

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held July 16, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement  
David W. Sweet, Vice Chairman  
John F. Coleman, Jr.  
Ralph V. Yanora

Petition of the Rural Incumbent Local Exchange  
Carriers for Temporary Waiver of Certain Chapter  
63 and 64 Regulations

P-2018-3005224

**ORDER**

**BY THE COMMISSION:**

Before us for consideration is the Petition of the Rural Incumbent Local Exchange Carriers for Temporary Waiver of Certain Chapter 63 and 64 Regulations (“Petition”) filed pursuant to 52 Pa. Code § 5.43. In their Petition, thirty-five RLECs<sup>1</sup> seek a temporary waiver of certain rules and regulations set forth in Chapters 63 and 64 of Title

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<sup>1</sup> For purposes of this Petition, Joint Petitioners (with their utility codes) include: Armstrong Telephone Company North (312650); Armstrong Telephone Company - Pennsylvania (312350); Bentleyville Communications Company (310250); Citizens Telecommunications Company of New York, Inc. (310174); Citizens Telephone Company of Kecksburg (310650); Consolidated Communications of Pennsylvania Company, LLC (31550); Frontier Communications Commonwealth Telephone Company (310800); Frontier Communications of Breezewood, LLC (310400); Frontier Communications of Canton, LLC (310550); Frontier Communications of Lakewood, LLC (311750); Frontier Communications of Oswayo River, LLC (312600); Frontier Communications of Pennsylvania, LLC (311250); Hancock Telephone Company (311500); Hickory Telephone Company (311550); Ironton Telephone Company (311650); Lackawaxen Telecommunications Services, Inc. (311700); Laurel Highland Telephone Company (311800); Marianna & Scenery Hill Telephone Company (312000); The North-Eastern Pennsylvania Telephone Company (312450); North Penn Telephone Company (312500); Palmerton Telephone Company (312700); Pennsylvania Telephone Company (312750); Pymatuning Independent Telephone Company (312800); South Canaan Telephone Company (3115916); TDS Telecom/Deposit Telephone Company (311100); TDS Telecom/Mahanoy & Mahantango Telephone Company (311950); TDS Telecom/Sugar Valley Telephone Company (313100); The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (313200); Venus Telephone Corporation (313400); West Side Telephone Company (313600); Windstream Buffalo Valley, Inc. (310369); Windstream Conestoga, Inc. (310850); Windstream D&E, Inc. (311050); Windstream Pennsylvania, LLC (312050); and Yukon-Waltz Telephone Company (313650).

52 of the Pennsylvania Code during the pendency of the Commission’s rulemaking proceeding at Docket No. L-2018-3001391. For the reasons stated herein, the Commission (1) grants the RLECs’ temporary waiver of 52 Pa. Code Section 63.21 regarding directories and 52 Pa. Code Section 64.191(e) regarding toll presubscription subject to the same conditions, terms, limitations, and requirements attached to prior Commission waivers granted for these regulations set forth in prior Commission Orders, and (2) denies the RLECs’ request for temporary waiver of the remaining Chapter 63 and 64 regulations set forth in their Petition because of the Commission’s pending Chapters 63 and 64 Advance Notice of Proposed Rulemaking (“ANOPR”) at Docket No. L-2018-3001391.

## **BACKGROUND**

### **Regulation of RLECs**

The RLECs are authorized to provide telecommunications services in various portions of the Commonwealth of Pennsylvania, as set forth in their respective lawful tariffs on file with the Commission. The RLECs are regulated under an alternative streamlined form of regulation found in Chapter 30 of the Public Utility Code and approved by the Commission in the respective RLECs’ Chapter 30 alternative regulation and network modernization plans.<sup>2</sup>

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<sup>2</sup> Four RLECs - Citizens Telecommunications Company of New York, Inc., Hancock Telephone Company, TDS Telecom/Deposit Telephone Company, and West Side Telephone Company - are multi-jurisdictional incumbent local exchange companies with the vast majority of their operations in jurisdictions other than Pennsylvania and, thus, have been granted waivers of their respective obligations to file an alternative regulation plan and network modernization plan pursuant to Chapter 30 of the Public Utility Code. *See, e.g., Petition of Hancock Telephone Company for Waiver of Sections 3003 and 3006 of Chapter 30 of the Public Utility Code (66 Pa.C.S. §§ 3003 and 3006)*, Docket No. P-00981445 (Order entered November 8, 1999); *Petition of West Side Telephone Company d/b/a West Side Telecommunications for Waiver of Sections 3003 and 3006 of Chapter 30 of the Public Utility Code (66 Pa.C.S. §§ 3003 and 3006)*, Docket No. P-00001809 (Order entered June 21, 2001); *Petition of Deposit Telephone Company, Inc. for Waiver of Sections 3003 and 3006 of Chapter 30 of the Public Utility Code (66 Pa.C.S. §§ 3003 and 3006)*, Docket No. P-00032044 (Order entered September 5, 2003). Petition at 2, n. 2.

## **Chapters 63 and 64 of the Commission's Regulations**

The Commission's regulations at 52 Pa. Code Chapter 63 govern the provision of telephone service and consist of fifteen subchapters, addressing, among other matters, service and facilities, accounts and records, and quality of service standards.

The Commission's regulations at 52 Pa. Code Chapter 64 set forth various standards and requirements related to the provision of residential telephone service and consist of eleven subchapters addressing such matters as account payment and billing, credit and deposit practices, suspension and termination of service, and customer complaint procedures. Chapter 64 was established in 1984 for the purpose of establishing "uniform, fair and equitable" standards and practices.

### **Chapter 63 and 64 Rulemaking**

On July 12, 2018, the Commission issued an ANOPR at Docket No. L-2018-3001391 initiating a rulemaking to examine the continued applicability of its Chapter 63 and Chapter 64 regulations in competitive and noncompetitive wire centers in response to changes in the telecommunications market.<sup>3</sup> The ANOPR solicited public comment on potential changes to these regulations, including, *inter alia*, whether the temporary waivers of our Chapter 63 and 64 regulations that were given to the Verizon ILECs<sup>4</sup> in the Commission's *Verizon Reclassification Order* for the retail telecommunications services determined to be competitive in 153 wire centers would become permanent on an industry wide basis and whether any of the Chapter 63 and 64 regulations governing basic stand-alone telephone service in noncompetitive wire centers should be amended or

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<sup>3</sup> *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 (Order entered July 12, 2018), 48 Pa.B. 4792 (Aug. 4, 2018).

<sup>4</sup> On March 4, 2015, the Commission partially granted a petition filed jointly by Verizon PA and Verizon North (collectively referred to as "Verizon" or "the Verizon ILECs") to reclassify retail services in certain wire centers as competitive and waive certain regulations. *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) (*Verizon Reclassification Order*).

rescinded. Comments to the ANOPR were due October 3, 2018, with Reply Comments due November 2, 2018.<sup>5</sup>

On October 3, 2018, the RLECs filed the instant Petition. The Office of Consumer Advocate (OCA) filed an Answer to the RLECs' Petition on October 26, 2018.

## DISCUSSION

### Legal Standards

Section 5.43(a) of the Commission's regulations sets forth the requirements for any petition seeking waiver of a Commission regulation.

A petition to the Commission for the issuance, amendment, waiver or repeal of a regulation must set forth clearly and concisely the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver or repeal requested, and cite by appropriate reference the statutory provision or other authority involved. The petition must set forth the purpose of, and the facts claimed to constitute the grounds requiring the regulation, amendment, waiver or repeal. Petitions for the issuance or amendment of a regulation shall incorporate the proposed regulation or amendment.

52 Pa. Code § 5.43(a).

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the burden of proof. The RLECs seek relief from the Commission, and, therefore, have the burden of proof in this proceeding.

Any decision of the Commission must be supported by substantial evidence. *See, e.g.,* Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of

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<sup>5</sup> The RLECs filed Comments to the ANOPR on October 3, 2018, concurrently with filing the instant Petition. The RLECs filed Reply Comments to the ANOPR on November 2, 2018.

the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n.*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).

Finally, it is well-settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Thus, any argument in the Petition that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

### **The RLECs' Petition**

On October 3, 2018, the RLECs filed the instant Petition. The RLECs requested temporary waiver of certain Commission regulations until such time as the Commission completes its rulemaking proceeding at Docket No. L-2018-3001391. Petition at 3-4. The RLECs also requested immediate and permanent waiver of 52 Pa. Code §§ 51.21 and 64.191(g) concerning directories, and 52 Pa. Code § 64.191(e) relating to intraLATA presubscription. *Id.*

The RLECs assert that the regulations for which they sought temporary waiver were promulgated in an era when voice telephone service was a monopoly and consumers' only mode of communication was via the voice telephone services provided by wireline telecommunications utility companies such as the RLECs. Petition at 5. The RLECs argued that today, the vast majority of voice communications are no longer provisioned by wireline companies like the RLECs, but rather by a host of alternative, unregulated providers not subject to the standards and requirements set forth in Chapters 63 and 64. *Id.*

As justification for their Petition, the RLECs submitted that temporary waiver of the regulations was in the public interest for the following reasons: (1) the General Assembly declared when it amended Chapter 30 of the Public Utility Code and enacted Act 183 of 2004, 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," 66 Pa.C.S. § 3011(13); (2) the Petition identifies specific regulations in Chapters 63 and 64 that the RLECs believe create the most significant hardship and/or which no longer provide any public or consumer benefit, in addition to imposing onerous and administratively cumbersome requirements on the RLECs; (3) that at the time of filing the Petition, three years had passed since the Commission issued its *Verizon Reclassification Order* and ordered a rulemaking docket opened to revise and amend the regulations at Chapter 63 and 64, and the RLECs anticipate that another two or three years would pass until the completion of a rulemaking revising said regulations, during which time the RLECs would allegedly continue to suffer harm from compliance with outdated and burdensome regulations; and (4) even if the Commission granted the RLECs' Petition for Waiver, the RLECs would remain jurisdictional public utilities still subject to the requirements of the Public Utility Code. Petition at 5-8.

As relief, the RLECs request temporary waiver of the regulations identified in the Petition until such date as the rulemaking proceeding at Docket No. L-2018-3001391 is completed and immediate and permanent relief from 52 Pa. Code §§ 51.21 and 64.191(g) concerning directories, and 52 Pa. Code § 64.191(e) relating to intraLATA presubscription, along with any other relief deemed appropriate and consistent with the Petition. Petition at 8. The RLECs also attached to the Petition their comments to the

Commission's rulemaking at Docket No. L-2018-3001391 that were concurrently filed on October 3, 2018.<sup>6</sup>

### **The OCA's Answer**

The OCA opposes the RLECs' Petition for Waiver as not being in the public interest. The OCA submits that the proper forum for determination of what Chapter 63 and 64 regulatory protections should be preserved, modified, or rescinded is at the Commission's rulemaking proceeding, based upon consideration from the full, broader scope of comments and recommendations. OCA Answer at 3. The OCA asserts that the RLECs' Petition has not proven that continued compliance with the identified regulations impose a hardship so unreasonable as to merit grant of temporary, virtually unconditional waiver of the regulations cited. *Id.*

The OCA expresses concern that if the RLECs' Petition is granted, the thirty-five RLECs identified in the Petition could establish unique terms and conditions that are unpublished in tariffs and without adequate notice to consumers, in lieu of the waived regulations during the pendency of the Commission's rulemaking proceeding. *Id.* The OCA notes that the regulations for which the RLECs seek waiver include substantive quality of service standards, dispute and informal/formal complaint processes, record keeping, and surveillance and other reporting requirements. OCA Answer at 5. As such, the OCA believes that granting the RLECs' Petition would create an unreasonable gap in the standards and protections for RLEC protected local exchange service customers for the duration of the Commission's rulemaking proceeding. OCA Answer at 5-6.

The OCA is unconvinced by the RLECs' claims that the Commission's delay in updating Chapter 63 and 64 will result in unreasonable hardship. The OCA notes that in the 2015 Verizon Reclassification proceeding, the Commission granted the Verizon

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<sup>6</sup> The RLECs' Comments to the Chapter 63 and 64 Rulemaking can be viewed at: <http://www.puc.state.pa.us/pcdocs/1588311.pdf>

ILECs competitive classification of retail services in certain wire centers for price-setting, based upon specific evidence of the availability of like and substitute services in those wire centers, and that the Commission also granted Verizon temporary, conditional waivers of certain Chapter 63 and 64 regulations in those competitive wire centers. However, the OCA emphasizes that the Commission ruled that the Verizon ILECs' carrier-of-last-resort (COLR) obligations were unchanged and denied the Verizon ILECs' request for temporary waiver of Section 63.20 (Line extensions), and also denied Verizon's request for a temporary waiver of certain other Chapter 63 and 64 regulations. OCA Answer at 6. The OCA asserts that, by contrast, the RLECs' Petition requests greater regulatory relief, based upon less specific claims of competitive alternatives. OCA Answer at 7. The OCA points out that the RLECs failed to distinguish why the Commission should waive for the RLECs certain Chapter 63 and 64 regulations which the Commission preserved in 2015 for the protection and benefit of Verizon customers in competitive wire centers. *Id.*

The OCA also opposes the RLECs' request for immediate and permanent waiver of Sections 63.21 and Section 64.191(g) as they pertain to an ILEC's obligation to update and distribute white pages directories, with specific customer billing and service information, as well as permanent waiver of Section 63.191(e) regarding discussion of intraLATA presubscription in new connect calls. OCA Answer at 8-9.

## **ANALYSIS**

Upon review of this record, we are reluctant to support the RLECs' petition for all the waivers requested. This is particularly true at this time when we have a comprehensive rulemaking pending in which we are undertaking a broader examination of temporary waivers granted to the Verizon ILECs, including the waivers' potential applicability to other entities who have not been subject to the exhaustive evidentiary review that preceded our grant of relief to Verizon. However, we find merit regarding two of the proposals in the RLECs' Petition related to the following: (1) a temporary

waiver of 52 Pa. Code § 63.21 regarding the provision of directories; and (2) a temporary waiver of 52 Pa. Code § 64.191(e) regarding toll presubscription.

In 2017, The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (“CenturyLink”) and the Verizon ILECs requested, and were granted, relief from Section 63.21 of our regulations requiring those carriers to provide access to hard copy telephone directories.<sup>7</sup> Relief was granted but was subject to carefully delineated requirements, for example, the provision of a hard copy directory upon request. In 2019, the Frontier companies that are part of the pending RLEC Petition filed a similar request, which we granted subject to the same requirements.<sup>8</sup>

The relief granted in the *2017 and 2019 Directory Orders* was more dependent on current customer patterns for directory use and less dependent on evidence presented and evaluated to substantiate the temporary waivers granted to Verizon following its 2015 reclassification proceeding. On that basis, we grant the RLECs the same relief that we have already granted to Verizon, CenturyLink, and the Frontier companies in the *2017 and 2019 Directory Orders*. As such, we will allow the RLECs to end mass distribution of paper copies of telephone directories, including residential white pages, business white pages, business yellow pages, customer rights and responsibilities, and any additional information commonly printed in the front of directories – except for distribution to those customers who are likely to use the directories and who specifically request them – and subject to strict adherence to all terms, conditions, and directives set forth in both of the *2017 and 2019 Directory Orders*, including that directories will be made available online

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<sup>7</sup> *Joint Petition and Notice of the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, Verizon Pennsylvania LLC and Verizon North LLC and Dex Media, Inc. to Reduce Distribution of Print Telephone Directories and Transition to Digital Publication or, Alternatively, for Relief of 52 Pa. Code §64.191(g)*, Docket No. P-2017-2610359 (Order entered August 31, 2017) (*2017 CenturyLink/Verizon Order*)

<sup>8</sup> *Joint Notice and Petition of the Frontier Communications Companies to Reduce Mass Distribution of Printed Telephone Directories*, Docket No. P-2019-3007871 (Order entered April 11, 2019) (*2019 Frontier Order*) (collectively with the *2017 CenturyLink/Verizon Order*, the *2017 and 2019 Directory Orders*).

indefinitely. To be clear, the RLECs' relief from 52 Pa. Code § 63.21 is limited strictly to and consistent with the exact relief already granted by the Commission to Verizon, CenturyLink, and the Frontier companies regarding the provision of directories and is subject to the RLECs' satisfaction of the same requirements in those prior orders.

With respect to toll presubscription, the RLECs seek relief consistent with the respective waivers granted to CenturyLink and Verizon with respect to various provisions of the Commission's *IntraLATA Presubscription Implementation Order* at Docket No. I- 00940034 (Order entered May 9, 1997) and the Commission's toll presubscription regulation at 52 Pa. Code § 64.191(e).<sup>9</sup> In 2014, we also granted a request from CenturyLink for relief from the equal access scripting requirements for toll presubscription following the grant of similar relief to Verizon in 2008. Given the changes to the toll market, we concluded that the scripting requirements of Section 64.191(e) were no longer relevant. That remains the case today. Consistent with our position regarding temporary relief from mass distribution of telephone directories, we believe there is no impediment to our granting the RLECs temporary relief from this regulation pending our final disposition in the ANOPR rather than withholding relief *until* such final disposition.

For these reasons, we believe that it is reasonable to grant the RLECs relief in the form of a temporary waiver of our regulations at 52 Pa. Code § 63.21 regarding the provision of directories and 52 Pa. Code § 64.191(e) regarding toll presubscription pending final resolution of these regulations at our pending ANOPR at Docket No. L-2018-3001391 and subject to the same conditions, terms, limitations, and requirements as

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<sup>9</sup> See *Petition of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink for a Waiver of the Commission's Regulation Governing Toll Presubscription, 52 Pa. Code § 64.191(e)*, Docket No.P-2014-2439191 (Tentative Order entered Oct. 23, 2014) (became final by operation of law on November 2, 2014); *Joint Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for a Waiver of the Commission's Order Dated May 9, 1997, et al.*, Docket Nos.I-00940034 and P-00072348 (Tentative Order entered September 24, 2008, per Secretarial Letter dated January 22, 2009 became final on October 6, 2008).

previously set forth by the Commission in our prior orders on these subjects;

**THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of the Rural Incumbent Local Exchange Carriers for a Temporary Waiver of 52 Pa. Code Section 63.21 regarding directories be granted subject to the same conditions, terms, limitations, and requirements attached to prior Commission waivers granted for this regulation as set forth in this Order.

2. That the Petition of the Rural Incumbent Local Exchange Carriers for a Temporary Waiver of 52 Pa. Code Section 64.191(e) regarding toll presubscription be granted subject to the same conditions, terms, limitations, and requirements attached to prior Commission waivers granted for this regulation as set forth in this Order.

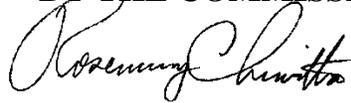
3. That in all other respects the Petition of the Rural Incumbent Local Exchange Carriers for a Temporary Waiver of Certain Chapter 63 and 64 Regulations be denied pending resolution of the Commission's Chapters 63 and 64 Notice of Proposed Rulemaking before the Commission for consideration at Docket No. L-2018-3001391.

4. That a copy of this Order be served on the individually named Rural Incumbent Local Exchange Carriers, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement.

5. That the Secretary's Bureau place a copy of this Order in the Commission's files at Dockets No. P-2018-3005224 and L-2018-3001391.

6. That this case be marked closed.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: July 16, 2020

ORDER ENTERED: July 28, 2020