

**Prepared Testimony of**

*Andrew G. Place*  
**Vice Chairman**  
**Pennsylvania Public Utility Commission**

*Before the*

**Pennsylvania House of Representatives**  
**Consumer Affairs Committee**

*Informational Meeting*

**Broadband Internet Services**

*Held at*

**Waynesburg University**  
**Waynesburg, Pennsylvania**

**August 17, 2016**

**Pennsylvania Public Utility Commission**  
**P.O. Box 3265**  
**Harrisburg, Pennsylvania 17105-3265**

## Testimony

Chairman Godshall, Chairman Daley, and Members of the Committee, thank you for the opportunity to testify today on behalf of the Public Utility Commission on the important issues of broadband access and availability. I also express my special thanks to Representative Snyder for hosting this meeting. I will address the implementation of Chapter 30 of the Public Utility Code — generally referred as the Chapter 30 law — as well as a number of federal regulatory developments that affect broadband access services and their continuous evolution and availability in Pennsylvania. My testimony centers on retail broadband access services that are or should be available for end-user consumers and enable high-speed connections to the Internet.

### **A. Chapter 30 Law And Its Implementation**

The Pennsylvania General Assembly through the November 2004 enactment of the new Chapter 30 law adopted an innovative approach for the deployment of broadband networks by incumbent local exchange carrier (ILEC) telephone companies and the universal availability of retail broadband access services. This Pennsylvania initiative began several years before the more recent federal policies that are being implemented by the Federal Communications Commission (FCC), combined the concept of universal service with the requirement of broadband deployment and availability. The relevant legislative Declaration of Policy specifically states “that it is the policy of this Commonwealth to:”

Maintain *universal telecommunications service* at affordable rates while encouraging the accelerated provision of advanced services and *deployment of a universally available, state-of-the-art, interactive broadband telecommunications network*, in rural, suburban and urban areas, including deployment of broadband facilities in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks and health care facilities.

66 Pa. C.S. 3011(2) (emphasis added).

Consistent with the applicable statutory provisions of the Chapter 30 law, the Pennsylvania Public Utility Commission (Commission or Pa. PUC) approved alternative regulation and network modernization plans (NMPs) for Pennsylvania ILECs. These NMPs contained both the relevant broadband deployment commitments and the accompanying incentive regulation and ratemaking mechanisms for these ILECs. The broadband deployment commitments were premised on the deployment of networks “using any technology” capable of delivering broadband access services with download speeds equal to or greater than 1.544

megabits per second (Mbps) and upload speeds equal to or greater than 128 kilobits per second (kbps, or 0.128 Mbps).<sup>1</sup> It should be noted that current federal standards used by the FCC in association with the federal universal service fund (USF) and Connect America Fund (CAF) mechanisms involve download and upload broadband speeds at the 10 Mbps and 1 Mbps levels respectively. These federal standards most likely will climb in the future to the 25 Mbps / 3 Mbps levels.

Numerous Pennsylvania rural ILECs completed their Chapter 30 broadband deployment commitments by December 31, 2008. CenturyLink (The United Telephone Company of Pennsylvania) and Windstream PA (ex-ALLTEL PA) completed their respective broadband deployments by December 31, 2013. Verizon Pennsylvania LLC (Verizon PA, ex-Bell Atlantic Pennsylvania Inc.) and Verizon North LLC (Verizon North, ex-GTE North) completed their broadband deployment by December 31, 2015. The Commission has received the required network modernization plan update reports from all the ILECs. Although these ILEC deployments have been primarily based on wireline technologies (e.g., digital subscriber line or xDSL, fiber optic to the home or to the premises such as FiOS, etc.), wireless and satellite technologies have also been and are utilized in partnership with wireless carriers and satellite communications entities respectively.

The incentive regulation and ratemaking for most of the Pennsylvania Chapter 30 ILECs was based on price stability mechanisms incorporating price cap formulas. These formulas permitted and still enable these ILECs to obtain almost automatic annual revenue and rate increases for their regulated intrastate services that the Commission authorizes in accordance with the approved NMPs.<sup>2</sup> The Commission has authorized a cumulative total of \$969.01 million in incentive revenue and rate increases for Pennsylvania's Chapter 30 ILECs in the 2005-2015 time frame. The annual application of the price stability mechanisms for the Chapter 30 ILECs is continuing even after the completion of their respective network modernization programs and broadband deployment.

In accordance with the Chapter 30 law statutory directives a number of programs were also implemented:

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<sup>1</sup> The Chapter 30 law defines "Broadband" as: A communications channel using any technology and having a bandwidth equal to or greater than 1.544 megabits per second (Mbps) in the downstream direction and equal to or greater than 128 kilobits per second (Kbps) in the upstream direction. 66 Pa. C.S. § 3012.

<sup>2</sup> These formulas rely on the annual percentage changes in the Gross Domestic Product Price Index (GDP-PI) and on statutorily prescribed productivity inflation offset values of 0% or 0.5%. *See generally* 66 Pa. C.S. § 3015(a)(1).

**Chapter 30 – Bona Fide Retail Request (BFRR) Program:** The Chapter 30 BFRR program involved the CenturyLink, Windstream, Verizon Pennsylvania, and Verizon North ILECs. This program accelerated broadband deployment within identifiable and qualifying broadband access service demand clusters within the service areas of these four (4) ILECs. This program has ended following the completion of the Chapter 30 broadband deployment commitments of these ILECs.

**Chapter 30 – Broadband Outreach and Aggregation Fund (BOAF):** The BOAF was a grant program that was administered by the Pennsylvania Department of Community and Economic Development (DCED). The program was designed to assist communities with the demand aggregation for broadband access services (e.g., use of seed grants), and for relevant DCED outreach activities to public entities, anchor institutions (e.g., schools, health care facilities), and business and residential consumers. The program was funded by annual Pa. PUC fiscal assessments on the relevant and actual Chapter 30 NMP revenue increases of CenturyLink, Windstream, Verizon PA and Verizon North.<sup>3</sup> This program has ended following the completion of the Chapter 30 broadband deployment commitments of these ILECs. The total funding since the inception of the program has equaled almost \$10 million.

**Chapter 30 – Education Technology Fund (E-Fund) and Education Technology Program:** The E-Fund and the related Education Technology Program were in place during the period of June 30, 2005 to June 30, 2011. 66 Pa. C.S. § 3015(d). The E-Fund and the related program administered by the Pennsylvania Department of Education authorized grants for the purchase or lease of “telecommunications services, infrastructure or facilities to establish and support broadband networks between, among and within school entities,” for the purchase or lease of related premises equipment, distance learning initiatives through the “foregoing broadband networks,” and for relevant technical support services. 66 Pa. C.S. § 3014(j)(2). The E-Fund was financed through certain fiscal assessments on the Chapter 30 non-rural ILECs (Verizon PA and Verizon North), and partially through the fiscal assessments of the BOAF mechanism. 66 Pa. C.S. §§ 3015(c)(3) and 3015(d)(3). A total of almost \$60 million was channeled to this program since its inception.

As a result of the Chapter 30 law and its implementation, Pennsylvania is ahead of other states in terms of broadband deployment and availability. The network investments that were made and are being made by Pennsylvania’s Chapter 30 ILECs provide the foundation for the provision of retail broadband access services that exceed the statutory standards for 1.544 Mbps downstream and 0.128 Mbps upstream speeds. Networks and network technologies continue to evolve. The volume and the speed of broadband traffic that transits through a fiber optic cable in the transmission or distribution part of a wireline network can be upgraded through the replacement of appropriate electronics (without replacing the actual fiber optic cable).

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<sup>3</sup> See generally 66 Pa. C.S. § 3015(c).

## B. Continuous Regulatory Oversight

The Commission continues to exercise regulatory oversight to monitor and enforce the carriers' compliance with Chapter 30 consistent with the statutory mandates and the network deployment obligations of the Pennsylvania ILECs. This includes the adjudication of formal complaints before the Commission's Office of Administrative Law Judge (OALJ), as well as the processing and resolution of informal complaints and/or appropriate inquiries by the Pa. PUC Bureau of Consumer Services (BCS) and the public. A Chapter 30 ILEC must make a broadband access service available to a customer at the bandwidths prescribed by Chapter 30 within ten (10) business days after receiving a request for such service. 66 Pa. C.S. § 3014(b)(5). However, the Commission's jurisdiction does not extend over the pricing of retail broadband access services which are currently classified by the FCC as interstate telecommunications services for regulatory purposes.<sup>4</sup>

As mentioned previously, an ILEC must supply the required retail broadband access service by "using any technology." However, any such technology must meet the Chapter 30 statutory standards of download and upload broadband speeds at a minimum of 1.544 Mbps and 0.128 Mbps respectively. Even when and where the broadband access service is provisioned through an ILEC's wireless affiliate or satellite communications partner, the ILEC remains responsible under the applicable Chapter 30 statutory mandates to the end-user consumer regarding the availability and delivery of the service.<sup>5</sup> Similarly, ILEC obligations for the continuous delivery of retail broadband access services under applicable Chapter 30 statutory provisions and relevant NMPs have not been modified in situations where certain ILEC regulated telecommunications services have been reclassified as competitive and price deregulated.<sup>6</sup>

The Commission retains considerable enforcement powers consistent with due process evidentiary requirements in the event of ILEC non-compliance with the statutory requirements of Chapter 30 regarding the ILECs' "interim and final 100% commitments for broadband availability in their amended network modernization plans." For example, in the "event that a

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<sup>4</sup> The FCC classifies broadband Internet access services (BIAS) as jurisdictionally interstate for regulatory purposes in its March 2015 *Net Neutrality Order*. *In re Protecting and Promoting the Open Internet*, GN Docket No. 14-28, (FCC, rel. Mar. 12, 2015), Report and Order on Remand, Declaratory Ruling, and Order, *slip op.* FCC 15-24, 30 FCC Rcd 5601 (2015), ¶ 431, *slip op.* at 203 (FCC *Net Neutrality Order*); *aff'd United States Telecom Assoc. v. FCC*, (DC Cir., No. 15-1063 *et al.*, June 14, 2016, *slip op.*), *petitions for reh'g en banc pending*.

<sup>5</sup> See generally *Petition of David K. Ebersole, Jr. and the Office of Consumer for a Declaratory Order*, Docket No. P-2012-2323362, Final Order entered February 28, 2013; Tentative Order entered December 26, 2012.

<sup>6</sup> See generally 66 Pa. C.S. § 3106.

local exchange telecommunications company is found by the commission, after notice and evidentiary hearings held on an expedited basis, to have failed to meet such an interim or final 100% commitment, then the commission shall require the local exchange telecommunications company to refund to customers in its next price stability filing an amount that is just and reasonable under the circumstances.” 66 Pa. C.S. § 3015(a)(2). The Commission can also impose appropriate and separate civil penalties. *Id.*

### **C. The Pennsylvania Universal Service Fund**

While there is no specific broadband build-out state fund, the Pennsylvania Universal Service Fund (Pa. USF), which currently underwrites reductions in intrastate access charges, indirectly supports broadband deployment for those ILECs that rely on both the Pa. USF and federal USF/CAF support to build and/or upgrade physical wireline networks that are used by a multitude of services and associated communications protocols. By providing funds to support physical networks, the Pa. USF and federal USF/CAF indirectly support the services provided over the networks, including broadband. This is important given that approximately 60% to 70% of the revenues for Pennsylvania’s rural ILECs with carrier of last resort (COLR) obligations come from state and federal USF support mechanisms as well as access payments. Such intercarrier compensation and federal support are being reduced under FCC regulation.<sup>7</sup>

The Pa. USF currently distributes \$33.83 million of funding support to 32 rural ILECs. The contribution base of the Pa. USF is funded by an annual assessment on the intrastate retail revenues of all wireline telecommunications carriers operating in Pennsylvania. During the 2004-2015 time period the Pa. USF annual support distributions amounted to a total of \$434.47 million.<sup>8</sup> The Pa. USF mechanism preserves and advances universal service and continuous broadband deployment goals under applicable Pennsylvania and federal law even as the FCC imposes additional obligations.

The Commission is supportive of the legislative initiative in House Bill 1417 (HB 1417) regarding the Pa. USF, consistent with the prior testimony that has been offered by Chairman

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<sup>7</sup> See generally *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, (FCC, Rel. Nov. 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 11-161, 26 FCC Rcd 17663 (2011), *aff’d In re FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014), *cert. denied* 83 U.S.L.W. 3835, May 4, 2015 (*NARUC v. FCC*, S. Ct., No. 14-901, *Allband Com. Coop. v FCC*, S. Ct., No. 14-900) (*USF/ICC Transformation Order*).

<sup>8</sup> This total amount of Pa. USF support distributions will increase to \$437.29 million by December 31, 2016.

Gladys M. Brown before this Committee, as well as additional analysis and explanations.<sup>9</sup> As Chairman Brown pointed out to this Committee, this proposed “legislation correctly focuses on ensuring that a state universal service fund is available to support rural carriers who provide telecommunication and broadband service in rural areas.” Furthermore, HB 1417 will permit the Commission to adequately investigate and modernize the existing Pa. USF mechanism while keeping abreast of the FCC initiatives involving the ongoing federal USF and Connect America Fund reforms.

#### **D. Interagency Initiatives & Collaboration**

The Commission collaborates with other Commonwealth government agencies such as the Department of Community and Economic Development (DCED), and the Rural Development Council on broadband issues and initiatives, and maintains a consultative relationship with the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA). The Commission also coordinates with the Office of Vocational Rehabilitation, Department of Labor and Industry (OVR-L&I) on issues involving the telecommunications device distribution program (TDDP) for qualified persons with disabilities. Finally, the Commission actively participates in various rulemaking proceedings before the FCC involving telecommunications and broadband deployment issues that can and do affect Pennsylvania’s interests.

#### **E. Federal Developments Affecting Continuous Broadband Deployment And Availability**

There are a number of FCC initiatives that affect the continuous broadband deployment and availability in Pennsylvania. I will focus on some of the most recent initiatives.

##### **1. Federal USF & CAF Mechanism**

The FCC has been reorienting the high-cost component of the federal USF mechanism in supporting the deployment of broadband networks and access services under the Connect America Fund (CAF) initiative. This involves broadband deployment in qualified locations under federal parameters and the broadband speed standards of 10 Mbps for downloads and 1 Mbps for uploads. The FCC has made available certain CAF Phase II (CAF II) cost model support amounts to those Pennsylvania ILECs that are classified as federal “price cap carriers.” The majority of these Pennsylvania ILECs have accepted these CAF II support amounts and the

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<sup>9</sup> *Prepared Testimony of Gladys M. Brown, Chairman, Pennsylvania Public Utility Commission, before the Pennsylvania House of Representatives Consumer Affairs Committee, August 24, 2015.*

related statewide commitment of broadband deployment at the 10 Mbps / 1 Mbps federal standard.<sup>10</sup> For example, the CAF II support allocated to Windstream PA for Greene County involves an annual amount of \$2.20 million for 4,299 locations, or 16.94% of the annual \$13 million support for all Windstream ILECs in Pennsylvania. One major Pennsylvania ILEC has not accepted the allocated annual CAF II support amount of \$23.27 million (\$232.71 million over a 10-year period). These unclaimed funds will be subject to a competitive bidding auction process under FCC guidelines.<sup>11</sup>

**FCC CAF II Model Support to Pennsylvania Federal Price Cap ILECs**

<u>ILEC</u>	<u>Annual Amount</u>	<u>10-Yr Amount</u>	<u>No. of Locations</u>
CenturyLink	\$10,562,353	\$ 105,623,530	30,297
Consolidated Telecom	83,898	838,980	175
FairPoint Communications	155,938	1,559,380	467
Frontier Communications	3,891,253	38,912,530	11,031
Windstream	13,001,364	130,013,640	34,807
Verizon North LLC	23,270,817	232,708,170	64,620
TOTAL	\$50,965,623	\$ 509,656,230	141,397

Source: FCC.

Because the FCC’s competitive auction bidding procedures may not necessarily result in the full utilization of this annual \$23.27 million CAF II support amount within Pennsylvania, the Commission has actively intervened in the related FCC proceeding. Through the submission of timely filed comments the Commission has brought to the FCC’s attention Pennsylvania’s statutory commitment to broadband deployment through the Chapter 30 law as well as the fact that the Commonwealth is customarily a net contributor state to the federal USF mechanism. For example, in 2014 alone Pennsylvania made a net positive contribution of \$132.27 million to the federal USF mechanism. Naturally, these net positive contributions serve universal service and broadband deployment goals in other states that are net recipients of federal USF mechanism funding support. The Commission has requested “that any unclaimed CAF II model support amounts should fully remain and [be] utilized within the Commonwealth.”<sup>12</sup>

The FCC has also revised the federal USF mechanism support for smaller rural ILECs that are classified as federal “rate of return (ROR) carriers.” These ILECs must make certain

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<sup>10</sup> These ILECs will also be utilizing their own capital funds in meeting the related statewide deployment commitments.

<sup>11</sup> *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, (FCC, Rel. May 26, 2016), Report and Order and Further Notice of Proposed Rulemaking, *slip op.* FCC 16-64, 81 Fed. Reg. 40235 (June 21, 2016).

<sup>12</sup> *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Comments of the Pennsylvania Public Utility Commission, July 21, 2016, at 14.



elections as to their preferred method of federal support. This mechanism still needs to be finalized and entails a certain degree of financial uncertainty for these smaller federal ROR ILECs that operate both in Pennsylvania and other states. As with price cap ILECs, the receipt of such funding support is accompanied by broadband deployment obligations under federal parameters and the associated download and upload speed standards (10 Mbps / 1 Mbps).<sup>13</sup>

## **2. FCC Lifeline Program Modernization And Supported Broadband Access Services**

The FCC has proceeded with a major initiative to reform and modernize the federal Lifeline program that is supported by the Low Income component of the federal USF mechanism. The federal Lifeline program will now support both telecommunications and retail broadband access services (BIAS) for eligible low-income end-user consumers and households that are served through wireline or wireless technologies. The relevant amount of federal support will be limited to \$9.25 per month and per eligible end-user or household.<sup>14</sup>

## **F. Conclusions**

The Chapter 30 law initiative provided the incentive regulation and the technological foundation for the deployment of appropriate networks and retail broadband access services by Pennsylvania's ILECs. However, technological evolution and the rising demand for both wireline and wireless broadband access services of ever higher speeds mandates continuous capital investment in physical networks in all geographic areas of the Commonwealth. This ongoing investment is critical for a number of areas such as economic development, education, health care, etc., and must be appropriately supported in rural high-cost areas that are served by carriers with COLR obligations.

The continuous deployment of broadband networks and access services is a *joint* responsibility between the federal government and the states.<sup>15</sup> Similarly, the concept of universal service, which now incorporates retail broadband access and not just basic voice

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<sup>13</sup> See generally *In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, (FCC, Rel. Mar. 30, 2016), Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, *slip op.* FCC 16-33.

<sup>14</sup> See generally *In re Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, (FCC, rel. Apr. 27, 2016), Third Report and Order, Further Report and Order, and Order on Reconsideration, *slip op.* FCC 16-38, 81 Fed. reg. 33026 (May 24, 2016) (FCC *Lifeline Reform Order*), *petitions for reconsideration pending, appeals pending NARUC et al. v. FCC*, (DC Cir. Case No. 16-1170 *et al.*, filed June 3, 2016). Because the FCC's *Lifeline Reform Order* involves a rather complex set of federal and state jurisdictional interactions, a number of parties including the Pa. PUC have sought clarification and/or reconsideration of the FCC's decision. The National Association of Regulatory Utility Commissioners and a number of states have appealed the FCC *Lifeline Reform Order* to the U.S. Court of Appeals for the District of Columbia Circuit.

<sup>15</sup> See generally 47 U.S.C. § 1302(a).

communications capabilities, is a basic premise under both federal and Pennsylvania law. Therefore, the continuous deployment of broadband networks and services is synonymous with the maintenance and enhancement of universal service for all Pennsylvanians.

I thank you for the opportunity to appear before the Committee and I will be happy to answer any questions that you may have.