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March 11, 2024

**VIA ELECTRONIC FILING**

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) 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 Nos. L-2023-3040646 and P-2010-2217748; **REPLY COMMENTS OF CTIA IN RESPONSE TO ADVANCE NOTICE OF PROPOSED RULEMAKING**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Reply Comments of CTIA in Response to Advance Notice of Proposed Rulemaking in the above-captioned dockets. Copies of the Reply Comments have been served.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart  
*Counsel for CTIA*

TSS/jld  
Enclosure

cc: Colin W. Scott, Esquire (via email – [colin.scott@pa.gov](mailto:colin.scott@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
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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
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**REPLY COMMENTS OF CTIA  
IN RESPONSE TO ADVANCE NOTICE OF PROPOSED RULEMAKING**

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CTIA hereby files these reply comments in response to comments filed regarding the Advance Notice of Proposed Rulemaking (“ANOPR”) adopted by the Pennsylvania Public Utility Commission (“Commission”) on August 24, 2023, entered on September 20, 2023, and published in the Pennsylvania Bulletin on November 11, 2023.<sup>1</sup> In the ANOPR, the Commission invited comments and replies from interested parties on the future of the Pennsylvania Universal Service Fund (“PA USF”).<sup>2</sup> As explained below, most parties agree that the Commission cannot lawfully obligate wireless carriers to contribute to the PA USF, and the fund, which has outlived its purpose by many years, is no longer relevant and should be discontinued.

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<sup>1</sup> 53 Pa.B. 7005 (for convenience, CTIA will use “ANOPR” for citations and in the text).

<sup>2</sup> *Id.* at 7015.

**I. THERE IS BROAD AGREEMENT THAT THE COMMISSION LACKS JURISDICTION TO REQUIRE WIRELESS PROVIDERS TO CONTRIBUTE TO THE PA USF.**

In parties' opening comments, there was broad consensus that the Commission has "authority to supervise and regulate all public utilities doing business in" Pennsylvania,<sup>3</sup> and that wireless carriers are not public utilities.<sup>4</sup> Almost all parties agreed that, read in concert, these statutes do not offer the Commission jurisdiction to impose obligations, including universal service obligations, on wireless providers.

In its comments, AT&T pointed out that "wireless carriers are specifically exempt from [the Commission's] jurisdiction," and thus the Commission has "no legal authority to require them to contribute to the PA USF."<sup>5</sup> Verizon agreed and indicated that "even the Commonwealth Court's decision affirming the [PA USF's] creation ... excluded wireless carriers from contributing" because they are beyond the Commission's jurisdiction.<sup>6</sup> Even the Pennsylvania Telephone Association ("PTA") "believes that legislative action would be required to require wireless carrier[s]" to contribute to the PA USF.<sup>7</sup>

Among the parties, only the Office of the Consumer Advocate ("OCA") argued that the Commission has jurisdiction to impose PA USF obligations on wireless providers.<sup>8</sup> However, that position was largely unsupported. OCA did not grapple with the clear dictates of Pennsylvania law and jurisprudence demonstrating that the Commission possesses no jurisdiction over wireless providers, and thus no jurisdiction to impose PA USF obligations on them. OCA pointed almost

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<sup>3</sup> 66 Pa. C.S. § 501(b).

<sup>4</sup> *See* 66 Pa. C.S. § 102 (2)(iv) ("The term ['public utility'] does not include . . . Any person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service."). *See also* CTIA Comments at 4.

<sup>5</sup> AT&T Comments at 3.

<sup>6</sup> Verizon Comments at 12.

<sup>7</sup> PTA Comments at 17-18.

<sup>8</sup> *See* OCA Comments at 10-12.

exclusively to federal law to conclude that sufficient jurisdiction exists. But OCA never addressed the fact that the text of Section 254 is merely permissive towards state universal service programs (“[a] state *may* adopt rules...”),<sup>9</sup> offering no independent authority that is not vested in the Commission under Pennsylvania law in the first instance.<sup>10</sup>

As all other parties addressing the issue agreed, the Commission must have jurisdiction under Pennsylvania law before Section 254 is relevant in any way. Even then, Section 254’s relevance to states is primarily in limiting state authority by requiring state programs to be “equitable and nondiscriminatory” and “not inconsistent with” the Federal Communications Commission’s (“FCCs”) rules.<sup>11</sup> As a result, OCA provides no cogent argument explaining how the Commission could be vested with authority to impose PA USF contribution obligations on wireless providers in spite of Pennsylvania law’s clear limitations on the Commission’s jurisdiction over them.

## **II. THE RECORD SHOWS THAT THE PA USF HAS OUTLIVED ITS RELEVANCE AND USEFULNESS.**

From its inception, the PA USF was purposed to be a temporary measure that was intended to terminate in 2003. The fund was envisioned and designed as a program to ease the transition to a competitive market, not as a permanent fixture.<sup>12</sup> Not only does the PA USF currently lack any relevant tie to its original purpose, but as Verizon points out, the last two evidentiary examinations of the PA USF concluded that rural incumbent local exchange carriers (“ILECs”) receiving support from the PA USF failed to provide evidence of any need for the PA USF.<sup>13</sup> What Administrative

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<sup>9</sup> 47 U.S.C. § 254(f) (emphasis added) (“Section 254”).

<sup>10</sup> See CTIA Comments at 6-7, Verizon Comments at 23-24.

<sup>11</sup> See 47 U.S.C. § 254(f).

<sup>12</sup> See Verizon Comments at 4.

<sup>13</sup> Verizon Comments at 4-5.

Law Judge Mellilo stated well over a decade ago regarding the lack of evidence of need for the PA USF remains pertinent and equally true today:

[There is a] lack of countervailing evidence that these PA USF payments are necessary.... There simply has been no showing of need for these massive subsidy transfers. Instead, in a competitive environment, the market should be relied upon, in large measure, to keep rates affordable and there has been no proof of any RLEC service area that lacks sufficient competitive options.<sup>14</sup>

The absence of such an evidentiary showing is replicated in the docket at bar, where the record is devoid of any showing that there is any need for the PA USF today, with only the merest of anecdotal statements from PTA regarding a lack of “ubiquitous voice availability,” which statements are contradicted within PTA’s own comments.<sup>15</sup> It is puzzling that PTA repeated the evidence-free approach it employed in the last dockets examining the future of the PA USF, each of which resulted in recommendations for its discontinuation in favor of relying on a market already deemed competitive some 15 years ago. Those recommendations were based in no small part on the absence of any showing of need.<sup>16</sup>

Rather than present any evidence that its members require support from the PA USF, PTA’s comments pointed to various FCC subsidy programs that PTA alleged require no such showing.<sup>17</sup> There are obvious flaws with PTA’s approach. For instance, unlike the federal funds PTA

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<sup>14</sup> *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 132-33.

<sup>15</sup> PTA Comments at 6. Compare PTA Comments at 3 (“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 masse “cut the cord” and no longer subscribe to any wireline voice service whatsoever. Even among wireline carriers, cable companies now serve more voice customers than the so-called “incumbent” local exchange carriers. The RLECs are often the third choice for various reasons, including end-user’s technology preferences and desire for mobility.”) To be clear, CTIA takes no position today on PTA’s request for COLR relief, and simply highlights PTA’s admission that consumers have competitive options in RLECs’ service territories.

<sup>16</sup> See generally *id.* and *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”)

<sup>17</sup> See PTA Comments at 11 (highlighting various elements of the Connect America Fund, the Alternative Connect America Fund (“A-CAM”), and the Rural Digital Opportunity Fund (“RDOF”).)

highlighted, the PA USF was intended to be discontinued 21 years ago, so any further continuation of the PA USF should involve scrutinization of any current need for the fund. Just as the existence of a habit is no evidence of its merits, the fact that the PA USF has continued for decades is no evidence that there is any need for it to continue today. In addition, PTA pointed to several funding mechanisms, A-CAM and RDOF, that the FCC has used as broadband deployment mechanisms by requiring recipients to make substantial commitments to offer broadband service at determined speeds and locations in exchange for universal service funding. These federal funds bear no resemblance to the PA USF whatsoever, a fact that PTA's strained comparison ignored.

The Commission may also consider that whatever need may have existed among then-recipient carriers at the time the PA USF was created, today, approximately 83% of PA USF payments are made to "sophisticated, multi-state, mostly privately held communications conglomerates."<sup>18</sup> This is a far cry from the facts on the ground in the late 1990s when the PA USF was originally created to support small ILECs serving the Commonwealth's rural markets.

Just as the original justification for the fund been rendered obsolete over the decades since its inception, the PA USF's structure has fared just as poorly. As the Office of the Small Business Advocate ("OSBA") noted,

[r]ecipient ILECs have lost 70% of the access lines they provided in 2007. Nevertheless, the Pa. USF perpetuates the revenues associated with these lines, paying its beneficiaries for calls last made 20-25 years ago, from customers that have moved onto other providers, using instruments (landline phones) now abandoned. If there is any remaining legitimacy to the Pa. USF it is the product of coincidence and happenstance, not the product of sound logic, policy and data.<sup>19</sup>

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<sup>18</sup> Verizon Comments at 6.

<sup>19</sup> OSBA Comments at 9.

CTIA agrees with OSBA's conclusion that "the Commission should terminate the existing USF as fundamentally obsolete and ineffective in the wireless/broadband world of today."<sup>20</sup>

### III. CONCLUSION.

For the reasons expressed above, CTIA urges the Commission to take steps to discontinue the PA USF immediately. Should the Commission elect to continue the PA USF, CTIA urges the Commission to recognize that it lacks jurisdiction to require wireless carriers to contribute.

Respectfully submitted,



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DATED: March 11, 2024

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<sup>20</sup> OSBA Comments at 1.