

Pennsylvania Telephone Association

*"The Communications
Leader in Pennsylvania"*

Steven J. Samara
President

June 24, 2021

VIA ELECTRONIC FILING

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

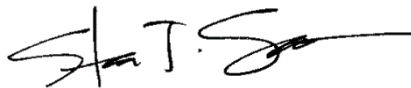
Re: Rulemaking to Comply with the Competitive Classification of Telecommunication Retail Services Under 66 Pa. C.S. Section 3016(a); General Review of Regulations 52 Pa. Code, Chapter 63 and Chapter 64
L-2018-3001391

Dear Secretary Chiavetta:

Attached please find the Pennsylvania Telephone Association's (PTA) Reply Comments regarding the Commission's Notice of Proposed Rulemaking in the above captioned matter.

Please do not hesitate to contact me with questions.

Sincerely,



Steven J. Samara
President

cc: David Screven, Deputy Chief Counsel Law Bureau (dscreven@pa.gov)
Attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Pennsylvania Telephone Association's Reply Comments upon the individuals listed below, in accordance with the requirement of 52 Pa. § Code 1.54 (relating to service by a participant).

Service by electronic mail as follows:

Barrett Sheridan
bsheridan@paoca.org


Pamela Polacek
ppolacek@ctenterprises.org

Suzan D. Paiva
suzan..d.paiva@verizon.com

Brooks E. Harlow
bharlow@techcomm.law

Elizabeth R. Marx
emarxpulp@palegalaid.net

Scott Rubin
scott.j.rubin@gmail.com



Dated: June 24, 2021

Steven J. Samara
President
30 North Third Street, Suite 780
Harrisburg, PA 17101
(717) 238-8311

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
PENNSYLVANIA TELEPHONE ASSOCIATION

The Pennsylvania Telephone Association (PTA) files this reply in response to the comments previously filed by other parties in this proceeding pursuant to the Pennsylvania Public Utility Commission's (Commission) Notice of Proposed Rulemaking Order entered September 21, 2020.¹

The parties' advocacy in this second round of comments² follows the same, predictable lines that were developed earlier in this proceeding and, indeed, that go back to Verizon's original reclassification docket.³

The Office of Consumer Advocate (OCA) applauds and supports the Commission's proposed prolongation of the heavy hand of regulation and "the NOPR's proposed retention of the majority of the Chapter 64 regulations, with some revisions, to apply to all LECs that provide residential local exchange service and to apply in all geographic areas."⁴ As does CAUSE-PA.⁵

The "incumbent"⁶ telephone companies (ILECs), the rural ILECs (RLECs) and the Verizon companies, continue to maintain that competition has evolved to the point where regulation is

¹ *NOPR Order*.

² The first round was the Advanced Notice of Proposed Rulemaking Order, Order entered July 12, 2018 (*ANOPR Order*).

³ *Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services*, P-2014-2446303 and P-2014-2446304, Opinion and Order entered March 4, 2015 (*Reclassification Order*).

⁴ Office of Consumer Advocate Comments at 17. Its position on Chapter 63 is largely the same.

⁵ Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania Comments.

⁶ Quotes are placed around the term "incumbent" because the traditional companies have not been the incumbent for at least 20 years. Nor is the implication that incumbency provides an advantage a fair inference any longer. The revolution of the last twenty years has removed whatever advantage there was twenty-five years ago in 1996 from the prior seventy-five plus years of providing voice service.

largely unnecessary and, in fact, harmful. They are operating in a market that has pushed their once 100% monopoly market share to single digits in the span of twenty-five years.

The PTA fully participated in the ANOPR docket, encouraging the Commission to bring prompt and decisive change to the antiquated and clearly outdated regulations of the Commission, which, as the PTA pointed out, were written when, “[l]andline phones were clunky, curly-corded and affixed to a wall or plugged into a wall jack”⁷ and without competition.

When these regulations were enacted,⁸ the telephone companies were state sanctioned monopolies. Since the passage of the deregulatory Telecommunications Act of 1996, twenty-five years ago, this Commission and federal regulators have aggressively promoted competition and diversity in the telecommunications marketplace to the point where there are now four widely adopted and consumer-accepted independent voice service platforms (incumbent telephone, cable, wireless and satellite). Competing platforms also use the broadband connections offered by these carriers to offer their own, over-the-top services.

The ILEC market share has consistently been withered by an average 4.4% annually during the last twenty years. **Since this docket was opened three years ago, the ILECs’ share of the voice market has continued this downtrend, tumbling from 12% to an estimated 6% today as it continues careening toward zero.**⁹ Throughout the various phases of this proceeding, the PTA and others have recited the statistics demonstrating the success of the regulatory resolve to introduce competition. This constitutes a solid and compelling factual basis to reduce the regulatory burden on the ILECs.

This is comprehensive competition. That wireless service has become a complete substitute for wireline service should be fairly obvious to everyone, as the Commission has previously found:

Based on the foregoing, we are of the opinion that the credible evidence proves that *in the eyes of consumers*, the voice services offered by competing providers, including cable telephony and wireless providers in the wire centers subject to the Petition, fulfill the same functions as Verizon’s basic local exchange service. We conclude that these competing services are *similar enough* that consumers are willing and able to switch to them. Therefore, we find these services to be “like”

⁷ PTA Comments at 1.

⁸ Chapters 63 and 64, in the Truman-era and Reagan-era, respectively, as Verizon points out. Verizon Comments at 2-3.

⁹ When the PTA filed its ANOPR comments in 2018, the FCC had just reported that less than 12% of total voice subscriptions in the Commonwealth were served by the incumbents down from 100% twenty years before. Joint Comments of the Rural Incumbent Local Exchange Carriers dated October 3, 2018; FCC Voice Telephone Services Report (Rel. 2018).

Regulated lines provided by the incumbent local exchange carriers further deteriorated to 8.3% of the total by 2019, two and one-half years later. FCC Wireline Competition Bureau, Voice Telephone Subscriptions as of June 30, 2019 (Rel. 5/7/21). Using these (very) long-term trends, the ILECs’ overall market share in 2021 is likely in the mid-6% range.

or “substitute” services to basic local exchange service under Section 3016(a) of the Code.¹⁰

As of 2019, there were 13.7 million mobile subscriptions compared to only 1.6 million ILEC switched lines in Pennsylvania.¹¹ These statistics no longer surprise anyone.

The Commission’s orders have consistently recognized the trend. And **six years ago**, based upon the evisceration of ILEC’s market share, the Commission declared that the entirety of the Commission’s regulation of the incumbent telephone companies needed to be reduced.

We find that the burdens of complying with outdated Regulations with which Verizon’s competitors do not have to comply is an “unreasonable hardship” that justifies granting a waiver.¹²

This rulemaking is a follow-up to that conclusion and was intended “to determine **what service Regulations, if any**, should apply in competitive and non-competitive wire centers.”¹³

The Pennsylvania General Assembly long ago recognized the changing telecommunications environment when amending Chapter 30 in 2004 and determined that competition leads to greater innovation and consumer benefits, including reduced pricing, improved quality of service, and additional choice. These objectives have all been realized.

And highly germane to the topic at hand, the General Assembly, seventeen years ago, simultaneously directed that the Commission should revise its regulations with the objective that “the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers.”¹⁴ The Commission was instructed to “review and revise” its rules, “tak[ing] into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand...”¹⁵

The Commission has never undertaken the reforms mandated by the General Assembly in 2004 and it is not doing so now. Indeed, after 6 years of discussion, the changes offered in the proposed regulations constitute minor tweaking based upon the misguided perception that regulation is the sole protector of customers despite all evidence to the contrary.

The PTA member companies’ thirty pages of ANOPR Comments extensively delved into the details of Chapters 63 and 64, providing specific and actionable recommendations. The PTA did not advocate deregulatory abdication, rather its Comments sought a more fair, common sense, approach in today’s non-monopoly circumstances.

¹⁰ *Reclassification Order* at 36 (emphasis in original).

¹¹ *Supra*, FCC Wireline Competition Bureau, Voice Telephone Subscriptions as of June 30, 2019 (Rel. 5/7/21).

¹² *Reclassification Order* at 75-76.

¹³ *Reclassification Order* at 104 (emphasis added).

¹⁴ 66 Pa.C.S. § 3011(13).

¹⁵ 66 Pa. C.S § 3019(b)(2).

Simply stated, the Commission's regulations are so arcane and infective as to need a complete rewrite – not just an update for selected exchanges.¹⁶ The PTA is in complete agreement with Verizon where it states that “[t]he main problem is that the Commission set out to redline and edit its existing rules when it should have eliminated those rules entirely and reviewed the need for regulation of the telephone industry from a clean slate.”¹⁷

The Commission needs to offer the bold strokes that would grant the ILECs relative freedom from regulation as Act 183 envisioned and requires. Weak and ineffective attempts at reform serve no one. The RLECs fight for their customers' business every day. There is no need for the Commission to continue to intercede into the middle of that relationship, creating complicated and unnecessary rubrics.

At bottom, the Commission has been far too timid in surrendering even a portion of its regulatory powers over the ILECs. Infinite study of deregulation becomes a barrier to the needed reforms.

The *RLEC Petition* in 2018¹⁸ reasonably sought the waiver of several Chapter 63 and 64 regulations “until such a time as the Commission completes its rulemaking proceeding at Docket No. L-2018-3001391.”¹⁹ The Petition was denied in its greatest part,²⁰ because the RLECs “have not been subject to the exhaustive evidentiary review that preceded our grant of relief to Verizon.”²¹ The PTA asks, what “exhaustive evidentiary review” is needed to conclude what should be obvious?

It is harmful for a regulator to think that it knows more than the customer and service providers. Unlike the monopoly circumstances of 25 years ago, customers today have the power to choose among a variety of carriers and do so with regularity.

Cable customers do not have and do not need state regulatory intrusion. Wireless carriers are only lightly regulated by the Federal Communications Commission (FCC) and not at all by this Commission. Satellite is the same. Customers subscribing to over-the-top VoIP connections

¹⁶ The Commission's regulations at Chapter 63 were initially adopted March 25, 1946 and expanded in 1969, 1982, 1988, and 1998. Chapter 64 was adopted in 1984 and also has been subsequently amended to add additional provisions. Neither of these regulatory chapters have ever been subjected to any examination of their overall relevancy and application to the realities of today's telecommunications market.

¹⁷ Comments of Verizon at 3-4.

¹⁸ *Petition of the Rural Incumbent Local Exchange Carriers for Temporary Waiver of Certain Chapter 63 and 64 Regulations*, Docket No. P-2018-3005224, Order entered July 28, 2020 (“*RLEC Petition*”). As set forth in the *RLEC Petition*; “While the Joint Petitioners patiently waited for Commission action, they cannot risk waiting any longer given the rapid declines in access lines, customers, and revenues and pressures from the ever-changing telecommunications environment. As such, Joint Petitioners are seeking immediate, albeit temporary, relief of the regulations identified above.” *RLEC Petition* at 7.

¹⁹ *RLEC Petition*, Docket No. P-2018-3005224 at 3. Specifically, the RLECs sought temporary waivers of 52 Pa. Code §§ 63.12, 63.13, 63.15(b) and (c), 63.16, 63.18 - 63.24, 63.31, 63.32, 63.54-63.62, 63.64, 63.71 - 63.77, 63.91, 63.98, 64.12, 64.123, 64.141, 64.142, 64.191, 64.192, and 64.201.

²⁰ Except for the obviously outdated telephone directories and presubscription scripting.

²¹ *RLEC Petition* at 8.

have no service or financial regulations to rely upon. There is no reason to perceive that the ILEC customers need Commission regulation any more than its lightly regulated competitors.

The Commission's jurisdiction is so limited as to be harmful to the carriers that it regulates. The marketplace has moved from voice calling as the primary service to data transfer via the Internet and wirelessly as consumers' product of overwhelming choice. Tweaking the existing regulations – as the proposed NOPR undertakes – demonstrates a lack of trust and confidence that the result of this regulatory process will result in responsive Commission action.

The PTA, frankly, lacks confidence that a traditional regulator, such as the Pennsylvania Commission, can be expected to meaningfully reduce regulation and, thereby, its own influence. Some, such as the FCC, have done so, but it takes a strict focus and a candid acknowledgement of the detriments of continued regulation. It takes some degree of faith in the self-regulation of competitive markets.

This is clearly evident in the OCA's comments, for example, where it denies the obvious and insists that the same old regulations should continue to apply²² “rather than scaling back regulatory protections in anticipation of future modernized, digital networks.”²³ What future networks? Those networks are now.

There are no facts cited by the OCA to justify the degree of regulation proposed by the Commission. No reference to complaint levels. No discussion of the Verizon Reclassification service reports. No comparison, as required by statute, to the level of regulation not imposed on the ILECs' competitors. It is support for the status quo with no rationale. It is following a historic path that can no longer be justified.

There appear to be several biases that have gotten in the way of a clear discussion. The first is the tendency to speculate, on a non-factual, hypothetical basis that some customer somewhere may need the protections where there are no alternatives or the customer lacks the savvy to avail themselves of the opportunity of choice. The statistics demonstrate that these situations are increasingly rare. Regulating meticulously across the RLEC's entire footprint regardless of the degrees of competition is unnecessary for the supposed benefit to the hypothetical customer and incapacitates any attempt to modernize the old regulatory paradigm.

Secondly, and perhaps most significantly, is the self-defeating notion that absolute parity is not attainable because the RLECs have the carrier of last resort (COLR) obligation to serve all consumers within their respective territories. This focus is misplaced because COLR only means that the RLECs must be capable of providing voice service within its service territory. This does not mean that the COLR-obligated ILEC must be highly regulated. The customers have no obligation to be served by the ILEC, obviously. They can switch at any time. Moreover, the RLEC is not going to degrade its service or customer relationships if they want to maintain those

²² The OCA also supports the expansion of PUC regulation as suggested in Chairman Dutrieuille's questions. Statement of Chairman Gladys Brown Dutrieuille, Public Meeting of July 16, 2020.

²³ OCA Comments at 2.

few customers that are remaining. An obligation to serve can be maintained in a deregulated market, as many of the states have demonstrated.

As a result of these preconceptions, Pennsylvania remains a traditional, heavy regulatory state and an outlier. The vast majority of the states, mostly via their legislatures, have fully or partially deregulated their ILECs.²⁴ As of September 2017, **39 states had reduced or eliminated oversight** of retail telecommunications services.²⁵ **35 of these were based upon state legislation.**²⁶ A few examples include:

- In **Indiana**, rates and charges for retail telecommunications services were fully deregulated as of July 1, 2009.²⁷ Between July 2006 and July 2009, the only telephone service rates and charges that remained under Indiana Utility Regulatory Commission jurisdiction were for stand-alone basic local services for residential landline customers.
- The 2009 **Tennessee** Market Regulation Act²⁸ exempts ILECs from all TRA jurisdiction, including, but not limited to, state-based regulation of retail pricing or retail operations. What remains within the TRA's regulatory purview is limited to carrier-to-carrier matters.
- Passing Bill 825 in 2012, the **Mississippi** legislature determined that competitive market forces adequately protect the public interest and, therefore, the MSPSC no longer has jurisdiction over telecommunications services, other than the provision of intrastate switched access service.²⁹
- In **Florida**, HB 1231 was passed and signed in 2011,³⁰ which totally exempts both basic local and nonbasic services, as well as comparable services offered by any telecommunications company, from PSC jurisdiction. As described by the PSC: "The Act eliminated most of the retail regulation of local exchange telecommunications services by the PSC, including the elimination of rate caps on all retail

²⁴ Deregulation, as referred to here, mean a radically reduced level of regulation over retail services, including pricing limits and service metrics. Wholesale regulation consistent with the TCA-96 remain and customers may file complaints, among other retained commission powers.

²⁵ *Telecommunications Oversight 2017: A State Perspective*, National Regulatory Research Institute Report No. 18-03 (NRRRI Report) at 1.

²⁶ "4 additional states, Iowa, Pennsylvania, New Jersey, and Rhode Island had reduced oversight in either all or part of the state after commission examination and review." *NRRRI Report* at 3. The Pennsylvania reference was to the *Verizon Reclassification Order*. *Id.* at 5.

²⁷ The IURC, however, still has jurisdiction to enforce or administer state and federal laws concerning: Slamming and Cramming; Universal Service support programs; Service matters regarding hearing- and speech-impaired customers (dual-party relay); Dialing code administration (including 211 and 811 dialing codes, area codes and number conservation); and Interconnection agreements and resolution of carrier-to-carrier disputes.
<https://www.in.gov/oucc/telecommunications/tips-and-publications/telephone-rate-deregulation/>

²⁸ Tennessee Code Title 65. Public Utilities and Carriers § 65-5-109. <https://codes.findlaw.com/tn/title-65-public-utilities-and-carriers/tn-code-sect-65-5-109.html>

²⁹ Mississippi House Bill 825 (2012), available at [HB0825SG.pdf \(state.ms.us\)](#).

³⁰ [House Bill 1231 \(2011\) - The Florida Senate \(flsenate.gov\)](#).

telecommunications services; elimination of telecommunications-related consumer protection and assistance duties of the PSC; and elimination of the PSC's remaining oversight of telecommunications service quality.”³¹

- Under the Communications Reform Act of 2005 (Act 2005-110), the **Alabama** PSC lost jurisdiction over bundled services in 2007 and, in 2014, overall retail telecommunications services offered by telecommunications carriers.³²
- Passed in 2011, the **Wisconsin** Telecommunications Modernization Act of 2011³³ eliminated PSC authority over most retail offerings.³⁴
- **Utah** House Bill 59 of 2017³⁵ allows the state commission to exempt a "telecommunications company or service" from all oversight in areas with "effective competition."

There have been no reports of escalated price or service deterioration in the states that have deregulated. In order to compete, the ILECs maintained competitive pricing and retained service quality. These legislative initiatives have been successful.

The data presented by Verizon Pennsylvania in its “competitive wire centers” shows no harm to customers has occurred either as to price or service.³⁶ Rates in the exchanges declared “competitive” remained the same as in the “non-competitive” exchanges. Service complaints actually decreased (faster than the decreasing line counts themselves) in competitive exchanges, while trouble reports increased in the noncompetitive wire centers, indicating service quality gains where regulations were waived.

³¹ [Telecommunications Local Competition - Florida Public Service Commission \(floridapsc.com\)](#); See also, [REPORT ON THE EFFORTS OF THE \(floridapsc.com\)](#).

³² [Alabama Code Title 37. Public Utilities and Public Transportation § 37-2A-4 | FindLaw.](#)

³³ [Wisconsin Legislature: 2011 Wisconsin Act 22.](#)

³⁴ <https://psc.wi.gov/Pages/ForUtilities/Telecom.aspx>

³⁵ Utah House Bill 59 (Utah Code 54-8b-3), 2017, Amend a provision relating to telecommunications, available at <https://legiscan.com/UT/text/HB0059/id/1560645/Utah-2017-HB0059- Enrolled.pdf>

³⁶ *NOPR Order* at 15-18.

The Commission promised a detailed analysis of that data,³⁷ but none has ever been forthcoming. As a result, the Commission's own *NOPR Order* lacks the factual support that would justify continuation of heavy, monopoly era regulation.³⁸

This matter has taken six years to develop to this tenuous point, in part because of the perceived need for further investigation. There has been more than ample time allotted for that exercise and no factual basis has been developed to suggest in any way that the Commission's current regulatory regime can be justified.

The PTA has not asked the Commission to totally eliminate price and service regulation, as has been done in other states. The PTA has requested limited relief focused on the now arcane regulations enacted during the Truman (Chapter 63) and Reagan (Chapter 64) presidencies.³⁹

Seventeen years ago, the General Assembly directed the Commission to undertake an industry-wide overhaul to reduce ILEC regulation to levels more consistent with their competitors. § 3019(b)(2) compels the Commission "to review and revise quality of service standards contained in 52 Pa. Code" and, in doing so, "take into consideration the emergence of new industry participants, technological advancements, service standards and consumer demand." It is not a license to perpetuate such regulation as some have claimed.

One of the stated purposes of Chapter 30 is the directive to "[r]ecognize that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers."⁴⁰ Of course, "more consistent" does not mean absolute parity, but it does set up a fact-based, comparative exercise that is sorely lacking at this docket.

The Commission can and should acknowledge that the remaining useful purposes of these regulations are very limited. Under the ILEC proposals on the table, the Commission would continue to administer relay services, prohibit slamming and cramming, hear consumer complaints, oversee the Universal Service Fund, review and approve carrier interconnection agreements, and many of the other functions that it does today.

³⁷ The February 6, 2020 Tentative Order that extended the Verizon waivers, "direct[ed] our Bureau of Consumer Services, with the assistance of Law Bureau, the Bureau of Technical Utility Services, and any other necessary Commission bureaus, to perform an analysis of the Verizon historic proprietary data to include (1) a comparison of the data, and any conclusions therefrom, regarding the effect of the waivers on competitive wire centers, pre-waiver and post-waiver, and (2) a comparison of the data, and any conclusions therefrom, between competitive and noncompetitive wire centers. We believe this analysis along with the supplemental comment process should address the concern of CAUSE-PA." *February 2020 Order* at 9-10. No such analysis or report has been released or, apparently, even undertaken.

³⁸ The *NOPR Order* dismissively sweeps aside the favorable competitive wire center service performance that Verizon reported under the *Reclassification Order*: "Naturally, we cannot make any hypotheses nor can we draw any conclusions from these limited data before us...." *NOPR Order* at 17.

³⁹ As noted by Verizon.

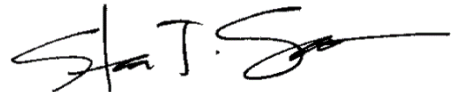
⁴⁰ 66 Pa.C.S. § 3011(13).

The PTA continues to urge the Commission to promptly adopt regulations that dramatically reduce the resource sapping regulations that no other carrier segment in the marketplace has to accommodate and for which no factual basis exists to justify. Verizon's Comments at Attachment 1 sets forth a useful and thorough set of reformed regulations that are certainly a vast improvement over those proposed by the Commission. However, they do not contain the necessary changes reflected in SB 341,⁴¹ the General Assembly's most recent attempt to forge modernized regulatory relief for the ILECs. It is this set of regulations that the Commission should recognize and adopt.

In summary, the record clearly shows that the breadth and depth of the Commission's proposed regulations serve no viable purpose and that they are, in fact, counterproductive. They far exceed, without any justification, the level of regulation imposed upon the ILECs' competitors and, thus, are in violation of statute.

The RLECs appreciate the opportunity to submit these reply comment on the Notice of Proposed Rulemaking Order and respectfully request that the Commission adopt the recommendations and the relief set forth herein.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'S. J. Samara', with a stylized flourish at the end.

Pennsylvania Telephone Association
Steven J. Samara, President

June 24, 2021

⁴¹ <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=S&type=B&bn=0341>. Passed by the Pennsylvania Senate on May 25, 2021 and currently before the House Consumer Affairs Committee.