

COMMONWEALTH OF PENNSYLVANIA



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February 9, 2024

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

Re: Rulemaking to Amend 52 Pa. Code §§
63.161— 63.171 (relating to Universal
Service); Advanced Notice of Proposed
Docket No. L-2023-3040646

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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

Dated this 9th day of February 2024.

SERVICE BY E-MAIL ONLY

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**OFFICE OF CONSUMER ADVOCATE
COMMENTS**

I. INTRODUCTION

On November 11, 2023, the Pennsylvania Public Utility Commission’s (PUC or Commission) Advance Notice of Proposed Rulemaking (ANOPR) regarding the future purpose, design, and support for the Pennsylvania Universal Service Fund (Pa USF) was published in the Pennsylvania Bulletin.¹ Through the ANOPR, the Commission invites comments on how to reform the Pa USF to “reasonably and effectively transition” the existing Pa USF program “in a manner that promotes competitive neutrality and affordable rates for telecommunications services.”² The PUC’s goal is a functional, competitively neutral universal service program that supports the statutory directives of the Public Utility Code, PUC policy, and federal law.³

The ANOPR Appendix A questions open the door to consideration of a wide range of possible changes as to the purpose, operation, and funding of the future Pa USF program. Statements by Chairman Steven M. DeFrank and Commissioner John F. Coleman, Jr. focus on updating the concept of “basic universal service” in today’s world and other aspects of whether the Pa USF should continue and if so, then for what purpose.

¹ 53 Pa.B. 7005.

² 53 Pa.B. at 7015

³ 53 Pa.B. at 7015.

The Office of Consumer Advocate (OCA) welcomes the opportunity to provide Comments on how to advance universal service for the benefit of Pennsylvania consumers. The OCA recommends that the Commission continue the Pa USF and preserve the focus on promoting affordability. The OCA comments on the definition of “basic universal service” and what it means today. Amendments to certain Pa USF regulations are needed, to conform with current Chapter 30 terms. Consistent with the OCA’s January 2011 Answer to the Pennsylvania Telephone Association (PTA) Petition in Docket No. P-2010-2217748, the OCA supports inclusion of interconnected voice-over-internet-protocol (VOIP) providers and wireless providers as contributors. The OCA’s Comments address the Commission’s authority, under federal and state law, to proceed.

The OCA will not comment at this time on some topics raised in the ANOPR Appendix A Questions. For example, federally funded initiatives such as the Rural Digital Opportunity Fund (RDOF) or Broadband Equity Access and Deployment Program (BEAD) weigh against redirecting the Pa USF to provide high-cost support.⁴ In the OCA’s view, the Pa USF should promote the universal service goal of affordability, rather than prioritize infrastructure deployment. The OCA will also reserve comment on matters related to competitive impacts, Pa USF administrative processes, the method for identifying assessment obligations, and the like.⁵ The OCA will consider the record developed by other parties on these topics.

⁴ See, e.g., Questions 4, 7, 9, 12, 13, 53 Pa.B. at 7016-7017. Pennsylvania is expected to receive over \$1.16 billion from the BEAD program, according to the Department of Community and Economic Development (DCED). <https://dced.pa.gov/programs-funding/broadband-in-pennsylvania/infrastructure-investment-and-jobs-act/broadband-equity-access-and-deployment-bead/>.

⁵ See, e.g., Questions 15, 17, 22-27, 53 Pa.B. at 7017-7018; see also, Commissioner Coleman Statement.

II. COMMENTS

A. The Future Pa USF Should Promote Affordability of Basic Universal Services

The OCA's primary recommendation is that the Pa USF continue to provide support for the current rural local exchange carrier (RLEC) recipients to help assure the affordability of local exchange services provided to residential consumers in their rural service areas. The \$33-34 million in annual support distributed to the RLECs is a significant amount in aggregate.⁶ The OCA is not aware of any factual record at present that the individual RLEC recipients would be able to continue to provide reasonable and adequate service, without significant rate increases for protected and other local exchange services, if current Pa USF support should end. Thus, the need for continued state Pa USF support remains. RLEC recipients include RLECs subject to either price cap or simplified ratemaking under Chapter 30 Plans, as well as one RLEC subject to Chapter 13 ratemaking.⁷ The OCA's primary recommendation recognizes the carrier of last resort (COLR) obligations of the RLEC recipients.⁸

In the alternative, if the Commission believes that the funds should be directed to other purposes, OCA recommends that the Pa USF still advance the universal service goal of

⁶ *Pennsylvania Universal Service Fund Rate Adjustment*, Docket No. M-00001337, Order at 5 (Dec. 7, 2023).

⁷ *In Re: the Broad Band Cable Assoc. of PA (Tunnell) v. Pa PUC*, OOR Docket No. AP-2015-2619 (Order entered Dec. 28, 2015), PUC release of records, Jan. 27, 2016 (PUC-RTK 2015-0092), Att. A. The OCA reviewed the public list of RLEC recipients of Pa USF support, as of 2016. Of the listed RLECs, Citizens Telephone Company of New York obtained a waiver of the original Chapter 30 Plan obligation in November 1999 and remains subject to Chapter 13 ratemaking.

⁸ 66 Pa.C.S. § 1501; 47 U.S.C. § 214(e). ILEC COLR obligations are for the convenience of the public and interconnected telecommunications carriers, throughout the ILEC's service area, and include service quality requirements and public safety obligations, and telecommunications carrier connectivity requirements governed by both Pennsylvania and federal law. *Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification*, Dockets P-2014-2446303, P-2014-2446304, Order at 7, 60-61 (Mar. 4, 2015) (*Reclassification Order*), accord, *Final Implementation Order* (Sept. 11, 2015). See also, *Rulemaking to Comply with the Competitive Classification of Telecommunication Retail Services*, Docket No. L-2018-3001391, Final Rulemaking Order at 54-55 (Dec. 9, 2021), 52 Pa.B. 5043 (Section 1501 and obligation to connect customers).

See also, *Petition of DRIVE for a Declaratory Order Regarding the Expansion of its Community Broadband Network*, Docket No. P-2021-3025296, Order at 22 (Aug. 2, 2023) (*DRIVE Order*), (PUC described Section 3014(h)(2) as imposing a "POLR/COLR" obligation on Chapter 30 Plan ILECs to provide broadband within 10 business days of a request).

affordability but focus on improving affordability and access for low-income Pennsylvania households through direct grants. The federal Lifeline universal service program currently provides support to make voice and/or broadband services more affordable for eligible low-income households. The federal Affordable Connectivity Program (ACP) has arguably had even greater impact in the short time of its existence in improving the affordability of broadband service for Pennsylvania households.⁹ Under this OCA alternative, the PUC could refocus the Pa USF to advance affordability of basic universal services – voice or voice and broadband internet access services – for low-income household subscribers on a more individualized basis rather than on a systemic basis. This change in focus of the Pa USF could advance or complement the Commonwealth’s proposed digital equity goals as developed through the Pennsylvania Broadband Development Authority’s (PBDA) current draft Digital Equity Plan which includes the goal of increased enrollment in the ACP.¹⁰

A pivot so the Pa USF may provide support more like the ACP would bolster affordability and access as the FCC has recently announced a freeze on ACP enrollments and a plan to wind down the ACP program, in the absence of new federal funding.¹¹ While the federal ACP advances goals typically within the scope of federal and state universal service policy, the federal ACP is dependent on federal appropriations of funding. A redirection of the Pa USF to promote affordability and access by Pennsylvania low-income households to voice or voice and

⁹ See generally, the FCC’s home page for the ACP at <https://www.fcc.gov/affordable-connectivity-program> . The FCC has compiled information about ACP enrollment as of January 31, 2024 by geographic areas (states, counties, Congressional districts). See, *FCC Chairwoman Highlight’s Next Week’s Enrollment Freeze for Nation’s Largest Broadband Affordability Program* (rel.Feb. 1, 2024), available at <https://docs.fcc.gov/public/attachments/DOC-400238A1.pdf>. The FCC research is available at <https://www.fcc.gov/reports-research/maps/total-ebb-acp-support-by-geographic-region/>.

¹⁰ Pennsylvania Broadband Development Authority, *Connected and Empowered: A Digital Equity Plan for the Commonwealth of Pennsylvania*, November 2023 Draft at 7, 20-22, 38, 43-44. (Digital Equity Plan Draft). Available at <https://dced.pa.gov/download/pbda-digital-equity-plan/?wpdmdl=122633&refresh=65c3aaf56c1171707322101>

¹¹ See fn. 3, supra. See also, *In the Matter of Affordable Connectivity Program*, WD Docket No. 21-450, Order (rel. Jan. 11, 2024).

broadband services would provide a stable source of funding, to advance Pennsylvania universal service goals.

To implement this OCA alternative, the Commission may need to draw a clear line between the Pa USF low-income support initiative and the federal supported Lifeline program or, in the alternative, seek amendment of Section 3019(f).¹² Section 3019(f) memorializes the obligations of all Pennsylvania Eligible Telecommunications Carriers (ETCs) to promote and provide the federal Lifeline discount to eligible subscribers.¹³ Section 3019(f)(5) precludes any requirement that an ETC provide “any new Lifeline service discount that is not fully subsidized by the Federal Universal Service Fund.”¹⁴ To avoid conflict with Section 3019(f)(5), direct or by implication, the Commission could identify the class of service providers eligible for reimbursement from the Pa USF independent of ETC designation, if a reimbursement model is adopted. The OCA acknowledges that once the Commission commits to this new focus of the Pa USF on improving affordability and access for low-income households, there would be many other details to work out.

The OCA’s recommendation that the Commission focus the future Pa USF on the universal service goal of affordability is grounded in Section 3011.¹⁵ Through Section 3011, the Commonwealth encourages the deployment of broadband facilities, availability of advanced services, delivery of technological advances and new services to improve the quality of life for all Commonwealth residents, promote competition on equal terms, while maintaining universal telecommunications service at affordable rates and assuring customers pay only reasonable

¹² 66 Pa.C.S. § 3019(f).

¹³ Id.

¹⁴ 66 Pa.C.S. § 3019(f)(5).

¹⁵ 66 Pa.C.S. § 3011. Section 63.161, Statement of Purpose and Policy, refers to the earlier Section 3001 policy goals of the original Chapter 30. See, 52 Pa. Code § 63.161. The Section 3001(1) and (2) goals are largely carried forward in part in today’s Section 3011(2) and (3) provisions.

charges for protected services at affordable rates.¹⁶ Both the OCA’s primary recommendation and alternative, forward-looking recommendation to focus Pa USF support on assistance to low-income consumers would advance the Commonwealth’s interest in the continued affordability of services, as “universally available, state-of-the-art, interactive broadband telecommunications networks” are deployed and new services that improve the quality of life for Pennsylvanians become available.¹⁷

B. Updating the Basic Universal Service Concept

Chairman DeFrank and Commissioner Coleman both flagged the need to reassess what is “basic universal service” in today’s world. Chairman DeFrank’s statement references the dual policy goals in Section 3011(2), “to maintain universal telecommunications service at affordable rates while encouraging the ... deployment of a universally available, state-of-the-art interactive broadband telecommunications network in rural, suburban and urban areas.”¹⁸ The ANOPR also asks whether the Commission’s basic universal service concept should align with federal universal service goals or concepts.

The OCA agrees that the Commission should provide in the final rulemaking order an updated description of what is encompassed by the “basic universal service” concept. The ANOPR’s review of telecom history notes the PUC identified in 1995 a list of basic universal service components such as local calling, directory listing, touchtone, access to emergency services.¹⁹ While the Commission acknowledged that list in the Pa USF rulemaking, the Commission opted to define “basic universal service” in Section 63.161 to allow flexibility. The OCA recommends that the Commission mirror that approach.

¹⁶ 66 Pa.C.S. § 3011(1), (2), (3), (4), (5), (6), (8).

¹⁷ *Id.*

¹⁸ Chairman DeFrank Statement, citing 66 Pa.C.S. § 3011(2); see, 52 Pa. Code § 63.161, citing 66 Pa.C.S. § 3001(1)(repealed).

¹⁹ 53 Pa.B. at 7007.

Basic universal service is currently defined as “[a]n evolving set of telephone services, as defined by the Commission, which represents the set of services essential for a resident of this Commonwealth to participate in modern society at any point in time.”²⁰ Retail customers subscribe for “basic universal service” from telecommunications companies labelled in the current Pa USF regulations as a “local service provider.”²¹

The OCA recommends that the Commission provide, in its future rulemaking order, updated examples of the components of basic universal service, with regard to both the voice and broadband internet access services made possible by pursuit of the Commonwealth’s Section 3011(2) goal of a ubiquitous “interactive broadband telecommunications network.”²²

Within the telecommunications service category, Chapter 30 defines “protected services” for end users as “(1) Service provided to residential consumers or businesses provided that is necessary to complete a local exchange call. (2) Touch tone service... (5) Ordering, installation, restoration and disconnection of these services.” Access to 911 and related public safety services continue as a necessary part of the basic universal service concept, regardless of the communications technology – wireline, wireless, or IP-enabled - at either end of the call. The other components of basic local service from the Commission’s 1995 list, such as a directory listing and access to operator services, are more particular to the monopoly environment and local exchange service of that time.

The FCC’s summary of federal universal service goals for broadband should also be acknowledged by the Commission’s updated description of basic universal service in a final rulemaking order. The FCC’s *Future of the USF Report* to Congress addresses universal service goals established by statute and further identified by the Infrastructure Investment and Jobs Act

²⁰ 52 Pa. Code § 63.162.

²¹ *Id.*

²² 66 Pa.C.S. § 3011(2).

(IIJA) specific to broadband.²³ The FCC updated its universal service goals for broadband to include “universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States....”²⁴ The FCC emphasized that some of these universal service goals for broadband would be advanced by IIJA funding, while current USF programs established under Section 254 would also support the goals of affordability, adoption, equitable access, and additional support for infrastructure deployment.²⁵

The OCA expects that the Commission’s final description of the elements of “basic universal service” will be influenced by further FCC developments, the PBDA’s final Digital Equity Plan as well as the PBDA’s priorities in distribution BEAD funding for infrastructure and improved broadband availability. As part of the Commission’s review and revision of the Pa USF regulations and program, the OCA supports expanding the “basic universal service” concept to encompass the evolving needs of consumers, with less emphasis on the “telecommunications” platform.

C. The Commission Should Continue to Prohibit Recovery of Pa USF Contributions from End-Users

The current Pa USF regulations address affordability in another important way that should be preserved in any future Pa USF regulations and program. Section 63.170 prohibits the imposition of an end-user surcharge by telecommunications providers to recover Pa USF contributions.²⁶ This is a critical consumer protection for customers of all contributing providers. The purpose of the Pa USF is to maintain affordability of local service for RLEC customers while encouraging greater competition.²⁷ Shifting ultimate cost responsibility to end-

²³ Report to Congress on the Future of the Universal Service Fund, WC Docket No. 21-476 (rel. Aug. 15, 2022)(*Future of USF Report*)

²⁴ *Future of USF Report*, ¶ 12; see ANOPR, 53 Pa.B. at 7006.

²⁵ *Future of USF Report*, ¶¶ 1, 10-12, 18, 21-23, 29.

²⁶ 52 Pa. Code § 63.170.

²⁷ 52 Pa. Code § 63.161(3).

users would alter the balance of public benefits of the Pa USF. Any future, revised Pa USF should preserve this protection or be held to high bar of justification as to why end-user surcharges are necessary and allowable. The introduction of an end-user surcharge would significantly impact the affordability of vital telecommunications services and the broader scope of basic universal services for all Pennsylvania consumers.

The OCA supports preservation of Section 63.170, with an amendment. Section 63.170 states:

§ 63.170. End-user surcharge prohibited.

A telecommunications service provider may not implement a customer or end-user surcharge or any other direct or indirect charge to recover any contributions to the Fund.²⁸

The phrase “*may not implement*” should be strengthened and revised to state “*shall not implement.*” Amendment is necessary so the phrasing of the regulation conforms with both the PUC’s description in the *2001 Revised Final Rulemaking Order* and the title of the regulation as imposing a prohibition on recovery of Pa USF contributions from end-users.²⁹

In addition to preservation of this regulation, as amended, the OCA recommends the Commission act to assure that contributors to the Fund verify their compliance with this Section 63.170 prohibition against recovery – by direct or indirect means – of any contribution to the Fund. A required verified statement affirming compliance with Section 63.170 may assist the Commission in determining whether and when to take enforcement action. Compliance with Section 63.170 advances the basic universal service goal of affordability, as well as promoting

²⁸ 52 Pa. Code § 63.170.

²⁹ *Pa USF Revised Final Rulemaking Establishing Universal Service Fund Regulations*, 52 Pa. Code, Chapter 63, Docket No. L-00000148, Order (Mar. 22, 2001), 31 Pa.B. 3402 (*2001 Revised Final Rulemaking Order*). As the Commission explained: “IRRC asked for clarity regarding whether a provider can recover USF contributions through any type of direct or indirect charge even though a surcharge on customer bills is expressly prohibited. To clarify as requested, *no telecommunications service provider may implement a customer or end-user surcharge to recover its contribution to the USF. All telecommunications service providers are prohibited from recovering these contributions through any type of direct or indirect charge.* Section 63.170 is expanded to include this clarification.” Id., 31 Pa.B. at 3407 (emphasis added).

competitive neutrality among telecommunications service providers and any other Fund contributors.

D. Wireless Providers and Interconnected VOIP Providers Should Contribute and Support the Pa USF

The OCA supports broadening the base of contributors to the Pa USF to include interconnected VOIP providers and wireless providers. To make funding of the Pa USF more fair and competitively neutral, interconnected VOIP and wireless providers should be required to contribute. The OCA stated its support for this modification to the Pa USF's operation in the OCA's January 2011 Answer to the 2010 PTA Petition.³⁰ The OCA supports broadening the contribution base in this way, so the Pa USF may continue to benefit Pennsylvania consumers who rely on the interconnected networks of local exchange carriers, wireless providers, and interconnected VOIP providers to make or receive communications as well communicate with public safety resources, while moderating the overall level of assessments on all contributors.³¹

Importantly, the Commission's authority to assess intrastate revenues of wireless provider or interconnected VOIP provider does not depend on whether the wireless provider or interconnected VOIP provider are jurisdictional public utilities.

In 2001, the Commission cited to Section 254(f) of the 1996 Telecommunications Act as one source of authority for adoption of the Pa USF regulations "to determine the manner in which intrastate telecommunications providers shall on an equitable and non-discriminatory basis contribute to the preservation and advancement of universal service."³² In a June 30, 2003

³⁰ *Petition of the Pennsylvania Telephone Association for Order to Expand the Base of Contributing Carriers to the Pennsylvania Universal Service Fund to Include Wireless Carriers and VoIP Providers*, Docket No. P-2010-2217748, OCA Answer (Jan. 20, 2011) (*PTA Petition*). Available at <https://www.puc.pa.gov/pcdocs/1119034.pdf>

³¹ The ANOPR provides data regarding the decline in ILEC access line counts as related to the decline in the intrastate revenues. 53 Pa.B. at 7014.

³² *Pa USF Revised Final Rulemaking Order*, 31 Pa.B. at 3402; 47 USC § 254(f). The Commission also identified portions of the original Chapter 30 as providing it with explicit authority to implement a state universal service fund. Id.

letter to the Legislative and Budget Finance Committee, then-Chairman Terrence Fitzpatrick noted that “the FCC permits state assessment of wireless carriers for universal service purposes regardless of whether that state regulates wireless carriers.”³³

Sections 253 and 254 of the 1991 Telecommunications Act provide part of the framework for the Commission’s authority to advance state universal service goals, complementary to federal universal service goals and programs.³⁴ Section 253(b) affirms the Commonwealth’s ability “to impose, on a competitively neutral basis and consistent with Section 254 of this title, requirements necessary *to preserve and advance universal service, protect public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.*”³⁵ Section 254(b)(4) identifies the obligation of “all providers of telecommunications services” to make “equitable and nondiscriminatory contribution[s] to the preservation and advancement of universal service.”³⁶ Section 254(b)(5) establishes that “policies for preservation and advancement of universal service” should be based in part upon “specific, predictable and sufficient Federal *and State mechanisms* to advance universal service.”³⁷ As cited in the *2001 Pa USF Final Rulemaking Order*, Section 254(f) provides the Commission with discretion to implement a state universal service fund, so long as it does not burden federal universal service programs and is within the bounds of Section 254(f).³⁸

The question of extending the contribution obligation to include the intrastate revenues of wireless providers and interconnected VOIP providers was put before the Commission in December 2010 by the *PTA Petition*, relief which OCA supported. The *PTA Petition* relied in

³³ Legislative Budget and Finance Committee, *Pennsylvania Public Utility Commission’s Implementation of Chapter 30* (June 2003) (2003 LBFC Chapter 30 Report), Appendix Q – Pennsylvania Public Utility Commission Response to this Report, page 4. Available at <https://lbfc.legis.state.pa.us/Resources/Documents/Reports/103.pdf>

³⁴ 47 U.S.C. §§ 253, 254.

³⁵ 47 U.S.C. § 253(b) (emphasis added).

³⁶ 47 U.S.C. § 253(b)(3).

³⁷ 47 U.S.C. § 254(b)(5) (emphasis added)

³⁸ *2001 Pa USF Revised Final Rulemaking Order*, 31 Pa.B. 3402, 3404; 47 USC § 254(f).

part upon a November 2010 Declaratory Order by the FCC. In that Declaratory Order, the FCC stated “the application of state universal service contribution requirements to interconnected VoIP providers does not conflict with federal policies, and could in fact promote them.”³⁹ In the ANOPR, the Commission dismissed the *PTA Petition* without prejudice, based upon the age of the record.⁴⁰

Including wireless providers and interconnected VOIP providers as contributors to the Pa USF, to further the Commonwealth’s universal service policies, is within the Commission’s authority and would further the Commonwealth’s Section 3011 policy goals. The OCA supports such action by the Commission. To this end, the Commission should amend the Section 63.171 definition of “contributing telecommunications providers” to conform with this expanded list of required contributors. Further, the “except that wireless carriers are exempt ...” phrase at the end of the definition should be deleted. As recognized by former PUC Chairman Fitzpatrick in 2003, a wireless provider might not be a public utility but may still, under federal law, be required to contribute to a state universal service fund.

³⁹ *In the Matter of Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling*, WC Docket No. 06-122, Declaratory Ruling (rel. Nov. 5, 2010). Available at https://docs.fcc.gov/public/attachments/FCC-10-185A1_Rcd.pdf

⁴⁰ 53 Pa.B. at 7014-7015.

III. CONCLUSION

The Office of Consumer Advocate supports the Public Utility Commission's endeavor to reevaluate how the Pennsylvania Universal Service Fund may continue for the benefit of Pennsylvanians who depend on the interconnected communications networks of today and the future. The OCA encourages the Commission to continue to focus the Pa USF on promotion of the universal service goal of affordability.

Respectfully Submitted,

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