

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

Public Meeting held July 12, 2018

Commissioners Present:

Gladys M. Brown, Chairman, Statement
Andrew G. Place, Vice Chairman, Statement
Norman J. Kennard
David W. Sweet
John F. Coleman, Jr., Statement

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

ADVANCED NOTICE OF PROPOSED RULEMAKING ORDER

BY THE COMMISSION:

The Public Utility Code (Code) gives the Commission broad authority to “supervise and regulate all public utilities doing business within this Commonwealth” as well as the power to “make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.” 66 Pa. C.S. § 501(b). Historically, the Commission has promulgated Regulations to respond to changes in law, technology and the economy in order to meet the essential needs of the public and the utilities we regulate. Today we are initiating a rulemaking to respond to changes in competitive market conditions in the telecommunications industry and, in particular, to address whether the increases in competition and competitive alternatives warrant the elimination of certain Regulations on a permanent industry-wide basis for competitive wire centers.

I. INTRODUCTION

On March 4, 2015, the Commission partially granted a petition filed by Verizon Pennsylvania LLC and Verizon North LLC¹ (Petition) to reclassify 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) (*Reclassification Order*).² As part of our *Reclassification Order*, the Commission also granted for Verizon's competitive wire centers a five-year waiver of certain of the Commission's Chapter 63 and Chapter 64 Regulations, pending a rulemaking to determine the status of these Regulations in competitive and noncompetitive wire centers on a permanent and industry-wide basis. To that end, this Advance Notice is being issued primarily to solicit public input regarding the status of the Commission's Chapter 63 and 64 Regulations, including whether to make permanent the waivers granted in the *Reclassification Order* to any wire center in Pennsylvania that is currently classified as competitive or becomes classified as competitive in the future under applicable law, whether to rescind or amend any Chapter 63 and 64 Regulations for non-competitive wire centers in Pennsylvania, and whether to create a separate chapter in our Regulations to address service provided in competitive wire centers.

The *Reclassification Order* addressed a number of complex regulatory issues of first impression. This Advance Notice will enable us to gather further input from the industry, consumer groups, and advocates before drafting the proposed revisions. Moreover, the Advance Notice will give us the opportunity to resolve any issues of

¹ Individually "Verizon PA" and "Verizon North"; collectively "Verizon."

² See also the Tentative Implementation Opinion and Order at 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 June 1, 2015) (Tentative Implementation Order) and the Final Implementation Opinion and Order at 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) (Final Implementation Order).

implementation that remain and will lead to a clear, cohesive, thorough, and analytically sound proposed rulemaking order.

II. HISTORY OF THE PROCEEDING

These proceedings began as a result of Verizon's Joint Petition for competitive classification of all retail services in certain geographic areas pursuant to Section 3016(a) of the Code, 66 Pa. C.S. § 3016(a), and for an eleven-year waiver of parts of Chapter 63 and all of Chapter 64 of our Regulations in Title 52 of the Pennsylvania Code (Regulations), Regulations that would be concomitant with a competitive designation of basic local exchange service in those wire center areas. Finally, Verizon requested that the Commission grant any other waivers and/or approval of alternative regulation to achieve the result requested in its Petition.

The Petition was filed on October 6, 2014, pursuant to 66 Pa. C.S. § 3016(a)(2), 66 Pa. C.S. § 501, and 52 Pa. Code § 5.43, and specifically sought a Commission determination that basic local exchange service in 194 wire centers in or adjacent to Verizon's Philadelphia, Erie, Scranton/Wilkes-Barre, Harrisburg, Pittsburgh, Allentown, and York service territories was competitive.

Section 3016(a) of the Code permits the Commission, after a review of all relevant evidence presented, to determine a "protected service" is competitive where an incumbent local exchange carrier (ILEC) has demonstrated the availability of like or substitute services or other business activities provided or offered by alternative service providers. On March 4, 2015, the Commission issued its *Reclassification Order*, which, *inter alia*, concluded that 153 of the 194 wire centers included in the Petition met the statutory criteria for a competitive determination and were so reclassified. *Reclassification Order* at 63-64. The *Reclassification Order* also concluded that forty-one of the wire centers did not meet the statutory test for a competitive classification, and the request was denied as to those wire centers.

We found that the evidence in that case established that consumers have numerous competitive choices offered by cable and wireless providers that are like or substitute services for Verizon's basic local exchange service. Accordingly, we concluded that, regardless of any technological or economic differences that may exist between basic local exchange service and the competing cable and wireless voice services, consumers considered these competing services adequate replacements for basic local exchange service. *Id.*

Our analysis on availability of competing services was conducted on a per-wire center basis and required widespread availability of both cable telephony and wireless voice service in each wire center determined to be competitive. The record evidence showed that in each wire center determined to be competitive, at least 97 percent or more of the households had access to cable, while wireless voice service is also ubiquitously available throughout each wire center. *Id.*

The *Reclassification Order* also granted, in part, waivers of certain of the Commission's Chapter 63 and Chapter 64 Regulations, 52 Pa. Code §§ 63.1, *et seq.*, 52 Pa. Code §§ 64.1, *et seq.*, in competitive wire centers.³ The waivers were conditioned upon the collection of data and a contemplated, future rulemaking proceeding to address the status of our Chapter 63 and 64 Regulations on a permanent and industry-wide basis, consistent with the discussion contained in the Opinion and Order. *See Reclassification Order* at 127 (Ordering Paragraph 17). This Advanced Notice is the initiation of that rulemaking proceeding. The purpose of the conditional waivers was to afford us time to collect data, for a period of two years, to aid in our assessment of the market conditions present in the aftermath of the competitive reclassification, particularly in the areas of affordability and quality of service. *See Reclassification Order* at 56, 76, 104. The Commission granted a waiver period of five years. *Reclassification Order* at 76, 103.

³ The waivers were granted to Verizon as well as to Competitive Local Exchange Carriers (CLECs) operating in the 153 wire centers determined to be competitive. *Reclassification Order* at 124 (Ordering Paragraph 4).

The *Reclassification Order*, while granting the Petition in part, confirmed Verizon's statutory duty to provide "adequate, efficient, safe, and reasonable service and facilities" as well as service that is "reasonably continuous and without unreasonable interruptions or delay" under 66 Pa. C.S. § 1501 in the entirety of its service territory. *Reclassification Order* at 7 (Ordering Paragraph 5). Under that same Code provision, and regardless of the competitive classification of any wire center, Verizon retained the carrier of last resort (COLR) obligation throughout its service territory. *Id.*(Ordering Paragraph 6).

No party sought reconsideration of any aspect of the *Reclassification Order*, and no party appealed the *Order*. Based on the foregoing, the unchanged directives of the *Reclassification Order* became the final and the binding action of this Commission. In the *Reclassification Order*, we provided a more detailed history of the proceeding, recitation of the record, and legal analysis supporting our conclusion on the threshold issue whether the protected or retail noncompetitive service Verizon provides was competitive under the standards set forth in Section 3016(a) of the Code. *Reclassification Order* at 9-13.

On June 1, 2015, we issued a *Tentative Implementation Order*, under authority of Sections 501 and 703(g) of the Code, 66 Pa. C.S. §§ 501 and 703(g), to clarify certain issues necessary to facilitate implementation of the *Reclassification Order* and to achieve a more efficient transition of basic service to a competitive service in the relevant areas. The clarification of certain matters in the *Reclassification Order* pertained to the following matters: (1) the application of Verizon's Product Guide; (2) Verizon's COLR obligations; (3) the application of reporting requirements under 52 Pa. Code § 64.201; and (4) the waiver of Chapter 64's Subchapters E, F and H concerning suspension, termination, and restoration of service rules in competitive wire centers, 52 Pa. Code §§ 64.61-111, 64.121-123, and 64.181-182.

On May 20, 2015, we issued a Secretarial Letter titled “VERIZON COMPETITIVE CLASSIFICATION DATA COLLECTION REQUEST FOR COMMENTS AND REPLY COMMENTS.” The purpose of the Secretarial Letter was to identify a detailed list of the data to be collected and submitted to help assess the market conditions in competitive wire centers and elicit comments and reply comments on the specific data, form, and reporting schedules for inclusion.

As noted in the *Tentative Implementation Order*:

The *Reclassification Order* addressed a number of complex regulatory issues of first impression for this Commission and the telecommunications industry in Pennsylvania as a whole. Chapter 30 of the Code is clear that the primary impact of the competitive status is that: (1) Verizon may price the service at its discretion; and (2) Verizon may maintain a price list for a competitive service rather than maintaining a Commission-approved tariff. In the absence of a tariff, Verizon’s “Product Guide” will be the governing document to memorialize the terms and conditions of stand-alone basic local telephone service in competitive wire centers.

* * *

Because of the compressed timeframe established pursuant to the provisions of Section 3016(a)(1) of the Code, 66 Pa. C.S. § 3016(a)(1), in which the Commission was mandated to issue an Order within 150 days of the Petition, upon further review, we believe it is necessary to issue a Tentative Implementation Opinion and Order clarifying certain issues related to the reclassification. Clarification in the following areas is necessary to facilitate implementation of the *Reclassification Order* and to achieve a more efficient transition of basic service to a competitive service in the relevant areas.

Tentative Implementation Order at 3-4.

Our *Final Implementation Order* was issued on September 11, 2015, and addressed the clarifications raised in the *Tentative Implementation Order*. The

Commission clarified: (1) that a Product Guide is not “legal authority” and does not have the same force and effect of law as a tariff; (2) that Verizon must continue to maintain COLR obligations; (3) that the waivers and clarifications in the *Tentative Implementation Order* concerning the revision of the Companies’ suspension, termination, and restoration of service rules were adopted as the final Commission action.

Also, on September 11, 2015, we issued an Order implementing Ordering Paragraphs 15 and 16 of the March 4, 2015 *Reclassification Order* and our May 20, 2015 Secretarial Letter. *Order Implementing Paragraphs 15 and 16*. This Order established the specific data, form, and reporting schedules required by Ordering Paragraphs 15 and 16 and this Commission’s obligations under the Code.⁴ The data collection required here provided for the appropriate implementation and evaluation of the market-based regulatory goals of the *Reclassification Order*, and intended to: (1) help assess the market in competitive areas, including the impact of our decision on affordability of basic service and quality of service in those areas and (2) provide guidance for this rulemaking. In other words, the data collection was intended to assist the Commission in making a determination as to the status of the waived Regulations in the competitive wire centers going forward. September 11, 2015 Order at 5.

III. REGULATORY IMPACT OF A COMPETITIVE DETERMINATION

According to Chapter 30, the primary impact of a competitive determination is that: (1) Verizon may price the service at its discretion; and (2) Verizon may maintain a price list of a competitive service rather than maintaining a Commission-approved tariff.⁵ However, a finding that the market is competitive is not equivalent to nor does it require a complete deregulation of the service.⁶

⁴ See 66 Pa. C.S. §§ 3015(f) and 3019(b)(2) and (3); see also 66 Pa. C.S. § 1501.

⁵ See 66 Pa. C.S. §§ 3016(d) and (e).

⁶ “Deregulation” is the pervasive elimination of all regulation, including both price and service regulation.

The Commission has retained authority under the Code over certain aspects of landline telecommunications services determined to be competitive, including retaining jurisdiction over quality of service standards that address the safety, adequacy, reliability, and privacy of telecommunications services and the ordering, installation, suspension, termination, and restoration of any telecommunication service.⁷ According to Chapter 30, our jurisdiction is only limited to the extent that competitive services' rates may not be regulated by the Commission,⁸ and the Commission may not require tariffs for competitive services. However, the Commission may require that a price list for competitive services be maintained at the Commission,⁹ an outcome similar to the principle of detariffing, which is the elimination of the requirement to file and maintain tariffs, including not only the rates for service set by the regulatory authority but also the terms and conditions of service approved by the regulatory authority.¹⁰

A. Reclassification Order Waivers

In its Petition, Verizon requested waiver, until December 31, 2025, of the following Subchapters of Chapter 63 of the Commission's Regulations: Subchapter B (Services and Facilities); Subchapter C (Accounts and Records); Subchapter E (Quality of Service); Subchapter F (Extended Area Service); and Subchapter G (Public Coin Services). Verizon also requested an eleven-year waiver for the entirety of Chapter 64 of the Commission's Regulations.

⁷ See 66 Pa. C.S. § 3019(b)(2); see also 66 Pa. C.S. § 1501.

⁸ 66 Pa. C.S. § 3016(e)(1) ("Subject to the requirements of subsection (d)(1) [establishing cost of service as the price floor], a local exchange telecommunications company may price competitive services at the company's discretion.").

⁹ 66 Pa. C.S. § 3016 (d)(4) ("The commission may require a local exchange telecommunications company to maintain price lists with the commission applicable to its competitive services. Price changes that are filed in a company's tariff for competitive services will go into effect on a one-day notice.").

¹⁰ Tariffs are defined under 66 Pa. C.S § 102 as including not only rates and rate schedules but also "rules, regulations and practices" of the utility. Moreover, the Commission's Regulation at 52 Pa. Code § 53.25 specifies that a telephone utility's tariff shall set forth "all rules and regulations" which apply generally to all classes of services. Therefore, we interpret the Section 3016(d)(2) language specifying that the Commission may not require tariffs for competitive services as applying to not only rates but also terms and conditions of service. In the event rates, services, or other conditions are detariffed, consumer protections are invoked under the Consumer Protection Act, 73 P.S. §§ 201-1 to 9.

We concluded that many of the monopoly-era Regulations in Chapters 63 and 64 that do not apply to Verizon's competitors no longer make sense in a competitive marketplace and that sufficient competition existed in certain wire centers subject to the Petition to substantially reduce our regulation. *Reclassification Order* at 75.

Accordingly, we waived specific Regulations for a period of five years, pending data collection and completion of a rulemaking to address the status of these chapters for noncompetitive and competitive services on a permanent and industry-wide basis. In the *Reclassification Order*, we specifically addressed the enumerated Regulations set forth in Subchapters B, C, E, F, and G. *See Reclassification Order* at 79. All remaining portions of Chapter 63 remained in full force in the wire centers determined to be competitive in this proceeding, including Subchapter K. Competitive Safeguards, Subchapter L. Universal Service, and Subchapter M. Changing Local Service Providers.

We shall now review the conditional waivers made in the *Reclassification Order* and open these dispositions for comment with respect to their implementation on a permanent industry-wide basis. *Reclassification Order* at 77-103.

1. Select Subchapters of Chapter 63

Subchapter B (Services and Facilities) 52 Pa. Code §§ 63.12-63.24

We specifically waived the following Subchapter B Regulations: Section 63.12 (Minimizing interference and inductive effects); Section 63.16 (Traffic measurements); Section 63.17 ([Reserved]); Section 63.18 (Multiparty line subscribers); Section 63.19 (Interoffice lines); Section 63.21 (Directories); Section 63.23 (Construction and maintenance safety standards); and 63.24 (Service interruptions). *Reclassification Order* at 79-81.

We concluded that this Subchapter includes provisions that are outdated, such as Section 63.23, which requires compliance with National Electrical Safety Code standards from 1981. Our waiver of Section 63.23 was conditioned upon the requirement that Verizon construct and maintain its public utility equipment, facilities, and wire or cable crossings in accordance with the safety standards as set forth in the most up-to-date version of the National Electrical Safety Code.¹¹ Because this Regulation addressed safety and reliability, the goal of this provision continued to be relevant in the current market.

Subchapter B also includes provisions relating to services that no longer exist, as a practical matter, including multiparty lines and provisions relating to traffic measurements and record keeping that are largely manual in nature and predate the use of computers. *Reclassification Order* at 79-80. Moreover, regarding directories, the Commission has since granted relief to both Verizon and CenturyLink to end saturation delivery of paper copies of residential white pages, business white pages, and business yellow pages directories—except for those customers who are likely to use the directories or who specifically request them.¹²

With respect to the Section 63.24 provision requiring bill credits for service outages, we found in the *Reclassification Order* that for those wire centers we determined to be competitive, a dissatisfied customer could obtain service from other providers if Verizon's service quality to the customer was unacceptable. Moreover, Verizon's applicable Product Guide addressed this issue by also providing credits for service interruptions.

¹¹ We have authority to condition a waiver of our Regulations pursuant to Sections 501 and 1501 of the Code.

¹² *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).

We retained 52 Pa. Code § 63.13 (Periodic inspections), and 52 Pa. Code § 63.14 (Emergency equipment and personnel), because we concluded that these Regulations were not outdated and remained relevant in a competitive world. We also retained 52 Pa. Code § 63.15 (Complaint procedures), and 52 Pa. Code § 63.22 (Service records), finding that they remained relevant to the Commission-approved complaint process that was retained in competitive wire centers.

Subchapter C (Accounts and Records)
52 Pa. Code §§ 63.31-63.37

Given that most of the Regulations in Subchapter C are applicable under rate base/rate of return regulation, we specifically waived Section 63.31 (Classification of public utilities); Section 63.32 (System of accounts); Section 63.33 (Integrity of service accounts to be preserved); Section 63.34 (Reclassification of telephone plant to original cost); and Section 65.35 (Preservation of records).

However, we retained Section 63.36 (Filing of annual financial reports) since determining that a wire center is competitive did not change the statutory reporting mandates in Section 3015(e) of Chapter 30, which requires LECs to file an annual financial report with the Commission.

We retained § 63.37 to ensure the accuracy of the cost allocation process related to the funding obligations of jurisdictional local exchange carriers pursuant to the Universal Telecommunications and Print Media Access Act, 35 P.S. §§ 6701.1 – 6701.4, (UMPTA). UMPTA provides for the Pennsylvania Telecommunications Relay Service and the Telecommunications Devices for the Deaf Program which address equivalent access to telecommunications services for the deaf, hard of hearing, speech-impaired, and others with disabilities. UMPTA also provides for the Print Media Access System Program which is a reading service for persons with certain vision and physical disabilities.

Subchapter E (Telephone Quality of Service Standards)
52 Pa. Code §§ 63.51-63.65

Subchapter E contains the provisions related to quality of service, *i.e.*, the performance standards for trouble reports, service installations, operator calls, dial tone connection, completion of correctly dialed calls, as well as a safety program for its employees. We specifically waived the following Subchapter E regulations: Section 63.51 (Purpose); Section 63.52 (Exceptions); Section 63.53 (General provisions); Section 63.54 (Record retention); Section 63.56(a)-(e) (Measurements); Section 63.58 (Installation of service); Section 63.59 (Operator-handled calls);¹³ Section 63.60 (Automatic Dialing Announcing Devices (ADAD)); Section 63.61 (Local dial service); Section 63.62 (Direct distance dial service); Section 63.63 (Transmission requirements and standards); Section 63.64 (Metering inspections and tests); and Section 63.65 (Safety).

As we did for bill credits for outages, we found that the market was sufficiently competitive that a customer could obtain service from other providers if Verizon's service quality was unacceptable. These customers also retain the option to complain to the Commission about poor service since waiving the regulations of Subchapter E did not, in any way, modify Verizon's statutory obligation under the Code to provide "adequate, efficient, safe, and reasonable service" to customers in competitive wire centers or impact the Commission's ability to adjudicate a customer complaint alleging poor service quality. Verizon remains statutorily required to provide reasonable service in competitive areas. Notwithstanding any regulatory waivers, our Section 1501 statutory jurisdiction and authority remain a regulatory back-stop on quality of service.

¹³ Pursuant to a prior ruling, we note that we have already granted a waiver for Verizon PA for Section 63.59(b)(2) related to customer calls to the business office. That waiver is in place until a rulemaking is undertaken. *See Pa. Public Utility Commission, Law Bureau Prosecutory Staff v. Verizon Pennsylvania, Inc.*, Docket No. M-2008-2077881 (Order entered October 12, 2012) at 32-35, Ordering ¶ 4 (Quality of Service Order).

In addition, we found no reason to continue our enforcement of Section 63.65 as this provision was enforceable by other agencies in charge of such standards. Again, the Commission retained its jurisdiction and authority under Section 1501 of the Code to address an allegation that a violation of Federal Communications Commission and/or Occupational Safety and Health Administration workplace safety regulations also violate Section 1501. *Reclassification Order* at 85-87.

With respect to a Section 63.58 (Installation of service), we determined that information on the timing of service installations should be readily available to customers in some form other than a regulation. This will help manage reasonable customer expectations on the subject. Thus, we granted a waiver of Section 63.58 conditioned upon the requirement that Verizon include in its Product Guide applicable to competitive services its rules regarding service installations. *Id.*

In order to maintain certain consumer protections related to service outages during this transition to an unprotected competitive service, we chose to retain the following Regulations: Section 63.55 (Surveillance levels); Section 63.56(f) and (g) (Measurements); and Section 63.57 (Trouble reports). We found these Regulations necessary to assist the Commission in ensuring continued compliance with Section 1501 of the Code and to manage reasonable customer expectations regarding service outages even in a competitive market. *Id.*

Section 63.57(b) language provides sufficient flexibility responding to outage calls that are non-emergency in nature, since Section 63.57(b) expressly permits a utility and its customer to “agree to another arrangement.” That flexibility made sense in a competitive environment, particularly for those customers who have wireless service and may prefer to schedule a repair appointment at a more convenient time than within twenty-four hours of reporting the trouble. *Id.*

**Subchapter F (Extended Area Service)
52 Pa. Code §§ 63.71-63.77)**

**Subchapter G (Public Coin Service)
52 Pa. Code §§ 63.91-63.98**

We waived the following Subchapter F Regulations regarding Extended Area Service: Section 63.71 (Definitions); Section 63.72 (Traffic usage studies); Section 63.72a (InterLATA traffic studies); Section 63.73 (Optional calling plans); Section 63.74 (EAS polls); Section 63.75 (Subscriber polls); Section 63.76 (EAS complaints); and Section 63.77 (Evaluation criteria). We also waived the following Subchapter G Regulations regarding Public Coin Service: Section 63.91 (Purpose); Section 63.92 (Definitions); Section 63.93 (Conditions of service); Section 63.94 (Coin telephone requirements); Section 63.95 (Sufficiency of public telephone service); Section 63.96 (Service requirements for coin telephones); Section 63.97 ([Reserved]); and Section 63.98 (Compliance).

We found the Regulations of Subchapters F and G to be outdated and serving no purpose in today's regulatory environment. Our extended area service Regulations were no longer enforced by the Commission, having been rendered useless in part, by their success, which led to the more expansive local calling, and by the competition that has evolved in the telecommunications market through state and federal statutory changes. *Reclassification Order* at 89-90.

Similarly, the competitive telecommunications market eliminated the need for payphone service in Pennsylvania and throughout the nation. Verizon noted that it no longer provided payphone services in Pennsylvania and that payphones also had been rendered obsolete, particularly due to the proliferation of wireless services across the Commonwealth. *Id.* at 90.

2. Chapter 64

Verizon requested a waiver of the entire Chapter 64 of our Regulations, 52 Pa. Code §§ 64.1-64.213, addressing Standards and Billing Practices for Residential Telephone Service. *Reclassification Order* at 90-103. Chapter 64 contains Regulations pertaining to telephone utility interactions with customers, including billing and payment, credit and deposit, suspension, termination, and restoration of service, and complaint handling among other items. The consumer protections of Chapter 64 were necessary in a monopoly market, but the importance of some of these Regulations had diminished in areas where the competitive market provided sufficient incentive for a company to meet reasonable customer expectations. And again, in waiving certain Chapter 64 Regulations we did not abandon our oversight of billing and collections practices because utilities were still required to abide by Section 1501 of the Code to provide reasonable service. Additionally, we are not precluded from hearing a customer complaint on certain billing-related issues not involving price.

We concluded that some protections may be necessary even in a competitive market. Therefore, we granted, in part, and denied, in part, Verizon's request to waive our Chapter 64 Regulations in those wire centers determined to be competitive.¹⁴

Subchapter A (Preliminary Provisions) 52 Pa. Code §§ 64.1 And 64.2

Section 64.1 is the statement of purpose and policy regarding Chapter 64. Section 64.2 contains definitions. We concluded that most of Section 64.1 remained relevant even in a competitive wire center, so we waived the first sentence but retained the rest of the statement of policy.¹⁵ Section 64.2 was retained to the extent certain provisions

¹⁴ The complete list of our Chapter 64 Regulations for which we granted Verizon a temporary waiver was attached in Appendix E to the *Reclassification Order*.

¹⁵ The sentence waived was the following: "The purpose of this chapter is to establish and enforce uniform, fair and equitable residential telephone service standards governing account payment and billing, credit and deposit practices, suspension, termination and customer complaint procedures."

elsewhere were retained and that retention implicated the definitions contained in Section 64.2.

Subchapter B (Payment and Billing Standards)
52 Pa. Code §§ 64.11-64.24

Subchapter B governs payment and billing. Specifically, we waived the following Subchapter B Regulations as no longer needed in a competitive environment: Section 64.11 (Method of payment); Section 64.12 (Due date for payment); Section 64.13 (Billing frequency); Section 64.14 (Billing information); Section 64.15 (Advance payments); Section 64.16 (Accrual of late payment charges); Section 64.17 (Partial payments for current bills); Section 64.18 (Application of partial payments between past and current bills); Section 64.19 (Rebilling); Section 64.20 (Transfer of accounts); Section 64.21 ([Reserved]); and Section 64.22 (Billing service for interexchange carriers). In granting the waiver, we noted that Verizon's Product Guide, Section 1 Original Sheets 5 and 6, applicable to basic local exchange services in competitive wire centers addressed several of Subchapter B payment-related issues, including method of payment and late payment charges.

We also recognized that Subchapter B included some important consumer protections related to slamming and cramming that remained relevant in a competitive market. Therefore, we retained Section 64.23 (cramming/slamming) obligations.

At the same time, Section 64.24, which addresses preservation of basic local exchange service upon the termination of a bundled package, contained an important consumer protection that remained relevant in a competitive market where there has been a proliferation of bundled service packages. Accordingly, we denied Verizon's waiver request for this specific Regulation.

Subchapter C (Credit and Deposit Standards Policy)
52 Pa. Code §§ 64.31-64.41

Subchapter C governs credit and deposit standards. Specifically, we waived the entirety of Subchapter C Regulations: Section 64.31 (LEC credit and deposit policies); Section 64.32 (Credit standards); Section 64.33 (Payment of outstanding balance); Section 64.34 (Written procedures); Section 64.35 (Deposit requirements for existing customers); Section 64.36 (Method of making deposit); Section 64.37 (Refund of deposits); Section 64.38 (Application of deposit to bills); Section 64.39 (Periodic review); Section 64.40 (Refund statement); and Section 64.41 (Interest).

We recognized that there was value in ensuring that interested customers had access to relevant information about their services, including Verizon's credit and deposit standards. We believed that making this information readily available would help to manage reasonable customer expectations. We took notice of Verizon's Product Guide, which applies to competitive services and specifies that Verizon will use a credit check to determine creditworthiness. To the extent that the Product Guide did not address Verizon's policies and procedures for service to applicants who are not deemed creditworthy, we concluded this information should be added to the Product Guide. We granted a waiver of this Subchapter conditionally upon the requirement that Verizon provide information in its Product Guide concerning the consequences if an applicant for service is not deemed to be creditworthy.

Subchapter D (Interruption and Discontinuation of Service)
52 Pa. Code §§ 64.51-64.53

Subchapter D governs temporary service interruptions and discontinuation of service. Specifically, we waived the following Subchapter D Regulations: Section 64.52 (Refunds for service interruptions) and Section 64.53 (Discontinuance of service). We recognized that Verizon's Product Guide, Section 1 Original Sheet 6, applicable to basic local exchange services in competitive wire centers in both Verizon service territories in

Pennsylvania, addressed refunds for service interruptions and customer-initiated discontinuation of service.

We concluded that Section 64.51, which allows a utility to interrupt service to a customer under emergency conditions and for critical maintenance purposes, should be retained. The Regulation requires utilities to give notice to customers (if possible) and to keep the interruption as short as possible. Even under competitive conditions, local exchange companies must have the ability to interrupt service to perform essential maintenance or repair work, and should make sure that work is done quickly and safely.

Subchapter E (Suspension of Service)
52 Pa. Code §§ 64.61-64.111)

Subchapter E governs grounds for suspension of service and notice procedures prior to suspension of service, including Section 64.61 (Authorized suspension of service); Section 64.62 (Days suspension or termination of service are prohibited); Section 64.63 (Unauthorized suspension of service); Section 64.71 (General notice provisions); Section 64.72 (Suspension notice information); Section 64.73 (Notice when dispute pending); Section 64.74 (Procedures upon customer contact before suspension); Section 64.75 (Exception for suspension based on occurrences harmful to person or property); Section 64.81 (Limited notice upon noncompliance with report or order); Section 64.101 (General provision); Section 64.102 (Postponement of suspension pending receipt of certificate); Section 64.103 (Medical certification); Section 64.104 (Length of postponement); Section 64.105 (Restoration of service); Section 64.106 (Duty of customer to pay bills); Section 64.107 (Suspension upon expiration of medical certification); Section 64.108 (Right of LEC to petition the Commission); Section 64.109 (Suspension prior to expiration of medical certification); and Section 64.111 (Third-party notification).

The Commission waived the following Subchapter E Regulations pertaining to grounds for suspension of service and certain notice procedures: Section 64.61 (Authorized suspension of service); Section 64.63 (Unauthorized suspension of service), *except* for subsection (10) relating to medical certificates; Section 64.72 (Suspension notice information); Section 64.73 (Notice when dispute pending); Section 64.74 (Procedures upon customer contact before suspension); and Section 64.81 (Limited notice upon noncompliance with report or order).

We noted that grounds for suspension and termination of service were addressed in Verizon's Product Guide applicable to competitive services in both service territories in Pennsylvania at Section 1, Original Sheets 4 and 4.1, while termination of service was addressed in Section 29 of the Product Guide.

We retained application of the following Subchapter E Regulations, which we believed remained relevant and should apply in a competitive environment: Section 64.62 (Days suspension or termination of service is prohibited); Section 64.63(10) relating to medical certificates; Section 64.71(General notice provisions); Section 64.75(Exception for suspension based on occurrences harmful to persons or property); and the emergency provisions at Sections 64.101-64.111, given the potential impacts of suspension of service on customers with serious medical conditions.

Subchapter F (Termination of Service)
52 Pa. Code §§ 64.121-64.123)

Subchapter F governs grounds for termination of service and the termination process, including Section 64.121 (Authorized termination of service); Section 64.122 (Unauthorized termination of service when dispute pending); and Section 64.123 (Termination notice).

We waived all provisions in Subchapter F. We concluded that these provisions were no longer necessary in a competitive telecommunications market. However, we did note that Verizon's grounds for suspension and termination of service were addressed in its Product Guide.

Subchapter G (Disputes; Informal and Formal Complaints)
52 Pa. Code §§ 64.131-64.171

Subchapter G governs disputes and the informal and formal complaint procedures. We declined to waive Subchapter G and recognized that customers have a right to file either an informal complaint or a formal complaint with the Commission about their service.¹⁶ We reasoned that maintaining these regulations would ensure that a process remained in place to handle complaints.

Subchapter H (Restoration of Service)
52 Pa. Code §§ 64.181 and 64.182

Subchapter H governs restoration of service, including Section 64.181 (Restoration of service after suspension) and Section 64.182 (Restoration of service after termination).

We waived all provisions in Subchapter H. We concluded that these provisions were no longer necessary in a competitive telecommunications market. We also noted that Verizon's grounds for suspension and termination of service and procedure for restoration were addressed in its Product Guide.

¹⁶ See 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 ([A]ny 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.).

Subchapter I (Public Information; Record Maintenance)
52 Pa. Code §§ 64.191 and 64.192

Subchapter I contains two provisions: Section 64.191 (Public information) and Section 64.192 (Record maintenance). We waived Subsections 64.191(f) and (g)¹⁷ and Section 64.192 as no longer necessary in a competitive environment. However, we retained Subsections 64.191(a)-(d) as these regulatory provisions govern applications for service and specify what the LEC must disclose to a potential customer about its available services. We believed these subparts remained relevant in a competitive environment and was similar to the requirement of fair marketing, which we also required of electric generation suppliers and natural gas suppliers.¹⁸

Subchapter J (Annual Reporting Requirements)
52 Pa. Code §§ 64.201 And 64.202

Subchapter J contains two provisions: Section 64.201 (Reporting requirements) and Section 64.202 (Petition for waiver). We waived parts of Section 64.201 as no longer necessary in a competitive environment but believed that the parts of this Regulation requiring the reporting of certain information related to basic local exchange service remained relevant and should continue to apply in competitive wire centers. Therefore, in competitive wire centers we continued to require Verizon to comply with Section 64.201(a) and the following Section 64.201(b) provisions: (b)(2)(i), (b)(4)(i), (b)(5), (b)(6), (b)(7), (b)(8)(i), (b)(9)(i), and (b)(10)(i). However, all remaining Section 64.201(b) provisions were waived.

Given that we retained some Chapter 64 Regulations, we also retained Section 64.202 as a means to seek waiver due to hardship.

¹⁷ The Commission had previously granted Verizon a waiver of Section 64.191(e) pertaining to toll presubscription based on the same competitive market realities of increasing competition that were the basis for the Petition. *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, made Final Order effective October 6, 2008, by Secretarial Letter dated January 22, 2009).

¹⁸ See, e.g., 52 Pa. Code §§ 54.43(1) and 62.114(1).

Subchapter K (General Provisions)
52 Pa. Code §§ 64.211-64.213

Subchapter K contains three provisions: Section 64.211 (Availability of normal Commission procedures); Section 64.212 (Applications for modification or exception); and Section 64.213 (Repealers). We waived the general provision section allowing customers to pursue other Commission procedures in cases not described in Chapter 64. However, we denied waiver of Sections 64.212 and 64.213 because certain Chapter 64 provisions are retained. Section 64.212, governing waiver requests, and Section 64.213, governing the effect of tariff provisions that are inconsistent, potentially remained useful.

B. Implementation Order Clarifications

As indicated previously, we issued Implementation Orders, in both Tentative and Final forms to clarify certain issues related to the reclassification and implementation of our *Reclassification Order*. Our *Tentative Implementation Order* addressed the following matters: (1) the application of Verizon's Product Guide; (2) Verizon's COLR obligations; (3) the application of reporting requirements in Section 64.201 of our Regulations, 52 Pa. Code § 64.201; and (4) the waiver of Chapter 64's Subchapters E, F and H concerning suspension, termination and restoration of service rules in competitive wire centers, 52 Pa. Code §§ 64.61-111, 64.121-123, and 64.181-182. Through our *Final Implementation Order*, we analyzed the comments filed and addressed the clarifications raised in the *Tentative Implementation Order*.

Legal Status of Product Guide

We held that the Product Guide did not have the force and effect of law as did a tariff. *Final Implementation Order* at 12; *See, e.g., Reclassification Order* at 64. We reasoned that the Product Guide could not take precedence over the Code or the retained Regulations in competitive wire centers. We then clarified the *Tentative Implementation Order* to provide that the final legal authorities to govern informal and formal complaints for customers located in competitive wire centers were as follows:

- (1) Whether Verizon's conduct is reasonable under Section 1501 of the Code, 66 Pa. C.S. § 1501;
- (2) The Regulations retained by the *Reclassification Order*; and
- (3) What is reasonable based on the facts presented in a case in accordance with Section 1501 of the Code, which may include consulting the Product Guide for any guidance that it may offer on whether Verizon's conduct is reasonable.

Final Implementation Order at 13. We clarified that, regardless whether a Regulation or applicable provision of the Product Guide applied, a utility's conduct in a consumer complaint case would always be subject to review for compliance with Section 1501 of the Code. *Id.*

Advance Filing Requirement for the Product Guide

In the *Final Implementation Order*, we required Verizon to file a copy of its Product Guide applicable to basic local exchange service, including all future changes, with Commission Staff and directed Verizon to provide such copies on or before their effective date. We concluded that the Product Guide should be treated consistent with, if not less burdensome than, our statutorily-authorized treatment of price lists for basic local exchange service. With respect to potential conflicts with Verizon's statutorily-based COLR obligation, the Product Guide governs in competitive wire centers only when it does not conflict with the Code or with Commission Regulations retained in competitive wire centers. If there was a conflict, the Code or Regulations controlled.

Carrier of Last Resort Obligations

Designating certain wire centers as competitive did not affect Verizon's COLR obligation. We determined that the statutorily-based COLR obligation remains and cannot be contractually removed or abandoned. *Tentative Implementation Order* at 7-8.

Section 64.201 Reporting

In adjusting reporting requirements, we waived some Section 64.201 residential account data reporting requirements in competitive wire centers but retained others in those wire centers based on the belief that we would keep in place certain of the Section 64.201 reporting requirements that could assist us with assessing the impact of the reclassification on stand-alone basic local telephone service rates in competitive wire centers. *Tentative Implementation Order* at 8.

In the *Final Implementation Order*, we modified our proposal in the *Tentative Implementation Order* and limited our waiver of the reporting requirements in 52 Pa. Code § 64.201 to the 153 wire centers that were determined to be competitive classification. *Final Implementation Order* at 26-28. In our *Tentative Implementation Order*, we also proposed that certain information be reported in light of the Commission's waiver. The Commission proposed that each Verizon Company continue to report all information required under Section 64.201 except for the information set forth under Section 64.201 (b)(2)(ii)-(iv), (b)(4)(ii)-(iv), (b)(5), and (b)(8)-(11). *Tentative Implementation Order* at 8.

In the wire centers determined to be competitive, we held that the reporting of information beyond basic service under the retained subparts of Section 64.201(b) would not gather the information necessary to evaluate the affordability of basic service as prescribed in Ordering Paragraph No. 15 of the *Reclassification Order*.

While the scope of that case did not permit us to extend a waiver of the reporting requirements to other wire centers, we invite comment on the issue in this docket.

Suspension/Termination/Restoration of Service Rules in Competitive Wire Centers

For competitive wire centers, we determined in our *Reclassification Order* that Subchapters F and H of Chapter 64 governing termination and restoration of service as well as parts of Subchapter E governing suspension of service, including Section 64.72 governing suspension notice information, would be waived. However, Section 64.71 was not waived, and this Regulation requires Verizon to provide seven days' advanced written notice to the customer prior to suspending service.¹⁹ The Commission also did not waive Section 64.75 (Exception for suspension based on occurrences harmful to person or property)²⁰ and Section 64.62 (Days suspension or termination of service are prohibited). *Tentative Implementation Order* at 9-10.

Rather than a two-tier notification process (a notice prior to suspension and a notice prior to termination), we intended to create a one-tier notification process:

Upon further review, we find that it is necessary to provide guidance on the implementation of the one-tier notification process in competitive wire centers. First, Verizon is required to provide at least thirty days' advanced notice to the Commission, in writing, prior to implementing the one-tier advanced written notice process applicable to suspension/termination of service in competitive wire centers. As part of this advanced notice to the Commission, Verizon must provide the relevant details regarding how it intends to implement the one-tier notification process, including the date that the one-tier notification process is to take effect and a copy of the written notice to be provided to customers. Until such a filing is made and is effective, Verizon shall follow the

¹⁹ Section 64.71 requires a LEC to provide seven days' advanced written notice to the customer prior to suspending service unless the grounds for the suspension is failure to comply with the material terms of a payment agreement for toll or non-basic telephone service, or both. If this exception applies, the LEC must comply with Section 64.81 (relating to limited notice upon noncompliance with report or order). However, the Commission in the *Reclassification Order* waived Section 64.81 in competitive wire centers. In furtherance of the Commission's intent, we clarify that the retention of Section 64.71 is limited to the first sentence only: "The LEC shall mail or deliver written notice to the customer at least 7 days before the date of proposed suspension regardless of the grounds upon which suspension is sought."

²⁰ Under Section 64.75 of the Commission's Regulations, which was also retained in competitive wire centers, no written notice is required if the suspension and/or termination of service is based on a safety issue.

existing two-tier suspension/termination process in competitive wire centers.

Additionally, we clarify the following in connection with the customer notice requirements for the one-tier notice process available in competitive wire centers:

- (1) The advanced written notice must advise the customer that once service has been suspended for at least five days, service may be terminated without any additional notice being provided. We add this requirement as a condition to waiving Subchapter F and parts of Subchapter E in Chapter 64 for competitive wire centers.
- (2) The advanced written notice must include, at a minimum, the reason for the proposed suspension/termination, the amount the customer must pay to avoid suspension/termination (if applicable), the earliest date that service will be affected, and information where the customer can contact Verizon about the matter to discuss avoiding suspension/termination. The advanced written notice also must include language that is the same or substantially similar to the language appearing in the medical emergency notice in Appendix A of the Commission's Chapter 64 Regulations. The Commission adds these requirements as a condition to waiving Section 64.72 and Sections 64.121-64.123 of its Regulations.

To resolve any ambiguity that may arise, we make the following additional clarifications regarding the one-tier notice process available in competitive wire centers:

- (1) When a LEC suspends service for nonpayment prior to the expiration of a

medical certificate, Section 64.109 requires the LEC to follow the suspension notice procedures at Sections 64.71-74 of the Commission's Regulations. Because Sections 64.72 through 63.74 [sic] have been waived in competitive wire centers, the Commission clarifies that when suspending service under Section 64.109 in competitive wire centers, Verizon must comply with Section 64.71 and the requirements established in a final Order resulting from this Tentative Order.

- (2) Prior to Verizon suspending stand-alone basic local telephone service in a competitive wire center in accordance with Section 64.24(c) of the Commission's Regulations, bundled bill customers are to receive the same notice as stand-alone basic local exchange customers.

Final Implementation Order at 30-31.

We invite comments whether a similar process could work for all suspension/termination notifications.

IV. ADDITIONAL WAIVERS OF CHAPTERS 53, 63 AND 64 REGULATIONS

In addition to the waivers granted within the context of Verizon Reclassification Petition, the Commission has granted various waivers to several carriers over the years, including for certain provisions of Chapter 53 of our Regulations. Many of these carriers sought permanent waivers. Although permanent waivers were not granted, the Commission suggested rule changes could be made, eventually. Indeed, in several instances, these waivers were granted until such time as the Commission examined Chapters 63 and 64 and amended its rules.

Carriers that now enjoy these waivers are invited to propose amendment or removal of specific regulations. These carriers may make their cases for permanent rule changes in their comments at this docket.

V. COMMENTS

The Commission issues this Advanced Notice of Proposed Rulemaking primarily to seek input on what the Commission's Chapter 63 and Chapter 64 Regulations should look like, going forward, which should help the Commission in preparing proposed revised Regulations applicable to competitive and noncompetitive wire centers.

The obvious regulatory impact of reclassification is that we now have competitive wire centers as well as wire centers that remain noncompetitive, and certain regulations may no longer be necessary in a competitive market. Therefore, we seek comments on any waiver of a Chapter 63 or 64 Regulation currently granted, including whether the waivers should be made permanent via the rulemaking process in any wire center in Pennsylvania for which basic local exchange service has been determined to be competitive pursuant to Section 3016(a) of the Code or is so determined under applicable law.

In addition, the Commission has retained, and will continue to retain, existing regulations that remain pertinent to and necessary for noncompetitive wire centers. However, some of these Regulations may be outdated or obsolete. Therefore, we invite comments whether any of our Chapter 63 and 64 Regulations not waived and that continue to be applicable in noncompetitive wire centers should be amended or rescinded.

One possible approach to addressing these competitive and noncompetitive wire centers is for the Commission to create a separate chapter to address local exchange telephone service for competitive versus noncompetitive wire centers. Under this

approach, existing chapters could be retained to reflect retail service in noncompetitive wire centers, except, again, for any Regulations we have found or may find to be outdated or obsolete as part of this rulemaking. We adopted a similar approach in our implementation of our Chapter 14 Regulations. *See, e.g.*, 52 Pa. Code § 56.1 (Statement of purpose and policy). The Commission invites comment supporting this approach.

We also invite interested parties to propose for consideration any reasonable alternative Regulations or regulatory structure/scheme for competitive and noncompetitive wire centers other than those proposed in this Advance Notice.

We note that the Commission is seeking comments on this matter from all telecommunication utilities that may be subject to these subchapters and any other interested parties, particularly in light of any current or recent proceedings, including those that addressed waivers outside the context of the Verizon Petition proceeding.

Finally, we invite interested parties to offer proposed language for our consideration in drafting any revised or new regulatory provisions.

VI. CONCLUSION

Following careful review and consideration of the comments received in response to this Advance Notice, the Commission intends to issue a formal Notice of Proposed Rulemaking with proposed revised Regulations.

This is an Advanced Notice of Proposed Rulemaking Order and is in addition to the normal rulemaking procedures for publication and comment established under the Commonwealth Documents Law, 45 P.S. §§ 1201, *et seq.* Accordingly, pursuant to Sections 501, 504, 505, 506, 1301, and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501, 504, 505, 506, 1301, and 1501, and the Commonwealth Documents Law, 45 P.S. §§ 1201, *et seq.*, and the Regulations promulgated thereunder; **THEREFORE,**

IT IS ORDERED:

1. That an Advanced Notice of Proposed Rulemaking is hereby instituted at this docket to consider revisions of the Regulations primarily appearing in 52 Pa. Code Chapters 63 and 64, relating to telephone service and standards and billing practices for residential telephone service.
2. That the Secretary shall duly certify this Advance Notice and deposit it with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
3. That written comments referencing Docket No. L-2018-3001391 be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265, while written reply comments referencing Docket No. L-2018-3001391 be submitted within 90 days of publication in the *Pennsylvania Bulletin*. Comments and reply comments may also be filed electronically through the Commission's e-File System.
4. That this Order proposing to revise the Regulations appearing in Title 52 of the Pennsylvania Code Chapters 63 and 64 (relating to Telephone Service and Standards and Billing Practices for Residential Telephone Service), be served on all jurisdictional incumbent local exchange carriers and competitive local exchange carriers, the public advocates, and all parties to the proceeding captioned *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.
5. That a copy of this Advance Notice shall be posted on the Commission's website.

6. The contact persons for this matter are Melissa Derr, Bureau of Technical Utility Services, (717) 783-6171, mderr@pa.gov; and Terrence Buda, Law Bureau, (717) 783-3459, tbuda@pa.gov.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being the most prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 12, 2018

ORDER ENTERED: July 12, 2018