Pennsylvania
Telephone Association

"The Communications
Leader in Pennsylvania"

Steven J. Samara
President

VIA ELECTRONIC FILING

February 9, 2024

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

Re: Rulemaking to Amend 52 Pa. Code §§ 63.161— 63.171 (relating to Universal Service); Advanced Notice of Proposed Rulemaking to Amend 52 Pa. Code §§ 63.161—63.171 (relating to Universal Service); L-2023-3040646, 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; P-2010-2217748 Advance Notice of Proposed Rulemaking.

Dear Secretary Chiavetta:

Attached please find the Pennsylvania Telephone Association's (PTA) Comments regarding the Commission's Advance Notice of Proposed Rulemaking in the above captioned matter.
Please do not hesitate to contact me with questions.

Sincerely,

Steven J. Samara
President

cc: Colin W. Scott, Esq.
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Amend 52 Pa. Code §§ 63.161- 63.171 (relating to Universal Service)	: :	L-2023-3040646
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	: : : :	P-2010-2217748

BACKGROUND

The above docketed Advanced Notice of Proposed Rulemaking ("ANOPR") was initiated by the Pennsylvania Public Utility Commission ("Commission" or "PA PUC") on September 20, 2023. The Pennsylvania Telephone Association ("PTA" or "Association") submits these comments in response to that ANOPR.

SUMMARY OF POSITION

The PTA contends that any changes to the Universal Service Fund ("USF" or "Fund") in its current form must also be reflected in the regulatory framework applicable to Pennsylvania's rural local exchange carriers ("RLECs")[1] who now operate in an environment dramatically different from when the Fund was created.

The purpose of Chapter 30, both when passed in 1984 and reenacted in 2004, is to "promote and encourage" a competitive telecommunications industry "without jeopardizing the provision of

[1] RLECs are "incumbent local exchange carriers" ("ILEC") serving a rural territory. 47 CFR 51.5 ("Rural telephone company').

universal telecommunications service at affordable rates."[2] With equal emphasis, the General Assembly stated that "the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers."[3]

Ironically, the promotion of competition has clearly been a success story with the RLECs' market share reduced to mid-single digits from a monopoly status in 1984. However, Pennsylvania remains a traditional, heavy regulatory state and an outlier. The vast majority of the states, mostly via their legislatures, have fully or substantially deregulated their ILECs. As of September 2017, thirty-nine (39) states had reduced or eliminated oversight of retail telecommunications services. Thirty-five (35) of these were based upon state legislation."[4]

The Commission's track record on RLEC deregulation, while appreciated and headed in the right direction, is underwhelming. The Commission has done little to reshape the regulations that it imposes on the RLECs. The Association laid out a specific outline for what a modernized framework should look like in its Comments and Reply Comments in the Commission's Docket No. L-2018-3001391.[5] However, the Commission took only tentative steps to modernize its decades-old regulatory regime, when much more is needed to truly effectuate an environment which benefits not only the RLECs, but most importantly, their customers. The *Chapters 63/64 Order* chose the lowest common denominator regulation, under which it continues to uniformly

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[2] 66 Pa.C.S.§ 3011 (8),

[3] 66 Pa.C.S.§ 3011 (13).

[4] *Telecommunications Oversight 2017: A State Perspective*, National Regulatory Research Institute Report No. 18-03 (October 2018); https://pubs.naruc.org/pub/40F36AB0-B2BD-47D3-5BF0-1CD11D94B5B7.

[5] *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 53, Chapter 63 and Chapter 64*, Docket No. L-2018-3001391, Final Rulemaking Order entered December 9, 2021 ("*Chapters 63/64 Order*").

regulate all incumbent telephone company exchanges at the "noncompetitive" level regardless of the competitive pressures each face.

Nor is there a path any longer to declaring services "competitive" under Chapter 30. The "two tier approach," requiring regulatory burdens to be reduced or eliminated where competition exists created by the General Assembly no longer exists. The *Chapters 63/64 Order* rejects two-tier, making even gradual deregulation impossible.[6] Without good explanation, the Order actually takes back waivers granted Verizon six years prior when many of its exchanges were declared "competitive."[7] It is clear that the Commission requires further legislative direction to give it the tools to meaningfully reduce regulation and oversight.[8]

With regard to competition, unlike in a monopoly market, end-users now have the option to select a provider other than the Carrier of Last Resort ("COLR") obligated RLEC and have choices among multiple carriers at any time, particularly in the category of wireless telephony service where customers have en mass "cut the cord" and no longer subscribe to any wireline voice service whatsoever. Even among the wireline carriers, cable companies now serve more voice

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[6] *Chapters 63/64 Order* at 95 ("Consistent with our rejection of a bifurcated regulatory structure that would impose different regulations and standards in competitive and noncompetitive areas, we will retain the language of Section 64.1 in its present form, to be applied uniformly to all geographic areas where telecommunications services are offered by the jurisdictional LECs in the final-form regulation.").

[7] *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).

[8] The level of competition in the marketplace and the relative lack of rules "imposed" on the cable companies, wireless companies, municipal broadband or satellite carriers as addressed by the PTA and Verizon in their comments was not even acknowledged in the *Chapters 63/64 Order*. The PUC avoided this statutorily required analysis. The idea of starting from a clean slate and rethink regulation is a "novel interpretation … not supported by the words of the statute itself…." *Id*. at 24. Instead, the Order states that; "Chapter 30 does not specifically require the Commission to eliminate its telephone service quality regulations….and in doing so, [Chapter 30] preserves the Commission's power to maintain them." *Id*. In other words, the General Assembly was not specific enough to require actual change.

customers than the so-called "incumbent" local exchange carriers.[9] The RLECs are often the third choice for various reasons, including end-user's technology preferences and desire for mobility.

This is a very difficult operating environment for the RLECs. The existence of powerful, dominant carriers, particularly wireless, have reduced market share to single digits. Yet, to meet their COLR obligation, the RLECs must maintain a robust network capable of providing service to all households and businesses in their respective service territories. The degree of regulation imposed upon the RLECs does not acknowledge the realities of a less than 10% of the market share. Between 2007 and 2022, the RLEC's pre-tax operating net income from operations declined from $183 million to $82 million or approximately 55% less.[10]

With coincident heavy regulation upon themselves and successful unregulated competition, the USF assists the RLECs in maintaining the ability to continue providing telephone service throughout their territory regardless of the actual take rates (i.e., whether the customer desires it or not). As an instrument of maintaining universal service, the Commission should not alter the USF support provided to the entities that the Commission relies upon for that result. So long as heavy regulation and the COLR obligation are maintained, so too should the USF. The RLECs networks are important to the telecommunications market beyond local exchange service. Among other things, they provide the poles that traffic from other communications providers rides on and the fiber that carries wireless traffic between towers.

The PA USF currently provides support for local telephone service rate affordability at an average level of $8.79 per access line per month. The median support per line is $11.07 per month

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

[10] Calculated from the most recent Annual Reports filed by the ILECs as follows: Net Operating Revenue (Line 13) plus or minus Nonregulated Net Income (Line 57).

which means that more than one half of the RLECs would have to increase rates by more than that amount. The RLECs have priced their services at what they think the market can bear. In the last 17 years, the RLECs have only raised their monthly basic telephone rates by 23% or approximately $4.00. The average RLEC local rate is now $19.10. Adding $8.79 per month, were USF support lost, would increase those end-user rates by 46% -- a dramatic increase for RLEC customers by any measure, and in some instances well above what certain RLECs feel that they can charge in a competitive market.

The best alternative would be for the Commission to implement a transitioned carrier designation, whereby a RLEC would choose to continue receiving USF proceeds and remain under COLR obligation and some form of streamlined regulation or, in the alternative, forego funding and be relieved of its COLR obligation and other regulatory burdens. The PTA stands ready to bring any and all potential innovative ideas to the table in ongoing discussions in this docket.

Absent comprehensive reform by the Commission, the General Assembly continues its efforts to modernize the Public Utility Code with the Senate having passed legislation in two successive sessions and through its current consideration of Senate Bill 85.[11]

THE PENNSYLVANIA UNIVERSAL SERVICE FUND ("PA USF")

Established in 2000,[12] the PA USF has remained a stable, fixed amount of approximately $33.5 million per year.[13] The PA USF is funded by an assessment on Pennsylvania

[11] Senate Bill 85, Printer's Number 34, introduced by Senator Kristin Phillips-Hill on January 12, 2023 and referred to the Senate Communications and Technology Committee.

[12] On September 30, 1999, the Commission issued an Order at Docket Nos. P-00991648 and P-00991649 ("*Global Order*") entered November 5, 1999), and as amended by the Proposed Order in Rulemaking Re: Establishing Universal Service Fund Regulations at 52 Pa. Code §§63.141-63.151, Docket No. L-00000148, (January 27, 2000).

[13] https://www.puc.pa.gov/telecom/pdf/PaUSF_External_Audit_Rpt_11-12.pdf and https://www.puc.pa.gov/media/1832/pausf_final_audit_reports_19-20.pdf.

telecommunications service providers that provide wireline intrastate telephone services (excluding uncertificated connected VoIP providers) based on company specific revenues. Wireless carriers are excused. Eligible RLEC recipients receive fixed monthly support payments from the USF as approved by the Commission.

The PA USF was established to both restructure access charges and as a means to continue to preserve the affordability of local service rates and, hence, the universal availability of telephone service.[14] It has accomplished those objectives.

The majority of states maintain a USF. "In all, 42 states and the District of Columbia provide some form of state universal service support in addition to the monies provided by the Federal funds."[15] The level of support was $1.7 billion in 2017.[16]

THE RURAL LECS AND THE HIGHER COST OF OPERATION

"RURALNESS"

The major driver of the RLECs' cost of service is the overall "ruralness" of the areas they serve. As the costs per customer are higher and customer base is diminishing, not surprisingly, so too are the pressures increasing on rates. Serving areas with lower populations levels also means there is no urban customer base to "average down" the cost per customer. Moreover, there are

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[14] As the Commission noted in the Global Order: "The USF is a means to reduce access and toll rates for the ultimate benefit of the end-user and to encourage greater toll competition, while enabling carriers to continue to preserve the affordability of local service rates." *Re Nextlink Pennsylvania, Inc*., Docket No. P-00991648; P-00991649, 93 Pa PUC 172 (September 30, 1999) (*Global Order*); 196 P.U.R. 4th 172 at 236, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmmwlth. 2000.

[15] *State Universal Service Funds 2018: Updating the Numbers*, National Regulatory Research Institute (April 2019) at 3; https://pubs.naruc.org/pub/FA86A8F7-0CE5-DF43-391B-095BD03757BF.

[16] *Id*; The PTA could not find more updated figures.

fewer business customers. But rates have not increased to keep pace with costs because of the presence of competition.

The RLECs' service territories are the least populated areas of Pennsylvania. Their territories are composed of unincorporated villages and hamlets with small populations, and have no urban component.[17] The average customer density of the PTA companies is approximately 15 lines per square mile.

The Commission is the steward of universal service in rural Pennsylvania. The rural local exchange companies are the instruments of that policy. No other participant in the industry is charged with making voice services ubiquitously available to every end-user in their service territory. No other carrier has offered or is capable of meeting this important public policy objective. The RLECs continue to be the sole guarantors of universally available voice service in rural Pennsylvania.

Neither cellular nor cable companies have ubiquitous voice availability in Pennsylvania. Gaps in cell phone coverage in portions of rural Pennsylvania continue. Nor have the cable companies stepped forward to provide universal service. The biggest cable operator in Pennsylvania, Comcast, has not sought eligible telecommunications carrier status and has not pledged to provide either universal voice or broadband service. Other cable operators do not absorb COLR related costs outside of their narrow, limited designation as Eligible Telecommunications Carriers ("ETC") for federal funding purposes.[18]

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[17] The largest population served by any of the RLECs is Chambersburg (served by Brightspeed), a town of merely 21,903 residents according to the 2020 United States Census.

[18] See, for example, *Petition of Claverack Communications, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania*, PUC Docket No. P-2021-3023996, Order entered July 15, 2021. Carriers seeking federal support funding in the FCC's Rural Digital Opportunity Fund (RDOF) auction are required to obtain the state's designation as an ETC in order to be eligible. The requirement to provide service is limited to those census block groups where federal funding is provided. The RLECs have been shackled with COLR obligations from the "beginning" and do not have an option to opt in or opt out.

COMPETITION

Since the passage of the deregulatory Telecommunications Act of 1996, almost thirty years ago, this Commission and its federal counterpart, the Federal Communications Commission ("FCC"), have aggressively promoted competition and diversity in the telecommunications marketplace to the point where there are now four widely adopted and consumer-accepted independent voice service platforms (incumbent telephone, cable, wireless and satellite). Other competing platforms use the broadband connections offered by these carriers to offer their own "over-the-top" services.

As of June 2022, there were **13.9 million mobile subscriptions compared to only 1.6 million ILEC switched lines** state-wide in Pennsylvania.[19] Non-ILEC, **interconnected VoIP (i.e., cable) serves 2.6 million customers**. Over the top VoIP serves approximately one half million subscribers. In 2007 the Pennsylvania RLECs reported a total of 669,836 access lines in service.[20] Those same companies now serve only 219,501 access lines representing a 67% loss of customers over this period. These statistics no longer surprise anyone.

The RLEC market share has consistently been withered by an average 4.4% annually during the last thirty years, tumbling to an estimated 6.8% today as it continues careening toward zero.[21] This represents the existence of comprehensive competition for most areas of the Commonwealth.

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[19] Supra, FCC Wireline Competition Bureau, Voice Telephone Subscriptions as of December 31, 2021 (Rel. August 2023). https://docs.fcc.gov/public/attachments/DOC-396136A1.pdf.

[20] See PTA Statement No. 1,, Exhibit JL-2 in the *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. 1-00040105 (Order entered December 20,2004).

[21] https://www.fcc.gov/voice-telephone-services-report. When the PTA filed its ANOPR comments in 2018 at 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. the FCC had

However, the RLECs, as the carriers of last resort, must still maintain their voice network at the same level of readiness to serve any end-user regardless of whether they desire the service or not. This requirement means that the same ubiquitous level of investment and maintenance is required whether their level of customer demand is 100% or less than 7% as it is today.

While unregulated and lesser regulated commenters will assert that USF support is "subsidizing competition," the designation of a COLR is a regulatory construct that would not exist in a competitive market. The COLR obligation backstops the theoretical potential of various competitive failures, including the failure to deploy service in an area or to survive financially, no matter how remote the prospect. Therefore, universal service requires regulatory support in a competitive market.

REGULATION

Among the segments of the voice telecommunications industry, only the ILECs are regulated. Other facilities-based carriers, notably wireless and cable VoIP service, are expressly excluded from any regulation under state statute. This means no rate or service regulation, no requirement to file for regulatory approvals of any kind, no service complaint procedures, no service standards and no reporting requirements.

The level of Commission regulatory oversight has not diminished despite the RLECs' vastly reduced market share and the increase in customer options. Rejecting the notion that competition should reduce, in any meaningful way, the level of regulation to any meaningful degree, the Commission recently stated that:

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

Regulated lines provided by the incumbent local exchange carriers further deteriorated to 8.3% of the total by 2019, two and one-half years later. FCC Wireline Competition Bureau, Voice Telephone Subscriptions as of June 30, 2019 (Rel. 5/7/21).

> [T]he Commission is of the opinion there are circumstances where *specific and uniform* standards better serve carriers and customers because of the greater predictability they provide. The Commission has determined this is true for both competitive and noncompetitive areas of the Commonwealth.[22]

The Title 66 and Chapter 63 and 64 obligations, as well as the reporting and ratemaking procedures, imposed upon the RLECs simply increase costs. It should not be surprising that the Commission's requirements impose substantial costs upon the RLECs and, although quantification would be difficult, if not impossible, they also certainly justify universal service support.

FEDERAL SUPPORT

The purpose of the PA USF is "to maintain the affordability of local service rates for end-user customers while allowing rural telephone companies to reduce access charges and intraLATA toll rates, on a revenue-neutral basis, thereby encouraging greater competition."[23]

It is in this regard that the PA USF resembles the FCC's prior actions to reduce intercarrier access charges. This includes both the 2001 FCC MAG Order,[24] and the 2011 Universal Service Support/Intercarrier Compensation Order.[25] The PA USF primarily funded reductions in intrastate switched access rates and toll rates via an increase in end-user rates for Local Service and universal service support. In the MAG Order, switched access reductions were offset by an increase in end -user rates (Federal Subscriber Line Charge) and universal service support. All PA USF recipients were also obtaining federal universal service funds provided through the MAG Order. The

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[22] *Chapters 63/64 Order* at 23.

[23] 52 PA Code § 63.161(3).

[24] See MAG Plan et al., CC Docket No. 00-256 et al., Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, (rel. Nov. 8, 2001) (MAG Order).

[25] See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (USF/ICC Transformation Order).

USF/ICC Transformation Order further reduced interstate switched access rates of rate-of-return companies with the offset again a combination of an increase in end-user rates (Access Recovery Charge) and universal service support. Federal price cap carriers support, including Local Switching Support and Interstate Access Support were shifted to a new mechanism called frozen high-cost support[26]. This frozen support was supplemented with an additional $300 million in CAF Phase I to help expand access to "…advanced networks that provide voice and broadband services…"[27]

The Commission's comparisons to federal funding should begin and end with the CAF-ICC support mechanism. Assets and costs are used to provide inter/intrastate and regulated/unregulated services. Federal access rates are set for many of the companies using the National Exchange Carriers Association ("NECA") average schedule methodology, which is a composite of all participating companies, not the individual companies themselves. Federal USF is rarely tied to company-specific cost information. The following table shows the primary USF mechanisms and whether they are based on company-specific expenses, investment, or rate of return.

Federal Support Mechanism	Based on company's rate of return / earnings
Connect America Fund-Broadband Loop Support (average schedule)	No
Connect America Fund-Broadband Loop Support (cost)	Yes
Connect America Fund – Intercarrier Compensation	No
Connect America Fund Phase II Auction	No
Alternative Connect America Fund (A-CAM)	No
Rural Digital Opportunity Fund (RDOF)	No

[26] *Id* at ¶ 128.

[27] *Id* at ¶ 22 and footnote 16.

As shown above, only one type of support mechanism, for one specific type of LEC is based on company-specific financial information. For those that might argue that ACAM is a better choice for a needs-based test, that model does not include any expenses for providing the switching and transport services required to provide voice services. Legacy rate-of-return carriers that elected ACAM support are still provided with a separate federal support mechanism designed to offset previous access charge reductions.

The level of Federal universal service support to be used to offset access charge reductions was not based on cost models, cost of service studies, or company specific expenses and investment. Rather the fund was set based on the requirement that each LEC would remain revenue-neutral after increasing end-user rates in a manner and to a level approved by the FCC. Federal switched access rates for many of the RLECs continue to be set using the NECA rates which, as the name suggests, are based on nationwide averages. These rates historically included subsidies which were in place to ensure that local service rates remained affordable.

The FCC and the Commission have already implemented similar access charge reform, complete with end-user rate increases, universal service support, and **without** a cost model of any sort to distribute funds to eligible carriers. The purpose of both the PA USF and the CAF-ICC is to reduce implicit subsidies, maintain affordable local rates, and encourage competition.

To the extent there is concern that the PA USF funding levels remains unchanged since its establishment, it is worth reviewing what has happened to the CAF-ICC fund in the past ten years. Federal CAF-ICC support for the Pennsylvania RLECs that participated in CAF-ICC each year from 2013-2023 is nearly the same now as it was in the first year of the fund. In 2023, the fourteen individual study areas still received 97.7% of the amount that they were receiving in 2013.

Year		Pennsylvania CAF-ICC
2013	$	4,570,662
2014	$	5,272,596
2015	$	5,987,022
2016	$	5,709,336
2017	$	5,317,590
2018	$	6,123,996
2019	$	5,619,396
2020	$	5,684,232
2021	$	5,454,600
2022	$	5,048,166
2023	$	4,464,870

LOCAL RATES

The downward spiral of a diminishing customer base which also serves as the base of the authorized revenues that supports the Fund, the cost of maintaining a COLR network even in inflationary times and high levels of regulation, obviously, have driven up the cost of providing service per subscriber. The state USF enabled local service rates to remain affordable consistent with its stated purpose[28].

Based on December 2023 data, the PA USF supports local rate affordability at an average of $8.79 per access line. The median support per line is $11.07 which means that more than half of the RLECs would have to increase rates by more than that amount. Since 2007, the RLECs have raised their monthly basic telephone rates by 24% or almost $4.00. The average RLEC local rate is now $19.10. Adding $8.79 per month would increase those rates by 46%.

This gap in local service funding represented by the USF, if transferred to local rates, would have catastrophic consequences. Even if the Commission were to grant such increases[29] it

[28] 52 PA Code § 63.161(3).

[29] Any change in state universal service support would be a qualifying exogenous event under each ILEC's approved Chapter 30 plan. As such, for price cap companies, the reduction or elimination of the PA USF would be passed through to customers on a dollar-for-dollar basis, without any investigation or review of earnings.

would inevitably lead to excessive end-user rates and a financial death spiral for the RLECs. This type of price increase would drive more customers away from the RLECs, leaving these providers to serve any and all remaining customers. The majority of the cost to maintain a COLR network does not decrease when customers elect an alternative provider. Eventually additional rate increases would be required, driving more customers off of the RLEC network as the rate of return death spiral continues.

The imposition of a needs-based test would be inconsistent with the Price Cap regulation included in Chapter 30. At the outset of Chapter 30 regulation, all LECs opted for some form of alternative or streamlined regulation in lieu of the traditional needs-based test that existed under Chapter 13 of the Public Utility Code. Those choosing alternative regulation through price caps and the Price Stability Mechanism ("PSM") eschewed the safety net provided by rate of return regulation in exchange for annual, formulaic revenue change opportunities that tied their economic needs to the performance of the gross domestic product price index. Price Cap incentive regulation allowed the companies the opportunity to achieve operating efficiencies that would produce better service, lower prices, and improved earnings necessary to carry out their broadband service commitments. The introduction of a further needs-based test based upon some form of rate of return regulation for the price cap companies at this time to justify PA USF support would be inconsistent with the goals of incentive regulation and contrary to the intent of Chapter 30.

RECOMMENDATIONS

OPT OUT OF COLR AND REGULATION

Several states have implemented some form of alternative, company-selected, regulatory framework. One concept which the PTA has begun socializing with the General Assembly and other interested parties is that of the transitioned carrier.

Under the transitioned carrier framework, an RLEC could file an election with the PA USF fund administrator to no longer receive funding from the Fund and, in turn, be exempt from all PA PUC authority and jurisdiction including regulation of retail pricing and retail operations while preserving Commission oversight in areas such as 911, Lifeline service, dispute resolution, damage prevention of underground facilities, public rights-of-way, pole attachments and numbering. In addition, the framework would provide a series of modernized regulatory options for RLECs if the PA PUC decreases or eliminates funding from the USF.

As explained by the National Regulatory Research Institute in 2016: "COLR policies in the states are changing as a result of the transition to broadband and increases in competition."

> COLR requirements have been modified or eliminated in some states as competition has increased the availability of alternate choices for telecommunications services. Legislation has further changed the requirements for carriers of last resort, including removing the requirement for basic local service, eliminating COLR requirements altogether (for example, in states like Florida and Delaware), limiting the requirement to areas without effective competition (for example, in Colorado), allowing carriers to exempt themselves from COLR requirements by selecting alternative forms of regulation (for example, Alabama, Louisiana, and South Carolina), or providing a path to withdrawing COLR duties altogether, as proposed by recent legislation in Maine.[30]

As of 2016, thirteen states had limited COLR requirements and nine states had done away with the concept of a COLR obligation altogether.

CERTIFICATION OF USE

[30] *Carrier of Last Resort: Anachronism or Necessity?*, National Regulatory Research Institute, Report No. 16–06 (July 2016) at v.

To make the funding more transparent, recipients of the Fund should be required to provide documentation to the Commission certifying the uses of any PA USF funding received during the prior year. This requirement can be satisfied in a manner similar to what the FCC requires under 47 C.F.R. § 54.314. The Commission is required to file annual certification with USAC and the FCC stating that all federal high-cost support provided to the carriers in Pennsylvania was used in the preceding year and will be used in the coming year only for provision, maintenance, and upgrading of facilities and services for which support is intended. The Commission can use the same process to confirm the PA USF funding is used in a manner consistent with the intention of the Fund.

EXPANDING CONTRIBUTION BASE

As set forth in the PTA's 2014 Petition, the funding base should be expanded to include all interconnected VoIP and wireless carriers. Among the interconnected VoIP companies, contributions should be fairly administered and enforced across all carriers. The Commission's requirement that only certificated, or in some cases formerly certificated VoIP providers,[31] contribute to the Universal Service Fund is unfair and discriminatory. The Commission should consistently apply the requirement to contribute to the universal service fund to all interconnected VoIP providers, not just those that obtained a certificate to provide other telecommunications services within the state.

The FCC's compilation of Form 499 filers contains a listing of interconnected VoIP carriers and their addresses.[32] The competitive inequities associated with assessing only the

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[31] See *Application of ITC Global Networks, LLC for Approval of the Abandonment or Discontinuance of Telecommunications Services to the Public in the Commonwealth of Pennsylvania*, Docket No. A-2023-3040636, December 7, 2023, Ordering Paragraph 6.

[32] https://apps.fcc.gov/cgb/form499/499results.cfm?FilerID=&frn=&operational=&comm_type=VOIP&LegalName=&state=pennsylvania&R1=and&XML=FALSE

traditional telephony participants for support of the ubiquitous PSTN and the RLECs' maintenance of universal service as the carriers of last resort should be avoided. Interconnected VoIP providers are required to file an annual tax return which reports total retail revenues segregated by intrastate and interstate jurisdictions. This intrastate retail revenue could be the basis for universal service contribution reporting. This RCT-111 Gross Receipts Tax return is required to include the interconnected VoIP revenues. Companies are required to report "Receipts from sale of service using voice over internet protocol (VOIP).[33]

The PTA's recommendation is that the Commission update the universal service fund administrator's Annual Report of Intrastate Retail Revenues to include the provider's 499 Filer ID number and the PA Department of Revenue's "Revenue ID." These unique identifiers would allow the Commission to cross reference other data sources to ensure that all providers of intrastate regulated telecommunications service, including interconnected VoIP, are contributing to the state's universal service goals.

The Commission had previously identified the wireless contribution issue as relevant to any further investigation of the RLECs' access rates,[34] as well as noted its explicit authority under the federal TCA-96 to compel every telecommunication carrier that provides intrastate telecommunications services to contribute, including wireless.[35] However, the PTA believes that

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[33] Pennsylvania Department of Revenue Corporation Tax Bulleting 2018-04, issued August 20, 2018, see non-comprehensive sample of sales of services and equipment that generate taxable receipts, item # 6.

[34] *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. 1-00040105 (Order entered December 20,2004).

[35] *Rulemaking Re Establishing Universal Service Fund Regulations at 52 Pa. Code §§63. /61-63.1 72*, Docket No. L00000148, Revised Final Rulemaking Order adopted March 22, 2001 at 2

legislative action would be required to require wireless carrier funding[36] and would require additional review and research that are outside the scope of this proceeding.

CONCLUSION

The PTA thanks the Commission for the opportunity to submit its views on this important topic and looks forward to continued discussions.

Respectfully Submitted.

Steven J. Samara, President
Pennsylvania Telephone Association

[36] *Universal Service Fund*, Independent Regulatory Review Commission, Regulation No. 57-214, Notice of Comments Issued, Dated May 18, 2000 (30 Pa.B. 2856)

Responses to Appendix A

1. Definitions at 52 Pa. Code § 63.162:

    a. Should the Pennsylvania Public Utility Commission (PUC) amend the Section 63.162 definition of "basic universal service" to reach beyond telephone service, which would align it with federally applicable principles (e.g., Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011))?

    b. Should the PUC amend the definition of "contributing telecommunications providers"?

        i. Should the definition include interconnected VoIP under 73 P.S. § 2251.6?

        ii. Should the definition include wireless providers?

    c. Should the PUC establish its own definition of "telecommunications carrier" independent of federal law as interpreted by the Federal Communications Commission (FCC)?

RESPONSE: No. The Pennsylvania USF should be limited to voice service. The Commission's jurisdiction over broadband is limited to the ILEC availability of 1.544 Mbps service. Moreover, PUC efforts would be duplicative of the Pennsylvania Broadband Authority, who has a specific charge from the General Assembly to administer the funding of broadband facilities.[37]

2. Carrier of last resort (COLR) or provider of last resort (POLR)

    a. Should the regulations clarify or define COLR or POLR obligations for Fund Recipients? If so, what do you suggest?

    b. Should there be only one provider with COLR or POLR obligation in a designated area and how should they be chosen?

RESPONSE: No. The COLR obligation is already understood as a § 1501 obligation to provide service throughout a service territory. There is no need for a further definition. Creation of more than one carrier with the COLR obligation is unnecessary, duplicative and more expensive. The very notion of COLR is that there is one carrier ready, able and willing to provide telephone service. Also, this would not be reasonable considering the amount of legacy copper facilities still in place. Moving to this requirement would materially limit providers' ability to recover from the fund. If there were more than one, who would ultimately be responsible for serving the customer? And what would stop USF funds from being used for overbuilding?

3. Competitive market for basic universal service

    a. Does requiring some, but not all, federally defined telecommunications carriers to contribute to the Pa. USF support a competitive market for basic universal service? Why or why not?

[37] 64 Pa.C.S. § 6101 et seq. (Act of Dec. 22, 2021, P.L. 459, No. 96).

b. Is such a regime non-discriminatory under state or federal law?

c. Should the classification of the contributing entities to the Pa. USF be aligned with FCC Form 499 classifications?

RESPONSE: As set forth in the comments, all interconnected VoIP carriers should be required to contribute, not just some, as is the Commission's current practice.

4. Should the Commission model its own approach to universal service using the current federal approach which requires a recipient of universal service to construct a voice network that can provide voice but also internet service at federal speeds and requires recipients to stand ready to provide voice and internet service at a required speed as a condition of receiving universal service as a POLR service and COLR network obligations?

RESPONSE: No. The USF should be limited to voice service for reasons previously explained.

5. Would Federal USF and intercarrier compensation reforms under the Connect America Fund Order and the Universal Service Reform Order affect the need for continuing and/or expanding the operational scope and the purposes of the Pa. USF? Why or why not?

RESPONSE: No. The PA USF has always operated independently and the PTA sees no reason that should change.

6. Would state law or Federal law prohibit the PUC from expanding the scope of the Pa. USF to high cost or low-income support? Why or why not?

RESPONSE: The PTA is not aware of any state law limitation.

7. Should the Commission's proposed provision of universal service support be conditioned on a recipient providing voice and internet services at federal speeds to all consumers in a designated area, particularly if VoIP and Broadband Internet Access Service (BIAS) are classified as telecommunications under federal law?

RESPONSE: See response to Question No. 1.

8. Should the Commission alter its current structure, in which support is provided in the entire service territory (service area) of an Incumbent Local Exchange Carrier (ILEC) service territory, in favor of another approach? If so, how could the Commission achieve that consistent with federal law?

RESPONSE: The question does not explain what "other approach" is being suggested. If the suggestion is to create support for an area smaller than an RLEC's service territory, such an approach is overly complicated and difficult, if not impossible to calculate.

9. Should the Pa. USF have a dedicated purpose or designation for providing support to eligible recipient carriers? Why or why not? What criteria should the PUC use for this purpose?

a. Should the PUC use a cost model or other method for ascertaining the level of support distributions to eligible carriers? Why or why not? If so, how should the model operate?

b. Should such a cost model or other method be already generally acceptable and in use, e.g., used by the FCC in ascertaining federal USF high-cost support for eligible carriers? Why or why not?

c. Should the level of support to eligible carriers be determined based on revenue, e.g., because of intrastate intercarrier compensation reforms, rate rebalancing, residential rate benchmarks, etc. Why or why not?

d. Should the level of support to eligible carriers operate as "supplemental support" to any Federal high-cost support? Why or why not?

e. Should Pa. USF support continue even if a corresponding Federal support mechanism expires? Why or why not?

f. Should the level of Pa. USF support to eligible carriers be ascertained on the basis of need and associated criteria, including but not limited to:

i. An overall rate of return benchmark that is periodically adjusted and applicable on both the regulated and unregulated operations of the eligible Pa. USF recipient carriers?

ii. An overall rate of return benchmark that is periodically adjusted and applicable only on the intrastate jurisdictional operations of the eligible Pa. USF recipient carriers?

iii. A cost and revenue relationship where network access costs are determined by cost model or other acceptable method and revenues are inclusive of retail and wholesale telecommunications services and unregulated services?

iv. Should unregulated services and operations exclude both costs and revenues of video content delivery?

v. A cost and revenue relationship that is limited to the eligible recipient's intrastate regulated telecommunications operations?

vi. Other criteria?

g. What reporting requirements should exist?

i. Should reporting be in conjunction with, or supplemental to, Federal USF (inclusive of CAF fund use) reporting requirements as revised by the Universal Service Reform Order?

ii. Should PUC reporting requirements ensure that carriers utilize Pa. USF support distributions for intended and relevant purposes, and not for the support of unrelated operations or activities of the recipient carrier? For example, should recipients provide details on how Pa. USF distributions are used for the support of network facilities that are jointly utilized by both regulated and unregulated retail and wholesale services that are provided by the recipient carrier?

RESPONSE: With respect to cost modeling, the exercise is overly complicated and difficult to administer. The current level of funding is a reflection of the non-transference of access charge reform to local service rates and is an acceptable methodology. The PA USF has always operated independently of federal programs and the PTA sees no reason to change that now. Needs tests are difficult to design and implement. Rate of return based USF funding would conflict with price cap regulation. The PTA suggests that annual reports should be required by recipients identifying the use of the funds as stated in its comments above.

10. Is it prudent to augment the Pa. USF by providing support so that consumers can purchase voice and/or internet service to further the federal universal service mandate of Section 254, 47 U.S.C.A. § 254, that there must be comparable rates for comparable services in rural and urban areas and Pennsylvania's universal mandate set out in Chapter 30, Pa.C.S. §§ 3001 et. seq.

RESPONSE: The USF should continue to be limited to voice service for reasons previously described.

11. Should the Pa. USF provide low-income residential service support?

a. If no, why not?

b. If yes, in what form?

i. How might this support be coordinated with Federal USF low-income support already provided by eligible carriers that are recipients of Pa. USF disbursements and the federal eligibility requirements for low-income end-user consumers?

ii. What eligibility rules or limitations should apply?

RESPONSE: Low-income support of $5.25 per month is currently provided under the Federal Lifeline program for voice service. Including low-income support in the USF would increase the size of the Fund and expand its purpose beyond the universal availability of service.

12. Should the Pa. USF provide high-cost support?

a. Should the PUC use a cost model or other method for ascertaining whether eligible carriers require support? If a cost model is proposed, provide public access to a web or excel-based template.

b. Should such a cost model or other method be already generally acceptable and in use?

c. Should the level of high-cost support be based on revenue, e.g., because of intrastate intercarrier compensation reforms, rate rebalancing, residential rate benchmarks, etc.

d. Should the level of high-cost support to eligible carriers operate as "supplemental support" to any Federal high-cost support?

e. Should Pennsylvania high-cost support continue even if corresponding Federal USF high-cost support mechanisms expire?

f. Should the level of Pa. USF high-cost support to eligible carriers be ascertained on the basis of need and associated criteria including:

i. An overall rate of return benchmark that is periodically adjusted and applicable on both the regulated and unregulated operations of the eligible Pa. USF recipient carriers?

ii. An overall rate of return benchmark that is periodically adjusted and applicable only on the intrastate regulated operations of the eligible Pa. USF recipient carriers?

iii. A cost and revenue relationship where network access costs are determined by cost model or other acceptable method and revenues are inclusive of retail and wholesale telecommunications services and unregulated services?

iv. Unregulated services and operations exclusive of costs and revenues of video content delivery?

v. A cost and revenue relationship that is limited to the eligible recipient's intrastate regulated telecommunications operations?

vi. Other criterion or criteria?

g. Reporting requirements

i. Should reporting be in conjunction with, or supplemental to, Federal USF (inclusive of CAF fund use) reporting requirements, as revised by the Universal Service Reform Order? Why or why not?

ii. Should reporting requirements ensure that Pa. USF support distributions are utilized for the intended and relevant purposes and not for the support of unrelated operations or activities of the recipient carrier? For example, should recipients provide details on how Pa. USF distributions are used for the support of network facilities that are jointly utilized by both regulated and unregulated retail and wholesale services that are provided by the recipient carrier? Why or why not?

RESPONSE: See response to Question No. 9.

13. Should a recipient of Pa. USF support be required to document its network and service cost costs in a public on-the-record proceeding to ensure an accurate demonstration of the support to be draw from the Fund?

RESPONSE: See response to Question No. 9.

14. Size of the Pa. USF

a. Should the Pa. USF continue to use the support floor contained in the November 10, 1997 Joint Petition In Settlement adopted in the Global Order, Docket Nos. P-00991648, P-0991649, (September 30, 1999)? Why or why not?

b. Should the PUC adjust the support floor for each eligible recipient carrier based on factors such as intrastate carrier access charge reform or additional proposed uses of the Pa. USF? Why or why not? What factors should be used?

RESPONSE: The current USF level of approximately $33.6 million per year is appropriate and should be continued. It is based on prior intrastate terminating access charge reform, the current charges for which are zero, thereby making further reform unnecessary. The "additional proposed uses" are not identified and, therefore, difficult to address. The PTA addressed expansion of the Fund to include lifeline above in response to Question No. 11,

15. Computational formula of 52 Pa. Code § 63.165

a. Should the PUC alter the computational formula of 52 Pa. Code § 63.165?

b. Should the formula allow for negative access line growth? If so, how?

c. Should the calculation reflect current Fund Recipient access line counts?

d. Should the calculation be adjusted for exogenous events for each eligible recipient carrier for factors such as intrastate access charge reform or additional proposed uses of the Pa. USF?

e. Should the computational formula be modified so that the levels of Pa. USF support distributions to each eligible carrier can be periodically adjusted within a calendar year with corresponding adjustments to the Pa. USF contribution levels? For example, other state-specific USFs and the Federal USF permit for quarterly adjustments in both the contribution payments and support payment disbursements during a calendar year.

RESPONSE: As explained in the PTA's comments, the USF has operated as a stable source of RLEC revenues. Decreasing Fund receipts for access line loss would have decreased the fund from the almost 100% customer subscription rate to the current approximately 6% or to a fund size of $2 million. This defeats the purpose which is to assist maintaining a network that can deliver telephone service to 100% of customers in the service territory.

16. How may the regulations address technological advances, especially regarding contributing telecommunications provider and fund recipient reporting procedures?

RESPONSE: The PTA's comments address expanding the contribution base to include all interconnected VoIP carriers,

17. What are the linkages and interactions of the existing Federal and Pa. USF. Address at a minimum the following areas:

a. Should the Pa. USF contribution mechanism align with the corresponding contribution mechanism of the revised Federal USF? If they do not align, provide concise discussion of what legal and technical issues may arise and how such issues may be resolved.

b. If the FCC adopted a telephone numbers-based contribution system for the Federal USF, should the Pa. USF contribution mechanism follow that approach?[78]

c. Describe the legal and technical issues that may arise for the operation of the Pa. USF if, as a result of the FCC Federal USF Contribution Base FNPRM, the Federal USF contribution mechanism crosses jurisdictional boundaries through, e.g., assessment of intrastate revenues. Provide a concise discussion of the relevant issues for the Pa. USF mechanism and their potential resolution.

RESPONSE: As noted previously, there is no linkage between the federal USF and that of Pennsylvania. The above comments describe that the federal USF support level has been maintained at stable levels and the same is true in Pennsylvania, but with much less complexity.

18. How would alterations to the Pa. USF affect broadband deployment under current obligations?

RESPONSE: There should be no alteration of the USF to support broadband deployment as previously explained.

19. Are non-jurisdictional services provided by affiliates of telecommunications providers that hold certificates of public convenience (CPCs) for regulated services within Pennsylvania relevant to the size or scope of the Pa. USF? Why or why not? Is provision of VoIP services relevant? Why or why not?

RESPONSE: The only services that should be funded are incumbent telephone services.

20. Should the Commission's support for the networks and services needed to advance universal service in Pennsylvania continue to be recovered via assessments on services from retail intrastate revenues alone, or should the contribution base be expanded to include revenues from all regulated and unregulated services provided over a supported network, including wholesale revenues and other services, given that the supported network can provide, among other things, regulated and unregulated services such as wireless backhaul transport and internet service?

RESPONSE: As explained previously in these comments, funding should come from other telephone service revenues that use the local exchange network, which does not include wireless backhaul or internet services.

21. Should the Commission continue prohibiting a stand-alone surcharge on individual consumers to recover the cost of universal service?

RESPONSE: The PTA takes no position on this question.

22. Should the 1% uncollectable additive referenced in 52 Pa. Code § 63.165 be moved from 1% to 5% to reflect the PUC's current practice? Why or why not?

RESPONSE: The PTA takes no position on this question.

23. Should the PUC establish a monetary penalty for those companies that do not timely submit an assessment form? Why or why not? If so, what would an appropriate fee be for a late filing? Would other enforcement action be appropriate?

RESPONSE: To the extent that there are non-reporters or non-payers, it would be appropriate to follow those enforcement protocols used by the Commission to collect its funding assessment.

24. Should the PUC consider revising the current late payment fee of 1.5% per month for failure to make timely payments? Why or why not? If so, what should the fee be going forward? Should there be a built-in adjustment factor?

RESPONSE: The PTA takes no position on this question.

25. Should the PUC revise the regulations to require a lump sum, quarterly or monthly payment of Pa. USF assessments? What thresholds would be appropriate for each remittance interval?

RESPONSE: The PTA believes that current practices are appropriate.

26. Should the PUC revise the regulations to change the de minimis threshold from $120 as set forth in 52 Pa. Code § 63.169(c) to another amount? Why or why not? If so, to what amount?

RESPONSE: The PTA takes no position on this question.

27. Should the PUC require a contributing carrier to the Pa. USF to provide documentation when reporting a certain minimum threshold? Why or why not? What would be an appropriate threshold? What should the mechanism be?

RESPONSE: The PTA takes no position on this question.

28. What should be done to address the current practice whereby only currently certificated carriers and certain eligible telecommunications carriers are required to report and pay Pa. USF assessments on intrastate VoIP revenues?

RESPONSE: As explained in these comments. All interconnected VoIP service providers should contribute.

29. What would be an appropriate process to ensure that all intrastate VoIP providers are properly reporting and being assessed?

RESPONSE: FCC Form 499 and the Pennsylvania Gross Receipts Tax Report for Telecommunications can both be used for this purpose. The FCC maintains a registry of interconnected VoIP carriers operating in Pennsylvania.[38] Interconnected VoIP providers are required to file an annual tax return which reports total retail revenues segregated by intrastate and interstate jurisdictions. This intrastate retail revenue could be the basis for universal service contribution reporting. This RCT-111 gross receipts tax return is required to include the interconnected VoIP revenues. Companies are required to report "Receipts from sale of service using voice over internet protocol (VOIP).[39]

30. What mechanism, other than certification of VoIP providers, can the Commission use to implement the universal support provisions of the VoIP Freedom Bill and ensure compliance with the provisions of the Code and the VoIP Freedom Bill?

RESPONSE: See response to Question 29. The VoIP Freedom Act contains an exception for universal service.

31. Should the PUC allow VoIP providers that do not hold a CPC to voluntarily contribute to the USF? Why or why not? If so, what should the mechanism be?

RESPONSE: Yes. As a matter of competitive fairness and use of the PSTN, all interconnected VoIP carriers should contribute.

32. Should a company that has abandoned jurisdictional service but that continues to provide VoIP service be required to contribute to the USF? Why or why not? If so, how?

RESPONSE: See response to Question 31.

33. How should the Commission address the issues outlined in Chairman Dutrieuille's statement in the Application of Sprint Communications Company L.P. for approval of abandonment of services, Docket No. A-2021-3028993 (August 25, 2022) in this proceeding?

RESPONSE: The USF is not mentioned in the Statement.

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[38] https://apps.fcc.gov/cgb/form499/499results.cfm?filerid=&frn=&operational=&comm_type=any+type&legalname=a&state=any+state&r1=and&xml=false.

[39] Pennsylvania Department of Revenue Corporation Tax Bulleting 2018-04, issued August 20, 2018, see non-comprehensive sample of sales of services and equipment that generate taxable receipts, item # 6.

34. Does competition remain a valid focus when it comes to supporting networks and services given that over 95% of today's consumers are served by the "last mile" network owned by two industries, i.e., telephone and cable, with cable and fiber networks lacking an open access mandate for competitors under federal law and precedent?

RESPONSE: The PTA does not understand the question. The USF does not focus on competition *per se*. The source of the 95% figure is unknown, but seems to exclude the largest competing network - wireless carriers, which, as described in these comments, has overwhelming voice market share.