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November 2, 2018

VIA ELECTRONIC FILING
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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 please find Verizon's Reply Comments Regarding the July 12, 2018 Advance Notice of Proposed Rulemaking, in the above captioned matter.

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

Very truly yours,

Suzan D. Paiva/sau

Suzan D. Paiva

SDP/sau

Enclosure

cc: Melissa Derr, Bureau of Technical Utility Services
Terrence Buda, Law Bureau

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 Regulations 52 Pa. Code, Chapter 63 and Chapter 64	L-2018-3001391

REPLY COMMENTS OF THE VERIZON COMPANIES

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Dated: November 2, 2018

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I. Introduction

Most of the commenting parties understand that Chapters 63 and 64 of this Commission's regulations have outlived their usefulness. These rules – written for a time when there was one provider, one technology, a guaranteed rate-of-return, and 100 percent regulation – are out of place today. The basic landline they were created to regulate is becoming a historic relic, amounting to less than 15 percent of the voice connections in Pennsylvania and rapidly fading away.[1] Customers have demonstrated that they do not find important old-school regulation, moving in droves to unregulated VoIP and wireless technologies. According to this Commission, "[r]egulation does not exist for regulation's sake. Rather, regulation seeks to produce a competitive result where there is no competition to do the same. Where sufficient competition exists, regulation is not needed and should be reduced or perhaps even discontinued."[2] Here, regulation should be reduced substantially and outdated Chapter 63 and 64 rules discontinued.

Verizon[3] is not alone in urging the Commission to take this opportunity to create a regulatory regime appropriate for today. AT&T urges this Commission to "allow[] the forces of competition to drive technology innovation and affordable communication services by eliminating those regulatory requirements which only serve to thwart competition and increase the cost of providing those services," and warns that "[i]n today's competitive marketplace, these

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1 Regulated lines have declined from 8.8 million in 1999, to 4.4 million in 2016, to 2.7 million in 2016. At this rate of decline, there are likely less than 2 million regulated lines today, and they could virtually disappear within five years. Verizon Comments at 4-6.

2 *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"*) at 75.

3 These Reply Comments are filed on behalf of Verizon Pennsylvania LLC, Verizon North LLC, MCImetro Access Transmission Services Corp., MCI Communications Services, Inc., XO Communications Services, LLC, Verizon Long Distance LLC, and Verizon Select Services, Inc. (together, "Verizon").

artificial rules only apply to a small percentage of the consumer market and can distort the natural competitive playing field."[4] Directory publisher Dex Media advises that "[t]he public interest is generally better served by less regulation when there is a free market that can better meet consumer needs and demands."[5] Pennsylvania's thirty-five rural incumbent local exchange carriers advise that "[t]he dwindling resources of the local exchange companies are better spent in continuing to provide services to our remaining customers and focus on gaining new customers, rather than record keeping, reporting and complying with outdated regulations."[6]

Even the Communications Workers of America ("CWA"), while pressing for more service regulation than is necessary, recognizes that the world has changed and it is time for the Commission's rules to change too: "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."[7]

The outliers in this debate are the Office of Consumer Advocate ("OCA") and its supporter, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE"). OCA and CAUSE want the Commission to continue to regulate like it is 1985. They refuse to acknowledge the reality of the market or to demonstrate any benefit from the heavy-handed regulatory scheme they advocate. As a result, their comments urging the

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4 AT&T Comments at 2, 5.

5 Dex Media Comments at 2.

6 RLEC Comments at 5.

7 CWA Comments at 2.

Commission to keep most of its Chapter 63 and 64 regulations lack credibility. The Commission should review the need for regulation anew and adopt only those rules that are necessary today.

II. Reply Comments

A. The Commission Should Review The Need For Regulation From A Clean Slate.

The industry and OCA/CAUSE differ fundamentally on how they envision the Commission reviewing the need for regulation. OCA/CAUSE advocate a "top down" review. They assume that every single one of the micro-managing, outdated rules from 1946 and the mid-1980s would remain in place, and then make a cursory attempt to consider which rules might be simplified or eliminated. Considering how old these regulations are and how much the industry, technology and customer options have transformed over the years, this top down approach does not make sense. The question is not "which of these outdated, monopoly-era regulations can we eliminate?" Rather, the question is "what regulations, if any, are necessary and beneficial in today's environment?"

The Commission should review the need for regulation of the telephone industry from a clean slate. It should assume there are no regulations and then determine what rules are truly needed in light of competition, technology and the diminishing relevance of regulated voice services. Verizon proposed this type of "bottom up" outline of regulation in Exhibit 1 to its Comments and stands ready to work with the Commission, staff and interested parties to refine and flesh out this outline to provide the lighter, more streamlined regulatory touch more appropriate for today's environment.

Verizon agrees with the CWA that the new regulations should clearly state all of the rules so that stakeholders can easily find them.[8] The regulations should supersede all waivers and waiver conditions and all regulation-like requirements that are outside of this Commission's regulations.[9]

B. The OCA/CAUSE Argument Is Based On Faulty Assumptions.

OCA and CAUSE argue that the Commission should keep the vast majority of its Chapter 63 and 64 regulations in place, but they provide no valid reason why those rules should continue to exist. Their argument is premised on a faulty understanding of customer behavior and an unreasonable failure to trust providers to respond to customer needs or to believe that there actually is a competitive market.[10] From reading their comments one would think nothing had changed since 1946 or the mid-1980s, when these rules were written. But the Commission need only look at the facts set out in Verizon's Comments to see that everything has changed.

Although all parties agree that the general statutory requirement of 66 Pa. C.S. §1501 to provide reasonable service would continue to apply, this statutory mandate is not enough for OCA. It presumes companies will not be capable of providing good service or interacting reasonably with customers on billing and other communications unless the commission sets

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[8] CWA Comments at 5.

[9] Verizon Comments at 11. The Commission should first consider the level of regulation that is appropriate state-wide and industry wide, and perhaps it will not be necessary to have different rules in competitive wire centers. But if there are different rules, then they should be clearly stated in the regulations. CWA Comments at 5.

[10] OCA claims that since Verizon was able to make small increases to its basic residential rates in competitive wire centers to keep them equal to the comparable rates in the noncompetitive wire centers increased under the inflation-based Chapter 30 Price Change Opportunity ("PCO") process, this must mean that competition is not working to constrain prices. OCA Comments at 6-7. This reasoning makes no sense. Basic service rates have been limited by price caps and the PCO formula for years, so it is not surprising that the market can bear increases to those rates. Price is not the only factor in meeting customer expectations and Verizon determined there was more value for customers in keeping the rates uniform, clear and simple by matching the rates in the noncompetitive wire centers rather than having different rates for the same service in the competitive wire centers.

prescriptive "standards" telling them exactly what they must do and say.[11] For example, OCA presumes that voice service will be riddled with "interference" unless there is a regulation telling companies specifically that they should not have interference.[12] Companies do not need regulations telling them how to serve and communicate with their customers. If a company does not please its customers, then the customers will leave. As the RLECs explained, companies "have every incentive, irrespective of Commission-prescribed regulations, to ensure that they are providing the best level of service possible at the highest standards and are responsive to customers' needs and concerns. The failure for doing so is severe - customers will simply switch to another service provider. As such, it is wholly unnecessary to direct ILECs to comply with a vast array of cumbersome and outmoded regulations."[13]

In today's rapidly changing market what is needed to please and keep customers will change over time and prescriptive regulations cannot keep up. Given that Chapters 63 and 64 were written more than thirty years ago, and in some cases more than 70 years ago, they do not comport with today's customer expectations. It is not in the public interest to divert resources to comply with artificial mandates and reporting that customers do not value. As the RLECs point out, enforcing these outdated requirements "penalizes the RLECs and diverts dwindling revenues and existing support away from the RLECs' ability to operate its network and serve their customers."[14] This Commission has already recognized that it should not keep in place regulatory standards that do not "comport with customer expectations in today's competitive telecommunications marketplace," because it would "constitute enforcement for enforcement's

[11] OCA Comments at 2.

[12] *Id*. at 11.

[13] RLEC Comments at 13.

[14] *Id.*

sake."[15] There is no basis for the OCA's premise that local exchange carriers need prescriptive regulations to make them do the right thing by their customers.

The fact that the vast majority of customers have chosen to obtain voice service from wireless and VoIP technologies that are not subject to Chapters 63 and 64 shows both that the existence of regulation is not a key factor in customer decision-making and that these unregulated providers are able to offer customer-pleasing service without regulations telling them what to do. There is no reason to believe that regulated local exchange carriers require these mandates when their competitors do not, and as the Commission already recognized, "it is important that this Commission not unnecessarily distort the marketplace by perpetuating asymmetrical regulations."[16]

CAUSE has a slightly different theory – one that the Commission has already rejected. CAUSE argues that Chapters 63 and 64 must remain unchanged because they are needed to protect "low-income households" that would not "have access to a continuance of universal service or basic calling plans at reasonable and affordable rates" without regulation.[17] This argument fails for several reasons. First, the NPRM does not propose to allow providers to cease offering stand-alone basic wireline service or to change the way its rates are regulated today, so there is no reason to conclude there would be any change in availability or affordability of basic service. Second, CAUSE has not demonstrated that the heavy-handed regulations in Chapter 63 and 64 are valued by customers or have any actual effect on their choice of service. Third,

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[15] *PUC v. Verizon Pennsylvania Inc*., Docket No. M-2008-2077881 (Opinion and Order entered October 12, 2012) at 33.

[16] *Joint Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for a Waiver of the Commission's Regulation Governing Toll Presubscription, 52 Pa. Code Section 64.191(e),* P-00072348 (Opinion and Order entered September 24, 2008) at 7, 9.

[17] CAUSE Comments at 2.

CAUSE's knee jerk assumption that individuals in poverty and senior citizens rely disproportionately on regulated landline service is a fallacy. According to the Centers for Disease Control ("CDC") Wireless Substitution study, 68 percent of adults classified as "poor" live in wireless-only households and another 9 percent live in wireless-mostly households, meaning basic landline service is irrelevant for 77 percent of adults in poverty.[18] It is notable that that the percentage of poor individuals living in wireless-only households continues to increase; it was 26 percent in 2008, 59 percent when Verizon filed its Reclassification petition in 2015, and is now 68 percent. These facts undermine CAUSE's unsubstantiated assumption that unregulated alternatives are not "affordable" or desirable to the customer categories CAUSE identifies.

Moreover, Lifeline service for low income individuals will remain available, as it is not affected by the proposed regulations.[19] And the reality is that most Lifeline service today is wireless. The Universal Service Administrative Company (USAC) reports that in 2017 approximately 96 percent of the Lifeline support disbursements in Pennsylvania were made to wireless ETCs such as Tracfone, Virgin Mobile and Q Link Wireless, and only 4 percent of distributions went to the ILECs in total (including Verizon and all of the RLECs together).[20]

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[18] Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, July–December 2017. National Center for Health Statistics. Available from https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201806.pdf

[19] *See* 66 Pa. C.S. § 3019(f).

[20] USAC, Quarterly Low Income Disbursements By Company 3Q 2017, available from https://www.usac.org/about/tools/fcc/filings/2018/q1.aspx. This fact is not surprising considering what is available to wireless Lifeline customers. According to Q Link Wireless, which describes itself as "a leading provider of Lifeline, a free government benefit program that offers affordable phone service to eligible Americans," qualifying customers get "their first smartphone at absolutely no cost, plus free monthly calling & data. . . . (1 GB of data, 1000 monthly minutes and free unlimited texting, nationwide calling, ability to connect to wi-fi, voicemail)."

In the *Reclassification Order*, this Commission specifically rejected CAUSE's theory that "there exists a core of vulnerable customers who only desire . . . basic local exchange service," noting that "ninety-two percent of low-income Lifeline customers prefer wireless service over wireline service," that "the elderly are more than willing to subscribe to cable television services, putting them in play for cable telephony, and are also willing to cut the cord from wireline service," and therefore that the "evidence undercuts the . . . speculation that these customer groups disproportionately favor basic local exchange service."[21] The Commission also found that, even if there existed some category of customers who would never change from regulated basic stand-alone landline service, their interests would be protected by the operation of the competitive market. "[P]ricing and service quality are set at the margin and not on the circumstances of an individual customer. Therefore, even without personal access to cable service, all customers . . . benefit from the competitive pressures created by the widespread availability of cable and wireless service."[22]

The position advanced by OCA and CAUSE is not just a harmless maintenance of the *status quo* - it is affirmatively harmful in many ways and not in the public interest. The negative effects of heavy-handed, monopoly-era regulation have been well described in the comments, including anti-competitive harms and diverting resources away from meeting customer needs. The net result of keeping that regime in place is to weaken the regulated providers and drive customers away from them. The Commission can see from pages 3-7 of Verizon's Comments how quickly the market and customer preference is changing and moving away from regulated landline service. If OCA and CAUSE believe that it is important to keep traditional landline

[21] *Reclassification Order* at 55.

[22] *Id.* at 37.

service available as an option for customers, then they should not be arguing for a regulatory environment that will continue to hasten its demise. The public would be best served if the Commission adopts a lighter regulatory scheme to manage the decline of these services reasonably.

C. OCA And CAUSE Do Not Provide A Good Reason To Retain Chapter 64's Intrusive Retail Regulation.

OCA's stance on retail regulation is a prime example of the fault in its overall position. It contends that "[t]he Commission should preserve the Chapter 64 protections for residential local exchange service customers in competitive areas, subject to very limited amendments and changes."[23] OCA assumes, in a top down manner, that all of these decades-old regulations micromanaging customer communications and other interactions are still appropriate, but does not even attempt to explain what benefit they provide or why they are needed in today's highly competitive market. Verizon responds generally to the arguments of OCA, CAUSE and any others in favor of retail regulation as follows.

1. There is No Need to Micromanage Customer Communications.

Prescriptive regulations micromanaging customer interactions, such as billing, credit, deposits, order verification, and the like, are not necessary and should not be included in the Commission's new regulations. Providers will still be required by Section 1501 to interact with customers in a reasonable manner. That statute provides sufficient flexibility for the Commission to oversee these matters without dictating the specific content of the communications.

[23] OCA Comments at 28.

OCA argues that the Commission should retain most of Subchapters B and C of Chapter 64 (billing, payment, credit and deposits and the like) as well as Subchapter I, particularly Section 64.191 (mandating in extreme detail what a provider must tell its customers, orally and in writing). But OCA never explains how such detailed micromanagement of a provider's communications with its customers is needed or helpful. The unregulated competitors serving the majority of the market are not subject to these rules relating to their interactions and communications with customers. Yet customers are flocking to those competitors, who are able to provide customer-pleasing service without these rules, demonstrating that there is no need to enforce traditional Chapter 64 regulations in those areas. As the Commission observed when it waived many of these rules in the *Reclassification Order*, while these rules might have been "necessary in a monopoly market where Verizon was the lone, dominant facilities-based provider of basic local exchange service," "[t]he importance of many of these Regulations has diminished in areas where the competitive market provides sufficient incentive for Verizon to meet reasonable customer expectations" and where the Product Guide for detariffed services informs customers of Verizon's policies on these issues.[24] The same reasoning holds true generally, for all providers and all locations.

The Commission was careful to note that waiving these rules "does not mean that we are abandoning our oversight of . . . billing and collections practices" because 66 Pa. C.S. § 1501 still requires reasonable service, which "includes ensuring that Verizon will continue to provide reasonable billing services."[25] As OCA points out, the billing statute at 66 Pa. C.S. § 1509 also continues to apply.[26] Beyond those guiding statutory principles, there is no need for additional

[24] *Reclassification Order* at 96.

[25] *Id.*

[26] OCA Comments at 29-30.

prescriptive regulations controlling billing, credit, deposits, and customer communications. OCA's arguments are simply another manifestation of its faulty presumption that companies will not act reasonably and that consumers need to be protected from their providers, which is demonstrably untrue.

These regulations are not only unnecessary, but downright harmful and anticompetitive. As the RLECs commented, "onerous payment and billing standards inherently limit the RLECs' ability to interface with their customers and thereby harm the ability to compete against alternative providers. None of the existing alternative providers of voice services are required to present a bill in the arcane billing formats prescribed by these sections. Likewise, customers are often confused with ILEC billing" because of these regulations.[27] And regarding the prescriptive order confirmation and information requirements of Section 64.191, the RLECs correctly observe that "consumers today are used to streamlined interactions and do not want a litany of summaries, forced dialogue caused by a recitation of services, and unnecessary written documents because these are not common practices anymore."[28] Forcing regulated providers to communicate in an annoying and confusing manner, and to incur the costs to do so, places regulated companies at a competitive disadvantage that will continue to hasten the customer exodus to wireless and VoIP providers that have the flexibility to meet their customers' needs.

Verizon proposed in Exhibit 1 to its Comments a streamlined framework to replace the Commission's billing, deposit, and customer communication regulations that would:

- Make clear that all regulated service is subject to the standard set forth in 66 Pa. C.S. § 1501 to furnish and maintain adequate, efficient, safe, and reasonable service.

[27] RLEC Comments at 21.

[28] *Id*. at 28.

- Make clear that the Commission retains the discretion upon complaint or investigation to enforce the statutory standards of Section 1501 with regard to customer interactions and communications.

- Ensure that customers will have clear notice of a provider's policies and practices by requiring them to include in their tariffs or product guide their credit and deposit requirements.[29]

No further regulation of these matters is necessary.

2. There Is No Need For Confusing And Complex Service Termination Rules.

The Commission's Chapter 64 rules currently contain a complex and highly micromanaging set of rules for suspension, termination, and restoration of service for non-payment and other reasons. The Commission waived many of these rules in its *Reclassification Order*. OCA not only argues that the Commission should retain virtually all of these rules in subchapters D, E, F and H, but actually argues that the Commission should go backward and reinstate waived rules in competitive areas.

Again, OCA fails to explain how these cumbersome rules on termination and restoration of service are needed or helpful, especially in light of the fact that customers are willingly flocking to unregulated competitors that are not subject to these rules. Moreover, even if these rules were eliminated, providers would still be required to act reasonably with respect to service termination issues under Section 1501. As with the other regulations micromanaging customer communications, this cumbersome process is not only unneeded, but also harmful and anticompetitive. As the RLECs point out: "These suspension and termination requirements are

[29] The Commission noted when it waived these rules in the *Reclassification Order* that "especially as we transition to a competitive market for basic local exchange service, . . . there is value in ensuring that interested customers have access to relevant information about their services, including Verizon's credit and deposit standards," and that it was reasonable to expect Verizon to make this information readily available in its Product Guide "to manage reasonable customer expectations." *Reclassification Order* at 97.

not reflective of the telecommunications industry of 2018 and beyond, only serve to confuse the customer based on repetitive application, and should therefore be eliminated."[30]

Verizon proposed in Exhibit 1 to its Comments a streamlined framework to replace the Commission's suspension, termination, and restoral regulations that would:

- Make clear that all regulated service is subject to the standard set forth in 66 Pa. C.S. § 1501 to furnish and maintain adequate, efficient, safe, and reasonable service.
- Make clear that the Commission retains the discretion upon complaint or investigation to enforce the statutory standards of Section 1501 with regard to service termination and restoral.
- Ensure that customers will have clear notice of a provider's policies and practices by requiring them to include in their tariffs or product guide their policies regarding notifications prior to termination for non-payment and other reasons, late payment charges, and the reasons upon which the company is entitled to terminate service.[31]
- Because Verizon is aware that this is an area of particular concern to OCA, it also proposed a transition period where some requirements would remain for residential stand-alone basic service classified as non-competitive, until they sunset on December 31, 2023. These requirements would be fleshed out in the final regulations, but essentially if the company intends to terminate this service for non-payment it will provide at least 10 days' written notice and will extend the disconnection date by thirty days if the customer provides a written medical certification from a physician, and the company will offer payment arrangements.

There is no need for regulation of termination and restoral of service beyond this reasonable framework.

In its *Final Implementation Order*,[32] the Commission provided Verizon the option to adopt in competitive wire centers what it called a "one-tier" notification process that would

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[30] RLEC Comments at 24.

[31] Responding to OCA's comments regarding copper retirement, these product guide provisions for Verizon would specify that one of the reasons for termination would continue to be "[u]nreasonable refusal to permit access to service connections, equipment and other property of the LEC for maintenance or repair" for purposes of fiber migration and would state the notice that will be provided before a customer's service would be disconnected for failure to allow access for fiber migration. OCA Comments at 40-42.

[32] *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-

effectively allow Verizon to send only one notice before terminating service. Thirty days' notice to the Commission was required before instituting such a process. OCA and CAUSE point out that Verizon never implemented this process in its competitive wire centers, and from that observation they contend that the Commission should not even consider simplifying its rules in this area.[33] Verizon did not adopt this option because it was too difficult from a systems perspective and too potentially confusing to customers and employees to have very different suspension and termination requirements in certain geographic areas. But simplifying the process was a good and forward-looking step by the Commission. Pending completion of this rulemaking, the Commission should extend its waivers – specifically including the option for this one-tier process – state-wide and to all providers. This would make it easier to implement and likely result in the Commission obtaining some experience with the process during the pendency of the rulemaking if it believes that would be helpful to its decision.

3. The Commission Should Simplify Its Confusing And Resource-Sapping Complaint Process.

The customer dispute and complaint process in Chapter 64 is unnecessarily complex and confusing to customers and diverts resources away from meeting customer needs. It should be eliminated in favor of a much simpler and customer friendly dispute resolution framework. The RLECs identify the problem with the current process – which is focused more on generating reports for the sake of reporting rather than addressing the customer. "The goal at the end of day from the standpoint of the RLECs is to resolve the issue with the customer. The RLECs' resources are better utilized focused upon working with the customer, rather than compliance

2014-2446303 and P-2014-2446304 (Order entered September 11, 2015) ("*Final Implementation Order"*) at 34-35.

[33] OCA Comments at 7, 55; CAUSE Comments at 3-4.

with imposing regulations and submittal of reports to the Commission."[34] The RLECs and AT&T point out that the micromanaging of customer disputes prior to the filing of any complaint as set forth in Sections 64.131 to 142 is also unnecessary and involves needless recordkeeping that diverts resources and does not benefit the customer.[35]

Verizon proposed in Exhibit 1 to its Comments a streamlined framework to replace the Commission's regulations on disputes and complaints that would:

- Phase out the informal complaint process by providing that BCS will continue to accept informal complaints only with respect to residential, stand-alone basic service classified as non-competitive, but only until December 31, 2023, after which the whole informal complaint process is eliminated for the telephone industry. During this period, BCS shall make the "warm transfer" option available if the company offers to accept warm transfers.[36]

- Provide that, for complaints received regarding any other regulated service (and for all complaints after December 31, 2023), BCS shall refer the complaint to the service provider. The service provider may respond to that customer and no further Commission action or reporting by the provider will be required.

- Require all formal complaints related to regulated retail telecommunications service to be subject to a mandatory mediation process. The case will be referred to mediation without the need for pleadings, formalities or attorney representation, for a period of at least 2 months (to continue indefinitely by agreement of the parties) unless emergency circumstances exist. If the matter is not resolved by the mediation, then the Commission will provide due process and resolve the dispute as a contested matter.

The RLECs propose a similar and equally reasonable framework to simplify the process.[37] "Rather than continue to invoke a complicated, tedious three phase process," they urge the Commission to instead "adopt a streamlined and modified dispute resolution process with a more consumer-friendly process which encourages the LEC and retail customer to directly

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[34] RLEC Comments at 27.

[35] RLEC Comments at 25-26; AT&T Comments at 5.

[36] As the RLECs observe, "[t]he entire informal complaint process is unnecessary, particularly with a flexible mediation process. The elimination of the informal complaint process would conserve Commission resources and lead to quicker resolution of customer issues." RLEC Comments at 26.

[37] *Id.* at 27.

resolve disputes and issues between the parties before the Commission takes action and expends time and resources."[38] Simplifying the process as the industry recommends, including eliminating the informal complaint process, would free Commission resources to address customer issues in other industries that may be more in need of attention at the present time, and would allow the telephone providers to devote their resources to the customer.[39]

Verizon believes that the current process is not particularly helpful to the customers, who normally only want a prompt resolution of their issues instead of the current confusing and time-consuming series of reports, complaint forms, pleadings and the like. Indeed, it is surprising that OCA would advocate preserving the informal/formal complaint process instead of taking this opportunity to develop a more customer-friendly process.[40]

Recently Chairman Brown recognized that the Commission's complaint processes and forms could be confusing to customers who are not represented by counsel (which is the vast majority of retail customer complaints), noting that "as time goes by and circumstances change, even the soundest of policies should be reevaluated with an eye towards improvement."[41] The Chairman's motion resulted in an order convening a "working group . . . to review the processes and forms utilized by the Commission relating to *pro se* complainants, both informal and formal, with the aim of producing a report and/or recommendation(s) for the Commission's review and

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[38] *Id.* at 26.

[39] As the RLECs point out, one such unnecessary use of Commission resources is the "UCARE" report prepared BCS from customer complaint data. RLEC Comments at 25. These reports claim to tally what BCS believes are violations of unspecified billing or service rules that most likely are meaningless to the customer, creating data that can be misused, such as the discussion at page 4 of the CAUSE Comments. Not only are the infraction figures cited by CAUSE overstated compared to the UCARE report, but they provide no information to gauge whether the rules at issue add any value for the customer.

[40] OCA Comments at 49.

[41] Motion by Chairman Gladys M. Brown, Failure to Appear by Pro Se Complainants, Public Meeting of September 20, 2018, 3004734-CMR.

consideration towards improving, clarifying or simplifying the Commission's processes and forms."[42]

This rulemaking provides another opportunity for the Commission to rethink its antiquated and overly formal dispute and complaint process for the telecommunications sector, where the volume of complaints continues to decline. The Commission should start making matters more efficient and customer friendly now, by adopting a modified process with its blanket waiver pending resolution of this rulemaking, so that as the rulemaking proceeds the Commission could gain some experience to evaluate a simplified, customer-friendly dispute resolution process.

4. The Commission Should Eliminate Unnecessary Reporting.

The RLECs urge the Commission to eliminate reporting requirements that exist "for the sake of further reporting and without any real benefit to any party involved."[43] Verizon proposed in Exhibit 1 to its Comments a streamlined reporting framework that would:

- Require all regulated companies to provide annual financial reports with sufficient information regarding regulated revenues and line counts necessary to allow the Commission to assess and/or administer its annual regulatory assessments, the universal service fund, and the telecommunications relay service fund.

- Although Verizon does not believe any further reporting is needed, because it is aware that OCA is particularly concerned with basic residential local service, it also proposed a transition under which any provider offering stand-alone residential voice service that is classified as "non-competitive" would also annually report the number of such residential non-competitive lines and the rates for the service until December 31, 2023. Rate information would continue to be available after that time in tariffs or product guides.

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[42] *Working Group for the Review of Processes and Forms Related to Pro Se Formal and Informal Complaints*, Docket No. M-2018-3004734 (Opinion and Order entered October 2, 2018).

[43] RLEC Comments at 24.

Although OCA advocates for maintaining virtually all current reporting requirements, it does not explain why these reports are needed or why the Commission should continue to foist the unnecessary expense of preparing them upon the small segment of the market that is regulated. In particular, the Commission should reject OCA's argument to keep the reporting required by Section 64.201 relating to residential customer accounts, average bills, suspensions, terminations, overdue bills, revenues, write-offs, etc. This information belongs to the now nonexistent rate-of-return structure. Unregulated providers who serve the large majority of residential customers are not required to file this information, and OCA has not identified any value these reports provide. The Commission will still be able to monitor the affordability of basic residential service because prices will be publicly available in tariffs and product guides (and also subject to pricing constraints where classified noncompetitive). OCA provides no reason why it is helpful to customers to force regulated providers to supply the other information required by Section 64.201. As the RLECs point out, "[t]hese reports are labor intensive (typically taking about two days to complete) and do not have any discernable benefit."[44]

5. There Should Be No Rules Regarding Outdated Print Directories.

Verizon agrees with the comments of Dex Media, Inc. that telephone directories should be deregulated, as they have been in many other states, so that their decline and likely inevitable disappearance can be managed by market forces and customer demand. OCA provides no good reason for its argument that the Commission should "accommodate the interests of consumers who would still like to receive a print copy or a directory in electronic media."[45] Dex has thoroughly explained why such a mandate is unnecessary and would only hasten the inevitable

[44] RLEC Comments at 28.

[45] OCA Comments at 13.

disappearance of paper directories if the publisher is not given the flexibility to expend its resources to meet reasonable customer demand.

6. Payphones Are Deregulated And Heading Toward Obsolescence.

The comments of Tenny Journal Communications, Inc. ("Tenny"), which describes itself as a pay telephone provider, relate to wholesale issues that are not the subject of the Commission's Chapter 63/64 regulations. It seems that Tenny is simply taking advantage of the opportunity to file "comments" in this docket to cast aspersions on Verizon due to an unrelated wholesale billing dispute. To the extent Tenny claims that payphone service should continue to be regulated, that does not affect Verizon since it no longer provides payphone service in Pennsylvania.[46] But given that the payphone market was deregulated many years ago[47] and has been rendered obsolete by the multiple competitive alternatives, especially wireless phones, the Commission correctly concluded in its *Reclassification Order* that the Public Coin Telephone Service rules at Sections 63.91, etc. "are very outdated and serve no purpose in today's regulatory environment."[48]

D. Service Quality Metrics And Reporting Are Unnecessary And Anticompetitive.

No party has put forth a good reason for the Commission to include specific service quality standards, metrics, or reporting in its new regulations. Everyone agrees that 66 Pa. C.S. § 1501 will continue to require regulated providers to "furnish and maintain adequate, efficient,

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[46] Tenny accuses Verizon of filing a "false" certification by stating that Verizon no longer provides payphone service in Pennsylvania, but Verizon's statement is true. Tenny may provide payphones, but Verizon does not. Verizon does provide access to wholesale lines that Tenny may use for payphone service. In areas where Verizon is retiring copper pursuant to the FCC's rules those lines are only available over fiber. This wholesale service is not affected by Chapters 63 and 64 and is subject to FCC rules.

[47] I*mplementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (Sept. 20, 1996)**.**

[48] *Reclassification Order* at 89.

safe, and reasonable service and facilities," and that the Commission will still be able to monitor compliance with this statute, investigate service, and take action if it determines that a provider has not complied.

As AT&T explains: "There is simply no need to require providers of traditional landline switched voice services to maintain or report service quality metrics in this competitive climate," because "[i]f customers' expectations are not met by their provider, they will choose another provider or another service that meets those expectations."[49] The RLECs note that Section 1501 "is flexible enough to sufficiently accommodate the exercise of jurisdiction and authority as needed to address any evolving matters affecting regulated telecommunications services," and "[r]etaining heavy-handed and outdated regulations is unnecessary given Section 1501 of the Public Utility Code." [50]

In the *Reclassification Order* this Commission found that "[o]verall, we are of the opinion that the market is sufficiently competitive that a customer can obtain service from other providers if Verizon's service quality is unacceptable. In essence, customers can 'vote with their feet,' which we believe provides sufficient incentive for Verizon to provide quality service in most cases. Therefore, we believe many of our quality of service regulations are no longer necessary in competitive wire centers."[51] This conclusion should apply state-wide and industry-wide. In light of the abundant unregulated options for voice service that the large majority of Pennsylvania customers have already taken advantage of, it is clear that the market provides sufficient incentive to provide good service. The Commission recognized moreover that "pricing and service quality are set at the margin and not on the circumstances of an individual customer,"

[49] AT&T Comments at 3-4.

[50] RLEC Comments at 7, 13.

[51] *Reclassification Order* at 85.

so even persons (likely very few) who lack access to or interest in competitive alternatives "benefit from the competitive pressures created by the widespread availability of cable and wireless service."[52] To the extent any regulatory support beyond the market incentive is still needed, Section 1501 is well able to supply it without additional prescriptive service quality standards and reporting requirements.

The Commission should simply eliminate most of Chapter 63.[53] Its decades-old standards do not comport with customer expectations today and compliance with these artificial mandates unnecessarily diverts resources and has an anti-competitive effect when unregulated competitors are not required to do the same. As the RLECs observed, "retaining outmoded regulations in a competitive marketplace penalizes the RLECs and diverts dwindling revenues and existing support away from the RLECs' ability to operate its network and serve their customers."[54] Most parties seem to agree that the bulk of Chapter 63 is outdated, such as those provisions that focus on services that no longer exist, record-keeping that was largely manual in nature before computers were used, rate-of-return accounting requirements and the like. There is no good reason to retain any of the prescriptive service quality metrics and requirements of Chapter 63.

Verizon proposed in Exhibit 1 to its Comments a streamlined framework for Commission service quality regulation to replace Chapter 63 that would:

- Make clear that all regulated service is subject to the standard set forth in 66 Pa. C.S. § 1501 to furnish and maintain adequate, efficient, safe, and reasonable service and facilities.

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[52] *Id.* at 37.

[53] Verizon listed in its comments the portions of Chapter 63 that should be retained.

[54] RLEC Comments at 13.

- Make clear that the Commission retains the discretion upon complaint or investigation to enforce the statutory standards of Section 1501 and to seek information on the service quality and performance of regulated service.

- Ensure a reasonable safety standard by stating that facilities providing regulated service shall comply with the safety standards as set forth in the most up-to-date version of the National Electrical Safety Code.

- Ensure that companies keep customers informed through their tariffs or product guides (as applicable) of their commitments regarding the timing of service installations, keeping customer appointments and notification of changes, without arbitrary mandates of what those standards should be.

Beyond the above framework, no further service quality regulation is necessary.

CWA argues that it is necessary to "reflect" companies' Section 1501 obligations in specific service quality regulations, and that regulations should "define installation standards, repair times, maintenance and testing of facilities, and similar requirements."[55] But CWA never explains why it would be necessary or helpful to do so or why Section 1501 alone is not sufficient. In light of the flexibility of Section 1501 and the harm that would be caused by diverting resources to comply with artificial regulatory standards that do not comport with ever-evolving customer expectations, the Commission should reject this proposal.[56] Eliminating outdated regulations imposing arbitrary standards that do not reflect customer expectations does not mean that the Commission abandons its oversight for jurisdictional services. Rather, it provides more flexibility for the Commission to evaluate any issue that is brought before it in light of the "emergence of new industry participants, technological advancements, service standards and consumer demand," as Chapter 30 directs. 66 Pa. C.S § 3019(b)(2).

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[55] CWA Comments at 3,8.

[56] CWA claims that the need for service quality standards was highlighted by CWA's 2015 complaint (coinciding with collective bargaining negotiations and, ultimately, a CWA strike) in which CWA criticized the state of Verizon's copper network. CWA Comments at 9. But the ability to file such a complaint did not depend on specific service quality regulations, as it could have been brought under Section 1501. Moreover, Verizon vigorously disputed CWA's allegation but it agreed to settle the case because it was willing to work with CWA in an open and cooperative manner to ensure that its customers receive the highest quality service.

CWA's request for public reporting of service quality data by regulated entities is particularly punitive and counterproductive.[57] While the Commission retains the authority to investigate the quality of regulated service under 66 Pa. C.S. § 1501 and to seek information to aid its review, material gathered by the Commission in the course of a noncriminal investigation of the companies it regulates is protected from public disclosure,[58] as is "confidential proprietary information" the "disclosure of which would cause substantial harm to the competitive position of the person that submitted the information."[59] It almost goes without saying that, where the unregulated wireless and VoIP providers that serve over 85 percent of the voice lines in Pennsylvania cannot be compelled to disclose their service quality data, it would be highly damaging, unfair and downright vindictive – and certainly anticompetitive – to expose publicly the service performance data of the regulated providers who serve a small and shrinking segment of the market. Even if service is good, competitors could misuse and mischaracterize this information with impunity since they could never be required to disclose the same information about themselves. Allowing competitors access to this confidential internal data, while they are not required to reveal similar information about their own unregulated operations, would put the regulated companies at a competitive disadvantage and only hasten the decline of the regulated landline in Pennsylvania. Moreover, CWA never squarely articulates how this information would be helpful to the public or to customers, given that they would not have access to the same data for the competitors that serve the majority of the market. If the goal is to maintain the availability of affordable, regulated basic voice service as long as possible, as CAUSE and OCA

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[57] CWA Comments at 9.

[58] 65 P.S. § 67.708(b)(17); *Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 810-14 (Pa. Commw. Ct. 2010).

[59] 65 P.S. § 67.102; *Commonwealth v. Eiseman*, 85 A.3d 1117, 1128 (Pa. Commw. Ct. 2014).

suggest, then the Commission should avoid gratuitously harmful requirements like those advocated by CWA.

OCA argues that the Commission should retain most of its Chapter 63 service quality regulations, but focuses its discussion on rules the Commission waived in the *Reclassification Order*.[60] OCA does not provide a good reason why these rules are still needed. Instead, its arguments are a symptom of the flaw with OCA's entire position: it assumes customers need to be "protected" from their voice providers who will deliver substandard service unless regulations tell them specifically what to do. The Commission has already rejected that premise. OCA's analysis also suffers from its "top down" approach, where it simply assumes without any analysis that all of the outdated Chapter 63 regulations are still valid and serve a useful purpose. OCA even argues to reinstate regulations that this Commission already found unnecessary, such as service outage credits[61] and answer time metrics.[62]

As discussed above, these suggestions are counterproductive because they will only hasten the decline of the very service OCA and its supporter, CAUSE, wish to protect. An unthinking maintenance of the *status quo* is not in the public interest. Rather, "it is important

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[60] OCA Comments at 10-27.

[61] The Commission waived this requirement for competitive exchanges because "[w]e are of the opinion . . . that the market is sufficiently competitive such that a dissatisfied customer can obtain service from other providers if Verizon's service quality to the customer is unacceptable and Verizon does not adequately address the customer's concerns by fixing the problem and/or providing appropriate financial compensation for any resulting service interruption." *Reclassification Order* at 80.

[62] The Commission found that keeping in place answer time metrics that do not "comport with customer expectations in today's competitive telecommunications marketplace," would "constitute enforcement for enforcement's sake." *PUC v. Verizon Pennsylvania Inc*., Docket No. M-2008-2077881 (Opinion and Order entered October 12, 2012) at 33.

that this Commission not unnecessarily distort the marketplace by perpetuating asymmetrical regulations" that serve no useful purpose.[63]

E. Verizon's Reclassification Reporting.

The Commission's *Reclassification Order* required Verizon to report confidentially certain information for the calendar years 2015 and 2016, which Verizon did.[64] The data reported includes proprietary and competitive information such as Verizon's monthly line counts and detailed service quality metrics. The Commission should deny CWA's and CAUSE's request to make these reports public.[65] Verizon agreed to supply this competitively sensitive information in reliance on the fact that it would be kept confidential and not made available to the public or Verizon's competitors. Confidential information provided to an agency under such circumstances is protected from public disclosure.[66] Material gathered by the Commission in the course of a noncriminal investigation of the companies it regulates is also protected from public disclosure.[67] "[S]trong public policy considerations" support the need to protect from public disclosure confidential and proprietary information solicited by an agency carrying out its regulatory oversight duties, because requiring the agency to disclose these documents after it has obtained them based on a promise of confidentiality would make people "less likely to cooperate

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63 *Joint Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for a Waiver of the Commission's Regulation Governing Toll Presubscription, 52 Pa. Code Section 64.191(e),* P-00072348 (Opinion and Order entered September 24, 2008) at 7, 9.

64 *Reclassification Order* at 126, Ordering Paragraph 15. By order entered September 11, 2015, the Commission directed the specific format and content of this reporting *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 September 11, 2015) ("*Data Reporting Order*").

65 CWA Comments at 6; CAUSE Comments at 3.

66 65 P.S. § 67.102 (exempting from public disclosure "confidential proprietary information" the "disclosure of which would cause substantial harm to the competitive position of the person that submitted the information") See also *Commonwealth v. Eiseman*, 85 A.3d 1117, 1128 (Pa. Commw. Ct. 2014).

67 65 P.S. § 67.708(b)(17); *Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 810-14 (Pa. Commw. Ct. 2010).

and provide relevant information" and hamper the agency's ability to meet its regulatory responsibilities.[68] This is not the first time that the CWA has attempted to make public confidential Verizon information submitted to the Commission. The Office of Open Records agreed with the Commission and Verizon that the information was protected from public disclosure.[69]

However, Verizon does not disagree with CWA's suggestion that the Commission limit its reliance to public information when making its decisions in this rulemaking. Verizon does not see any need for the Commission to rely on the proprietary details it submitted in response to the *Reclassification Order* when deciding how to regulate the entire industry. If aggregate data that masks the proprietary details would be useful to the rulemaking, Verizon could discuss compiling such information. For example, in Verizon's Comments it supplied aggregated data on the percentage decline in access lines in the competitive versus noncompetitive exchanges, without divulging the proprietary line counts themselves, to demonstrate that competitive forces are driving line losses throughout Verizon's territory.[70]

F. The Commission Should Grant A Blanket Waiver Pending Its Rulemaking.

Recognizing that this rulemaking is likely to take some time to complete, and that the market is only becoming more competitive as regulated lines dwindle faster and faster, the industry parties ask the Commission to grant a waiver of at least some of these Chapter 63 and 64 regulations pending the rulemaking. AT&T and Verizon ask the Commission to extend the waivers from the *Reclassification Order* state-wide and for all providers. The RLECs filed a

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[68] *See, e.g., Dep't of Health v. Office of Open Records*, 4 A.3d 803, 811 (Pa. Commw. Ct. 2010).

[69] *Scott Rubin v. Pennsylvania Public Utility Commission*, Office of Open Records, Docket No. AP 2015-1438 (Final Determination, September 29, 2015).

[70] Verizon Comments at 7.

formal petition for waiver of certain regulations. Verizon supports all of these waiver requests and urges the Commission to grant them in a competitively neutral manner, state-wide and industry-wide.

Verizon notes in particular AT&T's discussion of the difficulty taking advantage of waivers that are limited only to particular wire centers in a "patchwork" of regulation. According to AT&T, "CLEC's may lack the ability to easily bifurcate their operating systems to accommodate different regulatory requirements in competitive vs. non-competitive classified areas, which may effectively force a company to adhere to regulatory requirements even where those regulations have been waived – thus negating the Commission's stated intent and purpose."[71] Verizon found itself facing the same issue with some of the *Reclassification Order* waivers. For example, as OCA and CAUSE point out, Verizon never took advantage of its relief from the two-step suspension/disconnection process because it was too difficult from a systems perspective and potentially confusing to customers and employees to manage the process differently in only some wire centers. Extending these waivers state-wide will make it more likely that carriers can use them and provide some experience on which the Commission can base its decision for the final regulations.

It is not unusual for the Commission to waive a regulation during the pendency of the rulemaking. For example, following several individual company waivers, the Commission issued a blanket partial waiver of its regulation at 52 Pa. Code § 63.137(2) relating to call recording by telephone companies on July 29, 2009, at Docket No. M-2008-2074891, and then

[71] AT&T Comments at 6.

commenced a rulemaking to revise the rule permanently, which was completed in 2012.[72] The Commission should do the same here with those rules that it already waived in the *Reclassification Order*.

G. The Commission Should Provide Firm Guidance On Next Steps.

Some parties suggest that the Commission convene a "collaborative process" or "work group meetings" to attempt to reach "consensus" on the new regulations.[73] While Verizon certainly is willing to work with the Commission and other parties to move this matter forward, the Commission should be careful not to allow such a process to become an excuse for delay. In order to move forward in a productive manner, the Commission should:

- Extend the *Reclassification Order* waivers state-wide and industry wide, so that providers and the market are not harmed by these monopoly-era regulations while the rulemaking is pending, and the Commission can have experience with the waivers before making its final decision on the regulations.
- Provide firm and specific guidance on how the new regulations should be written, including a clean slate approach and rejection of the OCA/CAUSE view that the base assumption is that existing regulations should be retained.
- Make clear that the new regulations will not contain intrusive retail requirements or specific service quality metrics or reporting and must be appropriate for today's competitive market. Verizon suggests working from Exhibit 1 attached to its Comments.

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[72] *See also Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442 (Opinion and Order entered November 14, 2011) ("The waivers will remain in effect until revisions to 52 Pa. Code § 57.173 and § 57.174 are finalized in a Commission rulemaking.")

[73] *See, e.g.*, CWA Comments at 2; CAUSE Comments at 4.

III. Conclusion

Verizon appreciates the opportunity to comment on this matter and stands ready to work with the Commission, staff and interested parties to update the Commission's regulations to make them more appropriate for today's environment.

Respectfully submitted,

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