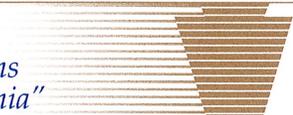


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Steven J. Samara
President

April 16, 2019

VIA ELECTRONIC FILING

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

Re: Proposed Policy Statement Regarding the Reporting of Intrastate Operating Revenues for Section 510 Assessment Purposes by Jurisdictional Telecommunications Carriers Offering Special Access and Other Similar Jurisdictionally-Mixed Telecommunications Services
Docket No. M-2018-3004578

Dear Secretary Chiavetta:

Enclosed for filing are the Comments of the Member Companies of the Pennsylvania Telephone Association to the Pennsylvania Public Utility Commission's Order and Proposed Policy Statement entered November 8, 2018 in the above-referenced matter.

Please feel free to call me with any questions or concerns.

Sincerely,

Steven J. Samara
President

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Policy Statement Regarding the Reporting of :
Intrastate Operating Revenues for Section :
510 Assessment Purposes by Jurisdictional : Docket No. M-2018-3004578
Telecommunications Carriers Offering :
Special Access and Other Similar :
Jurisdictionally-Mixed Telecommunications :
Services :

**JOINT COMMENTS OF THE MEMBER COMPANIES OF THE PENNSYLVANIA
TELEPHONE ASSOCIATION TO THE ORDER AND PROPOSED POLICY
STATEMENT ENTERED NOVEMBER 8, 2018**

- Armstrong Telephone Company — North
- Armstrong Telephone Company — Pennsylvania
- Bentleyville Communications Company
- Citizens Telephone Company of Kecksburg
- Consolidated Communications of Pennsylvania Company, LLC
- Hancock Telephone Company
- Hickory Telephone Company
- Ironton Telephone Company
- Lackawaxen Telecommunications Services, Inc.
- Laurel Highland Telephone Company
- Marianna & Scenery Hill Telephone Company
- North-Eastern Pennsylvania Telephone Company
- North Penn Telephone Company
- Palmerton Telephone Company
- Pennsylvania Telephone Company
- Pymatuning Independent Telephone Company
- South Canaan Telephone Company
- TDS Telecom/Deposit Telephone Company
- TDS Telecom/Mahanoy & Mahantango Telephone Company
- TDS Telecom/Sugar Valley Telephone Company
- The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink
- Venus Telephone Corporation
- West Side Telephone Company
- Windstream Buffalo Valley, Inc.
- Windstream Conestoga, Inc.
- Windstream D&E, Inc.
- Windstream Pennsylvania, LLC
- Yukon-Waltz Telephone Company

DATED: April 16, 2019

I. INTRODUCTION

By Order entered November 8, 2018 and appearing at Annex A thereto, the Pennsylvania Public Utility Commission (“Commission”) proposed a *Policy Statement Regarding the Reporting of Intrastate Operating Revenues for Section 510 Assessment Purposes by Jurisdictional Telecommunications Carriers Offering Special Access and Other Similar Jurisdictionally-Mixed Telecommunications Services* (“Policy Statement”). On March 2, 2019, the Order and proposed Policy Statement, along with the Statement of Vice Chairperson Andrew G. Place, were published in the Pennsylvania Bulletin.¹ Comments to the proposed Policy Statement are due April 16, 2019 and Reply Comments are due May 1, 2019. These Comments are jointly submitted by the 28 Member Companies (“Companies”) of the Pennsylvania Telephone Association (“PTA”),² each a rural incumbent local exchange carrier.

The Companies appreciate this opportunity afforded by the Commission to submit comments. The Companies support the concept that all certificated telecommunications carriers should pay a reasonable share of the costs of administering the Pennsylvania Public Utility Code

¹ 49 Pa.B. 929.

² For purposes of providing comments to the Commission in this docketed matter, the Companies (with their utility codes) include: Armstrong Telephone Company — North (312650); Armstrong Telephone Company — Pennsylvania (312350); Bentleyville Communications Company (310250); Citizens Telephone Company of Kecksburg (310650); Consolidated Communications of Pennsylvania Company, LLC (31550); Hancock Telephone Company (311500); Hickory Telephone Company (311550); Ironton Telephone Company (311650); Lackawaxen Telecommunications Services, Inc. (311700); Laurel Highland Telephone Company (311800); Marianna & Scenery Hill Telephone Company (312000); The North-Eastern Pennsylvania Telephone Company (312450); North Penn Telephone Company (312500); Palmerton Telephone Company (312700); Pennsylvania Telephone Company (312750); Pymatuning Independent Telephone Company (312800); South Canaan Telephone Company (3115916); TDS Telecom/Deposit Telephone Company (311100); TDS Telecom/Mahanoy & Mahantango Telephone Company (311950); TDS Telecom/Sugar Valley Telephone Company (313100); The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (313200); Venus Telephone Corporation (313400); West Side Telephone Company (313600); Windstream Buffalo Valley, Inc. (310369); Windstream Conestoga, Inc. (310850); Windstream D&E, Inc. (311050); Windstream Pennsylvania, LLC (312050); and Yukon-Waltz Telephone Company (313650). The Companies provide a full array of services over wire line networks, serving largely in rural portions of Pennsylvania.

("Code"). The Companies also understand that the Commission's intent of the proposed Policy Statement is to address situations in which carriers report "zero" intrastate revenues for assessment purposes under Section 510 of the Code.

As addressed below, the Companies are willing to participate in a collaborative process to examine the complex issues underlying and implicated by the proposed Policy Statement. The Companies recommend that the Commission wait on a proposed Policy Statement until after review of information obtained from the collaborative.

II. COMMENTS

A. A collaborative approach is preferred before any Policy Statement is formally adopted.

The convergence of technologies and prevalence of data-based traffic has significantly complicated issues with attempting to determine whether services are intrastate or interstate for jurisdictional purposes. When a special access circuit is purchased, for example, the customer makes the inter/intra distinction at the time of sale – not the carriers subject to this proposed Policy Statement.

Specifically, carriers do not inspect each data packet to determine jurisdiction. Data packets typically traverse through many states before coming back to the originating state. Any attempt to do so (assuming it could be done), would surely slow down customer traffic and would cause security and privacy issues. To require a carrier to attempt somehow to apportion the intrastate piece of that traffic would violate federal policies and the underlying reasons for the 10% contamination rule. In addition, although the Federal Communications Commission ("FCC") has acknowledged that broadband Internet access service traffic may include an intrastate component,

the FCC has concluded that broadband Internet access service is properly considered jurisdictionally interstate for regulatory purposes.³

While the Companies understand the Commission's intent behind the proposed Policy Statement, the reality today is that special access services and other similarly mixed jurisdictional services are overwhelmingly *interstate* in nature. The 10% contamination rule is not *per se* an inefficient or unreasonable way to apportion between interstate and intrastate. However, the Companies recognize that other interested parties may have varying positions and experiences. The Companies support a collaborative approach as that can facilitate the exchange of information regarding the challenges and potential benefits of the proposed Policy Statement.

B. Issues that could be addressed in the collaborative regarding the proposed Policy Statement.

The proposed Policy Statement creates a concept of “de facto gross intrastate operating revenues.” What is not clear is how to determine (and demonstrate) which revenue services would fall within the ambit of that concept. Moreover, the proposed Policy Statement at footnote 3 qualifies the concept as “traffic between points that are both located within the Commonwealth of Pennsylvania.”⁴ Without inspecting each packet of data, there is no realistic or practical way to be certain that the traffic wholly remains in the Commonwealth of Pennsylvania.

³ See, e.g., *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd. 311 (2018). See also, *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, CC Docket No. 98-79, Memorandum Opinion and Order, 13 FCC Rcd 22466, 22475, para. 16 (1998), recon. denied, 17 FCC Rcd 27409 (1999); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4832, para. 59 (2002) (Cable Modem Order and NPRM), *aff'd*, *NCTA v. Brand X*, 545 U.S. 967 (2005); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, 22 FCC Rcd 5901, 5911, para. 28 (2007) (*Wireless Broadband Classification Order*); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13281, 13288, para. 11 (2006).

⁴ See, Annex A, footnote 3. Questions abound. For example, are the “traffic points” physically located in Pennsylvania? What qualifies as a traffic point? How will these endpoints be uniformly and consistently determined

The extent and prevalence of the problem of carriers claiming zero intrastate revenues is also unclear. Therefore, the Companies are uncertain if the benefits of the proposal outweigh the effort, expense and resources necessary to redress that problem in the manner the proposed Policy Statement illustrates.

Finally, while special access is a known service, the proposed Policy Statement employs the phrase “or other similar jurisdictionally-mixed telecommunications services.” What specific services fall within the ambit of that phrase remains unclear and is undefined in the proposed Policy Statement. While the proposed Policy Statement apparently aims to seek redress relative to carriers that submit zero revenues for assessments under Section 510 of the Code, this ambiguity regarding the services is of concern to the Companies. That concern becomes magnified as the processes to enforce the Policy Statement are undertaken. Similarly, the proposed Policy Statement at Sections 69.3701(6) and (7) would include “other telecommunications public utilities” and as such implicate the Companies and would impose additional regulatory burdens on all telecommunications carriers. In this regard, the Companies note that Section 69.3701(7) would significantly increase reporting and record retention requirements.⁵ The imposition of additional reporting requirements runs counter to the Comments submitted by Rural Local Exchange Carriers in response to the Commission’s Advanced Notice of Proposed Rulemaking (ANPR) Order at Docket No. L-2018-3001391.⁶

either by the Commission or any bureau of the Commission tasked with implementing or enforcing the proposed Policy Statement?

⁵ “Any CAP or other telecommunications public utility...and providing special access or other similar jurisdictionally-mixed telecommunications services is obligated to submit its de facto gross intrastate revenues...along with all supporting information (such as traffic studies, tax returns, jurisdictional allocation formulas and factors, books of account, reports, etc.) on which the carrier bases its revenue determination...”

⁶ The ANPR invited interested parties “to propose for consideration any reasonable alternative regulations or regulation structure/scheme for competitive and non-competitive wire centers other than those proposed in the Advance Notice”.

The long-range impact of potential additional reporting requirements on all carriers and the lack of certainty regarding how the Policy Statement's concepts will be applied remain unclear and of concern. The Companies submit that a collaborative approach may help clarify some of these uncertainties and could facilitate the exchange of information regarding potential challenges and benefits of the concept.

C. The Companies' responses to Vice Chair Questions.

1. Whether and in what fashion existing jurisdictional separations rules are implicated in implementing the Proposed Policy Statement.

Companies' response to Question 1: As addressed above, the jurisdictional nature of special access services and other jurisdictionally mixed services are largely driven by the fact that these are data and internet-based services, which the FCC has found to be interstate for regulatory purposes. Application of the concept of "de facto gross intrastate operating revenues" creates uncertainty as addressed above. It would certainly appear that the same revenue would be implicated by both the proposed Policy Statement and under any potentially applicable separations rules.

2. Whether the format and content of the Commission's annual fiscal Assessment Report should be modified so that it contains better information on the reportable de facto revenues (including information and data on special access revenues that are classified as interstate under the FCC's "10% contamination rule").

Companies' response to Question 2: The Companies oppose any additional reporting or expansion of existing reports that may be established through the promulgation of the proposed Policy Statement.⁷ Additional reporting requirements and expansion of existing reports create additional administrative burdens and impose undue expenses on carriers and this Commission.

⁷ See, e.g., Annex A, § 69.3701(7).

3. Whether the Commission should initiate a formal collaborative process between its Staff and the interested parties and entities in order to address this potential change of reportable revenues for Section 510 fiscal assessment purposes.

Companies' response to Question 3: The Companies support a collaborative process before any formal adoption of a Policy Statement concerning reportable revenues for Section 510 fiscal assessment purposes.

III. CONCLUSION

The Companies appreciate the opportunity to submit these comments. For the reasons set forth above, the Companies recommend that the Commission not implement the proposed Policy Statement at this time and, in the alternative, establish a collaborative process to examine the complex issues underlying and implicated by the proposed Policy Statement.

Respectfully Submitted: April 16, 2019