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October 2, 2018

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

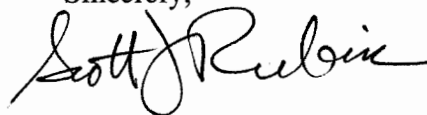
Re: Rulemaking to Comply with the Competitive
Classification of Telecommunication Retail
Services Under 66 Pa. C.S § 3016(a); General
Review of Regulations 52 Pa. Code, Chapter 63
and Chapter 64, Docket No. L-2018-3001391

Dear Secretary Chiavetta:

Enclosed for filing please find Comments of Communications Workers of America in the
above-referenced proceeding.

The document was filed electronically with the Commission on this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Rubin", written in a cursive style.

Enclosure

cc: Melissa Derr, Bureau of Technical Utility Services (email to: mderr@pa.gov)
Terrence Buda, Law Bureau (email to: tbuda@pa.gov)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Comply with the Competitive	:	
Classification of Telecommunication Retail Services	:	
Under 66 Pa. C.S § 3016(a); General Review of	:	Docket No. L-2018-3001391
Regulations 52 Pa. Code, Chapter 63 and Chapter 64	:	

COMMENTS OF COMMUNICATIONS WORKERS OF AMERICA

The Communications Workers of America (“CWA”) appreciates the opportunity to submit these Comments in response to the Advanced Notice of Proposed Rulemaking Order (“ANOPR”) issued by the Pennsylvania Public Utility Commission (“Commission”) on July 12, 2018, and subsequently published for public comment. 48 *Pa. Bulletin* 4792 (Aug. 4, 2018).

1. Introduction and Background.

CWA represents more than 5,000 employees of telecommunications carriers in Pennsylvania, including Verizon, Frontier, CenturyLink, Windstream, and Consolidated. In addition, CWA was an active participant in the Verizon reclassification proceeding¹ that provides some of the underlying basis for the Commission issuing the ANOPR at this time. As the Commission knows, CWA also initiated a complaint proceeding against Verizon concerning deficiencies in Verizon’s maintenance, repair, and replacement of physical plant in portions of Pennsylvania.² While CWA is pleased that matter was successfully resolved by a settlement, the

¹ *Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services*, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order entered March 4, 2015) (“Reclassification Order”).

² *Petition of Communications Workers of America for a Public, On-the-Record Commission Investigation of the Safety, Adequacy, and Reasonableness of Service Provided by Verizon Pennsylvania LLC* (converted by

proceeding underscores the need for continuing regulatory oversight of certain aspects of telecommunications services even when portions of the market are highly competitive. CWA submits these Comments to represent the interests of its members both as employees and customers of Pennsylvania's landline telecommunications carriers.

Initially, CWA expresses its intention to participate fully in the process of reviewing and amending Pennsylvania's telecommunications regulations in 52 Pa. Code Chapters 63 and 64. Many of those regulations were first adopted in the 1940s and have not been amended in almost 50 years. Other regulations were reviewed in the 1980s and a few were amended as recently as a decade ago. Needless to say, the past decade, let alone the past half century, has seen dramatic changes in telecommunications technologies, services, and consumer expectations. CWA's members have been at the forefront of many of those changes and CWA agrees that it is time to have an open, public process in which those regulations are fully and carefully reviewed.

CWA notes that the process is at a very early stage and the Commission has not yet developed a proposal to change its regulations. CWA appreciates the Commission engaging the public at this early stage in the process and hopes that the Commission continues to seek input from all stakeholders as the process continues. Given the generally non-adversarial nature of the rulemaking process before the Commission, CWA would suggest that the Commission consider holding a collaborative process through which interested parties can attempt to reach consensus on certain matters. CWA does not know if all interests would agree on all changes, but a consensus-building process could serve to greatly simplify the process of modernizing the Commission's telecommunications regulations.

Based on its experience throughout the country with telecommunications regulation, CWA would propose the following principles to guide the Commission's review of Chapters 63 and 64:

- Members of the public should be able to review the Commission's regulations and determine which regulations are applicable to a specific telecommunications carrier;
- Any changes in service-quality regulations should be conducted through a public process in which all data relied upon by the Commission is made available to participants in the process;
- Regulations should reflect carriers' continuing obligations to provide safe and adequate service under Chapters 15 and 30 of the Public Utility Code, including meeting incumbent carriers' carrier of last resort ("COLR") obligations;
- The Commission should require periodic public reporting of service quality metrics so that the public can participate in monitoring the state of effective competition in the Commonwealth's telecommunications marketplace; and
- The Commission should continue to exercise its authority to review proposed mergers, acquisitions, divestitures, and reorganizations.

In furtherance of these objectives, CWA provides the following more specific Comments.

2. Purpose and Organization of Regulations.

CWA submits that it would be extremely helpful to members of the public to have separate chapters of regulations that apply to competitive and non-competitive wire centers. Currently, in order to determine whether a regulation applies to a particular Verizon wire center, for example, it is necessary to have not only the regulations, but also the Reclassification Order. Even then it may not be clear without reviewing other orders exactly which regulatory requirements apply to a specific portion of a carrier's service area.

The whole purpose of having agencies issue regulations is to put the public (both regulated entities and the public at large) on notice of the specific obligations imposed on

regulated entities. This drives not only industry compliance, but also establishes public expectations and binds administrative agencies to particular processes and requirements.

Pennsylvania's courts have highlighted the importance of establishing "binding norms" – that is requirements that have the force of law and bind regulated entities, administrative agencies, and the public – through formal regulations. As the Pennsylvania Supreme Court has stated, "An agency may establish binding policy through rulemaking procedures by which it promulgates substantive rules or through adjudications which constitute binding precedents."³ Commonwealth Court has described the importance of the rulemaking process as follows:

The process by which regulations are issued provides an important safeguard for potentially affected parties against the unwise or improper exercise of discretionary administrative power. This process, which includes public notice of a proposed rule, making a request for written comments by any interested party, giving due consideration to such comments, and holding hearings as appropriate, affords the affected parties a democratic process for participation in the formulation of standards which govern their conduct and increases the likelihood of administrative responsiveness to their needs and concerns. Moreover, it gives the administrative agency facts and information relevant to the proposed rule, as well as opens up the agency to alternatives, detrimental effects, criticism and advice, thereby contributing to the soundness of the proposed regulation. See *National Petroleum Refiners Association v. Federal Trade Commission*, 482 F.2d 672, 683 (D.C.Cir.1973); *Texaco, Inc. v. Federal Power Commission*, 412 F.2d 740, 744 (3d Cir.1969). Not only is sound regulation promoted by this process, but it increases the likelihood of administrative responsiveness to the needs and concerns of those affected, because it promotes acquiescence in the result, even when the objections of those affected remain the same as to substance. *Jean v. Nelson*, 711 F.2d 1455, 1481 (11th Cir.1983).⁴

³ *Pa. Human Relations Commission v. Norristown Area School*, 473 Pa. 334, 349, 374 A.2d 671, 679 (1977).

⁴ *Dep't of Envtl. Res. v. Rushton Mining Co.*, 139 Pa. Commw. 648, 653-54, 591 A.2d 1168, 1171 (1991) (emphases added).

In other words, consumers, utility employees, elected officials, and the utilities themselves should be able to find the general rules that govern utilities' conduct by referring to the Commission's regulations.

Presently, however, telecommunications service requirements cannot be found solely by examining the Commission's regulations. As the ANOPR explains, many of those regulations have been waived for certain utilities, in some cases indefinitely and in other cases only for a defined period of time.

CWA agrees with the fundamental premise of the ANOPR that rather than continuing the process of granting case-by-case waivers, the Commission should fully review and update its regulations, so that they again establish the "binding norms" for telecommunications carriers and the public. If the Commission determines that different standards should apply in competitive wire centers (as it did in the Reclassification Order), then that should be reflected in the regulations. CWA believes that having different chapters of the regulations would be an appropriate way to separate regulations that apply to all carriers from those that apply only to the competitive or non-competitive portions of carriers' service areas.

CWA submits, however, that it is not necessary at this time for the Commission to review the Transfer of Control regulations in Chapter 63, Subchapter O.⁵ Those regulations were adopted in 2010 and appear to be working well. The regulations allow internal reorganizations and other uncontroversial transactions to proceed quickly, while preserving the Commission's full authority to hold evidentiary hearings, impose conditions, ensure public benefits, and otherwise review significant transactions, as required by Chapter 11 of the Public Utility Code⁶ and applicable case law.

⁵ 52 Pa. Code §§ 63.321, *et seq.*

⁶ 66 Pa. C.S. §§ 1101, *et seq.*

3. Regulations Require a Public Process with Public Data.

In the *Rushton Mining* decision cited above, Commonwealth Court highlighted the need for regulations to be established through “a democratic process for participation in the formulation of standards.” CWA is concerned that the Commission apparently has collected data as an outgrowth of the Reclassification Order, but those data are not available to CWA or other members of the public.

For example, on page 4 of the ANOPR, the Commission states: “The waivers were conditioned upon the collection of data ... The purpose of the conditional waivers was to afford us time to collect data, for a period of two years, to aid in our assessment of the market conditions present in the aftermath of the competitive reclassification, particularly in the areas of affordability and quality of service.”

On page 7 of the ANOPR, the Commission explains further that the purpose of the data collection was two-fold: to “(1) help assess the market in competitive areas, including the impact of our decision on affordability of basic service and quality of service in those areas and (2) provide guidance for this rulemaking.” The ANOPR continue: “In other words, the data collection was intended to assist the Commission in making a determination as to the status of the waived Regulations in the competitive wire centers going forward.” Thus, it appears highly likely that the Commission will attempt to use those data to inform its decisions about permanent changes in its regulations. Those data, however, are not available to CWA or the public.

Indeed, leading up to the filing of its Complaint, CWA’s counsel asked the Commission to provide the service quality information it had collected from Verizon. That request was denied because the information was confidential, and the Commission claimed it was part of an ongoing oversight or investigative process. Now that it appears the Commission wants to use

that information to make judgments about changes in regulations, CWA submits that the data must be made public.

Just two years ago, Commonwealth Court reviewed the Commission's treatment of allegedly proprietary data. Initially, the court stated: "The PUC is required to 'make part of the public record' all documents it relies on in reaching a decision," unless there is a specific claim of privilege, citing 66 Pa. C.S. § 335.⁷ The court also specifically addressed claims that aggregated data, as opposed to data containing customer-specific information, could be proprietary. In response, the court held: "Aggregated data are not the type of data generally protected pursuant to the Regulation."⁸ CWA respectfully submits, therefore, that the Commission must make public the data the Commission has collected from Verizon under the Reclassification Order. If the data are customer-specific (which the Reclassification Order does not appear to require), then an aggregated version of the data can be made public. If, however, as appears likely from the order, the data do not contain any customer-specific information, then the data should be made public as the Commission received it from Verizon.

It would not be consistent with either the law or reasonable regulatory policy for the Commission to rely on data in a rulemaking proceeding but refuse to make that data available to stakeholders that are expected to comment on the reasonableness of the proposed regulations. CWA respectfully requests, therefore, that the Commission provide to CWA and all other interested parties the Verizon data that were collected pursuant to the Reclassification Order. In addition, the Commission should provide all other data on which it intends to rely in this rulemaking proceeding.

⁷ *Lyft, Inc. v. Pa. PUC*, 145 A.3d 1235, 1242 (Pa. Commw. Ct. 2016).

⁸ *Id.*, at 1243, citing several Commission decisions denying proprietary protections for aggregate data.

4. Regulations Should Reflect Carriers' Chapter 15 Obligations.

The ANOPR notes on pages 5 and 8 that despite deregulation of rates and certain types of services, telecommunications carriers continue to have an obligation to provide safe and reasonable service. Indeed, as the Commission stated in the Reclassification Order and quoted on page 5 of the ANOPR, the classification of a service as competitive does not affect a carrier'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."⁹

CWA agrees with the Commission that carriers retain the obligation to provide safe, reliable, efficient, and reasonably continuous service throughout their service areas. The Commission's telecommunications regulations should continue to reflect this fact. Regulations that define installation standards, repair times, maintenance and testing of facilities, and similar requirements continue to be valid even in a partially deregulated marketplace.

Indeed, we see throughout the economy that price deregulation does not relieve industries from the regulation of safety, service quality, inspection, and maintenance. This is seen in formerly price-regulated industries as diverse as the airline industry, interstate trucking, and natural gas production. While those industries have the ability to price their products and services as the market will bear, they remain heavily regulated when it comes to safety and service quality. Airlines are subject to stringent safety and maintenance standards; trucking has numerous safety requirements on both equipment and drivers; and natural gas production is a highly hazardous activity subject to stringent safety and quality requirements (such as odorization, BTU content, and others).

⁹ ANOPR, p. 5, citing Ordering Paragraph 5 of the Reclassification Order. See also 66 Pa. C.S. § 3019(b)(2) cited on page 8 of the ANOPR.

The same should be true for Pennsylvania's telecommunications carriers. As noted above, the need for such continuing regulation and Commission oversight was highlighted in CWA's complaint case that was based on occurrences of deteriorating poles, sagging wires, persistent outages, and other unsafe or unreasonable conditions in parts of Pennsylvania. While CWA believes its settlement with Verizon has served to remedy many of these conditions (at least for now), that does not obviate the need for Commission regulations governing the safety of facilities, the availability of services, and the quality of services provided to the public.

5. Regulations Should Require Periodic Public Reporting.

As Commonwealth Court stated in the Rushton Mining decision quoted above, sound regulations are important because they "increase[] the likelihood of administrative responsiveness to the needs and concerns of those affected." That is, sound regulations are part of the process by which the government helps to assure the public that government actions are consistent with the public interest.

CWA submits that a vitally important part of this process is public reporting of regulated entities designed to show compliance with regulatory requirements. As discussed above, the Commission recognizes it has a continuing obligation to oversee telecommunications carriers' compliance with safety and service quality requirements. An integral part of that responsibility should be periodic, public reporting of service quality. The Commission also should enhance inspection, maintenance, and testing standards designed to ensure public and worker safety and service adequacy.

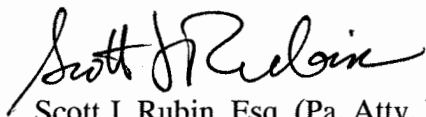
6. Conclusion.

CWA appreciates the opportunity to provide these initial comments to the Commission concerning an approach to reviewing, revising, and updating Chapters 63 and 64. In order to

develop more specific recommendations, CWA requires access to the data the Commission has collected under the Reclassification Order, as well as other data the Commission has collected concerning the safety, quality, and reliability of services provided by Pennsylvania's telecommunications carriers. Reviewing and understanding those data will be essential to determine how technological changes and price deregulation may have affected the need for, and content of, Pennsylvania's telecommunications regulations.

CWA looks forward to working with the Commission, the telecommunications industry, consumer representatives, and other interested parties to help update Pennsylvania's telecommunications regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott J. Rubin".

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Dated: October 2, 2018