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June 22, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink 2018 Annual Price Stability Index/Service Price Index Report Filing – R-2018-3004019 and

The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink 2018 Annual Price Stability Index/Service Price Index Report Filing – R-2019-3012238, et al.

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Pennsylvania Telephone Association's ("PTA") Petition to Intervene with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in blue ink that reads "Deanne M. O'Dell".

Deanne M. O'Dell, Esq.

DMO/lww

Enclosure

cc: Hon. Joel Cheskis, w/enc. (via email only)  
Hon. Benjamin Myers w/enc. (via email only)  
Cert of Service w/enc. (via email only)

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of PA Telephone Association's Comments upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email Only**

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Dated: June 22, 2020

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Deanne M. O'Dell, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The United Telephone Company of	:	
Pennsylvania LLC d/b/a CenturyLink	:	
2018 Annual Price Stability Index/Service	:	Docket No. R-2018-3304019
Price Index Report Filing	:	
	:	
Office of Consumer Advocate	:	Docket No. C-2018-3005400
v.	:	
The United Telephone Company of	:	
Pennsylvania LLC d/b/a Century Line	:	
	:	
The United Telephone Company of	:	Docket No. R-2019-3012238
Pennsylvania LLC d/b/a CenturyLink	:	
2019 Annual Price Stability Index/Service	:	
Price Index Report Filing	:	
	:	
Office of Consumer Advocate	:	Docket No. C-2019-3012876
v.	:	
The United Telephone Company of	:	
Pennsylvania LLC d/b/a CenturyLink	:	

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**PENNSYLVANIA TELEPHONE ASSOCIATION’S  
PETITION TO INTERVENE OR, IN THE ALTERNATIVE,  
MOTION FOR LEAVE TO ACCEPT EXCEPTIONS**

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Pursuant to 52 Pa. Code §§ 5.71-5.75 and § 5.103, the Pennsylvania Telephone Association (“PTA”) files this Petition to Intervene or, In The Alternative, Motion For Leave To Accept Exceptions. While PTA has not participated in the above-captioned proceeding involving The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (“CenturyLink”), all of the member companies of PTA have their own pending Annual Price Stability Index/Service Price Index Report filings against which the Office of Consumer Advocate (“OCA”) has filed complaints. The legal issues involved in this proceeding regarding whether the tax changes occurring under the federal Tax Cuts and Jobs Act (“TCJA”) should be classified as an exogenous event and reflected in price cap regulated companies’ rates. The

resolution of the legal issues in the above-docketed matter will directly impact the interests of the PTA member companies.

More specifically, the Recommended Decision (“RD”) of Administrative Law Judges (“ALJs”) Joel H. Cheskis and Benjamin J. Myers finding that the TCJA is an exogenous event to be flowed through to customers of telephone companies subject to Chapter 30 price cap regulation will have consequences well beyond CenturyLink and impact each of the PTA member companies. The RD even specifically recognizes that the issue of whether the TCJA qualifies as an exogenous event “may also be relevant to other Pennsylvania local exchange carriers.” RD at 26. Therefore, PTA respectfully requests that the Commission grant this Petition for the purpose of considering PTA’s Exceptions which address this important issue and explain why the TCJA is not an exogenous event contrary to the finding of the RD.

PTA respectfully requests that the Commission grant this Petition, accept PTA’s Exception and grant relief as requested in its Exceptions. In support of this Petition, PTA states as follows:

1. Enacted in late 2017, the federal Tax Cuts and Jobs Act (“TCJA”) was a substantial tax reduction that, among other effects, decreased the tax rate applicable to all businesses nationwide. Pursuant to Secretarial Letter dated February 12, 2018, at Docket No. M-2018-2641242, the Commission commenced a proceeding to determine the effects of the TCJA on the tax liabilities of Commission-regulated electric, natural gas, water and waste water public utilities for 2018 and future years and the feasibility of reflecting such impacts in the rates charged to Pennsylvania utility ratepayers.
2. A second Secretarial Letter was issued March 2, 2018, at Docket No. M-2018-2641242 to affected Pennsylvania telecommunications carriers. The Commission requested

responses to specific data requests to address whether their retail and wholesale rates should be adjusted to reflect the effects of the tax rate changes and reductions from the TCJA. Two key issues identified by the Commission were the tax rate reductions' potential qualifications as an "exogenous events" pursuant to various Chapter 30 plans and the Commission's maintenance of just and reasonable rates in light of those tax rate reductions. The PTA and member companies submitted their responses on May 25, 2018.

3. The Chapter 30 price cap form of regulation is not based upon cost recovery but, rather, allowable revenues are determined pursuant to a formula that relies upon the gross domestic product price index ("GDP-PI"). The GDP-PI measures changes in the prices of goods and services produced in the United States. Under price cap theory, the productivity of the subject telecommunications company can be expected to exceed GDP-PI and many plans have a productivity offset component to reflect changes in GDP-PI. Generally, circumstances that allow revenues to be adjusted outside of the GDP-PI formula are referred to as an exogenous event. A circumstance, however, must qualify as an exogenous event and, if qualifying, then quantification as an exogenous event occurs.
4. Notwithstanding the Commission's March 2, 2018, Secretarial Letter seeking to investigate whether or not the TCJA is such an event, the Office of Consumer Advocate ("OCA") filed formal complaints against ten ILECs' 2018 Chapter 30 Price Stability Mechanism ("PSM") filings alleging that their current rates for non-competitive services may be unjust and unreasonable because the filings did not account for the savings in tax expense from the TCJA as an exogenous event. As a result, the Commission issued a

Secretarial Letter on August 9, 2018, staying its own inquiry pending the parties' full litigation and the Commission's final adjudication of the ten outstanding complaints.

5. PTA and several other rural incumbent local exchange carriers ("RLECs") filed a Petition to Rescind Secretarial Letter and Discontinue Temporary Stay on August 24, 2018, asking the Commission to rescind its August 9, 2018, Secretarial Letter staying its TCJA investigation. By Order entered October 25, 2018, the Commission denied the Petition to Rescind and determined that OCA's pending complaint cases were the proper forum for resolution of whether the TCJA qualified as exogenous and maintained its prior stay of its investigation pending the individual proceedings regarding the annual PSM filings of the RLECs.
6. Litigation regarding CenturyLink's pending PSM filing moved forward while the OCA's complaints pending against the other ILECs have not moved forward.
7. On June 1, 2020, the RD in the above-captioned CenturyLink consolidated complaint cases regarding CenturyLink's 2018 and 2019 PSM filing was issued. The RD recommends that the Commission reject a settlement. Since the settlement did not address whether the TCJA constituted an exogenous event and did not create a record on this issue, the RD recommends that the settlement be rejected. RD at 17.
8. Notwithstanding this, the RD recommends that the Commission find that the TCJA is an exogenous event based on their legal analysis as the parties never articulated their respective disagreements as to why the TCJA does or does not qualify as an exogenous event. RD at 18.

**I. PETITION TO INTERVENE**

9. PTA is the state's oldest trade organization for the local exchange carrier industry serving largely in rural portions of the Commonwealth of Pennsylvania. PTA represents nearly

30 telecommunications companies that provide a full array of services over wire line networks. PTA members include 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, and The North-Eastern Pennsylvania Telephone Company and each is a RLEC regulated under a Commission approved price cap form of regulation.

10. The PTA has previously participated in this and other dockets related to the TJCA. The doctrine of associational standing has been repeatedly accepted by this Commission.
11. PTA's attorneys in this matter are:

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12. The Commission's regulations allow intervention where a person has an interest in the proceeding which may be directly affected and which is not adequately represented by existing parties, and as to which the person may be bound by the action of the Commission in the proceeding.<sup>1</sup> Intervention is also permitted where participation of the person may be in the public interest.<sup>2</sup> A "person" includes a corporation and an association.<sup>3</sup>

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<sup>1</sup> 52 Pa. Code § 5.72(a)(2).

<sup>2</sup> 52 Pa. Code § 5.72(a)(3).

<sup>3</sup> 52 Pa. Code § 1.8.

13. The Commission’s regulations also provide that “[e]xcept with regard to statutory advocates...intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.”<sup>4</sup> While the Commission has denied a petition to intervene filed after an initial decision was entered, the Commission specifically stated it does “not rule out the possibility that, in an appropriate future case, a petitioner might demonstrate extraordinary circumstances warranting intervention after the issuance of an Initial Decision.”<sup>5</sup> In fact, the Commission has previously granted a petition to intervene filed at the exceptions stage of a proceeding<sup>6</sup> and has considered exceptions filed by a non-party.<sup>7</sup> PTA believes, as explained herein, that extraordinary circumstances warrant its intervention and respectfully requests that the Commission grant its intervention.
14. PTA’s members will be affected by the action of the Commission in this proceeding were it to affirm the ALJs’ recommendation that the Commission adopt the RD’s conclusion, and the rationale in support of that conclusion, that the TCJA is an exogenous event. In fact, the RD recognizes that the issue of whether the TCJA qualifies as an exogenous event “may also be relevant to other Pennsylvania local exchange carriers as well.”<sup>8</sup> The Commission Order entered in this docket expressly invited interventions in each individual case by other ILECs.<sup>9</sup> In addition, intervention will assist the Commission in

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<sup>4</sup> 52 Pa. Code § 5.74(c).

<sup>5</sup> *Verizon Pennsylvania Inc., et al. v. Penn Telecom, Inc.*, Docket No. C-20066987, Order entered August 29, 2008 at 4.

<sup>6</sup> *Investigation into Demand Side Management by Electric Utilities Uniform Cost Recovery Mechanism*, Docket No. I-900005 Corrected Opinion and Order entered December 13, 1993 at 3.

<sup>7</sup> *Application of Sprint Communications Company*, Docket No. A-310183F0002AMA, et. al, Opinion and Order entered December 1, 2006 (“*Sprint Application Order*”).

<sup>8</sup> Recommended Decision at 26.

<sup>9</sup> Order entered October 25, 2018 at 7-8 (“The Commission disagrees with the Joint Petitioners' averment that allowing other ILECs to intervene in the Formal Complaint proceedings would be insufficient to cure due *process* concerns raised in the Petition.”)

developing a full record in response to the RD and its broadly-impacting determinations. Intervention is necessary to prevent prejudice and to accord due process to the PTA members caused by the Commission stay of its own investigation and deference to a multiple set of separate dockets involving numerous ILECS and price cap years as the proper vehicle for resolution.

15. PTA's interests in this proceeding are unique from and not adequately represented by other parties that may seek to intervene, including individual ILECs. This is because PTA represents the interests of a diverse and broad group of ILECs in general and not the interests of any individual member. The unusual circumstances present here warrant PTA's involvement at this stage of the proceeding.
16. PTA's intervention is in the public interest. The PTA's perspective on the impact of adopting the RD is valuable information for the Commission and will enable the Commission to have a broader view of this matter to ensure that its final decision serves the public interest.
17. Granting PTA's Petition to Intervene and considering its Exception will not delay the orderly progress of the case or broaden the issues.
18. PTA meets the standards for intervention set forth in 52 Pa. Code § 5.72(a). As an organization whose members include affected ILECs, PTA has interests that will be directly affected by this proceeding.
19. PTA also satisfies the extraordinary circumstances standard of 52 Pa. Code § 5.74(c) to support approval of its intervention after an evidentiary hearing has concluded because PTA had reasonable reasons for not intervening in this proceeding prior to the issuance of

the RD because this matter involved CenturyLink specifically. The RD changed that dynamic and implicated interests beyond just CenturyLink.

20. For all these reasons, earlier involvement in this matter did not seem appropriate, necessary or cost effective. This intervention is necessitated because of the recommendation of the RD. As such, PTA meets the standards of 52 Pa. Code § 5.74(c) to be granted intervention at this stage due to the extraordinary circumstances present here.

## **II. MOTION FOR LEAVE TO ACCEPT EXCEPTION**

21. If the Commission denies PTA's Petition to Intervene, PTA respectfully request that the Commission accept its Exceptions pursuant to 52 Pa. Code § 5.103.
22. The Commission has previously considered the exceptions filed by a non-party after issuance of the initial decision. In a case involving the application of Sprint Communications Company L.P. ("Sprint") for authority to expand its Competitive Local Exchange Carrier ("CLEC") certification, the only parties to the underlying litigation were Sprint and Commonwealth Telephone Company ("CTCo").<sup>10</sup> However, after the initial decision was issued, the Broadband Cable Association of Pennsylvania ("BCAP") filed a Petition to Intervene and Exceptions.<sup>11</sup> Although CTCo filed an Answer in Opposition requesting the Commission to deny BCAP's Petition to Intervene,<sup>12</sup> the Commission did not formally dispose of BCAP's Petition to Intervene so BCAP was

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<sup>10</sup> *Sprint Application Order* at 2.

<sup>11</sup> Petition to Intervene of the Broadband Cable Association of Pennsylvania and Exceptions of the Broadband Cable Association of Pennsylvania, Docket No. A-310183F0002AMA filed June 14, 2008.

<sup>12</sup> Answer in Opposition to the Petition to Intervene of the Broadband Cable Association of Pennsylvania, Docket No. A-310183F0002AMA filed June 28, 2006.

never granted official party status in the proceeding.<sup>13</sup> Despite this, the Commission extensively considered BCAP's exceptions in resolving the matter.<sup>14</sup> Thus, the *Sprint Application Order* case stands for the proposition that the Commission may consider the exceptions of a non-party.

23. As further evidence that non-parties may participate in proceedings, the Commission's regulations permit the filing of amicus briefs.<sup>15</sup> Thus, the Commission appears to recognize that there are instances in which the input of a non-party to a proceeding may provide valuable input to the Commission. While PTA recognizes that these amicus rules apply during the briefing stage, briefs were not submitted due to the settlement. Thus, given the circumstances here as well as the recognition of the Commission that non-parties can provide valuable insight, PTA urges the Commission to accept and fully consider its Exceptions.
24. Accepting PTA's Exceptions will not prejudice the parties in this proceeding because the exceptions are being submitted in accordance with the procedural schedule set by the Presiding Officers and the parties will have an opportunity to file a reply to PTA's Exceptions.
25. Thus, for all these reasons, if the Commission declines to grant PTA's Petition to Intervene, then PTA requests that the Commission grant its alternative request for leave to accept Exception.

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<sup>13</sup> 52 Pa. Code § 5.71(a)(1) requires an order of the presiding officer or the Commission to grant a petition to intervene before an interested person can participate in a proceeding as an intervenor.

<sup>14</sup> *Sprint Application Order* at 13-16; 26-28; 31-32

<sup>15</sup> 52 Pa. Code § 5.502(e). The applicability of the Commission's amicus rule regarding the *Sprint Application Order* was not clear at the time BCAP filed its Petition to Intervene and Exceptions because the proceeding began in May 2005 which was almost a year prior to the Commission's adoption of the new rule in April 2006.

**WHEREFORE**, for all these reasons, the Pennsylvania Telephone Association requests that the Commission grant its Exceptions in this matter and, moreover, restart its own investigation as more fully explained in the Exceptions.

Respectfully submitted,



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Date: June 22, 2020

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