

COMMONWEALTH OF PENNSYLVANIA



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November 2, 2018

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
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:

Attached for electronic filing are the Reply Comments of the Office of Consumer Advocate in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barrett C. Sheridan".

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**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

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**REPLY COMMENTS OF  
THE OFFICE OF CONSUMER ADVOCATE**

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**I. INTRODUCTION**

On October 3, 2018, the Office of Consumer Advocate filed Comments in response to the Public Utility Commission (Commission or PUC)’s Advance Notice of Proposed Rulemaking (ANOPR). The OCA Comments primarily addressed the future of certain Chapter 63 and 64 regulations which the Commission has temporarily waived in Verizon Pennsylvania LLC (Verizon PA) and Verizon North LLC (Verizon North; collectively Verizon) competitive wire centers.<sup>1</sup> The OCA files these Reply Comments with the understanding that this ANOPR stage is the Commission’s initial step towards development of a cohesive, proposed rulemaking order.

The OCA concurs with the Communications Workers of America (CWA) that the public is best served when the Commission adopts binding norms through a comprehensive, public

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<sup>1</sup> 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 (March 4, 2015) (Reclassification Order); Tentative Implementation Opinion and Order (June 1, 2015) (Tentative Implementation Order); Order, (Sept. 11, 2015)(Reporting Order); and Final Implementation Opinion and Order (Sept. 11, 2015) (Final Implementation Order). The Commission corrected Appendix D in the errata portion of the Tentative Order.

rulemaking process, not through piecemeal waivers. The OCA filed an Answer on October 26, 2018 in opposition to the separately docketed Rural Local Exchange Carriers (RLECs) petition for temporary waiver of certain Chapter 63 and 64 regulations.<sup>2</sup> The OCA similarly opposes the temporary waiver requests floated in the comments of other parties in this ANOPR proceeding, as discussed below.

The OCA will also address the requests by other parties for elimination or modification of all or most of Chapter 63 and 64 regulations, as well as requests for reform or rescission of certain Chapter 53 regulations.

## **II. REPLY COMMENTS**

### **A. Service Quality And Consumer Protection Regulations Are Still Needed for Telephone Utility Service**

Through the course of this ANOPR and rulemaking, the OCA submits that the Commission should stay focused upon the public aspect of public utility service, which includes the protected local exchange services provided by the RLECs and Verizon in areas not classified as competitive under Section 3016(a).<sup>3</sup> The OCA and the CWA support development of separate bodies of regulations to apply depending on whether the wire center or other area is classified as competitive pursuant to Section 3016(a).<sup>4</sup> Absent competitive classification, protected residential and business local exchange services are tariffed, price-regulated services. To obtain

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<sup>2</sup> See, Petition of the Rural Local Exchange Carriers for Temporary Waiver of Certain Chapter 63 and 64 Regulations, Docket No. P-2018-3005224, OCA Answer filed Oct. 26, 2018.

<sup>3</sup> 66 Pa.C.S. § 3016(a).

<sup>4</sup> See, OCA Comments at 5; CWA Comments at 3. Verizon suggests that the Commission first develop regulations to apply in non-competitive areas, and scale them back in a second phase to apply to competitively classified areas. Verizon Comments at 3.

competitive classification an ILEC must prove with specific, sufficient evidence the existence of competitive alternatives sufficient to provide economic discipline and so obtain pricing flexibility. The Commission granted Verizon temporary waiver of certain regulations based upon those specific findings of competitive alternatives.

In contrast, the RLECs, joined by AT&T and Verizon, ask the Commission to take a high-level view of competition in the voice service marketplace in Pennsylvania.<sup>5</sup> The RLECs and Verizon rely on statewide data regarding voice subscriptions and ILEC lines to justify elimination of regulations in their individual, still tariffed and price-regulated, service territories or non-competitive wire centers.

The OCA acknowledges that voice service is no longer the exclusive province of wireline ILECs. However, the OCA submits that statewide data – inclusive of Verizon’s competitively classified service areas with documented levels of competitive alternatives – does not provide sufficient insight into the depth and breadth of competitive alternatives in any individual RLEC service area. The RLECs and AT&T offer estimates of wireless access statewide.<sup>6</sup> However, other sources suggest there are gaps in the availability of wireless service in rural areas, such as Centre County.<sup>7</sup> The OCA submits that the RLEC, AT&T and Verizon comments do not tell the

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<sup>5</sup> See, RLEC Comments at 4-5; AT&T at 2.

<sup>6</sup> RLEC Comments at 4 (99.92%); AT&T Comments at 2. (“[O]ur mobile broadband network covers an estimated 99.7% of the Pennsylvania population.”)

<sup>7</sup> See, Testimony of Centre County Planning and Community Development Council, submitted March 23, 2018 to Mr. Barry Denk, Director, The Center for Rural Pennsylvania, regarding the availability of broadband service. The Centre County Council provided the Center for Rural Pennsylvania the Council’s “draft Communications and Information Technology chapter of the County’s Comprehensive Plan update.” (Centre County Council’s C&IT Chapter). Page 14 of the Chapter includes a map of wireless availability in Centre County, reflecting 1) mobile broadband available (25 Mbps down and 3 Mbps up, minimum), 2) service available, but not broadband speed, and 3) no service. Available at <http://www.rural.palegislature.us/documents/testimony/040518/CentreCountyPlanningTestimony.pdf> (last visited Nov. 2, 2018).

full story as to whether customers served in RLEC's and Verizon's non-competitive service areas have meaningful competitive alternatives.

As the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) notes:

those in are rural communities across our state – even just a few miles outside of our urban centers – often do not have access to telecommunications alternatives that offer reliable service to their homes. Even in our urban areas, many – particularly seniors and homebound individuals – still rely on wireline service as the primary mode of communication.<sup>8</sup>

CAUSE-PA further notes that where alternatives are available, the cost of cable or VOIP services can run \$40 to \$100 per month.<sup>9</sup> “While this service may be available, its availability is meaningless for a family that cannot afford these rates.”<sup>10</sup> Households with no computer and internet access device<sup>11</sup> are not able to obtain VOIP services.

Over the course of this ANOPR and rulemaking process, the OCA urges the Commission to recognize the needs of retail local exchange service customers for sound service quality regulations.<sup>12</sup> Similarly, the Commission should assure that protected residential local exchange service customers remain connected, through reasonable, specific regulations regarding billing, suspension, and termination, backed up with informal and formal complaint processes.

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<sup>8</sup> CAUSE-PA Comments at 3.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> “Nine percent of Centre County households are without a computer or internet access device.” Centre County Council’s C&IT Chapter at 16 (emphasis deleted).

<sup>12</sup> For example, the RLEC Comments describe their “digital network” and “digitally-based networks.” RLEC Comments at 9, 10. The OCA submits that such a description does not exclude the continued use of wire line copper connections to the home. As set forth in the OCA Comments, Chapter 63 service quality regulations still are relevant to such networks. See, OCA Comments at 10-27.

The Commission has engaged in this balanced consideration in another rulemaking, completed in January 2016.<sup>13</sup> The OCA submits that the Commission's Final Rulemaking Order; Paper Bill Fees analysis should be followed in this ANOPR and rulemaking. In that Order, the Commission added Section 53.85 to Chapter 53, prohibiting the imposition of paper bill fees by telephone public utilities and other non-common carrier utilities, based in part on Section 1509 of the Public Utility Code.<sup>14</sup> The Commission considered relevant Chapter 30 provisions, noting that Section 3011(13), which supports regulatory parity, is but one of several provisions which the Commission must consider.<sup>15</sup> Pursuant to Section 3011(2), the Commission explained:

Universal service is part of the Commission's legal mandate. It is required of jurisdictional telecommunications public utilities with Carrier of Last Resort obligations, which includes the provision of retail services to anyone who requests them and the rendering of various network access functionalities (e.g., ability to make 911/E911 calls).<sup>16</sup>

The Commission explained further:

Chapter 30 expressly declares that it is the policy of the Commonwealth to maintain universal service at affordable rates and to ensure that such service is available to customers on a nondiscriminatory basis. Separate charges or fees for a paper bill increase costs to consumers, particularly those low-income consumers who already face challenges in maintaining telecommunications service. Those challenges are compounded in situations where consumers lack reliable broadband access to the Internet or cannot afford it. .... A paper bill often conveys useful information related to the ordering and disconnection, suspension, termination, and restoration of *any* price regulated or competitive service provided by a jurisdictional telephone utility. Thus, receiving a paper bill at no additional charge helps ensure that customers, especially those without Internet access or those who are unable to purchase Internet access, continue to have

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<sup>13</sup> Rulemaking Re: Amendment to 52 Pa. Code Chapter 53; Paper Billing Fees, Docket No. L-2018-2411278, Final Rulemaking Order (Jan. 12, 2016).

<sup>14</sup> Final Rulemaking Order; Paper Billing Fees; 66 Pa.C.S. § 1509.

<sup>15</sup> Final Rulemaking Order; Paper Billing Fees, at 11-12.

<sup>16</sup> Id., citing 66 Pa. C.S. § 3011(3).

<sup>16</sup> Final Rulemaking Order; Paper Billing Fees, at 11-12, fn. 5, citing 66 Pa. C.S. § 3011(2).

access to information critical to maintaining uninterrupted telecommunications service in a nondiscriminatory fashion.<sup>17</sup>

The Commission also cited its authority pursuant to Section 3019(b)(3) to protect consumers and considered the needs of specific consumer groups:

As previously discussed, we view the prohibition of a separate paper billing fee as necessary to protect customers and ensure that service is available on a nondiscriminatory basis, especially for those without Internet access or who are unable to purchase Internet access.

The facts in the record support this conclusion. For example, 28% of Pennsylvanians are aged 65 or older. Moreover, 50% of elderly Americans lack a computer or consistent broadband access while 25% of Americans lack consistent Internet access.<sup>18</sup>

The OCA submits that the broad brush claims by Verizon, the RLECs, and AT&T regarding the need for regulatory relief based upon competitive alternatives must be balanced against the Chapter 30 values of universal service, concern for affordability, and concern that regulations protect those local exchange service consumers who do not purchase alternative services even if available.

B. The Commission Should Reject the Requests for Temporary Waiver Raised in Comments.

AT&T acknowledges that the Commission granted both Verizon and CLECs temporary waivers of certain Chapter 63 and 64 regulations in the Verizon competitive wire centers.<sup>19</sup> AT&T requests that “during the pendency of this rulemaking proceeding, the Commission should on a temporary basis extend the existing waivers to all wire centers, with an eye toward permanent waivers at the conclusion of this rulemaking.”<sup>20</sup> Verizon also recommends that the

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<sup>17</sup> Final Rulemaking Order; Paper Billing Fees, at 11-12 (footnotes omitted).

<sup>18</sup> Final Rulemaking Order; Paper Billing Fees, at 12 (footnotes omitted), citing 66 Pa.C.S. § 3019(b)(3).

<sup>19</sup> AT&T Comments at 6-7.

<sup>20</sup> Id.

Commission extend the Reclassification waivers statewide and to all providers while this ANOPR and rulemaking process is underway.<sup>21</sup>

The OCA objects to the AT&T and Verizon requests for waivers of significant Chapter 63 and 64 service quality and consumer protections, as raised in the scope of a rulemaking proceeding. As CWA notes, the Commission should be moving towards reducing the complicated mix of regulations which establish binding norms and the waivers which create exceptions on a per regulation or per telephone public utility basis.<sup>22</sup> Consideration and grant of the AT&T and Verizon proposals would add more complication and uncertainty, not less.

In the event that compliance with a Chapter 63 or 64 regulation constitutes an unreasonable hardship, the telephone utility may – after notice to the affected parties – petition the Commission for waiver or exemption.<sup>23</sup> According to AT&T, the source of hardship is the Commission’s grant in the Verizon Reclassification case of temporary waivers of certain regulations to Verizon and CLECs as limited to competitive wire centers. If AT&T seeks revision of the Commission’s grant of relief in the Verizon Reclassification proceeding, AT&T should comply with Section 703(g) of the Public Utility Code process for amendment.<sup>24</sup> Verizon should follow the same processes.

The RLECs did file a Petition for Temporary Waiver, which the OCA has answered and strongly opposed.<sup>25</sup> In the event that the Commission considers the AT&T and Verizon requests

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<sup>21</sup> Verizon Comments at 12-13.

<sup>22</sup> CWA Comments at 3-5.

<sup>23</sup> See, e.g. Sec. 63.53(c), 64.202.

<sup>24</sup> 66 Pa.C.S. § 703(g). The scope the Verizon Reclassification proceeding limited the Commission’s grant of temporary waivers to Verizon and CLECs to those wire centers which the Commission classified as competitive. See, Reclassification Order at 103-104; Final Implementation Order at 29-30.

<sup>25</sup> See, footnote 2, supra.



within the context of this ANOPR proceeding, the OCA incorporates by reference the arguments set forth in the OCA's October 3, 2018 Answer to the RLEC Temporary Waiver Petition.

Pennsylvania telephone public utility consumers in general and local exchange service customers in particular who pay tariffed rates for protected services should not have the Chapter 63 and 64 regulations waived without notice and without any oversight of what terms and conditions each LEC might impose to fill the regulatory void.

The Commission should not entertain and grant waivers – temporary, interim, or otherwise – as part of this ANOPR proceeding.

1. Chapter 53 ILEC and CLEC Tariff Filing Requirements

Verizon proposes that the scope of the ANOPR be broadened to include Sections 53.57 through 53.60, which set forth Tariff Filing Requirements for ILECs and CLECs.<sup>26</sup> Verizon also proposes that “[i]f a service is detariffed, the provider must maintain its terms in [sic] conditions in a product guide that will be made available on the company’s website. The Commission may require an informational price list to be filed for detariffed stand-alone basic residential service, but will not require price lists for other detariffed services.”<sup>27</sup>

The OCA agrees that the Sections 53.57 through 53.60 regulations should be updated to conform with today’s Chapter 30 statutory language. The particulars may be worked out in more detail as this ANOPR process proceeds.

However, the OCA does not support the elimination or dilution of the basic framework of these Chapter 53 regulations. For example, Section 53.58(d) states:

(d) CLECs and ILECs offering services classified by the Commission as competitive shall file with the Commission appropriate informational tariffs, price

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<sup>26</sup> Verizon Comments at 10.

<sup>27</sup> Id. at 11.

lists, and ministerial administrative tariff changes. These filings will become effective on 1-day's notice.<sup>28</sup>

Section 53.58(d) is consistent Section 3016(d)(4) of the Public Utility Code: "The commission may require a local exchange telecommunications company to maintain price lists with the commission applicable to its competitive services...."<sup>29</sup>

The OCA is opposed to Verizon's suggestion that the Commission only require the filing with the Commission of price list information for stand-alone basic residential service and that Verizon's Product Guide reside solely on its website. This proposal is contrary to the structure of Chapter 30 which recognizes that protected services may be classified as competitive pursuant to Section 3016(a) by declaration or Commission order, while Section 3016(c) provides the framework for the Commission to change the designation of a competitive service back to non-competitive.<sup>30</sup> The Commission has an obligation to monitor competitive services and markets.

In the Reclassification Order and Final Implementation Order, the Commission required Verizon to file with the Commission both updates to the Verizon Price List and Verizon's Product Guide for competitively classified services.<sup>31</sup> The Commission confirmed that such requirements conform with Section 3016(d)(4) and are within the Commission's authority to require as non-tariff filings necessary for the benefit of the Commission and Verizon's customers receiving competitive services. As the Commission explained in the Final Implementation Order:

Having an up-to-date Product Guide with accurate and current information about the terms and conditions of basic local exchange service in competitive wire

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<sup>28</sup> 52 Pa.Code § 53.58(d).

<sup>29</sup> 66 Pa.C.S. § 3016(d)(4).

<sup>30</sup> Compare, 66 Pa.C.S. § 3016(a) and § 3016(c).

<sup>31</sup> See, Reclassification Order at 56, 62-63, 65-66 ("While rates will not be regulated in competitive wire centers, we shall require Verizon to maintain at the Commission price lists for basic local exchange service, including dial-tone and usage rates, and to file changes upon one day's notice *as we have done with other competitive services.*")(emphasis added); see also, Final Implementation Order at 6-7, 20-21, citing 66 Pa.C.S. § 3019(b)(3) and other provisions.

centers is necessary for the Commission to carry out its remaining regulatory responsibilities with basic local exchange service in these centers. This includes the Commission's Chapter 30 responsibilities regarding quality of service, including quality of service with respect to the ordering, installation, suspension/termination, and restoration of such service. In addition, an up-to-date Product Guide helps us to adequately address customer inquiries and/or complaints, thereby protecting consumers on multiple fronts.<sup>32</sup>

As the Commission works through this ANOPR and rulemaking process, the Commission should continue to require all LECs to file Price Lists for competitive services with the Commission as well as Product Guides.

### C. Chapters 63 and 64

The OCA Comments provide a detailed discussion of the importance of preserving the Chapter 63 regulations which the Commission declined to waive in the Verizon Reclassification proceeding. The OCA Comments also recommended that some waived Chapter 63 service quality regulations should apply for the protection of consumers in all service areas, whether competitive or non-competitive. The OCA Comments also analyzed the Commission's grant of temporary waiver to Verizon and CLECs in the competitive wire centers of portions of Chapter 64, subject to some conditions and based upon review of Verizon's Service Guide.

The RLECs request broad elimination of Subchapter B (Services and Facilities) and Subchapter C (Accounts and Records) with the exception of Sections 63.36 (Annual financial reports) and Section 63.37 (Telephone relay service).<sup>33</sup> The RLECs recommend the complete elimination of Subchapter E (Telephone service quality standards).<sup>34</sup> Verizon proposes the Commission commence with a stripped regulatory framework to replace Chapters 63 and 64 in

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<sup>32</sup> Final Implementation Order at 21.

<sup>33</sup> RLEC Comments at 3, 9-11.

<sup>34</sup> RLEC Comments at 12-16.

their entirety.<sup>35</sup> Dex Media requests permanent waiver or elimination of the white pages directory requirements.

The OCA will briefly address some these RLEC and Verizon proposals, as well as Dex Media's Comments. The OCA agrees with the CWA that some collaborative processes or workshops may help the Commission develop a cohesive proposed rulemaking order. The OCA is not able, within the limited time allowed for Reply Comments, to respond point by point to each party on individual regulations as well as re-working Verizon's proposed framework which provides insufficient standards and protections for consumers, whether in non-competitive or competitive areas. The absence of a specific OCA reply comment to another party's proposed regulatory change does not signify consent.

1. Section 63.15, Chapter 64, Subchapter G and Other Provisions Regarding Consumer Disputes, Informal Complaints and Formal Complaints

The OCA opposes the RLECs and/or Verizon recommendations that local exchange service customers in non-competitive and competitive areas be limited in their ability to raise disputes with the LEC regarding service quality or billing, suspension or termination issues; not be informed of the Bureau of Consumer Services as another source of assistance to resolve the consumers problem; be required to engage in mandatory mediation before the consumer may file a formal complaint; or other similar limitations. As described in the OCA Comments, some Verizon consumers found the need to file formal complaints concerning the quality of Verizon's service and communications regarding copper to fiber network changes.<sup>36</sup>

The Commission should adhere to its reasoning as set forth in the Reclassification Order, regarding preservation of Section 63.15 and related regulations:

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<sup>35</sup> Verizon Comments at 12, Exh. 1.

<sup>36</sup> OCA Comments at 39-42, 44-45.

We also retain 52 Pa. Code § 63.15 (Complaint procedures), and 52 Pa. Code § 63.22 (Service records), because we are of the opinion that they, too, remain relevant to the Commission-approved complaint process that will continue to apply in competitive wire centers. We note that these Regulations shall also be subject to the reporting requirements, which we shall require herein.<sup>37</sup>

The Commission also stated:

We do not believe granting a waiver of Subchapter G is appropriate. Customers have a right to file either an informal complaint or a formal complaint with the Commission about their service. Maintaining these regulations will ensure that a process remains in place to handle both formal and informal complaints.<sup>38</sup>

Through this ANOPR, the Commission should preserve the rights and abilities of consumers to avail themselves of the Commission's informal and formal complaint processes. The Commission's mediation services should be offered as an option, not as a mandated requirement.

## 2. Section 63.21 and White Pages Directories

The Commission should not, through this ANOPR proceeding completely eliminate the Section 63.21 requirements for distribution of white pages directories. Although the OCA is generally opposed to more waivers while this ANOPR proceeding is underway, the OCA believes the issue of whether and where white pages directories still need to be distributed is best addressed through ILEC specific waivers, modelled upon the CenturyLink/Verizon/Dex White Pages Order and conditions.<sup>39</sup> After grant of waiver, the first condition requires the ILEC to provide advance notice to the affected customers, after consultation with the Commission's staff as to the form and provision of notice.<sup>40</sup> These steps are necessary to protect consumers and

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<sup>37</sup> Reclassification Order at 80.

<sup>38</sup> Id. at 101 (footnote omitted). The Commission cited to 66 Pa. C.S. § 308.1 (The commission shall promulgate regulations by which a consumer may make informal complaints). *See also* 66 Pa. C.S. § 701 (. . . any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.).

<sup>39</sup> Id. at 9-12, Ordering ¶¶ 1-4.

<sup>40</sup> Id. at 8.

provide notice to consumers in areas where distribution of white pages directories will be curtailed.

The Commission should only grant conditional, temporary waiver of these white pages related regulations after each ILEC has demonstrated that it has the resources and support from its white pages distributor to distribute print copies in areas where there is still demand and provide notice of the availability of the white pages directory on request, in electronic media.<sup>41</sup> Any Commission grant of conditional, temporary waiver should also include a requirement that the ILEC provide affected customers with advance notice of the changes in distribution of white pages directories and how to request a copy.

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<sup>41</sup> See, Joint Petition and Notice of the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, et al, to Reduce Distribution of Print Telephone Directories, Docket No. P-2017-2610359, Order (Aug. 31, 2017) (CenturyLink/Verizon/Dex White Pages Order). See, OCA Comments at 12-13.

### III. CONCLUSION

The Office of Consumer Advocate respectfully requests that the Public Utility Commission consider and adopt the OCA's recommendations as to Chapters 53, 63 and 64 regulations as discussed in the OCA's Comments and these Reply Comments.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Barrett Sheridan", written over a horizontal line.

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November 2, 2018  
261974

## CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2<sup>nd</sup> day of November 2018.

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