

**ECKERT  
SEAMANS**  
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL 717 237 6000  
FAX 717 237 6019  
www.eckertseamans.com

Deanne M. O'Dell  
717.255.3744  
dodell@eckertseamans.com

January 8, 2014

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification Of all Retail Services In Certain Geographic Areas, And For A Waiver Of Regulations For Competitive Services – Docket Nos. P-2014-2446303 and P-2014-2446304

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Dear Rosemary Chiavetta:

Enclosed for electronic filing please find Full Service Network's Main Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Joel H. Cheskis w/enc.  
Cheryl Walker Davis w/enc.  
Certificate of Service w/enc.  
[RA-OSA@pa.gov](mailto:RA-OSA@pa.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Full Service Network's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email and/or First Class Mail**

Suzan D. Paiva, Esq.  
Verizon Pennsylvania Inc.  
1717 Arch Street, 17 NW  
Philadelphia, PA 19103  
[Suzan.D.Paiva@Verizon.com](mailto:Suzan.D.Paiva@Verizon.com)

Steven C. Gray, Esq.  
Office of Small Business Advocate  
300 North Second St., Suite 202  
Harrisburg, PA 17102  
[sgray@pa.gov](mailto:sgray@pa.gov)

Michelle Painter, Esq.  
Painter Law Firm, PLLC  
26022 Glasgow Dr.  
Chantilly, VA 20152  
[Michelle.painter@painterlawfirm.net](mailto:Michelle.painter@painterlawfirm.net)

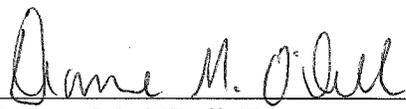
Charles E. Thomas III, Esq.  
Thomas, Niesen & Thomas  
PO Box 9500  
Harrisburg, PA 17108-9500  
[Cet3@tntlawfirm.com](mailto:Cet3@tntlawfirm.com)

Barrett Sheridan, Esq.  
Office of Consumer Advocate  
555 Walnut St., 5<sup>th</sup> Fl.  
Harrisburg, PA 17101-1923  
[bsheridan@paoca.org](mailto:bsheridan@paoca.org)

Johnnie E. Simms, Esq.  
Bureau of Investigation & Enforcement  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265  
[josimms@pa.gov](mailto:josimms@pa.gov)

Elizabeth R. Marx, Esq.  
Harry Geller, Esq.  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17102  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

Scott J. Rubin, Esq.  
333 Oak Lane  
Bloomsburg, PA 17815  
[Scott.j.rubin@gmail.com](mailto:Scott.j.rubin@gmail.com)

  
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Deanne M. O'Dell, Esq.

Date: January 8, 2015

**BEFORE THE  
PENNSYLVANIA PUBLIC COMMISSION**

Verizon North LLC and Verizon	:	Docket No. P-2014-2446303
Pennsylvania LLC Petition for	:	Docket No. P-2014-2446304
Reclassification	:	

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**MAIN BRIEF OF  
FULL SERVICE NETWORK, LP**

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Deanne M. O'Dell, Esquire  
Attorney ID #81064  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)

Date: January 8, 2015

Attorneys for Full Service Network, LP

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**I. INTRODUCTION/ARGUMENT SUMMARY**

Verizon Pennsylvania, LLC and Verizon North, LLC (collectively, “Verizon”) ask for approval to reclassify basic standalone local calling for residential and business customers from “protected” to “competitive” in 194 specific wire centers located around Philadelphia, Pittsburgh, Harrisburg/York, Erie and Scranton/Wilkes-Barre pursuant to 66 Pa.C.S. § 3016(a). If reclassified, these services would not be subject to Commission rate regulation and Verizon would have the ability to detariff them meaning that Verizon would no longer be required to provide the Commission 30 days’ advance notice of changes. The effect of this would remove any opportunity for advance notice to wholesale customers, like Full Service Network, LP (“FSN”), regarding changes to products and services these wholesale customers offer to retail customers on a resale basis. This result would significantly undermine the ability of FSN to offer these products and service for resale because FSN would have no advance notice of changes that could be communicated its retail resale customers and no ability to audit wholesale bills which would increase in proportion to the increased retail rates. Any new opportunity created by approving Verizon’s petition enabling Verizon to impose unreasonable or discriminatory conditions or limitations on the right of wholesale customers to purchase retail products for resale must be prevented. The failure to do this could negatively impact the ability of FSN (and other resellers) to provide resale as a competitive landline alternative to customers. For these reasons, FSN recommends that any approval of Verizon’s petition must include the following conditions:

1. Verizon must provide wholesale customers 30 days advance notice of any changes to its retail products reclassified as competitive;
2. If Verizon chooses to detariff the newly classified services, then it must continue to file notice of any subsequent changes to the Price List and Product Guide with the Commission; and,
3. The Commission should reaffirm Verizon’s obligation to make all reclassified retail services available at the currently applicable Pennsylvania wholesale discount rate.

Verizon is also requesting waivers from certain service quality and customer interaction regulations found in Chapters 63 and 64 of the Commission's regulations regarding any newly reclassified services. To the extent any of these waivers are granted, FSN recommends that they be equally applicable to similarly situated telecommunications carriers, like FSN. If Verizon is given a competitive advantage in terms of waivers that are not generally applicable to all similarly situated telecommunications carriers then the fair and equal ability of competitors to offer service and products will be negatively impacted. If this happens, customers would be harmed from the loss of competitive alternatives.

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

On October 6, 2014, Verizon filed a petition pursuant to 66 Pa. C.S. § 3016(a). As permitted by this section, Verizon is seeking a Commission determination that its retail services in the metropolitan areas of Philadelphia, Pittsburgh, Erie, Harrisburg/York and Scranton/Wilkes-Bare should be reclassified from noncompetitive (or protected) to competitive. Verizon is also seeking a waiver of certain regulations contained in Chapter 63 and 64 of the Pennsylvania Code as applied to competitive services in those areas. Notice of the Petition was published in the *Pennsylvania Bulletin* on October 11, 2014. That notice required that formal protests, petitions to intervene and answers to the Petition be filed by October 21, 2014.

Full Service Network, LP ("FSN") is a Pennsylvania based certificated competitive local exchange carrier ("CLEC") and facilities-based interexchange carrier ("IXC") that provides a complete range of services including long distance, toll-free service, internet and local telephone services. FSN is also a wholesale customer of Verizon that purchases services from Verizon at a wholesale discount and then resells them to FSN's retail customers. FSN filed a Petition to Intervene which was granted at the October 23, 2014 Prehearing Conference.

The following testimony submitted by Christopher Honeywill on behalf of FSN was admitted into the record: (1) Direct Testimony, FSN St. No. 1; and, (2) Surrebuttal Testimony, FSN St. No. 1-SR. In addition to the testimony, the FSN Exhibits CH-1, CH-2, and CH-3 were also admitted into the record. An evidentiary hearing was held on December 17, 2014 and a Briefing Order was entered on December 22, 2014. This Main Brief is being submitted in accordance with that Order.

### **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**

Chapter 30 of the Public Utility Code addresses the alternative regulation of telecommunications carriers and Section 3016 permits a local exchange carrier to petition the Commission for a determination that a “protected or retail noncompetitive service or other business activity in its service territory” is competitive.<sup>1</sup> The petitioning local exchange carrier has the burden of proof and the Commission is required to consider all relevant information including the availability of like or substitute services.<sup>2</sup> Chapter 30, however, does not limit the Commission's authority.<sup>3</sup> To that end, the Commission has the authority to “establish additional requirements as are consistent” with Chapter 30 and which the Commission “determines to be necessary to ensure the protection of customers.”<sup>4</sup> Thus, while the Commission’s assessment of Verizon petition begins with an evaluation of like or substitute services, the Commission is not confined to assessing only that question or to making a “yes” or “no” determination regarding the petition. Rather, the Commission – consistent with Chapter 30 – is required to assess the impact of the petition on customers and has the authority to impose any conditions as may be deemed necessary on an approval of all or part of the petition.

<sup>1</sup> 66 Pa. C.S. § 3016(a).

<sup>2</sup> 66 Pa.C.S. § 3016(a)(3) and (4).

<sup>3</sup> *Buffalo Valley Tel. Co. v. Pa. PUC*, 990 A.2d 67 (Pa. Commw. Ct. 2009).

<sup>4</sup> 66 Pa.C.S. § 3019(b)(3).

In addition, Chapter 30 maintains the Commission's jurisdiction over the safety, adequacy, reliability and privacy of telecommunications services and the ordering, installation, suspension, termination and restoration of any telecommunications service, including those services deemed competitive.<sup>5</sup> Further, federal law requires Verizon to offer for "resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers..." and the Commission is tasked with the duty of ensuring that Verizon is offering its retail services for resale on nondiscriminatory and reasonable terms.<sup>6</sup> Consistent with this authority, the Commission's competitive safeguards regulations prohibit Verizon, as an ILEC, from giving itself "any preference or advantage over any CLEC in the . . . ordering, provisioning. . . of any goods, services . . . or facilities."<sup>7</sup> Thus, pursuant to Chapter 30, federal law, and the Commission's regulations, the Commission has the necessary authority to ensure that the impact of approving all or any part of Verizon's petition does not create a future situation whereby Verizon can create unreasonable or discriminatory conditions or limitations on the resale of its services because doing so would be harmful to customers by removing resale as a competitive landline alternative.

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

Resale is a competitive alternative to Verizon's service and one of the fundamental methods of competitive entry envisioned by the Telecommunications Act as it can and does provide an attractive landline competitive voice alternative which can be particularly important for customers who are not interested in broadband, broadband/VoIP, or wireless services or may live in areas where such services

<sup>5</sup> *Pennsylvania Public Utility Commission v. Verizon Pennsylvania, Inc.*, Docket No. R-2011-2244373, Final Order entered November 14, 2011, 2011 Pa. PUC LEXIS 440, appeal denied at *Verizon Pennsylvania Inc. and Verizon North LLC v. Pennsylvania Public Utility Commission*, 1353 CD 2011, unpublished opinion entered August 18, 2012. ("Tariff 500 Order")

<sup>6</sup> 47 U.S.C. 251(b)(1) and (c)(4)(B); 66 Pa. Code § 63.143(1)(i). *See also, Wholesale Rate for Resale of Telecommunications Provided by Verizon Pennsylvania Inc. and Verizon North Inc.*, Docket No. R-00038516, Final Order entered March 4, 2005 ("Wholesale Rates Order").

<sup>7</sup> 52 Pa. Code § 63.143(1)(i).

are not availability.<sup>8</sup> FSN purchases services from Verizon as a wholesale customer of Verizon and offers resold retail services primarily to residential customers.<sup>9</sup> Oftentimes, FSN can offer these resold products to retail customers for less cost or with additional products and services beyond the Verizon equivalent offering.<sup>10</sup> In FSN's experience, there is a reasonable number of residential customers who desire a competitive landline alternative to Verizon's landline service and, therefore, benefit from the resale offerings available in the marketplace today.<sup>11</sup> FSN's ability to offer resale to retail customers is dependent on FSN's ability to purchase these products from Verizon on a nondiscriminatory and reasonable wholesale basis.<sup>12</sup> As explained further below, Verizon currently treats services classified as "protected" and "competitive" differently depending on: (1) the classification of the service; and, (2) whether it is provided to a retail or wholesale customer. These changes as well as any future ones that Verizon would be free to implement as a result of the approval of this petition that would create unreasonable or discriminatory conditions or limitations on the resale of its services would negatively impact the ability of FSN to offer resale to retail customers.<sup>13</sup> For these reasons, FSN recommends that any approval of all or part of Verizon's petition be subject to the reasonable conditions set forth more fully below in Section I.A.1.c.

**a. Verizon currently treats protected and competitive services differently depending on the classification of the service and whether provided to a retail or wholesale customer**

As the table below shows, Verizon currently treats protected and competitive services differently depending on the classification of the service and whether provided to a retail or a wholesale customer. Importantly, Verizon does not provide any notice to wholesale customers about any changes to any services. However, for protected services, wholesale customers may receive 30

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<sup>8</sup> FSN St. No. 1 at 7.

<sup>9</sup> Verizon St. No. 2, Confidential Attachment B (FSN Response to Verizon Interrogatories Set 1, No. 1)

<sup>10</sup> FSN St. No. 1 at 6.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 3-4.

days' notice of any changes by monitoring the tariff filings that are available at the Commission's website. If Verizon chooses to detariff any newly reclassified competitive services, then this 30 days' notice would be replaced with a one day's notice filing to the Commission of changes to Verizon's Price List.

	<b>Protected Service</b>	<b>Competitive Service</b>
<b>Public Location of Terms &amp; Conditions</b>	Commission filed Tariff <sup>14</sup>	Price List & Product Guides
<b>Timing of Verizon Notice of Changes to Commission</b>	30 days' notice via tariff supplement filing <sup>15</sup>	1 day's notice via Price List which are "updated for changes" <sup>16</sup>
<b>Verizon Notice of Price Change to Customer</b>	<b>Notice to Retail Customer</b>	
	30 days' notice via bill message, bill inserts or direct mail <sup>17</sup>	30 days' notice via bill message, bill inserts or direct mail <sup>18</sup>
	<b>Notice to Wholesale Customer</b>	
	None; must monitor Commission docket for tariff supplements which are filed with <u>30 days'</u> notice	None; must monitor Commission docket or Verizon's website. Price List updates are filed on <u>1 day's</u> <u>notice</u>

If the Commission were to grant Verizon's petition and allow it to reclassify protected services as competitive, then Verizon would have the option to detariff those services.<sup>19</sup> Once detariffed, the newly reclassified services would be shifted to the Price List/Product Guide process which would remove the 30 days' notice that currently exists for protected services through Verizon's filing of tariff supplements.<sup>20</sup> Updates to the Price List for competitive services are only filed with the Commission one day before they become effective. Therefore, a very real result of reclassifying protected services

<sup>14</sup> FSN Exhibit CH-1, Verizon Response to FSN Interrogatory Set I, No. 3.

<sup>15</sup> *Id.*

<sup>16</sup> FSN Exhibit CH-2, Verizon Response to FSN Interrogatory Set I, No. 6.

<sup>17</sup> FSN Exhibit CH-3, Verizon Response to FSN Interrogatory Set II, No. 3.

<sup>18</sup> *Id.*

<sup>19</sup> 66 Pa.C.S. § 3016(d).

<sup>20</sup> FSN St. No. 1 at 10.

and permitting Verizon to detariff the newly reclassified service would be to deprive the Commission and FSN of any effective advance notice of changes to the price or product.<sup>21</sup>

Even if one day's notice of change were reasonable, FSN has attempted to use the Price Lists and Product Guides posted on Verizon's website but has found that there are numerous difficulties that make them essentially useless for FSN's purposes. For example, when Verizon changes its Price Lists or Product Guides at its website, Verizon does not provide any notice that changes have been made. Rather, Verizon just reposts the revised Price Lists/Product Guides each time any one part changes. Notably, the Product Guide for Verizon Pennsylvania contains approximately 1,300 pages, consists of fifty-two sections and numerous subsections (each of which is posted in a separate file for a total of 103 files) and is impossible to simply download as one file.<sup>22</sup> Moreover, where Verizon makes an effort to designate changed materials (it does not do so on the Product Guides), often the newly revised postings are missing the "changed" designations in the margins making it nearly impossible to comb through and figure out what has changed. FSN has also found that Verizon often posts the wrong document entirely and there are times when the Price List or Product Guide is simply not available on the website. In FSN's experience, since there is no policing of Verizon regarding the Price Lists and Product Guides that Verizon posts to its website, they are often inaccurate and are, therefore, unreliable. Thus, even if one could look at these documents every single day and compare them line-by-line to the prior day's version, there is still no reasonable assurance that the information gleaned is accurate or up-to-date.<sup>23</sup>

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<sup>21</sup> Importantly, though, even for detariffed competitive services, Verizon provides its retail customers 30 days' advance notice of any changes through bill messages, bill inserts or direct mail. FSN Exhibit CH-3, Verizon Response to FSN Interrogatory Set II, No. 3.

<sup>22</sup> See [http://www.verizon.com/tariffs/Sections.aspx?docnum=PAVICA0&type=T&sch=Y&se=Y&att=N&typename=IT&tims\\_status=E&entity=VI](http://www.verizon.com/tariffs/Sections.aspx?docnum=PAVICA0&type=T&sch=Y&se=Y&att=N&typename=IT&tims_status=E&entity=VI)

<sup>23</sup> FSN St. No. 1 at 10-11.

In sum, the unconditional ability of Verizon to reclassify protected services to competitive enables Verizon to handle notification of changes to the competitive services in the same manner it does today. This means that the Commission would only be given one day's notice of changes to the Price List rather than the current 30 days' notice provided through tariff supplements for protected services. By removing all pricing and product information from the public view, there is no regulatory oversight ensuring Verizon's compliance with its federal and state obligations related to resale. Moreover, as discussed further below, such removal from the public view eliminates the ability of resellers, like FSN, to have any advance notice of changes to the products or pricing which negatively impacts their ability to audit wholesale bills and to make retail offerings to customers.

**b. Reclassifying protected services as competitive without imposing any reasonable regulatory oversight to ensure Verizon's compliance with the resale obligation may have harmful effects for customers**

FSN's ability to offer resale to retail customers is dependent on FSN's ability to purchase these products from Verizon on a nondiscriminatory and reasonable wholesale basis.<sup>24</sup> In this regard, the current tariff process for protected services is vitally important to both the Commission and resellers like FSN. First, it gives the Commission 30 days' notice of Verizon's proposed changes which enables the Commission to review the proposal and make a determination as to whether it is consistent with the law. Second, even though Verizon provides notices directly to FSN regarding a number of other wholesale issues and sends FSN electronic bills for the cost of purchased wholesale services, Verizon provides no advance notice to FSN regarding changes to protected services. Wholesale bills with increases and no explanations regarding the increase are difficult to manage. By monitoring the Commission's website and locating the tariff supplement filing, FSN can receive 30 days' notice of changes to the protected services. Without this ability, FSN would not be apprised of price changes until it receives its wholesale bill from Verizon – one full month into a new billing cycle.<sup>25</sup>

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<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 8.

Carriers like FSN who purchase products at wholesale need to know the price of the product and its terms and conditions for several reasons. First, the wholesale price is calculated by taking the product's retail price and applying a state regulated percentage discount. Thus, knowing the retail price of the product is a crucial part of the decision-making process regarding whether or not the carrier can or wants to resale the product. In other words, when Verizon chooses to increase the retail price, the wholesale price paid by carriers like FSN will also increase.<sup>26</sup> As FSN Witness Honeywill testified, "Verizon has never once issued an accurate wholesale bill to FSN. Because of this, FSN is required to audit each one of Verizon's wholesale bills and issues disputes to Verizon every single month without exception to ensure that FSN is being accurately charged by Verizon."<sup>27</sup>

Second, when Verizon changes the terms of the services offered and/or the prices charged for existing service, these changes impact FSN's provisioning of the service to FSN's retail customers. When Verizon implements a price or product change to a resale offering, this will impact the product FSN customers are currently using on a resale basis. If FSN is unaware of the changes and cannot timely respond to them for the benefit of the existing retail customer, then the likelihood of FSN losing the customer is increased. This is because the FSN customer is not likely to receive any advance notice of changes because FSN itself has no advance notice to offer the customer. On the other hand, Verizon provides its retail customers 30 days' advance notice of any changes to its retail products or services (regardless of whether they are classified as protected or competitive) via bill messages, bill inserts, and/or direct mail.<sup>28</sup> By providing Verizon retail customers advance notice of upcoming changes, a competitive advantage is created for Verizon because it can use the advance notice to smooth over any customer concerns about the changes. Thus, a Verizon customer receiving this advance notice is less likely to direct his/her upset to Verizon because Verizon has provided advance

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<sup>26</sup> *Id.* at 11.

<sup>27</sup> *Id.* at 9.

<sup>28</sup> FSN Exhibit CH-3, Verizon Response to FSN Interrogatories, Set II, No. 3.

notice. In contrast, an FSN customer would be more likely to direct his/ her upset to FSN regarding any service changes not realizing that FSN did not receive any advance notice of the change that it could provide to the customer. The most likely result of this – especially if it occurred on a regular and prolonged basis – would be customer dissatisfaction with FSN (or any reseller that would be in the same situation) and a return to Verizon.<sup>29</sup>

Third, because Verizon is in control of the service offering, Verizon is in a position to place other terms and conditions on the resale of these competitive services which may be unreasonable or discriminatory. For example, Verizon could embed language in the terms of the offering that would only apply if the customer purchases the service directly from Verizon. Depending on the term or condition, it could result in unreasonable restrictions that would effectively undermine the ability of FSN and others to offer the product for resale.<sup>30</sup>

Finally, even though the Commission does not regulate the rates of competitive services, Verizon is required by the Telecommunications Act to make resale available on a nondiscriminatory basis and complies with this requirement by offering all services for resale at the Pennsylvania approved wholesale rate.<sup>31</sup> As FSN Witness Honeywill testified, without any future regulatory oversight regarding Verizon's resale obligations, opportunities could be created for Verizon to offer services for resale at different rates to different wholesale customers (or itself). Without regulatory oversight, Verizon could just remove all pricing and product information from public access and simply send FSN wholesale bills with significant price increases and product changes claiming that Verizon increased the underlying price of the retail services and giving FSN no ability to verify the claims. This would create a significant competitive advantage for Verizon because it would give Verizon free reign to assess FSN (and other resellers) greater costs and/or push FSN and other resellers

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<sup>29</sup> FSN St. No. 1 at 11-12.

<sup>30</sup> *Id.* at 12.

<sup>31</sup> 47 U.S.C. 251(b)(1) and (c)(4)(B); 66 Pa. Code § 63.143(1)(i). *See also, Wholesale Rates Order.*

out of the resale market thereby forcing those retail customers to return to Verizon – effectively removing this competitive landline alternative for customers.<sup>32</sup>

**c. Commission must impose reasonable conditions on any reclassified services to ensure continued availability of resale to customers in the future**

While Verizon may argue that the Commission need not concern itself about resale because it does not provide any significant competitive pressure due to the presence of packages and bundled offerings of cable and wireless providers, the fact remains that the resold products offered by FSN present a valuable and important competitive landline alternative for residential customers.<sup>33</sup> Regardless of whether there are other non-landline competitive alternatives or whether those non-landline alternatives are more widely used, any result in this proceeding that would remove resale from the market would not be in the public interest. As explained in the preceding section, the failure to couple any approval of Verizon’s petition with reasonable regulatory oversight by the Commission could seriously jeopardize the availability of resale on a long-term basis to the detriment of retail customers.

For these reasons, FSN recommends that any approval of Verizon’s petition be accompanied with several conditions with the purpose of lessening the opportunity for Verizon to impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services. First, the Commission should direct Verizon to provide wholesale customers thirty days’ advance notice of any changes to its retail products reclassified as competitive. Whether or not Verizon chooses to detariff these services, specifically requiring Verizon to provide wholesale customers thirty days’ advance notice of changes is critically important for all the reasons discussed previously. Importantly, if Verizon chooses to detariff newly reclassified services, then a Commission

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<sup>32</sup> FSN St. No. 1 at 12-13.

<sup>33</sup> FSN St. No. 1-SR at 4.

directive to provide wholesale suppliers thirty days' notice of any changes in price or product terms is unquestionably necessary.<sup>34</sup>

Second, FSN recommends that the Commission make clear that even if Verizon chooses to detariff the newly classified services, then Verizon must continue to file notice of any subsequent changes to the price list with the Commission as it is required to do now (in addition to providing wholesale carriers thirty days' advance notice). Without this requirement, Verizon would have no obligation to provide any interested party, including the Commission, reasonable notice of changes to its products and services. Such result would provide Verizon with the opportunity to make any price and product changes it wants without oversight and, most likely, to the detriment of the resale market. Of note is the fact that Verizon has resisted making these filings with the Commission in the past.<sup>35</sup> Therefore, the lack of a Commission directive in this regard could result in Verizon failing to do it in the future. Thus, in addition to the thirty days' notice to wholesale customers that FSN is recommending, it is important for the Commission to ensure that any changes to the Price List continue to be filed with the Commission as they are today.<sup>36</sup>

Finally, FSN recommends that the Commission reaffirm Verizon's obligation to make all retail services – including those that may be reclassified as competitive – available at the currently applicable Pennsylvania wholesale discount rate. Even if the Commission were to designate these services as “competitive,” the Commission still maintains the authority to ensure that Verizon is offering them for resale on a non-discriminatory basis. Therefore, in addition to providing notice to wholesale customers and the Commission consistent with the first two recommendations, the Commission should reaffirm Verizon's obligation to make all reclassified retail services available at the currently applicable Pennsylvania wholesale discount rate. Reclassifying services must not be used

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<sup>34</sup> FSN St. No. 1 at 13-14.

<sup>35</sup> *See Tariff 500 Order.*

<sup>36</sup> FSN St. No. 1 at 14.

by Verizon as an excuse to remove all pricing and product information from public access to the detriment of resellers and, ultimately, customers who would lose the ability to access this competitive landline alternative.<sup>37</sup>

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

### **1. Legal Standard**

A petition for waiver of a Commission regulation must set forth clearly and concisely the petitioner's interest, the relevant legal authority, the purpose of the petition, and the facts claimed to constitute the grounds requiring waiver of the regulation.<sup>38</sup> The Commission may grant a petition for waiver that is in the public interest under the Commission's statutory authority to rescind or modify regulations or orders.<sup>39</sup>

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

FSN does not oppose Verizon's requested waivers but, to the extent they are granted, the waivers must be equally applicable to CLECs like FSN. Most of the regulations that Verizon seeks to waive if its services are reclassified contemplate equal applicability to CLECs.<sup>40</sup> Extending the benefit of any waivers granted to Verizon to the rest of the regulated telecommunications community is the only fair and reasonable way to ensure that all regulated local exchange carriers are subject to the same regulatory requirements (or released from them). This benefits customers by ensuring a level playing field exists so that all the telecommunications carriers are operating under the same rules and requirements. A failure to do this by granting Verizon's waiver requests without extending them to other carriers will create a competitive advantage for Verizon.<sup>41</sup> Moreover, if the Commission determines that Verizon should be granted these waivers, then it should not require other similarly

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<sup>37</sup> *Id.* at 15.

<sup>38</sup> 52 Pa. Code § 5.43(a); *see also* 1 Pa. Code § 35.18.

<sup>39</sup> *See* 66 Pa. C.S. § 501(a).

<sup>40</sup> *See e.g.* 52 Pa. Code §§ 63.15, 63.22 and 63.51.

<sup>41</sup> FSN St. No. 1 at 4-6.

situated entities to expend time and resources to petition the Commission to pursue the same right.<sup>42</sup> Such an outcome would unfairly and unnecessarily drain resources away from the ability of competitors to focus on providing competitive service which would not be in the public interest.

**3. Specific Chapter 63 Regulations**

See discussion above in Section III.B.2.

**4. Specific Chapter 64 Regulations**

See discussion above in Section III.B.2.

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

**1. Price Change Opportunity**

FSN has no position on this issue.

**2. Wholesale Issues**

Verizon argues that wholesale issues are “not relevant” because “Verizon is not proposing any changes to wholesale practices or regulations.”<sup>43</sup> As explained in more detail in Section III.A.2, however, granting Verizon’s petition and permitting Verizon to detariff the newly reclassified competitive services has the potential of negatively impacting the ability of carriers, like FSN, to offer products and services on a resell basis. While the underlying reasons for these negative consequences are because Verizon does not afford its wholesale customers (or the Commission) the same notice it provides its retail customers of future changes to competitive services, the long-term impact of such changes would be felt by all retail customers who may no longer have access to this competitive landline alternative to Verizon’s services. As Chapter 30 specifically authorizes the Commission to “establish additional requirements as are consistent” with Chapter 30 and which the Commission “determines to be necessary to ensure the protection of customers,”<sup>44</sup> FSN submits that the issues it raises here must not be simply dismissed as “wholesale issues” as Verizon would prefer.

<sup>42</sup> *Id.*; FSN St. No. 1-SR at 2.

<sup>43</sup> Verizon St. No. 1.0 at 4, n. 1; Verizon St. No. 2.0 at 7

<sup>44</sup> 66 Pa.C.S. § 3019(b)(3).

Moreover, and to the extent the Commission is somehow persuaded that FSN's concerns are "wholesale issues," Verizon is still incorrect to assert that the Commission need not deal with them in this proceeding. The record is clear that changing the classification of these services from "protected" to "competitive" permits Verizon the ability to detariff these services and, once that is accomplished, to essentially remove them from the purview of the Commission and wholesale customers. Pursuant to Chapter 30, the Commission maintains jurisdiction over the safety, adequacy, reliability and privacy of telecommunications services and the ordering, installation, suspension, termination and restoration of any telecommunications service, including those services deemed competitive.<sup>45</sup> The Commission has a duty to ensure that Verizon is offering its retail services for resale on nondiscriminatory and reasonable terms and to not impose any "unreasonable or discriminatory conditions or limitations on, the resale" of its services.<sup>46</sup> The Commission oversees compliance with this obligation and, in fact, the Commission's competitive safeguards regulations prohibit Verizon, as an ILEC, from giving itself "any preference or advantage over any CLEC in the . . . ordering, provisioning. . . of any goods, services . . . or facilities."<sup>47</sup> Thus, the Commission has ample authority to address the issues raised by FSN in this proceeding notwithstanding any attempt by Verizon to categorize them as somehow irrelevant "wholesale issues."

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

FSN has no position on this issue.

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<sup>45</sup> *Tariff 500 Order*; See generally 66 Pa. C.S. § 3019(b)(2).

<sup>46</sup> 47 U.S.C. 251(b)(1) and (c)(4)(B).

<sup>47</sup> 52 Pa. Code § 63.143(1)(i).

IV. CONCLUSION

For all the reasons discussed above, FSN recommend that if the Commission approve any or all of Verizon's Petition that it do so conditioned on the following:

1. Any waivers granted to Verizon also be applicable to FSN;
2. Verizon must provide wholesale customers 30 days advance notice of any changes to its retail products reclassified as competitive;
3. if Verizon chooses to detariff the newly classified services, then it must continue to file notice of any subsequent changes to the Price List and Product Guide with the Commission; and,
4. The Commission should reaffirm Verizon's obligation to make all reclassified retail services available at the currently applicable Pennsylvania wholesale discount rate.



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Deanne M. O'Dell, Esquire  
Attorney ID #81064  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)

Date: January 8, 2015

Attorneys for Full Service Network, LP

## **VI. PROPOSED FINDINGS OF FACT**

1. Resale is a competitive alternative to Verizon's service and one of the fundamental methods of competitive entry envisioned by the Telecommunications Act as it can and does provide an attractive landline competitive voice alternative which can be particularly important for customers who are not interested in broadband, broadband/VoIP, or wireless services or may live in areas where such services are not availability. FSN St. No. 1 at 7.

2. Oftentimes, resold products can be offered to retail customers for less cost or with additional products and services beyond the Verizon equivalent offering. There is a reasonable number of residential customers who desire a competitive landline alternative to Verizon's landline service and, therefore, benefit from the resale offerings available in the marketplace today. FSN St. No. 1 at 6-7.

3. The ability to offer resale to retail customers is dependent on the ability to purchase these products from Verizon on a nondiscriminatory and reasonable wholesale basis. FSN St. No. 1 at 4.

4. Verizon currently treats services classified as "protected" and "competitive" differently depending on: (1) the classification of the service; and, (2) whether it is provided to a retail or wholesale customer. These changes as well as any future ones that Verizon would be free to implement as a result of the approval of this petition that would create unreasonable or discriminatory conditions or limitations on the resale of its services would negatively impact the ability of resellers FSN to offer resale to retail customers. FSN St. No. 1 at 3-4.

5. Verizon does not provide any notice to wholesale customers about any changes to any services. However, for protected services, Verizon provides 30 days' notice of any changes through tariff filings that are available at the Commission's website. If Verizon chooses to detariff any newly reclassified competitive services, then this 30 days' notice would be replaced with a one day's notice filing to the Commission of changes to Verizon's Price List. FSN Exhibit Nos. CH1, CH-2, CH-3.

6. Verizon's Price Lists and Product Guides posted on its website include numerous difficulties that make them essentially useless for providing meaningful information to wholesale customers about changes to Verizon's products and services. Thus, even if one could look at these documents every single day and compare them line-by-line to the prior day's version, there is still no reasonable assurance that the information gleaned is accurate or up-to-date. FSN St. No. 1 at 10-11.

7. FSN's ability to offer resale to retail customers is dependent on FSN's ability to purchase these products from Verizon on a nondiscriminatory and reasonable wholesale basis. FSN St. No. 1 at 4.

8. The current tariff process for protected services gives the Commission 30 days' notice of Verizon's proposed changes which enables the Commission to review the proposal and make a determination as to whether it is consistent with the law and, by monitoring the Commission's website and locating the tariff supplement filing, FSN can receive 30 days' notice of changes to the protected services. Without this ability, FSN would not be apprised of price changes until it receives its wholesale bill from Verizon – one full month into a new billing cycle. FSN St. No. 1 at 8.

9. The wholesale price is calculated by taking the product's retail price and applying a state regulated percentage discount. Thus, knowing the retail price of the product is a crucial part of the decision-making process regarding whether or not the carrier can or wants to resale the product. In

other words, when Verizon chooses to increase the retail price, the wholesale price paid by carriers like FSN will also increase. FSN St. No. 1 at 11.

10. When Verizon implements a price or product change to a resale offering, this will impact the product FSN customers are currently using on a resale basis. If FSN is unaware of the changes and cannot timely respond to them for the benefit of the existing retail customer, then the likelihood of FSN losing the customer is increased. This is because the FSN customer is not likely to receive any advance notice of changes because FSN itself has no advance notice to offer the customer. FSN St. No. 1 at 11-12.

11. Verizon provides its retail customers 30 days' advance notice of any changes to its retail products or services (regardless of whether they are classified as protected or competitive) via bill messages, bill inserts, and/or direct mail. FSN Exhibit CH-3, Verizon Response to FSN Interrogatories, Set II, No. 3.

12. By providing Verizon retail customers advance notice of upcoming changes, a competitive advantage is created for Verizon because it can use the advance notice to smooth over any customer concerns about the changes. Thus, a Verizon customer receiving this advance notice is less likely to direct his/her upset to Verizon because Verizon has provided advance notice. In contrast, an FSN customer would be more likely to direct his/her upset to FSN regarding any service changes not realizing that FSN did not receive any advance notice of the change that it could provide to the customer. The most likely result of this – especially if it occurred on a regular and prolonged basis – would be customer dissatisfaction with FSN (or any reseller that would be in the same situation) and a return to Verizon. FSN St. No. 1 at 11-12.

13. Verizon is in a position to place other terms and conditions on the resale of these competitive services which may be unreasonable or discriminatory. For example, Verizon could embed language in the terms of the offering that would only apply if the customer purchases the service directly from Verizon. Depending on the term or condition, it could result in unreasonable restrictions that would effectively undermine the ability of FSN and others to offer the product for resale. FSN St. No. 1 at 12.

14. Without any future regulatory oversight regarding Verizon's resale obligations, opportunities could be created for Verizon to offer services for resale at different rates to different wholesale customers (or itself). Without regulatory oversight, Verizon could just remove all pricing and product information from public access and simply send FSN wholesale bills with significant price increases and product changes claiming that Verizon increased the underlying price of the retail services and giving FSN no ability to verify the claims. This would create a significant competitive advantage for Verizon because it would give Verizon free reign to assess FSN (and other resellers) greater costs and/or push FSN and other resellers out of the resale market thereby forcing those retail customers to return to Verizon – effectively removing this competitive landline alternative for customers. FSN St. No. 1 at 12-13.

15. Reasonable conditions are necessary to lessen the opportunity for Verizon to impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services. FSN St. No. 1 at 13-14.

16. Most of the regulations that Verizon seeks to waive if its services are reclassified contemplate equal applicability to CLECs. Extending the benefit of any waivers granted to Verizon to the rest of

the regulated telecommunications community is the only fair and reasonable way to ensure that all regulated local exchange carriers are subject to the same regulatory requirements (or released from them). This benefits customers by ensuring a level playing field exists so that all the telecommunications carriers are operating under the same rules and requirements. A failure to do this by granting Verizon's waiver requests without extending them to other carriers will create a competitive advantage for Verizon. FSN St. No. 1 at 4-6.

17. Requiring other similarly situated entities to expend time and resources to petition the Commission to pursue the same right regarding waivers that may be granted to Verizon would unfairly and unnecessarily drain resources away from the ability of competitors to focus on providing competitive service which would not be in the public interest. FSN St. No. 1 at 4-6; FSN St. No. 1-SR at 2.

## VII. PROPOSED CONCLUSIONS OF LAW

1. Chapter 30 of the Public Utility Code addresses the alternative regulation of telecommunications carriers and Section 3016 permits a local exchange carrier to petition the Commission for a determination that a "protected or retail noncompetitive service or other business activity in its service territory" is competitive. 66 Pa. C.S. § 3016(a).

2. The petitioning local exchange carrier has the burden of proof and the Commission is required to consider all relevant information including the availability of like or substitute services. 66 Pa.C.S. § 3016(a)(3) and (4).

3. Chapter 30 does not limit the Commission's authority. *Buffalo Valley Tel. Co. v. Pa. PUC*, 990 A.2d 67 (Pa. Commw. Ct. 2009).

4. The Commission has the authority to "establish additional requirements as are consistent" with Chapter 30 and which the Commission "determines to be necessary to ensure the protection of customers." 66 Pa.C.S. § 3019(b)(3).

5. Chapter 30 maintains the Commission's jurisdiction over the safety, adequacy, reliability and privacy of telecommunications services and the ordering, installation, suspension, termination and restoration of any telecommunications service, including those services deemed competitive. *Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc.*, Docket Nos. R-2011-2244373; P-00930715F1000; R-2011-2244375; P-00001854F1000, Final Order entered November 14, 2011, 2011 Pa. PUC LEXIS 440 (Pa. PUC 2011); See generally 66 Pa. C.S. § 3019(b)(2).

6. Federal law requires Verizon to offer for "resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers..." and the Commission is tasked with the duty of ensuring that Verizon is offering its retail services for resale on nondiscriminatory and reasonable terms. 47 U.S.C. 251(b)(1) and (c)(4)(B); 66 Pa. Code § 63.143(1)(i). See also, *Wholesale Rate for Resale of Telecommunications Provided by Verizon Pennsylvania Inc. and Verizon North Inc.*, Docket No. R-00038516, Final Order entered March 4, 2005.

7. The Commission's competitive safeguards regulations prohibit Verizon, as an ILEC, from giving itself "any preference or advantage over any CLEC in the . . . ordering, provisioning. . . of any goods, services . . . or facilities." 52 Pa. Code § 63.143(1)(i).

### **VIII. PROPOSED ORDERING PARAGRAPHS**

1. All waivers granted to Verizon shall also be applicable to FSN.
2. Verizon is directed to provide wholesale customers 30 days advance notice of any changes to its retail products reclassified as competitive.
3. If Verizon chooses to detariff the newly classified services, then it is directed to continue to file notice of any subsequent changes to the Price List and Product Guide with the Commission.
4. Notwithstanding the Commission's actions in this proceeding, Verizon's obligation to make all reclassified retail services available at the currently applicable Pennsylvania wholesale discount rate.