

Prepared Testimony of  
*Gladys M. Brown*  
Chairman  
Pennsylvania Public Utility Commission

*before the*

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Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120  
Telephone (717) 787-4301  
<http://www.puc.pa.gov>

Thank you, Chairmen Godshall, Chairman Daley, other members of the Committees, and all others gathered here this morning.

It is my pleasure to join you today to testify on behalf of the Commission and our dedicated staff at the PUC concerning House Bill 1417 – a legislative proposal to continue our state universal service fund through at least January 2022.

The PUC is supportive of HB 1417, which provides incumbent rural local exchange carriers (RLECS) carriers, who are currently receiving support from the fund, the needed certainty that their support will continue through January 1, 2022. There are specific reasons why this legislation is the right proposal at this time.

First, the legislation preserves Pennsylvania's state universal service fund through January 1, 2022, codifying in statute that which was created by the Commission in 1999. There are no changes in the terms and conditions of eligibility governing the existing fund. It has been operating since 1999 under our rules, set out at 52 Pa.Code § 63.161, *et. Seq.* This legislation will recognize and affirm that decision. The legislation also directs the Commission to conduct an investigation into the future of the state fund, an issue of considerable importance given the need to address significant changes at the federal level on universal service.

Second, there will be no increase in the number of carriers who are eligible to receive support. Carriers getting support will remain limited to those 32 incumbent RLECS. These 32 RLECs are the only carriers in their service area who have a Carrier of Last Resort (COLR) obligation. COLR is a requirement to provide service to all consumers in their service territory at just and reasonable rates. The current fund helping to support COLR is \$34 million dollars

with support disbursed monthly to these RLECs. This includes larger RLEC carriers like CenturyLink, Frontier, and Windstream.

Third, the scope of the carriers who contribute to this fund will not change. The fund will continue to be supported from Verizon's price change revenues under an existing Chapter 30 price-cap regulation plan, as well as contributions from about 245 other carriers. Those providers include Comcast, a contributor who currently makes a voluntary contribution in lieu of any mandatory assessment that may be permitted under Pennsylvania's VoIP Freedom Bill.

Fourth, the service supported by the fund remains the same: voice service. The current fund supports basic service through reductions in the RLECs access charges for voice calls. Access charges are the payments that other carriers must pay to the RLECs when they use the RLECs network. Our 1999 Order recognized that access revenues provide support for reasonable basic service rates. The reductions this Commission made in those access payments to spur competition under Chapter 30 were done at that time in a way that did not undermine the RLECs universal service obligation under Chapter 30. Access charges have been, and remain, a revenue source that supports basic service since well before 1999. This legislation recognizes that reality and directs the Commission to continue supporting basic service and conduct an investigation to determine what to do next.

Fifth, the legislation provides certainty to RLECs at a very uncertain time in the industry. New technology emerges very rapidly that may replace some service with another. Those changes may promote services other than basic service, but they do not change the underlying need to support the networks and carriers who have the COLR mandate of universal service.

Even more importantly, the FCC is expanding the terms and conditions imposed on our RLECs who have this COLR obligation. The RLECs must meet new mandates if they want to continue getting federal universal service support. This legislation preserves the telecommunications status quo by giving the COLR RLECs a 5-year window of certainty in their support in Pennsylvania. This limited-term period gives them the time they will need to comply with new federal mandates while continuing to support the COLR mandate to provide basic service. This also encourages our carriers to make the investments needed going forward.

Finally, the legislation is not in perpetuity. The legislation directs the Commission to initiate an investigation with parameters that, at a minimum, require the industry and the Commission to address the changes that have occurred and will occur over the next five years. There are no predetermined mandates other than an on-the-record investigation of whether, and if so how, to continue our current fund.

It is important to understand several critical, and indeed mandatory, developments at the federal level on the same subject: ensuring sufficient and predictable universal service support to carriers that are providing telecommunications service in high cost and lower density rural areas as part of their COLR mandate. Without our state fund, service might be unavailable to consumers, or, if it is available, at far higher rates given these changes and the economics of wireline networks.

### **General Overview: Universal Service and HB 1417.**

For decades during the monopoly era of telecommunications, federal policy promoted universal service, a term referring to the ability of more consumers to afford telephone service, through a system of subsidies and intra-company transfer of revenues. This kept prices for basic

local telecommunications far lower in high-cost/rural areas than would otherwise be the price without support. The 1996 Act changed that. The 1996 Act codified a federal commitment to competition but it also codified a federal universal service obligation. The universal service mandate is codified at Section 254, 47 U.S.C. § 254, of federal law. It requires that support be explicit, predictable, and sufficient. This provision also allows the FCC to change what it will support from that fund over time. And, what we are supporting from that federal fund is changing rapidly.

The federal universal service fund has four programs: A High-Cost Fund to support carriers in high-cost areas like Pennsylvania's RLECs. Additionally, there is a Lifeline-Low Income Fund; a Rural Health Fund; and a Schools & Libraries (or E-Rate) fund. Because those are not addressed in this bill, I limit my comments to the High Cost Fund because that, too, is changing rapidly.

In 2010, the FCC issued a National Broadband Plan as required by federal law. It addressed the delivery of traditional voice, but also recognized the need for more action to ensure the availability and affordability of broadband (or internet) service in America.

In 2011, the FCC built on that report by issuing a seminal order called the *Inter-carrier Compensation/Universal Service Order* or *ICC/USF Order*. That order repurposed the High Cost Fund, a fund from which Pennsylvania's rural carriers received nearly \$92 million dollars last year alone. Carriers, however, must now operate a voice network that can also provide broadband service or they will lose that support. This is a major change.

The \$92 million that our RLECs did get now comes with new conditions. This \$92 million is no small amount. Pennsylvania is already a "net contributor" to the federal fund. We

contributed \$136 million more into the federal fund alone than we got back last year alone. This \$136 million was paid in after taking into account the \$92 million that our RLECs received as “net recipients,” a term which means the RLECs got more support than they pay. This RLEC support reduces what would otherwise be a far larger contribution, a contribution from carriers like Verizon that continues to go to support other carriers in other states.

The *ICC/USF Order* also imposed a multi-year reform of intercarrier compensation rates. Intercarrier compensation is a term of art that refers to the payments that one carrier pays to another carrier to use that carrier’s network. In our case, these are payments that other carriers make to our Pennsylvania RLECs to use their networks. From now through 2022, the FCC is reducing the rates that our RLECs can charge to terminate the calls of other carriers. That rate is going to zero. The FCC is providing some compensation for that lost revenue but it is by no means 100% -- and it will be reduced over time. The FCC also expects carriers to impose a federal surcharge on consumers to compensate the carrier as well, a charge that consumers will likely consider to be an increase in the rate for their basic service.

This combination of new federal broadband mandates to get High-Cost Support and the loss of intercarrier compensation revenues means that our carriers no longer have the same revenues they once had to support universal service. HB 1417, however, steps in and assures our carriers that, at least in Pennsylvania, the state support they received when these reforms began will continue to be received through 2022. This provides our carriers with greater certainty to make the investments needed to comply with state, and federal, voice and broadband mandates.

The targets for what carrier must do keep changing. As an example, the FCC has changed the internet speed that a carrier must provide three times since 2011. Broadband was

first defined as 768 kilobytes (kilobytes are less than 1 Megabit) up and 4 Megabits down. The FCC subsequently set the minimum speed to be 1 Mbps up and 4 Mbps down. Then, in February of this year, the FCC's *Broadband Progress Report* redefined broadband to be 3 Mbps up and 25 Mbps down (essentially the speed needed to download services like Netflix). Finally, in June of this year, the FCC went further and proposed a national Broadband Lifeline Program so that low-income consumers could purchase broadband service just like the Lifeline Program we now have in place so that low-income consumers can buy basic voice service.

The Public Utility code already required the Commission to address broadband availability. We have long had what was considered the most aggressive rural broadband program of its kind in the nation. Every RLEC eligible for support under this bill has met their Pennsylvania deployment requirement. This legislation is consistent with that legislation, but in a way that also reflects change in federal law.

In addition, the FCC is currently considering a new way to determine how much support our rural carriers will get using a new federal cost model that is being called voluntary, but is expected to become the new normal. The current indications are that our rural carriers stand to lose support under this new model. The primary, but not exclusive, reason is location. We have smaller rural areas, and mostly mountainous at that, with more people compared to other parts of the country that have larger areas, and are far flatter, but have fewer people.

Since the High Cost Fund support is frozen, the development of new cost models and services mandates like those I just discussed will benefit some and hurt others. The Eastern United States, including Pennsylvania, will likely be hurt according to filings by ERTA,

Alexicon (a consultant to Yukon Waltz, a Pennsylvania RLEC), and ICORE (another consultant to Pennsylvania's rural carriers).

This complex and changing process of federal universal service and intercarrier compensation policies underscores the importance of HB 1417. It also translates into another reality: Pennsylvania's rural carriers will likely lose federal support and see reduction in the revenues they get from other carriers through intercarrier compensation. Time alone will tell if the few who may benefit will outweigh the many who likely stand to lose.

Without a state universal service fund similar to that proposed by HB 1417, the remaining vehicle will be local rates or lost earnings. Rate increases raise the distinct possibility that lower-income consumers residing in rural areas served by rural carriers will find it harder to purchase service. Moreover, the service they can buy may not be reasonably comparable to service in our urban areas. Revenue losses mean rural carriers serving rural areas will likely find it increasingly hard to meet new federal mandates, even if they lose federal support if they do not. In the absence of support from a state USF as in 1417, the loss of support and revenues will likely have an impact on local rates.

This is an important consideration. The FCC's 2014 *Universal Service Monitoring Report* showed that Pennsylvania household units with voice service, including mobile, fell from 98.2% in 2009 to 98% in 2014. While this two-tenths of one percent may seem like "the perfect being the enemy of the possible," the US Census Bureau shows that Pennsylvania has 4.9 million households with 2.48 persons per household. So, that two-tenths of one percent translates into about 9,917 households (or approximately 24,594 people) losing service from 2009 through

2013, or about 2000 households (5,000 people) per year. Local rate increases could exacerbate this situation.

Then, there is the availability of broadband, or internet service, at the speeds now deemed by the FCC to constitute broadband. Carriers must provide broadband at the speeds determined by the FCC or risk losing the federal support they do get. The current FCC definition of broadband as of February 2015 is 3 Mbps up/25 Mbps down, again roughly the speed needed for Netflix downloads. While the FCC only formally requires a supported carrier to provide 1 Mbps up/10 Mbps down, it is not an unreasonable stretch of the policy imagination to see that February's definition will soon become a mandatory minimum.

The FCC's *Progress Report* of February 2015 shows that only 1.6 million of Pennsylvania's 5,058,662 households, or about 32% of Pennsylvanians, have broadband at this new definition of broadband. Consequently, Pennsylvania's rural carriers face considerable uncertainty on how much future federal support they will get, what broadband and voice mandates they must meet to get it, and who will make up the intercarrier compensation lost revenues if they cannot get it in local rates?

H.B. 1417 answers that question in a positive way.

H.B. 1417 provides more revenue certainty to our rural carriers through the next several years of the FCC's transition to new universal service mandates, local service rate minimums, federal surcharges, and higher broadband speeds. This legislation assures our rural carriers that they will at least get no less support from our state fund than they are currently receiving.

This legislation provides a critical and stable revenue source for continuing to provide basic service while investing in newer networks. This can be done despite any experience with

reduced universal service support, increased local rate minimums that may push customers to other providers who do not have a universal service mandate, and broadband speed minimums that will be increasingly harder to provide using the DSL technology deployed under our successful Chapter 30 law.

This is an important consideration given that the federal reforms have resulted in substantial reductions by rural carriers in network investments. With this legislation, by contrast, Pennsylvania will provide a stable revenue source that makes it easier to make longer-term investments, at least over the next five years, and gives the General Assembly and the Commission a year-long process to consider what should be done at the end of this five-year stable funding period.

### **PUC Responsibilities**

H.B. 1417 requires the Commission to conduct an extensive on-the-record proceeding to examine the future of our stable universal service fund at the end of this period. This leaves open the possibility that the Commission and the carriers and providers to the fund can propose alternatives to address changing technology, alterations in federal policy, and how Pennsylvania can address those changes in a beneficial way.

### **PUC Suggestions.**

There are some suggestions the Committee might consider when examining this legislation. These suggestions focus primarily on the impact of federal policy on voice and broadband as it affect our rural carriers.

This is very important because our rural carriers are going to have to comply with these federal mandates on voice, broadband speeds, service quality, and customer requests for broadband or lose that support. Rural carriers depend on federal universal service support and losing that is not an option. It may also not be an option to make every rural carrier completely whole for every lost federal support or intercarrier compensation dollar as well.

Such a result may unduly burden those providers who may contribute to this fund but are not be able to draw from the fund because they are not Carrier of Last Resort (COLR) providers like the rural carriers. Such a result may also trigger significant negative impact as well because the size of the fund may grow astronomically because this smaller pool, Pennsylvania, will be replacing substantial support from a far larger national pool, the federal universal service fund.

Consequently, there are four suggestions that warrant consideration:

*Consider the Scope and Purpose of the Legislation.*

This 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. The legislation is narrower than the current environment in several ways.

First, the limited focus on basic voice is a contrast with federal law and policy. That law and policy is now supporting not only basic voice, but also broadband service. A Pennsylvania fund limited only to basic voice is not a law that meshes with federal law and policy. The result is that our consumers and carriers may lose access to services, even as they continue to support a federal fund that is doing those great things in other parts of the nation.

Second, federal law and policy is fast moving toward a Lifeline Program for Broadband for low-income consumers. That broadband Lifeline will be supported by the federal fund – a fund to which Pennsylvania contributes more than it receives. By limiting our law to basic voice alone, and then only in rural carrier areas, we deny support for our low-income consumers in all regions of Pennsylvania to purchase broadband, even as we pay other carriers for those services in other states across the country.

A revision instructing the Commission in the investigation to address how to implement a state fund consistent with federal law resolves this. This ensures availability in all regions of Pennsylvania, as is already the case under federal law, and supports broadband Lifeline, when that occurs under federal law.

*Consistency with Federal Law and Policy.*

The scope of the federal fund is growing to support not only basic voice, as this legislation proposes, but also broadband networks and services. The FCC has just proposed to support a Lifeline Broadband program that will give low-income consumers support to buy internet access service not just basic voice. Given these changes, the legislation could require the Commission to address ways to ensure that our rural carrier recipients comply with, or that we act in furtherance of, federal law and mandates. This could be done during the life of the fund or as part of an express mandate in the 2021 Order and Rulemaking set out in H.B. 1417.

Federal mandates already require a broadband network that can provide broadband at speeds higher than our Chapter 30 or the recipient carrier will lost that support. If we do not address ways to ensure compliance with, or act in furtherance of, federal law, we harm our carriers with a law that fails to mandate coterminous compliance with federal law.

Consumers in those areas are less likely to get access to comparable broadband service at rates comparable to other regions of the nation. Those carriers could receive the federal support our carriers lose. The legislation can avoid this imbalance by expressly mentioning support for broadband and directing the Commission to address it during the investigation. Finally, it must always be kept in mind that Pennsylvania's rural carriers are net recipients to the federal fund, that is they get back more than they pay in, but, equally important, Pennsylvania is overall a net contributor to the federal fund, that is we pay in more than we will ever get back. A reduction in federal support because our state law does not expect carriers to comply with, or act in furtherance of, federal law and policy will increase our net contribution to the federal fund. That will benefit others while we, ourselves, get limited support for basic service and nothing for broadband service.

*Address the Contribution Base.*

Current Federal current policy examines ways to expand the contribution base without exceeding the cost ceiling on the current fund. However, as we have noted, the combination of higher broadband speeds and fewer areas that can meet that speed means that more investment will have to be made. For those areas where the population densities and geography can sustain an increased investment, this is not a problem. That is not the case with our rural carriers.

This means there may need to be more support for the rural carriers' fund, either in the near future or after 2021. The law can preserve the basic voice only service and current funding limits of the rural fund now through 2021. This runs the risk that rural carriers lose federal support because they are also required to comply with federal law. This option, however, may

contravene recent federal case law in the telecommunications field which says that the states have a constitutional obligation to enforce federal law.

Alternatively, the legislation can direct the Commission to consider whether to expand the base of contributions to include all providers of telecommunications or service equivalent to telecommunications. This facilitates compliance with federal law while assuring that there is adequate revenue to sustain the state fund. By doing this now, the legislation avoids the problem of our carriers losing federal support. By doing this later, the legislation gives the Commission, contributors, recipients, and the legislature a five-year window to monitor developments and address this issue in the 2021 Order and rulemaking.

Third, while the current VoIP Freedom Bill at 73 Pa.C.S. § 2251.1 permits the Commission to seek contribution from Voice over the Internet (VoIP) Providers, the legislation could avoid further ambiguity in what voice services should contribute by including mobile services and all VoP providers as is the case under federal law.

It would also be helpful if the legislation directed the Commission's investigation to include, but not be limited to, the issues set out in the legislation. While the legislation appears to do that already, a provision specifically saying that better allows the Commission's investigation to determine comprehensively what to fund, how to fund it, where support is appropriate, who should contribute, and how to manage changes in services and the market while preventing any waste, fraud, and abuse..

Finally, the proposed sunset provision is probably unnecessary. The proposed sunset provision will undermine any final order or rules of the Commission arising from this statute if

those occur after the sunset date. Those actions could lack a statutory basis for action, an issue that is avoided by deleting the sunset provision.

*Auditing for Waste, Fraud, and Abuse.*

The current Lifeline program for low-income consumers to purchase voice service has been, depending on whom one talks to, either a model of success or a paradigm of waste, fraud, and abuse. Whatever the merits of these claims, the FCC has taken enforcement action against carriers, whose actions are contrary to the rules for determining eligibility, including providing more than one support to the same consumer. The FCC has also instructed the company that provides the Lifeline service on behalf of the FCC to conduct audits to ensure compliance with federal mandates.

This is done to minimize waste, fraud, and abuse. As a state that pays more into that fund than it receives, Pennsylvania stands to profit from those actions because they reduce what could otherwise be larger, or at least more wasteful, uses of Pennsylvania money in that fund. This also assures the public that resources dedicated to a public purpose are being used wisely and in a transparent fashion.

This legislation could be strengthened by adding a provision giving the Commission the authority to conduct audits of the contributors, recipients, and carriers to ensure that the state universal service fund is not one characterized by waste, fraud, and abuse. The Commission staff has years of experience and expertise conducting audits in the energy, electric, transportation, and water industries. That expertise could be put to use to further the purpose of the state universal service fund envisioned by this legislation. Moreover, the costs to ensure that

the Commission has the resources and staffing to do just that can be a component in the cost allocation when sizing the state universal service fund.

The current legislation when combined with the suggestions set out in this testimony can be a model for how to develop and sustain a meaningful state universal service fund that meshes with, and does not conflict with, federal law. Such a far-reaching enactment could be, as was the case with both versions of Chapter 30, one of the most aggressive programs in the nation for ensuring that rural Pennsylvanians first and all Pennsylvanians second have access to comparable service at comparable rates in all regions of Pennsylvania.

I thank you for this opportunity to address you.

I stand willing to answer any questions you may have.