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Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North St., 2nd Floor
Harrisburg, PA 17120

**Re: Docket No. L-2023-3040646
AT&T Comments in Response to Rulemaking to Amend 52 Pa. Code §§ 63.161—
63.171 (relating to Universal Service)**

Dear Secretary Chiavetta:

Enclosed for filing are Comments on behalf of AT&T Corp., Teleport Communications America, LLC and SBC Long Distance, LLC (collectively, “AT&T”) in response to the Public Utility Commission’s “Advance Notice of Proposed Rulemaking” in the above-referenced matter.

Thank you for your attention to this matter. Please contact me if you have any questions regarding this filing.

Respectfully submitted,



Joseph Monaghan

Attachment

cc: Colin Scott, Esq. (via email with WORD version)
Christopher Van de Verg, Esq. (via email with WORD version)
Spencer Nahf (via email with WORD version)
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**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

**Rulemaking to Amend 52 Pa. Code §§ 63.161—63.171
(relating to Universal Service)**

L-2023-3040646

COMMENTS ON BEHALF OF AT&T IN RESPONSE TO PROPOSED RULEMAKING

Pursuant to the Notice issued in the above-referenced matter, AT&T Corp., Teleport Communications America, LLC and SBC Long Distance, LLC (collectively, “AT&T”)¹ hereby submit the following Comments to the Public Utility Commission (“Commission” or “PUC”).

Introduction

AT&T applauds the Commission’s efforts to achieve a functional, competitively neutral universal service program that complies with the Public Utility Code, Commission policy and federal law. AT&T appreciates the opportunity to submit these Comments in response to the Commission’s “Advance Notice of Proposed Rulemaking” (“ANOPR”) in this matter.

The USF program was never intended to fund in perpetuity the rural ILEC’s network modernization. Rather, it exists to assist companies who meet a stringent test for determining that they serve an area whose costs are so high that they need financial assistance to provide voice telephone service to that area. That root objective, and the public interest, are best served by rule changes designed to moderate -- not expand – the size and reach of the USF program to better align it with marketplace realities within the bounds of controlling law.

¹ AT&T currently contributes to the PA USF but does not receive any PA USF funds.

As a threshold matter, AT&T submits that the providers who receive, and who want to continue to receive, USF monies must demonstrate in their Comments the continuing need for the PA USF in any form. Absent that showing, there is no need for the PUC to consider any expansion of the PA USF and the unnecessary carrier costs, and consumer burden, that an expansion of the program would entail.

Guided by these principles, AT&T offers the following responses to certain of the numbered questions in Appendix A to the ANOPR.

Question No 1: Definitions at 52 Pa. Code § 63.162:

- a. **Should the Pennsylvania Public Utility Commission (PUC) amend the Section 63.162 definition of “basic universal service” to reach beyond *telephone service*, which would align it with federally applicable principles (e.g., *Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663 (2011))?**

AT&T Response: No. The federal government is directing once in a generation amounts of funding to support broadband availability to Pennsylvania and other states through programs like the Broadband Equity Access and Deployment (BEAD) program and Capital Project Funds (CPF) program. If the Pennsylvania legislature believes that additional state funding is needed for broadband expansion beyond the federal monies, the fairest and most equitable way for Pennsylvania to support broadband availability would be to utilize funding from its general fund: All Pennsylvania consumers and businesses of every kind and size, as well as all Pennsylvania state and local government agencies, benefit from high speed internet services and the applications that they enable. The Commonwealth’s general fund is thus the most appropriate funding source for any state broadband funding mechanism because it would support the effort with general tax dollars, not from a surcharge targeted at one narrow industry and its customers. Indeed, because states are preempted from assessing broadband internet access service providers to support state USFs, the economic burden of expanding the PA USF to support internet service would fall upon *telecommunications* providers to support *broadband* providers. This would impose a particularly significant and unfair burden on traditional telecommunications revenues which are already in decline, while broadband revenues and demand are growing.

b. **Should the PUC amend the definition of “contributing telecommunications providers”?**

i. **Should the definition include interconnected VoIP under 73 P.S. § 2251.6?**

AT&T Response: The PUC’s current approach is to assess the intrastate interconnected VoIP revenues of certificated providers only - without a mandatory assessment on the interconnected VoIP revenues of providers who are *not* certificated. The PUC should adopt a competitively neutral approach and either assess all interconnected VoIP providers or none, whether certificated or non-certificated, whether facilities-based or over-the-top. To the extent the PUC does determine to assess all providers, it must strictly adhere to the legal limitation on its ability to regulate interconnected VoIP service and follow the FCC’s guidance set forth in the Matter of Universal Service Contribution Methodology Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling (WC Docket No. 06-122, November 5, 2010) (the “Nebraska-Kansas Declaratory Ruling”). In accordance with 47 U.S.C. § 254(f), state universal service contribution requirements may not conflict with federal rules and any PA USF assessment on interconnected VoIP revenues must be done in the manner specified in the rules adopted in the FCC’s Interim Contribution Methodology Order and the Nebraska-Kansas Declaratory Ruling to avoid preemption. Among other things, a state cannot apply its contribution rules to intrastate interconnected VoIP revenues that are attributable to services provided in another state. In addition, the assessment may only apply to interconnected VoIP, not one-way VoIP. And the rules must enable providers to utilize a reasonable methodology to identify assessable intrastate revenues (such as a traffic study; the inverse of the FCC’s interstate USF safe harbor for interconnected VoIP; or another reasonable methodology identified by the provider).

Importantly, if the PA PUC were to assess interconnected VoIP providers, it must allow them to recover their PA USF contributions from end-users if they choose to do so. Otherwise, the PA PUC would be unlawfully exercising preempted rate regulation over those VoIP providers.

ii. **Should the definition include wireless providers?**

AT&T Response²: No. Wireless carriers are specifically exempt from PUC jurisdiction. 66 Pa C.S. § 102(2)(iv) (excluding certain entities as a “public utility”); 66 Pa. C.S. § 501. Further, under federal law, a state commission must be authorized to regulate carriers on which it seeks to impose the requirement. 42 U.S.C. § 153(47). Put simply, the PA PUC has no statutory authority to regulate the activities of wireless carriers, and thus no legal authority to require them to contribute to the PA USF.

² AT&T’s wireless affiliates (“AT&T Wireless”) join in the Opening Comments being filed in response to the ANOPR by CTIA, the trade association for the wireless communications industry.

c. **Should the PUC establish its own definition of “telecommunications carrier” independent of federal law as interpreted by the Federal Communications Commission (FCC)?**

AT&T Response: No. A state’s USF authority is derived from and closely intertwined with the FCC’s federal USF authority. Specifically, 47 USC § 254(f) provides:

“A State may adopt regulations not inconsistent with the [FCC’s] rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.”

The PUC should and must be consistent with federal law and the FCC’s universal service rules in the creation and implementation of its USF rules.

Question No. 2: Carrier of last resort (COLR) or provider of last resort (POLR)

- a. **Should the regulations clarify or define COLR or POLR obligations for Fund Recipients? If so, what do you suggest?**
- b. **Should there be only one provider with COLR or POLR obligation in a designated area and how should they be chosen?**

AT&T Response: In today’s competitive communications world, antiquated COLR obligations are no longer necessary to ensure that all consumers have access to high-quality, affordable voice services. Indeed, a number of states have eliminated COLR requirements without adversely impacting consumers and businesses. COLR requirements are a vestige of a pre-competitive market regulatory scheme which have no place, and should play no role, in the current highly competitive marketplace where voice services are, and have long been, ubiquitously available not only from the ILECs but also from mobile wireless carriers, facilities-based and over-the-top interconnected VoIP providers (including the country’s largest cable operators), non-interconnected VoIP providers, and in the most remote areas, satellite voice.

Moreover, consumers and businesses today have long used internet-enabled applications to communicate with friends and family, transact business, and obtain and interact with government agencies - activities that in earlier decades required voice telephony (if not in-person communications).

In this highly competitive environment, where consumers' and businesses' communications needs are being met not only through myriad voice service offerings but also by many other forms of communication enabled by the internet itself - not only are COLR obligations obviously unnecessary but they also impose costly and discriminatory burdens on an industry segment that is not only small but growing smaller based on revenues and connections, and that saddle no other industry segment. In this competitive environment the most- if not, *the* only - sensible approach would be to recognize that COLR obligations are a lingering relic of a bygone time and eliminate all remaining COLR obligations.

That is not to say that there should not be stringent requirements for the recipients of PA USF monies. First, any recipients of PA USF support should be required to demonstrate their financial need for support, considering all sources of their government support, whether federal or state; and considering all revenues they derive from their network operations, whether derived by affiliates and irrespective of how those revenues are jurisdictionally classified. Second, the PUC should clearly identify the service obligations that fund recipients must meet to obtain such support. If those requirements are akin to COLR obligations, they should only apply where there is *no other voice provider using any other technology*. COLRs are unnecessary anywhere else; and there should be no need for more than one COLR in any given area. If there are areas where there is truly no other voice provider today, this should be periodically reevaluated. With the momentous funding the federal government is directing to broadband (e.g., through the BEAD program), ultimately there should be few locations, if any at all, that lack broadband and because broadband enables any number of voice service applications, there should correspondingly be few, if any, locations that lack voice service once broadband is available.

Question No. 7: Should the Commission's proposed provision of universal service support be conditioned on a recipient providing voice and internet services at federal speeds to all consumers in a designated area, particularly if VoIP and Broadband Internet Access Service (BIAS) are classified as telecommunications under federal law?

AT&T Response: No. See AT&T response to Question no. 1(a) above. This question should be moot, because the PA USF program should not be expanded to force competitors to fund the broadband deployment commitments of the RLECs.

First, subsidizing the RLECs' local rates keeps those rates artificially low, which makes it difficult for competitors to enter the market and compete when competitors' rates are not subsidized.

Second, forcing other companies to subsidize the RLECs increases the other companies' costs, thereby forcing those companies to pass the costs onto their customers, which is again a method of distorting the marketplace from allowing rates to be reflective of true costs. Using the PA USF to fund RLECs' broadband commitments would substantially increase the size of the fund, thereby substantially increasing the costs of those companies who must pay into the fund, but not receive any money from it. Third, at this time, not all types of carriers are required to pay into the universal service fund. Thus, by increasing the amount of subsidies wireline carriers are forced to pay, this increases the disparity in costs between different types of carriers, and again creates a regulatory distortion in the marketplace. Expansion of the PA USF to fund other services is anti-competitive and cannot be sustained in today's environment.

Question No. 21: Should the Commission continue prohibiting a stand-alone surcharge on individual consumers to recover the cost of universal service?

AT&T Response: No. The Commission's existing prohibition on a stand-alone surcharge on individual customers has compounded the economic burden that the current USF program rules have placed on certificated telecommunications companies operating in the Commonwealth. In the years since the USF program was created, certificated carriers have been compelled to subsidize the RLECs without a mechanism to recover those subsidies. The elimination of this unusual prohibition that was part of what was intended to be a temporary system is long overdue. The time has come for this Section to be deleted or amended as follows.

§ 63.170. End-user surcharge prohibited. A telecommunications service provider may not implement a customer or end-user surcharge or any other direct or indirect charge to recover any contributions to the Fund.

Question No. 28: What should be done to address the current practice whereby only currently certificated carriers and certain eligible telecommunications carriers are required to report and pay Pa. USF assessments on intrastate VoIP revenues?

AT&T Response: See AT&T response to Question no. 1(b) above. The current practice is not competitively neutral. It treats VoIP providers differently solely based on whether they also provide certificated services in the Commonwealth, penalizing the certificated providers and skewing the marketplace. The PUC should assess all VoIP providers or none, and any assessment must be done strictly in compliance with the federal rules.

Conclusion

The PA USF was never intended to be permanent and was not intended to be used for purposes other than rate rebalancing/access reform. AT&T commends the Commission for undertaking the task of modernizing, and ideally streamlining, the USF program to reflect the current marketplace. AT&T urges the PUC to reject any pleas for the expansion of the USF program to subsidize additional services and create an unfair competitive advantage.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JM', is written over a horizontal line.

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