**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held May 19, 2015 |
| Commissioners Present:  Gladys M. Brown, Chairman, Statement  John F. Coleman, Jr., Vice Chairman  James H. Cawley, Dissenting Statement  Pamela A. Witmer  Robert F. Powelson |  |
| 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 | P-2014-2446303  P-2014-2446304 |
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**TENTATIVE IMPLEMENTATION OPINION AND ORDER**

**BEFORE THE COMMISSION:**

We are issuing this Tentative Implementation Opinion and Order to seek comments with regard to our clarification of certain matters related to our March 4, 2015 Opinion and Order at the above captioned proceeding (*Reclassification Order*), which granted, in part, the petition (Petition) of Verizon Pennsylvania LLC (Verizon PA) and Verizon North LLC (Verizon North) (collectively Verizon, Company, or Companies) to reclassify as competitive all retail services in 194 wire centers serving geographic areas in or adjacent to Verizon’s Philadelphia, Erie, Scranton/Wilkes-Barre, Harrisburg, Pittsburgh, Allentown, and York service territories. *See* Section 3016(a) of the Public Utility Code (Code), 66 Pa. C.S. § 3016(a). The clarifications discussed herein, which will facilitate the implementation of the *Reclassification Order,* pertain to the following matters: the application of Verizon’s Product Guide, Verizon’s Carrier of Last Resort (COLR) obligations, the application of reporting requirements in Section 64.201 of our Regulations, 52 Pa. Code § 64.201, and the waiver of Chapter 64’s Subchapters E, F and H concerning suspension, termination and restoration of service rules in competitive wire centers, 52 Pa. Code §§ 64.61 – 111, 64.121 – 123, and 64.181 – 182. Additionally, this Order corrects several ministerial errors to the *Reclassification Order*.

**I. Introduction**

On March 4, 2015, the Commission issued its *Reclassification Order*, which, *inter alia*, concluded that 153 of the 194 wire centers included in the Petition met the statutory criteria for a competitive determination and were so reclassified. The Order also concluded that forty-one of the wire centers did not meet the statutory test for a competitive classification, and the request was denied as to those wire centers.

The *Reclassification Order* also granted, in part, a waiver of certain of the Commission’s Chapter 63 and Chapter 64 Regulations, 52 Pa. Code §§ 63.1, *et seq.*, 52 Pa. Code §§ 64.1, *et seq.*, in competitive wire centers.[[1]](#footnote-1)

The *Reclassification Order*, while granting the Petition in part, confirmed Verizon’s statutory duty to provide “adequate, efficient, safe, and reasonable service and facilities” as well as service that is “reasonably continuous and without unreasonable interruptions or delay” under 66 Pa. C.S. § 1501 in the entirety of its service territory. *Reclassification Order* at 7; Ordering Paragraph No. 5. Under that same Code provision, and regardless of the competitive classification of any wire center, Verizon will remain the COLR throughout its service territory. *Id.* at Ordering Paragraph No. 6.

The *Reclassification Order* neither affected the above-cited statutory, legal and policy safeguards for consumers, nor altered those additional statutory obligations imposed by Chapter 30 of the Code, 66 Pa. C.S. §§ 3011 - 3019*.*

No Party has sought reconsideration of any aspect of the *Reclassification Order*, and no Party has appealed the Order. Based on the foregoing, the directives of the *Reclassification Order* are now final and the binding action of this Commission.

**II. Discussion**

**A. Clarification of and Modification to the Reclassification Order**

**1. Overview**

The *Reclassification Order* addressed a number of complex regulatory issues of first impression for this Commission and the telecommunications industry in Pennsylvania as a whole. Chapter 30 of the Code is clear that the primary impact of the competitive status is that: (1) Verizon may price the service at its discretion; and (2) Verizon may maintain a price list for a competitive service rather than maintaining a Commission-approved tariff. In the absence of a tariff, Verizon’s “Product Guide”will be the governing document to memorialize the terms and conditions of stand-alone basic local telephone service in competitive wire centers.

Also, as a condition of our grant of a temporary waiver of certain provisions of the Commission’s Regulations at Chapters 63 and 64, pending disposition of a rulemaking proceeding, we have required certain reporting data to be submitted to the Commission on an annual basis. This data is important for the purpose of monitoring key aspects of affordability and quality of service, which we deem to be essential barometers to measure whether competition is serving the public interest of promoting and encouraging the provision of competitive services without jeopardizing the provision of universal telecommunications services at affordable rates. *See* 66 Pa. C. S. § 3011(8).

Because of the compressed timeframe established pursuant to the provisions of Section 3016(a)(1) of the Code, 66 Pa. C.S. § 3016(a)(1), in which the Commission was mandated to issue an Order within 150 days of the Petition, upon further review, we believe it is necessary to issue a Tentative Implementation Opinion and Order clarifying certain issues related to the reclassification. Clarification in the following areas is necessary to facilitate implementation of the *Reclassification Order* and to achieve a more efficient transition of basic service to a competitive service in the relevant areas.

Under authority of Sections 501 and 703(g) of the Code, 66 Pa. C.S. §§ 501 and 703(g), we hereby clarify the *Reclassification Order* consistent with the discussion in this Order.

Section 501(a) of the Code provides that “the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders.” Likewise, Se[ction 703(g)](http://www.lexis.com/research/buttonTFLink?_m=3304ef4c6f9fb6c379372a3e027b9c20&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b547%20Pa.%20367%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=21&_butInline=1&_butinfo=66%20PA.C.S.%20703&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAA&_md5=8498a2b78fa20b33280f209e43dfed02) of the Code states: “The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it.”  These provisions have been interpreted by the courts to require that the Commission may not effect substantive changes of a prior order unless it has complied with the requirements of notice and opportunity to be heard. [*Scott Paper Co. v. Pa. PUC*, 558 A.2d 914 (Pa. Cmwlth. 1989)](http://www.lexis.com/research/buttonTFLink?_m=3304ef4c6f9fb6c379372a3e027b9c20&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b547%20Pa.%20367%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=24&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b126%20Pa.%20Commw.%20111%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAA&_md5=0cd5f169bb6e66e40d2e9e44a4996ee0); [*Westinghouse Electric Corp. v. Pa. PUC*, 404 A.2d 712 (Pa. Cmwlth. 1979)](http://www.lexis.com/research/buttonTFLink?_m=3304ef4c6f9fb6c379372a3e027b9c20&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b547%20Pa.%20367%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=25&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b44%20Pa.%20Commw.%20407%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAA&_md5=97f40f9c09736832dd2194fd272ad0d0). To the extent any clarification addressed in this Order may be considered substantive in nature, we shall issue the Tentative Order and provide the Parties and other stakeholders an opportunity to comment.

**2. Application of the Product Guide**

Under the *Reclassification Order*, the regulatory approach to stand-alone basic local telephone service provided in competitive wire centers in the Verizon service territories has shifted from tariff-based terms and conditions of service to lighter regulation and contractually-based terms and conditions of service appearing in a Product Guide. Nevertheless, in the *Reclassification Order* we retained certain of our Chapter 63 and 64 Regulations that were viewed as remaining relevant in a competitive market. Moreover, in noncompetitive wire centers, the regulatory approach to basic local telephone customers remains largely the same, which includes the continued application of our Regulations in Chapters 63 and 64.

Thus, the rules applicable to resolving an informal complaint filed with the Commission’s Bureau of Consumer Services (BCS) against Verizon PA or Verizon North (either formal or informal) depend on the customer’s physical location. Through this Order, we clarify that the following legal authorities will govern complaints filed by Verizon customers located in competitive wire centers:

1. The Regulations retained by the *Reclassification Order*;
2. The Product Guide and any guidance that it may offer on whether Verizon’s conduct is reasonable under Section 1501 of the Code, 66 Pa. C.S. § 1501; and
3. What is reasonable based on the facts presented in a case in accordance with Section 1501 of the Code.

In the event of a conflict between the Verizon Product Guide and a retained Regulation, the Regulation trumps the Product Guide. This conclusion may be implicit as a matter of law in the *Reclassification Order*. However, we believe this clarification removes any doubt, and Verizon’s Product Guide shall note this conclusion. If there is no applicable Regulation, the Product Guide can be used as a reference when addressing a customer complaint. If there is no applicable Regulation and the Product Guide does not address an issue or is ambiguous, the proper inquiry is whether Verizon’s conduct was reasonable under the circumstances in accordance with Section 1501 of the Code, 66 Pa. C.S. § 1501.

In an attempt to avoid any conflicts and potential customer confusion, Verizon shall review its Product Guide applicable to stand-alone basic local telephone service and determine whether there are any conflicts with the retained Regulations in competitive wire centers. If so, Verizon is directed to modify its Product Guide so that it conforms to the retained Regulations. Verizon’s Product Guide should also include references to the Commission’s retained Regulations, where appropriate. For example, the section of Verizon’s Product Guide governing suspension/termination of service should reference the Commission’s emergency provisions at 52 Pa. Code §§ 64.101-64.111 that remain in effect in competitive wire centers. These are in addition to the Product Guide modifications required in the *Reclassification Order*.

Once completed, Verizon shall provide a copy of the Product Guide applicable to stand-alone basic local telephone service electronically to the Commission’s Bureau of Technical Utility Services (TUS) and BCS. Verizon also is required to notify TUS and BCS, at least ten days in advance, of any changes to the Product Guide and to provide TUS and BCS with electronic copies of the changed Product Guide pages.

**3. Ordering Paragraph Nos. 6 and 7 and the Carrier of Last Resort Obligation**

We believe it is necessary to address a potential conflict between the COLR obligation established in Ordering Paragraph No. 6 and the status of Verizon’s Product Guide established in Ordering Paragraph No. 7 of the *Reclassification Order.*

Ordering Paragraph No. 6 of the *Reclassification Order* specifies that the Verizon Companies shall continue to maintain their obligations as to COLR in competitive wire centers. This means that the Verizon Companies will continue to connect all customers located in their service territories upon request. Ordering Paragraph No. 7 of the *Reclassification Order* specifies that each Verizon Company shall use the terms and conditions of service contained in its “Product Guide”as the governing document for basic local telephone service customers in competitive wire centers. Verizon’s current Product Guide notes that it will not provide service where providing the service is uneconomic or not justified based on economic factors or where otherwise provided in the Product Guide.[[2]](#footnote-2)

One interpretation of Verizon's current Product Guide is that it may conflict with Verizon’s COLR obligation in competitive wire centers. To reconcile this potential conflict, we clarify that the Product Guide governs only to the extent it is consistent with applicable law. In other words, in competitive wire centers, the Product Guide governing the provision of service does not trump Verizon’s statutorily-based COLR obligation that remains in those wire centers, and Verizon cannot contractually remove this obligation. The Product Guide also does not trump the requirement of 52 Pa. Code § 63.20, to “make reasonable line extensions[,]” which remains in effect in competitive wire centers.

Thus, we clarify that the Product Guide governs in competitive wire centers only when it does not conflict with the Code or with Commission Regulations that were retained in competitive wire centers. Otherwise, if there is a conflict between the Product Guide and the Code and/or the Commission’s Regulations, the Statute and/or Regulations control.

**4. Section 64.201 Reporting**

Section 3015(e)(4) of the Code, 66 Pa. C.S. § 3015(e)(4), requires Verizon to file an annual service report with the Commission, which in this case is the Section 64.201 annual report. *See* 52 Pa. Code § 64.201. In the *Reclassification Order*,wewaived some Section 64.201 residential account data reporting requirements in competitive wire centers but retained others in those wire centers. Our rationale for granting only a partial waiver of Section 64.201 was to keep in place certain of the Section 64.201 reporting requirements that could assist with assessing the impact of the reclassification on stand-alone basic local telephone service rates in competitive wire centers.

Upon further review, rather than waiving parts of Section 64.201 only in competitive wire centers, we shall direct the following with regard to the Section 64.201 reporting requirements applicable to Verizon:

1. Each Verizon Company will file an annual statewide report not broken down by competitive versus noncompetitive wire centers, in accordance with Section 64.201 of our Regulations and this Order.
2. Each Verizon Company will continue to report all information required under Section 64.201, except each Verizon Company is not required to report the following: the Section 64.201 information in (b)(2)(ii)-(iv), (b)(4)(ii)-(iv), (b)(5), and (b)(8)-(11). These regulations are hereby waived.
3. In place of Section 64.201(11), each Verizon Company will report the total number of residential disputes handled, not just Chapter 64 disputes.

We are of the opinion that requiring Verizon to report the waived information is unduly burdensome, given the changes in the telecommunications market in Pennsylvania. As one example, collecting information on uncollectible accounts expenses seems unnecessary when considering Verizon is no longer subject to rate base/rate of return ratemaking. The same would hold true for collecting information related to toll and non-basic revenues. Thus, we view this waiver as streamlining residential account data reporting requirements, while still ensuring that Verizon provides information that is relevant to the Commission’s regulatory responsibilities.

The Section 64.201 waivers shall remain in place until no later than March 4, 2020, subject to the rulemaking contemplated by the *Reclassification Order*. The issue whether each Verizon Company must file a separate Section 64.201 or Section 64.201-like report, broken down by competitive versus noncompetitive wire centers, will be addressed by the Commission in an action implementing the data collection directive in Ordering Paragraph No. 15 and Ordering Paragraph No. 16 of the *Reclassification Order*.

**5. Suspension/Termination/Restoration of Service Rules in Competitive Wire Centers**

For competitive wire centers, our *Reclassification Order* waived Subchapters F and H of Chapter 64 governing termination and restoration of service as well as parts of Subchapter E governing suspension of service, including Section 64.72 governing suspension notice information. We did not, however, waive Section 64.71, which requires Verizon to provide seven days’ advanced written notice to the customer prior to suspending service.[[3]](#footnote-3) The Commission also did not waive Section 64.75 (Exception for suspension based on occurrences harmful to person or property)[[4]](#footnote-4) and Section 64.62 (Days suspension or termination of service are prohibited).

With its waiver of Subchapters F and parts of Subchapter E of Chapter 64, we intended to create a one-tier notification process prior to suspension and termination of service in competitive wire centers; a seven-day advanced written notice process. As part of this process, we anticipated that the written notice would advise the customer that once service has been suspended, service may be terminated without the customer receiving any further written notice from the carrier.

This process is different than the two-tier notification process applicable to non-safety related suspensions/termination. The two-tier process involves providing one written notice prior to suspension of service and, immediately after service is suspended, providing a second written notice prior to termination of service.[[5]](#footnote-5) Under the two-tier process, service cannot be terminated for at least ten days after service has been suspended.

Upon further review, we find that it is necessary to provide guidance on the implementation of the one-tier notification process in competitive wire centers. First, Verizon is required to provide at least thirty days’ advanced notice to the Commission, in writing, prior to implementing the one-tier advanced written notice process applicable to suspension/termination of service in competitive wire centers. As part of this advanced notice to the Commission, Verizon must provide the relevant details regarding how it intends to implement the one-tier notification process, including the date that the one-tier notification process is to take effect and a copy of the written notice to be provided to customers. Until such a filing is made and is effective, Verizon shall follow the existing two-tier suspension/termination process in competitive wire centers.

Additionally, we clarify the following in connection with the customer notice requirements for the one-tier notice process available in competitive wire centers:

1. The advanced written notice must advise the customer that once service has been suspended for at least five days, service may be terminated without any additional notice being provided. We add this requirement as a condition to waiving Subchapter F and parts of Subchapter E in Chapter 64 for competitive wire centers.
2. The advanced written notice must include, at a minimum, the reason for the proposed suspension/termination, the amount the customer must pay to avoid suspension/termination (if applicable), the earliest date that service will be affected, and information where the customer can contact Verizon about the matter to discuss avoiding suspension/termination. The advanced written notice also must include language that is the same or substantially similar to the language appearing in the medical emergency notice in Appendix A of the Commission’s Chapter 64 Regulations. The Commission adds these requirements as a condition to waiving Section 64.72 and Sections 64.121-64.123 of its Regulations.

To resolve any ambiguity that may arise, we make the following additional clarifications regarding the one-tier notice process available in competitive wire centers:

1. When a LEC suspends service for nonpayment prior to the expiration of a medical certificate, Section 64.109 requires the LEC to follow the suspension notice procedures at Sections 64.71-74 of the Commission’s Regulations. Because Sections 64.72 through 63.74 have been waived in competitive wire centers, the Commission clarifies that when suspending service under Section 64.109 in competitive wire centers, Verizon must comply with Section 64.71 and the requirements established in a final Order resulting from this Tentative Order.
2. Prior to Verizon suspending stand-alone basic local telephone service in a competitive wire center in accordance with Section 64.24(c) of the Commission’s Regulations, bundled bill customers are to receive the same notice as stand-alone basic local exchange customers.

Before concluding this section, it is important to note that if any CLEC operating in a competitive wire center chooses to avail itself of the various regulatory waivers that we have granted to Verizon, the same implementation requirements and guidance set forth in this Order applicable to Verizon shall also apply to that CLEC.

**B. Errata**

The Commission advises all parties of record that the *Reclassification Order* entered in the above-captioned proceeding on March 4, 2015, contains several ministerial errors. Therefore, we direct the following corrections to be made to the *Reclassification Order*:

1. Page 7, footnote 13 – replace “at 111” with “at 105-06.”
2. Page 61, footnote 44 – replace “at 111” with “at 105.”
3. Page 101 – In the last line of the first full paragraph, replace the words “file an” with “proceed with the.”
4. Appendix B – Section 63.55: Page 87 of the March 4, 2015 Order retains the Commission’s Regulations in Section 63.55 (Surveillance levels). However, this Section inadvertently was listed as being waived in Appendix D – Subchapter E on p. 141 of the Order. Therefore, Section 63.55 (Surveillance levels) should be removed from the list of waived regulations in Appendix D.
5. Appendix E – Subchapter J: The citation to Section 64.201 (Reporting requirements), “§§ (b)(**i**),” should be corrected to read “§§ (b)(**1**).”

**III. Conclusion**

Consistent with the forgoing, we shall issue this Tentative Implementation Opinion and Order regarding clarifications and errata for comment. Comments to this Order shall be due ten (10) days from date of entry by the Commission’s Secretary’s Bureau. No Replies to Comments shall be permitted. If no adverse Comments are received, this Tentative Implementation Opinion and Order shall become final without further action by the Commission. Otherwise, we shall issue a Final Opinion and Order that addresses the Comments**; THEREFORE,**

**IT IS ORDERED:**

1. That this Tentative Implementation Opinion and Order regarding clarifications and errata, relative to our Opinion and Order entered March 4, 2015, at Docket Nos. P-2014-2446303 and P-2014-2446304, is issued for comment.
2. That Comments shall be due within ten (10) days of the date of entry of this Tentative Implementation Opinion and Order.
3. That no Replies to Comments shall be permitted.
4. That if any adverse Comments are timely filed in response to this Tentative Implementation Opinion and Order, the Commission’s Office of Special Assistants shall prepare a Final Opinion and Order addressing such Comments for the Commission’s consideration.
5. That if no adverse Comments are filed, this Tentative Implementation Opinion and Order shall become final without further action by the Commission.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 19, 2015

ORDER ENTERED: June 1, 2015

1. The waivers were granted as to Verizon as well as to Competitive Local Exchange Carriers (CLECs) operating in the 153 competitive wire centers. [↑](#footnote-ref-1)
2. The relevant section of the Product Guide for each company is Section 1.2.G., 1st Revised Sheet 2. [↑](#footnote-ref-2)
3. Section 64.71 requires a LEC to provide seven days’ advanced written notice to the customer prior to suspending service unless the grounds for the suspension is failure to comply with the material terms of a payment agreement for toll or non-basic telephone service, or both. If this exception applies, the LEC must comply with Section 64.81 (relating to limited notice upon noncompliance with report or order). However, the Commission in the *Reclassification Order* waived Section 64.81 in competitive wire centers. In furtherance of the Commission’s intent, we clarify that the retention of Section 64.71 is limited to the first sentence only: “The LEC shall mail or deliver written notice to the customer at least 7 days before the date of proposed suspension regardless of the grounds upon which suspension is sought.” [↑](#footnote-ref-3)
4. Under Section 64.75 of the Commission’s Regulations, which was also retained in competitive wire centers, no written notice is required if the suspension and/or termination of service is based on a safety issue. [↑](#footnote-ref-4)
5. The requirements for termination of service in non-competitive areas are contained in Sections 64.121-64.123 of the Commission’s Regulations. [↑](#footnote-ref-5)