

Suzan DeBusk Paiva  
Assistant General Counsel



1717 Arch Street, 3 East  
Philadelphia, PA 19103

Tel: (215) 466-4755  
Fax: (215) 563-2658  
Suzan.D.Paiva@Verizon.com

January 16, 2015

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief of Verizon, being filed by Verizon Pennsylvania LLC and Verizon North LLC in the above captioned matter. Because the Reply Brief includes certain Proprietary information the Public Version of the Reply Brief is being e-filed, with the Proprietary Version of the Reply Brief being provided via Federal Express delivery.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

  
Suzan D. Paiva

SDP/slb  
Enc.

**Via E-Mail and Federal Express**  
cc: The Honorable Joel H. Cheskis  
Cheryl Walker Davis, OSA

**Via E-Mail and Federal Express**  
cc: Attached Certificate of Service

**CERTIFICATE OF SERVICE**

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon's Reply Brief, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 16<sup>th</sup> day of January, 2015.

**VIA E-MAIL AND FEDERAL EXPRESS**

Barrett Sheridan, Esquire  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

Michelle Painter  
Painter Law Firm, LLC  
26022 Glasgow Drive  
Chantilly, VA 20152  
Counsel for AT&T

Scott J. Rubin, Esquire  
Counsel for CWA and IBEW  
333 Oak Lane  
Bloomsburg, PA 17815

Charles Thomas, III, Esquire  
Thomas, Niesen & Thomas, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101  
Counsel for PA Telephone Assoc

Steven C. Gray, Esquire  
Office of Small Business Advocate  
Suite 202, Commerce Building  
300 North Second Street  
Harrisburg, PA 17102

Harry S. Geller, Esquire  
Elizabeth Marx, Esquire  
c/o PA Legal Aid Network  
118 Locust Street  
Harrisburg, PA 17101  
Counsel for CAUSE-PA

Deanne M. O'Dell, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St, 8<sup>th</sup> Floor  
P.O. Box 1248  
Harrisburg, PA 17101  
Counsel for Full Service Network



Suzan D. Paiva  
Pennsylvania Bar ID No. 53853  
1717 Arch Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19103  
(215) 466-4755

Attorney for Verizon

**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 :  
Geographic Areas, and for a Waiver of : Docket No. P-2014-2446304  
Regulations for Competitive Services :

---

**REPLY BRIEF OF VERIZON**

---

Suzan D. Paiva (Atty ID No. 53853)  
Verizon  
1717 Arch Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19103  
Telephone: 215-466-4755  
Facsimile: 215-563-2658  
[Suzan.D.Paiva@verizon.com](mailto:Suzan.D.Paiva@verizon.com)

Counsel for Verizon

Dated: January 16, 2015

**PUBLIC VERSION**

## TABLE OF CONTENTS

I.	Introduction.....	1
II.	Argument .....	3
A.	Verizon's Petition for Determination of Whether Protected Services in Certain Wire Centers are Competitive Under 66 Pa. C.S. § 3016(a) .....	3
1.	Cable and Wireless are Like or Substitute Services .....	4
2.	Competition is Widespread in the Petition Areas .....	7
i.	The Wire Centers in the Petition are Urban and Suburban.....	7
ii.	Verizon has Established Widespread Cable Coverage in Each Wire Center.....	8
iii.	CWA-IBEW's Market Share Threshold is Arbitrary and Not Supported by the Evidence. ....	11
iv.	CWA-IBEW's Criticisms of Verizon are Irrelevant and Unfounded.....	13
B.	Verizon's Petition for Waiver of Certain Regulations .....	14
C.	Related Issues Raised by Other Parties.....	17
1.	Price Change Opportunity.....	17
2.	Wholesale Issues .....	17
3.	Originating Access Rates and Section 3016(f) .....	18
III.	Conclusion .....	20

## TABLE OF AUTHORITIES

### Cases

<i>Norfolk &amp; Western Railway Co. v. Pa. PUC</i> , 489 Pa. 109, 413 A.2d 1037 (1980).....	19
<i>Murphy v. Pa. Dept. of Public Welfare, White Haven Center</i> , 480 A.2d 382 (Pa. Cmwlth. 1984).....	19

### Commission Orders

<i>Joint Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for a Waiver of the Commission's Regulation Governing Toll Presubscription</i> , 52 Pa. Code Section 64.191(e), Docket No. P-00072348 (Opinion and Order entered September 24, 2008).....	15
<i>Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc.</i> , Docket No. M-2008-2077881 (Opinion and Order entered October 12, 2012).....	16
<i>Petition of Verizon Pennsylvania Inc. and Verizon North Retain Co. for Partial Waiver of the Commission's Call Recording Prohibition Under 52 Pa. Code § 63.137(2)</i> , Docket No. P-2010-2196242 (Opinion and Order entered October 21, 2010).....	16
<i>Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for a Waiver of the Commission's Regulations at 52 Pa. Code §§ 53.58 and 53.39 to Permit Detariffing of Services to Enterprise and Large Business Customers</i> , Docket No. P-2009-2082991 (Opinion and Order entered June 3, 2009) .....	16
<i>PUC v. Verizon Pennsylvania LLC and Verizon North LLC</i> , Docket No. R-2011-2244373, etc. (Opinion and Order entered November 14, 2011).....	18

### Other State Commission Orders

<i>In the Matter of the Petition of Frontier Communications Northwest Inc. to be Regulated as a Competitive Telecommunications Company Pursuant to RCW 80.36.320</i> , 2013 Wash UTC LEXIS 601, 306 P.U.R. 4 <sup>th</sup> 273 (Wash UTC July 22, 2013) .....	2, 6
<i>Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities</i> , Decision 06-08-030 in Rulemaking 05-04-005, 2006 Cal. PUC LEXIS 367 (Cal. PUC, August 24, 2006) .....	5
<i>Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services. Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings</i> , CASE 05-C-0616, 2006 NY PUC LEXIS 193, 248 P.U.R. 4 <sup>th</sup> 71 (NY PSC, April 11, 2006).....	5

### Statutes

66 Pa. C.S. § 501.....	15
66 Pa. C.S. § 3016(a).....	3, 4
66 Pa. C.S. § 3016(d)(4).....	18
66 Pa. C. S. § 3016(f)(1),.....	19
66 Pa. C.S § 3019(b)(2). .....	3, 15

**Regulations**

52 Pa. Code § 63.53(e).....	15
52 Pa. Code § 64.212.....	15

## I. Introduction

Most of the parties do not oppose Verizon's<sup>1</sup> request for competitive classification and a waiver of regulations in the urban and suburban areas where Verizon has demonstrated extensive competition from alternative service providers. Several of the parties filed briefs raising tangential issues, but did not oppose the relief requested.<sup>2</sup> No one specifically addressed competitive classification for business services, and the Office of Small Business Advocate intervened but chose not to participate actively, which indicates that it does not oppose the petition. Not a single Verizon customer complained or participated.

The only parties to oppose the relief are Verizon's labor unions<sup>3</sup> and two advocacy groups.<sup>4</sup> But their briefs make clear that they disagree with Chapter 30's statutory determination that where "like or substitute services or other business activities" are demonstrated to exist, the Commission must declare formerly "protected" services to be competitive. 66 Pa. C.S. § 3016(a). Thus, these parties are, in essence, arguing against the governing statute. As Chapter 30 recognized, where service options are available from other sources, customers – not regulators – are to dictate how communications service are provided.

Even CWA-IBEW's Ms. Baldwin agrees that the only relevant question in evaluating "like or substitute services" is whether the products "are good substitutes for one another *in the*

---

<sup>1</sup> Verizon Pennsylvania LLC and Verizon North LLC ("Verizon" or "VZ").

<sup>2</sup> AT&T Corp. and Teleport Communications America, LLC ("AT&T"), Full Service Network ("FSN") and the Pennsylvania Telephone Association ("PTA").

<sup>3</sup> The Communications Workers of America and International Brotherhood of Electrical Workers ("CWA-IBEW").

<sup>4</sup> The Office of Consumer Advocate ("OCA") and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA").

eyes of buyers.”<sup>5</sup> Here, the evidence in the relevant areas is unquestionable that cable, wireless and other services are substitutes for Verizon’s service “in the eyes of the buyers.” Two thirds of the households in the petition area have switched to a provider other than Verizon. Only [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] percent still have Verizon basic service. And basic service lines have declined by about [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] percent since 2006. VZ Main Br. at 16.

Several other state commissions have rejected the same “there is no substitute for basic service” argument that these parties make here, including California, New York, Washington and Colorado. VZ Main Br. at 14-15. As the Washington commission observed rejecting this argument, “we do not believe the legislature intended the Commission to adopt such a rigorously constricted approach in assessing competitive conditions. Indeed, the narrow market definition [these parties] propose would undermine legislative intent by virtually ensuring that Frontier could never demonstrate the existence of effective competition for these services.”<sup>6</sup> CWA-IBEW, OCA and CAUSE-PA similarly attempt to undermine Chapter 30 here.

In the absence of any evidence to show the lack of competitive options, the other parties rely on unsupported assertions and regulatory lore to argue in favor of perpetual regulation of basic service. In particular, CWA-IBEW’s attempt to twist the “in the weeds” data submitted by its witness is baseless and unsupported. For example, CWA-IBEW mischaracterizes the record

---

<sup>5</sup> CWA-IBEW St. 1.0 at 18-19 (emphasis added).

<sup>6</sup> *In the Matter of the Petition of Frontier Communications Northwest Inc. to be Regulated as a Competitive Telecommunications Company Pursuant to RCW 80.36.320*, 2013 Wash UTC LEXIS 601, \* 37-38, 306 P.U.R. 4<sup>th</sup> 273 (Wash UTC July 22, 2013) ¶ 57.

to make the irresponsible claim that wire centers in and close to the cities of Philadelphia and Pittsburgh are not competitive.

Chapter 30 also supports the regulatory waiver. The other parties admit that the regulations are outdated and irrelevant in today's competitive market, but argue nonetheless that they should apply to Verizon. But Chapter 30 directs the Commission to "review and revise" its regulations taking into account "the emergence of new industry participants, technological advancements, service standards and consumer demand." 66 Pa. C.S. § 3019(b)(2). The Commission has recognized that this provision authorizes a waiver of outdated regulations that do not apply to competitors or distort the market.

The facts and the law require the Commission to grant Verizon's petition.<sup>7</sup>

## **II. Argument**

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

Evidence supplied by other parties confirms Mr. Vasington's demonstration that competitive alternatives are widely available and customers are switching to them. Dr. Loube's map<sup>8</sup> and the spreadsheet provided by CWA-IBEW<sup>9</sup> show that cable service is available in every wire center and to at least 98% (and likely more) of the households in the petition area. VZ Main Br. at 8-9. And CWA-IBEW's surrebuttal testimony exhibit<sup>10</sup> shows that two thirds of the households in the petition area do not have Verizon wireline service. VZ Main Br. at 13.

---

<sup>7</sup> Several parties described the credentials of their witnesses. Verizon's witness, Paul B. Vasington, brings a unique perspective to this case as the former Chairman and Commissioner of the Massachusetts Department of Telecommunications and Energy, with a long history of experience with issues relating to telecommunications. VZ St. 1.0 at 1.

<sup>8</sup> OCA St. 1, Exhibit 2.

<sup>9</sup> CWA-IBEW Cross Examination Exhibit 5.

<sup>10</sup> CWA-IBEW St. 1S, Schedule SMB-6 (Revised) at 15.

Because they cannot deny this evidence, the other parties would distort the legal standard to impose additional limitations and requirements that would make it impossible ever to classify protected services as competitive and would undermine the will of the Legislature. Their arguments are baseless and should be rejected.

### 1. Cable and Wireless are Like or Substitute Services.

OCA, CWA-IBEW and CAUSE-PA concoct various arguments to argue that the cable, wireless and other services that customers are widely using instead of Verizon service are not “comparable” enough to be “like or substitute services or other business activities” as required by 66 Pa. C.S. § 3016(a). None of them withstand scrutiny.

First, these parties argue that the alternative services lack the safety and reliability of Verizon’s regulated service. These arguments discount decisions being made by consumers to purchase such alternative services.<sup>11</sup> OCA Main Br. at 13-15; CWA-IBEW Main Br. at 7; CAUSE-PA Main Br. at 11. For example, these parties argue that wireless technology is not good enough for purposes of calling 911, but the evidence shows that consumers do not agree: 70 percent of 911 calls today are placed from wireless phones and that percentage is growing. VZ St. 2.0 at 4. These parties also theorize that the rational consumer should refuse to switch from Verizon copper facilities because of back-up power issues,<sup>12</sup> but CWA-IBEW’s own evidence shows that over 80% of the households in the petition area have chosen services that are not provided over a copper network.<sup>13</sup> Even CAUSE-PA’s witness Mr. Miller, who joins in

---

<sup>11</sup> See, e.g., Tr. at 97-98 (Loube) (to him “it doesn’t really matter whether customers who are buying these services value” a particular issue or feature because “there are lots of ways in which individuals are helped by their governments.”)

<sup>12</sup> CWA-IBEW Main Br. at 7; OCA Main Br. at 14-15.

<sup>13</sup> CWA-IBEW St. 1S, Confidential Schedule SMB 6 (Revised) at 15, comparing the [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] Verizon copper lines against the 2,767,419

this argument that customers do not know what is good for them, acknowledges that “[p]ersonally, my household relies on cable telephony and wireless service.” CAUSE-PA St. 1 at 13. Mr. Miller’s choice is reflective of what consumers in the petition area consider to be “like or substitute services.” If Verizon is held to asymmetrical requirements in these areas, it could lose its entire business to competitors whose services customers value, yet still not qualify for competitive classification because the alternative providers have not exactly replicated Verizon’s regulated service. That cannot be what the Legislature intended.

Second, these parties argue that the alternative services are not in the same “product market” as stand-alone basic service. CWA-IBEW Main Br. at 8. This argument is wrong and has been rejected elsewhere. California found that defining basic service as a separate product market “is no longer relevant in today’s technologically diverse telecommunications environment.”<sup>14</sup> New York found that “from the perspective of customer demand” cable and wireless are “sufficiently close substitutes” for stand-alone basic service.<sup>15</sup> Washington found that this argument is “too confining in its description of the market” and that the “narrow view” that competitive services are not substitutes for basic service in the marketplace would “undermine legislative intent by virtually ensuring” that basic services could never be proven

---

households in the petition area to show that **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]** of households do not have copper service.

<sup>14</sup> *Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*, Decision 06-08-030 in Rulemaking 05-04-005, 2006 Cal. PUC LEXIS 367, \*111 (Cal. PUC, August 24, 2006).

<sup>15</sup> *Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services. Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings*, CASE 05-C-0616. 2006 NY PUC LEXIS 193, 248 P.U.R. 4<sup>th</sup> 71 (NY PSC, April 11, 2006).

competitive.<sup>16</sup> Verizon's Main Brief explained that competitors will never replicate exactly the regulated stand-alone voice service that is a vestige from the pre-divestiture Bell System, and that this distinction is meaningless to customers who are just looking for the best service to meet their communications needs. VZ Main Br. at 17.<sup>17</sup>

Third, these parties argue that the services provided by competitors are too expensive. CAUSE-PA Main Br. at 19-20; OCA Main Br. at 35. But consumers obviously do not agree, as demonstrated by how many are using those alternatives. And as Verizon explained in its Main Brief, there is no evidence to support the insinuation that "vulnerable" customers disproportionately use stand-alone basic service; the record shows the opposite. VZ Main Br. at 21-22. OCA argues that the Commission must consider the impact on Lifeline customers (OCA Main Br. at 36), but the record shows that 92% of Lifeline customers have already chosen wireless service. VZ Main Br. at 22. Arguments seeking pricing conditions evince a fundamental disagreement with the will of the Legislature. Chapter 30 determined that where like or substitute services exist, basic service should be classified as competitive, and once reclassified "[t]he commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return or earnings of competitive services or otherwise regulate" those services. 66 Pa. C.S. § 3019(g).

---

<sup>16</sup> *In the Matter of the Petition of Frontier Communications Northwest Inc. to be Regulated as a Competitive Telecommunications Company Pursuant to RCW 80.36.320*, 2013 Wash UTC LEXIS 601, \* 37-38, 306 P.U.R. 4<sup>th</sup> 273 (Wash UTC July 22, 2013) ¶ 57.

<sup>17</sup> Another version of the same argument is OCA's claim that if the consumer's decision turns on the attractiveness of "features or functionalities" other than price, the service cannot be a substitute. OCA Main Br. at 19. As Mr. Vasington explained, while it is true that customers who value mobility will not be satisfied by a landline, the opposite is not true. Many consumers are using their wireless phone as a replacement for a landline (44% according to the Centers for Disease Control) and many wireless companies advertise their products as less expensive landline replacements. VZ St. 2.0 at 5. Wireless is clearly a substitute for landline service.

CAUSE-PA claims that Verizon is trying to “circumnavigat[e] the General Assembly” by asking the Commission to apply the standards contained in legislation introduced last session to modify Chapter 30 by reducing regulation in competitive areas. CAUSE-PA Main Br. at 7.<sup>18</sup> That claim is false. Verizon’s petition asks the Commission to apply the existing law (Chapter 30). The referenced legislation would have made a number of changes to Chapter 30, including classifying many areas of the state as competitive without Commission action and broadening the impact of such classification. Verizon believes that the reform legislation would have made sense, but the Commission granting this petition will not provide the regulatory relief contemplated by that legislation.

## **2. Competition is Widespread in the Petition Areas.**

Perhaps recognizing the widespread competition in the petition areas, CWA-IBEW attempts to chip away at portions of the areas with unfounded claims.

### ***i. The Wire Centers in the Petition are Urban and Suburban.***

In its brief, CWA-IBEW continues to claim that some of Verizon’s petition wire centers are “rural” rather than urban or suburban even though that claim was discredited in Verizon’s uncontested “Motion for Admission of Supplemental Exhibits.” CWA-IBEW Main Br. at 3, 10. This argument is not relevant because there is nothing in Chapter 30 that distinguishes between rural/urban/suburban labels for purposes of competitive classification. But CWA-IBEW’s claim about the nature of the areas is also wrong. CWA-IBEW relies on its Cross Examination Exhibit 1, which its counsel represented at the hearing was prepared by the Center for Rural Pennsylvania and printed from the center’s website, depicting “Rural Pennsylvania School

---

<sup>18</sup> H.B. 1608, 2013-14 Legislative Session. CAUSE-PA’s claim that this legislation was “roundly rejected” in committee is not true. It never came up for a vote.

Districts.” He asked Mr. Vasington to agree that Verizon’s petition included geography that is depicted as a “rural” school district on this map, implying that Verizon had not limited its petition to urban and suburban areas. Tr. at 131. Following the ALJ’s ruling that Verizon could respond after the hearing to CWA-IBEW’s unauthenticated cross examination exhibits and unsubstantiated “subject to check” assertions, Verizon discovered that the Center for Rural Pennsylvania also publishes an adjacent map depicting “Pennsylvania Rural Counties.” The website also explains how it defines rural versus urban for each map. Neither page was shown to Mr. Vasington on cross examination. The counties map, Verizon Supplemental Exhibit 1 (admitted into the record without objection or response from CWA-IBEW), shows that the petition wire centers are located in areas the Center for Rural Pennsylvania classifies as “urban” counties.

In fact, the map shows that Verizon likely undercounted urban and suburban areas in its petition by excluding portions of geography that are considered “urban” on this map. And regardless of the classification by the Center for Rural Pennsylvania, the twelve wire centers CWA-IBEW claims are “rural” are located where CWA-IBEW’s other evidence shows competitors serve a majority of the households.<sup>19</sup>

***ii. Verizon has Established Widespread Cable Coverage in Each Wire Center.***

Verizon already refuted OCA’s argument that 100% of households in a wire center must have access to cable telephony to establish the availability of like or substitute services. OCA

---

<sup>19</sup> For example, CWA-IBEW St. 1S, Confidential Schedule SMB 6 (Revised) shows that Verizon serves [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] of the households in the Dauphin, Midland, New Hope, New Kensington, Rochester, Waterford and Zelenople wire centers (calculated by comparing total Verizon wireline lines to total households). The majority of households in those locations are served by competitors. .

Main Br. at 22; VZ Main Br. at 8; Tr. at 40. CWA-IBEW seems to agree that 100% is not reasonable, but instead invents for the first time in its brief an arbitrary standard that at least 97% of the households in the wire center must be served by cable telephony for like or substitute services to be available. CWA-IBEW Main Br. at 14. Chapter 30 does not set any particular percentage threshold and there is no market or economic evidence that 97% is a significant figure. As Mr. Vasington explained at hearing, having cable telephony available to the majority of households in a wire center provides the competitive effect to protect all customers, even those inframarginal customers that might not subscribe to cable service. Tr. at 40. But even if CWA-IBEW's arbitrary 97% standard were applied, CWA-IBEW's own evidence shows that the standard would be satisfied as at least 98% (if not more) of the households in the petition area have cable availability. VZ Main Br. at 8-9.

CWA-IBEW claims based on its Cross Examination Exhibit 5 that only 153 of the 194 wire centers included in the petition have at least 97% cable availability. That still amounts to almost 80% of the wire centers in the petition, but the claim that the other wire centers lack competition is wrong. CWA-IBEW Cross Examination Exhibit 5 was presented for the first time at the hearing, with no opportunity to take discovery or to examine it thoroughly. CWA-IBEW's witness did not swear to its authenticity; instead, OCA's Dr. Loube was asked during cross examination to accept it "subject to check." Tr. at 94. The document is said to be based on the output of an FCC model used to determine census blocks that might be eligible for high cost support from the federal Connect America Fund if unserved by an unsubsidized broadband competitor. The model was not designed or intended for purposes of determining the extent of cable availability to evaluate competition. VZ Cross Examination Exhibit 7; Tr. at 107-109. That the FCC's cost model shows small pockets of unserved census blocks within these densely

populated urban and suburban areas is not surprising nor indicative of a lack of competition in those areas. Some of the wire centers on CWA-IBEW's list are actually in the cities of Philadelphia or Pittsburgh (i.e., Locust and Trinity in the City of Philadelphia, North Side in Pittsburgh). A number of others are in the near suburbs of Philadelphia.<sup>20</sup> These are locations where cable facilities are widely available. The "unserved" census blocks in these densely populated city and suburban locations may include multiple dwelling units with exclusive arrangements with satellite providers or industrial parks and the like, but cable facilities are likely to be ubiquitous enough to extend to the small number of households in these census blocks if requested. CWA-IBEW's insinuation that households in these locations lack competitive alternatives is misleading and unfounded.<sup>21</sup>

If CWA-IBEW is suggesting that Verizon or other providers would charge higher prices to the small number of "unserved" households within these wire centers, that argument is a red herring. Verizon currently prices its service uniformly throughout its rate centers (individual wire centers or groups of wire centers) and will commit that it will continue to do so even in exchanges classified as competitive.

---

<sup>20</sup> Those wire centers that CWA-IBEW claims are not sufficiently competitive that are located in the near suburbs of Philadelphia include Ardmore, Bryn Mawr, Larchmont, Chester A, Jenkintown, Bethayers, Lansdale, North Wales, Hatboro, Langhorn and Tulleytown. *See* CWA-IBEW St. 1S, Schedule SMB 18 p. 7 (map of the wire centers in center city and near suburbs of Philadelphia).

<sup>21</sup> Dr. Loube's examination of unserved census blocks is also not relevant. OCA Main Br. at 14. As Mr. Vasington explained, Dr. Loube only excluded census blocks with zero population but not those with very minimal population. An examination of the population in the two wire centers he cited as "most important" in having the highest number of unserved census blocks turned out to have very high percentages of cable coverage by population, indicating that the census blocks he lists as unserved have minimal population and his table (duplicated at page 24 of OCA's Main Brief) is not a good proxy for cable coverage. Tr. at 39-40.

CWA-IBEW also relies on its own misleading cross examination to suggest that Verizon admitted some flaw in the cable coverage data of the Warren FactBook.<sup>22</sup> That claim was discredited in Verizon's response to CWA-IBEW's "subject to check" assumptions. At hearing, CWA-IBEW's counsel asked Mr. Vasington to accept "subject to check" that various Erie County communities did not have any cable service at all (Tr. at 144-47); that assumption was discredited by Verizon's uncontested Motion for the Admission of Supplemental Exhibits. Verizon established through its Supplemental Exhibits 2 through 5 that Time Warner Cable provides extensive cable coverage in these areas. Thus, the insinuation on cross examination repeated in CWA-IBEW's brief that the Warren FactBook did not establish cable coverage in those areas was erroneous.<sup>23</sup>

*iii. CWA-IBEW's Market Share Threshold is Arbitrary and Not Supported by the Evidence.*

CWA-IBEW also claims that a 50% market share is the appropriate threshold to determine the availability of like or substitute services. CWA-IBEW Main Br. at 17. This is another arbitrary factor mentioned by CWA-IBEW for the first time in its brief, with no support

---

<sup>22</sup> CWA-IBEW criticizes the Warren FactBook because it "does not have information by telephone wire center," (CWA-IBEW Main Br. at 12) but since telephone wire centers have no meaning to cable companies, it is not reasonable to expect that this or any other source would break down the data by telephone wire center. The Warren FactBook shows that the relevant communities are served by cable providers. And Dr. Loube confirmed that each wire center has cable coverage through his map and associated analysis. OCA St. 1.0, Exhibit 2; VZ Main Br. at 8.

<sup>23</sup> At the hearing CWA-IBEW's counsel made much of the Waterford exchange outside Erie, which is also listed in its brief purporting to show that 76% of households in that wire center have cable service available from an unsubsidized competitor. Verizon demonstrated through its supplemental exhibits that cable service is widely available in Waterford from Time Warner Cable. See VZ Supplemental Exhibits 2, 3 and 4. Other evidence in the record shows that competitors have had great success penetrating the market in Waterford, as Verizon provides landline service to only [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] of households in the Waterford exchange. See CWA-IBEW St. 1S, Confidential Schedule SMB 6 (Revised) at 14 showing ([BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] Verizon lines as compared to 3,223 total households in the wire center).

in the Chapter 30 statute or in the evidentiary record.<sup>24</sup> Chapter 30 says nothing about market share. Moreover, Mr. Vasington explained that “market share” in and of itself, says nothing about whether a service should be classified as competitive under the standard of Chapter 30, particularly where, as here, the relevant market has multiple suppliers of like or substitute services and there are no significant barriers to market entry or expansion. The two or more unaffiliated competitors that Verizon has demonstrated serve each of the exchanges subject to this petition can take on more customers and thus expand their market share. Market share is a static, often retrospective view of any market, and thus does not provide an accurate picture of the degree of competition that may exist over time. VZ St. 2.0 at 31-32.

But even if it were relevant – which it is not – CWA-IBEW’s data does not show that Verizon serves more than 50% of the households in the petition area. CWA-IBEW relies on Confidential Schedule SMB 6 (Revised), in which Ms. Baldwin depicted how many lines she believes were served by the Verizon petitioners (stand-alone and bundles, copper and fiber) compared to total households in the wire center. But she inflates the “Verizon” market share by adding a guess of how many of the significant percentage of households that are *not* served by a Verizon wireline service are cord cutters using Verizon Wireless service.<sup>25</sup> This guess inflates her calculation of the Verizon “share” by 13 to 14 percent. Even with that inflating factor, Ms. Baldwin concludes that Verizon’s total share of the households in the petition area (including

---

<sup>24</sup> The electric industry cases cited at page 16 of CWA-IBEW’s brief are inapposite. The 50% load caps discussed in those cases related to setting the rules for auctions to ensure a diverse array of supplier participation. Those cases had nothing to do with defining a competitive market.

<sup>25</sup> Ms. Baldwin assumes 41% of the households not served by Verizon are “cord cutters” (based on national CDC data, since superseded) and 33% of those are Verizon Wireless customers (based on general national wireless market share information). She did not examine which carriers actually serve the households that are not served by the Verizon parties to this case.

Verizon Wireless) is less than 50%.<sup>26</sup> Without the inflating factor, her chart shows that the Verizon petitioners serve only about a third of the households in the petition area. Thus, even if it were relevant – which it is not – CWA-IBEW’s arbitrary 50% threshold is satisfied in the petition area.

As to the 75 individual wire centers identified in CWA-IBEW’s brief, without the inflating factor many of them show Verizon serving less than 50% of households. The wire centers that show the highest Verizon “share” are those with a high penetration of unregulated FiOS Digital Voice packages, demonstrating customer demand for bundles and willingness to switch to unregulated services. Without unregulated FiOS packages, the “share” of Verizon regulated services in these wire centers is quite low – less than 20% in many cases. *See* CWA-IBEW St. 1S, Confidential Schedule SMB 6 (Revised).

***iv. CWA-IBEW’s Criticisms of Verizon are Irrelevant and Unfounded.***

CWA-IBEW tries to disqualify a number of wire centers by claiming that Verizon has poor service quality or that Verizon has not deployed its fiber-optic facilities in those wire centers. CWA-IBEW Main Br. at 20-27. These claims are irrelevant, as Mr. Vasington explained at the hearing:

The statutory standard for reclassification looks outward through a window at services from alternative providers to see if they are like or substitute services. Other parties in this case keep trying to turn that window into a mirror that looks back at Verizon inwardly and tries to judge Verizon’s actions. The important part of this statutory standard is that all customers are protected by market forces when there are widespread alternatives in the market.

Tr. at 37.

---

<sup>26</sup> CWA-IBEW St. 1S, Confidential Schedule SMB 6 (Revised) at 15 (showing a total “Verizon market share” of [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY]).

With regard to service quality, CWA-IBEW fails to demonstrate that the artificial standards it sets up to judge Verizon's performance have any meaning to real customers in today's market.<sup>27</sup> The declining rate of customer complaints demonstrates that Verizon's service is meeting customer expectations. VZ Main Br. at 30. But if a customer is dissatisfied with Verizon's service, there are other service options, which is the hallmark of a competitive market.

Whether Verizon is offering services over fiber-optic facilities in a wire center also has no bearing on the question of what services are available from competitors. But CWA-IBEW's Table 6 at pages 24-25 of its brief, purporting to show "wire centers where FiOS is not widely available" has a major error. It contains all 194 wire centers, even though FiOS services are available in most of the petition wire centers according to the document CWA-IBEW claims as its source. CWA-IBEW St. 1S, Confidential Schedule SMB 16.

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

The opposing parties admit that in the present competitive market many of the Commission's regulations are outdated. OCA "acknowledges that over time some regulations may need to be updated or eliminated to respond to technological and market conditions in the underlying industry." OCA Main Br. at 39. CWA-IBEW notes that "[i]t may be true that some of the regulations are outmoded in light of changes in the telecommunications industry since their adoption." CWA Main Br. at 38. CWA-IBEW also concedes that the Commission has the power to waive its own regulations. *Id.* at 35.

---

<sup>27</sup> For example, CWA-IBEW criticizes Verizon's repair response time in certain offices, but there is no evidence customers are dissatisfied. As Mr. Vasington explained, customers in these urban and suburban areas are likely to have wireless phones and may not want to disrupt their plans or take a day off from work to wait for an immediate repair visit, but instead are more likely to request an appointment at a time that is convenient for the customer, resulting in a longer service restoral time but better satisfying the customer. VZ St. 2.0 at 26.

The parties cite provisions in the regulations that allow waivers upon proof of “unreasonable hardship.” 52 Pa. Code § 63.53(e); 64.212.<sup>28</sup> But nothing in those provisions or the Commission’s enabling authority states that “unreasonable hardship” is the *only* basis upon which the Commission can waive a regulation. The Commission has much more discretion over its own regulations than the other parties suggest. The Commission’s enabling statute at 66 Pa.C.S. § 501 states that the Commission “shall have the power to rescind or modify” any regulation it issues, and does not limit the bases upon which it may do so.

The Commission has recognized that it is appropriate to waive regulations that are not needed in a competitive market, and has done so repeatedly without citing the “unreasonable hardship” standard. The Commission has found that 66 Pa. C.S. § 3019(b)(2) provides statutory authority to waive regulations that result in competitive harm or do not apply to similarly situated providers. In 2008, the Commission relied on Section 3019(b)(2) to waive equal access scripting requirements, finding that “[i]n our opinion, in an increasingly competitive telecommunications market, one in which a significant percentage of customers makes voice calls – and particularly long distance calls – using the services of wireless providers and/or VoIP, it is important that this Commission not unnecessarily distort the marketplace by perpetuating asymmetrical regulations.”<sup>29</sup> In 2010, the Commission relied on Section 3019(b)(2) to waive its regulation prohibiting call recording by telephone companies, in response to Verizon’s argument “that it will be competitively harmed if it has to comply with the two conditions because its

---

<sup>28</sup> CAUSE-PA Main Br. at 26 (“Verizon must demonstrate unreasonable hardship”); CWA-IBEW Main Br. at 37; OCA Main Br. at 38.

<sup>29</sup> *Joint Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for a Waiver of the Commission’s Regulation Governing Toll Presubscription*, 52 Pa. Code Section 64.191(e), P-00072348 (Opinion and Order entered September 24, 2008) at 7, 9 (acting “pursuant to its authority under 66 Pa. C.S. Section 3019(b)(2)”).

unregulated competitors will not be required to make the same disclosures.”<sup>30</sup> In waiving certain regulations relating to tariffing of CLEC services, the Commission observed that “in a competitive environment, service provided to enterprise and large business customers warrants a lesser degree of regulatory oversight and, in accord with that view, we have reduced regulatory burdens on Verizon Access.”<sup>31</sup> In waiving its call answer time rules, the Commission recognized that regulatory standards that do not “comport with customer expectations in today’s competitive telecommunications marketplace” should be waived and that keeping such regulations in place “would constitute enforcement for enforcement’s sake.”<sup>32</sup>

But even if the Commission determined to consider the unreasonable hardship standard, the market distortion and inefficient diversion of resources caused by complying with outdated regulations that do not comport with customer expectations is sufficient to demonstrate “unreasonable hardship” to Verizon and its customers or other “exceptional” circumstances under that standard.

CAUSE-PA takes issue with Verizon’s assertion that customer complaints have dropped dramatically (CAUSE-PA Main Br. at 31), but Mr. Vasington explained on rejoinder that line loss is not the cause of the decrease in complaints because the number of complaints per 1,000 customer accounts has declined over time. Tr. at 38; Verizon Rejoinder Exhibit 1. CAUSE-PA also cites testimony of its witness Mr. Miller claiming that these regulations are important to

---

<sup>30</sup> *Petition of Verizon Pennsylvania Inc. and Verizon North Retain Co. for Partial Waiver of the Commission’s Call Recording Prohibition Under 52 Pa. Code § 63.137(2)*, Docket No. P-2010-2196242 (Opinion and Order entered October 21, 2010) at 6-9 (acting “pursuant to its authority under 66 Pa. C.S. Section 3019(b)(2)”).

<sup>31</sup> *Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for a Waiver of the Commission’s Regulations at 52 Pa. Code §§ 53.58 and 53.39 to Permit Detariffing of Services to Enterprise and Large Business Customers*, Docket No. P-2009-2082991 (Opinion and Order entered June 3, 2009) at 11

<sup>32</sup> *PUC v. Verizon Pennsylvania Inc.*, Docket No. M-2008-2077881 (Opinion and Order entered October 12, 2012) at 33.

customers. CAUSE-PA Main Br. at 32. As explained in Verizon's Main Brief, Mr. Miller's myopic views were formed as an author of regulations more than 20 years ago, not on any recent experience in the communications industry. VZ Main Br. at 32. But the real proof on the lack of importance of these regulations comes from customers themselves: not a single customer has joined in the opposition of the request for waiver of the outdated regulations.

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

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

OCA states that Verizon's explanation that its switched access revenues will continue to decline due to FCC requirements "tempers the OCA's concern" regarding future Price Change Opportunity ("PCO") filings for noncompetitive areas "to a point." OCA Main Br. at 47. There is no need for Commission action on this issue. VZ Main Br. at 33-34. The Commission and the OCA will have the opportunity to review Verizon's future PCO filings and any concerns can be raised at that time.

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

FSN's issues largely are not in dispute. Verizon agrees that the same regulations for which it seeks relief should not apply to FSN; Verizon did not request any change to its resale obligations (nor could it since those requirements are governed by federal law); and Verizon will continue to follow the Commission's November 14, 2011 order that determined how Verizon would provide notice of rate changes for detariffed competitive services.

FSN's only real demand is to change that November 14, 2011 order and require 30 days' advance notice of changes to competitive service rates as a condition of granting the petition. But the Commission already considered FSN's arguments regarding the need for notice of rate

changes for detariffed competitive services and found that Chapter 30 only authorizes one-day's notice in the form of a price list filing.<sup>33</sup> The Commission relied on 66 Pa.C.S. § 3016(d)(4), which states that “the commission may require a local exchange telecommunications company to maintain price lists with the commission applicable to its competitive services. Price changes that are filed in a company's tariff for competitive services will go into effect *on a one-day notice.*” (emphasis added). It is not surprising that Chapter 30 limits notice requirements for competitive services to one day. In a competitive market, it would be unfair to require one provider alone to notify its competitors of its marketing plans 30 days in advance. FSN's complaint that Verizon's rates would be removed from “public view” without such notice is simply wrong. FSN Main Br. at 8. The Commission already determined that Verizon must file a price list for its detariffed services, which is publicly available, and Verizon also maintains the rates, terms and conditions of detariffed competitive services on its own website.

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

AT&T “agrees that Verizon's local exchange service faces competition from like or substitute services in the areas at issue, and that reclassifying Verizon's local service in those areas as competitive will promote competition and benefit consumers.” AT&T Main Br. at 1. That is the only relevant part of AT&T's brief. If the Legislature had intended a party seeking reclassification to prove that it satisfies “all the other requirements” of Section 3016, it would have said so. AT&T Main Br. at 13. Instead, Section 3016(a) states the demonstration that must be made – and AT&T admits Verizon has made that competitive showing. No other proof is required.

---

<sup>33</sup> *PUC v. Verizon Pennsylvania LLC and Verizon North LLC*, Docket No. R-2011-2244373, etc. (Opinion and Order entered November 14, 2011) at 18.

But even if the Commission considers AT&T's claim regarding Section 3016(f)(1), AT&T failed to sustain its burden of proof. VZ Main Br. at 37. AT&T's argument presumes that revenues from Verizon's originating access services provide a subsidy to Verizon's stand-alone basic services in the petition areas. But AT&T has not proven either fact. Therefore, the Commission cannot accept AT&T's contention that Verizon will violate 66 Pa. C.S. § 3016(f)(1) if its basic rates become competitive because there is no evidence to support such a finding. The Commission must ensure that any decision it makes is supported by substantial evidence in the record.<sup>34</sup> AT&T asserts that "access charges have historically been designed and used to subsidize low-cost local exchange service," but it relies on nothing but a description of "regulatory history" without any cost studies or current facts. AT&T Main Br. at 4, 10. This is not even close to sufficient to provide substantial evidence of the existence of a subsidy to support Commission action.

AT&T contends that the "price of admission" for competitive classification is that Verizon must "give up" any subsidy for services in the competitive areas. AT&T Main Br. at 1. But AT&T has not shown there is any subsidy to give up. VZ Main Br. at 37. Even if it had, a complex noncompetitive rate rebalancing would not be the "simple" remedy, "easiest way," or "easy" answer. AT&T Main Br. at 1, 2 and 11. If AT&T had shown that basic service rates receive a subsidy – which AT&T has not shown – the simple and easy answer is to increase those competitive rates following competitive classification. VZ Main Br. at 37-38. AT&T tries too hard to shoehorn its demand for access reductions into this case by casting the most complex

---

<sup>34</sup> Substantial evidence is such relevant evidence that a reasonable mind may accept as adequate to support a conclusion, and more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Railway Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

and convoluted “remedy” as the “easy” answer. The separate and complex question of the pricing of Verizon’s noncompetitive originating switched access rates is not relevant here.

If the Commission chooses to address originating access rates, AT&T already has a forum in the proceeding at Docket C-20027195. But as the PTA correctly pointed out, the pricing of originating access service is an “industry-wide” issue that “remains intermingled with far-reaching FCC reform initiatives.” PTA Main Br. at 2, 7, 8. This case is not the forum to address it.

**III. Conclusion**

For the forgoing reasons Verizon respectfully requests that the Commission grant its petition for competitive classification of all retail services in the identified wire centers and for a waiver of Chapter 63 and 64 regulations for competitive services in these areas.

Respectfully submitted,



Suzan D. Paiva (Atty ID No. 53853)  
Verizon  
1717 Arch Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19103  
Telephone: 215-466-4755  
Facsimile: 215-563-2658  
[Suzan.D.Paiva@verizon.com](mailto:Suzan.D.Paiva@verizon.com)

Counsel for Verizon

Dated: January 16, 2015