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August 24, 2018

*Via Electronic Filing*

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

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

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Consolidated Communications of Pennsylvania Company, Windstream Buffalo Valley, Inc., Windstream Conestoga, Inc., Windstream D&E, Inc., Windstream Pennsylvania, LLC, Bentleyville Communications Corporation, Hickory Telephone Company, Lackawaxen Telecommunications Services, Inc., Marianna & Scenery Hill Telephone Company, The North-Eastern Pennsylvania Telephone Company, and the Pennsylvania Telephone Association is a Petition to Rescind Secretarial Letter and Discontinue Temporary Stay in the above-referenced matter.

Copies of the Petition are being served in accordance with the attached Certificate of Service.

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

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Charles E. Thomas, III

Enclosure

cc: Certificate of Service  
Ann Morrison (via email)  
Brian Jeffers (via email)  
James J. Kail (via email)  
Jeanne Shearer (via email)  
Steven D. Tourje (via email)  
Steven J. Samara (via email)

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tax Cuts and Jobs Act of 2017

:

Docket No. M-2018-2641242

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**PETITION TO RESCIND SECRETARIAL LETTER  
AND DISCONTINUE TEMPORARY STAY**

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Pursuant to 66 Pa.C.S. § 703(g) and 52 Pa. Code § 5.572(d), Consolidated Communications of Pennsylvania Company (“CCPA”), Windstream Buffalo Valley, Inc. (“WBV”), Windstream Conestoga, Inc. (“WC”), Windstream D&E, Inc. (“WDE”), Windstream Pennsylvania, LLC (“WPA”), Bentleyville Communications Corporation (“BCC”), Hickory Telephone Company (“HTC”), Lackawaxen Telecommunications Services, Inc. (“LTS”), Marianna & Scenery Hill Telephone Company (“M&SH”), and The North-Eastern Pennsylvania Telephone Company (“NEP”), each a rural incumbent local exchange carrier (collectively the “RLECs”), and the Pennsylvania Telephone Association, on behalf of its other member companies (“PTA”)<sup>1</sup> (together with the RLECs, the “Joint Petitioners”), by and through their undersigned counsel, hereby petition the Pennsylvania Public Utility Commission (“Commission”) to rescind its Secretarial Letter dated August 9, 2018 (“*August 9 Secretarial Letter*”) and discontinue the temporary stay imposed in the above-referenced matter. In support thereof, Joint Petitioners aver as follows:

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<sup>1</sup> While the RLECs are members of PTA, for purposes of this Joint Petition PTA is only representing the following additional member companies (with utility codes in parentheses) which are not individually petitioning the Commission on this issue: Armstrong Telephone Company – North (312650); Armstrong Telephone Company – Pennsylvania (312350); Citizens Telephone Company of Kecksburg (310650); Hancock Telephone Company (311500); Ironton Telephone Company (311650); Laurel Highland Telephone Company (311800); 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); and Yukon-Waltz Telephone Company (313650) (collectively the “PTA Companies”).

## **I. BACKGROUND**

1. By Secretarial Letter issued March 2, 2018 (“*March 2 Secretarial Letter*”), the Commission initiated a proceeding to determine the effects of the federal Tax Cuts and Jobs Act of 2017 (“TCJA”) on Pennsylvania telecommunications carriers for 2018 and future years. The Secretarial Letter directed data requests to Pennsylvania’s incumbent local exchange carriers (“ILECs”) concerning the effects of the TCJA, including, *inter alia*, whether the TCJA qualified as a potential “exogenous event” under the ILECs’ Commission-approved Chapter 30 plans. The Commission also solicited comments from interested parties addressing possible rate reflections of TCJA impacts.

2. The Commission received timely responses to the data requests from the ILECs and public comments from multiple parties, including the PTA and the Office of Consumer Advocate (“OCA”).

3. Separately, on or about May 1, 2018, the RLECs filed their respective 2018 annual Chapter 30 Price Stability Index/Service Price Index (“PSI/SPI”) reports.<sup>2</sup> With the limited exception of the LTS filing which proposed a nominal annual rate increase of \$312, none of the PSI/SPI filings resulted in any actual rate increases.

4. The OCA filed Formal Complaints against each of the RLECs’ 2018 PSI/SPI filings, generally alleging that the filings failed to contain any adjustments to recognize, as an

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<sup>2</sup> See *Consolidated Communications of Pennsylvania Company PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001104; *Windstream Buffalo Valley, Inc. PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001132; *Windstream Conestoga, Inc. PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001135; *Windstream D&E, Inc. PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001133; *Windstream Pennsylvania, LLC PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001150; *Bentleyville Communications Corporation PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001213; *Hickory Telephone Company PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001217; *Lackawaxen Telecommunications Services, Inc. PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001199; *Marianna & Scenery Hill Telephone Company PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001201; *The North-Eastern Pennsylvania Telephone Company PSI/SPI Filing for Year 2018*, Docket No. R-2018-3001197.

exogenous event, the effect of any savings in tax expenses resulting from the enactment of the TCJA.<sup>3</sup>

5. At its public meeting of June 14, 2018, the Commission unanimously approved a Motion by Vice Chairman Place which accepted the RLECs' annual PSI/SPI filings as being procedurally consistent with the RLECs' corresponding Chapter 30 plans and permitted them to go into effect, including the rate increase proposed by LTS, subject to the adjudication of the Formal Complaints. Orders consistent with the Motion were subsequently entered, and the complaints were assigned to the Office of Administrative Law Judge ("OALJ") for adjudication.

6. On June 22, 2018, the parties to the complaint proceedings filed a Joint Procedural Stipulation which stayed the proceedings pending the completion of discovery and adopted certain modifications to the procedural schedule. In entering the stipulation, the parties specifically retained all substantive and procedural rights, including the ability to seek a further stay of the proceedings pending the outcome of the Commission's investigation at Docket No. M-2018-2641242.

7. On August 9, 2018, the Commission issued a Secretarial Letter which provided, in pertinent part, as follows:

Since the issue of whether any TCJA tax savings should be accounted for under these ILECs' Chapter 30 forms of alternative regulation is presently in litigation before OALJ, the Commission will temporarily stay its own inquiry undertaken in its [sic] March 2018 Secretarial Letter pending the parties' full litigation and the Commission's final adjudication of these ten complaints. In this fashion, the Commission will avoid any prejudgment of any issues that remain pending before it and will have the benefit of a fully developed evidentiary record, the parties' briefs and the presiding ALJ's recommended decision before any final decision is rendered.<sup>4</sup>

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<sup>3</sup> See *Office of Consumer Advocate v. Consolidated Communications of Pennsylvania Company et al.*, Docket Nos. C-2018-3001863 (CCPA), C-2018-3001865 (WBV), C-2018-3001864 (WC), C-2018-3001870 (WDE), C-2018-3001871 (WPA), C-2018-3001916 (BCC), C-2018-3001917 (HTC), C-2018-3001913 (LTS), C-2018-3001912 (M&SH), and C-2018-3001915 (NEP).

<sup>4</sup> *August 9 Secretarial Letter* at 1 (emphasis added).

## II. JUSTIFICATIONS FOR RESCISSION

8. Section 703(g) of the Public Utility Code, 66 Pa.C.S. § 703(g), gives the Commission power, at any time, to rescind any order made by it. Additionally, Section 5.572(d) of the Commission's regulations, 52 Pa. Code § 5.572(d), provides that a petition for rescission may be filed at any time according to the requirements with Section 703(g) of the Code.<sup>5</sup>

9. A petition under Section 703(g) may raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior order. *West Penn Power Co. v. Pa. P.U.C.*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995) (citing *Duick v. Pennsylvania Gas & Water Co.*, 56 PA PUC 553 (1982)). Section 703(g), furthermore, does not require new evidence to be presented before the Commission may rescind or amend a prior order. *West Penn Power Co.*, *supra*.

10. Joint Petitioners respectfully submit that a temporary stay of the Commission's inquiry at the instant docket is neither prudent nor appropriate and that the *August 9 Secretarial Letter* should be immediately rescinded for several reasons.

11. *First*, the Commission's decision to temporarily stay its examination of any effects the TCJA may have on the tax liabilities of Pennsylvania ILECs unfairly prejudices and unduly burdens the ten RLECs which now must fully litigate a single issue that is part of a larger Commission-sponsored docket impacting the entire industry. These RLECs face the dismal prospect of devoting substantial time, energy, and resources and incurring significant legal, consulting, and other expenses to a fully litigated proceeding, above and beyond the considerable time, resources, and costs already expended to respond to the Commission's data requests and

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<sup>5</sup> To the extent deemed necessary, Joint Petitioners submit that this Petition to Rescind may alternatively be construed as a petition for reconsideration consistent with the Commission's policy of liberal construction under 52 Pa. Code § 1.2(a). The characterization of this petition notwithstanding, the grounds for relief and the relief requested remain the same.

participate in the submission of comments in response to the *March 2 Secretarial Letter*, which fully addressed the effects of the TCJA, including the exogenous events issue. The RLECs should not have to serve as guinea pigs for the purpose of developing a record and litigating an issue that will impact all Pennsylvania ILECs.

12. *Second*, in addition to placing an enormous burden on the shoulders of the RLECs, the temporary stay of the Commission's inquiry at this docket also prejudices the other Pennsylvania ILECs, like the PTA Companies, which will be foreclosed from participating in the Formal Complaint proceedings, including with respect to the development of an evidentiary record, exchange of discovery, submission of testimony, and participation at hearings.<sup>6</sup> These ILECs, nevertheless, will be bound by the record developed in those proceedings and the actions taken by the Commission. Due process entitles these ILECs to a full and fair opportunity to be heard on this issue, and the proper proceeding to do that is this M-docket.<sup>7</sup>

13. To the extent the Commission feels it does not have enough sufficient information to address the "exogenous events" and just and reasonable questions, it has several options at its disposal for gathering the information necessary to render an informed, final decision – none of which requires staying its own inquiry at this docket while deferring to the complaint proceedings and subjecting the RLECs (and the OCA and OALJ for that matter) to needless, piecemeal litigation. The Commission has specifically reserved the ability to solicit reply

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<sup>6</sup> While these other ILECs may have the right to file amicus briefs, that right does not equate to meaningful participation in those complaint proceedings. In particular, these ILECs will be bound by the records developed in those cases, without an opportunity to contribute, and their arguments will be severely limited as a result.

<sup>7</sup> The ILECs' due process concerns would not be solved by intervening in the complaint cases either. As a threshold matter, it is unclear whether intervention in those cases would even be permitted. Assuming *arguendo* that these ILECs were permitted to intervene, there is no guarantee they would be afforded the opportunity to present witnesses, conduct discovery (which is already ongoing), and introduce additional evidence into the record. Even if those opportunities were afforded, this would substantially expand the record in those proceedings and overly complicate the resolution of those cases, far more so than the consolidated, streamlined process available at the M-docket.

comments on the issues raised in its *March 2 Secretarial Letter*.<sup>8</sup> It is also well within the Commission's authority to propound additional data requests should it deem necessary. The Commission also has the option of holding an *en banc* hearing to seek further information, clarification, and comment, through which all Pennsylvania ILECs and other interested parties could participate.<sup>9</sup> Ultimately, a thorough and complete record from all stakeholders – and not a limited record developed through the adjudication of a handful of complaints – will best inform the Commission in reaching a final decision.

14. *Third*, Joint Petitioners have serious concerns that the Commission may have overlooked the fact that the RLECs subject to the OCA Formal Complaints are not necessarily representative of all Pennsylvania ILECs. The RLECs are regulated under a Price Stability Mechanism found in their Chapter 30 plans, which is a type of price cap regulation. Some PTA Companies, however, are regulated under a Simplified Ratemaking Plan (“SRP”) methodology of alternative regulation. While there are many similarities, it is ill-advised to assume that the evidentiary record developed in the RLECs' complaint proceedings will be relevant or beneficial for answering TCJA questions related to the SRP companies, which further demonstrates the need for the Commission to move forward with its examination at this M-docket.

15. *Fourth*, the stay of this docket pending final adjudication of the ten RLEC complaints would be “temporary” in name only, as the stay will leave all issues under review by the Commission at this docket unresolved for a considerable period of time. A fully litigated proceeding will be a time-consuming and drawn-out affair. Discovery in the complaint

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<sup>8</sup> *March 2 Secretarial Letter* at 2.

<sup>9</sup> See, e.g., *In re En Banc Hearing on Implementation of Supplier Consolidated Billing*, Docket No. M-2018-2645254 (organizing an en banc hearing after declining to consider the supplier consolidated billing issue in response to a petition filed by a single company). See also *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*, Docket No. P-2016-2579249 (Opinion and Order entered Jan. 31, 2018).

proceedings is still ongoing, and a procedural schedule has yet to be established since the parties to those proceedings have themselves stipulated to a temporary stay until discovery concludes. The schedule for these cases will need to account for, among other things, multiple rounds of testimony, evidentiary hearings, and briefing before the presiding ALJ's recommended decision can even be issued. There is a very real possibility final adjudication of these complaints would not be achieved until mid-2019, leaving the RLECs' 2019 filings (due May 1, 2019), as well as other ILECs that make annual Chapter 30 filings, in limbo as to the treatment of the TCJA going forward. One would also expect an increase in complaints filed by the statutory advocates related to these filings while the TCJA issues remain unresolved.

16. Moreover, as the *August 9 Secretarial Letter* acknowledges, there are other issues under review at this docket besides the TCJA's potential qualification as an "exogenous event" and the Commission's maintenance of just and reasonable rates, including, *inter alia*, the TCJA's effect on accumulated deferred income taxes and interconnection agreements. These other issues will not be resolved by the RLEC complaints, and the Commission will still need to address these issues when the stay is lifted before a final decision can be rendered. This will severely hinder the orderly disposition of the Commission's examination and conclusion of this M-docket. Thus, it is in the public interest for the Commission to move ahead with – rather than delay – its inquiry and examination of the TCJA's effects, if any, on the tax liabilities of Pennsylvania ILECs, so a final decision providing guidance to all affected carriers can be rendered in a timely, efficient manner.

17. *Fifth*, the Commission's decision to stay its inquiry at this M-docket puts the cart before the horse. This docket was initiated two months before the RLECs made their respective 2018 PSI/SPI filings and the OCA subsequently filed its Formal Complaints. Joint Petitioners

submit that the Commission's initiation of this M-docket likely provided the impetus for the OCA to file its complaints and that absent this docket, the complaints may never have been filed.<sup>10</sup> Consequently, proper procedure calls for the Commission's inquiry to continue while the RLEC complaint cases are stayed pending a final outcome at this docket – not the other way around.

18. In fact, this is the exact procedure the RLECs envisioned and intended to pursue. Rather than file a formal motion to stay at the outset of the complaint proceedings, however, the RLECs agreed to temporarily stay those cases until all formal and informal discovery concluded, at which time the parties would reconvene to determine a proposed path for moving forward, whether any of the complaints could be terminated, and the impact and, if applicable, the outcome of the Commission's investigation at the M-docket.<sup>11</sup> The RLECs elected to proceed in this manner because they were optimistic the Commission would render a final order at the instant docket before discovery concluded, particularly in light of the fact that the Commission acted swiftly in issuing an order addressing the effects of the TCJA on the Commission's other regulated public utilities. Nonetheless, to the extent a final order was not rendered at the time discovery concluded, the stipulation expressly reserved all substantive and procedural rights of the parties, including the ability to seek a further stay of the proceedings pending the outcome of

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<sup>10</sup> To further illustrate this point, several other ILECs made annual PSI/SPI filings earlier this calendar year before the M-docket was initiated, but well after the enactment of the TCJA on December 22, 2017. The OCA certainly could have filed complaints in those proceedings raising the same TCJA arguments it raised in the RLECs' complaints, but chose not to do so. *See, e.g., 2018 Joint Price Stability Index/Service Price Index Report Filing of Frontier Communications of Brezewood, LLC; Canton, LLC; Lakewood, LLC; Oswayo River, LLC; and Pennsylvania, LLC*, Docket No. (filed Feb. 1, 2018); *Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company 2018 Price Stability Index/Service Price Index Report Filing*, Docket No. R-2018-2642777 (filed Feb. 1, 2018); *Citizens Telephone Company of Kecksburg's 2018 Annual Price Stability Index/Service Price Index Report Filing*, Docket No. R-2018-2642830 (filed Feb. 1, 2018); *Ironton Telephone Company 2018 Annual Price Stability Index/Service Price Index Report Filing*, Docket No. R-2018-2642826 (filed Feb. 1, 2018).

<sup>11</sup> *Office of Consumer Advocate v. Consolidated Communications of Pennsylvania Company et al.*, Docket Nos. C-2018-3001863 et al., Joint Procedural Stipulation (filed June 22, 2018).

the Commission's investigation.<sup>12</sup> By staying the complaint cases and moving forward with its own inquiry, the Commission will preserve the limited resources of the RLECs, OCA, and its own OALJ, avoid unnecessary, piecemeal litigation of a single issue, and ensure no interested stakeholders are prejudiced.

### **III. RELIEF REQUESTED**

19. Based on the foregoing reasons, Joint Petitioners respectfully request the Commission issue an Order which: (i) rescinds its *August 9 Secretarial Letter*, (ii) discontinues the temporary stay imposed thereunder, and (iii) immediately resumes the Commission's examination and consideration of the impact, if any, of the TCJA on Pennsylvania telecommunications carriers, which should culminate with the issuance of a final, dispositive order on the matter. Such relief is in the public interest and will ensure a comprehensive industry-wide solution.

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<sup>12</sup> *Id.*

WHEREFORE, for the reasons set forth above, Joint Petitioners respectfully request that the Commission grant this Petition and issue an Order rescinding its *August 9 Secretarial Letter*, discontinuing the temporary stay, and immediately resuming the Commission's examination of the effects, if any, of the TCJA on Pennsylvania telecommunications carriers in the above matter

Respectfully submitted,



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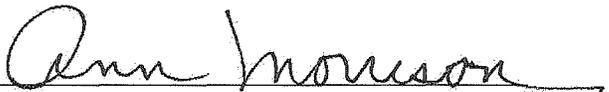
*Counsel for Joint Petitioners*

DATED: August 24, 2018

VERIFICATION

I, Ann Morrison, Director-Regulatory of Consolidated Communications, Inc., hereby state that the facts set forth above with respect to Consolidated Communications, Inc. and its subsidiaries, Consolidated Communications of Pennsylvania Company, Bentleyville Communications Corporation, and Marianna & Scenery Hill Telephone Company, are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: August 24, 2018

  
Ann Morrison

VERIFICATION

I, Jeanne Shearer, Vice President State Government Affairs of Windstream Services, LLC, hereby state that the facts set forth above with respect to Windstream Services, LLC and its subsidiaries, Windstream Buffalo Valley, Inc., Windstream Conestoga, Inc., Windstream D&E, Inc., and Windstream Pennsylvania, LLC, are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

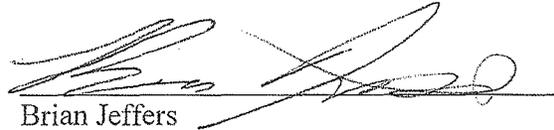
Date: August 24, 2018

  
\_\_\_\_\_  
Jeanne Shearer

VERIFICATION

I, Brian Jeffers, Treasurer and CEO of Hickory Telephone Company, hereby state that the facts set forth above with respect to Hickory Telephone Company are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: August 24, 2018

  
Brian Jeffers

VERIFICATION

I, James J. Kail, President and CEO of Lackawaxen Telecommunication Services, Inc., hereby state that the facts set forth above with respect to Lackawaxen Telecommunication Services, Inc. are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: August 24, 2018

  
James J. Kail

VERIFICATION

I, Steven D. Tourje, President of The North-Eastern Pennsylvania Telephone Company, hereby state that the facts set forth above with respect to The North-Eastern Pennsylvania Telephone Company are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: August 24, 2018

  
Steven D. Tourje

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 24<sup>th</sup> day of August, 2018, served a true and correct copy of the foregoing document upon the upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54:

Via First Class Mail, Postage Prepaid

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Charles E. Thomas, III (PA ID # 201014)