

# Morgan Lewis

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May 12, 2023

## VIA E-FILING

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120-3265

**Re: Cancellation of Certificates of Public Convenience for Telecommunication Utilities; Failure to Operate or Report Any Intrastate Operating Revenue**

**Application of PEG Bandwidth PA, LLC for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the Public in the Commonwealth of Pennsylvania**

**Docket Nos. M-2022-3037353 and A-2012-2301870**

Dear Secretary Chiavetta:

Attached for electronic filing, please find PEG Bandwidth PA, LLC's comments in opposition to the Commission's Tentative Order in the above captioned matters. If you have any questions, please do not hesitate to contact us.



Sincerely,

/s/ Catherine G. Vasudevan

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**Before the  
Pennsylvania Public Utility Commission  
Harrisburg, PA 17120**

In the Matters of	)	
<b>Cancellation of Certificates of Public Convenience for Telecommunication Utilities; Failure to Operate or Report Any Intrastate Operating Revenue</b>	)	M-2022-3037353
<b>Application of PEG Bandwidth PA, LLC for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the Public in the Commonwealth of Pennsylvania</b>	)	A-2012-2301870

**Opposition of PEG Bandwidth PA, LLC  
to Cancellation of Certificates of Public Convenience  
for Telecommunications Public Utilities**

PEG Bandwidth PA, LLC (“PEG PA”) respectfully submits this opposition to the Pennsylvania Public Utility Commission’s (“Commission”) Tentative Order (“2023 Tentative Order”) proposing to find public utilities reporting no intrastate revenue within the last three years as deemed to be no longer providing public utility service for compensation in Pennsylvania and consequently, no longer entitled to hold a Commission-issued Certificate of Public Convenience and Necessity (“CPC”).<sup>1</sup> The 2023 Tentative Order concluded that CPC cancellation is tentatively approved as being in the public interest for each telecommunications utility that has (1) failed to report any intrastate operating revenue to the Commission since 2019; (2) reported zero intrastate revenue since 2019; or (3) reported zero intrastate revenue in any year since 2019 in combination

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<sup>1</sup> See Tentative Order Finding Cancellation of Certificates of Public Convenience for Telecommunication Utilities; Failure to Operate or Report Any Intrastate Operating Revenue, Docket No. M-2022-3037353 (Order entered March 16, 2023) (“2023 Tentative Order”).

with not reporting intrastate operating revenue in the required annual assessment. PEG PA submitted Assessment Reports reflecting zero total gross intrastate operating revenues for the assessment years of 2019, 2020, and 2021. The 2023 Tentative Order established a deadline for the submission of comments to challenge the tentative approval of CPC cancellations within 20 days of the date of publication of the Tentative Order in the Pennsylvania Bulletin. Publication occurred on April 22, 2023, resulting in a comment deadline of on or before May 12, 2023. As such, these opposition comments are timely filed.

PEG PA calls attention to the Commission's referral of PEG PA to the Bureau of Investigation and Enforcement ("Bureau") on May 18, 2020.<sup>2</sup> The Commission's referral to the Bureau concerned the same issue raised here by the 2023 Tentative Order. Specifically, on July 11, 2019, the Commission issued a Tentative Order ("2019 Tentative Order") alleging a violation of the same Pennsylvania code section by numerous carriers including PEG PA.<sup>3</sup> PEG PA filed timely opposition comments in response to the 2019 Tentative Order.<sup>4</sup> Subsequently, the Commission referred the matter to the Bureau. After responding to the Bureau<sup>5</sup> and fully cooperating with the investigation,<sup>6</sup> the Bureau terminated its investigation of PEG PA on

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<sup>2</sup> Docket Nos. M-2019-3010251; A-2012-2301870.

<sup>3</sup> *See* Cancellation of Certificates of Public Convenience for Telecommunications Public Utilities; Reporting Zero Intrastate Operating Revenue, Docket No. M-2019-3010251 (dated July 11, 2019) (alleging violation of 66 Pa. C.S. § 510(b) which is the same code section identified in the 2023 Tentative Order).

<sup>4</sup> *See* Opposition of PEG Bandwidth PA, LLC to Cancellation of Certificates of Public Convenience for Telecommunications Public Utilities, Docket No. M-2019-3010251 (Oct. 4, 2019).

<sup>5</sup> The Bureau requested certain information from PEG PA. *See* Letter from Kayla L. Rost, Prosecutor, Bureau of Investigation and Enforcement to Ronald W. Del Sesto, Jr., Esq. Morgan, Lewis & Bockius LLP, Docket No. M-2019-3010251; A-2012-2301870 (Oct. 5, 2021).

<sup>6</sup> *See* PEG Bandwidth PA, LLC Responses to I&E Data Requests – Set I, Docket Nos. M-2019-3010251; A-2012-2301870 (Oct. 25, 2021).

February 18, 2022, where the Bureau found that it was “unable to substantiate allegations of wrongdoing on the part of [PEG PA] which would require the cancellation of its Certificate.”<sup>7</sup> The Bureau’s letter continues that “I&E has elected to terminate the instant investigation, without prejudice, pursuant to 52 Pa. Code § 3.113(b)(1).”<sup>8</sup>

PEG PA is unaware of any change in relevant law since February 18, 2022 that would materially affect the outcome of another investigation of the company by the Bureau. In fact, PEG PA received a letter from the Commission’s Finance and Assessment Division Bureau of Administration on September 27, 2022, raising the same allegations of violations of relevant law as those identified in the 2019 Tentative Order and the 2023 Tentative Order.<sup>9</sup> By letter dated October 14, 2022,<sup>10</sup> PEG PA informed the Finance and Assessment Division Bureau of Administration of the procedural history of PEG PA’s interaction with the Commission on this issue, as summarized in these opposition comments, and called attention to the Bureau’s closing of its investigation of PEG PA on this same matter a little over six months before PEG PA received the letter from the Finance and Assessment Division Bureau of Administration, *i.e.*, the Bureau’s letter notifying PEG PA that it was terminating its investigation of the company dated February 18, 2022.

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<sup>7</sup> Letter from Kayla L. Rost, Prosecutor, Bureau of Investigation and Enforcement to Ronald W. Del Sesto, Jr., Esq. Morgan, Lewis & Bockius LLP, Counsel for PEG Bandwidth PA, LLC, Docket No. M-2019-3010251; A-2012-2301870 (Feb. 18, 2022).

<sup>8</sup> *Id.*

<sup>9</sup> *See* Letter from Amy R. Zuvich, Pennsylvania Public Utility Commission, Finance and Assessment Division Bureau of Administration to PEG Bandwidth PA LLC, File No. 3114607 (Sept. 27, 2022).

<sup>10</sup> *See* Letter from Catherine Vasudevan and Ronald W. Del Sesto, Morgan, Lewis & Bockius, Counsel for PEG Bandwidth PA, LLC to Amy R. Zuvich, Pennsylvania Public Utility Commission, Finance and Assessment Division Bureau of Administration to PEG Bandwidth PA LLC, File No. 3114607 (Oct. 14, 2022).

If the Commission elects to either initiate an action to cancel PEG PA's CPC, or to open another investigation, PEG PA maintains that it is not in violation of relevant law nor is there any basis for the Commission to pursue an investigation of the company regarding this issue. This is primarily due to the Bureau's concluded investigation of PEG PA's service offerings a little over a year ago where it found no basis upon which to cancel PEG PA's CPC.<sup>11</sup> The 2023 Tentative Order raises no new material issues of fact or law with respect to PEG PA's service offerings in the Commonwealth that would allow for a contrary finding by the Bureau. PEG PA incorporates by reference the many filings it has made concerning this issue opposing cancellation of its CPC and all remain relevant to the 2023 Tentative Order.<sup>12</sup> Accordingly, PEG PA respectfully emphasizes that since the 2023 Tentative Order raises no new material issues of fact or law concerning PEG PA's operations in Pennsylvania that were not already addressed by the company in its filings cited to in these opposition comments, there is no basis for the Commission to cancel PEG PA's CPC or to investigate the company.

Respectfully submitted,

/s/ Jeffrey R. Strenkowski  
Jeffrey R. Strenkowski  
VP, Deputy General Counsel of  
Governmental Affairs  
PEG BANDWIDTH PA, LLC

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<sup>11</sup> Letter from Kayla L. Rost, Prosecutor, Bureau of Investigation and Enforcement to Ronald W. Del Sesto, Jr., Esq. Morgan, Lewis & Bockius LLP, Counsel for PEG Bandwidth PA, LLC, Docket No. M-2019-3010251; A-2012-2301870 (Feb. 18, 2022).

<sup>12</sup> See Letter from Catherine Vasudevan and Ronald W. Del Sesto, Morgan, Lewis & Bockius, Counsel for PEG Bandwidth PA, LLC to Amy R. Zuvich, Pennsylvania Public Utility Commission, Finance and Assessment Division Bureau of Administration to PEG Bandwidth PA LLC, File No. 3114607 (Oct. 14, 2022); PEG Bandwidth PA, LLC Responses to I&E Data Requests – Set I, Docket Nos. M-2019-3010251; A-2012-2301870 (Oct. 25, 2021); Opposition of PEG Bandwidth PA, LLC to Cancellation of Certificates of Public Convenience for Telecommunications Public Utilities, Docket No. M-2019-3010251 (Oct. 4, 2019).

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*Counsel to PEG Bandwidth PA, LLC*

Dated: May 12, 2023

## VERIFICATION

I, Jeffrey R. Strenkowski, state that I am the Vice President and Deputy General Counsel of Governmental Affairs of Uniti Group Inc. (“Uniti Group”); that I am authorized to make this Verification on behalf of Uniti Group and its subsidiary PEG Bandwidth PA, LLC (collectively, the “Company”); that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to un-sworn falsification to authorities).



Jeffrey R. Strenkowski  
Vice President, Deputy General Counsel  
Governmental Affairs  
Uniti Group Inc.

Dated: May 11, 2023