



COMMONWEALTH OF PENNSYLVANIA

March 8, 2024

E-FILED

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

Re: Rulemaking to Amend 52 Pa. Code §§ 63.161—63.171 (relating to Universal Service) / Docket No. L-2023-3040646

Dear Secretary Chiavetta:

Enclosed please find Reply Comments to the Advance Notice of Proposed Rulemaking, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Joseph Gillian

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking to Amend 52 Pa. Code §§ :
63.161—63.171 (relating to Universal : **Docket No.: L-2023-3040646**
Service) :

**REPLY COMMENTS
OF THE OFFICE OF SMALL BUSINESS ADVOCATE
TO THE POLICY STATEMENT ORDER**

Respectfully submitted,

/s/ Steven C. Gray

Steven C. Gray
Assistant Small Business Advocate
Office of Small Business Advocate

For:

NazAarah Sabree
Small Business Advocate

DATE: March 7, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking to Amend 52 Pa. Code §§ :
63.161—63.171 (relating to Universal : **Docket No.: L-2023-3040646**
Service) :

**REPLY COMMENTS OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

The Office of Small Business Advocate (“OSBA”) herein files our Reply Comments in the above captioned proceeding. Our Reply Comments are relatively brief because the Comments filed by other parties establish two fundamental conclusions that should bring this proceeding (and the Pennsylvania USF) to a close.

The first conclusion is that market and technological conditions have fundamentally changed since the Pennsylvania Universal Service Fund (“Pa. USF”) was first established, to the point where the fund is now far removed from its initial rationale and calculation. Second, there is not a single economic analysis offered by any party that purports to justify the existing fund in light of today’s conditions.

With its past justification now a historical anecdote -- and its present purpose unproven -- the Commission should use this proceeding to bring the fund to its close. Even those few parties asking that the fund remain are willing to trade-it-in for some other purpose, either by creating a different end-user fund (the Office of Consumer Advocate), or as a bargaining chip for deregulation (the Pennsylvania Telephone Association). For different reasons, the Commission should reject these proposals here.¹

There is Widespread Agreement Fund That the Market Has Changed

Our initial Comments explained in detail that the Pa. USF was grounded in a market-view that is today obsolete.² It was created at a time when toll service was a substantial source of revenues to landline telephone companies. Today, however, voice service has largely migrated to wireless service, offered with pricing plans that do not even *charge* for long distance service,

¹ To the extent that either the OCA’s call for a PA-specific Affordable Connectivity Program, or the PTA’s call for deregulation have merit (which the OSBA does *not* address in these Reply Comments as both proposals are beyond the scope of this proceeding), those suggestions should be separately investigated without linkage to the Pa. USF.

² Comments of the OSBA at pp. 2-8.

while terrestrial networks focus on broadband capabilities over which voice imposes trivial levels of capacity and cost.

These facts are not in dispute:

... the competitive and technological landscape for voice communications is almost unrecognizable compared to what it was at the turn of the 21st century. Plain old telephone service (“POTS”) delivered over low-bandwidth copper facilities – the bulk of assessable intrastate telecommunications services under both Pennsylvania and federal law – was the predominant method for voice communication at the turn of the century. Since that time, consumers and providers alike have migrated to different technologies.³

The PA USF is an anachronistic subsidy program, and rather than looking for ways to maintain it, the Commission should scrutinize it for extinction. The original purpose of the PA USF was to replace lost switched access subsidies. Putting aside any debate over whether that was a prudent use of public funding at the time of its inception, now that dozens of years have passed, there is no compelling argument that such a need still exists.⁴

The Commission should rescind its current regulations and eliminate the USF, an archaic forced transfer of revenue from some regulated companies to the rural incumbent local exchange carriers (“RLECs”). This “fund” was supposed to be a temporary mechanism when it was adopted nearly twenty-five years ago, to help the RLECs transition to a competitive market. The competitive market has long ago arrived.⁵

Wireless providers are constantly expanding their networks, and technological innovation is also pushing the boundaries of wireless coverage further into rural and difficult-to-serve areas. With wireless service ubiquitously available and adopted across the Commonwealth, both commercially and through universal service programs, the Commission should recognize that universal service has been achieved, and that wireless service has played a large part in realizing that goal.⁶

³ Initial Comments of the Broadband Communications Association of Pennsylvania at 2.

⁴ Comments of CTIA in Response to Advance Notice of Proposed Rulemaking (“*CTIA Comments*”) at 8.

⁵ Verizon Comments at 1.

⁶ *CTIA Comments* at 2-3. Footnote omitted.

[The] legacy copper networks supported by the PA USF have no lasting place in the future of the telecommunications market.⁷

⁷ *CTIA Comments* at 9.

Even the rural telephone company recipients from the Pa. USF acknowledge that everything is different today than when the fund was established:

... rural local exchange carriers (“RLECs”) who now operate in an environment dramatically different from when the Fund was created.⁸

... the promotion of competition has clearly been a success story with the RLECs’ market share reduced to mid-single digits...⁹

We agree. Consumers today (with very rare exception) have choices and, for the most part, have chosen alternatives to the RLECs. Obviously, such a fact pattern begs the question: Why should consumers (and small businesses) be forced to contribute their hard-earned income to a Pa. USF that pays-out the very same companies they themselves have chosen to abandon in favor of alternatives?¹⁰

No Party Offered a Factual Basis to Continue the Pa. USF

Just as no party has argued that the historic assumptions underlying the Pa. USF justify its continuation, no party offered any contemporary economic analysis that would justify the funds perpetuation. The fund should not be an entitlement, existing today only because of its existence in the past.¹¹

Importantly, the Pa. USF is not free, it is the product of a hidden tax on consumers and small businesses, as a Commission Hearing Examiner has previously explained:

The PA USF is a fund which exists because the ratepayers of other telecommunications providers have paid the money, unwittingly, as a hidden tax. It is not “free money” to be plundered at will ...¹²

Two parties, the OCA and the Pennsylvania Telephone Association (PTA) offered a whisper of support for the Pa. USF on their way to making alternative recommendations. For its part, the OCA turned conventional regulatory policy on its head by suggesting that fund should continue until those that pay *into* the fund can meet an undefined burden-of-proof that the RLECs don’t need it:

⁸ Comments of Pennsylvania Telephone Association (“*PTA Comments*”) at 1.

⁹ *Ibid.* at 2.

¹⁰ We note that the OCA is harboring the misconception that the Commission’s prohibition on an explicit surcharge somehow prevents consumers from providing the revenues to the Pa. USF. This view is economic balderdash – in a competitive environment, prices move to reflect costs, including the cost of the Pa. USF. The prohibition on an explicit surcharge may keep that cost hidden, but it does nothing to diminish it.

¹¹ To paraphrase Descartes, the current rationale for the Pa. USF is “I am, therefore I am.”

¹² *CTIA Comments* at 8, citing ALJ Colwell’s Recommended Decision in I-00040105 at 87 (July 22, 2009).

The OCA is not aware of any factual record at present that the individual RLEC recipients would be able to continue to provide reasonable and adequate service, without significant rate increases for protected and other local exchange services, if current Pa USF support should end.¹³

Such role reversal is unreasonable – only the RLECs have access to the financial data to prove need and we attach great significance to the fact that they have not attempted to do so. In this regard, we agree with AT&T that it is the RLEC that must bear this burden,¹⁴ not the unfortunate consumers and small businesses that pay into the fund.

Importantly, the record here includes admissions by the RLECs that it is competition – not the Pa. USF – that is presently protecting consumers:

The RLECs have priced their services at what they think the market can bear.... [any significant increase would be] well above what certain RLECs feel that they can charge in a competitive market.¹⁵

Whether the OCA accepts these admissions as “factual evidence” that the Pa. USF is unneeded is, of course, their choice to make. However, the OCA must already be skeptical because it goes on to propose that Pa. USF should be repurposed to providing direct grants to PA households (although not small businesses):

In the alternative, if the Commission believes that the funds should be directed to other purposes, OCA recommends that the Pa USF still advance the universal service goal of affordability but focus on improving affordability and access for low-income Pennsylvania households through direct grants.¹⁶

At this point, the OSBA takes no position on the OCA’s “direct grant” proposal as it is beyond the scope of this proceeding. Moreover, the OCA acknowledges that such a proposal would first require legislation and, in our view, if the legislature chooses to *create* a new program with a new goal (broadband affordability), the legislature should also provide the *funding* needed for the program to become operational.¹⁷ What the Commission should not do is search-out novel uses for the Pa. USF – if the Pa. USF is no longer needed (which we believe to be the case), then it should simply be terminated.

Similarly, the RLECs have proposed an alternative to the existing Pa. USF system by suggesting that its recipients should be able to trade-it-in for reduced regulation:

¹³ Office of Consumer Advocate Comments (“OCA Comments”) at 3.

¹⁴ AT&T Comments at 2.

¹⁵ PTA Comments at 5.

¹⁶ OCA Comments at 3-4.

¹⁷ Notably, the Affordable Connectivity Program (ACP) presented by the OCA as model (OCA Comments at 4-5), was funded by Congressional appropriations, not the federal USF system.

The best alternative would be for the Commission to implement a transitioned carrier designation, whereby a RLEC would *choose* to continue receiving USF proceeds and remain under COLR obligation and some form of streamlined regulation or, in the alternative, forego funding and be relieved of its COLR obligation and other regulatory burdens.¹⁸

We certainly understand why the RLECs believe this alternative to be “best,” in that each company could decide which approach – Pa. USF payments or deregulation – best meets its private goals. We fail to see, however, why the *public* interest would be served by allowing each company to make this choice. The fact that some companies might *prefer* trading their USF draw for less regulation only begs the question as to why *any* company should be entitled to USF at all? If these companies are similar, then why should one company be able to surrender its Pa. USF and others cannot do so as well? In our view, the Commission should terminate the USF and, if any RLEC seeks other regulatory changes in this new environment, the Commission should consider the request on its individual merits. But the USF should not become a hostage to that process.

Finally, we address the argument that newer technologies (such as wireless and VoIP) should be excused from contributing to the Pa. USF. As we have made clear in our Comments and Reply Comments above, we believe that *no* company should contribute to this fund as the fund can no longer be justified. That said, if the Commission decides to continue the fund (based on some record we do not see here), then it only makes sense to recognize that the ascendent technologies (wireless and VoIP) must be assessed for the fund to survive.¹⁹ As the table below illustrates, these technologies are the surviving technologies and while we see that fact as the *reason* to terminate the fund, if for some reason it continues, the surviving technologies must be treated equally to the technologies they have replaced.

**Voice Subscriptions by Technology: Pennsylvania June 2022
(millions)²⁰**

Technology	Subscriptions	Percent
Wireless	13,866	76%
VOIP		
ILECs	523	3%
All Others	2,597	14%
Switched Access Lines		
ILECs	1,061	6%
All Others	223	1%
Total Voice Subscriptions	18,270	

¹⁸ *PTA Comments* at 5. Emphasis added.

¹⁹ As the table shows, wireless and VoIP technologies now serve 93% of the voice market.

²⁰ Voice Telephone Services: Status as of June 2022, Federal Communications Commission, August 2023, <https://docs.fcc.gov/public/attachments/DOC-396138A1.pdf>

Conclusion

The Pa. USF should sunset. There is no factual basis to continue to require Pennsylvania's consumers and small businesses to make payments to companies that are no longer their chosen provider of service. The initial rationale no longer applies and no replacement justification has been offered (much less proven). End it now.

Respectfully submitted,

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