



McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

**Kenneth R. Stark**  
Direct Dial: 717.237.5378  
Fax: 717.237.5300  
kstark@mcneeslaw.com

February 9, 2024

**VIA ELECTRONIC FILING**

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

**RE: In the Matter of Rulemaking to Amend 52 Pa. Code §§ 63.161-63.171 (relating to Universal Service); Advanced Notice of Proposed Rulemaking  
Docket No. L-2023-3040646**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission are the Initial Comments of The Broadband Communications Association of Pennsylvania in the above-referenced matter.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads 'Kenneth R. Stark'.

Kenneth R. Stark  
MCNEES WALLACE & NURICK LLC

c: Colin W. Scott, Esq. (via colinscott@pa.gov)  
Christopher F. Van de Verg, Esq. (via cvandeverg@pa.gov)  
Spencer Nahf (via snahf@pa.gov)  
Karen Thorne, RRA (via kathorne@pa.gov)  
ra-pcpcregreview@pa.gov

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of	)	L-2023-3040646
Rulemaking to Amend 52 Pa. Code	)	
§§ 63.161-63.171 (relating to Universal Service);	)	
Advanced Notice of Proposed Rulemaking	)	

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**INITIAL COMMENTS OF  
THE BROADBAND COMMUNICATIONS ASSOCIATION OF PENNSYLVANIA**

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**I. INTRODUCTION**

The Broadband Communications Association of Pennsylvania (“BCAP”) is an association of broadband cable operators, equipment suppliers, and programmers that provide broadband communications services in every Pennsylvania County. BCAP appreciates the opportunity to comment on the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Advance Notice of Proposed Rulemaking (“ANOPR”) in the above-referenced proceeding concerning Universal Service.

Nascent and significant federal broadband infrastructure programs will impact the need for high-cost funding, including where and how much funding may be needed, if at all. The PUC should not make policy decisions without knowing the impact of these programs. BCAP respectfully submits that the PUC should therefore suspend this proceeding until the impact of the federal programs can be fully assessed.<sup>1</sup> Adopting reforms in the current environment would be impractical given the difficulty of identifying the proper locations for such support.

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<sup>1</sup> Importantly, the issuance of an ANOPR does not bind or commit the Commission to proceed to the Notice of Proposed Rulemaking phase of the Administrative Rulemaking Process. The ANOPR is a mechanism used by some agencies to provide notice of a new proposed regulation

The Commission should carefully assess the impact of existing federal and state broadband deployment programs on the Pennsylvania Universal Service Fund’s (“PA USF”) supported services, as well as *all* revenues received and costs incurred by PA USF recipients in determining need and funding for any PA USF distributions. Once fully implemented, the various programs may obviate the need for continuing the PA USF, or reshape the telecommunications landscape to such an extent that it would require a wholesale reframing of the questions posited in the ANOPR.

**II. CHANGED TECHNOLOGIES AND CHANGED SUPPORT SOURCES MAKE SIGNIFICANT REFORMS IMPRACTICABLE UNTIL THE IMPACT OF THAT SUPPORT IS BETTER UNDERSTOOD.**

As the Commission noted in the ANOPR, the past three decades have seen enormous changes in the competitive and regulatory landscape underlying the objectives of both state and federal universal service programs. The models for intercarrier compensation – the former source of funding universal service – have evolved significantly. More importantly, however, the competitive and technological landscape for voice communications is almost unrecognizable compared to what it was at the turn of the 21<sup>st</sup> century. Plain old telephone service (“POTS”) delivered over low-bandwidth copper facilities – the bulk of assessable intrastate telecommunications services under both Pennsylvania and federal law – was the predominant method for voice communication at the turn of the century. Since that time, consumers and providers alike have migrated to different technologies.

Critically, billions of dollars of federal support and private investment are currently targeted to bring high-speed internet to unserved and underserved Pennsylvanians. Most of this

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and welcome public comment; however, the ANOPR is not part of the formal rulemaking process under the Regulatory Review Act. *See generally* Commonwealth Documents Law, 45 P.S. § 1201, *et seq.* (last accessed Feb. 9, 2024)

<https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1968/0/0240..PDF>

broadband funding has not yet been received by the Commonwealth nor committed to any particular projects with just a small amount in the process of being distributed by the Pennsylvania Broadband Development Authority and local governments. For example, the Federal Communications Commission's ("FCC") Rural Digital Opportunity Fund ("RDOF") program is investing \$368 million to support winning providers' investments in gigabit-class fiber internet service and reach 184,505 previously unserved locations in the Commonwealth.<sup>2</sup> The Broadband Infrastructure Program ("BIP"), funded pursuant to the Coronavirus Capital Projects Fund ("CPF") program of the American Rescue Plan Act ("ARPA"), is providing \$200 million targeting rural locations in the Commonwealth locations that do not have access to broadband with speeds of at least 25 Mbps download and 3 Mbps upload. Pennsylvania is also slated to receive \$1.16 billion in Broadband Equity, Access, and Deployment ("BEAD") Program funds which will be used to provide broadband to unserved and underserved locations across the Commonwealth. In addition, small incumbent local exchange carriers in Pennsylvania are receiving more than \$5 million annually to support the deployment of broadband to unserved locations at speeds of 100 Mbps x 20 Mbps through the FCC's Enhanced Alternative Connect America Model ("Enhanced A-CAM") support.<sup>3</sup> Each of these programs involves or requires significant private investment to support or "match" federal funding support, so the total ongoing investment in rural broadband is significantly higher than the nearly \$2 billion in support programs identified above.

With all this investment, every home in Pennsylvania should soon have robust internet service without any additional federal and/or state subsidies required. Indeed, the BEAD

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<sup>2</sup> <https://docs.fcc.gov/public/attachments/DA-20-1422A3.pdf> (last accessed Feb. 9, 2024).

<sup>3</sup> <https://www.fcc.gov/document/fcc-announces-e-acam-support-expand-broadband-rural-communities> (last accessed Feb. 9, 2024).

program requires Pennsylvania to develop a plan for its BEAD funding that connects every home with high-speed internet service.<sup>4</sup> The majority of these connections will be wireline, with the remainder primarily consisting of fixed wireless services. And the vast majority of the newly supported wireline infrastructure will be fiber-to-the-home. Voice services will be available to all the households connected with these wireline and wireless networks. Successful use of RDOF, Enhanced A-CAM, CPF, BEAD, and other state/local funding for rural broadband deployment will completely change the analysis regarding the need for and cost of high-cost funds.

If, as trends suggest, and a high percentage of households that receive broadband through RDOF, Enhanced A-CAM, CPF and BEAD projects drop traditional wireline voice, demand for a state USF will further decrease. By waiting to more fully understand the impact of these funding programs, it will be easier to determine any remaining need for high-cost support – which promotes efficiency with limited support funds.

Fairness also dictates limiting or reducing existing financial burdens imposed on telephone customers as a result of the USF surcharge. Currently the PUC is prohibited under 52 Pa. Code § 63.162 from requiring contributions from wireless providers. Wireless providers are increasingly the 3<sup>rd</sup>, 4<sup>th</sup>, and sometimes 5<sup>th</sup> last mile alternative for broadband customers. Moreover, as of 2021, there were more than 13.7 million wireless subscriptions in Pennsylvania. In contrast, Pennsylvania has about 2.3 million households using landline voice – Voice over

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<sup>4</sup> *Notice Of Funding Opportunity Broadband Equity, Access, And Deployment Program*, National Telecommunications and Information Administration, May 13, 2022, p. 38, accessible at <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>, (each state “must ensure it has a plan for serving all unserved and (whether it has sufficient funding) underserved locations”) (last accessed Feb. 9, 2024).

Internet protocol (“VoIP”) and POTS – with just 608,000 of those being POTS lines.<sup>5</sup> This disparity continues to grow: FCC estimates for 2022 indicate a further decrease to 570,000 POTS lines.<sup>6</sup> Having so many subscribers exempt from contributing to the state USF exacerbates the financial burden on wireline/POTS customers.

BCAP does not, however, advocate for wireless providers to contribute to the PA USF. The far better solution is to ramp down PA USF surcharges from all providers and not find new revenue sources for universal service programs given that they may not be needed following the influx of federal support described above.

In addition, BCAP members believe that Carrier of the Last Resort (“COLR”) / Provider of the Last Resort (“POLR”) obligations as well as the definition of and reliance on Eligible Telecommunications Carrier (“ETC”) status will evolve significantly after ubiquitous broadband deployment is achieved. In locations where robust broadband is available, voice and wireless services offerings from a number of providers, using a variety of technologies, make both traditional COLR and POLR obligations, and the support for those obligations, unnecessary.<sup>7</sup> The extent and direction of these changes and future needs cannot be accurately measured now, however, because a majority of the funding from the RDOF, Enhanced A-CAM, ARPA, and BEAD programs remains to be spent and deployed.

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<sup>5</sup> See “Voice Telephone Services: Status as of Dec. 31, 2021”, at p. 12, Federal Communications Commission (Aug. 2023), available at [DOC-396136A1.pdf \(fcc.gov\)](#) (last accessed Feb. 4, 2024).

<sup>6</sup> *Voice Telephone Services: Status as of June 30, 2022*, FCC Industry Analysis Division, August 2023, accessible at <https://docs.fcc.gov/public/attachments/DOC-396138A1.pdf> (last accessed Feb. 9, 2024).

<sup>7</sup> In addition, the costs and revenues for high-bandwidth fiber and wireless networks that primarily deliver jurisdictionally interstate services such as broadband internet access service are not well-recognized or allocated by current state or federal universal service programs.

### III. CONCLUSION

It is critical that the Commonwealth adopt policies that synchronize with what are still nascent and significant broadband funding programs (like BEAD, ARPA, RDOF, and Enhanced A-CAM) and federal regulatory policies to achieve a coordinated and unified policy in Pennsylvania. BCAP urges the Commission to await the outcome of the RDOF, Enhanced A-CAM, ARPA, and BEAD distribution, so that both the parties and the Commission will be able to reasonably assess the actual market landscape. As the PUC has noted in this ANOPR (at p. 31-32), there are times – whether it be state legislative efforts or pending FCC reform proceedings – when it is simply “futile” to move forward on amending its universal service regulations. In light of the RDOF, ARPA, Enhanced A-CAM, and BEAD distribution and other economic and regulatory uncertainties, this is also such a time.

BCAP appreciates this opportunity to comment and reserves its right to respond to comments filed and issues raised in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By.  \_\_\_\_\_

Kenneth R. Stark (I.D. No. 312945)

Ryan Block (I.D. No. 334653)

McNees Wallace & Nurick LLC

100 Pine Street

Harrisburg, PA 17108-1166

Phone: 717.232.8000

Fax: 717.237.5300

kstark@mcneeslaw.com

rblock@mcneeslaw.com

*Counsel to The Broadband Communications Association of Pennsylvania*

Dated: February 9, 2024

## VERIFICATION

I, Todd Eachus, state that I am the President of Broadband Communications Association of Pennsylvania (the “Association”); that I am authorized to make this Verification on behalf of the Association; that I have read the foregoing document; that any statements in the foregoing document with respect to the Association, except as otherwise specifically attributed, are true and correct to the best of my knowledge, information, and belief; and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: February 7, 2024

A handwritten signature in black ink, appearing to read "Todd Eachus". The signature is stylized with a long horizontal line extending to the left and a large, looped "E" at the end.

Todd Eachus, President

*Broadband Communications Association of Pennsylvania*