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March 11, 2024

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

RE: Advanced Notice of Proposed Rulemaking to Amend Pennsylvania Universal Service Fund Regulations
Docket No. L-2023-3040646

Dear Secretary Chiavetta:

Enclosed please find Verizon's Reply Comments regarding the August 24, 2023 Advance Notice of Proposed Rulemaking Order, in the above captioned matter.

Please do not hesitate to contact me with any questions.

Very truly yours,

Suzan D. Paiva/sau

Suzan D. Paiva

SDP/sau
Enclosure

Via Email
cc: Colin Scott, Esq., Law Bureau (colinscott@pa.gov)
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BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Rulemaking to Amend 52 Pa. Code §§ 63.161—63.171 (relating to Universal Service)	Docket No. L-2023-3040646

VERIZON REPLY COMMENTS

Verizon[1] appreciates the comments responding to this Commission's Advance Notice of Proposed Rulemaking Order entered September 20, 2023 ("ANOPR") relating to the Pennsylvania Universal Service Fund ("USF") and submits these reply comments addressing issues that were raised.

The comments confirm that the Commission should: (i) terminate the current USF and its regulations; (ii) act now to reduce regulatory burdens and outdated service obligations on incumbent local exchange carriers ("ILECs"); and (iii) take no additional action while it monitors the roll-out of the multi-billion dollar federally-funded broadband infrastructure deployment and any changes to federal universal service programs.

I. The Commission Should Terminate The USF And Rescind Its Regulations.

No party came forward with a valid reason to keep the current USF revenue transfer mechanism in place and most agree that the Commission should terminate the USF.

The Office of Small Business Advocate ("OSBA") presented an impartial assessment by a party that is neither a contributor to nor a recipient from the fund. OSBA recommends "that the Commission take this opportunity to close the current Pa. USF," which has "out-lived its usefulness" and opines that the concept of "a revenue entitlement to offset access charge reductions on customers and calls that no longer even exist . . . has so little merit that the

[1] See footnote 1 to Verizon's comments, identifying the Verizon companies submitting these reply comments.

Commission should quickly end the system."[2] Other commenters agree that there is no legitimate purpose to continuing to pay the rural incumbent local exchange carriers ("RLECs") to replace revenue they would no longer collect under normal business circumstances if the fund did not exist. CTIA observes that the USF is "an anachronistic subsidy program" and "there is no compelling argument" that it should continue.[3] AT&T agrees that "[t]he USF program was never intended to fund in perpetuity the rural ILEC's network modernization" and must be moderated "to better align it with marketplace realities within the bounds of controlling law."[4]

The Office of Consumer Advocate ("OCA"), while favoring a different kind of fund for other purposes, does not provide strong support for the current revenue transfer to the RLECs. OCA observes that "federally funded initiatives such as the Rural Digital Opportunity Fund (RDOF) or Broadband Equity Access and Deployment Program (BEAD) weigh against" any type of high-cost or infrastructure fund providing money directly to carriers.[5] While OCA also states that it 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," this statement does not provide the factual support that would be needed to continue this revenue transfer.[6] It is a logical fallacy to presume that a statement must be true (i.e., the USF is necessary) simply because it has not been proven false.[7] The statutory burden is to justify

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2 OSBA Comments at 11.

3 CTIA Comments at 8.

4 AT&T Comments at 1.

5 OCA Comments at 2. OCA's comments regarding potential new uses and structures for the fund for affordability purposes will be addressed later in these comments.

6 OCA Comments at 3.

7 *See Ala. Tombigbee Rivers Coalition v. Kempthorne*, 477 F.3d 1250, 1257 (11th Cir. 2007) (*citing* Irving M. Copi & Carl Cohen, Introduction to Logic 93 (8th ed. 1990)) (the burden of proof cannot be sustained through

regulations with “acceptable data.”[8] Interested parties had the opportunity to present facts establishing the necessity of continuing this funding mechanism and they did not do so.

Even the Pennsylvania Telephone Association (“PTA”), the only representative of the RLECs to file comments, does not muster a convincing defense of the current USF. PTA seems instead to hold the fund’s inevitable elimination as a bargaining chip in exchange for long overdue regulatory relief.[9] While Verizon agrees that regulatory relief for the RLECs and all ILECs is urgently needed and should be granted immediately, that alone is not a reason to keep an outdated revenue transfer in place when there is no evidence to support its continuation. It is also telling that the large conglomerates that receive more than 80% of the money from the fund – over $29 million of the $34 million each year – did not come forward with their own separate comments to justify their continued receipt of these hefty payments taxed from competitors.[10]

PTA continues to rely on the same conclusory and unsubstantiated claims about cost and need that ALJs Melillo and Colwell rejected years ago. In 2009 ALJ Colwell faulted the RLECs for arguing that the USF should continue “to provide subsidies to companies who do not have to prove need,”[11] while in 2010 ALJ Melillo concluded that the RLECs failed to present “evidence

a logical fallacy, “the mistake that is committed whenever it is argued that a proposition is true simply on the basis that it has not been proved false, or that it is false because it has not been proved true.”)

8 *See* 71 P.S. § 745.5b(b).

9 PTA Comments at 4 (“So long as heavy regulation and the COLR obligation are maintained, so too should the USF.”)

10 *See* Verizon Comments at 6 (explaining that Windstream, Brightspeed, Consolidated Communications and Frontier receive the vast majority of the money from the USF).

11 *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund,* I-00040105 (Recommended Decision Issued July 23, 2009) (“Colwell RD”) at 87-88.

that these PA USF payments are necessary."[12] Nothing has changed. For example, PTA claims the RLECs' "costs per customer are higher,"[13] but presents no evidence of their actual costs per customer or their other sources of revenue to cover those costs, including federal subsidies and unregulated services. PTA argues that the RLECs are "the sole guarantors of universally available voice service in rural Pennsylvania" because it asserts neither cellular nor cable companies are serving rural areas adequately,[14] but then it claims that RLEC territories are so competitive that their market share has "withered," is "tumbling," and is "careening toward zero."[15] Both claims cannot be true. Clearly these areas are highly competitive and customers in most portions of RLEC territory have a choice of service providers and are exercising that choice. Given those facts, Verizon agrees with PTA that there is no reason the RLECs should be forced to stand ready to provide a service that customers do not want, especially where competitive options exist, and that this Commission (and the Legislature as necessary) should eliminate legacy regulatory burdens. But PTA's rhetoric and unexamined claims are not enough to justify continuation of the USF.

Not only did PTA fail to submit any evidence of the RLECs' actual costs, financial condition, or need for these subsidies, but it even takes the position that there should ***never*** be a needs-based test to justify continuing USF payments to the RLECs.[16] Other commenters see it

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12 *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund,* I-00040105 (Recommended Decision Issued August 3, 2010) ("Melillo RD") at 132.

13 PTA Comments at 6. The related claim that the RLECs have "no urban customer base to 'average down' the cost per customer," is a relic of monopoly-era regulatory concepts. If anything, the urban areas are the most competitive in the state and there is no longer a captive urban customer base for telephone service.

14 PTA Comments at 7.

15 PTA Comments at 8.

16 PTA Comments at 14.

differently. As OSBA opines, "the only relevant determination is one that considers the total cost of the enterprise and the total revenue from all services (voice, data and video) using the shared facility without distortion through allocations or corporate organization (such as the use of affiliates)."[17] As the only parties with access to that data, the RLECs chose not to present it and therefore any claim that they need continued USF support should be rejected, as ALJs Colwell and Mellilo concluded.

PTA admits that the size of the USF would only be $2 million if it was based on the current number of access lines, effectively conceding that the continuing $34 million per year revenue transfer is providing a huge windfall to the RLECs.[18] Rather than attempting to explain why this windfall should continue, PTA turns to scare tactics by threatening that the RLECs will increase retail rates if the USF payments end, again without any financial facts.[19] PTA claims that on "average" the USF supports "$8.79 per access line per month" and suggests that rates will increase by that exact amount if the fund payments end. But this appears to be just a rough division of the total size of the USF by current RLEC line counts. When the USF was created twenty-five years ago the per-line share of the payments would have been a small fraction of $8.79, so it is difficult to see how this windfall could now be converted into an exact amount of direct rate increases. In fact, there is no basis to assume that the USF payments are tied to the RLECs' regulated rates at all, and in any event rate-of-return regulation does not apply and any proposed retail rate increases would be subject to approval under the Public Utility Code and

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17 OSBA Comments at 10, n. 23.

18 PTA Answer to Question 15 ("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 analysis appears to presume that RLEC access lines today are less than 6% of the line count when the fund was created.

19 PTA Comments at 4-5.

applicable alternative regulation plans. The PTA's threats are not sufficient evidence to continue the USF.

There is no denying that the USF in its current form must end. The only questions are when and how to end it. No one put forward a specific plan for a phase-out. The Commission would be justified based on this record to end the USF immediately, with no phase-out. OSBA states that "[g]iven how long recipients have already (unreasonably) benefitted, we recommend a phase-out of the fund over a period no longer than two years."[20] If the Commission wishes to consider a phase-out, then based on this record it could reduce the payments now by the percentage that the RLECs' access lines have declined in the twenty-five years since the fund began and then eliminate the much smaller fund over a period of no more than two years as suggested by OSBA.

Verizon does not agree with the suggestion of the Broadband Communications Association of Pennsylvania ("BCAP") to "suspend" this proceeding, to the extent BCAP means the case would be closed without taking any action to end the current USF revenue transfer mechanism now.[21] Verizon agrees with BCAP that consideration of any new, different, or expanded future high cost or affordability mechanisms are premature in light of the ongoing $1.5 billion broadband infrastructure investment and the review of federal universal service funding programs, as discussed in Verizon's comments. However, there is no justification to keep the current revenue transfer in place in the meantime. This multi-million-dollar taxing of revenues of other communications providers is not harmless. It is money these companies otherwise could

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[20] OSBA Comments at 11.

[21] BCAP Comments at 1.

be spending on their own customers and networks.[22] Some of the companies funding these unjustified payments are the same parties that will be bidding (possibly against RLECs or their affiliates) to match the $1.5 billion in federal funds to build out broadband networks to the unserved and underserved areas of the Commonwealth. Continuing to tax them to send payments to the RLECs diverts money that otherwise could be used for other purposes such as broadband deployment and is bad policy since there is no justification for these payments. The Commission should take long overdue action to accept the recommendations of ALJ's Colwell and Mellilo and end the current USF.

II. The Commission Should Reduce Regulatory Burdens On ILECs.

Verizon agrees with PTA that the Commission must eliminate outdated regulatory burdens that no longer reflect customer expectations and impose unneeded costs. If PTA is correct that "the Commission requires further legislative direction to give it the tools to meaningfully reduce regulation and oversight,"[23] then Verizon encourages the Legislature to provide that direction as soon as possible. Part of the reason that we are here today debating the future of a long-outdated access revenue replacement fund is because, as PTA observes, Pennsylvania "remains a traditional, heavy regulatory state and an outlier,"[24] and action needs to be taken by this Commission or the Legislature to embrace the deregulation that has already occurred or is well underway in other states.

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22 The Commission's regulations prohibit companies from recovering these payments from their customers, an unreasonable requirement that Verizon does not support and is not within this Commission's authority, at least for competitive and unregulated services. *See, e.g.*, 66 Pa. C.S. § 3019(g) ("The commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return or earnings of competitive services or otherwise regulate competitive services except as set forth in this chapter.")

23 PTA Comments at 3.

24 PTA Comments at 2.

Verizon in its comments proposes some regulatory changes that the Commission should make right now to reduce regulatory burdens on ILECs. These steps include making clear that:

- In any location where a faster broadband service is available from another wireline or wireless provider, the ILEC is not required to continue to offer a 1.5 Mbps service under Chapter 30.

- In any location where voice service is available from another wireline or wireless provider, the ILEC is not required to make line extensions to serve areas where it does not have an existing network.

- In any location where voice service is available from another wireline or wireless provider, all ILEC services are classified "competitive" under Chapter 30. Verizon also agrees with PTA that the Commission's decision to pursue the "lowest common denominator" regulation in the Chapter 63/64 rulemaking failed to take advantage of the flexibility the Legislature intended because it watered down the deregulatory benefits of competitive classification.[25] The Commission should revisit that holding and extend the broadest possible regulatory waivers to all competitively classified locations.

Other commenting parties agree that the key to advancing universal service in today's environment is to reduce outdated burdens of legacy regulation. AT&T provides an extensive discussion of the need to remove outdated service obligations, as has been done in other states.[26] BCAP agrees that "where robust broadband is available" and there are "voice and wireless services offerings from a number of providers, using a variety of technologies" these legacy regulatory obligations are unnecessary.[27] Verizon encourages the Commission to take immediate steps to reduce regulatory burdens and legacy service obligations on ILECs. If Legislative action is needed to ensure this result, then Verizon encourages the Legislature to act as well.

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25 PTA Comments at 2-3.

26 AT&T Comments at 4-5.

27 BCAP Comments at 4.

III. The Commission Should Not Take Further Action Relating To Universal Service And Should Instead Monitor Ongoing Developments.

The commenting parties recognize the importance of supporting universal service, but most agree that it is premature for this Commission to consider any new or expanded universal service programs at this time given the "[n]ascent and significant federal broadband infrastructure programs" through which "every home in Pennsylvania should soon have robust internet service without any additional federal and/or state subsidies required."[28] OSBA reasonably "recommend[s] that the Commission monitor broadband deployment to determine whether any future mechanism is needed, but only after fully understanding the consequences of ongoing federal support mechanisms and emergent new technologies. It is simply too early to determine whether such mechanisms and technologies will be sufficient, much less to predict exactly where (or for whom) coverage gaps may remain."[29]

While the Commission should terminate the current USF revenue replacement mechanism now, for the reasons stated earlier, Verizon agrees with other commenting parties that the Commission should not take further action to establish new universal service regulations or programs. Rather, it should monitor ongoing developments including the roll out of broadband deployment in unserved and underserved areas of the Commonwealth to be funded with $1.5 billion of federal money and an equal or larger amount of private matching funds from telecommunications providers, as well as FCC and Congressional review of federal universal service programs. During this time of transition there is still ongoing substantial support for universal service in Pennsylvania through the federal universal service fund ("FUSF"), including the Lifeline program to address affordability concerns for voice and broadband services and

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[28] BCAP Comments at 1, 4.

[29] OSBA Comments at 11.

various high-cost programs providing money directly to carriers. These programs are paid for by providers and customers through the FUSF assessments and surcharges on customer bills. The most recent information shows that for the year 2021 Pennsylvania companies and customers paid more to the FUSF to support these programs than the Commonwealth received from the fund.[30] In addition to these existing programs, the Pennsylvania Broadband Development Authority ("PBDA") is currently reviewing policy issues relating to broadband affordability, noting that "[a]ddressing the needs and gaps impacting broadband affordability requires a combination of long-term policy solutions, including increasing competition, subsidizing broadband costs for low-income households, and supporting small broadband providers. By addressing these gaps, more households can access affordable high-speed internet services."[31]

Verizon would also like to reply to a few other issues raised in the comments regarding the future of universal service programs in Pennsylvania.

First, most parties agree there likely will not be a need for a state-level high cost or infrastructure support program going forward given the enormous government investment in building out broadband infrastructure. BCAP notes that the unprecedented investment in broadband networks "will completely change the analysis regarding the need for and cost of

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30 Verizon Comments at 21. Another program to be monitored is the Affordable Connectivity Program ("ACP"), which is funded by Congress and administered by the FCC to provide affordability discounts to eligible customers for broadband services and equipment. At this time, funding for ACP has run out and the FCC is winding down the program, but legislation has been introduced in Congress to extend the funding. *See* "Can the ACP keep the lights on? Maybe," Fierce Telecom, 2/22/24 (available at https://www.fiercetelecom.com/broadband/unlikely-plans-save-acp-can-they-work). Even if ACP ends, Verizon will continue to offer ACP-eligible households with home internet as low as $20 per month through the Verizon Forward program, along with Lifeline discounts for phone and internet service for qualifying low-income households. https://www.verizon.com/discounts/verizon-forward/

31 PBDA, Connecting the Commonwealth of Pennsylvania, A 5-Year Strategy toward Internet for All, at 40 (available at https://dced.pa.gov/programs-funding/broadband-in-pennsylvania/infrastructure-investment-and-jobs-act/broadband-equity-access-and-deployment-bead/).

high-cost funds."[32] OSBA "recognize[s] there may be a need for a future fund to complete gaps in federal broadband funding, but that need (if it exists) should be addressed in a future rulemaking after the full implementation of the federal programs." [33] AT&T notes that "[w]ith the momentous funding the federal government is directing to broadband (e.g., through the BEAD program), ultimately, there should be few locations, if any at all, that lack broadband and because broadband enables any number of voice service applications, there should correspondingly be few, if any, locations that lack voice service once broadband is available."[34] OCA observes that "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."[35] Also, as noted in Verizon's comments, some of the RLECs will receive additional FUSF-supported payments to build out broadband in their territories because they have enrolled in the FCC's Enhanced Alternative Connect America Cost Model ("E-ACAM"), which provides 15 years of financial support for the electing RLEC to build out broadband while prohibiting BEAD funding to serve those locations.[36]

PTA is the outlier on this issue, looking to enshrine through its "transitioned carrier" proposal a stream of legacy era financial payments for voice-only service simply based on whether an RLEC chooses to ask for the support, without regard to need, costs, federal subsidies,

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32 BCAP Comments at 4.

33 OSBA Comments at 1, n. 1.

34 AT&T Comments at 5.

35 OCA Comments at 2.

36 Verizon Comments at 19. According to the FCC, "[t]he authorizations specify support to the electing companies for a 15-year period beginning January 1, 2024, in exchange for these companies committing to deploy broadband service of at least 100/20 Mbps service to over 700,000 unserved locations across the United States, and maintain or improve existing 100/20 Mbps service to approximately 2 million locations." https://www.fcc.gov/document/fcc-authorizes-over-18-billion-expand-rural-broadband

or competition.[37] OSBA disagrees, noting that it does not make sense to subsidize "a single market participant (the incumbent local telephone company) that may not be in the best position to provide the lowest-cost service," and if any future broadband support mechanisms are needed they "should be open to competitive bidding and tied to specific deployment obligations."[38] In that case, of course, the ILEC should not have legacy service obligations. In the highly unlikely event that small "gaps" of unserved or underserved high-cost locations remain at the end of the day, and federal programs are not sufficient to address them, then a much smaller and targeted state infrastructure support mechanism could be discussed but it is premature to do so now.

Second, while affordability and digital equity initiatives are very important, there are already existing programs to address them during this period of transition and Pennsylvania is a net contributor to the FUSF that funds these programs.[39] If any additional state affordability initiatives are to be considered in the future, this would be an issue better left to the Legislature because Chapter 30 explicitly prohibits this Commission from imposing "any new Lifeline service discount that is not fully subsidized by the Federal Universal Service Fund."[40] OCA agrees that the Commission may need to "seek amendment of Section 3019(f)" from the Legislature before it could enact the types of changes that OCA suggests, and that "there would be many other details to work out."[41] Moreover, OCA's ideas are targeted to supporting affordability for broadband services, as for example OCA discusses expanding the definition of

37 PTA Comments at 15.

38 OSBA Comments at 13.

39 *See also* Verizon Comments at 17.

40 66 Pa. C.S. § 3019(f).

41 OCA Comments at 5.

basic universal service to include broadband.[42] But taxing the limited and dwindling revenues of companies certificated to provide regulated voice service to create a fund to support broadband service does not make policy sense. All citizens and businesses of Pennsylvania benefit from universal availability and access to broadband service. Thus, as AT&T explained, following the "once in a generation amounts of funding to support broadband availability" then "[i]f the Pennsylvania legislature believes that additional state funding is needed for broadband expansion beyond the federal monies, the fairest and most equitable way for Pennsylvania to support broadband availability would be to utilize funding from its general fund."[43] The Legislature would also be in a position to consider using funds from BEAD or other federal or state funding sources for this purpose if it turns out to be needed in the future.

Last but not least, there is some agreement among the commenting parties on limitations to this Commission's authority with regard to any universal service fund. Most parties agree that this commission does not have the authority to assess wireless revenues.[44] Even PTA concedes that legislative action would be needed for this Commission to require wireless carriers to contribute to a USF.[45] OCA is the only party that presumes this Commission could assess wireless revenues without additional legislative authority, relying on 47 U.S.C. 254(f). However, as Verizon explained in its comments, this statute describes what the Pennsylvania Legislature could do as the "State," but it would still be necessary for the Legislature to authorize this Commission to assess wireless carriers and it has not done so.[46] Section 254(f) alone does

42 OCA Comments at 7-8.

43 AT&T Comments at 2.

44 CTIA Comments at 4; AT&T Comments at 3; BCAP Comments at 5.

45 PTA Comments at 17-18.

46 Verizon Comments at 22-23.

not authorize this Commission's assessment of wireless carriers that are not public utilities subject to this Commission's authority and any attempt by this Commission to do so would likely be met with controversy and litigation.

While parties differed on whether VoIP revenue could or should be assessed for universal service purposes, all who addressed it agree that it is discriminatory and violates Section 254(f) to tax only the VoIP revenue of those providers that are also certificated by this Commission, while not taxing the same revenue from other providers.[47] As Verizon explained in its comments, this Commission does not have authority from the Legislature to assess VoIP providers that are not public utilities subject to this Commission's jurisdiction, and therefore is not able to lawfully assess any VoIP revenue for USF purposes due to Section 254(f)'s nondiscrimination requirement.[48] Again, this is an issue that would require legislative action.

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[47] PTA Comments at 16 ("The Commission's requirement that only certificated, or in some cases formerly certificated VoIP providers, contribute to the Universal Service Fund is unfair and discriminatory"); AT&T Comments at 3; Verizon Comments at 24.

[48] The Commission's current discriminatory policy on VoIP revenue was announced without input from affected parties because the proper rulemaking procedure was not followed. In 2021 the Commission announced that "the Commission directs all currently certificated telecommunications carriers in the Commonwealth to ***begin*** reporting their total gross intrastate VoIP revenues for PaUSF assessment purposes." *Pennsylvania Universal Service Fund Annual Rate Adjustment*, Docket No. M-00001337 (Order entered December 2, 2021) at 7 (emphasis added). Prior to that time, VoIP revenues were not included, as the Commission acknowledged in 2009. The Commission did not conduct a rulemaking in compliance with the Commonwealth Documents Law (45 P.S. § 1102, et seq.) with notice and an opportunity for affected parties to be heard as well as executive and legislative review before announcing this change to its rules. "The effect of an agency's failure to promulgate a regulation in accordance with these various statutory requirements is to have the regulation declared a nullity." *Borough of Bedford v. Department of Environmental Protection*, 972 A.2d 53, 62 (Pa. Cmwlth. 2009) (*en banc*). Verizon has therefore questioned the Commission's authority to assess VoIP revenues of certificated carriers for the USF. *See* Petition for Reconsideration of Staff Action at Dockets No. M-2023-3037828 and M-2023-3037829.

IV. **Conclusion**

Verizon thanks the Commission for the opportunity to comment on these important issues. For the foregoing reasons the Commission should:

1. Rescind the regulations at 52 Pa. Code §§ 63.161–63.171 relating to the "Pennsylvania Universal Service Fund" and eliminate the current USF.

2. Reduce regulatory burdens on ILECs, including the fund recipients, with the forward-looking measures described in Verizon's and the other parties' comments.

3. Close this rulemaking without adopting any additional carrier or customer funded state universal service fund.

4. Monitor the proceedings on the federal level relating to federally-funded low-income, high cost, rural broadband, and other programs that could affect the future need to address universal service issues at the state level.

Respectfully submitted,

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