

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

May 1, 2019

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

Re: 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 Telecommunication Service
Docket No. M-2018-3004578

Dear Secretary Chiavetta:

Attached for electronic filing are the Reply Comments of the Office of Consumer Advocate
in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Barrett Sheridan".

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Enclosures:

cc: Office of Administrative Law Judge
David E. Screven, Law Bureau (e-mail only: dscreven@pa.gov)
Certificate of Service
*271254

CERTIFICATE OF SERVICE

Re: 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 :
Telecommunication Services :

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 1st day of May 2019.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

Richard A. Kanaskie, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

John R. Evans
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Matthew T. Murchison, Esquire
Latham & Watkins, LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

Pamela C. Polacek, Esquire
McNees, Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Michael J. Cicchetti, Vice President
Government and External Affairs
Frontier Communications
125 South Main Street
West Hartford, CT 06107

Steven J. Samara, President
Pennsylvania Telephone Association
30 North Third Street, Suite 300
Harrisburg, PA 17101

Susan D. Paiva, Esquire
Verizon
900 Race Street, 6th Floor
Philadelphia, PA 19107

Robert Ritter, Esquire
Robert Millar, Esquire
Rebecca Hussey, Esquire
Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317

/s/ Barrett C. Sheridan
Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org
*271258

Counsel for Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: May 1, 2019

**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 Service :

**THE OFFICE OF CONSUMER ADVOCATE
REPLY COMMENTS**

I. INTRODUCTION

On November 8, 2018, the Commission issued for public comment a Proposed Policy Statement (Order) to guide telecommunications public utilities in the determination of intrastate operating revenues which are subject to the Commission's Section 510 assessment process. 66 Pa.C.S. § 510. Through a separate Statement, then Vice Chairman Andrew G. Place posed several questions for additional comment. The Office of Consumer Advocate (OCA) Comments filed April 16, 2019 support of the intent of the Commission's Proposed Policy Statement, subject to certain clarifications.

The OCA now replies to the comments filed by the Broadband Cable Association of Pennsylvania, Inc. (BCAP), Crown Castle Fiber LLC (Crown Castle), the members of the Pennsylvania Telephone Association (PTA), joined by the Frontier Companies, and the Verizon companies (Verizon Pennsylvania LLC, Verizon North LLC, MCImetro

Access Transmission Services Corp., and XO Communications Services, LLC). The OCA submits that the other parties have not shown that the Commission is legally barred by federal or state law from clarifying that the “gross intrastate operating revenues” concept embodied in Section 510 refers to “*de facto* gross intrastate operating revenues” for assessment purposes. Common to the OCA Comments and other parties’ comments is the position that the language of the Proposed Policy Statement is not ready for adoption. Further, there is support for some collaborative process to address technical concerns.

II. **REPLY COMMENTS**

A. The Section 510 Assessment Process Applies Fairly to All Certificated Public Utilities That Provide Telecommunications Services.

Crown Castle suggests that the Commission’s assessment of gross intrastate operating revenues under Section 510 – or Section 510 coupled with the Proposed Policy Statement – may be unfair. On one hand, Crown Castle suggests that certificated public utilities that provide competitive access services on a deregulated basis should be subject to less regulatory assessments, because they require less Commission oversight. Crown Castle Comments at 11. On the other hand, Crown Castle states concern that the implementation of the Proposed Policy Statement could provide incumbent local exchange carriers (ILECs) an unfair advantage, if the ILECs are not required to report *de facto* gross intrastate operating revenues. *Id.* at 3, 10.

The OCA disagrees with Crown Castle. The Section 510 assessment process based upon the gross intrastate operating revenues of each public utility is a fair and reasonable approach. The Commission is charged with oversight to assure that markets

remain competitive and encourage the provision of competitive services by a variety of service providers and to meet market demand. See, e.g. 66 Pa.C.S §§ 3011(5), (8), (9) (policy goals of the Commonwealth); 3016(c), 3018(c) (authority to reclassify certain competitive services as non-competitive in the absence of sufficient competition). The Commission's regulatory powers over telephone public utilities include: evaluation of applications for grant of an original certificate of public convenience; approval of proposed changes in control (such as Crown Castle's recent transaction); review and grant of petitions to abandon service; and oversight to assure that the services and facilities provided by telephone public utilities are safe, adequate, and in the public interest. See, 66 Pa.C.S. §§ 1101-1103, 1501-1504; Crown Castle at 1. The Commission rules upon complaints by retail consumers, intercarrier compensation disputes, and proposed interconnection agreements and amendments. The Commission reviews the issuance or assumption of securities by telephone public utilities and may deny or impose conditions. 66 Pa.C.S. § 1903. Through the exercise of these and other powers, the Commission assures that Pennsylvania's interconnected telecommunications networks and carriers provide the public with quality services on a continuous basis and the Commonwealth's policy goals are advanced.

Section 510's use of gross intrastate operating revenues as the base for assessments is reasonable and fair. It is within the Commission's discretion to treat incumbent local exchange carriers (ILECs), competitive local exchange carriers (CLECs), competitive access providers (CAPs), and interexchange carriers (IXCs) as part

of a common utility group.¹ The OCA supports the Commission’s intent, through the Proposed Policy Statement, to assure that regulatory assessments authorized by statute are collected from all certificated public utilities in the telephone public utility group and each telephone public utility “shall advance to the commission its reasonable share of the cost of administering this part.” 66 Pa.C.S. §§ 510(b), (f). Crown Castle’s position that a more equitable approach would differentiate between providers of rate regulated and deregulated services does not alter the Commission’s obligation to apply the revenue based approach set forth in Section 510.

B. The Commission Has the Authority to Clarify What Constitutes “Gross Intrastate Operating Revenues” So that Telephone Public Utilities Advance their Reasonable Share.

Verizon questions whether the Commission may clarify that assessable revenues from telecommunications service are “*de facto* gross operating revenues” without statutory amendment of Section 510. Verizon Comments at 8, 10. Crown Castle states that the Commission’s Proposed Policy Statement exceeds its legislatively granted powers. Crown Castle at 8-10. The OCA disagrees.

Section 510 in general and Section 510(f) in particular instruct the Commission as to the legislative purpose of Section 510. Section 510(f) declares, “[i]t is the intent and purpose of this section that each public utility subject to this part shall advance to the commission its reasonable share of the cost of administering this part.” Clarifying that “*de facto* gross operating revenues” are subject to assessment is squarely within the Commission’s Section 501 general powers “to enforce, execute and carry out” Section 510 and “the full intent thereof....” 66 Pa.C.S § 501(a), (b).

¹ See, Generic Investigation Regarding Transportation Assessments, Docket No. I-2008-2022003, 2008 Pa. LEXIS 45, *32-33. (Utility group for assessment purposes should be comprised of utilities providing the same kind of service).

C. The Commission Has the Authority to Require ILECs and Other Telephone Utilities to Provide Information in Support of Their Reported Gross Intrastate Operating Revenues.

The PTA expresses concern that adoption of the Proposed Policy Statement would impose new reporting and record-keeping burdens on its rural local exchange carrier (RLEC) members. PTA Comments 4. The OCA notes that Section 510 imposes obligations on all regulated public utilities to report their gross intrastate operating revenues. Pursuant to Section 3015(e)(7), ILECs operating under an amended network modernization plan (Chapter 30 Plan) are still subject to certain Commission “filing and audit requirements” including “[a]n annual statement of gross intrastate operating revenues for purposes of calculating assessments for regulatory expense.” 66 Pa.C.S. § 3015(e)(7). As explained in the Commission’s Order, Sections 309, 504, and 505 provide the Commission with the plenary authority to compel the production of information and to require public utilities to furnish such records, documents, and information as may be necessary. Order at 14, citing 66 Pa.C.S. §§ 309, 504, 505. The Proposed Policy Statement would not subject Chapter 30 Plan ILECs to any new audit and filing requirements. Instead, the Order and Proposed Policy Statement clarifies that supporting information “such as traffic studies, tax returns, jurisdictional allocation formulas and factors, books of accounts, reports, etc.” describes the possible scope of information which may be considered as support. Order at 14, fn. 2 (List “for illustration purposes only”); Proposed Section 69.3701(7).

D. Some Further Consideration of the Proposed Policy Statement’s Scope, Language, and Implementation Is Warranted.

As noted in the OCA Comments, the Proposed Policy Statement could be improved by certain amendments to better track the Order. OCA Comments at 5-7.

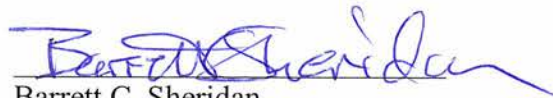
Other commentators discern ambiguity as to whether the “de facto gross intrastate operating revenues” standard would apply only to a telephone public utility which reported zero intrastate revenues in the prior year or to all telephone public utilities. Crown Castle at 5-6; but see PTA at 2. BCAP states that the certain revenues from Internet Protocol based services are beyond the Commission’s jurisdiction for reasons other than the FCC’s 10% rule (47 C.F.R. § 36.154(a)). See, BCAP at 5-6. The PTA and others note the practical and technical difficulties of identifying whether a particular message or transmission begins and ends in the Commonwealth, where they rely on the customer purchasing a special access service to certify whether the use will be intrastate or interstate. See, PTA at 2-4; BCAP at 6-7; Verizon at 4, 9.

The other parties’ comments raise some concerns which support more review by the Commission of the scope and language of the Proposed Policy Statement. Some technical conference or collaborative process may help the Commission improve upon how it provides guidance to all telephone utilities of their obligation to report gross intrastate operating revenues in a manner which assures each of them pays their reasonable share of the Commission’s costs of administration.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully provides these Reply Comments in response to the Public Utility Commission's Proposed Policy Statement Order entered November 8, 2018.

Respectfully Submitted,



Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: bsheridan@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: May 1, 2019
271533