



COMMONWEALTH OF PENNSYLVANIA

May 25, 2018

E-FILED

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

Re: Tax Cuts and Jobs Act of 2017 / Docket No. M-2018-2641242

Dear Secretary Chiavetta:

I am delivering for filing today Comments, on behalf of the Office of Small Business Advocate (OSBA), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Rose Triscari".

Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney ID No. 306921

Enclosures

cc: Mr. Joseph Gillan
Ms. Erin Laudenslager
Mr. Colin W. Scott

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tax Cuts and Jobs Act of 2017	:	
	:	Docket M-2018-2641242
	:	

**COMMENTS OF THE OFFICE OF SMALL BUSINESS ADVOCATE
ON THE EFFECTS OF THE TCJA ON THE TAX LIABILITIES OF
TELECOMMUNICATIONS CARRIERS**

I. INTRODUCTION

Public Law No. 115-97 was signed into federal law on December 22, 2017, the short title of which is the Tax Cuts and Jobs Act (“TCJA”).

By Secretarial Letter issued March 2, 2018 (“Secretarial Letter”) at the above-referenced docket, the Commission requested comments from interested parties on the effects of the TCJA on the tax liabilities of Pennsylvania telecommunication carriers. Specifically, stakeholders were invited to address: (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.

Upon request of the Pennsylvania Telephone Association, the deadline to submit comments was extended to May 25, 2018, by Secretarial Letter dated March 26, 2018.

The Office of Small Business Advocate (“OSBA”) submits the following comments in response to the Secretarial Letter for the Commission’s consideration.

II. COMMENTS

1. As the Secretarial Letter recognizes, Pennsylvania’s incumbent local exchange carriers are regulated under various alternative regulation plans under 66 Pa. C.S. §§ 3011, *et seq.* (“Chapter 30”). Although there may be *variety* in the alternative regulation plans of individual carriers, what is *common* is that each carrier remains fully subject to the just and reasonable rate standards of Chapter 30.¹ Specifically, while allowing alternative regulation plans, the legislature retained the basic ratemaking obligation that rates must remain just, reasonable and nondiscriminatory:

§ 3015. Alternative forms of regulation.

(g) Rate change limitations. – Nothing in this chapter shall be construed to limit the requirement 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 a local exchange telecommunications company’s effective commission-approved alternative form of regulation plan or any other commission-approved annual rate change limitation shall remain applicable and shall be deemed just and reasonable under section 1301.²

¹ In addition, some alternative regulation plans include within their formula factors to address exogenous changes such as reductions in federal taxes. *E.g.*, Marianna & Scenery Hill Telephone Company, Lackawaxen Telecommunications Services, Inc., Bentleyville Communications Corporation, Hickory Telephone Company, North-Eastern Pennsylvania Telephone Company, Consolidated Communications of Pennsylvania Company, Windstream D&E, Inc., Windstream Buffalo Valley, Inc., Windstream Conestoga, Inc., Windstream Pennsylvania, LLC

² 66 Pa. C.S. § 3015 (emphasis added).

2. In addition, Section 3019(e) states, as follows:

(e) Unreasonable preferences. — Nothing in this chapter shall be construed to limit the authority of the commission to ensure that local exchange telecommunications companies do not make or impose unreasonable preferences, discriminations or classifications for protected services and other noncompetitive services.³

3. Consequently, irrespective of the provisions of any individual alternative regulation plan, the Commission has the full authority to require the telecommunication carriers subject to Chapter 30 to reduce their revenues to reflect the tax savings attributable to the TCJA so that their rates remain just, reasonable and nondiscriminatory. The only issue that remains concerns how to implement the reductions and establishing which rates should be reduced.

4. The OSBA recommends that the Commission conduct its review in two sequential phases. First, the Commission should determine the *level* of overall revenue reduction that is required, and second, the Commission should determine which *rates* should implement that decline.

5. As the Commission is aware, the OSBA has been concerned for several years by ILEC PCO filings that have exacerbated the business-residential rate differential without any supporting justification. The OSBA recommends that the *first* priority for revenue reductions should be to rollback these increases to reestablish the business-residential rate differential that existed when the alternative regulation plan was adopted, and to then implement equivalent reductions to business and residential rates so that this differential is maintained. Although implementing our recommendation could occur within the same proceeding, performing the mathematical calculations to propose specific rates would be simplified if the overall revenue

³ 66 Pa. C.S. § 3019(e) (emphasis added).

reduction were known in advance. Consequently, we recommend that the Commission proceed in a phased manner.

III. CONCLUSION

We look forward to working with the Commission to ensure that a fair share of the tax savings from the TCJA flow to the benefit of Pennsylvania's small businesses and respectfully request that the Commission consider and adopt our foregoing comments.

Respectfully submitted,



Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney ID No. 306921

For:

John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101

Dated: May 25, 2018