

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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**MAIN BRIEF  
OF  
COMMUNICATIONS WORKERS OF AMERICA  
AND  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

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## **I. STATEMENT OF THE CASE**

On October 6, 2014, Verizon Pennsylvania LLC ("Verizon PA") and Verizon North LLC ("Verizon North") (collectively "Verizon") filed a Joint Petition seeking two types of relief. First, pursuant to 66 Pa. C.S. § 3016(a), Verizon asked that basic local exchange service be classified as competitive in 194 wire centers. Second, Verizon asked to waive for a period of nearly 11 years (through December 31, 2025) certain regulations of the Pennsylvania Public Utility Commission ("Commission") in any wire centers where basic local exchange service is classified as competitive.

The Communications Workers of America ("CWA") and International Brotherhood of Electrical Workers ("IBEW") (collectively "CWA-IBEW") filed a Protest and Answer to the Joint Petition on October 20, 2014. CWA-IBEW represent thousands of employees of Verizon and are concerned that the Joint Petition would diminish the safety and reliability of service provided to the public and the safety of CWA-IBEW members who maintain and repair Verizon's telecommunications network throughout Pennsylvania.

In addition, the Office of Consumer Advocate ("OCA"), Full Service Network, and AT&T Corp. actively participated in this proceeding.

Verizon submitted the testimony of one witness, Paul Vasington, the Director of State Policy for Verizon. Verizon St. 1.0 (Direct Testimony) and Verizon St. 2.0 (Rebuttal Testimony).

CWA-IBEW submitted the testimony of four witnesses: Susan Baldwin, an independent consultant specializing in telecommunications economics, regulation, and public policy with

more than 30 years of experience (CWA-IBEW St. 1 [Direct Testimony] and CWA-IBEW St. 1S [Surrebuttal Testimony]); Jeremy Dvorak, the Business Manager of IBEW Local 1637 in Erie which represents employees of Verizon North (CWA-IBEW St. 2); James Gardler, the President of CWA Local 13000, based in Philadelphia and representing more than 4,000 employees of Verizon PA (CWA-IBEW St. 3); and Richard Dezzi, the Eastern Region Vice President for Local 13000, working closely with Verizon PA employees in the Allentown-Bethlehem-Easton, Scranton-Wilkes-Barre, and Philadelphia metropolitan areas (CWA-IBEW St. 4).

An evidentiary hearing was held in Harrisburg on December 17, 2014, during which Mr. Vasington and Ms. Baldwin, as well as witnesses from AT&T and OCA, were cross-examined. The testimonies of the remaining CWA-IBEW witnesses were admitted into the record by stipulation of the parties.

## **II. SUMMARY OF ARGUMENT**

Verizon has failed to meet its burden of proof that the provision of stand-alone basic local exchange service is competitive anywhere in Pennsylvania. Verizon cannot demonstrate that any other company is providing a stand-alone basic service product that is reasonably comparable to Verizon's stand-alone dial-tone service. While other companies compete with Verizon in certain segments of the residential and business markets, no other company provides universal access to basic dial-tone service.

Moreover, even if Verizon had met its burden of showing that there is some competition for basic dial-tone service in some parts of Pennsylvania (a burden that Verizon has not met), Verizon has not shown that such competition exists in each of the 194 wire centers included in its Joint Petition. In fact, the record evidence shows that Verizon has included dozens of wire

centers where all customers do not have access to cable telephony. Despite Verizon's assertions that its Joint Petition focuses solely on urban and suburban areas, Verizon actually included numerous wire centers that are classified as rural by the Center for Rural Pennsylvania. In addition, Verizon has included dozens of other wire centers where despite the alleged presence of competitors, Verizon and its affiliates still control at least two-thirds of the market for residential telephone service. When all of this evidence is considered, even if Verizon had shown that there were competitors for basic dial-tone service, the evidence supports a finding of such competition in only 21 wire centers in Pennsylvania, not the 194 wire centers Verizon claims.

Finally, Verizon's request to waive the applicability of certain regulations through December 31, 2025, should be denied. Verizon has not demonstrated that it will suffer "unreasonable hardship" if it is required to continue to comply with the regulations, or that it is otherwise unable to comply in a reasonable manner. Moreover, some of the regulations Verizon seeks to waive would have a direct and adverse effect on the safety and reliability of the network, potentially causing harm to utility employees who must maintain and repair the network, and the public that comes in contact with network facilities. While CWA-IBEW would not oppose the opening of a rulemaking proceeding to examine whether certain telecommunications regulations might be in need of revision, no such changes should be made in the context of this case where Verizon has requested a long-term exemption from the regulations without any showing of unreasonable hardship from continued compliance.

### **III. ARGUMENT**

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

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

Verizon filed its petition for competitive classification under 66 Pa. C.S. § 3016(a). That statute permits Verizon to "petition the commission for a determination of whether a protected or retail noncompetitive service or other business activity in ... a particular geographic area, exchange or group of exchanges or density cell within its service territory is competitive based on the demonstrated availability of like or substitute services or other business activities provided or offered by alternative service providers." 66 Pa. C.S. § 3016(a)(1).

The statute requires Verizon to bear the "burden of proving that a protected or retail noncompetitive service or other business activity is competitive." 66 Pa. C.S. § 3016(a)(4).

Further, the statute contains a directive to the Commission about the evidence it must consider in ruling on Verizon's request, stating: "In making its determination, the commission shall consider all relevant information submitted to it, including the availability of like or substitute services or other business activities, and shall limit its determination to the service territory or particular geographic area, exchange or group of exchanges or density cell in which the service or other business activity has been proved to be competitive." 66 Pa. C.S. § 3016(a)(3).

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

- a) *Evidence must be limited to the specific wire centers included in Verizon's Joint Petition*

Verizon has the burden of proving that basic local dial-tone service in each of the 194 wire centers included in its Joint Petition is competitive. Verizon suggests that the only relevant consideration is whether "like or substitute services or other business activities" are provided by unaffiliated companies. See, e.g., Verizon St. 1.0 at 3:6-25 and Verizon St. 2.0 at 1:16-23.<sup>1</sup> In doing so, Verizon cites at length from national and statewide statistics that it claims show the extent of competition for certain types of telecommunications services. See, e.g., Verizon St. 1.0 at 7:1 through 22:4 and Verizon St. 2.0 at 2:1-19 and 12:4 to 18:9.

Such information, however, is irrelevant to the Commission's determination in this case. The statute directs the Commission to "consider all relevant information submitted to it, including the availability of like or substitute services or other business activities, and shall limit its determination to the service territory or particular geographic area, exchange or group of exchanges or density cell in which the service or other business activity has been proved to be competitive." 66 Pa. C.S. § 3016(a)(3) (emphasis added). In other words, the Commission must consider evidence related to the presence or absence of competition in the 194 specific wire centers Verizon included in its Joint Petition. What may or may not be happening in other parts of Pennsylvania or nationwide is irrelevant and cannot be relied upon by the Commission in making its determination.

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<sup>1</sup> For ease of reference, written testimony and transcripts will be cited to page and line numbers in the following format *p:l*, where *p* is the page number and *l* is the line number.

b) *Verizon has not shown that cable telephony and wireless service are "like or substitute" services for basic dial-tone service*

Verizon's Joint Petition is based on the flawed assumption that cable telephony and wireless service are similar enough to basic dial-tone service as to constitute "like or substitute" services. Verizon, however, never defines the attributes of basic dial-tone service. Without an understanding of those attributes, it is not possible to properly evaluate other services to determine if they are "like or substitute" services, as required by the statute.

CWA-IBEW's expert witness, Susan Baldwin,<sup>2</sup> explained as follows the fundamental characteristics of basic dial-tone service:

There has been, for over a century, a broadly shared understanding that all customers, regardless of their location in the state, should have access to the public switched telephone network at just and reasonable rates, that this service be affordable (consistent with the goal of universal service) and that it be available to all on a non-discriminatory basis. Public safety and public welfare considerations require that service quality and reliability on the ILEC's network be maintained.

CWA-IBEW St. 1 at 16:8-13.

Importantly, these same goals have been adopted as the law in Pennsylvania. Chapter 30 of the Public Utility Code begins with a Declaration of Policy that includes the following: "[I]t is the policy of this Commonwealth to: ... (2) Maintain universal telecommunications service at affordable rates ... [and] (3) Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis." 66 Pa. C.S. § 3011.

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<sup>2</sup> Susan Baldwin is a graduate of Wellesley College and holds Master's degrees in public policy from Harvard University and economics from Boston University. She has testified as an expert witness in telecommunications economics and policy before more than 20 state utility commissions and the Federal Communications Commission. In her more than 30 years of experience, she has published dozens of scholarly papers, submitted expert testimony in more than 65 proceedings, and testified before state legislative committees in four states. Her complete curriculum vitae is appended to her Direct Testimony (CWA-IBEW St. 1) as Attachment A.

Ms. Baldwin continued by explaining the specific service characteristics that consumers require in order for a service to substitute for basic dial-tone service. Foremost among these characteristics are safety and reliability, which include "the ability to operate without an independent electric power supply, a dedicated access connection to the local wire center ... and a reliable E-911 interface." CWA-IBEW St. 1 at 16:20 to 17:1.

These basic safety and reliability characteristics of basic dial-tone service are missing from both cable telephony and wireless telephony -- the two services on which Verizon relies for its claim of competition for basic dial-tone service in 194 wire centers.

Specifically, neither cable telephony nor wireless service can operate reliably during power outages. Ms. Baldwin cited cable companies' own web sites to demonstrate this fact, including the following warnings to consumers: "Service (including 911/emergency services) may not function after an extended power outage." (Comcast) "Modem uses household electrical power to operate. Telephone service, including access to e911 service, will not be available during a power outage without a battery or if the modem is moved or inoperable. New modem installs do not come with a battery." (Cox) CWA-IBEW St. 1 at 35:8-14. See also the FCC's warning to consumers about cable telephony and other voice over Internet protocol ("VoIP") services: "VoIP service may not work during a power outage, or when the Internet connection fails or becomes overloaded." *Id.* at 36:2-4.

Similarly, wireless networks lack the ability to function during prolonged power outages, do not have reliable access to E911, and may not be available during emergencies when telecommunications is needed the most. Ms. Baldwin pointed to the following factors, among others, to demonstrate that wireless telephony does not provide the same level of safety and reliability as wired basic dial-tone service:

- Roughly one in four cell towers were inoperable during Superstorm Sandy.
- On September 26, 2013 the FCC released a Notice of Proposed Rulemaking proposing to adopt a requirement that wireless providers publicly disclose the percentage of cell sites that are operational on their network during and after disasters.
- Cell phones use a GPS-based method to report your location in a 911 emergency. ... [T]hey don't indicate which floor you're on in a high-rise building. A home phone is connected to your address, including apartment number, so the 911 operator knows exactly where to send help even if you can't talk.
- The FCC cautions: "While wireless phones can be an important public safety tool, they also create unique challenges for emergency response personnel and wireless service providers. Since wireless phones are mobile, they are not associated with one fixed location or address. While the location of the cell site closest to the 911 caller may provide a general indication of the caller's location, that information is not usually specific enough for rescue personnel to deliver assistance to the caller quickly."

CWA-IBEW St. 1 at 31-32.

In addition to having similar essential characteristics, in order to be a competitive service offering, the services must be in the same product market. Ms. Baldwin explained in detail why basic dial-tone service and wireless service are not in the same product market. Fundamentally, she explained that in "evaluating whether products are in the same market, it is important to remember that the economic question is whether, in response to a small, but significant, price increase, consumers will leave their current provider and choose a different service provider." Id. at 26:7-9. That is, "in the case of wireless service, for example, the question isn't whether some consumers choose to use wireless service, it is whether the availability of wireless service constrains the price of wireline service." Id. at 26:16-18. There is absolutely no evidence to even suggest, let alone demonstrate, that wireless service constrains the price of wireline service in Pennsylvania.

Similarly, cable telephony is rarely sold as a stand-alone product. Even when offered as part of a package, the price greatly exceeds the price of basic dial-tone service. For example,

adding voice to a Comcast video service would cost \$35 per month, or roughly double or triple the cost of a stand-alone dial-tone service from Verizon. Id. at 49:5-9. As is the case with wireless service, cable telephone service does not compete directly with basic dial-tone service because the price of one service does not constrain the price of the other. CWA-IBEW witness Dvorak, with first-hand knowledge of the Erie area market, confirms this fact, stating: "As far as I know, those [cable] companies want customers to buy bundles of services. I have not see[n] any ads for those companies that offer a basic, stand-alone dial tone type of service to customers." CWA-IBEW St. 2 at 3:8-10.

Moreover, Mr. Dvorak explained that cable and wireless telephony "cannot do everything that a stand-alone landline can do. For example, cable telephone and cell phones do not support most home security systems, and they do not support medical alert services. There also are problems with basic data transmission (like fax machines and hard-wired credit card machines) using cable or wireless telephone service." Id. at 3:10-14.

Thus, cable telephony and wireless telephony fail both tests for being competitive services to basic dial-tone service: they do not share the same essential service characteristics (safety and reliability, among others) and they are not in the same product market (that is, they do not constrain the price of each other).

In summary, Verizon has failed to meet its burden of proving that either wireless service or cable telephony is a "like or substitute service" to basic dial-tone service. Neither wireless nor cable service has the same essential safety and reliability characteristics as Verizon's wireline dial-tone service; and given the lack of pricing constraints, neither service is in the same product market as basic dial-tone service.

As Ms. Baldwin concluded: "Granting Verizon's Petition would enable Verizon to raise rates without limit for an essential service that is directly tied to public safety and welfare." CWA-IBEW St. 1 at 66:3-4. Such a result is not what the General Assembly intended when it adopted Chapter 30 to the Public Utility Code, which included policies to "[m]aintain universal telecommunications service at affordable rates ... [and] [e]nsure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis." 66 Pa. C.S. § 3011.

Consequently, CWA-IBEW respectfully submit that the Commission must deny Verizon's Joint Petition. Verizon has not, and cannot, show that there is any effective competition for the provision of basic dial-tone service in Pennsylvania.

In the event that the Commission disagrees with this conclusion, however, CWA-IBEW also presented evidence addressing the lack of competition in specific wire centers -- even assuming that cable and wireless telephony can be considered to be "like or substitute services." That evidence is addressed in the following subsections.

*c) Verizon's Joint Petition includes several rural areas*

Verizon witness Vasington emphasized that Verizon's intention was to limit the wire centers included in the Joint Petition to "urban and suburban, population-dense areas where the presence of competition is without question." Verizon St. 1.0, 4:6-8. In fact, though, Mr. Vasington made that judgment without looking at any data on population density or any information concerning whether a wire center was actually in a rural area. Tr. 128:2-17, 129:3-6, 129:21 to 130:3. When presented with a map from the Center for Rural Pennsylvania showing the rural areas in Pennsylvania (CWA-IBEW Exh. 1) -- information which, for some unspecified reason, he did not rely upon in selecting non-rural wire centers (Tr. 129:21 to 130:3) -- Mr.

Vasington acknowledged that "there are some wire centers that we've identified in our petition that encompass an area that appears to be identified as a rural Pennsylvania school district." Tr. 131:4-8.

In particular, based on a comparison of the Center for Rural Pennsylvania's map (CWA-IBEW Exh. 1) and the map of wire centers included in the Joint Petition (Verizon St. 1.0, Attach. C, enlarged, labeled versions of which are provided in CWA-IBEW St. 1S, Sch. SMB-18), CWA-IBEW submits that the 12 wire centers in Table 1 are actually located in rural areas and should not have been included in the Joint Petition because they do not meet Mr. Vasington's criterion of being "urban and suburban, population-dense areas."

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**Table 1**  
**Joint Petition Wire Centers**  
**in Rural Areas**

<b>CLLI</b>	<b>Wire Center</b>
BRCKPAES	Bear Creek PA
CRVVPACA	Carversville PA
DAPHPADA	Dauphin PA
FSCKPAFC	Fishing Creek PA
KHVLPKU	Kuhnsville PA
MDLDPAMI	Midland PA
MTGRPAMG	Mount Gretna PA
NWHPPANH	New Hope PA
NWKNPANK	New Kensington PA
ROCHPARC	Rochester PA
WTFRPAXW	Waterford
ZLNPPAZE	Zelienople PA

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These wire centers do not meet Verizon's own criteria for inclusion in the Joint Petition. Thus, even if the Commission finds that cable telephony and wireless service constitute "like or substitute" services for basic dial-tone service, the 12 wire centers in Table 1 should be excluded from further consideration for a competitive classification of basic dial-tone service.

d) *Verizon's Joint Petition includes numerous areas where customers do not have access to cable telephony*

Verizon witness Vasington also claims that all of the 194 wire centers Verizon included in the Joint Petition "are in communities with cable telephony available." Verizon St. 1 at 24:13-15. He explained that the source for this information is the Warren Communications News Advanced TVFactBook. Id., 24:7-12 and Tr. 132:8-24.

Importantly, though, during cross-examination Mr. Vasington agreed that his source did not have information by telephone wire center. Tr. 133:5-7. Moreover, he did not actually try to identify communities that affirmatively had cable telephony available, instead he looked for those that the data source said did not have cable telephony. Tr. 133:8-19. When asked about his understanding of what the data base actually contains, he answered: "I'm not sure." Tr. 133:20-23. He then further explained: "I started the query with the whole state and then identified no cable telephony. Does the data base already exclude any community that doesn't have any cable franchisee at all? I don't know." Tr. 136:8-11. In short, he simply assumed "that the data base included all communities," but he did nothing to try to verify that. Tr. 136:13-18. He also acknowledged that he did not attempt "to determine whether the cable provider in each wire center serves all or even a majority of households and businesses in the wire center." Tr. 137:2-5.

The importance of Mr. Vasington's rather lackluster analysis was highlighted by an in-depth examination of the Waterford wire center in Erie County. Mr. Vasington included that wire center in his analysis without understanding anything about the demographics or geography of the wire center (including its rural character, as shown in Table 1 above). Tr. 139:4 to 140:19.

Moreover, OCA witness Dr. Loube analyzed publicly available data from the Federal Communications Commission ("FCC") and the U.S. Census Bureau showing the actual availability of broadband cable by wire center. That information is summarized for each wire center included in the Joint Petition in CWA-IBEW Exhibit 5. For the Waterford wire center (WTFRPAXW), CWA-IBEW Exhibit 5 shows a total of 770 households lack access to broadband cable, which is an essential pre-condition to providing cable telephony service. This compares to a total of only 3,223 households in the wire center. CWA-IBEW St. 1S, Sch. SMB-6 Revised, p. 14.<sup>3</sup> That is, approximately one in four households in the Waterford wire center does not have access to cable telephony. Yet Mr. Vasington nonetheless included Waterford in the Joint Petition.

Mr. Vasington made clear that in selecting wire centers to include in the Joint Petition, he did not rely on any U.S. Census data (Tr. 150:22 to 151:7) and did not rely on any data to try to determine how many households and businesses in a wire center actually had access to cable telephony (Tr. 150:8-12).

In other words, Verizon included wire centers in the Joint Petition based on assumptions and guesses about the availability of cable telephone competition -- an essential element of competition, according to Verizon. According to Mr. Vasington, Verizon is seeking to classify basic dial-tone service as competitive only in urban-suburban wire centers that "satisf[y] the following criteria: Cable telephony is available and there is coverage by at least one unaffiliated wireless provider." Verizon St. 1.0 at 4:13-16 (emphasis in original).

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<sup>3</sup> Verizon agreed that the number of households shown in this schedule is public information, even though the other information in the schedule is proprietary. Tr. 139:24 to 140:19.

Verizon's faulty analysis, however, failed to accurately identify the availability of cable telephony to all customers in a wire center. 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. In fact, the data compiled by Dr. Loubé show that there are dozens of wire centers included in the Joint Petition where cable telephony is far from universal. Table 2 shows that Verizon has included 41 wire centers in the Joint Petition that have at least three percent of households without access to broadband cable.<sup>4</sup>

**Table 2**  
**Joint Petition Wire Centers Where**  
**at Least 3% of Households Lack Cable Broadband Access**

CLLI	Wire Center	Total Households	Households without Cable	% of Households without Cable
WTFRPAXW	WATERFORD	3,223	770	23.9%
MOVLPAMO	MONROEVILLE PA	15,130	1,763	11.7%
EDTNPAED	EDDINGTON PA	16,233	1,835	11.3%
PHLAPALO	LOCUST PA	15,412	1,299	8.4%
PRBGPAPB	PARKESBURG PA	4,691	365	7.8%
LANGPALA	LANGHORNE PA	19,434	1,373	7.1%
ARMRPAAR	ARDMORE PA	14,419	987	6.8%
PLMYPAPA	PALMYRA PA	9,339	628	6.7%
MTGRPAMG	MOUNT GRETNA PA	587	36	6.1%
ANVLPAAAN	ANNVILLE PA	3,316	189	5.7%
PITBPANS	NORTH SIDE PA	13,739	775	5.6%
LARCPALM	LARCHMONT PA	14,150	751	5.3%
LBNNPAES	LEBANON PA	25,204	1,321	5.2%
MBRGPAME	MECHANICSBURG PA	25,070	1,285	5.1%
SPGVPAXS	SPRING GROVE	7,023	349	5.0%
JENKPAJK	JENKINTOWN PA	25,906	1,268	4.9%
PHLAPATR	TRINITY PA	30,000	1,421	4.7%
HTBOPAHB	HATBORO PA	26,678	1,236	4.6%
NCLDPANC	NEW CUMBERLAND PA	6,352	292	4.6%
YORKPAXW	YORK WEST	5,779	258	4.5%
TULYPATU	TULLYTOWN PA	27,560	1,150	4.2%
PTTNPAPI	PITTSTON PA	13,118	536	4.1%
CHESPACA	CHESTER A PA	20,132	815	4.0%
QKTWPAQT	QUAKERTOWN PA	13,574	538	4.0%

<sup>4</sup> The data on the number of households without cable broadband are from CWA-IBEW Exhibit 5 and the data on total number of households in the wire center are from CWA-IBEW St. 1S, Sch. SMB-6 Revised.

CLLI	Wire Center	Total Households	Households without Cable	% of Households without Cable
MOSCPAMC	MOOSIC PA	7,383	292	4.0%
ENOLPAEN	ENOLA PA	10,435	398	3.8%
MDTNPAMI	MIDDLETOWN PA	6,626	250	3.8%
TRCKPATC	TURTLE CREEK PA	16,607	606	3.6%
BRYMPABM	BRYN MAWR PA	10,166	352	3.5%
JNNTPAJE	JEANNETTE PA	8,156	282	3.5%
PRFDPAPF	PARKERFORD PA	4,025	139	3.5%
BTPKPABP	BETHEL PARK PA	21,801	744	3.4%
BTHYPABH	BETHAYRES PA	6,785	229	3.4%
BMNSPABM	BEDMINSTER PA	772	26	3.4%
WGRVPAWG	WEST GROVE PA	6,910	222	3.2%
YORKPAXS	YORK SOUTH/ LOGANVILLE	8,737	280	3.2%
GNBGPAGR	GREENSBURG PA	23,430	728	3.1%
NWLSPANW	NORTH WALES PA	6,825	211	3.1%
CHVLPACH	CHURCHVILLE PA	24,285	740	3.0%
ALQPPAAL	ALIQUIPPA PA	12,927	389	3.0%
LNDLPALD	LANSDALE PA	29,576	882	3.0%
Total		561,515	28,010	5.0%

These wire centers fail one of Verizon's essential criteria for inclusion in the Joint Petition. Thus, even if the Commission finds that cable telephony and wireless service constitute "like or substitute" services for basic dial-tone service, the 41 wire centers in Table 2 should be excluded from any competitive classification ordered by the Commission.

e) *Verizon's Joint Petition includes numerous areas where Verizon continues to control the market for telephone service*

Verizon's inclusion of wire centers in its Joint Petition is based on the mere existence of alleged "competitors" without any analysis of the actual existence of competition. Rather incredibly, Mr. Vasington testified that not only did he not use any measure of Verizon's market share, but he does not even think "that market share was appropriate for that purpose."

Tr. 127:6-11.

In fact, though, market share is a critically important measure of the actual existence of competition. The Commission has recognized this fact in wholesale electricity markets by

limiting the market share of suppliers to 50% of the market. Specifically, in *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, I-2011-2237952, 2012 Pa. PUC LEXIS 324, (Mar. 2, 2012), the Commission held that it would limit an electricity supplier's ("EGS") market share to no more than 50% of a distribution company's default service load. In this way, the Commission held that there would be an appropriate balance between ensuring a competitive market and establishing reasonable prices for consumers. Specifically, the Commission stated: "This balance is between ensuring a diverse array of EGSs are able to participate and to enjoy the potential benefits of the Retail Opt-in Auctions while providing for the lowest pricing possible to consumers. The Commission continues to believe that a 50% cap is appropriate in achieving this balance." Accord *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, et al., 2012 Pa. PUC LEXIS 1348 (Aug. 16, 2012) ("We continue to believe that a fifty percent cap strikes the appropriate balance between diversity of EGS participation and competitive supply pricing.").

The Commission's conclusion for the electricity market is equally applicable to the telecommunications market. If one supplier has a market share in excess of 50%, that is a strong indication that actual competition does not exist. Rather, one supplier dominates the market and it remains necessary to have prices set through regulation, rather than relying on market prices because the market is not sufficiently developed to provide a competitive price signal.

As CWA-IBEW witness Baldwin explained: "High market shares provide evidence of market power." CWA-IBEW St. 1 at 58:9-10. That market power, in turn, translates into the ability to raise prices or allow service quality to deteriorate (absent regulation).

Ms. Baldwin's analysis shows that there are 75 wire centers that Verizon included in the Joint Petition where Verizon controls 50% or more of the market. Table 3 lists the wire centers where Verizon's market share exceeds 50%, taking into account both wireline and wireless service.<sup>5</sup> The precise market share percentages are alleged by Verizon to be confidential, so all that is provided here is the list of wire centers that have Verizon market shares of 50% or more. The exact numbers can be found in CWA-IBEW St. 1S, Sch. SMB-6 Revised (sorted alphabetically) and SMB-7 Revised (sorted by market share).

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**Table 3**  
**Joint Petition Wire Centers with**  
**Verizon Market Shares of 50% or Higher**

<b>CLLI</b>	<b>Wire Center</b>
AMBLPAAM	AMBLER PA
ARMRPAAR	ARDMORE PA
AVDLPAAV	AVONDALE PA
BTHYPABH	BETHAYRES PA
BTPKPABP	BETHEL PARK PA
BRDDPABR	BRADDOCK PA
BGVLPABR	BRIDGEVILLE PA
BRYMPABM	BRYN MAWR PA
BCHMPABU	BUCKINGHAM PA
CARNPACA	CARNEGIE PA
PITBPACA	CARRICK PA
CNPNPACE	CENTER POINT PA
CHTTPACT	CHESTER HEIGHTS PA
CSSPPACS	CHESTER SPRINGS PA
CHVLPACH	CHURCHVILLE PA
CTVLPACV	COATESVILLE PA
CNSHPACN	CONSHOHOCKEN PA
CRPLPACO	CORAOPOLIS PA
BCYNPABC	CYNWYD PA
DRMTPADO	DORMONT PA
DWTWPADT	DOWNINGTOWN PA
DYTWPADB	DOYLESTOWN PA
EAGLPAEG	EAGLE PA
EXTNPAEX	EXTON PA
GLNMPAGL	GLENMOORE PA
GLNSPAGL	GLENSHAW PA

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<sup>5</sup> While CWA-IBEW does not believe that wireless service is a full substitute for basic dial-tone service, the relevant question here is Verizon's share of the residential telecommunications market in the 194 wire centers. If the only question were Verizon's share of the basic dial-tone service market, Verizon's market share would be at or near 100% in every wire center.

<b>CLLI</b>	<b>Wire Center</b>
GRLAPAGL	GREEN LANE PA
HRLVPAHV	HARLEYSVILLE PA
HTBOPAHB	HATBORO PA
HMSTPAHO	HOMESTEAD PA
HUMLPAHM	HUMMELSTOWN PA
IMPRPAIM	IMPERIAL PA
KNSQPAKS	KENNETT SQUARE PA
LDNBPALB	LANDENBERG PA
LANGPALA	LANGHORNE PA
LNDLPALD	LANSDALE PA
LNSDPALD	LANSDOWNE PA
LARCPALM	LARCHMONT PA
LNLXPALN	LINE LEXINGTON PA
MCMRPAMC	MCMURRAY PA
MBRGPAME	MECHANICSBURG PA
MEDIPAME	MEDIA PA
MNDNPAMH	MENDENHALL PA
MLVAPAMI	MILLVALE PA
MOVLPAMO	MONROEVILLE PA
MOSCPAMC	MOOSIC PA
MRSLPAMV	MORRISVILLE PA
MTGRPAMG	MOUNT GRETNA PA
NWTWPANW	NEWTOWN PA
NWLSPANW	NORTH WALES PA
OKDLPAOA	OAKDALE PA
PLMYPAPA	PALMYRA PA
PAOLPAPA	PAOLI PA
PRBGPAPB	PARKESBURG PA
PEHLPAPH	PENN HILLS PA
PRKSPAPE	PERKASIE PA
PYVLPAPE	PERRYSVILLE PA
PXVLPAPV	PHOENIXVILLE PA
PLHSPAPH	PLEASANT HILLS PA
QKTWPAQT	QUAKERTOWN PA
RBTPPART	ROBINSON TWP PA
SCHWPASV	SCHWENKSVILLE PA
SWKYPASE	SEWICKLEY PA
SHSAPASH	SHARPSBURG PA
SDTNPASD	SOUDERTON PA
SPFDPASF	SPRINGFIELD PA
TULYPATU	TULLYTOWN PA
TRCKPATC	TURTLE CREEK PA
WGTPPAWR	WARRINGTON PA
WAYNPAWY	WAYNE PA
WGRVPAWG	WEST GROVE PA
WKBGPAWK	WILKINSBURG PA
WLGRPAWG	WILLOW GROVE PA
WYNGPAWY	WYOMING PA
YRDLPAYL	YARDLEY PA

The wire centers in Table 3 should not have been included in Verizon's Joint Petition. Verizon is the dominant telecommunications company in each of these 75 wire centers. Deregulating basic dial-tone service without the existence of a robust competitive market would enable Verizon to raise prices and/or allow service quality to deteriorate. In other words, a sufficient market does not exist to take the place of regulation for these services.

Importantly, the General Assembly expressed a concern about this very issue. The Declaration of Policy that is part of Chapter 30 of the Public Utility Code includes the following: "[I]t is the policy of this Commonwealth to: ... (3) Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis. ... [and] (8) Promote and encourage the provision of competitive services by a variety of service providers on equal terms ... without jeopardizing the provision of universal telecommunications service at affordable rates." 66 Pa. C.S. § 3011.

That is, the Commission is to find that protected services (like basic dial-tone service) are competitive only if there are assurances that customers will pay reasonable charges for the service and that universal service will not be jeopardized. Such a finding cannot be made in wire centers where Verizon continues to control the market.

Importantly, Ms. Baldwin demonstrated that Verizon has a history of increasing prices after deregulation in markets where it is the dominant carrier. Her analysis shows that Verizon's history of exorbitant price increases for basic service after deregulation includes the following:

- California: 70% price increase for basic business service
- Florida: 33% price increase for basic residential service
- Massachusetts: 105% price increase for basic business service
- Rhode Island: 71% price increase for basic business service

- Texas: 41% price increase for basic residential service and 89% price increase for basic business service

CWA-IBEW St. 1 at 71-72 (Tables 5 and 6).

Ms. Baldwin concluded: "In those states where Verizon has pricing latitude, it raises rates. For example, in Florida, Verizon has raised rates for residence stand-alone service by more than 24 percent (or \$4 per month) since July 2011." *Id.* at 72:7 to 73:1.

Consequently, even if the Commission finds that cable telephony and wireless service constitute "like or substitute" services for basic dial-tone service, the 75 wire centers in Table 3 should be excluded from any competitive classification ordered by the Commission. Those wire centers lack sufficient competition to ensure that deregulation of basic dial-tone service would not result in unreasonable charges for that service.

*f) Verizon's Joint Petition includes numerous areas where customers experience poor service quality, which is a strong indication of the lack of competition for basic dial-tone service*

Ms. Baldwin provided a detailed analysis of Verizon's service quality. She found poor service quality in certain wire centers included in the Joint Petition. The allegedly confidential data are discussed and summarized on pages 82-84 of CWA-IBEW St. 1, and detailed tables for all Joint Petition wire centers can be found in Schedules SMB-10 (trouble reports) and SMB-11 (repair times). For purposes of this Main Brief, which is a public document, CWA-IBEW provide two tables showing the Joint Petition wire centers that have extremely poor service quality. Table 4, below, shows those wire centers with trouble report rates twice as high as Verizon's internal standard. Verizon's standard and the actual values in each wire center are alleged by Verizon to be confidential and can be found on pages 82-83 of CWA-IBEW St. 1.

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**Table 4**  
**Joint Petition Wire Centers with Trouble Report**  
**Rates Twice as High as Verizon's Internal Standard**

<b>CLLI</b>	<b>Wire Center</b>
ALQPPAAL	ALIQUIPPA PA
PHLAPABA	BALDWIN PA
BMNSPABM	BEDMINSTER PA
BCHMPABU	BUCKINGHAM PA
CRVVPACA	CARVERSVILLE PA
CHESPACA	CHESTER A PA
CLRTPACL	CLAIRTON PA
PHLAPADB	DAVENPORT PA
PHLAPAEW	EASTWICK PA
ELZTPAET	ELIZABETH TOWNSHIP PA
ERIEPAXT	ERIE SOUTHEAST
PHLAPAEV	EVERGREEN PA
FRERPAXF	FAIRVIEW
FSCKPAFC	FISHING CREEK PA
GLNMPAGL	GLENMOORE PA
HLTWPAHE	HELLERTOWN PA
IMPRPAIM	IMPERIAL PA
PHLAPAIV	IVYRIDGE PA
PHLAPAJE	JEFFERSON PA
LARCPALM	LARCHMONT PA
MDLDPAMI	MIDLAND PA
OKDLPAOA	OAKDALE PA
PRFDPAPF	PARKERFORD PA
PNBGPAPB	PENNSBURG PA
PIVLPAPV	PINEVILLE PA
PGTWPAPT	PUGHTOWN PA
RGVLPARI	REIGELSVILLE PA
PHLAPASA	SARATOGA PA
PHLAPASH	SHERWOOD PA
SPTWPASP	SPRINGTOWN PA
PHLAPATR	TRINITY PA
WTFRPAXW	WATERFORD

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Table 5, below, shows those wire centers with very slow repair times that fail Verizon's internal standard by a wide margin. The actual values and Verizon's internal standard can be found in CWA-IBEW St. 1 on pages 84-85.

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**Table 5**  
**Joint Petition Wire Centers with Repair Times**  
**Significantly Worse than**  
**Verizon's Internal Standard**

<b>CLLI</b>	<b>Wire Center</b>
PITBPAAL	ALLENTOWN-PITT PA
PHLAPABA	BALDWIN PA
BRYMPABM	BRYN MAWR PA
PHLAPADB	DAVENPORT PA
PHLAPADE	DEWEY PA
PHLAPAEW	EASTWICK PA
PHLAPAEV	EVERGREEN PA
FRERPAXF	FAIRVIEW
PHLAPAJE	JEFFERSON PA
KMVLPAKV	KEMBLESVILLE PA
PHLAPAMK	MARKET PA
MDTNPAMI	MIDDLETOWN PA
NWHPPANH	NEW HOPE PA
NWKNPANK	NEW KENSINGTON PA
OKDLPAOA	OAKDALE PA
PITBPAOK	OAKLAND PA
OKMTPAOA	OAKMONT PA
PHLAPAPE	PENNYPACKER PA
PIVLPAPV	PINEVILLE PA
PHLAPARE	REGENT PA
RDPKPARP	RIDLEY PARK PA
RGVLPARI	REIGELSVILLE PA
PHLAPASA	SARATOGA PA
WTFRPAXW	WATERFORD

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Ms. Baldwin explained that this extremely poor service quality is a strong indication that Verizon does not face effective competition for basic dial-tone service in these wire centers. Specifically, she testified: "[C]ompetition is not creating sufficient economic incentive for Verizon to provide adequate service quality to the households served by these and other Verizon wire centers." *Id.* at 80:18-20. She also explained that if "Verizon were concerned about line loss and competitive pressures, one would expect Verizon to improve its repair record." *Id.* at 85:7-8.

Consequently, even if the Commission finds that cable telephony and wireless service constitute "like or substitute" services for basic dial-tone service, the wire centers in Tables 4 and 5 should be excluded from any competitive classification ordered by the Commission. The extremely poor service quality in those wire centers is a strong indication of the lack of sufficient competition for basic dial-tone service. Moreover, as Ms. Baldwin properly testified: "Designating these wire centers and others as competitive and granting the request for waiver of service quality oversight would jeopardize the protection that customers now have." CWA-IBEW St. 1 at 80:16-18.

g) *Verizon's failure to widely deploy fiber-to-the-premises in many of the Joint Petition wire centers is a further indication of the lack of competition in those wire centers*

In selected portions of Pennsylvania, Verizon offers FiOS, a fiber-to-the-premises service that, according to Ms. Baldwin, is "one of the highest-quality telecommunications products available to homes in the United States." CWA-IBEW St. 1S at 7:16-17. Unfortunately, Verizon has chosen not to provide FiOS throughout its service area in Pennsylvania, and it has included 99 wire centers in its Joint Petition where FiOS is not widely available.

Table 6, below, lists the 99 Joint Petition wire centers where FiOS is not widely available to homes and businesses. As Ms. Baldwin explained, because of the manner in which Verizon provided the data (number of business and residence premises combined that are passed by fiber), her analysis provides a reasonable estimate of the availability of FiOS throughout a wire center. See CWA-IBEW St. 1S at 2:16 to 3:24. As is too often the case, Verizon claims that the data (here, the number of premises passed by fiber-to-the-premises) are confidential. CWA-IBEW St. 1S, Sch. SMB-16 provides the actual figures for each wire center included in the Joint Petition.

**Table 6**  
**Joint Petition Wire Centers**  
**Where FiOS is not Widely Available**

<b>CLLI</b>	<b>Wire Center</b>	<b>CLLI</b>	<b>Wire Center</b>
ALQPPAAL	ALQUIPPA PA	DWTWPADT	DOWNINGTOWN PA
ALTWPAAL	ALLENTOWN PA	PITBPADT	DOWNTOWN PA
PITBPAAL	ALLENTOWN-PITT PA	DYTWPADB	DOYLESTOWN PA
AMBLPAAM	AMBLER PA	EAGLPAEG	EAGLE PA
AMBRPAAM	AMBRIDGE PA	PITBPAEL	EAST LIBERTY PA
ANVLPAAAN	ANNVILLE PA	ESTNPAEA	EASTON PA
ARMRPAAR	ARDMORE PA	PHLAPAEW	EASTWICK PA
AVDLPAAV	AVONDALE PA	EDTNPAED	EDDINGTON PA
BADNPABA	BADEN PA	ELZTPAET	ELIZABETH TOWNSHIP PA
PHLAPABA	BALDWIN PA	EMMSPAXE	EMMAUS
BRCKPAES	BEAR CREEK PA	ENOLPAEN	ENOLA PA
BMNSPABM	BEDMINSTER PA	ERIEPAXE	ERIE EAST
BLLVPABE	BELLEVUE PA	ERIEPAXM	ERIE MAIN
BTHYPABH	BETHAYRES PA	ERIEPAXS	ERIE SOUTH
BTPKPABP	BETHEL PARK PA	ERIEPAXT	ERIE SOUTHEAST
BHLHPABE	BETHLEHEM PA	ERIEPAXW	ERIE WEST
BRDDPABR	BRADDOCK PA	PHLAPAEV	EVERGREEN PA
BGVLPAABR	BRIDGEVILLE PA	EXTNPAEX	EXTON PA
BRSTPABR	BRISTOL PA	FRERPAXF	FAIRVIEW
BRYMPABM	BRYN MAWR PA	FSCKPAFC	FISHING CREEK PA
BCHMPABU	BUCKINGHAM PA	PHLAPAGE	GERMANTOWN PA
CPHLPACH	CAMP HILL PA	GLNMPAGL	GLENMOORE PA
CARNPACA	CARNEGIE PA	GLLDPAGN	GLENOLDEN PA
PITBPACA	CARRICK PA	GLNSPAGL	GLENSHAW PA
CRVVPACA	CARVERSVILLE PA	GRLAPAGL	GREEN LANE PA
CTSQPACT	CATASAUQUA PA	GNBGPAGR	GREENSBURG PA
CNPNPACT	CENTER POINT PA	HRLVPAHV	HARLEYSVILLE PA
CHESPACA	CHESTER A PA	HRBGPAHA	HARRISBURG PA
CHESPACB	CHESTER B PA	HTBOPAHB	HATBORO PA
CHTTPACT	CHESTER HEIGHTS PA	HLTWPAAE	HELLERTOWN PA
CSSPPACS	CHESTER SPRINGS PA	HRSHPAHX	HERSHEY
PHLAPACH	CHESTNUT HILL PA	HMSTPAHO	HOMESTEAD PA
CHVLPACH	CHURCHVILLE PA	HUMLPAHM	HUMMELSTOWN PA
CLRTPACL	CLAIRTON PA	IMPRPAIM	IMPERIAL PA
CTVLPACV	COATESVILLE PA	IRWNPAIR	IRWIN PA
CGVLPACL	COLLEGEVILLE PA	PHLAPAIV	IVYRIDGE PA
CNSHPACN	CONSHOHOCKEN PA	JNNTPAJE	JEANNETTE PA
CRPLPACO	CORAOPOLIS PA	PHLAPAJE	JEFFERSON PA
CRAFPACR	CRAFTON PA	JENKPAJK	JENKINTOWN PA
BCYNPABC	CYNWYD PA	KMVLPAKV	KEMBLESVILLE PA
DAPHPADA	DAUPHIN PA	KNSQPAKS	KENNETT SQUARE PA
PHLAPADB	DAVENPORT PA	KGPRPAKP	KING OF PRUSSIA PA
PHLAPADE	DEWEY PA	KGTPNAES	KINGSTON PA
DRMTPADO	DORMONT PA	KRLNPAKL	KIRKLYN PA
DRVLPADO	DORSEYVILLE PA	PHLAPAKR	KNIGHTS ROAD PA
DOVRPAXD	DOVER	KHVLPAPU	KUHNSVILLE PA

**CLLI**

LDNBPALB  
 LANGPALA  
 LNDLPALD  
 LNSDPALD  
 LARCPALM  
 LBNNPAES  
 LNLXPALN  
 PHLAPALO  
 PHLAPAMK  
 PHLAPAMY  
 MCRKPAMR  
 MCPTPAMK  
 MCMRPAMC  
 MBRGPAME  
 MEDIPAME  
 MNDNPAMH  
 MDTNPAMI  
 MDLDPAMI  
 MLVAPAMI  
 MOVLPAMO  
 MOSCPAMC  
 MRSLPAMV  
 MTGRPAMG  
 ALTWPAMT  
 NCLDPANC  
 NWHPPANH  
 NWKNPANK  
 NWTWPANW  
 NRTWPANR  
 PITBPANS  
 NWLSPANW  
 OKDLPAOA  
 PITBPAOK  
 OKMTPAOA  
 OLYPPAOL  
 PHLAPAOR  
 PLMYPAPA  
 PAOLPAPA  
 PRFDPAPF  
 PRBGPAPB  
 PXTGPAPG  
 PXTNPAPA  
 PEHLPAPH  
 PNBGPAPB  
 PHLAPAPE  
 PRKSPAPE  
 PYVLPAPE  
 PXVLPAPV  
 PHLAPAPI  
 PIVLPAPV  
 PTTNPAPI

**Wire Center**

LANDENBERG PA  
 LANGHORNE PA  
 LANSDALE PA  
 LANSLOWNE PA  
 LARCHMONT PA  
 LEBANON PA  
 LINE LEXINGTON PA  
 LOCUST PA  
 MARKET PA  
 MAYFAIR PA  
 MCKEES ROCKS PA  
 MCKEESPORT PA  
 MCMURRAY PA  
 MECHANICSBURG PA  
 MEDIA PA  
 MENDENHALL PA  
 MIDDLETOWN PA  
 MIDLAND PA  
 MILLVALE PA  
 MONROEVILLE PA  
 MOOSIC PA  
 MORRISVILLE PA  
 MOUNT GRETNA PA  
 MOUNTAINVILLE PA  
 NEW CUMBERLAND PA  
 NEW HOPE PA  
 NEW KENSINGTON PA  
 NEWTOWN PA  
 NORRISTOWN PA  
 NORTH SIDE PA  
 NORTH WALES PA  
 OAKDALE PA  
 OAKLAND PA  
 OAKMONT PA  
 OLYPHANT PA  
 ORCHARD PA  
 PALMYRA PA  
 PAOLI PA  
 PARKERFORD PA  
 PARKESBURG PA  
 PAXTANG PA  
 PAXTONIA PA  
 PENN HILLS PA  
 PENNSBURG PA  
 PENNYPACKER PA  
 PERKASIE PA  
 PERRYSVILLE PA  
 PHOENIXVILLE PA  
 PILGRIM PA  
 PINEVILLE PA  
 PITTSTON PA

**CLLI**

PLHSPAPH  
 PSVLPAPV  
 PLMOPAPL  
 PHLAPAPO  
 PTTWPAPT  
 PGTWPAPT  
 QKTWPAQT  
 RDLNPAXR  
 PHLAPARE  
 RGVLPARI  
 RDPKPARP  
 RBTPPART  
 ROCHPARC  
 RYFRPARF  
 PHLAPASA  
 SCHWPASV  
 SCTNPASC  
 SWKYPASE  
 SHSAPASH  
 PHLAPASH  
 SDTNPASD  
 SPGVPAXS  
 SPDLPASP  
 SPFDPASF  
 SPTWPASP  
 PITBPASQ  
 SLTNPAST  
 TAYLPATA  
 PHLAPATR  
 TRPRPATR  
 TULYPATU  
 TRCKPATC  
 WGTNPAWR  
 WTRFPAXW  
 PHLAPAWV  
 WAYNPAWY  
 WCHSPAWC  
 WGRVPAWG  
 WMFLPAWM  
 WSVWPAWE  
 WLBRPAWB  
 WKBGPAWK  
 WLGRPAWG  
 WYNGPAWY  
 YRDLPAYL  
 YORKPAXE  
 YORKPAXM  
 YORKPAXN  
 YORKPAXS  
 YORKPAXW  
 ZLNPPAZE

**Wire Center**

PLEASANT HILLS PA  
 PLUMSTEADVILLE PA  
 PLYMOUTH PA  
 POPLAR PA  
 POTTSTOWN PA  
 PUGHTOWN PA  
 QUAKERTOWN PA  
 RED LION  
 REGENT PA  
 REIGELSVILLE PA  
 RIDLEY PARK PA  
 ROBINSON TWP PA  
 ROCHESTER PA  
 ROYERSFORD PA  
 SARATOGA PA  
 SCHWENKSVILLE PA  
 SCRANTON PA  
 SEWICKLEY PA  
 SHARPSBURG PA  
 SHERWOOD PA  
 SOUDERTON PA  
 SPRING GROVE  
 SPRINGDALE PA  
 SPRINGFIELD PA  
 SPRINGTOWN PA  
 SQUIRREL HILL PA  
 STEELTON PA  
 TAYLOR PA  
 TRINITY PA  
 TROOPER PA  
 TULLYTOWN PA  
 TURTLE CREEK PA  
 WARRINGTON PA  
 WATERFORD  
 WAVERLY PA  
 WAYNE PA  
 WEST CHESTER PA  
 WEST GROVE PA  
 WEST MIFFLIN PA  
 WEST VIEW PA  
 WILKES BARRE PA  
 WILKINSBURG PA  
 WILLOW GROVE PA  
 WYOMING PA  
 YARDLEY PA  
 YORK EAST  
 YORK MAIN  
 YORK NORTH  
 YORK SOUTH/LOGANVILLE  
 YORK WEST  
 ZELIENOPLE PA

Ms. Baldwin explained the importance of FiOS deployment to an analysis of competition.

Specifically, she testified as follows:

I will oversimplify somewhat, but at its essence, there are two ways for telecommunications competition theoretically to flourish: having multiple providers competing aggressively to provide high-quality service to customers, or having the incumbent provider (Verizon) allow its service to deteriorate so that customers must leave to find reliable service.

CWA-IBEW St. 1S at 7:5-9. She then explained that "Verizon has included both kinds of wire centers in its Petition." Id. at 7:15. Verizon's decisions about fiber deployment affect the safety and reliability of service customers receive, and also provide an excellent measure of the type of competition that may exist in the wire center. As Ms. Baldwin stated:

In many of those [FiOS] areas, Verizon faces relatively more competition (at least for its bundled offerings) from a cable company that also has upgraded its network to provide high-quality, high-speed broadband service than it does in its non-FiOS communities. Unfortunately, though, Verizon also has included many of these other wire centers where it is engaged in a "race to the bottom" -- it has not upgraded its network, the physical plant and service quality are deteriorating, the work force is likely understaffed (as is evidenced by Verizon's slow repair of out-of-service dial tone lines), and consumers are not being well served. In those areas, if consumers leave Verizon to find some other service that is minimally reliable and meets at least some of their needs for service, they are doing so not because they have found a competitive alternative to well-maintained, reliable affordable basic service but rather because competitive forces are insufficient to cause Verizon to provide adequate service quality for its basic local service.

Id. at 7:17 to 8:3 (emphasis added).

Finally, the presence or absence of fiber-to-the-premises has important public policy implications for this case. Ms. Baldwin explained those implications as follows:

It may be reasonable for telecommunications policy to encourage the first type of competition. Under no circumstances, however, should public policy give Verizon an incentive to engage in the second type of competition -- the "race to the bottom" neither serves consumers nor fosters economic development in those communities.

Id. at 8:5-8.

Consequently, even if the Commission finds that cable telephony and wireless service constitute "like or substitute" services for basic dial-tone service, the wire centers in Table 6 should be excluded from any competitive classification ordered by the Commission. The General Assembly did not intend that a utility should be able to allow its network to deteriorate so much that customers are forced to leave. Indeed, the Declaration of Policy that is part of Chapter 30 of the Public Utility Code includes the following: "[I]t is the policy of this Commonwealth to: ... (2) ... [E]ncourag[e] the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban, and urban areas ... [and] (6) Ensure the efficient delivery of technological advances and new services throughout this Commonwealth in order to improve the quality of life for all Commonwealth residents." 66 Pa. C.S. § 3011.

CWA-IBEW submits that any competitive classification should be consistent with the Commonwealth's telecommunications policy goals. Thus, such a regulatory "reward" should be available only where Verizon (or any carrier) has deployed a state-of-the-art network that can deliver technological advances and new services. That is what the General Assembly intended when Chapter 30 was enacted, and it is the delivery of such services in a competitive market that the statute hoped to foster -- making Pennsylvania a technological leader, not a state filled with technological haves and have-nots.

Simply stated, Verizon must not be rewarded for allowing its network to deteriorate to the point where customers must look for alternate providers. Verizon should not be given an incentive to allow its network to deteriorate further, thereby creating the illusion of "competition." If Verizon is to be relieved of any regulatory obligations, such relief must be

provided solely in areas where Verizon has started to fulfill the goals of this Commonwealth to provide a world-class telecommunications network for all of its citizens. The 99 wire centers listed in Table 6 fail that test and should be excluded from consideration for any competitive classification for basic dial-tone service.

*h) Conclusion: Verizon should not receive a competitive classification in any wire center, but if the Commission disagrees Verizon has met its burden of proving a competitive market in only 21 wire centers*

As explained in subsection (b) above, CWA-IBEW respectfully submits that the Commission must deny Verizon's Joint Petition. Verizon has not, and cannot, show that there is any effective competition for the provision of basic dial-tone service in Pennsylvania.

Even if Verizon had met its burden to show that cable and wireless telephony can theoretically be effective competitors of, and substitutes for, basic dial-tone service, the Commission must go the next step and evaluate actual data concerning competition in each of the 194 wire centers Verizon included in the Joint Petition. Subsections (c) through (g), above, contain such a review. When these data are compiled, it is apparent that Verizon has failed to meet the tests for competition in all but 21 of the 194 wire centers included in its Joint Petition.

Table 7 summarizes the results of the competitive screen analysis explained in the previous subsections. Only those wire centers shown in bold-face type with "PASS" in the last column -- 21 wire centers in total -- pass each of the tests of competitiveness. In all other wire centers, Verizon has failed to demonstrate that it is providing reliable, state-of-the-art service in suburban or urban areas where cable telephony is available to all customers. Absent this demonstration, a wire center does not meet the statutory test for the deregulation of basic dial-tone service.

**Table 7  
Summary of Competitive Screening Analysis**

CLLI	Wire Center	Urban / Suburban screen	Cable available screen	Market share screen	Out of Service screen	Repair time screen	FiOS screen	Pass All Screens
ALQPPAAL	ALIQUIPPA PA		FAIL		FAIL		FAIL	
ALTWPAAL	ALLENTOWN PA						FAIL	
PITBPAAL	ALLENTOWN-PITT PA					FAIL		
AMBLPAAM	AMBLER PA			FAIL				
AMBRPAAM	AMBRIDGE PA						FAIL	
ANVLPAAAN	ANNVILLE PA		FAIL				FAIL	
ARMRPAAR	ARDMORE PA		FAIL	FAIL				
AVDLPAAV	AVONDALE PA			FAIL				
BADNPABA	BADEN PA						FAIL	
PHLAPABA	BALDWIN PA				FAIL	FAIL	FAIL	
BRCKPAES	BEAR CREEK PA	FAIL					FAIL	
BMNSPABM	BEDMINSTER PA		FAIL		FAIL		FAIL	
<b>BLLVPABE</b>	<b>BELLEVUE PA</b>							<b>PASS</b>
BTHYPABH	BETHAYRES PA		FAIL	FAIL				
BTPKPABP	BETHEL PARK PA		FAIL	FAIL				
BHLHPABE	BETHLEHEM PA						FAIL	
BRDDPABR	BRADDOCK PA			FAIL				
BGVLPABR	BRIDGEVILLE PA			FAIL				
BRSTPABR	BRISTOL PA						FAIL	
BRYMPABM	BRYN MAWR PA		FAIL	FAIL		FAIL		
BCHMPABU	BUCKINGHAM PA			FAIL	FAIL		FAIL	
<b>CPHLPACH</b>	<b>CAMP HILL PA</b>							<b>PASS</b>
CARNPACA	CARNEGIE PA			FAIL				
PITBPACA	CARRICK PA			FAIL				
CRVVPACA	CARVERSVILLE PA	FAIL			FAIL		FAIL	
CTSQPACT	CATASAUQUA PA						FAIL	
CNPNPACE	CENTER POINT PA			FAIL				
CHESPACA	CHESTER A PA		FAIL		FAIL		FAIL	
<b>CHESPACB</b>	<b>CHESTER B PA</b>							<b>PASS</b>
CHTTPACT	CHESTER HEIGHTS PA			FAIL			FAIL	
CSSPPACS	CHESTER SPRINGS PA			FAIL				

CLLI	Wire Center	Urban / Suburban screen	Cable available screen	Market share screen	Out of Service screen	Repair time screen	FiOS screen	Pass All Screens
<b>PHLAPACH</b>	<b>CHESTNUT HILL PA</b>							<b>PASS</b>
CHVLPACH	CHURCHVILLE PA		FAIL	FAIL				
CLRTPACL	CLAIRTON PA				FAIL		FAIL	
CTVLPACV	COATESVILLE PA			FAIL				
<b>CGVLPACL</b>	<b>COLLEGEVILLE PA</b>							<b>PASS</b>
CNSHPACN	CONSHOHOCKEN PA			FAIL				
CRPLPACO	CORAOPOLIS PA			FAIL				
<b>CRAFPACR</b>	<b>CRAFTON PA</b>							<b>PASS</b>
BCYNPABC	CYNWYD PA			FAIL				
DAPHPADA	DAUPHIN PA	FAIL					FAIL	
PHLAPADB	DAVENPORT PA				FAIL	FAIL	FAIL	
PHLAPADE	DEWEY PA					FAIL	FAIL	
DRMTPADO	DORMONT PA			FAIL				
DRVLPADO	DORSEYVILLE PA						FAIL	
DOVRPAXD	DOVER						FAIL	
DWTWPADT	DOWNINGTOWN PA			FAIL				
<b>PITBPADT</b>	<b>DOWNTOWN PA</b>							<b>PASS</b>
DYTWPADB	DOYLESTOWN PA			FAIL				
EAGLPAEG	EAGLE PA			FAIL				
<b>PITBPAEL</b>	<b>EAST LIBERTY PA</b>							<b>PASS</b>
ESTNPAEA	EASTON PA						FAIL	
PHLAPAEW	EASTWICK PA				FAIL	FAIL	FAIL	
EDTNP AED	EDDINGTON PA		FAIL					
ELZTPAET	ELIZABETH TOWNSHIP PA				FAIL		FAIL	
EMMSPAXE	EMMAUS						FAIL	
ENOLPAEN	ENOLA PA		FAIL				FAIL	
ERIEPAXE	ERIE EAST						FAIL	
ERIEPAXM	ERIE MAIN						FAIL	
ERIEPAXS	ERIE SOUTH						FAIL	
ERIEPAXT	ERIE SOUTHEAST				FAIL		FAIL	
ERIEPAXW	ERIE WEST						FAIL	
PHLAPAEV	EVERGREEN PA				FAIL	FAIL	FAIL	
EXTNP AEX	EXTON PA			FAIL				
FRERPAXF	FAIRVIEW				FAIL	FAIL	FAIL	
FSCKPAFC	FISHING CREEK PA	FAIL			FAIL		FAIL	

CLLI	Wire Center	Urban / Suburban screen	Cable available screen	Market share screen	Out of Service screen	Repair time screen	FiOS screen	Pass All Screens
<b>PHLAPAGE</b>	<b>GERMANTOWN PA</b>							<b>PASS</b>
GLNMPAGL	GLENMOORE PA			FAIL	FAIL			
GLLDPAGN	GLENOLDEN PA						FAIL	
GLNSPAGL	GLENSHAW PA			FAIL				
GRLAPAGL	GREEN LANE PA			FAIL				
GNBGPAGR	GREENSBURG PA		FAIL				FAIL	
HRLVPAHV	HARLEYSVILLE PA			FAIL				
HRBGPAHA	HARRISBURG PA						FAIL	
HTBOPAHB	HATBORO PA		FAIL	FAIL				
HLTWPAAHE	HELLERTOWN PA				FAIL		FAIL	
<b>HRSHPAHXH</b>	<b>HERSHEY</b>							<b>PASS</b>
HMSTPAHO	HOMESTEAD PA			FAIL				
HUMLPAHM	HUMMELSTOWN PA			FAIL				
IMPRPAIM	IMPERIAL PA			FAIL	FAIL		FAIL	
IRWNPAIR	IRWIN PA						FAIL	
PHLAPAIV	IVYRIDGE PA				FAIL		FAIL	
JNNTPAJE	JEANNETTE PA		FAIL				FAIL	
PHLAPAJE	JEFFERSON PA				FAIL	FAIL	FAIL	
JENKPAJK	JENKINTOWN PA		FAIL					
KMVLPAKV	KEMBLESVILLE PA					FAIL		
KNSQPAKS	KENNETT SQUARE PA			FAIL				
<b>KGPRPAKP</b>	<b>KING OF PRUSSIA PA</b>							<b>PASS</b>
KGTPNAES	KINGSTON PA						FAIL	
<b>KRLNPAKL</b>	<b>KIRKLYN PA</b>							<b>PASS</b>
PHLAPAKR	KNIGHTS ROAD PA						FAIL	
KHVLPAKU	KUHNSVILLE PA	FAIL					FAIL	
LDNBPALB	LANDENBERG PA			FAIL			FAIL	
LANGPALA	LANGHORNE PA		FAIL	FAIL				
LNDLPALD	LANSDALE PA		FAIL	FAIL				
LNSDPALD	LANSDOWNE PA			FAIL			FAIL	
LARCPALM	LARCHMONT PA		FAIL	FAIL	FAIL			
LBNNPAES	LEBANON PA		FAIL				FAIL	
LNLXPALN	LINE LEXINGTON PA			FAIL				
PHLAPALO	LOCUST PA		FAIL					
PHLAPAMK	MARKET PA					FAIL	FAIL	

CLLI	Wire Center	Urban / Suburban screen	Cable available screen	Market share screen	Out of Service screen	Repair time screen	FiOS screen	Pass All Screens
PHLAPAMY	MAYFAIR PA						FAIL	
<b>MCRKPAMR</b>	<b>MCKEES ROCKS PA</b>							<b>PASS</b>
MCPTPAMK	MCKEESPORT PA						FAIL	
MCMRPAMC	MCMURRAY PA			FAIL				
MBRGPAME	MECHANICSBURG PA		FAIL	FAIL				
MEDIPAME	MEDIA PA			FAIL				
MNDNPAMH	MENDENHALL PA			FAIL		FAIL	FAIL	
MDTNPAMI	MIDDLETOWN PA						FAIL	
MDLDPAMI	MIDLAND PA	FAIL			FAIL		FAIL	
MLVAPAMI	MILLVALE PA			FAIL				
MOVLPAMO	MONROEVILLE PA		FAIL	FAIL				
MOSCPAMC	MOOSIC PA		FAIL	FAIL			FAIL	
MRSLPAMV	MORRISVILLE PA			FAIL				
MTGRPAMG	MOUNT GRETNA PA	FAIL	FAIL	FAIL			FAIL	
ALTWPAMT	MOUNTAINVILLE PA						FAIL	
NCLDPANC	NEW CUMBERLAND PA			FAIL				
NWHPPANH	NEW HOPE PA	FAIL				FAIL	FAIL	
NWKNPANK	NEW KENSINGTON PA	FAIL				FAIL	FAIL	
NWTWPANW	NEWTOWN PA			FAIL				
<b>NRTWPANR</b>	<b>NORRISTOWN PA</b>							<b>PASS</b>
PITBPANS	NORTH SIDE PA		FAIL					
NWLSPANW	NORTH WALES PA		FAIL	FAIL				
OKDLPAOA	OAKDALE PA			FAIL	FAIL	FAIL	FAIL	
PITBPAOK	OAKLAND PA					FAIL	FAIL	
OKMTPAOA	OAKMONT PA					FAIL	FAIL	
OLYPPAOL	OLYPHANT PA						FAIL	
PHLAPAOR	ORCHARD PA						FAIL	
PLMYPAPA	PALMYRA PA		FAIL	FAIL				
PAOLPAPA	PAOLI PA			FAIL				
PRFDPAPF	PARKERFORD PA		FAIL		FAIL		FAIL	
PRBGPAPB	PARKESBURG PA		FAIL	FAIL				
<b>PXTGPAPG</b>	<b>PAXTANG PA</b>							<b>PASS</b>
<b>PXTNPAPA</b>	<b>PAXTONIA PA</b>							<b>PASS</b>
PEHLPAPH	PENN HILLS PA			FAIL				
PNBGPAPB	PENNSBURG PA				FAIL		FAIL	

CLLI	Wire Center	Urban / Suburban screen	Cable available screen	Market share screen	Out of Service screen	Repair time screen	FiOS screen	Pass All Screens
PHLAPAPE	PENNYPACKER PA					FAIL	FAIL	
PRKSPAPE	PERKASIE PA			FAIL				
PYVLPAPE	PERRYSVILLE PA			FAIL				
PXVLPAPV	PHOENIXVILLE PA			FAIL				
<b>PHLAPAPI</b>	<b>PILGRIM PA</b>							<b>PASS</b>
PIVLPAPV	PINEVILLE PA				FAIL	FAIL	FAIL	
PTTNPAPI	PITTSTON PA		FAIL				FAIL	
PLHSPAPH	PLEASANT HILLS PA			FAIL				
<b>PSVLPAPV</b>	<b>PLUMSTEADVILLE PA</b>							<b>PASS</b>
PLMOPAPL	PLYMOUTH PA						FAIL	
<b>PHLAPAPO</b>	<b>POPLAR PA</b>							<b>PASS</b>
PTTWPAPT	POTTSTOWN PA						FAIL	
PGTWPAPT	PUGHTOWN PA				FAIL		FAIL	
QKTWPAQT	QUAKERTOWN PA		FAIL	FAIL				
RDLNPAXR	RED LION						FAIL	
PHLAPARE	REGENT PA					FAIL	FAIL	
RGVLPARI	REIGELSVILLE PA				FAIL	FAIL	FAIL	
RDPKPARP	RIDLEY PARK PA					FAIL	FAIL	
RBTPPART	ROBINSON TWP PA			FAIL				
ROCHPARC	ROCHESTER PA	FAIL					FAIL	
RYFRPARF	ROYERSFORD PA						FAIL	
PHLAPASA	SARATOGA PA				FAIL	FAIL	FAIL	
SCHWPASV	SCHWENKSVILLE PA							
SCTNPASC	SCRANTON PA						FAIL	
SWKYPASE	SEWICKLEY PA							
SHSAPASH	SHARPSBURG PA							
PHLAPASH	SHERWOOD PA					FAIL		
SDTNPASD	SOUDERTON PA							
SPGVPAXS	SPRING GROVE							
SPDLPASP	SPRINGDALE PA		FAIL				FAIL	
SPFDPASF	SPRINGFIELD PA							
SPTWPASP	SPRINGTOWN PA					FAIL	FAIL	
PITBPASQ	SQUIRREL HILL PA						FAIL	
SLTNPAST	STEELTON PA						FAIL	
TAYLPATA	TAYLOR PA						FAIL	

CLLI	Wire Center	Urban / Suburban screen	Cable available screen	Market share screen	Out of Service screen	Repair time screen	FiOS screen	Pass All Screens
PHLAPATR	TRINITY PA		FAIL		FAIL		FAIL	
<b>TRPRPATR</b>	<b>TROOPER PA</b>							<b>PASS</b>
TULYPATU	TULLYTOWN PA		FAIL	FAIL				
TRCKPATC	TURTLE CREEK PA		FAIL	FAIL				
WGTPPAWR	WARRINGTON PA			FAIL				
WTFRPAXW	WATERFORD	FAIL	FAIL		FAIL	FAIL	FAIL	
PHLAPAWV	WAVERLY PA						FAIL	
WAYNPAWY	WAYNE PA			FAIL				
<b>WCHSPAWC</b>	<b>WEST CHESTER PA</b>							<b>PASS</b>
WGRVPAWG	WEST GROVE PA		FAIL	FAIL				
WMFLPAWM	WEST MIFFLIN PA						FAIL	
WSVWPAWE	WEST VIEW PA						FAIL	
WLBRPAWB	WILKES BARRE PA						FAIL	
WKBGPAWK	WILKINSBURG PA			FAIL				
WLGRPAWG	WILLOW GROVE PA			FAIL				
WYNGPAWY	WYOMING PA			FAIL			FAIL	
YRDLPAYL	YARDLEY PA			FAIL				
YORKPAXE	YORK EAST						FAIL	
YORKPAXM	YORK MAIN						FAIL	
YORKPAXN	YORK NORTH						FAIL	
YORKPAXS	YORK SOUTH/LOGANVILLE		FAIL				FAIL	
YORKPAXW	YORK WEST		FAIL				FAIL	
ZLNPPAZE	ZELIENOPE PA	FAIL					FAIL	

In summary, the Commission should find that cable and wireless telephony do not constitute competitive services for basic dial-tone service. Even if the Commission disagrees, however, each wire center must be evaluated separately to determine the actual competitiveness of service. When that examination is conducted, 173 of the wire centers included in Verizon's Joint Petition fail to pass the test. Thus, even if the Commission disagrees and finds that cable and wireless telephony may, in theory, compete with basic dial-tone service, Verizon has met its burden of proving that such competition actually exists in only 21 wire centers in Pennsylvania.

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

### **1. Legal Standard**

The Commission has the power to waive its own regulations. The regulations themselves reserve that power to the Commission. Specifically, 52 Pa. Code § 5.43 allows any interested person to petition the Commission to waive a regulation. That regulation requires that the petition requesting a waiver "must set forth the purpose of, and the facts claimed to constitute the grounds requiring the ... waiver."

The Commission has explained, however, that while it has the power to waive regulations, it will use that power only when the facts are compelling. Specifically, in *Township of Collier v. Pennsylvania-American Water Company*, Docket No. C-200162072004, Pa. PUC LEXIS 26 (May 3, 2004), the Commission explained this power as follows:

Section 501 of the Code grants the Commission authority to promulgate regulations and to rescind or modify those regulations. (66 Pa. C.S. § 501.) As the Code has changed, the Commission has reassessed affected regulations and has modified or rescinded regulations that have become inconsistent with the Code. The power to rescind our regulations also includes the power to waive them. Indeed, case law supports the power of an administrative agency to waive its own rules and regulations or excuse noncompliance. *Keys v. Unemployment Compensation Board of Review*, 130 A.2d 262 (Pa. Super. Ct., 1957).

This Commission, as an administrative agency, does have the power to waive its Regulations. 52 Pa. Code § 1.2(c).<sup>6</sup> Whether our Regulations should be waived in this instance is a different question. This matter presents no reasonable or lawful justification for a waiver of our line extension ... We conclude that the need of the Township does not rise to the level of justification necessary for a waiver of the Commission's Regulations. Thus, we grant the OCA's Exception in order to clarify that the Commission does have the power to waive its own Regulations, but we deny the OCA's Exception to the extent it seeks such a waiver.

In other words, while the Commission has the power to waive its regulations, such a waiver should be based on a change in the enabling statute or a clear demonstration that the party seeking relief cannot reasonably comply with the regulation.

Moreover, certain Commission regulations contain specific standards for requesting waivers. For purposes of this proceeding, two such provisions are applicable.

First, the regulations concerning service quality reporting, 52 Pa. Code Ch. 63, Subch. E, contain a specific exemption provision, which states: "If unreasonable hardship to a person or to a utility results from compliance within this subchapter, application may be made to the Commission for modification of the section or for temporary exemption from its requirements." 52 Pa. Code § 63.53(e).

Second, there is a specific waiver provision that applies to the entirety of Chapter 64. 52 Pa. Code § 64.212 provides as follows:

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

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<sup>6</sup> The Commission's citation to 52 Pa. Code § 1.2(c) appears to be an error. That regulation allows the Commission to waive any provision of "this subpart" which is Subpart A, the Commission's procedural rules.

Thus, in order for Verizon to obtain a waiver of the requirements of Chapter 63 Subchapter E or any provisions in Chapter 64, Verizon must demonstrate that continued compliance would cause it "unreasonable hardship."

Finally, as the proponent of an action by the Commission, Verizon bears the burden of proof concerning its petition for a waiver. 66 Pa. C.S. § 332(a).

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

Verizon has requested an 11-year waiver of all of Chapter 64 and the following subchapters of Chapter 63: B (Services and Facilities), C (Accounts and Records), E (Quality of Service), F (Extended Area Service), and G (Public Coin Services).

As discussed above, in order to obtain a waiver of Chapter 63 Subchapter E or Chapter 64, Verizon must demonstrate that it would suffer "unreasonable hardship" if it were required to continue complying with the regulations. Neither Verizon's Joint Petition nor the testimony of Mr. Vasington concerning the waiver request even mentions the "unreasonable hardship" standard, let alone presents any facts or circumstances that would constitute such a hardship. See Joint Petition ¶¶ 14-18 and Verizon St. 1 at 39:16 to 42:8. There is no mention anywhere in the record of unreasonable compliance costs, impracticality of obtaining relevant data, unreasonableness of keeping in place existing procedures that comply with these requirements, or any other indication that Verizon would suffer any type of hardship (let alone an "unreasonable" one) if it were required to continue complying with regulations that it has been required to meet for many years.

As an initial matter, therefore, Verizon's requests for waivers of Chapter 63 Subchapter E and Chapter 64 must be denied for failure to even attempt to demonstrate "unreasonable hardship" from continued compliance with those regulations.

Moreover, as discussed above, the Commission has held that a party requesting a waiver must provide a sound justification, supported by facts, for the waiver. Verizon has not done so with respect to any of these regulations. It may be true that some of the regulations are outmoded in light of changes in the telecommunications industry since their adoption, as Mr. Vasington claims. Verizon St. 1 at 39:23 to 40:2. That fact may provide a reasonable justification for Verizon to file a petition for a rulemaking under 52 Pa. Code § 5.43, but it is not sufficient to justify an 11-year waiver that would apply only to one company.

Further, Verizon acknowledges (as it must) that the Commission retains authority to oversee the safety and reliability of Verizon's facilities under 66 Pa. C.S. § 1501. Joint Petition ¶ 18 and Verizon St. 1 at 40:20 to 41:12. What Verizon fails to recognize, however, is that the predominant way in which the Commission exercises that authority is through the issuance and enforcement of regulations -- some of the very regulations Verizon seeks to waive. In fact, each of the regulations in Chapter 63 Subchapter B (52 Pa. Code §§ 63.12 through 63.24) and Subchapter E (52 Pa. Code §§ 63.51 through 63.65) includes Section 1501 as part of the Commission's Authority for promulgating the regulation.

Moreover, Section 1501 requires Verizon to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" and to ensure that "[s]uch service and facilities shall be in conformity with the regulations and orders of the commission." Verizon cannot legitimately claim that it will continue to be subject to the Commission's authority under Section

1501 while simultaneously asking to be exempted from the very regulations concerning safety and reliability that implement Section 1501.

CWA-IBEW would not oppose the initiation of a rulemaking proceeding to evaluate whether changes should be made in Chapter 63 regulations. Such a proceeding would enable the Commission to hear from all interested parties (including relevant Commission bureaus) to determine whether changes in the telecommunications industry should result in changes to the Chapter 63 requirements. Such a review should not be made solely for one utility, and certainly not for an 11-year period after a greatly expedited proceeding in which numerous other issues also were involved.

CWA-IBEW submits, therefore, that Verizon's request for a waiver of any regulations should be denied. Verizon has failed to demonstrate that it would suffer an "unreasonable hardship" from continued compliance with Chapter 63 Subchapter E and Chapter 64. It also has failed to demonstrate how it would remain subject to the Commission's authority under Section 1501 of the Code if it is exempt from complying with some of the very safety and reliability regulations that implement Section 1501.

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

If the Commission wishes to consider waiving any regulations in this proceeding, CWA-IBEW strongly oppose granting any waiver of Chapter 63 Subchapter B (Service and Facilities) and Subchapter E (Telephone Quality Service Standards) requirements. Those regulations deal directly with the safety and reliability of the network and are designed to protect utility workers and members of the public who come in contact with those facilities.

Mr. Dvorak, who leads Verizon North employees in the Erie area, spoke directly to the importance of the Subchapter B regulations. He testified as follows:

[W]aiving the regulations in Chapter 63, Subchapter B would jeopardize the safety our members who work on Verizon's network. We have to remember that our lines are usually placed very close to electric lines, and these regulations require Verizon to meet electrical safety standards, including the National Electrical Safety Code. These regulations also require Verizon to inspect its system, conduct tests and preventive maintenance, and have the ability to respond to emergencies. The Subchapter B regulations also prohibit Verizon from tapping into interoffice lines to serve individual customers, which is important not only for safety, but also for the security of interoffice traffic. I am not sure if Verizon is meeting all of these requirements today, given the poor state of the network in my part of the state. But I have no doubt that if Verizon did not have to meet these requirements, it would jeopardize the safety of myself and every other Verizon employee or contractor who has to work on Verizon's network; not to mention the general public that might come into contact with these lines.

CWA-IBEW St. 2 at 7:10 to 8:2 (emphasis added).

Mr. Dvorak's concerns are echoed by the representatives of Verizon PA employees. Mr. Gardler concluded: "Giving Verizon this waiver [of Chapter 63 Subchapter B] will just further harm customers across the state and put our members in harm's way." CWA-IBEW St. 3 at 5:16-17. Mr. Dezzi agreed, stating: "Verizon must comply with those regulations [Subchapter B] to make sure that the network is safe for our workers and the public." CWA-IBEW St. 4 at 6:12-13.

Similarly, Mr. Dvorak expressed serious concerns about the worker safety implications of waiving three specific provisions in Chapter 63 Subchapter E. He explained:

I'm very concerned about a waiver of section 63.63 that sets electrical standards; section 63.64 that requires metering inspections and testing, and section 63.65 that requires Verizon to ensure the safety of its work environment and our work practices. Waiving any of these regulations would jeopardize the safety of all of us who work on Verizon's network.

CWA-IBEW St. 2 at 8:9-13 (emphasis added).

Other provisions in Subchapter E are equally important to the safety and reliability of service received by Verizon's customers. For example, Section 63.57 requires Verizon to clear customer trouble reports within a certain periods of time and Section 63.58 requires service installations to occur within a certain amount of time. As discussed above, Verizon has not even attempted to show that complying with these requirements would cause it "unreasonable hardship," as required by Section 63.53(e) in order to obtain a waiver of these regulations.

Thus, if the Commission considers any of Verizon's waiver requests for Chapter 63 regulations, the Commission should not waive the requirements of Subchapters B and E.

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

As CWA-IBEW discussed above, Verizon has not shown that it would suffer "unreasonable hardship" if Chapter 64 regulations continued to apply to Verizon. Most of Chapter 64 addresses specific standards, rights, and responsibilities for serving residential consumers. CWA-IBEW witness Dvorak highlighted one specific regulation in this Chapter that has important public safety implications. He explained as follows why Verizon should not be granted a waiver of Section 64.51:

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. Verizon should not get a waiver from this requirement -- we must have the ability to interrupt service to perform essential maintenance or repair work, and we should make sure that work is done quickly and safely.

CWA-IBEW St. 2 at 8:18 to 9:2.

Thus, if the Commission considers any of Verizon's waiver requests for Chapter 64 regulations, the Commission should not waive the requirements of Section 64.51.

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

CWA/IBEW does not take a position on the issues raised by other parties.

## **IV. CONCLUSION**

For the reasons set forth above, the Communications Workers of America and International Brotherhood of Electrical Workers respectfully request the Commission to deny Verizon's Joint Petition. Verizon has not met its burden of proving that "like or substitute" services exist for basic dial-tone service in Pennsylvania.

In the alternative, if the Commission finds that cable or wireless telephony do constitute "like or substitute" services (at least in theory), then an evaluation of each of the 194 wire centers included in Verizon's Joint Petition is required. As set forth in detail above, if such analyses are conducted for each wire center, only 21 of the 194 wire centers can be found to be competitive. The remaining wire centers exhibit important characteristics showing that competition does not actually exist for basic service (including customers' lack of access to cable telephony, poor service quality, large Verizon market share, or lack of customer access to state-of-the-art technology).

Finally, even if the Commission finds that basic dial-tone service should be classified as competitive in certain wire centers, the Commission should deny Verizon's request for an 11-year waiver of most safety, reliability, service quality, and customer service regulations in those wire centers. Verizon has not met its burden of proving an "unreasonable hardship" to comply with those regulations, or otherwise shown that excusing compliance would be consistent with the public interest.

In the alternative, if the Commission finds that Verizon should receive a waiver or some regulations for some period of time, in no event should there be a waiver of Chapter 63 Subchapters B and E or of Section 64.51. Waiving those regulations would jeopardize the safety of utility workers and the public who comes in contact with network facilities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott J. Rubin". The signature is fluid and cursive, with the first name "Scott" being the most prominent.

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Counsel for CWA-IBEW

Dated: January 8, 2015

## Appendix A: Proposed Findings of Fact

1. Verizon Pennsylvania LLC and Verizon North LLC (collectively “Verizon”) are incumbent local telecommunications companies in Pennsylvania. Joint Petition ¶¶ 4.
2. The Communications Workers of America (“CWA”) and International Brotherhood of Electrical Workers (“IBEW”) represent more than 5,000 Verizon employees in Pennsylvania. CWA-IBEW Protest and Answer ¶¶ A1 and A3.
3. CWA and IBEW also are customers of Verizon at their offices in Erie, Philadelphia, and Bridgeville, at which they purchase services that will be affected by the Joint Petition. CWA-IBEW Protest and Answer ¶¶ A2 and A4.
4. On October 6, 2014, Verizon filed a Joint Petition seeking the competitive classification of basic dial-tone service and other protected services under 66 Pa. C.S. § 3016(a) in 194 wire centers. Joint Petition Exhibit A.
5. The Joint Petition also seeks a waiver until December 31, 2025, of the Commission’s regulations at 52 Pa. Code Chapter 63 Subchapters B, C, E, F, and G and all of Chapter 64. Joint Petition ¶ 15.
6. CWA-IBEW have a direct interest in the outcome of this proceeding, as it could have a direct and material effect on the safety and reliability of Verizon’s network. CWA-IBEW Protest and Answer ¶ A5.
7. Cable telephone service does not function reliably when a home or business loses electricity (for example, during storms). CWA-IBEW St. 1 at 35-36.
8. Cable telephone service cannot be relied upon to reach E-911 service when a home or business loses electricity. CWA-IBEW St. 1 at 35-36.
9. Cable telephone service cannot be purchased as a stand-alone service in most of the wire centers included in the Joint Petition, and where it is available the cost is two to three times the cost of Verizon’s basic dial-tone service. Verizon St. 1 at 38.
10. Cable telephone service cannot support essential services such as home security alarms and medical alert services. CWA-IBEW St. 2 at 3.
11. Cable telephone service does not have the essential characteristics of wireline basic dial-tone service and is not a “like or substitute” service for basic dial-tone service.
12. Wireless telephone service does not function reliably during major storms and emergencies when many people are trying to use the wireless network. CWA-IBEW St. 1 at 31-32; Tr. 99.
13. Wireless telephone service does not function reliably if the customer does not have access to electricity during an extended period of time to recharge the customer’s telephone. CWA-IBEW St. 1 at 31-32.

14. Wireless telephone service does not accurately identify a customer's location in multi-unit buildings for E-911 service. CWA-IBEW St. 1 at 32.

15. Wireless telephone service does not support essential services such as home security alarms and medical alert services. CWA-IBEW St. 2 at 3.

16. Wireless telephone service does not have the essential characteristics of wireline basic dial-tone service and is not a "like or substitute" service for basic dial-tone service.

*Note: The following proposed findings of fact are provided in the event the Commission rejects findings 11 and 16.*

17. Verizon intended to limit the wire centers included in the Joint Petition to "urban and suburban, population-dense areas." Verizon St. 1.0 at 4.

18. Verizon did not use any data to determine whether a wire center served a rural area. Tr. 128-130.

19. Verizon included 12 wire centers in the Joint Petition that are in rural areas, as shown in Table 1, above. Compare the maps in CWA-IBEW Exh. 1 and CWA-IBEW St. 1S, Sch. SMB-18.

20. The 12 wire centers in Table 1, above, do not meet Verizon's own criteria for inclusion in the Joint Petition and are excluded from consideration for a competitive classification of basic dial-tone service.

21. Verizon intended to limit the wire centers included in the Joint Petition to areas where cable telephony was available. Verizon St. 1.0 at 4.

22. Verizon did not use any data to determine whether a wire center had cable telephony available to all households in the wire center. Tr. 150-151.

23. Publicly available data from the Federal Communications Commission and U.S. Census Bureau show the number of households in each wire center that have broadband cable available (and thus access to cable telephony) and the total number of households in the wire center. CWA-IBEW Exh. 5 and CWA-IBEW St. 1S, Sch. SMB-6 Revised.

24. There are 41 wire centers included in Verizon's Joint Petition where at least 3% of households do not have access to cable telephony. Table 2, above.

25. The 41 wire centers in Table 2, above, do not have universal access to cable telephony and, therefore, are excluded from consideration for a competitive classification of basic dial-tone service.

26. Market share is an important measure of the existence of a competitive market. CWA-IBEW St. 1 at 58.

27. Verizon did not analyze its market share in any of the wire centers included in the Joint Petition. Tr. 127.

28. If one company has a market share of 50% or higher, the market is not competitive. CWA-IBEW St. 1 at 58.
29. Verizon has a history in other jurisdictions of significantly increasing prices for basic service after the service is deregulated. CWA-IBEW St. 1 at 71-72.
30. Verizon included 75 wire centers in its Joint Petition where Verizon's market share is 50% or higher, as summarized in Table 3, above. CWA-IBEW St. 1S, Schs. SMB-6 Revised and SMB-7 Revised.
31. The 75 wire centers in Table 3, above, do not have a competitive market for telephone service and, therefore, are excluded from consideration for a competitive classification of basic dial-tone service.
32. Poor service quality is an indicator of the absence of a competitive market. CWA-IBEW St. 1 at 80 and 85.
33. Service quality for a telephone utility can be measured by the trouble report rate and the percentage of out-of-service trouble reports that are repaired within 24 hours. CWA-IBEW St. 1 at 80-85.
34. There are 32 wire centers included in the Joint Petition that have trouble report rates twice as high as Verizon's internal standard, as shown in Table 4, above. CWA-IBEW St. 1 at 82-83.
35. There are 24 wire centers included in the Joint Petition that have out-of-service repair times that are significantly worse than Verizon's internal standard, as shown in Table 5, above. CWA-IBEW St. 1 at 84-85.
36. The 32 wire centers in Table 4, above, exhibit poor service quality which indicates a lack of pressure from competitors and, therefore, are excluded from consideration for a competitive classification of basic dial-tone service.
37. The 24 wire centers in Table 5, above, exhibit poor service quality which indicates a lack of pressure from competitors and, therefore, are excluded from consideration for a competitive classification of basic dial-tone service.
38. In portions of Pennsylvania, Verizon offers a fiber-to-the-premises service, known as FiOS, which is "one of the highest-quality telecommunications products available to homes in the United States." CWA-IBEW St. 1S at 7.
39. There are essentially two ways for telecommunications competition to exist in a wire center: "having multiple providers competing aggressively to provide high-quality service to customers, or having the incumbent provider allow its service to deteriorate so that customers must leave to find reliable service." CWA-IBEW St. 1S at 7.
40. As a matter of public policy, consistent with the Declaration of Policy contained in Chapter 30 of the Public Utility Code, the Commission should encourage the first kind of

competition (the provision of high-quality service with state-of-the-art technology).  
CWA-IBEW St. 1S at 8.

41. Verizon included 99 wire centers in the Joint Petition where it has not made FiOS available to all households in the wire center, as shown in Table 6, above. CWA-IBEW St. 1S, Sch. SMB-16.
42. The 99 wire centers in Table 6, above, do not provide state-of-the-art technology to all customers, which indicates a lack of the type of competition that is consistent with the Commonwealth's public policy, and, therefore, are excluded from consideration for a competitive classification of basic dial-tone service.
43. Verizon has failed to demonstrate the requirements for the competitive classification of basic dial-tone service in 173 of the 194 wire centers included in the Joint Petition, as shown in Table 7, above.
44. Verizon has met the requirements for the competitive classification of basic dial-tone service in the following wire centers: Bellevue, Camp Hill, Chester B, Chestnut Hill, Collegeville, Crafton, Downtown, East Liberty, Germantown, Hershey, King of Prussia, Kirklyn, McKees Rocks, Norristown, Paxtang, Paxtonia, Pilgrim, Plumsteadville, Poplar, Trooper, and West Chester.

*The following proposed findings relate to Verizon's request to waive certain regulations*

45. Verizon has requested a waiver through December 31, 2025, of the following Commission regulations: Chapter 63 Subchapters B, C, E, F, and G, and all of Chapter 64. Joint Petition ¶ 15.
46. Verizon has not presented any evidence attempting to show that it would suffer an unreasonable hardship from continued compliance with any Commission regulations. See Verizon St. 1 at 39-42.
47. Verizon has not met its burden of proving the need for a waiver of any regulations.

*The following proposed findings are provided in the event the Commission rejects proposed finding 47*

48. Regulations in Chapter 63 Subchapter B are required to protect the safety and reliability of the telecommunications network and the safety of utility workers and members of the public who come in contact with network facilities. CWA-IBEW St. 2 at 7-8.
49. Waiving the requirements of Chapter 63 Subchapter B would jeopardize the safety of utility workers and members of the public who come in contact with Verizon's network. CWA-IBEW St. 2 at 7-8, CWA-IBEW St. 3 at 5, CWA-IBEW St. 4 at 6.
50. Regulations in Chapter 63 Subchapter E are required to protect the safety and reliability of the telecommunications network and the safety of utility workers and members of the public who come in contact with network facilities. CWA-IBEW St. 2 at 8.

51. Waiving the requirements of Chapter 63 Subchapter E would jeopardize the safety of utility workers and members of the public who come in contact with Verizon's network. CWA-IBEW St. 2 at 8.
52. The regulation in Section 64.51 is required to protect the safety and reliability of the telecommunications network and the safety of utility workers and members of the public who come in contact with network facilities. CWA-IBEW St. 2 at 8-9.
53. Waiving the requirement of Section 64.51 would jeopardize the safety of utility workers and members of the public who come in contact with Verizon's network. CWA-IBEW St. 2 at 8-9.

## Appendix B: Proposed Conclusions of Law

1. Verizon has the burden of proof in this proceeding. 66 Pa. C.S. §§332(a) and 3016(f).
2. Verizon must prove that “like or substitute” services to basic dial-tone service are available in each of the 194 wire centers it included in the Joint Petition. 66 Pa. C.S. § 3016(a).
3. The Commission must make its determination based on an evaluation of the competitiveness of the market in each of the 194 wire centers included in the Joint Petition. 66 Pa. C.S. § 3016(a)(3).
4. Verizon has failed to meet its burden of proof that “like or substitute” services to basic dial-tone service are available in any of the 194 wire centers.
5. This Commonwealth’s telecommunications policy includes the following: “[I]t is the policy of this Commonwealth to: ... (2) Maintain universal telecommunications service at affordable rates ...; (3) Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis; ... (6) Ensure the efficient delivery of technological advances and new services throughout the Commonwealth in order to improve the quality of life of all Commonwealth residents ...; [and] (8) Promote and encourage the provision of competitive services by a variety of service providers on equal terms ... without jeopardizing the provision of universal telecommunications service at affordable prices.” 66 Pa. C.S. § 3011.
6. Limiting a provider’s market share to no more than 50% helps to achieve an appropriate balance between ensuring a competitive market and establishing reasonable prices for consumers. *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, I-2011-2237952, 2012 Pa. PUC LEXIS 324, (Mar. 2, 2012).
7. The Commission has the authority to waive its own regulations. *Township of Collier v. Pennsylvania-American Water Company*, Docket No. C-200162072004, Pa. PUC LEXIS 26 (May 3, 2004), citing 66 Pa. C.S. § 501 and *Keys v. Unemployment Compensation Board of Review*, 130 A.2d 262 (Pa. Super. Ct., 1957).
8. A waiver of regulations should be based on a change in the enabling statute or a clear demonstration that the party seeking relief cannot reasonably comply with the regulations. *Township of Collier v. Pennsylvania-American Water Company*, Docket No. C-200162072004, Pa. PUC LEXIS 26 (May 3, 2004).
9. Any waiver of any provision in Chapter 63 Subchapter E must be based on a showing of “unreasonable hardship” to the party requesting the waiver. 52 Pa. Code § 63.53(e).
10. Any waiver of any provision in Chapter 64 must be based on a showing on “unreasonable hardship” to the party requesting the waiver. 52 Pa. Code § 64.212.

11. Verizon has failed to meet its burden of proving that it would suffer an unreasonable hardship if it were required to continue complying with the requirements of Chapters 63 and 64.
12. Verizon has failed to meet its burden of proving that it cannot reasonably comply with the requirements of Chapters 63 and 64.
13. Verizon remains subject to Commission jurisdiction over safety and reliability. 66 Pa. C.S. § 1501.
14. Commission regulations in Chapters 63 and 64 are the primary manner in which the Commission regulates the safety and reliability of telecommunications utilities' facilities under Section 1501. See the Authority notes to regulations in Chapters 63 and 64.

## Appendix C: Proposed Ordering Paragraphs

IT IS ORDERED:

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

*Note: The following proposed ordering paragraphs are provided in the event the Commission rejects paragraph 1.*

4. That the Joint Petition filed by Verizon Pennsylvania LLC and Verizon North LLC on October 6, 2014, seeking the competitive classification of all retail services in 194 wire centers is granted as to the following 21 wire centers: Bellevue, Camp Hill, Chester B, Chestnut Hill, Collegeville, Crafton, Downtown, East Liberty, Germantown, Hershey, King of Prussia, Kirklyn, McKees Rocks, Norristown, Paxtang, Paxtonia, Pilgrim, Plumsteadville, Poplar, Trooper, and West Chester; and denied as to all other wire centers.
5. That Verizon Pennsylvania LLC and Verizon North LLC are hereby directed to file within twenty (20) days after the date of entry of this Final Order the "Price List and Product Guide" that it files on its own website showing the competitive classification of basic dial-tone service in the 21 wire centers listed above. Thereafter, Verizon Pennsylvania LLC and Verizon North LLC shall submit any changes to the price list it maintains with the Commission using sequentially numbered supplements.
6. That Verizon Pennsylvania LLC and Verizon North LLC are hereby directed to file within twenty (20) days after the date of entry of this Final Order tariff supplements removing basic dial-tone service in the 21 wire centers listed above from the service areas to which the tariffs apply.