PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas, and for a Waiver of Regulations for Competitive Services

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

Dissenting Statement of Commissioner James H. Cawley

Summary

Today, the Commission visits unrestrained market forces upon unsuspecting and unprepared basic local telephone subscribers in Pennsylvania.

For the first time in the history of telephone regulation in Pennsylvania, the Commonwealth's two dominant local exchange carriers—Verizon and Verizon North—are free to charge what they please for presently protected basic local calling service for residential and small business customers in the Philadelphia, Pittsburgh, Erie, Harrisburg/York, Allentown, and Scranton/Wilkes-Barre metropolitan and suburban areas. Henceforth, the Commission will not entertain complaints about Verizon's rates in these areas.

The Commission also waives for five years a number of our essential consumer protection regulations as unnecessary in Verizon's wire centers now designated as "competitive." It does so without adequate data which it plans to obtain in a future data gathering exercise along with a rulemaking "to address the status of [the waived regulations] for noncompetitive and competitive services on a permanent and industry-wide basis."

I greatly fear that there will be great confusion regarding what Pennsylvania's residential and small business customers can complain about, and whether there is any remedy if they do. Most, if not all, attempted relief to customers complaining about their telephone rates or service, especially if it is based on our Section 1501 general authority to regulate, will be struck down upon Verizon's objection that such relief is arbitrary and capricious and a violation of due process of law because our statutory authority is too vague without the current tariffs containing terms and conditions of service with

the force of law and without the implementing regulations and standards which are eliminated today.[1]

Having failed to achieve telephone deregulation in the last two legislative sessions,[2] Verizon now achieves it (for "just" our most populous regions, rather than statewide) by an end-run around the legislature through a rushed 150-day regulatory process. Verizon would not voluntarily agree to an extension of that statutory time frame, cutting short the time for public discourse and education.

The standard for reclassification adopted today is so lenient that all or most of Verizon's 504 statewide wire centers would qualify for reclassification, thus allowing Verizon to achieve statewide deregulation by regulatory fiat when it could not to do so legislatively.

There can be no other reason for Verizon to seek competitive designation for its exchanges than to raise local calling rates from current levels, all the while claiming that it needs this freedom because it is steadily losing market share due to fierce competition from rivals. Of course, if this were true, it could not raise its prices for fear of losing even more market share. But, most certainly, with today's granting of its petition in most of the wire centers it requested, Verizon will promptly raise its prices even more than they already are above competitive market levels.

After competitive reclassifications, Verizon's rate-raising track record is incontrovertible. For example, in 2005 Verizon self-declared certain of its services competitive under Section 3016(b) and then promptly raised its prices from 28%-67%. It did the same in 2006. Most tellingly, when its petitions similar to the one substantially granted today were approved in Virginia, Rhode Island, California, Delaware, Florida, and Texas, it promptly raised its rates without fear of its competition *because it truly did not face the*

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[1] *See, e.g., Equitable Gas Co. v. Pa. Pub. Util. Comm'n,* 536 A.2d 846 (Pa. Cmwlth. 1988) (holding that Public Utility Code sections and implementing regulations requiring gas utility to pursue a least cost procurement policy consistent with that utility's obligation to provide safe, adequate and reliable services to its customers did not deny utility due process of law for lack of reasonably ascertainable standards where the statute specified guidelines which Commission was to use in making that determination); *Allegheny Ludlum Steel Corp. v. Pa. Pub. Utility Comm'n,* 447 A.2d 675 (Pa. Cmwlth. 1982) (holding that energy cost rate adjustment provision of Public Utility Code met procedural due process standards because proposed rates were subject to review by governmental body which was restricted by specific guidelines as to which factors could be considered in ascertaining an ECR proposal).

[2] *See* HB 2496 of the 2011-2012 session and HB 1608 of the 2013-2014 session, neither of which was reported from Committee (although the latter was subject to a Committee hearing at which Chairman Powelson and I testified).

constraining competition that it claimed. The same is true here, and the same rate-raising will promptly occur.

Providing Verizon with unhindered pricing freedom over basic local exchange services that are at the core of the universal service endangers both its affordability and availability. Since there are no *economic* "like or substitute services" that will competitively constrain the upward pricing movements of basic services over time, such services (and universal service itself) will become unaffordable with detrimental effects for Pennsylvania's consumers.

The rate increases that Verizon will undoubtedly implement for its basic local exchange services following their competitive classification will also impact end-users of Lifeline services because there will be a dollar-for-dollar increase in the relevant total monthly bill.[3]

The provision of Verizon's wireline Lifeline services (which commonly are not usage-sensitive for local calls) is *not* equivalent to the provision of wireless-based Lifeline services, nor can wireless Lifeline services be considered as economic "like or substitute services" for the purposes of §§ 3016(a)(1) and 3016(a)(3).[4]

I conclude that Verizon has not sustained its burden of proof under the applicable legal and evidentiary standards. Its evidentiary presentation has simply demonstrated that various types of intermodal competition by cable companies and wireless communications companies have an aggregate presence in the footprint that is generally encompassed by the service area of all of the wire centers that Verizon put forward for competitive classification. Its presentation has not focused with the requisite degree of particularity and precision on *each* of its wire centers. Indeed, most of the statistical evidence that Verizon presented has a statewide or even a national focus. However, such evidence is not probative of what should be considered and established at particular wire centers in response to the applicable legal and evidentiary parameters and standards.

Fortunately for those hundreds of thousands of basic local calling subscribers suddenly bereft of rate and service protection, today's decision cannot withstand judicial review for the reasons that follow.

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[3] OCA M.B. at 36, citing OCA St. 1 at 52-53.

[4] *Id.* at 53.

Errors of Law

1. It is an error of law to interpret the "availability" requirement of § 3016(a)(1)'s legal standard for reclassifying wire centers to competitive status as "an objective test that demonstrates the *presence* of at least one cable telephony provider and at least one wireless provider in each wire center" (emphasis added).[5] Mere "presence" of competitors *somewhere*, but not entirely or even prevalently, in a wire center is insufficient evidence of competitiveness, because it totally ignores § 3016(a)(3), which requires a demonstration of the level or degree of competitiveness *in each and every* wire center.

This joint petition by Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon") requests a reclassification of its *protected*[6] basic local calling services[7] to *competitive*[8] in its most populous "wire centers."[9]

The statutory authority, process, and applicable legal standard for this relief is contained in Section 3016(a)(1) of the Public Utility Code, 66 Pa.C.S. § 3016(a)(1) (emphasis added):

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[5] Verizon M.B. at 10.

[6] Protected services include those retail services, not otherwise classified by the Commission as competitive, which enable residential or business consumers to complete a local call. 66 Pa.C.S. § 3012 (definitions). Verizon did not present evidence regarding "non-recurring" charges concerning "ordering, installation, restoration and disconnection of these services," which are also defined as protected services under § 3012.

[7] The terms "basic service" or "basic calling service" are used interchangeably with the term "protected services."

[8] The main difference between noncompetitive and competitive services is how rates for Verizon's public utility telecommunications services are determined. Noncompetitive rates and revenues are subject to Verizon's Chapter 30 Plan provisions and price change opportunity (PCO) formulas and are also subject to the just and reasonable requirements applicable to all public utility rates. 66 Pa.C.S. §§ 1301, 3019(h); OCA St. 1 at 8. In contrast, the 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 competitive services except as set forth in this chapter." 66 Pa.C.S. § 3019(g). Granting Verizon's petition will allow it to price basic service at its discretion, so long as the price is not less than the cost to provide it. 66 Pa.C.S. § 3016(d)(1); OCA St. 1 at 8-9.

[9] Verizon did not define a "wire center" as distinguished from a "service territory or a particular geographic area, exchange or group of exchanges or density cell."

(a) Commission determination of protected, retail nonprotected and retail noncompetitive services as competitive.—

(1) A local exchange telecommunications company may petition the commission for a determination of whether a protected or retail noncompetitive service or other business activity in its service territory or a particular geographic area, exchange or group of exchanges or density cell within its service territory is competitive *based on the demonstrated availability of like or substitute services or other business activities provided or offered by alternative service providers.* The commission, after notice and hearing, shall enter an order granting or denying the petition within 60 days of the filing date or within 150 days of the filing date where a protest is timely filed, or the petition shall be deemed granted.

Section 3016(a)(3) expansively directs the Commission to "consider all relevant information submitted to it," and "limit[s] its determination" of reclassification only to areas (here, "wire centers") "in which the service or other business activity has been proved to be competitive":

(3) In making its determination, the commission shall consider all relevant information submitted to it, including the availability of like or substitute services or other business activities, and *shall limit its determination* to the service territory or the particular geographic area, exchange or group of exchanges or density cell *in which the service or other business activity has been proved to be competitive.*

66 Pa.C.S. § 3016(a)(3) (emphasis added).

To satisfy the "availability" part of the statutory standard, Verizon advanced "an objective test that demonstrates the *presence* of at least one cable telephony provider and at least one wireless provider in each wire center."[10] To satisfy the "like or substitute services" requirement, Verizon suggested a "customer preference" interpretation where "actual consumer purchasing decisions" constitute the best evidence. These flawed interpretations are adopted by the Commission today.

Verizon may regard its interpretation of Section 3016(a)(1) & (3) as an "objective test," but it does not comport with the words of those subsections.

[10] Verizon M.B. at 10.

In order to carry its burden of proof, imposed by subsection (a)(4) of Section 3016, 66 Pa.C.S. § 3016(a)(4), Verizon must specifically prove "demonstrated availability of like or substitute services or other business activities provided or offered by alternative service providers" *in each and every part* of its service territory in which reclassification is sought. Only those wire centers that have been "proved to be competitive" can be classified as competitive.

Subsections (a)(1) and (a)(3) must be read together. Doing so reveals a legislative intent requiring proof (a "demonstration") that "like or substitute" alternative services are not merely available *in some portion* of a wire center, but that these alternative services are *actually* competitive in that wire center. Mere "presence" of an alternative service somewhere in the wire center (perhaps in only a small part of it) is clearly insufficient proof.

Exactly what the level or degree of coverage throughout the wire center must be in order to demonstrate competitiveness has never been defined by this Commission, although an internal study group in 2005 attempted (without a resulting recommendation) to formulate a standard and other guidelines. Given, however, the Legislature's repeatedly stated policy of encouraging and protecting universal service,[11] it is hard to imagine the requisite level or degree being less than 100 percent after allowing for differences in population density.[12] Also, given Verizon's continuing carrier of last resort (COLR) obligation, that should be the standard.

2. Having introduced only general, rather than wire center-specific, evidence confined to allegedly competing cable and wireless services, and admittedly having failed (1) to produce evidence available to it establishing the actual location of cable deployment in its wire centers, and (2) to conduct wireless signal strength field tests that would conclusively determine the true level of wireless competition in its wireless centers, Verizon utterly failed to place substantial evidence of record to support its

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[11] *See* 66 Pa.C.S. §§ 3011(2), (8), & (12) (declaration of policy) (finding and declaring it a policy of the Commonwealth to ... (2) Main universal telecommunications service at affordable rates....(8) 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...[and] (12) Promote and encourage the provision of advanced services and broadband deployment in the service territories of local exchange telecommunications companies without jeopardizing the provision of universal service).

[12] *See* OCA M.B. at 22-23 (citing OCA Statement 1 at 13-14).

petition, and consequently failed to even begin to carry its burden of proof for any of the 194 wire centers under consideration.

a. Verizon failed to produce evidence available to it, and therefore the Adverse Inference Rule should be applied.

Verizon confined its proof to alleged competition in its wire centers by cable and wireless providers. It submitted no evidence regarding so-called "over-the-top" (meaning provided over the Internet rather than over private telecommunications networks) providers like Skype. This is just as well, because such services are so lacking in features and reliability that they cannot be regarded as adequate substitutes for wireline basic local calling service.

Commonsense would dictate that the best way to prove the level or degree (or prevalence, intensity, and vibrancy) of competition within a wire center would be to establish the location of cable facilities that could provide voice service. Instead, Verizon, without giving the names of alleged providers in each wire center, relied only on broad statistics and nonproprietary data from the Warren Communications New Advanced TV Factbook and the FCC's National Broadband Map.[13]

This less-than-specific information is insufficient under the standards set forth in §§ 3016(a)(1) & (3). As OCA's witness, Dr. Robert Loube testified, "[E]ven if a cable company has a franchise in each wire center, there is not guarantee that there is cable service to all customers in the cable franchise, [and] even if there is a cable franchise in each wire center, there is no guarantee that the cable franchise(s) covers the entire wire center."[14] In fact, Verizon's witness confirmed on cross-examination that it did not attempt to determine whether the cable provider in each wire center serves all, or even a majority, of households in the wire center.[15]

It has much more specific information that it did not use—its joint ownership and joint use agreements, especially regarding pole attachments. It also possesses (or it could easily obtain) cable deployment knowledge from

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[13] OCA M.B. at 23.

[14] OCA St. 1 at 48; *see also* Transcript 136-137 (Verizon witness acknowledging that, where a cable provider serves a wire center, there is no guarantee that all customers in that wire center will have cable access).

[15] Transcript at 137.

its field crews. In fact, as if with other telecommunications industry giants, it is likely that it has very sophisticated, highly confidential mechanisms and personnel in place whose sole task is to assess and counteract threats from competitive providers.[16]

Verizon introduced none of this information into evidence, even though it was far better evidence than the publicly-available data and broad statistics it proffered. *Despite its burden of proof, it failed to produce it because it would likely demonstrate a lack of competition in substantial areas of its wire centers.*

For the same reason, throughout its lengthy legislative endeavors Verizon resisted any suggestion that the Public Utility Commission (or anyone else) be tasked with undertaking a study of the true state of telecommunications competition in the Commonwealth (since no one, except the carriers, really knows).[17] And why Verizon also resisted suggestions by legislative staff and others that it participate in trial or pilot programs to determine an accurate level of competition in a limited number of wire centers.

The adverse inference rule provides that when a party has relevant evidence within its control which it fails to produce, that failure gives rise to an inference that the evidence is unfavorable to it.[18] The logic supporting the rule is that a party fails to produce evidence in its control in order to conceal adverse facts.

Because "modern rules governing civil discovery have made it more likely that the evidence will be equally available to both parties ... thereby diminish[ing] the likelihood that nonproduction of such evidence will be the

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[16] All of this information would have been protected by the confidentiality agreement entered into by the parties, just as the proprietary information that Verizon introduced was covered.

[17] *See, e.g., Prepared Testimony of James H. Cawley, Commissioner, Before the Pennsylvania House of Representatives Consumer Affairs Committee, HB 1608, PN 2209* (Nov. 1, 2013), at ii & 5 *available at* http://www.puc.pa.gov/General/pdf/Testimony/Cawley-HB1608_112113.pdf; *see also* CAUSE-PA M.B. at 24-25 (arguing that the Commission, rather than granting Verizon's petition, should instead launch an investigation into the market in the areas subject to Verizon's petition to determine if it is competitive); H.R. 1096, P.N. 4323 (introduced Oct. 20, 2014) which, had it been adopted (no vote was taken), would have directed the Legislative Budget and Finance Committee "to study and report on the extent of competition in this Commonwealth's communications industry and the impact of the transition to new technologies on the availability and affordability of clear and reliable voice service for all Pennsylvanians."

[18] 1 West's Pa. Prac., Evidence § 427 (4th ed., updated December 2014).

subject of the adverse inference," that is not the case here. This is not an instance where the protestants could have obtained, assimilated, and adequately interpreted Verizon's internal data, chiefly because of the severe time constraints imposed by the statutory deadline and Verizon's stated intention not to extend that deadline voluntarily. On the other hand, Verizon as the moving party with the burden of proof had all the time it wished to prepare its case in chief, and yet failed to assemble and present this vital information. This being the case, it was incumbent on Verizon, not the protestants, to produce it. For the same reasons, although the adverse inference rule is permissive rather than mandatory,[19] its application is particularly apt in this instance.

b. Verizon failed to conduct wireless signal strength field tests that would have conclusively determined the true level of wireless competition in its wire centers.

It is common knowledge that wireless signal strength varies depending on one's geographic location in relation to cell towers, topography, and even weather conditions. Sometimes signals are strong, sometimes they are spotty, and sometimes they are nonexistent. It was incumbent on Verizon to prove wireless availability throughout each wire center. It did not do so. It admitted that it did not conduct any field research to ensure that customers had access to even one wireless carrier in each wire center. Instead, it relied on overly broad coverage maps that do not take into consideration specific coverage issues that may exist in each wire center.[20]

With technology that has existed since at least World War II, it would have been a simple matter for Verizon to do field tests of the signal strength of any wireless providers in each wire center. Therefore, the adverse inference rule also applies to Verizon's failure to provide such definitive information.

Because it failed to submit substantial evidence of record to prove the level, degree, or even existence of either cable or wireless competition in each wire center, Verizon did not carry its burden of proof.

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[19] *Id.*

[20] OCA M.B. at 26; *see also* CAUSE-PA Statement 1 at 11-12 (explaining that Verizon's reliance on the National Broadband Map is "grossly over simplistic" because "the areas represented on the map as having coverage indicates only that coverage 'should be sufficient for on-street, in-the-open and some in-building coverage'"); OCA Statement 1 at 48 (debunking reliance on the FCC's Sixteenth Wireless Competition Report because it is based on a report that determined wireless coverage "as reported to it by many mobile wireless service providers, each of which uses a different definition or determination of coverage").

3. It is an error of law to satisfy the "like or substitute services" requirement § 3016(a)(1) by (1) defining those terms according to their ordinary usage when they have special meanings as terms of art in this context, (2) finding cable and wireless services as "like or substitute services" when they are not true *economic* substitutes for basic local service, and (3) by adopting a "customer preference" standard where "actual consumer purchasing decisions" constitute the best evidence (a concept found nowhere in the statute).

The Commission uses dictionary definitions to ascertain the meaning of the words "like" and "substitute" in § 3016(a)(1), which is a simplistic approach to the economic effects of declassifying basic calling service from its longtime status as a protected service. Consequently, those words in this context are words of art with special significance. The necessary inquiry is far more complex than simply concluding—using the common usage of those words—that competing services are "similar or substantially similar" or that they "take the place of another." The Statutory Construction Act makes provision for the technical nature of these words in this type of proceeding:

> § 1903. Words and phrases
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> (a) Words and phrases shall be construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning or definition.[21]

As the OCA pointed out, what "constitutes like services or substitute services is not defined by Chapter 30" for the purposes of Sections 3016(a)(1) and 3016(a)(3).[22] The determination of "like or substitute services" must involve objective criteria and concrete evidence that relates directly and with the requisite degree of particularity to each of the wire centers that are implicated in the Joint Petition. Such objective criteria cannot utilize undefined or loose parameters such as "customer choice" or the simple presence of intermodal competition in order to conclude that "like or

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[21] 1 Pa.C.S. § 1903(a).

[22] OCA M.B. at 12.

substitute services" exist in a manner and to a degree that meets the strict statutory requirements of §§ 3016(a)(1) and 3016(a)(3).

A combination of proper legal and economic criteria—and accompanying factual evidence that is specifically relevant to each of the wire centers involved in the Joint Petition—must address such factors as the "relevant market" for the "like or substitute services," **and must conclusively establish that the current and future presence of such "like or substitute services" will adequately and competitively constrain Verizon's pricing behavior for its basic local exchange services.**[23]

If there is no credible evidence that Verizon's pricing behavior can be successfully constrained once such basic local exchange services are classified as competitive in the wire centers in question, the mere, partial, and ineffectual existence of allegedly "like or substitute services" in each of the wire centers is of no assistance in meeting the applicable statutory criteria for the requested competitive classification. Either Verizon's pricing behavior for competitively classified basic local exchange services can be genuinely and substantively constrained in each of the wire centers involved in the Joint Petition, or the continuous availability and affordability of reliable universal service of adequate quality will not be assured.

In order to ascertain the "like or substitute" services, a relevant competitive market must be defined and evaluated. The OCA testimony conclusively established the standards for defining a competitive market on the basis of the economic relationship between price and cost utilizing the test used by federal merger guidelines of the U.S. Department of Justice and the Federal Trade Commission on "whether a hypothetical monopolist can impose at least a small but significant and non-transitory increase in price ('SSNIP')" within the market in question. The OCA testimony credibly concluded that Verizon's basic local exchange services that are the subject of this proceeding within specific wire centers are "separate and distinct" from such communications markets as those for bundled wireline services (this encompasses bundled wireline services that are provided by both telecommunications carriers and cable television or CATV companies inclusive of retail wireline broadband access and video delivery) and mobile wireless services.[24]

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[23] OCA M.B. at 13.

[24] OCA St. 1 at 17-19. The CWA-IBEW essentially and independently reached the same conclusion. CWA-IBEW M.B. at 8, citing CWA-IBEW St. 1.0 at 26.

The OCA testimony went to great lengths to accurately describe both the definition and the evolution of "three separate markets": The wireline basic local exchange services market, the wireline bundled services market, and the wireless services market.[25]

The OCA testimony (largely and independently also paralleled by the CWA-IBEW testimony), also established a number of unique technical characteristics relating to adequacy, safety, and reliability of Verizon's wireline basic local exchange services as compared to wireline bundled service offerings such as Verizon's FiOS fiber to the premises or to the home (FTTP/FTTH), the wireline bundled service products of CATV companies, and mobile wireless services.[26]

Some of these technological differences include the ability of the wireline basic local exchange services that are provided over conventional telephone network facilities that are powered with direct current (DC) from Verizon's central office (CO) switching centers to continue functioning during prolonged periods of commercial power outages as long as the physical network link between the CO and the end-user premises is not severed.[27] In contrast, voice communications capabilities that are often provided over such services with Voice over the Internet Protocol (VoIP) as part of the Verizon FiOS and CATV bundled service packages need to be powered by backup batteries of limited duration that are located at the premises of the end-user customer during prolonged commercial power outages. Commercial power outages of long duration can outlast backup power batteries at a customer's premises (assuming that they have been installed and are functional in the first place).[28] When that happens VoIP end-users lose voice communication

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[25] OCA St. 1 at 21-24.

[26] OCA St. 1 at 11-13.

[27] Verizon COs are equipped with standby diesel generators as well as with their own individual backup battery reserve power supplies. As long as the standby diesel generators remain functional (e.g., through an adequate fuel supply), a CO can continue to provide critical network functionalities and also support basic local exchange services (i.e., the CO continues to provide dial tone) during a prolonged commercial power outage.

[28] *See generally Eileen Floyd v. Verizon Pennsylvania LLC*, Docket No. C-2012-2333157, Order entered April 30, 2013, Statement of Commissioner James H. Cawley Concurring In Result Only. *See also* OCA M.B. at 15, and CWA-IBEW M.B. at 7, citing CWA-IBEW St. 1.0 at 35. Only recently the Federal Communications Commission (FCC) commenced a generic inquiry for ensuring reliable backup battery power for residential end-user consumers of Internet Protocol (IP) based services that include VoIP. *In re Ensuring Customer Premises Equipment Backup Power for Continuity of Communications; Technology Transitions; Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers, et al.*, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, *et al.*, (FCC, Rel. Nov. 25, 2014), Notice of Proposed Rulemaking and Declaratory Ruling, FCC 14-185.

capabilities and the ability to make 911/E911 emergency calls. Similarly, Verizon's basic local exchange services provide 911/E911 emergency call access functionalities with automated locational capabilities for the end-user[29] that are far superior to those that are provided through mobile wireless 911/E911 calls.[30]

In short, there are material technical differences on how Verizon's regulated wireline basic local exchange services are provisioned and function in contrast with wireline bundled service offerings (e.g., FiOS and CATV bundles) and wireless services. Furthermore, the provision of Verizon's regulated wireline basic local exchange services is governed by a concrete set of statutory and administrative requirements that ensures the reliability, safety, and adequacy of these services—including their ordering, installation and restoration—even in conditions of peak demand or abnormal operational circumstances.

The relevant inquiry must encompass whether Verizon's basic local exchange services offered in each of the particular wire centers in question can be classified as competitive under an economic "like or substitute" standard. Again, OCA's testimony and legal argument (largely paralleled by the testimony and argument of CWA-IBEW), conclusively established that wireline bundled services (e.g., CATV service bundles) and wireless services are not economic "like or substitute" services for the Verizon regulated wireline basic exchange services at issue here for each of the wire centers involved in the Joint Petition. As the OCA explained:

> Pivotal to Verizon's definition of substitute services is that consumers would change their supplier for basic local service should Verizon increase its price above competitive levels, based on the availability of cable telephony and wireless service in the wire center. However, *if the consumer's purchasing decision turns on features or functionalities which are unique to the alternate service, such as the mobility offered by wireless service, then those services cannot be considered economic substitutes.* Verizon

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[29] The locational capabilities for 911/E911 calls that are made through Verizon's wireline basic local exchange services are based on automatic number identification (ANI) and automatic location identification (ALI) network functionalities and related master street address guide (MSAG) locational data base information. *See also* OCA M.B. at 15.

[30] The locational challenges for mobile wireless 911/E911 calls are well known with particular emphasis on the determination of accurate caller location on the so-called "z-axis" (e.g., mobile wireless calls that are made from multistory buildings). *See generally In re Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, (FCC, Rel. Feb. 3, 2015), Fourth Report and Order, FCC 15-9. *See also* CWA-IBEW M.B. at 8.

witness Vasington conceded that point in reply to discovery, stating:

> [M]any consumers value the inherent mobility of wireless services, while others value the particular bundles of video, data and phone service that cable companies offer. **Verizon's basic service does not meet the needs of those consumers at any price.**[31]

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Most importantly, Verizon claims that the increase in consumer consumption of all wireless services is proof that all such services are substitute services for Verizon's protected, basic local calling service. Dr. Loube [OCA's witness] explained that Verizon has failed to provide support that wireless services are appropriate economic substitutes:

> My basic argument was to show that price is not the reason that consumers are shifting towards the use of wireless devices. To contradict my argument, Mr. Vasington *would have to show that an increase in the price of basic local exchange service would have accelerated the shift to the use of wireless service or that a decrease in the price of basic local exchange would have slowed down the shift towards the use of wireless service.* Mr. Vasington provided no evidence supporting such a showing, and I have not seen any evidence that would support a showing that price is the determining factor in the change in consumption habits.[32]

As Dr. Loube testified, based on Verizon's own admissions, the available wireless services and cable telephony services that Verizon cite as support for its Petition are not in fact appropriate economic substitutes. The OCA does not disagree that consumers have chosen to subscribe to cable telephony services or wireless services. However, as Dr. Loube explained, *these consumer choices are not driven by the price for those services relative to Verizon's price for basic local exchange service.* Instead, Dr.

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[31] OCA M.B. at 19, citing OCA St. 1 at 15, n. 19, quoting Verizon reply to OCA-16 (emphasis in bold in the original, emphasis in italics added).

[32] OCA M.B. at 19-20, citing OCA St. 1-S at 7.

> Loube determined that such consumer choices were driven by those features or functions which are unique to wireless or cable services and *cannot be duplicated or met through the purchase of Verizon's basic local exchange service.*[33]
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> The OCA submits that the fact that consumers have changed their consumption patterns and purchase more cable, wireless and even Verizon competitively-priced bundles that include basic service, or Verizon's FiOS Digital Voice, does not support the conclusion that such alternatives, where available, provide competitive discipline for Verizon's provision of affordable basic local service. The changes in consumption reflect changes in the tastes and wants of consumers, rather than based on the price difference between Verizon's basic service and the alternatives. Although Verizon offered a definition of "substitute service," Verizon has not provided evidence that the cable telephony and/or wireless services from at least one unaffiliated wireless carrier which Verizon claims are available in the wire centers will function as substitute services for the purposes of Section 3016(a).[34]

In a parallel vein, the CWA-IBEW similarly and independently reached the same conclusion that as "is the case with wireless service, *cable telephone service does not compete directly with basic dial-tone service because the price of one service does not constrain the price of the other.*"[35]

The OCA also produced credible testimony ascertaining Verizon's incremental cost of basic local exchange service as a measure of its competitive price, where such incremental cost included that for voice service as well as a reasonable allocation of common network costs. Common network costs are largely associated with local loops and their respective CO line cards, where such network facilities are utilized for the provision of multiple voice and data services, including digital subscriber line (xDSL) retail broadband access services.[36] OCA's testimony indicated that Verizon's incremental cost of basic local exchange service in Pennsylvania was $21.09 per month while Verizon rates in Philadelphia and Pittsburgh for the same

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[33] OCA M.B. at 20, citing OCA St. 1 at 15-16, and n. 19 (emphasis added).

[34] OCA M.B. at 21, citing OCA St. 1-S at 6.

[35] CWA-IBEW M.B. at 9 (emphasis added).

[36] OCA St. 1.0 at 25-32.

service were in the range of $22.28-$22.90 per month where these figures include the applicable subscriber line charge (SLC) and the access recovery charge (ARC).[37] Thus, current Verizon rates for basic local exchange services are already above a competitive level as it is measured through an incremental cost derivation.

The OCA testimony refuted Verizon's argument that Verizon's wireline basic local service "prices must compete with the incremental charges (if any) for VoIP, not the full cost of broadband plus VoIP."[38] As OCA explained, for "Pennsylvania's largest cable provider, Comcast, Verizon has calculated the incremental charge for voice service [e.g., VoIP] as $10 [per month] for two of Comcast's bundles."[39] Thus, OCA was able to show that this Comcast $10 "charge is less than half of Verizon's combined rate (the sum of the unlimited service rate, the SLC and the ARC) for basic local exchange service, and if incremental charge is the competitive price level it means that Verizon'[s] rates are over twice the current competitive price."[40]

Furthermore, the OCA conclusively demonstrated that Verizon's basic local exchange service rates had remained indifferent to this Comcast incremental price for voice service in states where Verizon's basic services had attained a competitive classification, i.e., Verizon had not lowered its rates.[41] This evidence buttresses the point that even the voice portion of a competitively priced CATV service bundle does *not* affect nor does it provide competitive market pricing discipline for Verizon's basic local exchange services both in Pennsylvania and in other states where the same Verizon services have been classified as competitive. Consequently, it cannot be argued that CATV telephone voice services somehow constitute *economic* "like or substitute services" for Verizon's wireline regulated basic local exchange services.

Although OCA demonstrated that the Verizon rates for basic local exchange service exceed a competitive measure of incremental cost, it is well established that these regulated rates of Verizon PA and Verizon North are still subject to a certain degree of control under the respective price stability mechanisms (PSMs) and price cap formulas that exist within the Chapter 30 alternative regulation and network modernization plans (NMPs) of these two

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[37] OCA M.B. at 31, and OCA St. 1.0 at 32.

[38] OCA St. 1.0, at 32, quoting from Verizon St. 1.0 at 38.

[39] OCA M.B. at 31, citing Verizon St. 1.0 at 38.

[40] OCA St. 1.0 at 33.

[41] OCA M.B. at 32, citing Tr. at 121.

Verizon incumbent local exchange carrier (ILEC) telephone companies. Competitive classification of these basic local exchange services will eliminate the Commission's pricing oversight. Since Verizon's basic local exchange services constitute their own distinct and separate communications market without economic "like or substitute services" that can exercise a competitive pricing discipline constraint, what will be the future course of the prices for these services if they are classified as competitive in the slated wire centers?

Both the OCA and CWA-IBEW related the experience in other states where the same Verizon basic local exchange services were classified as competitive and price deregulated. Such price deregulation was followed by substantial rate increases for these services that constitute the core of the universal service concept. As the OCA argued:

> The OCA submits that the Commission should consider Verizon's reclassification proceedings in Virginia in 2007, where basic residential local exchange service was reclassified as competitive. See OCA St. 1 at 33-41. In that case, the Virginia State Corporation Commission (VSCC) established a test to determine what exchanges were competitive, and determined that 39 exchanges in four metropolitan areas met that test. OCA St. 1 at 36. Dr. Loube examined the evolution of the telecommunications market in Virginia between the time of the re-classification and today and found that the conditions were similar to those in Pennsylvania. OCA St. 1 at 38-39. *Despite the similar development of the overall telecommunications market, however, the price for residential, basic telephone service has increased in Virginia.* Dr. Loube testified as follows:
>
> > The evidence shows that Verizon has been able to increase it[s] prices to a level that is more than 5% above competitive market levels, and even though it has been losing customers, Verizon has not lowered its prices. Because it must be assumed that Verizon is rational, it can only be concluded that loss in sales was not enough to reduce the profitability associated with the price increases.
>
> OCA St. 1 at 39.

Dr. Loube thoroughly analyzed the price increases in Virginia, and explained the increased rates as follows:

> Q. What evidence exists that shows that Verizon has increased its prices in Virginia?

> A. The evidence exists for two Verizon exchanges, Richmond and Smithfield. The base year evidence was obtained from the FCC urban rate survey. As of October 2007, the basic local exchange rate in both exchanges was $16.37. The subscriber line charge ("SLC") was $6.28 in Richmond and $6.50 in Smithfield. Rates for 2014 were obtained from Verizon price lists filed with the VA Commission and Verizon filings with the FCC. For the Richmond exchange, deregulated by the VA Competition Order in December 2007, the basic local exchange rate had increased to $22.37 by 2014.

OCA St. 1 at 39-40 (Footnotes omitted). With regard to the Smithfield exchange, Dr. Loube testified as follows:

> Rates in the Smithfield exchange were not deregulated until December 30, 2010. By January 2014, the basic local exchange service rate had increased to $19.97 from $16.37. This represents a 21% increase or an average annual rate of 6.7%.

OCA St. 1 at 40.

* * *

OCA witness Loube testified that Verizon provided data on five additional states that had deregulated residential rates: Rhode Island, California, Delaware, Florida, and Texas. OCA St. 1 at 41. In each state, Verizon increased its prices following the deregulation of the basic service rate. OCA St. 1 at 41. Specifically, Rhode Island's rate groups saw increases of 6.6% and 6.9% in 2006. OCA St. 1 at 41. California saw increases of 5.2% since the end of 2010. OCA St. 1 at 41. Delaware's two rate groups saw increases of 9.9% and 10% since June 2013. OCA St. 1 at 42. Florida experienced an increase of 24.3% since November 2011. OCA St. 1 at 42. In Texas, most customers experienced increases of 26% to 41%, with some customers seeing an increase of 134%. OCA St. 1 at 42.

The OCA submits that the experience in Virginia, Rhode Island, California, Delaware, Florida, and Texas *confirms that the basic telephone service is a distinct market that sufficient competition does not exist to restrain prices.* The experience further demonstrates that Verizon's claim in this proceeding that the market for basic service has converged with bundled service is

not correct. Taking the above considerations into account, the OCA submits that the Commission should not approve the Petition at this time ***as the market for basic service remains separate and apart from the services in which competitive pressures may exist.***

OCA M.B. at 32-35 (emphasis and bold added).

The CWA-IBEW testimony independently conveyed the same type of information regarding substantial rate increases for Verizon basic local exchange services that were classified as competitive and were price deregulated in other states.[42]

CWA-IBEW's testimony also established that these substantial rate increases were unrelated to Verizon's underlying cost structure. CWA-IBEW credibly pointed out that in Pennsylvania Verizon charges rates for discretionary or vertical features or functionalities (e.g., call waiting, caller identification), that are much above the economic cost for providing these services.[43] Indeed, the Commission itself is administratively aware that when Verizon PA first reclassified certain vertical services as "competitive" through the "self-declaration" process available to it through Section 3016(d), 66 Pa. C.S. § 3016(d), on or about February 4, 2005 (e.g., local directory assistance, national directory assistance, non-published number, non-listed number, additional listing-residence, etc.), the relevant rate elements were increased in the range of 28.57%-66.67%.[44] On or about April 30, 2006, Verizon PA also submitted an informational tariff effectuating price increases for certain vertical services and features that it had previously self-declared as "competitive" under Section 3016(d) (e.g., call waiting, call forwarding, three way calling, caller identification, call trace-usage), that ranged from 6% to 100% for residential customers and from 4.17% to 100% for business customers.[45]

The evidentiary record proves the premise that there are no *economic* "like or substitute" services that can exert competitive pricing discipline on Verizon's basic local exchange services once such services become classified as

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[42] CWA-IBEW St. 1.0 at 70-73.

[43] CWA-IBEW St. 1.0 at 73.

[44] *See* generally Docket No. R-00050294. *See also* Verizon North Incorporated, Declaration of Directory Listing Services as competitive under 66 Pa.C.S. § 3016, Docket No. R-00050295, Secretarial Letter issued March 31, 2005.

[45] Verizon PA Bill Insert, BA006906PA – CB.

competitive and price deregulated in any number of wire centers involved in the Joint Petition. If such economic "like or substitute" services existed, they would *already* have been able to exert such competitive pricing discipline or constraints on Verizon's regulated wireline basic local exchange services. But, as the recent operation of the Chapter 30 NMP PSMs for Verizon PA and Verizon North has demonstrated, this is not happening even while these services and rates are still under the Commission's full regulatory oversight.

For example, Verizon PA sought and the Commission approved the concurrent 2015 price change opportunity (PCO) annual revenue increase along with a residential dial tone line rate rebalancing where Verizon PA's dial tone line rates increased by 5.71% to 9.71% in Cells 1 and 2 while the corresponding rates in Cell 4 decreased.[46]

Verizon PA's Cells 1 and 2 contain metropolitan areas (e.g., Philadelphia and Pittsburgh) and wire centers that allegedly are subject to a higher degree of competition from "like or substitute services." Because of geographic density characteristics, Verizon PA's basic local exchange services in Cells 1 and 2 also have a lower economic cost of service. Correspondingly, Cell 4 contains Verizon PA wire centers in rural areas of Pennsylvania that allegedly are subject to a lesser degree of competition and have higher economic costs of service (e.g., longer local loops).

Thus, Verizon PA's residential dial tone line rate rebalancing where basic service dial tone line rates were recently increased in low cost wire centers subject to an allegedly higher degree of competitive pressure was counterintuitive. Such pricing behavior completely invalidates Verizon's positions in this proceeding.

Simply put, *economic* "like or substitute services" do not exist that will provide substantive competitive pricing discipline or constraints once these Verizon basic services are classified as competitive and price deregulated. And if such economic and competitive constraints do not exist and are not operative in the wire centers within the metropolitan areas of Philadelphia and Pittsburgh, it rationally follows that they will not exist in any of the remaining wire centers that are the subject of the Joint Petition.

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[46] *Verizon Pennsylvania LLC 2015 Price Change Opportunity Filing; Verizon Pennsylvania LLC Revenue Neutral Residential Rate Rebalancing, et al.*, Docket Nos. R-2014-2449301, R-2014-2449295, *et al.*, Order entered December 18, 2014 (*Verizon PA 2015 PCO Order*), Statement of Commissioner James H. Cawley Dissenting In Part. *See also Verizon North LLC 2015 Price Change Opportunity Filing; Verizon North LLC Revenue Neutral Residential Rate Rebalancing, et al.*, Docket Nos. R-2014-2449777, R-2014-2449774, *et al.*, Order adopted February 12, 2015, Dissenting Statement of Commissioner James H. Cawley.

The evidence conclusively establishes that Verizon will be able to sustain price increases for its competitively classified basic local exchange services "beyond a competitive level" in the wire centers involved in the Joint Petition.

4. When the Commission is required to "consider all relevant information submitted to it," it is an abuse of discretion to reject indisputably relevant information advanced by the protestants.

Rather than following § 3016(a)(1)'s admonition to consider all relevant information, the Commission rejects the price of basic local exchange service as a relevant criterion for determining competitiveness. It did the same with service quality and the extent of fiber deployment in wire centers.

The Commission also rejects market share as relevant by requiring protestants to present "a much greater showing" than "Verizon's market share alone," but then rejects each other showing by protestants as irrelevant. In fact, protestants did more than argue "market share alone," but other relevant factors. The cumulative effect is telling, but the Commission rejected each factor as if it were the protestants' sole argument.

The Commission also dismisses arguments that universal service will be jeopardized by freeing Verizon to price at its discretion. Instead, it baldly declares, without record evidence, "that universal service will be maintained at affordable rates in competitive wire centers."

The Commission further abuses its discretion by substantially granting the Joint Petition without sufficient data. It acknowledges that deficiency by undertaking a "post-determination" proceeding to gather data "to help assess how the market is doing, including the affordability of basic local exchange service." This puts the cart before the horse and leaves thousands of customers at risk in the meantime.

Most egregiously, the Commission waives essential consumer protection regulations for five years in a severely truncated reclassification proceeding that was not suited for determining such far-reaching questions. The Commission promises to undertake a rulemaking to determine whether the waived regulations should have been retained. *This is irresponsible beyond words.* The status quo, which has obtained for decades and can continue with absolutely no harm to Verizon, should be maintained while a rulemaking proceeds.

Waiver of Regulations

Verizon has not sustained its burden of proof for the competitive classification of its wireline basic local exchange services in the wire centers that are involved in the Joint Petition. Consequently, Verizon's request for the waiver of a substantial number of the Commission's regulations is not itself sustainable. However, this Commission is proceeding with the competitive classification of Verizon's basic local exchange services in a number of wire centers and is waiving several important regulations under certain conditions. Therefore, I am obliged to put forward some selected observations in summary form on certain actions that are being taken by the majority today:

1. Applicable Legal Standard and Burden of Proof

As the OCA, the CWA-IBEW, and other parties persuasively argue, Verizon has failed to meet the applicable legal standard in its request for the waiver of Commission regulations. Verizon is obliged to affirmatively demonstrate that it would suffer "unreasonable hardship" in its request for the waiver of regulations.[47] Simply put, Verizon has failed to meet the required burden of proof. As CWA-IBEW succinctly points out:

> There is no mention anywhere in the record of unreasonable compliance costs, impracticality of obtaining relevant data, unreasonableness of keeping in place existing procedures that comply with these requirements, or any other indication that Verizon would suffer any type of hardship (let alone an "unreasonable" one) if it were required to continue complying with regulations that it has been required to meet for many years.
>
> As an initial matter, therefore, Verizon's requests for waivers of Chapter 63 Subchapter E and Chapter 64 must be denied for failure to even attempt to demonstrate "unreasonable hardship" from continued compliance with those regulations.

CWA-IBEW M.B. at 37-38.

Furthermore, as the OCA has cogently pointed out, a proceeding with an accelerated statutory time frame of only 150 days is not the place for

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[47] *See generally* OCA M.B. at 37-39, citing 52 Pa. Code § 64.212(a) and (b).

deciding issues involving Commission regulations.[48] Rather, a generic rulemaking proceeding is a more appropriate forum for examining and deciding the relevant issues because the Commission's rules have general applicability, and "regulatory divides" through the selective application of waivers should be avoided where possible.

2. Subchapter B (Services and Facilities) 52 Pa. Code §§ 63.12 to 63.24

I respectfully disagree with the majority that market competition (which in the first place cannot even discipline Verizon's pricing of its basic local exchange services that are declared competitive), can effectively police the issuance of customer credits in the event of service outages or interruptions (waiver of 52 Pa, Code § 63.24). However, this waiver parity by necessity is also extended to the competitive local exchange carriers (CLECs) that operate in Verizon wire centers where basic services will receive the competitive classification.[49] Thus, when service outages or interruptions occur, neither the Verizon ILECs nor the CLECs in wire centers with the competitive classification will be obliged to issue any bill credits to their respective end-user customers. Therefore, even under the putative market competition in these wire centers, the situation will be one of "lose-lose" for end-user consumers of basic local exchange services. Such an outcome may even contain the perverse result that, if the outage or service interruption is attributable to Verizon's network facilities, Verizon may compensate a CLEC under wholesale interconnection performance measure parameters, but the CLEC may not need to compensate its own end-users.

This waiver is also likely to create administrative implications for the existing tariffs of CLECs that currently operate in the wire centers in question, the proposed tariffs of CLECs seeking to serve in the same wire centers, and limitation of liability provisions contained in current and prospective tariffs.

Similarly, since Verizon is still directed to operate largely under the premises of 52 Pa. Code § 63.23 (construction and maintenance safety standards – National Electrical Safety Code) under the competitive classification, there is no need to waive the regulation just because it references an older edition of the National Electrical Safety Code.

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[48] OCA M.B. at 40-41, citing OCA St. 1 at 51.

[49] *See generally* ILEC and CLEC tariff parity regulations at 52 Pa. Code § 53.57 *et seq.*

3. Subchapter C (Accounts and Records) 52 Pa. Code §§ 63.31 to 63.37

I do not believe that it is reasonable to start waiving regulations that affect Verizon's regulatory systems of accounts which are largely based on pre-existing FCC Uniform System of Accounts (USOA).

It will most likely be internally burdensome and administratively costly for Verizon itself to keep its regulatory accounts under the USOA system for its network facilities and operations in wire centers where there is no competitive classification of basic services, and to use a different accounting system for the wire centers where basic services receive the competitive classification. The same regulatory accounting system has been in place for a very long time and it can simultaneously, effectively, and efficiently be used for various reporting purposes (and internal Verizon purposes as well) both with this Commission and the FCC.[50]

I am troubled by this particular waiver because any modifications in longstanding systems of accounts of regulated public utilities are the product of a detailed deliberative process and do not arise from "flash cut" solutions in the form of individual waivers granted in the context of specific case adjudications.

4. Subchapter E (Telephone Quality of Service Standards) 52 Pa. Code §§ 63-51 to 63.65

I fundamentally disagree with the waiver of regulations that relate to the quality of telephone service under the broad rationale that alleged market competition can police quality of service standards and parameters.

Quality of service standards and parameters for wireline telephone service directly relate to public health and safety issues. When there is no dial tone to make a wireline 911/E911 call, it is not the time to look for an alternative provider of local service or even to start looking for a cell phone.

Again, I am troubled by these waivers because there is credible testimony in the evidentiary record that a number of Verizon's wire centers that are included in the Joint Petition exhibit trouble report rates and repair time intervals that exceed Verizon's own internal operational performance

[50] Most likely this system of accounts is also utilized for the compilation of the Verizon PA and Verizon North annual financial reports to the Commission, a requirement that is retained under 52 Pa. Code § 63.36, and 66 Pa. C.S. § 3015(e).

standards (CWA-IBEW has characterized these as a "race to the bottom" wire centers).[51]

Furthermore, as I have previously stated, the waiver of telephone quality of service standards for Verizon will also apply to CLECs that operate in the wire centers where Verizon's basic services are receiving a competitive classification. Thus, rather than having the allegedly competitive market effectively police the quality of service among the market participants, perverse incentives may be created where the quality of service standards are lowered for all market participants providing basic local exchange services in the wire centers at issue in this proceeding. Naturally, this can have detrimental results for the end-user consumers of basic services no matter what provider they choose.

5. Waiver of Various Chapter 64 Regulations

I am fundamentally opposed to the waiver of Chapter 64 regulations having moved their adoption during my first term on the Commission. They have been continuously refined ever since, all the while better protecting consumers.

These regulations were designed (and they have been successfully implemented) to protect the interests of end-user consumers. They fairly police the business relationships between Verizon and its customers while providing the foundations and standards for the adjudication of informal and formal complaints.

I believe that the Verizon PA and Verizon North Product Guides (by today's decision lamely and probably ineffectually made "governing documents" under an "implied contract in fact" with customers) applicable to competitive services in Pennsylvania will prove to be grossly inadequate substitutes for the regulations that are being waived, especially because Verizon can modify them as it pleases when it pleases.

Furthermore, I restate my previous position that the allegedly competitive marketplace for basic local exchange services will fail to adequately protect consumers because the waiver of Chapter 64's regulations will also apply to CLECs that operate in the wire centers where Verizon basic services are being classified as competitive.

Furthermore, the waiver of these regulations will create an administrative burden for the Commission's Bureau of Consumer Services,

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[51] CWA-IBEW M.B. at 20-26, citing CWA-IBEW St. 1 at 82-84, Schedules SMB-10 & SMB-11, and St. 1S at 7-8.

because a laborious task will need to be undertaken in order to adequately and accurately specify what types of informal complaints can be addressed on a Verizon wire center basis, and the same will hold true for CLEC end-user customers in the Verizon wire centers at issue here.

Ratemaking Issues

1. Verizon ILEC Price Change Opportunity Mechanisms

The OCA identified a ratemaking issue that will arise from the competitive classification of basic local exchange services in any of the wire centers involved in the Joint Petition.

This ratemaking issue concerns the Chapter 30 PSM price change opportunity (PCO) mechanisms for Verizon PA and Verizon North. OCA posited the argument that the competitive classification of Verizon's basic local exchange services in a large number of the wire centers in question (the relevant OCA hypothetical involves 2/5 of the wire centers), will leave the remaining Verizon regulated basic local exchange service ratepayers to absorb the PCO annual revenue increases that will result from the respective pools of non-competitive intrastate revenues of Verizon PA and Verizon North. These pools will continue to include intrastate carrier switched and special access revenues attributable to the wire centers where basic local exchange services have been classified as competitive. Therefore, the OCA reasoned that regulated basic service ratepayers in the remaining wire centers will have to absorb larger than usual annual revenue and rate increases resulting from the annual application of the PCO mechanisms. OCA witness Dr. Loube suggested that in order "to avoid this possible unfair shift, it may be appropriate to remove a pro rata share of switched access revenues from Verizon's future PCO calculations."[52]

Verizon countered this position with the argument that "Verizon's intrastate switched access revenue continues to decline as the FCC's intercarrier compensation order is implemented."[53] Verizon's argument does

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[52] OCA M.B. at 46-47, citing OCA St. 1 at 49-50.

[53] OCA M.B. at 47, citing Verizon St. 2.0 at 19. The relevant testimony of Verizon witness Vasington references what is commonly known as the FCC's *USF/ICC Transformation Order* or, alternatively, the *Connect America Fund (CAF) Order*. *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, (FCC, Rel. Nov. 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-161, 26 FCC Rcd 17663 (2011), and subsequent Reconsideration and Clarification rulings (collectively *USF/ICC Transformation Order*), *aff'd In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *reh'g petitions denied, certiorari petitions pending NARUC v. FCC*, S.Ct., No. 14-901, *Allband Com. Coop. v. FCC*, S.Ct., No. 14-900.

not adequately ameliorate the concerns that OCA's observations have raised. Although the FCC's *USF/ICC Transformation Order* is transitioning the terminating switched carrier access rates to a "bill and keep" level (a $0 per minute of use or MOU rate) for federal price cap ILECs such as Verizon PA and Verizon North, this transition will not be finalized until July 1, 2018, under the current FCC directives.[54] Fortuitously, the FCC so far has not engaged in any substantial "reform" of originating switched carrier access charges where such "reform" could potentially and negatively impact the corresponding intrastate originating carrier access rates of Verizon PA, Verizon North, and of other Pennsylvania incumbent and competitive local exchange carriers, along the ill-reasoned lines of the *USF/ICC Transformation Order.*

There is also the uncertainty of whether the FCC's *USF/ICC Transformation Order* will be subject to any further appellate review by the U.S. Supreme Court, whether it will be further modified by the FCC itself in the future, or whether it will be materially affected by the outcome of other FCC proceedings.

Thus, the Verizon PA and Verizon North pools of intrastate carrier access revenues that are used in the annual PCO mechanism calculations will continue to be substantial for some time to come and the corresponding annual revenue increases that these pools generate will continue to be primarily channeled to the Verizon PA and Verizon North regulated basic local exchange services and their ratepayers. The question then remains whether the ratepayers of regulated basic services in wire centers not affected by any competitive classification will continue to bear revenue increases associated with intrastate carrier access revenue pools resting with the wire centers that have received such a classification.

This issue cannot be comfortably examined in the context of the normal 60-day notice periods associated with the annual Verizon PA and Verizon North PCO filings and proposed tariff submissions. This matter requires a more generic proceeding that would lead to appropriate and concrete amendments of the existing Verizon PA and Verizon North Chapter 30 NMPs. Furthermore, although the regulated intrastate operations and rates of Verizon PA and Verizon North are governed in substantial part by these Chapter 30 NMPs and corresponding PCO mechanisms, associated revenues continue to fund relevant network operations that support both noncompetitive and competitive services in all of Verizon's wire centers. However, such funding is still subject to the statutory restriction in § 3016(f)(1) where a "local exchange telecommunications company shall be prohibited from using revenues earned or expenses incurred in conjunction

[54] *FCC USF/ICC Transformation Order*, 26 FCC Rcd 17934-17935.

with noncompetitive services to subsidize competitive services." 66 Pa.C.S. § 3016(f)(1). Such funding is also subject to the Commission's own regulations on competitive safeguards and code of conduct at 52 Pa. Code § 63.143(4)(i).

Thus, this issue merits additional examination in the context of proper amendments to the existing Verizon PA and Verizon North Chapter 30 NMPs and relevant PCO mechanisms. In this manner, interested stakeholders can formally put forward their views, the Commission can duly reach a decision, and potential future formal complaint litigation and regulatory uncertainty over annual PCO submissions and changes in noncompetitive retail service rates for Verizon PA and/or Verizon North can be avoided.

2. Ratemaking Treatment of Verizon PA Negative 2003 PCO

This is also a ratemaking issue that relates to the Verizon PA Chapter 30 NMP and the relevant PCO mechanism.

Perhaps because of the limited time available in this proceeding, this issue did not attract adequate attention by the parties. However, in view of the competitive classification of Verizon PA's basic local exchange services in a number of wire centers and the anticipated outcome that the end-user customers of these services will see future rate increases while they are also "owed" the so-called "2003 negative PCO revenues," this matter must receive proper and timely attention.

This issue cannot be properly addressed within the limited time frame that is available through the normal 60-day notice period associated with the annual Verizon PA PCO submissions and the proposed tariff filings. It arises from Verizon PA's 2003 PCO submission that resulted in the generation of a negative amount of approximately $17 million that essentially was owed to Verizon PA ratepayers of noncompetitive services.[55] The Commission has authorized Verizon PA to use this recurring annual amount to fund its annual Pennsylvania Universal Service Fund (Pa. USF) periodic contribution assessment obligation. Any difference with the annual Pa. USF contribution assessment obligation is commonly credited against the annual Verizon PA PCO revenue increases. The current value of the Verizon PA 2003 PCO stands at a negative amount of $12,974,183.[56]

Because the available evidence indicates that Verizon PA will implement rate increases for its basic local exchange services in its newly-

[55] This was the result of a different price cap formula that was operative at that time within the Verizon PA PCO mechanism (i.e., use of a 2.93% inflation offset value).

[56] *Verizon PA 2015 PCO Order*, at 9.

designated competitive wire centers, there is an issue whether the ratepayers of these competitively classified services should be availed a partial credit from the remaining negative 2003 PCO amount, whether the use of this negative $12.97 million amount should continue to be used to fund Verizon PA's annual Pa. USF contribution assessment obligation, and, consequently, whether this negative 2003 PCO amount and its use should be somehow adjusted on a going forward basis.

This issue involves the concept of intergenerational equity and fundamental fairness, i.e., the Verizon PA ratepayers of basic local exchange services that will be classified as competitive in various wire centers will not be able to take full and timely advantage of the remaining negative 2003 PCO amount of $12.97 million absent affirmative resolution of the related issues by this Commission.

Again, this issue needs to be deliberated with relevant input from interested stakeholders, leading to a corresponding amendment of Verizon PA's Chapter 30 NMP and its PCO mechanism on a going forward basis well in advance of the annual 2016 PCO submission. This approach will obviate the risks of future regulatory uncertainty and of potential but unnecessary formal complaint litigation.

3. Potential Discrimination In Rates For Competitively Classified Basic Services

I have great concerns regarding the potential practice of rate discrimination for basic local exchange services that will be classified as competitive in wire centers involved in the Joint Petition, and among "similarly situated" wire centers.

The available evidence indicates that, with the absence of any economic "like or substitute services" that can exercise substantive competitive pricing discipline on Verizon's basic services in newly-designated competitive wire centers, such discriminatory pricing practices are possible, especially in the absence of any concrete safeguards. If Verizon were to engage in such discriminatory pricing practices in those wire centers (including such practices among "similarly situated" wire centers), certain CLECs that have a presence in the same marketplace may feel compelled to engage in similar pricing behavior (including CLECs that resell Verizon's retail services).

Discriminatory pricing of competitively classified basic local exchange services will harm end-user consumers because they will not be able to obtain these services (which are at the core of the universal service concept) at rates

that reflect truly competitive market prices and/or the true economic costs of these services. Furthermore, discriminatory pricing practices distort the marketplace and create artificial barriers to competition. Any vacuum in appropriate safeguards on a going forward basis cannot be easily filled by the operation of federal law, assuming that federal law can be applied in matters that concern intrastate retail telecommunications services that have been classified as competitive.

4. Verizon PA And Verizon North Intrastate Originating Switched Carrier Access Rates

I agree with my colleagues and the positions of OCA and other parties that AT&T has not sustained its burden of proof in the context of its request that the Commission proceed with the reform of the intrastate originating switched carrier access charges of Verizon PA and Verizon North within the present proceeding.[57]

I have already noted that the FCC through its *USF/ICC Transformation Order* has improvidently intruded into the space of intrastate switched carrier access charges. This Commission has been and is legally obliged to implement the FCC's *USF/ICC Transformation Order* "reforms" which currently implicate the intrastate terminating switched carrier access charges of both ILECs and CLECs operating in Pennsylvania under this Commission's jurisdiction. However, the issue of intrastate originating access charges is inexorably interlinked with the FCC's preemptive "reforms" that have already taken place and been sustained by the U.S. Court of Appeals for the Tenth Circuit (certiorari petitions are currently pending before the U.S. Supreme Court).

For these reasons I respectfully but VIGOROUSLY dissent.

James H. Cawley
Commissioner

Dated: February 26, 2015

[57] OCA M.B. at 49-50, generally citing to OCA St. 1-R and OCA St. 1-S.