

COMMONWEALTH OF PENNSYLVANIA



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March 27, 2018

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

Re: The Tax Cuts and Jobs Act: Tax Reform  
Bill Signed Into Law on December 22, 2017  
Docket No. M-2018-2641242

Dear Secretary Chiavetta:

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

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Certificate of Service  
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CERTIFICATE OF SERVICE

The Tax Cuts and Jobs Act: Tax Reform : Docket No. M-2018-2641242  
Bill Signed Into Law on December 22, 2017 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's 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 27<sup>th</sup> day of March 2018.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Tax Cuts and Jobs Act: Tax Reform Bill : Docket No. M-2018-2641242  
Signed Into Law on December 22, 2017 :

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COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

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DATED: March 27, 2018

## **I. INTRODUCTION**

On March 2, 2018, the Pennsylvania Public Utility Commission (Commission) issued a Secretarial Letter commencing a proceeding seeking to measure the effects of the Tax Cuts and Jobs Act on Commission-regulated incumbent local exchange carrier (“ILEC”) public utilities. The Tax Cuts and Jobs Act: Tax Reform Bill Signed Into Law on December 22, 2017, Docket No. M-2018-2641242, Secretarial Letter (March 2, 2018) (March 2 Secretarial Letter). The Commission directed interested parties to file comments concerning the legal and ratemaking framework that applies, whether the tax savings realized as a result of tax reform should be passed back to ratepayers and if so, what method should be used. The Secretarial Letter also directed certain incumbent local exchange carriers (ILECs) identified in Attachment A to provide verified responses to the Data Requests in Attachment B. The Data Requests ask whether the ILEC will experience reductions to its 2018 and subsequent federal tax obligations, whether the ILEC will flow through such reductions to retail ratepayers, and whether there are other impacts bearing on the ILEC’s wholesale interconnection rates, with affiliates and non-affiliates.

The Tax Cuts and Jobs Act is the most sweeping and complex federal tax reform since 1986. Due to the enactment of a reduced federal corporate income tax rate, telecommunications utilities will realize tax savings at a minimum in the form of a reduced annual tax expense. The Office of Consumer Advocate (OCA) submits that these tax savings represent an extraordinary and substantial reduction in utility expense that is the direct result of a change in federal legislation. These tax savings should be flowed back to ratepayers immediately. The majority of Pennsylvania ILECs are subject to rate regulation pursuant to price cap formulas or streamlined rate regulation, pursuant to Chapter 30. Four small ILECs are subject to rate base/rate of regulation. Common to each ratemaking framework is the requirement that rates must be just and reasonable. The January

1, 2018 effective date of the TCJA should mark the starting point for identification of the tax savings and appropriate rate adjustments.

For the majority of ILECs subject to price cap regulation pursuant to Price Stability Mechanisms (PSM) set forth in company-specific Chapter 30 Plans, the tax savings should be accounted for as an exogenous events adjustment, which would account for the reduction in expense, based upon most recent per books levels, without any investigation or review of earnings.

Some smaller ILECs operate under a Simplified Ratemaking Plan (SRP) as set forth in company-specific Chapter 30 Plans. The rate methodology allows specific revenue adjustments to recognize exogenous events. Tax savings should also be accounted for as exogenous events adjustments, based upon most recent per books levels, without any investigation or review of earnings.

Four ILECs are subject to rate base/rate of return ratemaking pursuant to Chapter 13 of the Public Utility Code.<sup>1</sup> For these utilities, tax savings resulting from the TCJA would be extraordinary and substantial, non-recurring reductions in utility expense. The OCA's March 9, 2018 Comments address the legal and regulatory support for implementation of a negative surcharge for utilities subject to rate base /rate of return regulation pursuant to Chapter 13. The Pennsylvania jurisdictional customers of these ILECs should receive the benefit of such tax savings, whether through a negative surcharge or other rate adjustment appropriate for these small ILECs that have their central offices and additional customers across the state line.

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<sup>1</sup> The Commission granted a waiver from the obligation to submit proposed Chapter 30 Plans to West Side Telephone, Hancock Telephone, Citizens of New York Telephone, and Deposit Telephone Company. The OCA notes that Citizens Telecommunications of New York is an affiliate of the Frontier Companies and Commonwealth Telephone, while Deposit Telephone is an affiliate of the TDS Telephone Companies' Sugar Valley Telephone and Mahanoy and Mahantango Telephone.

The Commission properly asks the ILECs to provide information regarding their competitive intrastate rates and wholesale interconnection rates. The OCA supports the scope of the Commission's inquiry, as necessary to have a complete understanding of the impact of the change of the tax laws on each ILEC's intrastate revenues and expenses. Non-competitive services should not subsidize competitive services.

A. Procedural History

On December 22, 2017, President Donald Trump signed into law the Tax Cuts and Jobs Act, the most sweeping and complex tax reform since 1986. Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (TCJA or the Act). This legislation's provisions will have important effects on the public utility industry. Most importantly, the TCJA established a new federal tax rate for corporate income tax. The tax reform sets a flat tax rate of 21 percent on all corporate income replacing the graduated tax brackets with the highest rate of 35 percent. Additionally, the TCJA provides a 20 percent deduction for income from a trade or business conducted within the United States by a partnership, S corporation, or sole proprietorship. These changes went into effect on January 1, 2018.

On February 12, 2018, the Commission released a Secretarial Letter commencing this proceeding by which the Commission will seek to determine the effects of the TCJA on the tax liabilities of the major Commission-regulated public utilities for 2018 and future years and the feasibility of reflecting such impacts in the rates charged to Pennsylvania utility ratepayers. The February 12, 2018 Secretarial Letter concerns the Commonwealth's larger electric, natural gas, water, and wastewater utilities.

The Commission released a second Secretarial Letter on March 2, 2018 directing the Commonwealth's thirty-seven (37) incumbent local exchange carriers (ILECs) to provide

information regarding the impact of the TCJA on their tax expense and plans to flow through any savings to the ILECs' Pennsylvania consumers.<sup>2</sup> (March 2 Secretarial Letter). Additionally, the March 12 Secretarial Letter directed interested parties to submit comments addressing:

- (1) all provisions, under either Chapter 30, the telecommunications carriers' alternative regulation plans, or any other provision of the Public Utility Code and Commission regulations addressing the carriers' or the Commission's ability to adjust customer rates to account for the tax changes, including the rate reductions in the TCJA;
- (2) whether the Commission should adjust current retail and wholesale rates to reflect the effect of the tax rate reductions;
- (3) if so, the appropriate negative surcharge or other methodologies that would permit immediate modifications to consumer rates; and
- (4) whether the surcharge or other methodology should provide that any refunds to customers due to these tax rate reductions be effective as of January 1, 2018.

Responses are to be provided on March 27, 2018. The OCA submits these Comments in accordance with the March 2 Secretarial Letter.

B. Process Issues

The OCA is an interested party and intends to review the information solicited by the Commission, including any calculation of utility state and federal taxes and other financial information as requested in the Commission's Data Requests. The OCA will require access to such utility supplied information, in its original live format. To the extent that utilities report information to the Commission with request for confidential treatment, the OCA submits that an appropriate protective agreement or order should be promptly implemented. 52 Pa. Code §§ 5.362(a)(7) (protective orders for trade secrets). In a non-adversarial proceeding, a petition for protective order is referred to Law Bureau for recommended disposition by the Commission. 52

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<sup>2</sup> March 12 Secretarial Letter, Att. A (List of ILECs) and B (Data Requests).

Pa. Code §§ 5.365(b). The OCA is ready to work with Commission staff and other interested parties to promptly resolve these process issues, so the Commission, OCA and other interested parties can review the calculations and move expeditiously.

## **II. RESPONSE TO COMMISSION QUESTIONS**

### **1. The Commission Has The Authority To Assure That ILECs' Rates For Non-Competitive Services Are Just And Reasonable, Non-Discriminatory, And Do Not Cross-Subsidize The ILECs' Other Services.**

The March 2 Secretarial Letter requests that interested parties identify:

all provisions, under either Chapter 30, the telecommunications carriers' alternative regulation plans, or any other provision of the Public Utility Code and Commission regulations addressing the carriers' or the Commission's ability to adjust customer rates to account for the tax changes, including the rate reductions in the TCJA.

The OCA supports the Commission's initial inquiry and request for specific information from each ILEC as squarely within the Commission's duty to assure that Pennsylvania ratepayers served by ILECs are charged only rates that are just and reasonable. Pursuant to the original Chapter 30, the Commission approved alternative regulation plans for most ILECs, which employ either a Price Stability Mechanism (PSM) or Simplified Ratemaking Plan (SRP) (broadly, Chapter 30 Plans) as a substitute for traditional rate base/rate of return rate regulation. The Chapter 30 Plans detail how revenues and rates for non-competitive services may be changed.

The rates charged by ILECs for noncompetitive services must still be just and reasonable, pursuant to Section 1301 and in conformance with the policy and protections of Chapter 30. The Commission's authority to enforce its prior orders and require compliance by Chapter 30 Plan companies with Chapter 30 and preserved portions of Chapter 13 is established by Sections 501, 3013(d), and 3015(g). 66 Pa. C.S. §§ 501(a) (General powers), 1301 (Rates shall be just and



reasonable), 3013(d) (Continued Commission oversight of amended Chapter 30 Plans), and 3015(g)(Alternative form of regulation, rate limitations).

Sections 1301 (relating to rates to be just and reasonable), 1302 (relating to tariffs; filing and inspection), 1303 (relating to adherence to tariffs), 1304 (relating to discrimination in rates), 1305 (relating to advance payment and deposits), 1309 (relating to rates fixed on complaint), and 1312 (relating to refunds) all continue to apply under Chapter 30 and alternative rate regulation.

66 Pa. C.S. § 3019(h). Section 3015(g) states that no other provision in Chapter 30

shall be construed to limit the requirements of section 1301 (relating to rates to be just and reasonable) that rates shall be just and reasonable. The annual rate change limitations set forth in [an ILEC's] effective commission-approved alternative form of regulation plan or any commission-approved rate change limitation shall remain applicable and shall be deemed just and reasonable under section 1301.

66 Pa. C.S. § 3015(g).

Chapter 30 expressly preserves the Commission's authority to protect ratepayers of noncompetitive and protected services and the Commission's ratemaking authority to ensure that any particular rate charged by an ILEC or any rate change proposed as part of a PSM annual filing is just and reasonable. Buffalo Valley Tel. Co. v. Pa. P.U.C., 990 A.2d 67, 79-81 (Pa. Commw. 2009) (Buffalo Valley). The Commission's authority in review of an ILEC's annual PSM filing and any related proposed tariffs is not limited to whether the ILEC has complied with the terms of the ILEC's alternative regulation plan. Id. at 79-80. The Commission is authorized to consider the interests of ratepayers and the Commonwealth's declared policy goals.

a. Policy Considerations

In exercise of its authority to review the justness and reasonableness of ILECs' rates following the TCJA's statutory change in federal tax law, the Commission should consider the

Commonwealth's policy in favor of protecting and promoting the universal availability of noncompetitive services on terms which are just and reasonable and affordable.

It is the Commonwealth's policy to "ensure that customers pay only reasonable charges for protected services which shall be available on a non-discriminatory basis." 66 Pa. C.S. § 3011(3).

Further, the Commonwealth's support for broadband deployment is tempered by the goal of maintaining "universal telecommunications service at affordable rates ..." and "without jeopardizing the provision of universal service." 66 Pa. C.S. § 3011(2), (12).

It is also the Commonwealth's policy to "[e]nsure that rates for protected services do not subsidize the competitive ventures of telecommunications carriers" 66 Pa. C.S. § 3011(5). Diversity of competitive services is encouraged, but not to the point of "jeopardizing the provision of universal service at affordable rates." 66 Pa. C.S. § 3011(6). Section 3016 provides ILECs with flexibility as to the pricing and rate structure for competitive services. However, Section 3016 prohibits ILECs from: a) pricing competitive services at below the costs to provide the service, and b) "using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services." 66 Pa. C.S. § 3016(d)(1), (f)(1).

The OCA submits that the Commission's March 2 Secretarial Letter and Data Requests directed at the ILECs is an important first step in ensuring that each ILECs' rates for non-competitive services are just and reasonable, provide universal service at affordable rates, and do not improperly subsidize the ILEC's competitive services.

b. The Commission Has Authority To Request Information From ILECs Related To Changes In The Costs Of Noncompetitive And Competitive Services And Intrastate Revenues, To Protect Customers

Section 3011(1) states the Commonwealth’s policy “to continue alternative regulation of local exchange telecommunications companies,” defined as ILECs. 66 Pa. C.S. § 3011(3). Section 3013(d) affirms the Commission’s ongoing obligation “to exercise oversight of [Chapter 30 Plans] for [ILECs] as provided in this chapter.” 66 Pa. C.S. § 3013(d). As part of that oversight, the Commission is authorized to require ILECs with Chapter 30 Plans to file “an annual financial report consisting of a balance sheet and income statement; an annual statement of intrastate operating revenues for purposes of calculating assessments for regulatory expenses; and “an annual “State tax adjustment computation for years in which a tax change has occurred, if applicable.” 66 Pa. C.S. § 3015(e)(2), (7), (8). The Commission has the ability “to require the submission of further information in support of the accuracy of or to seek an explanation of the reports specified in subsection (e).” 66 Pa. C.S. § 3015(f)(2). Section 3015(f)(1) describes the process for the Commission to require additional reports necessary to ensure that the ILEC is charging rates that comply with Chapter 30 and the ILEC’s Chapter 30 Plan.

Section 3019(b) provides the Commission with the “powers and duties relating to the regulation of all telecommunications carriers and interexchange telecommunications carriers, including the power to seek information necessary to facilitate the exercise of these powers and duties.” 66 Pa. C.S. § 3019(b). These retained powers include authority “[t]o audit the accounting and reporting systems of telecommunications carriers relating to their transactions with affiliates...” and “subject to Section 3015(e), “to establish such additional requirements as are consistent with this chapter as the commission determines to be necessary to ensure the protection of customers.” 66 Pa. C.S. § 3015(b)(2), (3).

The OCA submits that the Data Requests, as inquiring into the quantification, allocation, and planned use of tax savings arising from the TCJA by ILECs and their corporate affiliates,

relating to the costs and revenues associated with noncompetitive and competitive services, and retail and wholesale services, are appropriate. These Data Requests are well within the Commission's authority to request, as the first step towards assuring that the noncompetitive service rates charged by ILECs remain just and reasonable and in compliance with Chapter 30 policy and provisions, as the legislatively mandated decrease in federal corporate net income tax rates reduce the ILECs' corporate net income tax expenses.

**2. The Commission Should Require ILECs To Adjust Current Retail Rates For Noncompetitive Services**

The March 2 Secretarial Letter requests that interested parties answer:

whether the Commission should adjust current retail and wholesale rates to reflect the effect of the tax rate reductions.

The OCA's response is "yes." Noncompetitive service customers of Pennsylvania ILECs should benefit from the extraordinary change in federal tax law which has reduced the federal income tax expense for ILECs as of January 1, 2018 and forward.

The OCA in particular supports reductions to the retail rates paid by residential and small business customers for noncompetitive services. The OCA does not intend that changes in rates be unreasonably discriminatory. However, intrastate access service revenues are included in the Chapter 30 ILEC's calculation of any allowed annual revenue increase, but intrastate access services are not allocated any rate increases, based on Commission and federal policies. See, e.g. Buffalo Valley, 990 A.2d at 75-77; Investigation Regarding Intrastate Access Charges, Docket No. I-00040105, Opinion and Order at 57-59 (July 19, 2012) (2012 Intrastate Access Reform). ILECs have accordingly allocated higher increases to residential and small business service rate to produce the PSM allowed increase.

A second important consideration is Section 3017(a) which states “[t]he commission may not require [an ILEC] to reduce access rates except on a revenue-neutral basis.” 66 Pa. C.S. § 3017(a). The Commission should avoid issuing a ruling that directs an ILEC to reduce intrastate access charges, even for the purpose of allocating the benefit of an exogenous events tax savings adjustment. Such a Commission order would trigger this “make whole” or revenue neutral protection and allow the ILEC to increase rates for the other noncompetitive services, specifically residential and small business services. Such an outcome should be avoided.

**3. The Appropriate Mechanism To Adjust Current Retail And Wholesale Rates May Vary.**

The March 2 Secretarial Letter asks parties to address, if some adjustment to current retail and wholesale rates should be made, “the appropriate negative surcharge or other methodologies that would permit immediate modifications to consumer rates.”

The OCA submits that the majority of the Chapter 30 alternative regulation plans approved by the Commission allow for revenue and rate adjustments to reflect “exogenous events.” The sliding scale of rates or surcharge provisions of Section 1307 are superseded by Chapter 30, except as to the express preservation of the obligation of ILECs to file State Tax Adjustment Surcharge reports “for years in which a tax change has occurred, if applicable.” See, 66 Pa. C.S. §§ 1307, 3015(e)(8), 3019(h). For the four ILECs that are not subject to Chapter 30 rate regulation, a negative surcharge pursuant to Section 1307(a) or other rate adjustment under Chapter 13 would apply. See, 66 Pa. C.S. § 1307(a); see, also OCA March 9 Comments.

Each of the PSMs approved by the Commission employs a price cap formula to measure an allowed annual revenue increase or revenue decrease for intrastate revenues from non-competitive services. The inputs include calculation of the one-year change in the Gross Domestic

Product Price Index (GDP-PI) and base non-competitive revenues in the corresponding time frame. The PSMs for certain ILECs calculate the change in GDP-PI reduced by an inflation offset of 0.5%. As part of the annual PSM calculation and report, the ILEC may file proposed tariffs to increase or decrease rates for non-competitive services calculated to generate the new revenue level. The PSMs typically include limitations on increases, banking provisions, and allow adjustments for exogenous events, as discussed below.

For the ILECs subject to a Chapter 30 SRP, the ILEC's ability to file proposed tariffs to *increase* non-competitive rates and revenues is constrained by whether the ILEC's return on common equity capital exceeds a marketplace cost of common equity capital, based on methodology set-forth in the SRP.<sup>3</sup> If the ILEC is an average schedule company, the ILEC's return on common equity is determined on a total company basis. If the ILEC is a cost-based company, the ILEC's cost of common equity is determined on a jurisdictional basis. The Chapter 30 SRP also allows adjustments for exogenous events, as defined in the corresponding Plan A PSM<sup>4</sup>

The broad purpose of these exogenous event provisions of the Chapter 30 PSM or SRP is to allow for consideration of rate adjustments to account for changes in costs or revenues which are beyond the control of the ILEC and fit within certain other parameters.<sup>5</sup> The majority of ILEC Chapter 30 Plan PSMs include a "Z" factor in the price cap formula, to account for the effect of any exogenous changes (positive or negative) in the ILEC's revenues or expenses, stated as a

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<sup>3</sup> See, North Penn Telephone Company Amended Chapter 30 Plan, , Plan B.

<sup>4</sup> See, North Penn Telephone Company Amended Chapter 30 Plan, Plan B, B(B)1. "In addition to any SRP filing, the Company, OTS, OCA, OSBA or other parties in interest may request that the Commission make rate changes to reflect specific revenue adjustments at any time to recognize exogenous events as previously defined in Plan A herein."

<sup>5</sup> See, e.g. Amended Alternative Form of Regulation and Network Modernization Plan of ALLTEL Pennsylvania, Inc., as amended March 15, 2005, Part 3, A., 3. "Except as otherwise noted, any changes or events within the Company's control are excluded as exogenous events." In 1995, the Commission provided model language and guidance to ILECs for the development of Chapter 30 Plans. See, Implementation of Chapter 30 of the Public Utility Code; Streamlined Form of Regulation, Tentative Opinion and Order at 28-35 (Apr. 2005), Corrected Opinion and Order at 19-21 (Aug. 2005).

percentage of the ILEC's revenue from intrastate, noncompetitive services.<sup>6</sup> However, a claim for exogenous event recognition of a change in revenues or expenses can be filed and reviewed outside of the annual PSM recalculation and filing.

By way of illustration, the parameters for an exogenous event under CenturyLink's Amended Chapter 30 Plan include but are not limited to:

- a. Jurisdictional shifts in cost recovery where interstate revenues actually change;
- b. Subsequent state or federal regulatory and legislative changes which affect revenues or expenses, to the extent they are not captured in GDP-PI; and
- c. Unique changes in the telephone industry that are not reflected in the overall inflation factor as measured by GDP-PI.<sup>7</sup>

As the Commission has previously noted, the typical rural ILEC's (RLEC's) Chapter 30 Plan recognizes "state or federal regulatory and legislative changes which affect revenues or expenses" as possible exogenous events. See, 2012 Intrastate Access Reform at 105-107.

The OCA submits that the reduction in tax expense which ILECs are already experiencing as a result of the TCJA qualify for exogenous event recognition under the ILEC's Chapter 30 Plan. The GDP-PI is an index of the change in prices of all goods and services produced in the United States and is not specific to the tax law change.<sup>8</sup> Current ILEC rates for non-competitive services are based upon GDP-PI measures which pre-date 2018 and enactment of the TCJA. For example,

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<sup>6</sup> Verizon Pennsylvania's Chapter 30 Plan does not include a "Z" factor and allows adjustments in two scenarios. Verizon, Commission staff, OCA, and the Office of Small Business Advocate (OSBA) "may request the Commission to make special revenue adjustments beyond the scope of the PSM that are limited to mechanical regulatory events bearing only on local exchange carriers and may include only changes resulting from: (1) jurisdictional shifts ...; and (2) limited regulatory accounting changes not initiated by Verizon." Alternative Regulation Plan of Verizon Pennsylvania, Inc. as of December 2011, Docket Nos. P-00930715, et seq., Part I, A, 8. In addition, Verizon Pennsylvania's rates for noncompetitive services must be just and reasonable, pursuant to Section 1301 and to advance Commonwealth policy as discussed above.

<sup>7</sup> Amended Alternative Regulation Plan of the United Telephone Company of Pennsylvania, Doing Business as "Sprint" (revised June 9, 2005), Part 3, A. 9. (CenturyLink Chapter 30 Plan).

<sup>8</sup> Tax savings can be used for many purposes, such as stock buybacks, which may affect financial price indices but have no major impact on GDP-PI. Even if the tax savings is not used for stock buybacks, it may still not impact the GDP-PI. For example, while the tax cut reduces the cost of producing goods or services, all other things remaining equal, if corporations use the money to increase salaries there will be no impact on the GDP-PI.

the first quarter 2018 PSM filings reviewed by the Commission calculate the difference between a 2017 quarterly GDP-PI measure and the year earlier GDP-PI measure.<sup>9</sup> The OCA submits that ILEC ratepayers should receive the benefit of the tax savings which ILECs are now experiencing, though an exogenous event adjustment.

#### **4. The Calculation Of Tax Savings And Corresponding Rate Adjustments Should Reflect The January 1, 2018 Effective Date Of The TCJA.**

The March 2 Secretarial Letter questions “whether the surcharge or other methodology should provide that any refunds to customers due to these tax rate reductions be effective as of January 1, 2018.”

The OCA’s reply is an emphatic “yes.” The PSM and SRP methods for setting rates impose limits on the increases, for the protection of consumers. These alternative forms of rate regulation do not and should not preclude downward rate adjustments to assure that Pennsylvania local exchange ratepayers pay rates for noncompetitive services that are just and reasonable and affordable. The exogenous event adjustment for Chapter 30 Plan ILECs should incorporate all tax savings beginning as of January 1, 2018. Most Chapter 30 Plans describe recognition of an exogenous expense or revenue change as an administratively simple process that starts with “the most recent per books level of expense.” For example, CenturyLink’s Chapter 30 Plan states:

Exogenous expense changes shall be flowed through, dollar-for-dollar, on the basis of review of that single expense item for which an exogenous change is sought, without any investigation or review of earnings, and using the most recent per books level of such expense. Results shall be adjusted to recognize the impact of gross receipts tax.<sup>10</sup>

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<sup>9</sup> See, e.g. Citizens Telephone Company of Kecksburg, Docket Nos. R-2018-2642830, P-00971229F1000, Order at 2 (Mar 1, 2018). “Pursuant to the Plan, Advance Notice was issued on January 16, 2018, informing the Commission of the forthcoming filing. On February 1, 2018, the Company filed its annual PSI/SPI Report using the change in 2016 and 2017 3<sup>rd</sup> quarter GDP-PI that produced a 1.78% increase in the GDP-PI, which equates to a 1.78% increase in the PSI.”

<sup>10</sup> CenturyLink Chapter 30 Plan, Part 3, A. 9.



Accordingly, the OCA submits that calculation of the impact of the TCJA on the Chapter 30 ILEC's tax expense starts with the 2017 per books level of expense for the ILEC's intrastate noncompetitive services compared against the ILEC's pro forma 2018 tax expense resulting from the reduced federal tax rates. The end result should be reduction to noncompetitive service rates to reflect the annual tax savings resulting from this significant change in federal tax law.

The OCA's prime interest is that the tax savings should flow through as rate reductions for the benefit of the ILEC's noncompetitive service ratepayers.

### III. CONCLUSION

The OCA appreciates the opportunity to comment on the The Tax Cuts and Jobs Act: Tax Reform Bill Signed Into Law on December 22, 2017 and its impact on the revenues, expenses and rates of incumbent local exchange carriers subject to alternative regulation plans under Chapter 30, as well as those few subject to traditional regulation under Chapter 13. As discussed above, the OCA submits that tax savings produced as a result of the TCJA represent must be passed back to ratepayers. The OCA provides some additional discussion in its responses to the Commission's Data Requests, included as Attachment A.

Respectfully Submitted,



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Dated: March 27, 2018  
245765

**Question 1: How does the reduction in the corporate Federal Income Tax Rate from 35% to 21% due to the Tax Cuts and Jobs Act of 2017 (TCJA) affect the company's federal tax obligations for calendar year 2018 and subsequent tax years? Please quantify your response as to the effect on both current and deferred tax obligations for 2018 and subsequent tax years.**

The companies will need to provide this information. The OCA requests that each Company provide this information and the live, working Excel spreadsheets to the OCA.

**Question 2: Are there any implementation plans based on the TCJA that will impact the company at the holding company level and flow through to the Pennsylvania affiliate? If yes, please explain. If not, please explain why not.**

The companies will need to provide this information.

**Question 3: If the impact of the TCJA is a reduction in the company's tax obligation, will it be flowed through to the company's retail and wholesale telecommunications services customers, including those who purchase intrastate telecommunications services? If so, please explain how the company will flow through a reduction in its tax obligation to customers, including the methodology to be used to compute the reduction, the rate mechanism to accomplish the reduction, the rate reduction effect on your company's regulated intrastate services for both retail and wholesale customers, and the method of computing the jurisdictional allocation of such reduction.**

As set forth in the OCA's Comments, ILEC Chapter 30 Plans recognize a change in federal law as giving rise to an exogenous event. The ILEC's tax expense for 2018 under the TJCA should be calculated on a pro forma basis, as set forth in Question 1. Any reduction in tax expense should be flowed through the ILEC's noncompetitive service ratepayers, with particular focus on noncompetitive retail services. The Commission should refrain from entering an order directing

an ILEC to reduce intrastate access rates, based on consideration of the revenue neutrality provision set forth in Section 3017(a).

Even in the absence of express exogenous events language in a Chapter 30 Plan PSM, an ILEC's rates must be just and reasonable and affordable. Section 3016(f)(1) prohibits an ILEC from using expenses incurred in conjunction with noncompetitive services to subsidize competitive services. The tax savings associated with noncompetitive service revenues and the decrease in federal tax rate should be flowed through to the noncompetitive service ratepayers.

The companies will need to provide the information requested.

**Question 4: If the company intends to flow through to its customers a reduction in the company's tax obligation under the TCJA and the company provides intrastate services that have received a competitive classification under Pennsylvania law, please explain how the company will allocate any TCJA tax cut benefits to these competitive services and whether such an allocation will be uniform in nature for all services that have been classified as competitive.**

The OCA notes that the ILEC's network are more robust, the more consumers are subscribed and contribute to support of the network. The OCA submits that ILEC basic local service customers in competitively classified areas should receive rate reductions to reflect the tax savings and improve the competitiveness of the ILEC's basic local service offerings in such areas.

The companies will need to provide the information requested.

**Question 5: If the company intends to retain the benefit of any tax rate reductions associated with the TCJA, please specify how the company intends to use these funds. Please explain whether the potential retention of such tax reduction benefits will differ among the intrastate, interstate, and unregulated services of your company and please explain the reasons for such differences, including appropriate references to the system of accounts utilized by your company as applicable.**

The OCA is opposed to any ILEC plan to retain the benefit of tax rate reductions for private corporate purposes such as stock buy-backs or other activities which enhance the financial well-being of the ILEC or corporate affiliates without direct benefit to the ILEC's noncompetitive service customers.

The OCA supports rate reductions to pass through the benefits of the tax rate reductions directly to the ILEC's noncompetitive service customers. The Chapter 30 alternative regulation plans were shaped in part to provide ILECs with a revenue stream to support their capital expenditures to modernize their networks with the goal of universal broadband availability by the end of 2015 or earlier. Now, ILECs are only required to be ready to provide a broadband channel of 1.544 Mbps down and 126 kbps up within 10 business days of request. Yet, residential and small business ratepayers continue to pay charges for noncompetitive services that may increase annually through the ILEC's Chapter 30 PSM. Pass-through of the benefits of tax rate reductions to the ILEC's noncompetitive services ratepayers is the best and most appropriate course of action.

The companies will need to provide the information requested.

**Question 6: If the company operates under a Chapter 30 Alternative Regulation Plan, does the plan contain any provisions, such as an "exogenous events" clause or change in law provision, that would recognize a substantial change in law such as the TCJA? If yes, please explain whether the "exogenous events" clause or change in law provision applies to both positive and negative effects on the company, including any positive and negative effects from the TCJA. Provide the docket number and most recent approval date of your Chapter 30 plan and a copy of the relevant provisions from your company's most recent Chapter 30 plan in effect.**

The OCA's Comments and reply to other Data Requests set forth the OCA's position.

**Question 7: Does the company reflect changes in state taxes, up or down, while operating under authority of its Chapter 30 plan for its regulated intrastate services? If**

**yes, could this also apply to changes in federal taxes, up or down? Please fully explain.**

The OCA notes generally, that many ILECs file State Tax Adjustment Surcharge Reports, consistent with Section 3015(e)(8). 66 Pa. C.S. § 3015(e)(8). Some ILECs have received Commission approval and amended their Chapter 30 Plan language to roll-in the STAS on a revenue neutral basis within the PSM.

The companies will need to provide the information requested.

**Question 8: If the company operates under a Simplified Rate Making Plan, please specify whether the company will be making a simplified ratemaking filing to incorporate the effect of the tax changes from the TCJA for its regulated intrastate services.**

As discussed in the OCA Comments, the federal tax rate reductions and any corresponding tax savings should be accounted for as an exogenous event by an ILEC operating under a Chapter 30 SRP.

**Question 9: Does the company provide wholesale services pursuant to Interconnection Agreements (ICAs) and/or tariffs? Are these ICAs or tariffs cost-based (using TELRIC or other cost models)? If yes, do the ICAs or tariffs for these wholesale interconnection services provide for rate adjustments to account for subsequent positive or negative effects on costs, including the effects of the TCJA? How, if at all, will the recurring and non-recurring rates, e.g., for unbundled network elements (UNEs), be affected by these tax changes from the TCJA?**

The companies will need to provide the information requested.

**Question 10: Are there any other rate elements in the company's operations that remain cost-based? If yes, please identify the rate elements and the impact of the TCJA on those elements.**

The companies will need to provide the information requested.

**Question 11: Will the TCJA tax cut affect wholesale interconnection rates that are applicable between your company and other entities under "commercial interconnection agreements" that may not have been filed with the Commission under applicable law? If yes, please explain in what manner.**

The companies will need to provide the information requested.

**Question 12: Will the TCJA tax cut modify rates that are applicable between your company and any affiliated entities, e.g., wholesale interconnection rates between your company and a wireless affiliate? If yes, please explain in what manner.**

The companies will need to provide the information requested.

**Question 13: Does the company have any Net Operating Losses (NOL) as of December 31, 2017? If yes, please quantify the impact of the TCJA for your company's intrastate regulated services and operations and please explain how this impact has been or is jurisdictionally allocated with respect to your company's interstate and unregulated services and operations.**

The companies will need to provide the information requested. The OCA requests that each Company provide this information and the live, working Excel spreadsheets to the OCA.

**Question 14: Does the company have any Deferred Tax Liabilities as of December 31, 2017? If yes, please quantify the impact of the TCJA for your company's intrastate regulated services and operations and please explain how this impact has been or is jurisdictionally allocated with respect to your company's interstate and unregulated services and operations.**

The companies will need to provide the information requested. The OCA requests that each Company provide this information and the live, working Excel spreadsheets to the OCA.

**Question 15: Are there any other changes made in the TCJA that will impact the company? If yes, please explain.**

The companies will need to provide the information requested.

**Question 16: Does the company have any affiliates subject to state public utility/service commission regulation that are operating in other jurisdiction(s), including the interstate jurisdiction, where rates are designed using a methodology other than rate base/rate of return? If yes, please identify the following: (1) the jurisdiction; (2) the ratemaking methodology used or rate/pricing standard(s) that apply; and (3) any action taken in the jurisdiction(s) by either the company or a regulatory agency in exploration of or response to the impact of the TCJA.**

The companies will need to provide the information requested.