

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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**January 16, 2015**



**The Pennsylvania Utility Law Project**

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

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## I. INTRODUCTION/ARGUMENT SUMMARY

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, files this Reply Brief in response to the arguments raised by Verizon Pennsylvania, LLC and Verizon North, LLC (collectively “Verizon”) in its Main Brief. CAUSE-PA stands on the arguments it made in its Main Brief, and has limited its Reply Brief to only those issues which were not already addressed and to illuminate the areas where Verizon has mischaracterized the record and misstated the law.

First, CAUSE-PA briefly addresses Verizon’s summary dismissal of reliability, affordability, and safety as irrelevant to the Commission’s determination and, in response, explains why these factors are critical factors that must be considered.

Next, CAUSE-PA addresses the inaccuracies in Verizon’s Main Brief with respect to its claim that adoption of wireless service means that wireless service is a substitute for wireline service. Indeed, there is ample evidence on the record which shows that individuals adopting wireless technology consider the service as a *supplement* to – not a replacement for wireline service. In that same vein, CAUSE-PA addresses Verizon’s mischaracterization of Lifeline subscribership as evidence that wireless service is affordable and/or is viewed by low income individuals as a substitute for wireline service. As the record shows, Lifeline does not reach a majority of vulnerable, low-income individuals and is wholly irrelevant to whether wireless service is an affordable and reliable substitute for this population.

Finally, CAUSE-PA explains that Verizon misstates the applicable law with respect to its request for regulatory waiver, and – in turn - fails to meet the requisite hardship standard. To the contrary, the evidence Verizon puts forth in support of its request for waiver shows that continued

compliance with Chapter 64 *does not create a hardship for Verizon* but, rather, creates the distinct likelihood that wholesale regulatory waiver would cause unreasonable hardship on *consumers*, particularly those who are most vulnerable and who – as the record shows – regularly rely on the Commission to resolve complaints.

For the reasons explained in its Main Brief – and as further explained herein in response to Verizon -- CAUSE-PA strongly urges the Commission to reject Verizon's Petition and, instead, to engage in an independent exploration and examination of the telecommunications market – in coordination with interested stakeholders – to assess the true state of competition in Pennsylvania.

## II. ARGUMENT

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

#### 1. Legal Standard

*Verizon Mischaracterizes the Appropriate Legal Standard for Competitive Reclassification, Which Requires a Full Assessment of All Relevant Factors – Including the Reliability, Affordability, and Safety of Possible Alternatives.*

As explained in CAUSE-PA's Main Brief, the General Assembly set forth an approach to telecommunications that would ensure that all Pennsylvanians would be able to access service. In carefully balancing the Commonwealth's interest in a competitive market with its interests in the delivery of quality, nondiscriminatory universally accessible telecommunications service, the legislature was clear: The intent of Chapter 30 is to "Promote and encourage the provision of competitive services by a variety of service providers on equal terms throughout all geographic areas of this Commonwealth *without jeopardizing the provision of universal telecommunications service at affordable rates.*"<sup>1</sup> To be sure that the Commission would consider such factors, the legislature specifically required the Commission to consider "all relevant information" in ruling on a petition for reclassification, and placed the burden of proof squarely on the local exchange telecommunications company (in this case, Verizon).<sup>2</sup>

Nevertheless, even with the legislature's clear, unambiguous expression of intent and its specific requirements for the Commission's decision making, Verizon argues in its brief that the reliability, affordability, and safety of alternative services is irrelevant to the Commission's inquiry, and attempts to characterize these critical factors as a customer "preference" as opposed to a necessity. Verizon explains: "In every competitive market, there are certain *infra-marginal*

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<sup>1</sup> 66 Pa. C.S. § 3011(8)(emphasis added).

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

customers who do not switch providers or consider alternatives for whatever reasons, but the mere presence of such customers does not mean that the market is not competitive or that the service needs to be regulated.”<sup>3</sup> To illustrate its point, Verizon makes the inapt comparison of Apple product consumers’ unwillingness to buy a Microsoft or Samsung tablet to the inability of vulnerable, low-income households to purchase telecommunications service... and the needs of many at-risk Pennsylvanians to contact emergency 911 service.<sup>4</sup>

But unlike the preference of a loyal Apple consumer, who is economically capable of making a choice, and may not see other tablets as a viable substitute for an iPad, low income populations and other vulnerable, at-risk populations (such as victims of domestic violence and others who are similarly endangered) do not have the luxury of choice or the choice to select luxury. Their *need* to access reliable, affordable, and safe telecommunication services is critical, and is explicitly protected in Chapter 30.<sup>5</sup>

To make a proper assessment of the “availability of like or substitute services”, it is critical that the Commission engage in a full assessment of the relative reliability, affordability, and safety of the alternatives. To hold otherwise would be to ignore the explicit language in

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<sup>3</sup> Vz. Main Br. at 12; *see also* Vz. St. 2.0, Vasington, at 17, 33-34.

<sup>4</sup> Vz. Main Br. at 12.

<sup>5</sup> CAUSE-PA St. 1-SR, Miller, at 10-11; CAUSE-PA St. 2, Pinsker, at 3-4. Mr. Miller elaborates:

Undoubtedly many low income individuals would prefer to have the convenience of a wireless phone and the luxury of cable or Internet service. But the affordability of packaged services is beyond the reach of many low-income consumers who struggle to find money for food, shelter, heat, and electricity – let alone cable, Internet, or wireless service. Even the terms and conditions of unbundled alternative telecommunication services include additional fees, variable rates, and service limiting terms that can have a particularly harsh impact on low income individuals.

*Id.*

Chapter 30 and to deny the importance of universal services to the overall scheme of telecommunications delivery in Pennsylvania.

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

*Verizon's Reliance on Wireless Adoption as Proof that Wireless is a Substitute for Wireline Service is Fundamentally Flawed.*

Verizon's assertions regarding wireless adoption are misleading, incomplete and insufficient to form the basis of a conclusion that wireless is a substitute for basic, standalone wireline service.

The very first claim that Verizon makes in discussing the facts related to the competitive standard is that “the presence of competition is undisputed,” and that “no one denies that that [sic] there is widespread wireless coverage throughout the petition areas.”<sup>6</sup> To the contrary, the record indicates that or preference Verizon's assertion is patently incorrect. Mr. Miller explained in direct testimony that the AT&T coverage map provided by Verizon in support of its claim of widespread wireless coverage is misleading at best, and only indicates that coverage is available at the street level – not inside cars, buildings, or other structures.<sup>7</sup> Verizon fails to acknowledge Mr. Miller's testimony and never rebuts this critical coverage issue, presumably because it sees street-level coverage as sufficient because many customers have adopted wireless technology.<sup>8</sup> There is no showing by Verizon, other than the number of individuals who have chosen to “cut the cord”<sup>9</sup>, that a technology which provides the *ability to place calls outdoors - but not indoors*

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<sup>6</sup> Vz. Main Br. at 13.

<sup>7</sup> CAUSE-PA St. 1, Miller, at 11-12 (explaining that AT&T's coverage map “indicates only that coverage ‘should be sufficient for on-street, in-the-open and some in-building coverage.’ In other words, even if an individual has the service, and lives in an area with coverage, she or he will receive ‘sufficient’ (not quality) service on the street, but not necessarily in their home.”).

<sup>8</sup> Vz. Main Br. at 12, 16, 18-19.

<sup>9</sup> Vz. Main Br. at 18-19.

is a substitute for wireline. Nor to support Verizon's assumption that the number of customers who have decided it is worth the trade-off to have the convenience of wireline service means the service is a viable substitute for the majority of Pennsylvanians who have remained with wireline.

Verizon is wrong to make this assumption. While 44% of households nationwide have "cut the cord", a clear majority of customers, 66%, have opted to keep their wireline service in addition to wireless service.<sup>10</sup> As Ms. Susan Baldwin – expert for CWA-IBEW – points out:

While customers may choose to substitute a portion of their messages among a broader choice of communications alternatives, they continue to place a distinct value on the function of their wireline telephone. ... The very fact that the majority of consumers continue to maintain wireline service despite also using wireless service suggests that they do not view the two services as substitutes.<sup>11</sup>

Ms. Baldwin further explains why Verizon's reliance on the number of wireless customers in the state is inappropriate:

It is not uncommon for a single household or business to subscribe to multiple wireless phones – even when they continue to purchase wireline service. Any analysis that counts every wireless phone necessarily overstates the reliance on wireless by household or business units. More importantly, however, the fact that many households have more than one wireless telephone or that the number of wireless lines exceeds the number of landline telephones in the state does not change the fact that households that have cut the cord are still in the minority.<sup>12</sup>

Thus, while wireless subscribership may appear to Verizon to be an indication that households consider wireless service a substitute for wireline service, the wireless subscribership actually shows that households have adopted the technology to *supplement* – not supplant – their wireline service.

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<sup>10</sup> Vz. Main Br. at 19, 23 (citing the United States Centers for Disease Control and Prevention).

<sup>11</sup> CWA-IBEW St. 1.0, Baldwin, at 23.

<sup>12</sup> CWA-IBEW St. 1.0, Baldwin, at 23.

This same conclusion also applies to low income populations. Verizon repeatedly argues that adoption of wireless service by Lifeline customers is an indication that wireless is an accessible substitute for low income populations, and points to the fact that 92% of Pennsylvania Lifeline customers subscribe to wireless service as proof that “low income customers overwhelmingly *prefer* wireless service over wireline service.”<sup>13</sup> But as explained above, the record clearly rebuts the claim that adoption of wireless service necessarily means that customers accept wireless as a substitute for wireline service.

It is important to look closer at what the Lifeline subscribership actually shows. Lifeline subscribership is not representative of all low income individuals. In fact, just 576,000 customers subscribe to Lifeline service, which makes up only 4.5% of the statewide population.<sup>14</sup> But upwards of 20-30% of the individuals in the affected geographic areas are eligible for Lifeline service.<sup>15</sup>

There is absolutely no evidence on the record to explain whether non-Lifeline subscribers have viable access to affordable alternative services – a necessary and critical component to a reclassification decision.<sup>16</sup> Quite the contrary, there is significant recorded evidence showing that alternative telecommunication services – including wireless Lifeline – is unaffordable and can have a harmful impact on those who adopt it as their sole means of communication. As Ms. Pinsker explained in direct testimony:

In support of its Petition, Verizon points to statistics indicating that a large percentage of wireline customers have already “cut the cord” and rely exclusively

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<sup>13</sup> Vz. Main Br. at 4, 22.

<sup>14</sup> Vz. Main Br. at 18, 22. (Verizon cites Pennsylvania’s statewide population as 12.8 million, and Lifeline subscribership as 576,000, which is 4.5% of the 12.8 million statewide population.)

<sup>15</sup> CAUSE-PA St. 1-SR at 10 (explaining that the percentage of adults living at or below 100% of poverty in the affected geographic areas range from 16.9% in Erie to 37.1% in York, well above the state average of 13.3%). Lifeline eligibility is 150% of the federal poverty level, which means that in these areas, even more adults are Lifeline eligible than the poverty figures suggest.

<sup>16</sup> See *supra* section A above, explaining that both the express intent and letter of the law in chapter 30 requires that the Commission ensure the continued universal availability of telecommunications.

on wireless service. (Vz. St. 1.0, Vasington, at 34). But this does not mean that the wireless service is sufficiently reliable to conclude that all customers are able and willing to do so. In the 15 years I spent representing victims of domestic violence, I had countless clients who were reliant on wireless service, but would run out of their wireless minutes early in the month. For many of these clients who were unable to afford additional minutes, I was forced to rely on the postal service as my primary means of communication, which was often useless in an emergency or time-sensitive situation. Still, other clients would sometimes continue to use their phone past the minutes allotted in their plan, resulting in huge bills and, often, termination of phone service. Not only would clients in this situation face increased financial instability, but many would turn to pre-paid wireless phones – which would mean frequent phone number changes and – once again – reliance on the postal service for time-sensitive and emergency communication.<sup>17</sup>

Indeed, reliance on wireless service has proven to be harmful for many customers who run out of minutes before the month and must choose between forgoing critical communications or high per-minute billing rates.

Verizon also points to the fact that adults living in poverty have adopted wireless-only service at a rate of 59.1% as proof of low income preference.<sup>18</sup> But again, that evidence was roundly rebutted by parties opposed to Verizon’s Petition. As Ms. Baldwin explained, low income customers likely adopt wireless only service because they “can’t afford both wire line and wireless.”<sup>19</sup> Mr. Miller further contextualized Verizon’s reliance on the wireless adoption figures:

Undoubtedly many low income individuals would prefer to have the convenience of a wireless phone and the luxury of cable or Internet service. But the affordability of packaged services is beyond the reach of many low-income consumers who struggle to find money for food, shelter, heat, and electricity – let alone cable, Internet, or wireless service. Even the terms and conditions of unbundled alternative telecommunication services include additional fees, variable rates, and

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<sup>17</sup> CAUSE-PA St. 2, Pinsker, at 8-9 (internal citations omitted). Ms. Pinsker explained the extent of the possible harm in further detail in a supporting footnote: “Many court proceedings for victims of domestic violence are extremely time sensitive and require immediate action. The consequences for failure to act quickly can be dire in this context, such as the loss of custody, lack of notice of an offender’s release from prison, or a grant or denial of a Protection From Abuse Order.” *Id.* at n.11.

<sup>18</sup> Vz. Main Br. at 4, 22.

<sup>19</sup> Tr. at 88.

service limiting terms that can have a *particularly harsh impact on low income individuals*.<sup>20</sup>

In all, Verizon sets forth no evidence on the record to show that the widespread adoption of wireless service is proof that wireless service is a substitute – as opposed to a supplement – for wireline service. In fact, the record reveals the opposite: Most Pennsylvanians have continued to maintain wireline service in addition to wireless service... which is perhaps attributable to the lack of reliable coverage inside a home or building. Without further evidence regarding the quality, affordability, and safety of the proposed alternatives, the Commission must deny Verizon’s Petition in full.

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

### **1. Legal Standard**

*Verizon Misstates the Applicable Standard for Regulatory Waiver, Which Requires it to Prove That Further Compliance Would Result in Unreasonable Hardship.*

Verizon sets forth no evidence to support its request to waive Chapter 64 regulations. Tellingly, Verizon’s Main Brief fails to even acknowledge or cite to the applicable legal standard for waiver of Chapter 64 regulations, which requires Verizon to demonstrate that ongoing compliance with existing regulation poses an “unreasonable hardship.”<sup>21</sup> In making its case, Verizon goes far afield of the applicable law, and even attempts to place the burden of proof on the parties opposing such waiver, claiming: “The opposing parties who argue that these regulations should remain in place unchanged articulate no plausible reason to foist these costs and inconveniences upon Verizon and its customers to achieve a standard that customers do not expect or demand.”<sup>22</sup> CAUSE-PA has a very simple answer in response to this assertion: The

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<sup>20</sup> CAUSE-PA St. 1-SR, at 11.

<sup>21</sup> 52 Pa. Code § 64.212(a).

<sup>22</sup> *Id.*

applicable regulation places the burden on Verizon, not opposing parties, to submit evidence sufficient to prove that continued adherence to the regulations would cause unreasonable hardship.

#### **4. Specific Chapter 63 Regulations**

##### *The Record Evidence Clearly Shows that Verizon Will Not Experience Unreasonable Hardship As a Result of Continued Compliance with Chapter 64 Regulations.*

Verizon’s argument for waiver of Chapter 64 demonstrates that compliance with existing regulations presents no hardship at all, let alone unreasonable hardship. And, in fact, the record reveals that: “Waiver of [Chapter 64] regulations would have a devastating impact on low income and other vulnerable populations, as it would jeopardize their ability to access ... relief from the Commission to ensure that they can retain basic calling service.”<sup>23</sup>

To explain, Verizon argues that waiver of Chapter 64 is appropriate because “customers are leaving regulated landline service in droves, choosing instead to take advantage of the many unregulated options such as cable, wireless and VoIP service. And even those customers who still subscribe to regulated service no longer seek Commission intervention to the same degree

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<sup>23</sup> CAUSE-PA, St. 1, Miller, at 19. Mitchell Miller, former Director of the Bureau of Consumer Services, explained further:

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

...

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

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

that they did in the past, as demonstrated by the steep decline in customer complaints discussed in Mr. Vasington's testimony."<sup>24</sup>

But, a decline in the overall number of customer complaints<sup>25</sup> reveals that Verizon, in fact, is not facing unreasonable hardship. And, by its own account, Verizon's business practices already "works with customers and offers flexible arrangements so that they can attempt to pay the balances they owe while retaining service with Verizon."<sup>26</sup> Verizon refers to the number of individuals accessing Commission relief as "*de minimus*."<sup>27</sup> Assuming that Verizon's assertions are true (which CAUSE-PA disputes strongly in its Main Brief)<sup>28</sup>, it would be manifestly unreasonable to then conclude that continued compliance with the regulations would create a hardship for Verizon. Indeed, Verizon's claim that it already has business practices in place to offer customers the same protections that they get under Chapter 64 – and that very few individuals request such relief – would lead any reasonable person to conclude that continued compliance does not even create a minor inconvenience for Verizon.

Contrary to Verizon's claims, the evidence on the record demonstrates a continuing need for Chapter 64 regulations to ensure that customers across the state are able to access the same protections with respect to connecting and maintaining basic telecommunication service. The record clearly shows that while the *number* of overall complaints has declined, the *rate* of justified complaints over the past decade has remained consistently higher than other companies

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<sup>24</sup> Vz. Main Br. at 28.

<sup>25</sup> As explained in CAUSE-PA's Main Brief, **the rate of justified complaints (as opposed to simply the total number of complaints) has remained relatively unchanged for over a decade.** CAUSE-PA Main Br. at 30-32 (quoting CAUSE-PA St. 1-SR, Miller, at 3-8 and T.1).

<sup>26</sup> Vz. St. 2.0, Vasington, at 22-24.

<sup>27</sup> *Id.* at 23.

<sup>28</sup> CAUSE-PA Main Br. at 30-32.

– both within the telecommunications industry and across industries. Mr. Miller explained the significance of Verizon’s consistently high rate of justified complaints:

Put simply, *a decline in the rate of justified consumer complaints – followed by a consistently low rate of justified complaints – means that regulation is working to ensure that companies are dealing with customers fairly.* Looking at the complaint numbers in the electric industry is an excellent example. ... [Over the last decade], the electric industry has had a relatively stable and low justified complaint rate. In my experience, this is because electric companies are responsive to BCS reports and act quickly to adjust their policies and practices to ensure resolution of customer complaints upon initial contact.

But looking to the justified complaint rate for Verizon tells a different story. Unlike the rate of justified complaints in other industries, *the rate of justified complaints for Verizon has continued to be high, suggesting that Verizon’s internal policies and procedures are still insufficient to address customer complaints upon initial contact* [with the customer]. Thus, the need for Chapter 64 regulations to resolve customer complaints in the regulated telecommunication industry remains important, even as the number of consumers receiving regulated service declines.<sup>29</sup>

Verizon’s track record with respect to proper billing in the wholesale market speaks volumes in terms of what can be expected if the Commission waives consumer billing and collections standards. Mr. Christopher Honeywill, expert for the Full Service Network (FSN), explained:

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>30</sup>

Presumably, FSN has a staff and attorneys that can help it navigate this egregious billing issue.

Consumers, however, do not have the resources to engage in a dispute with an unregulated company such as Verizon, making it unconscionable to even suggest that regulatory waiver is in any way appropriate.

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<sup>29</sup> CAUSE-PA St. 1-SR, at 6-7 (emphasis added).

<sup>30</sup> FSN Main Br. at 9; FSN St. 1, Honeywill, at 9.

Finally, Verizon makes a weak attempt to argue that continued compliance with the regulations “foists ...costs and inconveniences upon Verizon and its customers” and is “counterproductive and a waste of Commission and company resources.”<sup>31</sup> But the only evidence on the record about the cost of compliance to Verizon and the Commission is from Mr. Miller, former Director of the Bureau of Consumer Services, who explained:

The additional cost of the regulatory complaint procedure is largely in implementation. Consumers who have problems with a business will register complaints regardless of regulatory requirements. *Once implemented, the added cost of handling complaints under regulation is minimal.* The Commission resources required to continue adherence to the regulations is also significantly reduced. And, nothing in Verizon’s testimony points to any currently burdensome cost on Verizon. If Verizon were as successful at adhering to the regulations as it claims to be, then the cost would be reduced. And, once the complaint handling is implemented, the costs would be incremental.<sup>32</sup>

There is absolutely no evidence on the record to suggest that any burdensome costs are associated with continued adherence to the Chapter 64 regulations. Quite the opposite. The record is clear that waiving Chapter 64 would come at a great cost to consumers and, thus, to the health, safety and wellbeing of individuals who reside in the Commonwealth. As such, it is incumbent upon the Commission to deny Verizon’s unreasonable, unsupported, and unnecessary request for waiver.

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<sup>31</sup> Vz. Main Br. at 28; Vz. St. 2.0, Vasington, at 20-21; CAUSE-PA St. 1-SR, Mitchell, at 9-10.

<sup>32</sup> CAUSE-PA St. 1-SR, Mitchell, at 9-10 (emphasis added).

### III. CONCLUSION

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

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the **Reply Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** upon the persons and in the manner listed below in accordance with 52 Pa. Code §§ 1.51-1.59.

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