


COMMONWEALTH OF PENNSYLVANIA


Admitted by Recommended Decision  
June 2, 2020



OFFICE OF CONSUMER ADVOCATE

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April 14, 2020

**Via Electronic Mail Only**

The Honorable Joel H. Cheskis  
The Honorable Benjamin J. Myers  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
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 Judge Cheskis and Judge Myers:

Enclosed is the verified Statement of Dr. Robert Loube on behalf of the Office of Consumer Advocate (OCA). The OCA is submitting this Statement in support of the pending Joint Petition for Settlement in the above proceedings, pursuant to the March 2020 further prehearing conference.

The OCA and counsel for CenturyLink and the Office of Small Business Advocate have agreed to waive cross-examination of each party's expert statement in support of the Joint Petition for Settlement. Further the Parties have agreed to the admission of the respective statements into the record by stipulation.

The Honorable Joel H. Cheskis  
The Honorable Benjamin J. Myers  
April 14, 2020  
Page 2

The OCA has served the parties of record electronically, as shown by the enclosed Certificate of Service. The Certificate of Service will be e-filed with the Secretary's Bureau.

Respectfully submitted,

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

Enclosures:  
cc: Certificate of Service  
\*286457

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 Statement of Dr. Robert Loube, 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 14<sup>th</sup> day of April 2020.

**SERVICE BY E-MAIL ONLY**

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Dated: April 14, 2020  
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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	:	
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v.	:	
The United Telephone Company of Pennsylvania LLC	:	C-2019-3012876
d/b/a CenturyLink	:	

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**STATEMENT OF DR. ROBERT LOUBE**  
**ON BEHALF OF THE OFFICE OF CONSUMER ADVOCATE**

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**Introduction**

1. My name is Robert Loube. My business address is 10601 Cavalier Drive Silver Spring, MD 20910. I am a Vice-President and a principal owner of Rolka Loube Associates, headquartered in Harrisburg, Pennsylvania. I have a doctorate in Economics from the Michigan State University. My clients include state attorneys general, state public advocates, non-profit public advocates, the Internal Revenue Service and the Department of Justice. I have testified in cases that focus on rate design, broadband deployment, service

quality, universal service, revenue forecasts, market power, mergers and regulatory structure. I have also helped the National Association of State Utility Consumer Advocates (“NASUCA”) and the state members of the universal service joint board prepare comments in FCC proceedings related to Unbundled Network Element cost, Subscriber Line Charge increases, Universal Service and jurisdictional separations. I recently was the technical adviser to the state commissioners on the Universal Service Federal-State Joint Board and I am currently the technical adviser to the state commissioners on the Separations Federal-State Joint Board. The Universal Service Federal-State Joint Board is investigating issues related to which services should be included in the contribution base that supports universal service; and investigating whether the contribution base should be based on revenue, number of connections to the telecommunications network including broadband connections or telephone numbers. The Separations process allocates telecommunications revenue and cost between the federal and state jurisdictions. The Separations Federal-State Joint Board is reviewing these processes. I have previously worked in telecommunications regulation at the Federal Communications Commission (“FCC”), the District of Columbia Public Service Commission, and the Indiana Utilities Regulatory Commission. I have regularly lectured at the National Association of Regulatory Utility Commissioners’ Annual Summer Workshops at Michigan State University.

2. I am submitting this statement on behalf of the Pennsylvania Office of Consumer Advocate.

**Purpose of Statement**

3. The purpose of my statement is to support the settlement between United Telephone Company of Pennsylvania (“CenturyLink”), the Office of the Consumer Advocate (“OCA”), and the Office of the Small Business Advocate (“OSBA”). The settlement is in

the public interest because it provides benefits to residential consumers and small businesses without full litigation of the questions presented in the OCA formal complaint. As addressed below, quantification and allocation of savings arising from the Tax Cuts and Jobs Act of 2017 (“TCJA”) is complicated and would consume significant resources. Additionally, CenturyLink has banked prior allowed revenue increases to the point of possibly offsetting any change in rates to reflect tax savings. In the settlement, the residential consumers and small businesses benefit because CenturyLink commits to forgo banked revenues and current and future price increases. In exchange, the parties agreed to not litigate whether the TCJA corporate income tax reduction would be considered an exogenous event as per CenturyLink’s Chapter 30 plan and the cause of a rate reduction.<sup>1</sup>

4. While the settlement differs from the procedure used to share the benefits of the TCJA among electric utilities and their customers, and other rate-of-return utilities and their customers, it is necessary to use an alternative procedure because there is no agreed upon method to allocate the reduction of the federal tax liability to Pennsylvania intrastate services. Even if the Commission wished to proceed to establish a method to allocate the reduction of the federal tax liability among the non-regulated sector, the interstate jurisdiction and the intrastate jurisdiction, it would then be necessary to develop a method to allocate cost and tax liability between Pennsylvania telecommunications competitive and non-competitive services.

#### Cost and Tax Liability Allocations Rules

5. A telecommunications carrier provides a variety of services and operates in a number of different jurisdictions. Some of the services have been considered regulated common carrier

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<sup>1</sup> Amended Alternative Regulation Plan of the United Telephone Company of Pennsylvania, Doing Business as “Sprint”, Revised March 15, 2005, and Further Revised June 9, 2005, page 16.

services and some have been considered non-regulated services. One service, Internet access, during some time intervals was considered a regulated service and at other times a non-regulated service. Currently, it is classified as a non-regulated service. The major jurisdictional divide is between the interstate and intrastate jurisdiction.

6. The Federal Communications Commission (“FCC”) established several sets of rules to allocate cost and tax liability among services and jurisdictions. FCC Part 64 rules allocates cost between regulated and non-regulated services. FCC Part 36 rules (Separation Rules) allocates between the interstate and the intrastate jurisdictions.
7. According to the FCC’s procedures, the FCC first allocates cost to the non-regulated sector according to its Part 64 rules. Then the cost remaining in the regulated sector are allocated between the interstate and intrastate jurisdictions according to the Part 36 rules. States are allowed to make a further allocation to the non-regulated sector if they choose to do so. In this sense states are not pre-empted by the FCC rules.
8. Until 2008, states were pre-empted by the FCC rules from altering the Part 36 rules. Starting in 2008 with AT&T and then for all price-cap regulated telecommunications companies the FCC granted those companies forbearance from its Part 36 rules.<sup>2</sup> In those Orders, the FCC stated “we do not in this order preempt any state accounting requirements adopted under state authority. Similarly here, we do not preempt states’ ability to establish intrastate cost allocations for its own purposes, and our forbearance from Cost Assignment

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<sup>2</sup> In the Matter of Petition of AT&T Inc. For Forbearance Under 47 U.S.C. §160 From Enforcement of Certain of the Commission’s Cost Assignment Rules, WC Docket No. 07-21, Memorandum Opinion and Order, FCC 08-120, released: April 24, 2008; In the Matter of Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, et al., WC Docket No. 08-190, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203, released: September 6, 2008; In the Matter of Petition of USTelcom for Forbearance Under 47 U.S.C. § 160 ( c) from Enforcement of Certain Legacy Telecommunications Regulations et al., WC Docket No. 12-61, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, FCC 13-49, (“Price Cap Forbearance Order”)released: May 17, 2013.

Rules does not otherwise affect a state’s ability to do so.”<sup>3</sup> CenturyLink has obtained forbearance of the FCC Part 36 rules.<sup>4</sup>

#### Changes in the Cost Assignment Rules

9. In 2001, the FCC imposed an interim freeze of jurisdictional categories and allocators. A category determines the function of a particular type of plant.<sup>5</sup> For example, cable and wire facilities that connect an end-user to a wire center for completing voice messages are Category 1.3 investments, while cable and wire facilities that provide many special access services are considered Category 2 investments. Once a facility is assigned to a category, its investment is assigned to jurisdiction on the basis of an allocator. The allocator for Category 1.3 investments assigns 75% of the facilities to the intrastate jurisdiction and 25% of the facilities to the interstate jurisdiction. In general, expenses are assigned on the basis of the relative investment.
10. In 2001, the FCC recognized a need for a comprehensive review of the Part 36. A major concern was that the Part 36 rules did not address how the Internet and other recent changes in the use of the telecommunications network may require a change in its rules.<sup>6</sup> The FCC did not use its Part 64 rules to assign any Internet related costs to the non-regulated services,<sup>7</sup> even though it has been estimated that less than 1% of the traffic on the wireline network is voice and the rest is Internet and other non-regulated services.<sup>8</sup> Due to that decision 75% of investment and expenses used to provide Internet service remain in the

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<sup>3</sup> Price Cap Forbearance Order, ¶ 49.

<sup>4</sup> See CenturyLink’s Response to OCA Data Request I-6.

<sup>5</sup> In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, FCC 01-162, released: May 22, 2001.

<sup>6</sup> Id.

<sup>7</sup> In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al., Report and Order and Notice of Proposed Rulemaking, CC Docket No. 02-33, released: September 23, 2005, ¶ 130.

<sup>8</sup> Anna-Maria Kovacs, “Telecommunications competition: the infrastructure-investment race,” October 8, 2013.

state jurisdictional investments and costs. While the FCC recognized the need for comprehensive reform, it has not acted on that recognition. State members of the Joint-Board on Separations provided the FCC with a comprehensive way to address changes in the use of the Category 1.3 investment, assigning investments on the basis of consumer purchases of voice, video and Internet service. The FCC did not adopt that recommendation. Instead, under the forbearance rules, price-cap companies no longer are subject to those rules and there have been minor changes in the rules for the rate-of-return regulated companies.

#### Reported Costs and Taxes and Reasonable Adjustments

11. On a total company basis, CenturyLink reported positive income before taxes and positive federal corporate income taxes in 2018.<sup>9</sup> Both values are less than the respective values reported in 2017.<sup>10</sup> The corporate income tax decrease was greater than income decrease and was affected substantially by the TCJA reduction in the corporate income tax from 35% to 21%.
12. A review of the CenturyLink cost study reports greatly different rates of return by sector and by jurisdiction. On a total company basis, CenturyLink reported a rate of return on investment that was several magnitudes greater than the current FCC allowed rate of return that the FCC uses for determining universal service support. A higher rate of return was reported for non-regulated Part 64 sector and for the interstate jurisdiction. The private line portion of the interstate jurisdiction reported an even higher rate of return. On the other hand, the reported intrastate rate of return was close to zero, and in the column called “Local

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<sup>9</sup> CenturyLink’s response to OCA data request II-1.

<sup>10</sup> CenturyLink’s response to OCA data request I-1.

Other” which includes residential service, the reported rate of return was below the FCC allowed rate of return.

13. These extremely divergent rates of return are the results of the accounting conventions discussed above, the Separation Freeze and the decision to keep Internet investment and costs in the regulated sector and other accounting conventions. Changing these accounting conventions so that the allocation of revenues and costs better reflects cost causation in the respective markets would increase the profits and federal corporate income tax in the intrastate jurisdiction and reduce the profits and federal corporate income tax in the Part 64 sector and in the interstate jurisdiction. The Commission has the authority to change the accounting conventions.

14. The impact of the Connect America Fund Phase II (CAF II) support received by CenturyLink on CenturyLink’s investments, expenses and profits highlights the problems of the misalignment between the accounting conventions and cost causation. Through the end of 2017, CenturyLink had received \$28,653,523.<sup>11</sup> CenturyLink states that universal service fund support is reported as interstate revenue.<sup>12</sup> Upon the receipt of CAF II funds, CenturyLink has the responsibility to upgrade its network so that it can provide Internet access service 10 Mbps downstream and 1 Mbps upstream to a designated number of locations in its service territory. The network upgrade increases the gross investment in local loop facilities. According to the current accounting convention 75% of that investment would be allocated to the “Local Other” sector, the sector that serves residential service. Along with the investment, 75% of Internet related expenses are also allocated to the “Local

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<sup>11</sup> This value was determined using the Universal Service Administrative Company’s disbursement tool available at <https://apps.usac.org/hc/tools/disbursements/default.aspx>.

<sup>12</sup> CenturyLink’s response to OCA data request I-4.

Other” sector. The combined result is that 100% of the Internet access revenue is reported in the interstate jurisdiction, while only 25% of the cost is allocated to the interstate jurisdiction and 75% of the cost is allocated to the intrastate jurisdiction.

15. In addition to the CAF II investment, CenturyLink has been investing in providing Internet Access service as part of its Chapter 30 plan commitment to provide at least 1.544 mbps downstream to all of its customers. Transferring that investment out of state jurisdictional costs would create a similar pro forma adjustment to the adjustment described above. If it is not possible to separate the investment, then allocators based upon the type of services purchased could be applied. The state members of the Separations Joint-Board have made such a recommendation in the past.

16. Another example of a distortion caused by an accounting convention is related to the reporting of private line revenues. The accounting convention allows the carrier to report the overwhelming majority of private line revenue as interstate revenue even if the private line service is used to provide intrastate telecommunications services.<sup>13</sup> For example, wireless carriers purchase from local exchange carriers a substantial amount of private line service to connect their cell towers and the switching offices. The revenue associated with those purchases is generally reported as interstate revenue. On the other hand, the wireless carriers report to the FCC that 70% of their revenue is intrastate revenue.<sup>14</sup> Therefore, it could be considered appropriate to transfer 70% of the interstate private line revenue associated with wireless industry purchases to the intrastate jurisdictions.

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<sup>13</sup> See 47 CFR 36.154(a), and 47 CFR 36.213(c).

<sup>14</sup> That percentage was calculated from data provided in the FCC 2019 Monitoring Report Supplementary Table 1.1 Revenue Details – 2018.

17. Even if the Commission could adjudicate the three adjustments discussed above and other adjustments that would be part of a litigated case, the Commission and the parties would still be left with the problem of how to divide the state jurisdiction between its competitive and non-competitive services. To date, the Commission has not required a price-cap company to construct a cost study that would divide investments, expenses and taxes between competitive and non-competitive services, and it would be unduly burdensome to do so at this time.
18. Another consideration is the size of CenturyLink's bank of allowed revenue increases. The Company's bank was in excess of \$9.6 million before the Company's 2018 and 2019 Price Stability filings. Those banked revenue increases could allow the Company to offset or make short-lived any rate decrease tied to quantification of tax savings recognized in a Price Stability filing. The Settlement protects consumers because CenturyLink has agreed to postpone any request to use its banked revenues and has agree to eliminate a part of its banked revenues and to forgo increasing its banked revenues as part of its 2020 PSI filing.

### **Conclusion**

19. I recommend that the Commission approve the settlement agreed to by the OCA, OSBA and CenturyLink. The settlement is in the public interest. It provides a practical way to solve a number of very complicated regulatory issues, which might otherwise be contested. The settlement provides benefits to CenturyLink's customers in the form of the elimination of possible future rate increases. Thus the settlement addresses that OCA's key concern that CenturyLink's rates for non-competitive services be just and reasonable.

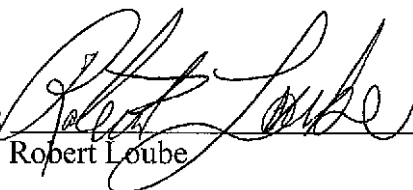
BEFORE THE  
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VERIFICATION

I, ROBERT LOUBE, hereby state that the facts set forth in my Statement In Support of Settlement, are true and correct (or 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 4/13/2020

Signed:   
Robert Loube