

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560

 @pa\_oca

 /pennoca

FAX (717) 783-7152  
consumer@paoca.org

July 2, 2020

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

Re: The United Telephone Company of Pennsylvania LLC  
d/b/a CenturyLink 2018 Annual Price Stability Index/  
Service Price Index Report  
Docket No. R-2018-3004019

The United Telephone Company of Pennsylvania LLC  
d/b/a CenturyLink 2019 Annual Price Stability Index/  
Service Price Index Report  
Docket No. R-2019-3012238

Office of Consumer Advocate v. CenturyLink  
Docket Nos. R-2019-3012876  
C-2018-3001871

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer and Objection to the Pennsylvania Telephone Association Petition to Intervene or, in the Alternative Motion for Leave to Accept Exceptions in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Barrett C. Sheridan  
Barrett C. Sheridan  
Assistant Consumer Advocate  
PA Attorney I.D. # 61138  
E-Mail: [BSheridan@paoca.org](mailto:BSheridan@paoca.org)

Enclosures:

cc: The Honorable Benjamin J. Myers (**email only**)  
The Honorable Joel H. Cheskis (**email only**)  
Certificate of Service

\*291312

CERTIFICATE OF SERVICE

Re:	The United Telephone Company of Pennsylvania LLC	:	
	d/b/a CenturyLink 2018 Annual Price Stability	:	R-2018-3004019
	Index/Service Price Index Report Filing	:	
	Office of Consumer Advocate	:	
	v.	:	
	The United Telephone Company of Pennsylvania LLC	:	C-2018-3005400
	d/b/a CenturyLink	:	
	The United Telephone Company of Pennsylvania LLC	:	
	d/b/a CenturyLink 2019 Annual Price Stability	:	R-2019-3012238
	Index/Service Price Index Report Filing	:	
	Office of Consumer Advocate	:	
	v.	:	
	The United Telephone Company of Pennsylvania LLC	:	C-2019-3012876
	d/b/a CenturyLink	:	

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Answer and Objection to the Pennsylvania Telephone Association Petition to Intervene or, in the Alternative Motion for Leave to Accept Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2nd day of July 2020.

**SERVICE BY E-MAIL ONLY**

Steven C. Gray, Esquire  
Office of Small Business Advocate  
555 Walnut Street  
1<sup>st</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923

Zsuzsanna E. Benedek, Esquire  
The United Telephone Company of PA LLC  
240 North Third Street  
Suite 300  
Harrisburg, PA 17101

Deanne M. O’Dell, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101

/s/ Barrett C. Sheridan  
Barrett C. Sheridan  
Assistant Consumer Advocate  
PA Attorney I.D. # 61138  
E-Mail: [BSheridan@paoca.org](mailto:BSheridan@paoca.org)

Counsel for:  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: July 2, 2020  
\*291311

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

The United Telephone Company of Pennsylvania LLC	:	
d/b/a CenturyLink 2018 Annual Price Stability	:	R-2018-3004019
Index/Service Price Index Report Filing	:	
	:	
Office of Consumer Advocate	:	
v.	:	
The United Telephone Company of Pennsylvania LLC	:	C-2018-3005400
d/b/a CenturyLink	:	
	:	
The United Telephone Company of Pennsylvania LLC	:	
d/b/a CenturyLink 2019 Annual Price Stability	:	R-2019-3012238
Index/Service Price Index Report Filing	:	
	:	
Office of Consumer Advocate	:	
v.	:	
The United Telephone Company of Pennsylvania LLC	:	C-2019-3012876
d/b/a CenturyLink	:	

---

THE OFFICE OF CONSUMER ADVOCATE’S  
ANSWER IN OPPOSITION TO THE  
PENNSYLVANIA TELEPHONE ASSOCIATION’S  
PETITION TO INTERVENE OR, IN THE ALTERNATIVE  
MOTION FOR LEAVE TO ACCEPT EXCEPTIONS

---

Pursuant to Section 5.66, 52 Pa. Code § 5.66, the Office of Consumer Advocate (OCA) answers and opposes the Pennsylvania Telephone Association’s (PTA’s) June 22, 2020 pleading. The PTA requests that the Public Utility Commission (Commission or PUC) approve the PTA’s petition for intervention as filed on June 22, 2020. PTA Pet. at 1, citing 52 Pa. Code §§ 5.71- 5.75. In the alternative, PTA asks the Commission to grant PTA’s motion, made as a non-party, “for leave to accept exceptions.” *Id.*, citing 52 Pa. Code § 1.103. The PTA admits that it is not a party

to these proceedings. PTA Pet. at 1. Nonetheless, the PTA has separately filed proposed exceptions.

The OCA joins the Office of Small Business Advocate (OSBA) in opposing the PTA's Petition and alternative motion. See, Answer of the OSBA to PTA's Petition, filed June 26, 2020. (OSBA Answer) The PTA is not eligible to be joined as an intervenor, based upon the Company's late-filed request. See, 52 Pa. Code §§ 5.72(a), 5.74(c). The Parties submitted a unanimous Joint Petition for Settlement in late January 2020, the record closed in April 2020, the presiding officers have issued a Recommended Decision (R.D.) on June 2, 2020, and the Parties have submitted Exceptions. The next step is for the Commission to consider the timely Exceptions filed by the OCA, the OSBA, and The United Telephone Company of Pennsylvania d/b/a CenturyLink (CenturyLink or Company) (collectively, the Parties) and decide whether to approve the Settlement as in the public interest. See, 52 Pa. Code §§ 5.232(f), 5.533(a).

The Commission's regulations permit parties to file exceptions and reply exceptions to a recommended decision. The PTA does not have standing as party. Nor does the Commission allow for the filing of *amicus curiae* exceptions by non-parties.

The Commission should deny the PTA Petition and not consider the PTA's proposed exceptions.

## **I. PTA's Petition Should Be Denied**

### **A. The Proposed Exceptions Filed By The PTA As A Non-Party Should Not Be Considered By The Commission**

The OCA joins the OSBA in opposing the PTA's request that the Commission consider the proposed exceptions filed by the PTA, despite the PTA's lack of standing at the time of filing.

OSBA Answer at 1-6. In the alternative, the PTA asks the Commission to grant the PTA's motion for leave to file *amicus curiae* exceptions. *Id.*; see PTA Pet. pp. 1-2, ¶¶ 21-24. The PTA's request is contrary to the Commission's regulations and fundamental fairness. In 2006, the Commission amended its procedural regulations and replaced "the term participant ... with the term party throughout the regulation. *This change ensures that those who wish to appear before the Commission do so consistent with Pennsylvania law and Commission procedure based on standing as a party.*" PECO Energy Co. Universal Services Three-Year Plan, 2008 Pa PUC LEXIS 403, \*9-10, Order (Apr. 9, 2008), citing 36 Pa. B. 2097, 2098 (Apr. 29, 2006)(emphasis added). The Commission should not consider the exceptions which the PTA has filed as a non-party.

The PTA is not the first to ask the Commission to review exceptions filed by a non-party whose petition to intervene is late-filed and has not been yet been ruled upon. In West Penn, the Commission denied a similar petition to intervene filed after an R.D. in a rate filing issued. P.U.C. v. West Penn Power Co., Docket No. P-00072349, R-00072754, 2008 Pa PUC LEXIS 46, \*4-7 (Aug. 14, 2008) (West Penn). Community Energy, Inc. (CEI) filed exceptions to the recommended decision and a late-filed petition to intervene. In the alternative, CEI sought a waiver of the Commission's regulations to permit CEI to file exceptions to the recommended decision "even though CEI does not have party status." *Id.*, \*\*4-5. The Commission denied *both* of CEI's requests as too late in the proceeding and unsupported. *Id.*, \*\*5-7. The Commission did not yield its "Regulations regarding intervention, party status and exceptions." West Penn, \*7.

In Verizon, the Commission determined that the late filing of a petition to intervene and exceptions is unfair to parties and deprives the Commission of the benefit of an initial decision that addresses the full scope of issues. Verizon Pennsylvania Inc., et. al. v. Penn Telecom, Inc., Docket No. C-20066987, Opinion and Order at 7-9 (August 29, 2008) (Verizon). "Exceptions are

the mechanism by which *a party* seeks review of an initial, tentative, or recommended decision.” Id. at 10 (emphasis added), citing 52 Pa. Code § 5.533. The Commission declined to consider exceptions offered by the non-party CTSI as *amicus curiae* exceptions, as “it would be unfair to the Parties, and a disservice to this Commission, to allow a non-party to file *amicus curiae* exceptions raising issues not raised by the Parties.” Id. at 10. The Commission “easily envision[ed] several scenarios in which *amicus curiae* exceptions could conflict with the just, speedy, and inexpensive determination of Commission actions and proceedings.” Id., citing 52 Pa. Code § 1.2(a). The Commission committed to not allow “a non-party to file *amicus curiae* exceptions.” Id. The Commission did not consider the non-party CTSI’s proposed exceptions and did not consider Verizon’s replies to those exceptions. Id.

The PTA’s proposed exceptions, filed by a non-party without established standing, are not proper pleadings for consideration by the Commission, under either of the PTA’s scenarios. Verizon, supra; followed, Frompovich v. PECO Energy Co., Docket No. C-2015-2474602, Opinion and Order at 7 (May 3, 2018)(“[O]ur Regulations do not provide for the filing of *amicus curiae* Exceptions or Replies to Exceptions by a non-party.” Non-party letters were not considered.)

Similarly, the Commission has refused to consider petitions for reconsideration when filed by a non-party. Implementation of Ch. 32 of the Public Utility Code Re Pittsburgh Water and Sewer Authority – Stage 1, Docket No. M-2018-2640802, Opinion and Order at 59 (June 18, 2020) (PWSA) (“[W]e shall not consider the City’s Reconsideration Petition due to the City’s lack of standing as a party to the subject proceeding.”), citing Pa. PUC v. National Fuel Gas Distribution Corp., Docket No. R-00932885, 1994 WL 712660, Order (Sept. 26, 1994) (NFG) (Only a party

may seek reconsideration, per 66 Pa.C.S. § 703(f), (g), and Duick. Petitioner IOGA did not have standing as a party, due to ALJ's denial of IOGA's petition to intervene.)

The Commission should not consider the PTA's proposed exceptions, which the PTA filed without the benefit of standing.

B. The OCA Will Not File A Reply Exception To The PTA's Proposed/Amicus Curiae Exceptions

Like the OSBA, the OCA will not file a Reply Exception to the PTA's proposed exceptions, because the PTA was not a party to these proceedings on the due date for parties to file exceptions. See OSBA Answer at 3-6. The June 2, 2020 the Secretarial Letter, which issued the R.D., notified "ALL PARTIES" of the 20 day period for the filing of Exceptions, and subsequent 10 day deadline for the filing of Reply Exceptions. (emphasis in original) The Commission's regulations reserve the filing of exceptions and reply exceptions to "parties" for sound reasons of procedural fairness and administrative efficiency. See, 52 Pa. Code § 5.533(a). Standing and due process matter, particularly when the Parties are allowed just 10 days to prepare and file reply exceptions, as of right. 52 Pa. Code § 5.535(a).

In Verizon, before Verizon had the benefit of the Commission's ruling that non-party or *amicus curiae* exceptions are not allowed by the Commission's regulation or sound administrative procedures, Verizon filed protective reply exceptions and a motion to strike the would-be intervenor's exceptions. The Commission determined it would not consider the non-party's exceptions. So the Commission did not even reach the merits of Verizon's motion to strike or Verizon's reply exceptions. Verizon at 8-9. The OCA should not have to engage in the exercise and expense of such additional pleadings, to respond to exceptions filed by non-party.

### C. The Commission Should Deny The PTA's Late-Filed Petition For Intervention

A petition to intervene may be filed by a person “claiming an interest of such nature that intervention is necessary or appropriate to the administration of a statute under which the proceeding is brought.” 52 Pa. Code § 5.72(a). A petition for intervention must meet the Section 5.72 eligibility criteria *and* be requested in a timely fashion. Section 5.74(b) states the deadline by which “[p]etitions to intervene shall be filed,” tied to the type of proceeding and due dates for responsive pleadings. 52 Pa. Code § 5.74(b). Once an evidentiary hearing has concluded, “intervention will not be permitted ... absent *extraordinary circumstances*.” 52 Pa. Code § 5.74(c) (emphasis added).

Of the possible rights or interests, the PTA states that it has met elements of both Section 5.72(a)(2) and (3). PTA Pet. ¶¶ 9-18; see 52 Pa. Code § 5.72(a)(2), (3). The OCA does not agree with each of the PTA's assertions. For example, the OCA is not persuaded that the PTA has a direct interest in the rates and revenues of CenturyLink and the pending unanimous Joint Petition for Settlement. However, the Commission may grant a petition to intervene based upon a showing that one eligibility criteria is met. 52 Pa. Code § 5.72(a).

The OCA objects to the PTA's Petition because it is late-filed. The Parties have invested time and resources in conducting discovery and addressing how to fairly resolve these proceedings. The Parties submitted a unanimous Joint Petition for Settlement in January 2020. The Settlement contains time sensitive provisions. An R.D. has issued and the Parties have filed Exceptions. The PTA's Petition is untimely and should be denied.

The PTA acknowledges that its Petition to Intervene is late-filed. According to the PTA, it had reasonable reasons for not intervening earlier and grant of the PTA's Petition “will not delay the orderly progress of the case or broaden the issues.” PTA Pet. ¶¶ 17, 19. The PTA states the

R.D. issued in this case on June 2, 2020 changed the dynamic in this proceeding, by implicating interests beyond those of CenturyLink. PTA Pet. ¶ 19.

The OCA disagrees. The PTA has not met the Commission’s strict standards for grant of a late-filed intervention due to “extraordinary circumstances.” 52 Pa. Code § 5.74(c). The Commission’s standard for permitting a late-filed petition for intervention involves the following four criteria, each of which must be met:

- (1) The petitioner has a reasonable excuse for missing the protest due date.
- (2) The proceeding is contested at the time of the filing of a petition for intervention.
- (3) A grant of intervention will not delay the orderly progress of the case; and
- (4) The grant of intervention will not broaden significantly the issues or shift the burden of proof.

PWSA at 12-14.

1. The PTA Has Not Justified Its Untimely Petition To Intervene

The PTA states that it did not intervene at an earlier time because the PTA did not consider intervention appropriate, necessary, or cost effective. PTA Pet. ¶ 20. PTA’s excuse does not arise to the level of a reasonable excuse. The OCA’s October 2018 formal complaint against CenturyLink’s 2018 PSM filing raised the issue of whether the TCJA qualifies as an exogenous event under the provisions of CenturyLink’s Amended Chapter 30 Plan. These combined proceedings concern the revenues and rates of CenturyLink and directly impact the interests of CenturyLink’s non-competitive service customers. Any interest on the PTA’s part in presenting arguments that CenturyLink’s 2018 and 2019 PSM filings should be subject to zero adjustment should have been raised long before the issuance of a R.D. on the pending Joint Petition for Settlement.

The PTA had ample opportunity to file and receive a ruling on a petition to intervene while the Parties conducted discovery and addressed how best to resolve these proceedings, in the many months after the OCA filed its October 2018 formal complaint against CenturyLink’s 2018 PSM. But the PTA did not petition to intervene. Nor did the PTA petition to intervene, as permitted by Section 5.72(a), after the Parties submitted the Joint Petition for Settlement on January 23, 2020. 52 Pa. Code § 5.72(a).

It is clear that the PTA refrained from filing a timely petition to intervene by choice, to save money and conserve the PTA’s resources. The time for the PTA to intervene and object to the proposed Joint Petition for Settlement as contrary to the PTA’s legal theories is past. In West Penn, the issuance of a recommended decision adverse to CEI’s interests did not qualify as “extraordinary circumstances” to allow CEI party status as an intervenor. West Penn, \*7. The PTA has not plead persuasive exigent circumstances for its delay. See, PWSA at 55-56. The PTA’s change in strategy does not justify the lateness of the PTA’s request to intervene. See, Petition of UGI Utilities, Inc. – Gas Div. to Establish a Schedule for Installation of Daily Metering Facilities, Docket P-2017-2607269, Initial Decision at 6 (Nov. 9, 2017), Final Order adopting the I.D. (Jan. 2, 2018). The PTA has not met the first prong for the Commission’s four-part test.

2. The PTA Seeks to Intervene While A Unanimous Settlement Is Awaiting Disposition By The Commission

The PTA’s Petition does not meet the second criteria, which requires that the proceeding be contested as of the date when the PTA filed its petition for intervention pursuant to Section 5.74(c). These proceedings are not at present contested. A fact acknowledged by the PTA. PTA Pet. ¶ 23. The Parties have mutually agreed to set aside litigation and instead support the Joint Petition for Settlement, pursuant to the Commission’s express policy in favor of settlements. 52

Pa. Code § 5.231(a). The R.D. acknowledged that “a ‘burden of proof’ standard, *as is utilized for contested matters,*” does not apply when the Commission reviews the acceptability of a settlement. R.D. at 9, citations omitted (emphasis added). Instead, the Commission considers “whether the terms and conditions are in the public interest.” *Id.*, citations omitted.

The OCA submits that as of the date of the PTA’s petition to intervene, these proceedings are not “contested.” The PTA filed its Petition on June 22, 2020, after the R.D. issued and before the Commission has ruled upon the Joint Petition for Settlement, the R.D., and the Parties’ Exceptions.

The OCA acknowledges that the ALJs have recommended that the Commission reject the Settlement and remand for development of a factual and legal record. R.D. at 30. Regardless, the issuance of the R.D. does not end the Parties’ agreement to resolve these proceedings by settlement. The Commission will consider the Parties’ timely filed Exceptions to the R.D. in the Commission’s “ruling made on the settlement petition.” 52 Pa. Code §§ 5.232(f), 5.533(a).

As of the date of the PTA’s late filed petition for intervention, these proceedings have proceeded on a settlement track. The PTA’s petition for intervention does not meet the second criteria for grant of a late-filed petition pursuant to Section 5.74(c).

3. Grant Of The PTA’s Late-Filed Petition Will Delay The Orderly Progress Of This Case

The OCA disputes the PTA’s position that “[g]ranted PTA’s Petition to Intervene and considering its Exceptions will not delay the orderly progress of the case ....” PTA Pet. ¶ 17. The PTA statement is not supported.

The PTA’s Petition will delay and impede the orderly progress of this case because the PTA asks the Commission to consider exceptions filed weeks before a Commission determination

of the PTA's standing. The PTA's filing of a petition to intervene triggers a 20 day answer period. 52 Pa. Code § 5.66(a). If a party does not file a timely answer, then that party "may be deemed to have waived objection to the granting of the petition." *Id.* A decision on the merits of the PTA Petition by the presiding officer or Commission will occur "as soon as practicable after the expiration of the time for filing answers to the petitions" allowed by Section 5.66. 52 Pa. Code § 5.75(b). The PTA's alternative "motion for leave" also allows for a 20 day answer period. 52 Pa. Code § 5.103(b)(2), (3).

The PTA's intent to litigate in the exceptions phase of this proceeding, a specific issue which the Parties to the Settlement have expressly agreed to set aside for the purpose of obtaining Commission approval of the Settlement, is contrary to the orderly progress of this proceeding. Certain provisions of the Settlement are time sensitive as they relate to CenturyLink's upcoming late August 2020 PSM filing. Grant of the PTA's Petition would interfere with the Parties' efforts to obtain a favorable Commission ruling on the merits of the Settlement in a timely fashion.

The PTA Petition does not satisfy the third criteria for grant of a late-filed petition pursuant to Section 5.74(c).

4. Grant Of The PTA's Late-Filed Petition Would Unreasonably Broaden The Issues

The PTA states that grant of its Petition "will not ... broaden the issues." PTA Pet. ¶¶ 17, 19. However, the PTA also states that it did not intervene earlier because "this matter involved CenturyLink specifically." *Id.*, ¶ 19. The PTA states that the R.D. has "changed that dynamic ...." *Id.*, ¶ 19.

The OCA disagrees. As stated above, the scope of these proceedings are still confined to the CenturyLink 2018 and 2019 PSM rate filings and the OCA's corresponding formal complaints.

The immediate issue for resolution by the Commission is whether the Joint Petition for Settlement should be approved as in the public interest. Even if the Commission issues an order which is other than an unconditional approval of the Settlement as in the public interest, the Parties to the Settlement have reserved time to consider their options.

The PTA has not satisfied the fourth criteria for grant of its late-filed Petition. The PTA seeks standing as a party to litigate the general interests of the PTA's members in legal and factual issues, when this matter is still limited to the rates and revenues of only CenturyLink and the interests of CenturyLink's non-competitive service ratepayers.

## II. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully opposes the late-filed Petition for Intervention or alternative relief filed by the PTA and the PTA's concurrently filed exceptions to the Recommended Decision pending in this proceeding. The OCA asks that the Commission resolve these pleadings in manner which is procedurally fair to the present Parties and does not delay or complicate the Commission's review of the pending unanimous Joint Petition for Settlement.

Respectfully Submitted,

/s/ Barrett C. Sheridan

Barrett C. Sheridan  
Assistant Consumer Advocate  
PA Attorney I.D. # 61138  
E-Mail: BSheridan@paoca.org

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

July 2, 2020