complying with outdated regulations with which Verizon's competitors do not have to comply is an "unreasonable hardship" that justifies granting a waiver of certain regulations.

We note that our action on the waiver request is not intended to serve as an abandonment of our regulatory responsibilities. Rather, our action on the waiver is an attempt to streamline our regulation of Verizon's basic local exchange service to reflect the competitive environment that exists in the 153 wire centers contained in this Joint Motion.

At the same time, we are maintaining certain consumer protections that we believe are necessary as we transition basic local exchange service to a competitive service. These consumer protections include:

- Confirming that a competitive determination does not change Verizon's Carrier of Last Resort or COLR obligation in competitive wire centers;
- Confirming that Verizon's COLR obligation includes maintaining a basic, stand-alone telephone service offering to customers in competitive wire centers;
- Confirming that a competitive determination does not impact Verizon's E-911 obligation in competitive wire centers;
- Confirming that a competitive determination does not alter Verizon's Chapter 30 Plan commitments, including the provision of ubiquitous broadband service;
- Ensuring that Verizon addresses certain consumer protection-related issues in its Product Guide that will memorialize the rates, terms, and conditions of basic telephone service in competitive wire centers;
- Maintaining certain consumer protections in Chapters 63 and 64 of our regulations that remain relevant in a competitive telecommunications market, including regulations related to service outages and suspension/termination of service;

- Taking additional steps, including data collection and initiating a rulemaking, to determine what service regulations should apply, long-term, in noncompetitive and competitive wire centers.

Today's decision is an important step towards modernizing how we regulate telecommunications in Pennsylvania. The telecommunications marketplace is a dynamic and fast changing segment of both the Pennsylvania and National economies. As the record in this case shows, the communications options for today's consumers have expanded beyond traditional voice-only service offered by incumbent carriers to include a variety of new service options and providers. With the proliferation of service bundles and the rising popularity of both wireline and wireless providers offering competing products and services, consumers now have an array of options to meet their communications needs. We believe the Commission's regulation of basic local exchange service should reflect these market developments.

**THEREFORE, WE MOVE THAT:**

1. The Verizon Pennsylvania LLC and Verizon North LLC Joint Petition for Competitive Classification of all Retail Services in Certain Geographic Areas is granted in part and denied in part, consistent with this Joint Motion;
2. The Verizon Pennsylvania LLC and Verizon North LLC Joint Petition for Waiver of Regulations for Competitive Services is granted in part and denied in part, consistent with this Joint Motion;
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

  
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ROBERT F. POWELSON  
CHAIRMAN

  
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JOHN F. COLEMAN, JR.  
VICE CHAIRMAN

**Date: February 26, 2015**