

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]

[L-2023-3040646]

[P-2010-2217748]

Rulemaking to Amend 52 Pa. Code §§ 63.161— 63.171 (relating to Universal Service); Advanced Notice of Proposed Rulemaking

Public Meeting held
August 24, 2023

Commissioners Present: Gladys Brown Dutrieuille, Chairperson; Stephen M. DeFrank, Jr., Vice Chairperson, statement follows; Ralph V. Yanora; Kathryn L. Zerkfuss; John F. Coleman, Jr., statement follows

*Rulemaking to Amend 52 Pa. Code §§ 63.161—63.171
(relating to Universal Service); L-2023-3040646*

*Petition of the Pennsylvania Telephone Association for
Order to Expand the Base of Contributing Carriers to the
Pennsylvania Universal Service Fund to Include Wireless
Carriers and VoIP Providers; P-2010-2217748*

Advance Notice of Proposed Rulemaking

By the Commission:

Pursuant to our Opinion and Order of July 18, 2011¹ and August 9, 2012² in the consolidated access reform proceedings previously before the Public Utility Commission (PUC), we hereby provide this Advance Notice of Proposed Rulemaking (ANOPR) to amend our regulations governing the Pennsylvania Universal Service Fund (Pa. USF). The PUC has included a detailed list of questions in Appendix A and requests that interested parties address these in addition to providing other comments. The PUC requests that, along with other interested parties, all public utilities participating in the Pa. USF provide responses.

Background

The onset of toll competition marked the beginning of state and federal efforts to set access charges. Since that time, various Pennsylvania access stakeholders advanced proposals designed to restructure how carriers balanced their business models between access revenue flowing from intrastate toll traffic and ratepayer subscription revenue. The goals of the PUC in considering these efforts are to maintain universal telecommunications services at affordable rates and to enhance competitive benefits within the telecommunications services market. From the beginning, Pennsylvania access reform efforts focused on the linkage between access revenues and affordable local

telephone service rates.³ The approximate thirty-year duration of these efforts is testament to the difficulty of breaking the link between access revenue and local service rates in a manner that fosters competition and maintains universal telecommunications services at affordable rates. The history of this effort, detailed below, necessarily serves as a backdrop for this rulemaking.

Federal Universal Service Considerations

The PUC's jurisdiction extends to intrastate access rates under state and federal law; thus, discussion of inter-carrier compensation is incomplete without consideration of the actions taken by the Federal Communications Commission (FCC) to address and reform the access charges regime and to achieve universal service so that telecommunications carriers can provide certain basic services to customers in high-cost areas without having to charge these customers unaffordable rates. Historically, in the interest of meeting the goal of universal service, telecommunications carrier services have been subsidized or "supported" to enable high-cost consumers to be served at rates that are reasonably comparable to those in lower cost areas. This universal service support has been both explicit and implicit. The PUC recognizes the challenges presented by the Federal backdrop to our State access reform efforts and acknowledge that Federal access reform provides an additional basis to reexamine our universal service regulations at this time.

As part of its universal service reforms, the FCC released a Further Notice of Proposed Rulemaking on April 30, 2012, seeking comment on proposals to reform the Federal Universal Service Fund (FUSF) contribution system.⁴ The FCC sought comment on issues similar to those we seek to explore in this rulemaking—who should contribute, how to assess contributions, administrative improvements, and modifications of contribution recovery. The FCC generally found that its current revenues-based system may not have kept pace with markets, that the contribution base had begun to shrink, and that the system may have produced competitive distortions because similar services may have different contribution obligations based on how carriers provide services.

The FCC proposed three primary avenues to address these issues: simplify compliance through the establishment of clear, simple rules without excessive exceptions, maintain competitive neutrality, and develop a sustainable and stabilized contribution base.⁵ Of particular interest are its two alternative approaches to identifying contributors. The FCC proposed a service-by-service approach, that is, to identify types of service that should contribute. Alternatively, it questioned whether it should adopt a broad definition of contributing interstate telecommunications such that "[a]ny interstate information service or interstate telecommunications is assessable if the provider also provides the transmission (wired or wireless), directly or indirectly through an affiliate, to end users."⁶

³ See Re Implementation of Intrastate Access Charges, 58 Pa. PUC 239 (1983). Section 63.161 (relating to statement of purpose and policy) provides:

The purpose of the Fund is to maintain the affordability of local service rates for end-user customers while allowing rural telephone companies to reduce access charges and intraLATA toll rates, on a revenue-neutral basis, thereby encouraging greater competition.

52 Pa. Code § 63.161(3).

⁴ Universal Service Contribution Methodology; A National Broadband Plan For Our Future, Further Notice of Proposed Rulemaking, 27 FCC Rcd. 5357 (2012) (Universal Service Reform Order).

⁵ Id. ¶¶ 22–25.

⁶ Id. ¶¶ 74–75.

¹ Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105; *AT&T v. Armstrong Telephone Company, et al.*, Docket No. C-2009-2098380 et al. at 191 (July 18, 2011).

² Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105; *AT&T v. Armstrong Telephone Company, et al.*, Docket No. C-2009-2098380 et al., Implementation of the Federal Communications Commission's Order of November 18, 2011, as Amended or Revised and Coordination with Certain Intrastate Matters, Docket No. M-2012-2291824 at 66-67 (August 9, 2012).

The FCC also sought comment (as do we) on whether replacement of the existing revenue-based contribution system is appropriate. The FCC considered whether a connection-based contribution system would be appropriate (with assessments based on the number of connections provided to customers), whether contributions should be numbers-based, or whether it should adopt a hybrid system based on distinctions between customer type. The FCC also proposed changes to how carriers might recover USF contributions from end users. Most significantly, it considered whether it should no longer allow contributors to recover USF contribution costs as a separate line-item charge on customer bills.⁷ Comments and reply comments did not present consensus on what the FCC should retain or reform. There was also widespread disagreement on which services should contribute to the FUSF, particularly regarding broadband Internet access service.

On August 6, 2014, the FCC adopted an order asking the Federal-State Joint Board on Universal Service to provide recommendations on how the FCC should modify the contribution methodology and emphasized its interest in how modifications would impact the statutory principle that there be state as well as federal mechanisms to advance universal service. The FCC also requested that the Joint Board focus on the role of states in accomplishing universal service objectives and protecting consumers.⁸

In 2019, the FCC issued a Notice of Proposed Rulemaking seeking comment on establishing a cap on the FUSF and ways such action could enable to FCC to evaluate the financial aspects of the four universal service programs in a more holistic way. The FCC acknowledged that the creation of a topline budget would not eliminate its ability to increase funding for a particular program but would require the FCC to consider the consequences and tradeoffs of spending decisions for the overall fund.⁹

Finally, in August 2022, the FCC adopted a Report on the Future of the Universal Service Fund (Report) as required by the Infrastructure Investment and Jobs Act.¹⁰ The Report provided recommendations for further actions by the FCC and Congress to build upon past investments and improve the ability of the FCC to achieve its goals of universal deployment, affordability, adoption, availability, and equitable access to broadband through the FUSF and other FCC programs.¹¹

As of yet, the FCC has not taken substantive action in these proceedings, and we acknowledge the potential for inconsistencies between any reforms to the Pa. USF and any proposed reforms of FUSF programs. Nevertheless, we will fulfill all of our statutory universal service obligations regardless of any proposed federal reforms.

Pennsylvania USF Background

Issues of intrastate inter-carrier compensation reach to the heart of how telecommunications service providers have traditionally organized operations to provide efficient public service. Adding complication in the modern era is how rapid technological change affects public expectations of how to use telecommunications services.

⁷ If adopted, the Federal restriction would mirror Pennsylvania regulations at 52 Pa. Code § 63.170 in this regard.

⁸ In the Matter of Federal State Joint Board On Universal Service Universal Service Contribution Methodology A National Broadband Plan For Our Future, Order, 29 FCC Rcd. 9784 (2014).

⁹ In the Matter of Universal Service Contribution Methodology, Notice of Proposed Rulemaking, 34 FCC Rcd 4143 (2019).

¹⁰ Pub.L. No. 117-58, § 60104 (2021).

¹¹ In the Matter of Report on the Future of the Universal Service Fund, Report, 2022 WL 3500217 (2022).

While an exhaustive history of Pennsylvania inter-carrier compensation and universal service proceedings is beyond the scope of this ANOPR, we provide this roadmap of Pennsylvania access charge and universal service fund development and reform to assist persons interested in participating in this rulemaking.

The modern era of access regulation began with the Modification of Final Judgment (MFJ) divesting American Telephone and Telegraph Company in 1982.¹² The divestiture (effective January 1, 1984) made fundamental changes in how carriers could provide telephone service in Pennsylvania. Anticipating the divestiture, in 1983 the FCC established rules to govern access to, and payment for, the use of AT&T's former local exchange service affiliates and independent local exchange facilities by AT&T and other interexchange carriers to provide interstate and foreign service.¹³ Of particular interest to our efforts here are: (1) the exit of The Bell Telephone Company of Pennsylvania (Bell Pennsylvania) from the long-distance toll market under the MFJ; (2) the creation of the five Pennsylvania Local Access Transport Areas (LATAs); (3) the restriction on Bell Pennsylvania to only intraLATA services; and (4) and the replacement of private access arrangements between Bell Pennsylvania and the independent carriers with unbundled and tariffed access arrangements. The upshot of these changes was that new entrants (e.g., MCI) applied for Chapter 11 approval to fill the Pennsylvania toll market vacated by Bell Pennsylvania. 66 Pa.C.S. §§ 1101–1104. Bell Pennsylvania filed interLATA access tariffs to recover costs from those new entrants, and independent carriers filed tariffs to recover costs for the interLATA and intraLATA services formerly addressed by private access arrangements.¹⁴ This set the stage for ongoing discussion of how to allocate intrastate access costs among all users of the public switched telephone network.¹⁵

At the time of the divestiture and into the early 1990s, Pennsylvania telecommunications services providers operated under rate base/rate of return regulation; access charges formed an integral part of the rate structure for each carrier.¹⁶ Arguments raised 40 years ago echo today—Bell Pennsylvania argued access reductions were necessary because of competitive threats, AT&T argued that proposed reductions did not go far enough, and the Office of Consumer Advocate (OCA) argued that access reductions should not increase local service rates.¹⁷ Developing access charges that balanced toll competition and local service rates in the context of the traditional ratemaking model did not settle matters, particularly regarding non-traffic sensitive costs, and increasing competition eroded the ability of carriers to maintain affected revenue streams.¹⁸

The passage of the first Chapter 30 of the Public Utility Code (Code) on July 8, 1993,¹⁹ also influenced intrastate access matters. The first Chapter 30 provided carriers with the opportunity to obtain alternative regulation plans in exchange for network modernization commitments. Under alternative regulation, the PUC would no

¹² *United States v. American Telephone & Telegraph Co.*, 48 PUR 4th 227, 552 F Supp 131 (1982).

¹³ Third Report and Order, Common Carrier Docket No. 78-72 (1983).

¹⁴ See *Re Implementation of Intrastate Access Charges*, 58 Pa. P.U.C. 239 (1983) (Cawley, J., dissenting).

¹⁵ See, e.g., *Re Intrastate Access Charges, Opinion and Order Authorizing Competitive IntraLATA long-distance Telephone Service*, 69 PUR 4th 69 (Docket No. P-830452, August 8, 1985).

¹⁶ See, e.g., *Pa. PUC et al. v. Bell Telephone Co. of Pa.*, 60 Pa. P.U.C. 435, 541 (1985).

¹⁷ *Id.* at 541-42.

¹⁸ See, e.g., *Pa. PUC et al. v. Bell Telephone Co. of Pa.*, 66 Pa. P.U.C. 315 (1988); see also *Pa. PUC v. Bell Telephone Co. of Pa.*, Docket No. R-891200, Recommended Decision (September 22, 1989).

¹⁹ 66 Pa.C.S. §§ 3001–3009 (1993) (relating to alternative form of regulation of telecommunications services), repealed 11/30/2004.

longer set carrier rates based on traditional rate-base rate of return filings.²⁰ Rather, rates for noncompetitive services would be set based on price stability mechanisms whereby carriers would increase or decrease rates based on the annual change in the Gross Domestic Product Price Index, minus an offset for inflation.²¹ Thus, the revenue requirement formula would no longer set carrier rates and the era of establishing access revenue as a part of traditional rate structure litigation closed. In addition, the first Chapter 30 alternative regulation plans frequently included revenue neutral rate rebalancing provisions.²² Affected carriers have opined that these provisions, while technically allowing for the recovery of access reductions through local rates, are of limited practical use because of competitive pressures.

With the 1993 promulgation of the first Chapter 30, both carriers and the PUC noted the inevitable tension between the policy goals of market-based competition and universal service. The PUC observed that, on one hand, competition was a driver of cost-based rates, i.e., minimizing rates through the elimination of cross-subsidies like those provided by excessive access charges. On the other hand, the telecommunications industry had contended for years that access charges subsidized low local basic service rates.²³ Then, as now, the General Assembly confirmed its commitment to universal service. It expressly set forth this commitment in the second Chapter 30 Declaration of Policy at 66 Pa.C.S. § 3011(1) (2004)²⁴ and, by implication, through 66 Pa.C.S. § 1501.

To address the universal service conflicts imposed by competitive markets, the PUC initiated a multi-step review that included investigations and rulemakings designed to examine competitive and universal service goals in the context of the increasingly complex landscape of telecommunications markets. On April 10, 1995, the PUC issued its Order in that formal investigation initiating a multi-part proceeding on universal service. The first proceeding consisted of a rulemaking at Docket No. L-00950102 designed to establish parameters for the ongoing evaluation and review of the universal service definition adopted by the PUC. The second was a proposed rulemaking at Docket No. L-00950105 to create a universal service funding mechanism. The third proceeding continued Docket No. I-00940035 into its third-phase investigation into the cost of providing basic universal service in the Commonwealth. The fourth proceeding was initiated by PUC Order in Application of MFS Intelenet of Pa. Inc., Docket No. A-310203F0002 (October 4, 1995), and included access pricing as an additional issue to be addressed at Docket No. I-00940035. Two days later, on October 6, 1995, the PUC directed parties, via Secretarial Letter, to address appropriate reciprocal compensation rates in the latter docket. The PUC had hoped that the proceedings, other than the costs proceeding, could be documentary in nature. That the cost issues alone involved the testimony of thirty-four witnesses provides some insight into the complexity and contention of the development of the current Pa. USF. Regarding the current Pa. USF, this series of interrelated proceedings set the stage for the developments of the Global Order,

entered in 1999,²⁵ that would establish our current universal service paradigm and quiet Pennsylvania universal service matters for the two decades preceding the instant rulemaking.

The 1995 rulemaking at Docket No. L-00950102 established an initial definition of the components of “universal service” in Pennsylvania. The suite of services included:

1. Single party, voice grade, incoming and outgoing access to the local switched network and usage within a local calling area;
2. Touch tone capability;
3. Annual local directory;
4. Access to operator services;
5. Access to directory assistance;
6. Access to telecommunications relay services and other services designed for persons with disabilities; and
7. Access to emergency services.

In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth; Docket Nos. I-00940035 and L-00950102, Declaratory Order, Advance Notice of Proposed Rulemaking, Scheduling of Public Forum (April 10, 1995) at 16.

At the time, parties urged the PUC to exercise restraint regarding the scope of its universal service definition out of concern that the costs to provide a wide suite of services would exceed the benefits to consumers.

The 1995 rulemaking at Docket No. L-00950105 ultimately produced the framework for the universal service funding mechanism, i.e., the current universal service fund regulations found at 52 Pa. Code §§ 63.161—63.171.²⁶ The PUC’s determination that it had authority to create a universal service fund to replace the implicit geographic or cross-service funding mechanisms embedded in rates, including access rates, was also established at that time.²⁷ The PUC noted that two of its primary obligations (and authority) under the first Chapter 30 were aimed at assuring affordable rates and bringing competition to all areas of the Commonwealth. We stated that:

The first objective was to establish a competitively neutral universal service fund, which would in the long-term replace traditional, anti-competitive implicit funding mechanisms caused by rate averaging and rate cross-subsidization, to assure that all Pennsylvanians, even those in high cost areas, continue to pay affordable basic universal service rates. The Second objective was to create a universal service funding mechanism which acts as a stimulant to competition and creates a business environment in which competition would appear in all areas of the Commonwealth (including high cost areas where competition might never appear otherwise) and in which all Pennsylvanians could receive the benefits of competition in all markets in the foreseeable future.

Rulemaking to Establish a Universal Service Funding Mechanism; 52 Pa. Code §§ 63.141, et seq., Docket No. L-00950105, Final-Form Rulemaking Order (June 21,

²⁰ See *Clouser v. Bell Atlantic-Pennsylvania, Inc.*, 82 Pa. P.U.C. 194 (1994) (Docket No. P-00930715) affirmed in part and reversed in part, see *Popowsky v. Pennsylvania Pub. Utility Commission*, 669 A.2d 1029, 168 PUR 4th 399 (Pa. Cmwlth. 1995).

²¹ See *Molino et al. v. Bell Atlantic-Pennsylvania, Inc.*, 82 Pa. P.U.C. 194, 216—18, 284 (1994) (Docket No. P-00930715) affirmed in part and reversed in part, *Popowsky v. Pa. P.U.C.* 669 A.2d 1029, 168 PUR 4th 399 (Pa. Cmwlth. 1995).

²² *Id.* at 285.

²³ In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth; Docket Nos. I-00940035 and L-00950102, Declaratory Order, Advance Notice of Proposed Rulemaking, Scheduling of Public Forum (April 10, 1995).

²⁴ 66 Pa.C.S. §§ 3011—3019 (2004) (relating to alternative form of regulation of telecommunications services).

²⁵ Joint Petition of Nextlink Pennsylvania, Inc., et al., Docket Nos. P-00991648, P-00991649, Order entered September 30, 1999, at 246—249, 196 PUR 4th 172, 279-80 (Global Order), aff’d, *Bell Atlantic-Pennsylvania, Inc. v. Pa. Pub. Util. Comm’n*, 763 A.2d 440 (Pa. Cmwlth. 2000), vacated in part sub nom. *MCI Worldcom Inc. v. Pa. Pub. Util. Comm’n*, 844 A.2d 1239 (Pa. 2004).

²⁶ Rulemaking to Establish a Universal Service Funding Mechanism; 52 Pa. Code §§ 63.141, et seq., Docket No. L-00950105, Final-Form Rulemaking Order (June 21, 1996).

²⁷ *Id.* at 13—40.

1996). These objectives remain valid today despite the subsequent amendment of Chapter 30 in 2003 and the significant changes in the background against which we now apply these principles.

On January 28, 1997, at Docket No. I-00940035, the PUC issued its third and final Opinion and Order regarding the cost of providing basic universal service in the Commonwealth.²⁸ It is important to note that on February 6, 1996, the Telecommunications Act of 1996 (TA96) was signed into law. As directed in TA96, the Federal-State Joint Board released the Joint Board Recommended Decision on universal service on November 6, 1996, approximately three months prior to this PUC's Opinion and Order in Docket No. I-00940035.²⁹ The Joint Board Recommended Decision established the parameters for the federal funding mechanism used to support the FUSF and established requirements for carrier contributions to state universal service funds as well. As will be discussed below, this federal effort complicated state access and USF reform measures.

In coordination with the requirements of the Joint Board Recommended Decision, the PUC's January 28, 1997 Order determined, in major part, that a universal service funding mechanism was necessary to:

1. maintain affordable rates in all areas of the Commonwealth in the future;
2. maintain and/or increase telephone subscribership rates in all areas of the Commonwealth;
3. encourage competition in urban and rural areas and telecommunications markets in Pennsylvania;
4. achieve regulatory parity between incumbent and new providers;
5. ensure economic development in all areas of the Commonwealth through the equal availability of basic and advanced services so that telecommunications infrastructure development in Pennsylvania does not disadvantage rural areas and result in a system of haves and have-nots;
6. achieve more effective targeting of existing subsidies;
7. encourage carriers to meet the mandates of Chapter 30;
8. carry out and comply with the requirements of TA96.

In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth, Docket No. I-00940035 at 13 (January 28, 1997).

The January 28, 1997 Order also established that the Commonwealth would create a single universal service funding mechanism applicable to all carriers as opposed to a multi-fund system, a basic rate of \$20.00, inclusive of local calling, as reasonable for the purposes of calculating universal service support, and the requirement that all LECs file proposed Lifeline plans for low-income customers. The January 28, 1997 Order further established the Pennsylvania Universal Service Task Force and directed the initiation of a proceeding to examine intrastate access rate levels and pricing structures in the competitive marketplace.

²⁸ In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth, Docket No. I-00940035 (January 28, 1997).

²⁹ In The Matter Of Federal-State Joint Board Universal Service, CC Docket No. 96-45, Recommended Decision (November 8, 1996).

On February 14, 1997, the PUC issued its Opinion and Order initiating the Generic Investigation of Intrastate Access Charge Reform at Docket No. I-00960066.³⁰ The PUC assigned the proceeding to the Office of Administrative Law Judge (OALJ). The February 14, 1997 Order acknowledged the internecine relationships among the access reform proceedings (and others), specifically referencing TA96, pending interconnection investigations and arbitrations, and the FCC access charge reform proceedings. The issues the PUC sought to address included access cost models and methods, the financial impact of access reforms, the coordination of the nascent Pa. USF with ratemaking and access reform, the reduction of the then applicable Common Carrier Line Charge, and toll reductions promised by interexchange carriers (IXCs). A recommended decision would not appear in the docket until June 30, 1998.

On November 10, 1997, the small rural exchange carriers and Bell-Atlantic of Pennsylvania filed a Joint Petition In Settlement (Small Company Plan) intended to resolve all issues at Docket Nos. I-00940035, L-00950105, I-00940034, and I-00960066.³¹ The Small Company Plan proposed an interim measure until the PUC and the FCC resolved outstanding policy issues, and permanently established rules concerning universal service and access charge reform.³² The Small Company Plan noted that these key access reform and universal service proceedings were by then mired in appeals and petitions for reconsideration and that any state action required coordination with federal reform efforts.³³ The Small Company Plan also noted the final-form Pa. USF regulations developed in Docket No. L-00950105 would lapse if the PUC failed to submit them to the Independent Regulatory Review Commission (IRRC) by December 11, 1997, at that time approximately one month away. The Petitioners noted that they offered an industry-originated solution to issues that had lingered before the PUC for nearly a decade and that approval would resolve outstanding appeals of PUC Orders. In response, on November 17, 1997, the PUC requested comments from interested parties. On April 29, 1998, the PUC directed the OALJ to issue a recommended decision regarding only Docket No. I-0960066, the Generic Investigation of Intrastate Access Charge Reform, on the record as it existed before the filing of the Small Company Plan on November 10, 1997. The Recommended Decision followed on June 30, 1998.³⁴ Parties filed exceptions in anticipation of a PUC decision on the merits. This proceeding marked the end of individual issue litigation of industry-wide telecommunications matters in the 1990s.

On September 18, 1998, then-PUC-Chairman Quain invited interested parties to participate in "Global Telecommunications Settlement" (GTS or Global) discussions facilitated by the PUC over several months at Docket No. M-00981185.³⁵ The GTS sought to achieve resolution of the myriad (and by then mired) issues presented by the proceedings discussed above. Parties were broken into working groups and participated in technical conferences

³⁰ In Re: Generic Investigation of Intrastate Access Charge Reform, Docket No. I-00960066 (February 14, 1997).

³¹ Joint Petition In Settlement of Bell-Atlantic Pennsylvania and Small Rural Local Exchange Carriers, Docket Nos. I-00940035, L-00950105, I-00940034, I-00960066 (November 10, 1997).

³² In re Universal Service Fund, Revised Final Rulemaking Order, L-00000148, 95 Pa. P.U.C. 246 (March 23, 2001).

³³ In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth, Docket No. I-00940035 (Order on Reconsideration entered July 31, 1997) Appealed by Bell-Atlantic at Docket No. 2420 CD 1997.

³⁴ Generic Investigation of Intrastate Access Charge Reform, Docket No. I-00960066, Recommended Decision (June 30, 1998).

³⁵ See Re Global Telecommunications Settlement Proceeding, Docket No. M-00981185, Letter of Assistant Counsel of September 28, 1998.

and substantive settlement discussions under issue matrices established by the PUC. The PUC stated the goal of the GTS was to provide all Pennsylvanians with the benefits of full competition in the telecommunications industry. While the PUC provided a final summary term sheet to the GTS parties on March 1, 1999, the GTS appeared to be unfruitful.

On March 18, 1999, however, the PUC received two petitions that would form the basis of the Global Order. The first was the Joint Petition of Senators Fumo, Madigan and White, the Pennsylvania Telecommunications & Cable Association and Seven Competitive Local Exchange Carriers for the Adoption of Partial Settlement Resolving Pending Telecommunications Proceedings at Docket No. P-00991648 (the 1648 Petition). The second was the Joint Petition for Global Resolution of Telecommunications Proceedings at Docket No. P-00991649 (the 1649 Petition). With the filing of these petitions, it became clear that the parties had fully engaged in the GTS process and had in fact advanced the resolution of the issues.

On April 2, 1999, the PUC consolidated the 1648 and 1649 Petitions. It then assigned the consolidated proceeding to the OALJ to create a record to supplement the other related dockets (GTS proceeding).³⁶ The PUC provided for briefs and replies and committed to issue a Final Order on or before June 25, 1999. In addition, the PUC extended a stay on all related dockets pending further order of the PUC to allow the parties a full opportunity to present their respective positions on the outstanding issues and to aid in the resolution of the matter in its entirety. The stay extended the multiple proceedings until June 30, 1999 or until resolution of the Joint Petitions, whichever occurred earlier. This list from the April 2, 1999 Order³⁷ of stayed proceedings illustrates the ambition, complexity, and scope of the issues at play in the GTS proceeding:

A-310125F0002—Application of AT&T Communications of Pennsylvania, Inc.; Petition for Arbitration of Interconnection Agreement with GTE North, Inc.

R-00963666/R-00963666C0001—*Pennsylvania Public Utility Commission and AT&T Communications of Pennsylvania, Inc. v. GTE North, Inc.*

A-310203F0002/P-00961137—Application of MFS Intelenet of Pennsylvania, Inc. for Approval to Operate as a Local Exchange Telecommunications Company

A-310236F0002—Application of MCImetro Access Transmission Services, Inc. for a Certificate of Public Convenience and Necessity to Provide and Resell Local Exchange Telecommunications Services in Pennsylvania

C-00967717/R-00973866C0001—*Bell Atlantic-Pennsylvania, Inc. v. MCI Metro Access Transmission Services, Inc.*

I-00940035—Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications in the Commonwealth

I-00960066—Generic Investigation into Intrastate Access Charge Reform

I-00980075/M-00960840—Investigation into Bell Atlantic-Pennsylvania's Entry into In-Region Inter-LATA Services under Section 271 of the Telecommunications Act of 1996

I-00980080—Sen. Vincent J. Fumo Request for Declaratory and Injunctive Relief against Bell Atlantic for Violations of the Pennsylvania Telecommunications Act

L-00940095—Rulemaking Re Updating and Revising Existing Filing Requirement Regulations at 52 Pa. Code §§ 53.52-53.53

L-00940095F0002—Rulemaking Re Updating and Revising Existing Filing Requirement Regulations at 52 Pa. Code §§ 53.52-53.53—Interim Guidelines

L-00950105—Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth

M-00920376—Statement of Policy on Expanded Interconnection for Interstate Special Access

M-00960799—Implementation of the Federal Telecommunications Act of 1996

P-00971293—Petition of Bell Atlantic-Pennsylvania, Inc. for a Determination of Whether a Telecommunications Service is Competitive under Chapter 30 of the Public Utility Code

P-00971307—Petition of Bell Atlantic-Pennsylvania, Inc. for a Determination that Provision of Business Telecommunications Services is a Competitive Service under Chapter 30 of the Public Utility Code

P-00981404—Petition of Bell Atlantic-Pennsylvania, Inc. for a Generic Proceeding to Investigate Issuance of Local Telephone Numbers to Internet Service Providers by Competitive Local Exchange Carriers

R-00974174, R-00974174C0001, R-00974174C0002—*Pennsylvania Public Utility Commission v. The Bentleyville Telephone Company*

R-00984315, R-00984315C0001—*Pennsylvania Public Utility Commission v. Denver and Ephrata Telephone and Telegraph Company*

The GTS proceeding was devoted to implementing telecommunications market reforms occurring at both state and federal levels, and the Pa. USF was but a part of these efforts. The PUC itself described the Global proceeding as "an aggressive move to jump-start competition in the local telecommunications markets."³⁸ This necessarily involved access charges, unbundled network elements (UNEs), enhanced extended loops (EELs) and other UNE combinations, interconnection, digital tariffs, calling areas, resale, Universal Service Fund Carrier Charge Pool, Lifeline programs, consumer education, rate caps and ceilings, the Internet and reciprocal compensation, operations support systems (OSS), separation of wholesale and retail operations, performance measures, competitive service designations, Section 271 approval (47 U.S.C. § 271), regulatory parity and filing requirements, abbreviated dispute resolution, and the resolution of certain pending dockets.³⁹ While not all of these issues touch on matters pertinent to the Pa. USF, many do; the Global Order is, nevertheless, the definitive touchstone of the Pa. USF as we know it.

³⁶ In re Nextlink Pennsylvania, Inc., Docket Nos. P-00991648 and P-00991649, Order (April 02, 1999).

³⁷ Id.

³⁸ *Bell Atlantic—Pa. v. Pa. P.U.C.*, et al., 2003 WL 24232272 (E.D.Pa.).

³⁹ Id.

When considering how provisions of the 1648 and 1649 Petitions shaped the Pa. USF in the Global Order, one must keep in mind that the 1648 and 1649 Petitions were settlement proposals. Settlements are the product of compromise; it is impossible to “peek behind the curtain” to understand how each settling party weighs the value of each benefit and concession. Regarding the Pa. USF, the PUC took a favorable view of what appeared to be balanced compromise—the 1648 and 1649 Petitions each proposed similar universal service funding plans. This was achieved by the competitive carriers’ adoption of a modified form of the November 10, 1997 Joint Petition (i.e., the Small Company Plan), *supra*, as a part of their 1648 Petition.⁴⁰ Significantly, while the 1649 Petition argued in favor of retaining a \$12 million cap on the Bell-Atlantic Pennsylvania contribution used to size the Pa. USF, the 1648 Petition argued in favor of modifying the Small Company Plan by proposing to eliminate the \$12 million cap on Bell Atlantic Pennsylvania’s contributions to the Pa. USF.⁴¹

After reasserting its authority to establish a universal service fund, the PUC adopted a modified version of the Small Company Plan submitted as Appendix II of the 1649 Petition.⁴² The Global Order describes the Pa. USF as an interim pass-through mechanism designed to facilitate the transition to competitive markets until the PUC and the FCC permanently establish rules concerning universal services and access charge reform. In general terms, the Pa. USF was designed to temporarily replace carrier revenue lost to various forms of access charge reductions. Unlike either the 1648 or 1649 Petition, the Global Order recognized Sprint LTD (alternately known as United, then Embarq, then CenturyLink, and now Brightspeed) as a rural local exchange company and increased the size of the Pa. USF by \$9 million to accommodate its participation in the Pa. USF along with other rural carriers.⁴³ It also established revenue neutral rate rebalancing targets and a \$16 cap on local rates among other benchmarks. The Global Order recognized that the FCC was concurrently examining interconnection, access charges, and universal service issues. Under the expectation that permanent rules would be forthcoming, the PUC set an endpoint of December 31, 2003, for the interim Pa. USF mechanism it established in the Global Order.

Appendix II of the 1649 Petition was comprehensive. It contained a narrative explanation of the universal service fund settlement, an Appendix A with the terms and conditions of the universal service fund itself (complete with spreadsheets of expected contributions and payments by carrier), and an Appendix B with proposed language for Universal Service Fund regulations. While the inclusion of Sprint LTD would ultimately alter the figures contained in Appendix II, the following points are key to understanding how the Pa. USF would function if the 1649 Petition were approved:

- All providers of intrastate telecommunications services, excluding wireless carriers, contribute to the Pa. USF. Carriers that benefit from the fund both contribute and withdraw from the fund.
- The size of the fund is established annually using carrier gross intrastate end-user retail telecommunications revenues. While the amounts specified in 1649

Petition Appendix II, Exhibit 1, served as a floor for the size of the fund, the fund adjusts annually to account for access line growth of Pa. USF recipients. The formula does not take declines in access line numbers into account. That is, the size of the Pa. USF pool ratchets up, never down.

- Carrier contributions to the fund are proportional allocations of the required revenue replacement (the amount fixed above) based on gross intrastate telecommunications revenue. Thus, each carrier contributes to the Pa. USF pool according to the amount of revenue it obtains from its customers.
- While all required carriers contribute to the fund, those permitted to draw from it may experience participation in the fund as net cash negative, neutral, or positive.
- Bell Pennsylvania (now Verizon PA) may redirect PCO-mandated rate reductions from its customers to its Pa. USF funding contribution requirement.
- Bell Pennsylvania and GTE (now Verizon North) are the only ILECs that may not draw on the fund. With the addition of Sprint LTD, the carriers listed in Appendix II may draw on the Pa. USF.
- Carriers that draw on the fund do so in direct proportion to the amounts established in Appendix II, adjusted for access line growth.

For those carriers listed in 1649 Petition Appendix II, Exhibit 1, this system approximated access revenues recovery from the various access charge reductions mandated in the 1649 Petition and approved in the Global Order.

Parties appealed the Global Order with Pennsylvania’s then largest IXC arguing that access charge reductions did not go far enough.⁴⁴ Commonwealth Court’s consideration of the role of access charge reductions in universal service is instructive:

The record and the law support the PUC’s decision to reduce the above-cost access charges in phases, to a degree now, and then further, pursuant to a future proceeding.

* * *

One of the lessons of this proceeding is that the cost of excessively priced elements must be reduced to a point nearer to actual incremental cost, but not so greatly as to eliminate the support such revenue provides to other areas of the system that need that support.

The record here confirms the soundness of the PUC’s view, based on evidence from consumer witnesses, that users of all services, including access, should share in the payment of total network costs, with the cost of the local loop included as an element of that total network. Initiating a gradual transition in improving the placement of cost burdens is a valid approach in establishing rate structure.

With respect to the role of a universal service fund in the relocation of cost burdens, as urged by GTE, the PUC’s action on that element [. . .] was upheld.

Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Comm’n., 763 A.2d 440 (Pa. Cmwlth. 2000), at 480 (internal citations and footnotes omitted).

As is apparent today, the PUC has the authority to both incrementally reduce access charges and to provide

⁴⁰ 1648 Petition at 41.

⁴¹ 1648 Petition at 42.

⁴² In re Nextlink Pennsylvania, Inc., 196 P.U.R. 4th 172, 1999 WL 1041892 *62-3 (September 30, 1999).

⁴³ In re Nextlink Pennsylvania, Inc., 196 P.U.R. 4th 172, 1999 WL 1041892 *61 (September 30, 1999).

⁴⁴ See *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Comm’n.*, 763 A.2d 440, 480 (Pa. Cmwlth. 2000).

support for access revenue-reliant non-traffic sensitive elements of the Commonwealth's telecommunications networks.

An important aspect of the Global Order, as determined by Commonwealth Court, is that the Global Order confirmed the PUC intention to reduce above-cost access charges in phases, to a degree now, and then further, pursuant to future proceedings. Participants in the GTS proceeding, including the PUC, wasted no time in beginning that work. On March 23, 2001, the PUC issued its Revised Final Rulemaking Order at Docket No. L-00000148.⁴⁵ That rulemaking amended Title 52 of the Pa. Code, Chapter 63, to include a final-form version of the Universal Service Regulations and to move the final-form regulations through the administrative approval process involving the Standing Committees of the General Assembly, the IRRC, the Governor's Budget Office, and the Attorney General. The March 23, 2001 Order confirmed, in no uncertain terms, that the Pa. USF was intended and designed to benefit end-users through the reduction of access and toll charges while enabling carriers to preserve the affordability of local service rates.⁴⁶ The regulations became effective on June 30, 2001,⁴⁷ and the Pa. USF began to function under the auspices of the National Exchange Carrier Association for administrative purposes until the PUC could conduct an RFP.

In September 2001, the PUC closed Docket No. L-00950102 with the acknowledgement that the reforms of the Global Order had resolved most of the issues raised in its investigations and rulemakings related to universal service, including developing a definition for "basic universal service" in its recently enacted regulation at 52 Pa. Code § 63.162.⁴⁸ Efforts to reform access charges continued apace; focus on the role of the new Pa. USF in that process did not diminish.

Also, efforts at federal interstate access reform were active at this time and influenced the course of proceedings before the PUC.⁴⁹ In January 2002, the PUC opened Docket No. M-00021596 to accommodate the access charge reduction investigation required by the Global Order.⁵⁰ In March 2002, AT&T filed a formal complaint seeking parity between the Verizon PA and Verizon North access charges based on merger commitments of the latter companies at Docket No. A-310200F0002.⁵¹ The PUC split that proceeding from the consideration of the access charges of Pa. USF recipients to Docket No. C-20027195.⁵²

On November 26, 2002, Verizon PA filed its annual Price Change Opportunity (PCO) seeking authority to use a negative PCO adjustment of \$17.7 million to fund its Pa. USF contributions; while challenged, the proposal

⁴⁵ Rulemaking Re Establishing Universal Service Fund Regulations at 52 Pa. Code §§ 63.161—63.172, Docket No. L-00000148, Proposed Rulemaking Order adopted January 27, 2000, Final Rulemaking Order Entered March 23, 2001.

⁴⁶ *Id.* at 1-2.

⁴⁷ See 31 Pa.B. 3402 (6/30/2001).

⁴⁸ Advance Notice of Proposed Rulemaking Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth; Docket Nos. I-00940035 and L-00950102 (September 11, 2001).

⁴⁹ For a discussion of FCC access reform activity, particularly regarding rural carriers, see Access Charge Investigation per Global Order of September 30, 1999; Docket Nos. M-00021596, P-00991648, P-00991649 at 6—9 (July 15, 2003).

⁵⁰ Access Charge Investigation per Global Order of September 30, 1999; Docket Nos. M-00021596, P-00991648, P-00991649 Order (May 5, 2003), (July 15, 2003).

⁵¹ See Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger, Docket Nos. A-310200F0002; A-310222F0002; A-310291F0003; A-311350F0002, 1999 Pa. PUC LEXIS 86 (November 4, 1999). Verizon Pennsylvania Inc. (Verizon PA) is the company formerly known as Bell Atlantic-Pennsylvania, Inc., and Verizon North Inc. (Verizon North) is the company formerly known as GTE—North, Inc.

⁵² While initiated in 2002, the unresolved issues raised in Docket No. C-20027195 form, in part, the basis for this rulemaking at Docket No. L-2023-3040646.

was approved.⁵³ In December 2002, the Rural Telephone Company Coalition, Sprint/United, OCA, OTS, and OSBA filed a Joint Proposal designed to resolve the access charge reduction proceeding. In January 2003, AT&T challenged Verizon PA's request to use its PCO adjustment to fund its Pa. USF contributions. The July 15, 2003 Order resolved the issues of the Joint Proposal.

The July 15, 2003 Order granted the Joint Proposal of December 2002. That Joint Proposal, *inter alia*: (1) increased the residential rate cap from the \$16 established in the Global Order to \$18 for three years; (2) modified the Pa. USF to account for additional access reductions; (3) determined that the Pa. USF would continue under the existing regulations until a further rulemaking; (4) agreed to initiate a further Pa. USF rulemaking no later than December 31, 2004; (5) initiated a Pa. USF administrator RFP; and (6) directed that all IXCs should demonstrate by March 31 of each year how access reductions have benefited Pennsylvania customers on a dollar-for-dollar basis.⁵⁴

On November 30, 2004, the General Assembly enacted sweeping reforms to Chapter 30 of the Public Utility Code. Regarding access charges, these changes included the key provision of Section 3017 (relating to access charges) of the Code: "[t]he [PUC] may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis."⁵⁵ In addition, the repeal of telephone rate increase limitations in Section 1325 of the Code, and the enactment of permissive rate increase language in Section 3015(b) of the Code posed questions regarding how the PUC might manage access reductions going forward. Initiated on December 20, 2004, in response to its Order of July 15, 2003, the Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund at Docket No. I-00040105 was timely.⁵⁶

The December 20, 2004 Order acknowledged the July 15, 2003 Order's commitment to continued access reform and also the changes (and challenges) posed by the newly-amended Chapter 30. The December 20 Order directed the OALJ to conduct hearings and to develop an analysis and recommendation on six primary issues:

1. Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the RLECs' territories?
2. What rates are influenced by contributors to and/or disbursements from the Pa USF?
3. Should disbursements from the Pa USF be reduced and/or eliminated as a matter of policy and/or law?
4. Assuming the Pa USF expires on or about December 31, 2006, what action should the PUC take to advance the policies of this Commonwealth?

5. If the Pa USF continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund? If included, how will the [PUC] know which wireless carriers to assess? Will the [PUC] need to require wireless carriers to register with the [PUC]? What would a wireless carrier's contribution be

⁵³ See Verizon Pennsylvania Inc.'s 2003 Price Change Opportunity, Docket No. M-00031694; *AT&T Communications of Pennsylvania, Inc., v. Verizon Pennsylvania Inc.* Re: Verizon Pennsylvania Inc.'s 2003 PCO, Docket Nos. M-00031694C0001 and P-00930715, Summary Judgment Order (September 9, 2003).

⁵⁴ Access Charge Investigation per Global Order of September 30, 1999; Docket Nos. M-00021596, P-00991648, P-00991649, Order at 6—9 (July 15, 2003).

⁵⁵ 66 Pa.C.S. § 3017.

⁵⁶ Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, Docket No. I-00040105 (December 20, 2004).

based upon? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?

6. What regulatory changes are necessary to the [PUC's] Pa. USF regulations at 52 Pa. Code §§ 63.161—63.171 given the complex issues involved as well as recent legislative developments?

Id. at 5-6.

As the OALJ began the proceeding in early 2005, the FCC also instituted an intercarrier compensation reform proceeding that would ultimately produce the CAF Order over six years later.⁵⁷ In August 2005, and again in November 2006, the PUC stayed its investigation; the PUC and the parties anticipated that any FCC action had the potential to make state efforts moot. On April 24, 2008, approximately three years later, the PUC reopened Docket No. I-00040105 for the limited purpose of directing the OALJ to address twelve issues related to the Pa. USF.⁵⁸ The PUC issued a third stay on other issues pending an FCC order, or until April 2009. The OALJ commenced the proceeding including testimony, hearings, and briefs. This proceeding would produce the ALJ Colwell Recommended Decision at the above docket.

On March 19, 2009, each of the three AT&T companies operating in Pennsylvania (AT&T Communications of Pennsylvania, LLC, TGC Pittsburgh, Inc., and TGC New Jersey, Inc.) filed individual complaints against thirty-two Pennsylvania Rural Local Exchange Carriers (RLECs)—a total of ninety-six formal complaints (AT&T complaints). The AT&T complaints alleged intrastate access charge violations of the Public Utility Code and sought a remedy of parity between intrastate and interstate access charges. The PUC assigned the complaints to OALJ where ALJ Melillo consolidated the cases into one proceeding at lead docket C-2009-2098380. This proceeding would produce part of the ALJ Melillo Recommended Decision. On March 25, 2009, the PTA, CenturyLink (CTL), and OCA moved that the PUC issue a fourth stay of the RLEC Access Charge Investigation.

On June 26, 2009, PTA and CTL petitioned to request that the PUC stay, or in the alternative, consolidate the AT&T complaints with the RLEC Access Charge Investigation issues. On July 23, 2009, the PUC issued ALJ Colwell's Recommended Decision on the twelve limited Pa. USF issues. On July 29, 2009, the PUC denied the PTA and CTL Petition for stay of the AT&T complaints and instead consolidated the AT&T case with the RLEC Access Charge Investigation. On August 5, 2009, the PUC denied the PTA, CTL, and OCA request for a fourth stay on the RLEC Access Charge Investigation, noting its concern with continued FCC delay. The PUC assigned the now-consolidated AT&T complaints at Docket No. C-2009-2098380 and RLEC Access Charge Investigation at Docket No. I-00040105 to OALJ (ALJ Melillo), directing that the OALJ not re-litigate the issues of the ALJ Colwell Recommended Decision, and that the OALJ produce a recommended decision within twelve months of the entry of the Order or by August 5, 2010.⁵⁹ ALJ Melillo issued the Recommended Decision on August 3, 2010. The Parties filed timely exceptions and replies.

⁵⁷ See In the matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005).

⁵⁸ Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105; 2006 Annual Price Stability Index/Service Price Index Filing of Denver & Ephrata Telephone and Telegraph Company, Docket Nos. P-00981430F1000, R-00061377, et al., at 30—33 (April 24, 2008).

⁵⁹ Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105 (August 5, 2009).

In the interim, on December 28, 2010, the PTA petitioned the PUC to expand the base of telecommunications providers that contribute to the Pa. USF to include wireless carriers and VoIP providers and to enter any other order necessary to accomplish this important public policy goal.⁶⁰ OCA filed an Answer in Support of the PTA's Petition.

Additionally, AT&T Communications of Pennsylvania (AT&T), TCG Pittsburgh & TCG New Jersey (collectively TCG), Comcast Phone of Pennsylvania and Comcast Business Communications (collectively Comcast), Verizon⁶¹ and the Broadband Cable Association of Pennsylvania (BCAP) each filed Answers to the Petition.

T-Mobile Northeast LLC (T-Mobile), Sprint/Nextel Corporation (Sprint), Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless) and CTIA-The Wireless Association (CTIA) (collectively, the "Wireless Carriers") filed an Answer in Opposition to Petition. The Wireless Carriers also submitted Preliminary Objections in response to PTA's Petition for the unlawful expansion of the Pa. USF contribution base. Additionally, Verizon filed Preliminary Objections to PTA's Petition. The PTA filed an answer to preliminary objections of the Wireless Carriers and Verizon. No further action has been taken by the PUC on PTA's Petition.

On July 18, 2011, the PUC issued its Opinion and Order in the consolidated AT&T complaint and RLEC Access Charge Investigation docket.⁶² Of note to this rulemaking, the Order determined, in *passim*, that:

- The PUC has authority to perform just and reasonable rate analysis under Chapter 30, i.e., to determine if newly proposed increases represent just and reasonable rates.
- Chapter 30 does not impose a set rate cap on carriers.
- The Pa. USF should not subsidize RLEC Chapter 30 rate increases.
- The Pa. USF recovery of amounts over the \$16 cap from the Global Order related only to amounts considered in the Global Order, and then only for rate rebalancing of access and toll revenues.
- The Pa. USF is a means to reduce access and toll rates for the ultimate benefit of end-users, to encourage greater toll competition, while enabling carriers to continue to preserve the affordability of local service rates.
- The instant rulemaking is required to consider the efficacy of the current Pa. USF model and regulations.
- The balance of access charges and local service rate contributions to joint and common costs may not be adequately preserved under current access charge rates.
- Pennsylvania consumers should be the beneficiaries of Pennsylvania access charge reductions.
- Carrier of last resort (COLR) obligations to provide adequate, safe, and reliable service extend to the provision of retail telecommunications services throughout a carrier's service area.

⁶⁰ Petition of Pennsylvania Telephone Association for Order to Expand the Base of Contributing Carriers to the Pennsylvania Universal Service Fund To Include Wireless Carriers and VoIP Providers, Docket No. P-201022177 (filed December 28, 2010) (PTA Petition).

⁶¹ "Verizon" includes Verizon Pennsylvania, Inc. Verizon North LLC, Verizon Long Distance LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, MCI Communications Services Inc., Verizon Select Services Inc., Verizon Enterprise Solutions LLC and Cellco Partnership d/b/a Verizon Wireless.

⁶² Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105; *AT&T v. Armstrong Telephone Company, et al.*, Docket No. C-2009-2098380, et al., (July 18, 2011).

- COLR obligations are a construct of the Public Utility Code, precedent, and federal law; as such, that obligation is not obviated by intermodal competition;

- COLR obligations extend to interconnection and transport of various traffic protocols from wire and wireless carriers.

- Precedent and policy require that joint and common costs be shared among all users of an RLECs' intrastate access services and that placing 100% of these costs on the end-user would be inequitable, discriminatory, and unlawful.

- Revenue neutral rebalancing of access charges should be accomplished only through increases to noncompetitive services.

- RLECs did not avail themselves of the opportunity to develop optimum rate designs under the rebalancing efforts since the Global Order.

- Carriers should not read "revenue neutral" access reductions as "guaranteed revenue recovery."

- The complete elimination of the carrier charge (CC) to recover local loop costs is not warranted.

- The existing \$18 rate cap should be eliminated by the substitution of a \$23/month, exclusive of taxes and fees, affordability benchmark.

- The AT&T complaints were resolved and that the three-phase implementation of access charge reductions recommended by ALJ Melillo was appropriate and should proceed.

On August 2, 2011, the PTA and CTL filed a Joint Petition for Limited Reconsideration and Stay of this Order. AT&T and TGC Pittsburgh and New Jersey filed a petition for Reconsideration and Clarification on that same date. On August 11, 2011, the PUC granted reconsideration pending review on the merits. Interested parties filed timely answers to these petitions. On August 19, 2011, the PUC issued the templates proposed in the July 18, 2011 Order; interested parties provided comments thereafter.

On November 18, 2011, the FCC released its CAF Order addressing, among other matters, a sea change in its intercarrier compensation regime.⁶³ The CAF Order imposes, over a transition period, a bill-and-keep access charge regime in place of the former access charge and reciprocal compensation regime for terminating traffic. The bill-and-keep regime has the legal effect of relieving IXCs from the obligation to contribute to the joint and common costs of RLEC networks. It has the practical effect of greatly exacerbating the financial challenges addressed in this rulemaking because the bill-and-keep regime mandates end-state access rates of \$0.

On March 20, 2012, the PUC reopened the record of the July 18, 2011 proceeding for the purpose of examining the effects of the CAF Order on the determinations of the July 18, 2011 Order. The PUC invited updated petitions for reconsideration, and interested parties provided answers thereto. In addition, on May 10, 2012, the PUC provided guidance to its regulated carriers regarding the July 1, 2012 state tariff filings required by the CAF Order. The May 10, 2011 Order affirmed that we maintained the intrastate carrier charge/carrier common line at that time regardless of the FCC reforms to interstate

access. It also determined that the PUC would not act on originating access at that time.

On August 9, 2012, the PUC issued its Order directing this rulemaking proceeding, among other matters.⁶⁴ While that August 9, 2012 Order indefinitely stayed the access reforms of the July 11, 2011 Order pending resolution of the CAF Order appeal and the latter PUC Order, the rulemaking was also delayed.⁶⁵ The August 9, 2012 Order delayed the access reforms because the PUC recognized the futility of attempting to implement access reform provisions directly in conflict with those in the CAF Order. The PUC similarly increased the \$23 local service rate benchmark established in the July 18, 2011 Order to \$30 to match the FCC Residential Rate Ceiling so that carriers may obtain maximum federal funding support. It also reaffirmed the full suite of RLEC carrier of last resort obligations and the retention of the intrastate CC as a method of recovering joint and common costs. While the PUC reiterated that it determined that the Pa. USF would not be used for additional access reform, it also noted that a rulemaking could consider that issue. The August 9, 2012 Order considered responses to the five questions posed in the March 12, 2012 Order, and endorsed the AT&T proposal to segregate originating and terminating traffic for the purpose of allocating the CC under the CAF Order. The PUC also recognized that the CAF Order access recovery reforms represented an exogenous event subject to approved Chapter 30 plans and Section 1301 of the Code.

Legislative Initiatives Re Pa. USF

Prior legislative proposals in the Pennsylvania General Assembly to amend Chapter 30 of Title 66, 66 Pa.C.S. §§ 3011—3019 (relating to alternative form of regulation of telecommunications services), as well as the PUC's regulations at 52 Pa. Code §§ 63.161—63.171 (relating to universal service), have delayed our initiation of the instant rulemaking. The PUC has attempted to avoid a rulemaking to amend its Pa. USF regulations in order to allow legislative efforts to move forward that would revise the telecommunications regulatory landscape in a more comprehensive manner.

To quickly recount several legislative proposals over the last decade, the Pennsylvania House has proposed HB 2496 of 2012, HB 1608 of 2013, House Resolution No. 630 of 2017, House Resolution No. 63 of 2019, and House Resolution No. 354 of 2019. These initiatives would have, among other things, provided for the continuation of PUC-approved alternative regulations and network modernization plans, directed the PUC to commence an investigatory proceeding regarding the Pa. USF, and directed an audit and study on the compliance of nonrural telecommunication carriers with the Public Utility Code and high-speed broadband universal service deployment mandates. House Resolution No. 630, specifically, would have urged the FCC to favorably consider the joint petition filed by the PUC and the Department of Community and Economic Development (DCED) as part of the effort to address Pennsylvania's digital divide by preserving Federal funding to increase access to high-speed Internet services in rural areas across the state.

Additionally, the PA Senate has proposed SB 740 of 2017, SB 1112 of 2020, SB 341 of 2021, and SB 85 of

⁶³ See Footnote 72, supra. The CAF Order does not substantively address originating traffic other than noting that the FCC intends to initiate a rulemaking to reform it in the near future.

⁶⁴ Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105; *AT&T v. Armstrong Telephone Company, et al.*, Docket No. C-2009-2098380, et al.; Implementation of the Federal Communications Commission's Order of November 18, 2011, as Amended or Revised and Coordination with Certain Intrastate Matters, Docket No. M-2012-2291824 (August 9, 2012).

⁶⁵ This ANOPR at Docket No. L-2023-3040646 is the beginning of the rulemaking contemplated in the August 9, 2012 Order.

2023. Among other things, these initiatives would have required the PUC to issue annual reports identifying Fund disbursements, waived several PUC regulations while retaining PUC oversight of the Pa. USF, and required newly promulgated regulations to be supported by factual findings and determinations based on an evidentiary record that demonstrated a need for the regulation with benefits that outweighed the costs to comply with and enforce the regulation. Finally, the Senate adopted Senate Resolution No. 48 of 2019, which directed the Legislative Budget and Finance Committee to conduct a review of the compliance of telecommunications carriers with the high-speed broadband deployment mandates of Chapter 30 and to report findings and recommendations to the Senate.

Discussion

With this background, the PUC initiates this rulemaking to consider the need to revise the Pennsylvania Universal Service Fund regulations at 52 Pa. Code §§ 63.161—63.171 pursuant to our Orders of July 18, 2011, and August 9, 2012. The adopted definition, now at 52 Pa. Code § 63.162, continues to reflect the previously discussed commenter concerns with flexibility and scope:

Basic universal service—An evolving set of telephone services, as defined by the PUC, which represents the set of services essential for a resident of this Commonwealth to participate in modern society at any point in time.

As part of this rulemaking, we will now consider its continued validity and meaning.

The PUC also notes, at this time, additional trends that indicate the necessity of reforming the Pa. USF. In 2007, the total intrastate end-user telecommunications retail revenue, which excludes revenues received from access, resale (toll or local), or the sale of unbundled network elements or other services essentially wholesale in nature,⁶⁶ for all assessed carriers totaled \$3,049,572,900.82.

In 2021, those end-user revenues had dropped to \$1,347,151,452.88, a decrease of \$1.7 billion or roughly 56% of assessable revenues. From the time the PUC originally contemplated this rulemaking in 2011 until 2021, total end-user revenues have decreased by more than \$996 million. Meanwhile, monthly support amounts from the Pa. USF have remained relatively stable, increasing only \$20,862.43 between 2009 and 2023. Still, a diminishing number of contributors, down from 271 in 2009 to 213 in 2023, means that the burden of shouldering support amounts is shared by fewer carriers.

Similarly, the number of access lines claimed by the carriers receiving support funds continues to decrease. While reporting an increase access in lines can yield a support carrier additional funds, decreases in access lines do not lessen support from the Pa. USF pursuant to the calculation formula at Section 63.165(b). Between 2007 and 2021, carriers receiving support from the Pa. USF have seen the number of access lines decrease from 1,099,688 to 328,438, a total decrease of 771,250. This trend exacerbates the need to reevaluate how support from the Pa. USF works. The annual intrastate revenues of carriers receiving monies from the Pa. USF has decreased from \$345,041,043 to \$117,416,886.13 between 2007 and 2021. Thus, there is a clear convergence of less total end-user intrastate revenues, fewer access lines, and a diminishing contribution base that undergirds potential Pa. USF reform. Due to these circumstances, the Pa. USF

Administrator presented various proposals in its 2022 Annual Report, as well as in reports from several previous years, to address the issues concerning the Pa. USF, including a recommendation to examine the Pa. USF mechanism and the contribution base methodology.⁶⁷

The PUC seeks to strike a balance—to obtain the economic benefits of competition while at the same time supporting the health, safety, and welfare of Pennsylvania's citizenry. Any consideration of this balance must acknowledge the ongoing role of Pennsylvania's incumbent telecommunications service providers. The current Pa. USF was born out of compromise over how Pennsylvania could balance access revenues and local service rates. The PUC has employed revenue-neutral mechanisms like the Pa. USF to ensure service availability to all consumers, particularly those in rural areas. This method has ensured service availability, avoided rate shock, allowed for network modernization, and avoided undue economic harm to incumbents in the competitive telecommunications era.⁶⁸ Indeed, it is now Commonwealth law that the PUC cannot order access charge reductions except on a revenue-neutral basis.⁶⁹

The genesis of the current Pa. USF regulations is in the compromises detailed in the November 1997 Joint Petition In Settlement, discussed above.⁷⁰ Since that time, stakeholders have proposed modifications to the Pa. USF through various procedural vehicles available before the PUC. In addition, the FCC, through its November 2011 Connect America Fund Order (CAF Order),⁷¹ has enacted sweeping changes to both inter and intrastate access rates and proposed entirely new funding mechanisms to temporarily replace access revenue lost because of CAF Order reforms. In short, it is a time of extreme flux for Pennsylvania's local exchange telecommunications companies (LETCs) whose business models are reliant on access revenue, or access revenue support, in one form or another.

In recognition of long-standing requests for Pa. USF reform on the part of Pennsylvania stakeholders,⁷² and in light of sweeping changes occurring at the federal level,⁷³ the PUC determined to initiate this rulemaking. As concerns over the diminishing contribution base continue, the need for Pa. USF program reform remains. This rulemaking will address whether and what type of reform the current Pa. USF program may require ensuring that Pennsylvania achieves the multiple universal service public policy goals prescribed by Pennsylvania and Federal law. For example, the Voice-Over-Internet Protocol Freedom Act empowers the PUC to enforce applicable Federal and State statutes and regulations relating to, among other things, universal service fund fees.⁷⁴

In conjunction with issuing this ANOPR, the PUC takes action on the pending PTA Petition to expand the base of telecommunications providers that contribute to the Pa.

⁶⁷ The Pa. USF Administrator's Annual Report, going back to 2012, can be found at <https://www.puc.pa.gov/telecommunications/pa-universal-service-fund>. Additionally, PUC annual rate adjustment orders dating back to 2014 are available at the same location and at Docket No. M-00001337.

⁶⁸ Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105 at 3 (December 20, 2004).

⁶⁹ 66 Pa.C.S. § 3017(a) (relating to access charges).

⁷⁰ 52 Pa. Code §§ 63.161—63.171. See also Docket No. I-00040105, Footnote 31.

⁷¹ Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663 (2011) (CAF Order and/or FNPRM) aff'd sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

⁷² Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105. *AT&T v. Armstrong Telephone Company, et al.*, Docket No. C-2009-2098380 et al.

⁷³ Implementation of the Federal Communications Commission's Order of November 18, 2011, as Amended or Revised and Coordination with Certain Intrastate Matters, Docket No. M-2012-2291824 at 66-67 (August 9, 2012).

⁷⁴ 73 P.S. § 2251.6.

⁶⁶ See section 63.162 (relating to definitions).

USF to include wireless carriers and VoIP providers. We expect that comments submitted in early 2011 in response to the 2010 PTA Petition may have become stale and this ANOPR addresses many of the issues presented in PTA's Petition. Accordingly, the PUC shall deny PTA's Petition without prejudice because of the significant overlap between issues addressed in this ANOPR and the 2010 PTA Petition.

Comments to this Advance Notice of Proposed Rulemaking

While the PUC welcomes all useful comments regarding the Pa. USF and regulatory reform, the PUC specifically seeks comments on the questions set forth in Appendix A. Commenters proposing reform should explain how proposed reforms would reasonably and effectively transition from the existing Pa. USF program in a manner that promotes competitive neutrality and affordable rates for telecommunications services.

Additionally, comments should include, where appropriate, reference to existing regulations and proposed language for revision along with explanatory narrative for each recommendation. The PUC welcomes offers of proposed language for our consideration in revising the regulatory provisions of 52 Pa. Code §§ 63.161—63.171. Finally, we encourage commentators to raise any matters or issues that may have been overlooked in this notice.

Conclusion

With this rulemaking, the PUC intends to achieve a functional, competitively neutral universal service program that supports the statutory directives of the Public Utility Code, PUC policy and federal law. Comprehensive and detailed comments will assist in the development of a cohesive and thorough rulemaking.

This Advance Notice of Proposed Rulemaking Order is in addition to the normal rulemaking procedures for publication and comment established under the Commonwealth Documents Law, 45 P.S. §§ 1201, et seq. Accordingly, pursuant to Sections 501, 504, 505, 506, 1301, and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 505, 506, 1301, and 1501, and the Commonwealth Documents Law, 45 P.S. §§ 1201, et seq., and the regulations promulgated thereunder, we shall initiate a rulemaking proceeding to comply with our August 9, 2012 Order at Docket Nos. I-00040105. C-2009-2098380; and M-2012-2291824; *Therefore,*

It Is Ordered That:

1. Entry and publication of this Advance Notice of Proposed Rulemaking Order and Appendices A and B indicate that the Public Utility Commission intends to commence a rulemaking proceeding at this docket to consider revisions of the Public Utility Commission regulations appearing in 52 Pa. Code §§ 63.161—63.171 relating to the Pennsylvania Universal Service Fund.

2. This Advance Notice Of Proposed Rulemaking Order and Appendices A and B be posted on the Public utility Commission's website.

3. Copies of this Advance Notice of Proposed Rulemaking and Appendices A and B be served on all jurisdictional telecommunications utilities, the Office of Consumer Advocate, the Office of Small Business Advocate, and parties to the proceedings at Docket Nos. I-00040105; C-2009-2098380; and M-2012-2291824.

4. This Advance Notice Of Proposed Rulemaking Order and Appendices A and B be delivered to the Governor's Budget Office for fiscal review.

5. This Advance Notice Of Proposed Rulemaking Order and Appendix A be published in the *Pennsylvania Bulletin*.

6. Interested parties may submit electronic or written comments within 90 days, and reply comments within 120 days, from the date this Advance Notice of Proposed Rulemaking and Appendix A is published in the *Pennsylvania Bulletin*.

7. Comments regarding this Advance Notice of Proposed Rulemaking Order and Appendix A may be filed electronically through the Public Utility Commission's efilings system,⁷⁵ in which case no paper copy needs to be filed with the Secretary of the Public Utility Commission provided that the filing is less than 250 pages.⁷⁶ Certain items such as confidential or proprietary material cannot be efiled.⁷⁷ If you do not efile, then you are required to mail, preferable by overnight delivery, one original filing, signed and dated, with the Commission's Secretary at: Pennsylvania Public Utility Commission, Commonwealth Keystone Building 2nd Floor, 400 North Street, Harrisburg, PA 17120. Comments must reference Docket No. L-2023-3040646. All pages of filed comments, with the exception of a cover letter, must be numbered. Commenters must also email a copy of their comments in electronic format (Microsoft Word readable-equivalent) to Colin W. Scott, Esq., (colinscott@pa.gov), Christopher F. Van de Verg, Esq., (cvandeverg@pa.gov), Spencer Nahf (snahf@pa.gov), Karen Thorne, RRA, (kathorne@pa.gov), and ra-pcpregreview@pa.gov. All comments will be posted comments on the Public Utility Commission website.

8. The contact persons for this matter are Spencer Nahf (717-787-5164) in the Bureau of Technical Utility Services and Colin W. Scott (717-783-5949) and Christopher F. Van de Verg (717-783-3459) in the Law Bureau.

9. The December 28, 2010 Petition of the Pennsylvania Telephone Association for Order to Expand the Base of Contributing Carriers to the Pennsylvania Universal Service Fund to Include Wireless Carriers and VoIP Providers, Docket No. P-2010-2217748, is denied without prejudice. In regard to the instant rulemaking at Docket No. L-2023-3040646, the Public Utility Commission may take official notice, on its own initiative or upon request, of matters on the record in P-2010-2217748.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: August 24, 2023

ORDER ENTERED: September 20, 2023

Appendix A

Follow the numbering pattern when you answer the questions below. Provide rationales for each of your responses; do not merely respond "yes" or "no." Include suggested regulatory language. If you have additional points to make, do so after you have answered the questions.

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))?

⁷⁵ <https://www.puc.pa.gov/efiling/default.aspx>.

⁷⁶ If your filing is 250 pages or more, then you are required to mail one copy of the filing to the Secretary.

⁷⁷ See <https://www.puc.pa.gov/filing-resources/efiling/> for instructions regarding materials that cannot be efiled.

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

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

ii. Should the definition include wireless providers?

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

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?

3. Competitive market for basic universal service

a. Does requiring some, but not all, federally defined telecommunications carriers to contribute to the Pa. USF support a competitive market for basic universal service? Why or why not?

b. Is such a regime non-discriminatory under state or federal law?

c. Should the classification of the contributing entities to the Pa. USF be aligned with FCC Form 499 classifications?

4. Should the Commission model its own approach to universal service using the current federal approach which requires a recipient of universal service to construct a voice network that can provide voice but also internet service at federal speeds and requires recipients to stand ready to provide voice and internet service at a required speed as a condition of receiving universal service as a POLR service and COLR network obligations?

5. Would Federal USF and intercarrier compensation reforms under the Connect America Fund Order and the Universal Service Reform Order affect the need for continuing and/or expanding the operational scope and the purposes of the Pa. USF? Why or why not?

6. Would state law or Federal law prohibit the PUC from expanding the scope of the Pa. USF to high cost or low-income support? Why or why not?

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?

8. Should the Commission alter its current structure, in which support is provided in the entire service territory (service area) of an Incumbent Local Exchange Carrier (ILEC) service territory, in favor of another approach? If so, how could the Commission achieve that consistent with federal law?

9. Should the Pa. USF have a dedicated purpose or designation for providing support to eligible recipient carriers? Why or why not? What criteria should the PUC use for this purpose?

a. Should the PUC use a cost model or other method for ascertaining the level of support distributions to eligible carriers? Why or why not? If so, how should the model operate?

b. Should such a cost model or other method be already generally acceptable and in use, e.g., used by the FCC in ascertaining federal USF high-cost support for eligible carriers? Why or why not?

c. Should the level of support to eligible carriers be determined based on revenue, e.g., because of intrastate intercarrier compensation reforms, rate rebalancing, residential rate benchmarks, etc. Why or why not?

d. Should the level of support to eligible carriers operate as “supplemental support” to any Federal high-cost support? Why or why not?

e. Should Pa. USF support continue even if a corresponding Federal support mechanism expires? Why or why not?

f. Should the level of Pa. USF support to eligible carriers be ascertained on the basis of need and associated criteria, including but not limited to:

i. An overall rate of return benchmark that is periodically adjusted and applicable on both the regulated and unregulated operations of the eligible Pa. USF recipient carriers?

ii. An overall rate of return benchmark that is periodically adjusted and applicable only on the intrastate jurisdictional operations of the eligible Pa. USF recipient carriers?

iii. A cost and revenue relationship where network access costs are determined by cost model or other acceptable method and revenues are inclusive of retail and wholesale telecommunications services and unregulated services?

iv. Should unregulated services and operations exclude both costs and revenues of video content delivery?

v. A cost and revenue relationship that is limited to the eligible recipient’s intrastate regulated telecommunications operations?

vi. Other criteria?

g. What reporting requirements should exist?

i. Should reporting be in conjunction with, or supplemental to, Federal USF (inclusive of CAF fund use) reporting requirements as revised by the Universal Service Reform Order?

ii. Should PUC reporting requirements ensure that carriers utilize Pa. USF support distributions for intended and relevant purposes, and not for the support of unrelated operations or activities of the recipient carrier? For example, should recipients provide details on how Pa. USF distributions are used for the support of network facilities that are jointly utilized by both regulated and unregulated retail and wholesale services that are provided by the recipient carrier?

10. Is it prudent to augment the Pa. USF by providing support so that consumers can purchase voice and/or internet service to further the federal universal service mandate of Section 254, 47 U.S.C.A. § 254, that there must be comparable rates for comparable services in rural and urban areas and Pennsylvania’s universal mandate set out in Chapter 30, Pa.C.S. §§ 3001 et. seq.

11. Should the Pa. USF provide low-income residential service support?

a. If no, why not?

b. If yes, in what form?

i. How might this support be coordinated with Federal USF low-income support already provided by eligible carriers that are recipients of Pa. USF disbursements and the federal eligibility requirements for low-income end-user consumers?

ii. What eligibility rules or limitations should apply?

12. Should the Pa. USF provide high-cost support?

a. Should the PUC use a cost model or other method for ascertaining whether eligible carriers require support? If a cost model is proposed, provide public access to a web or excel-based template.

b. Should such a cost model or other method be already generally acceptable and in use?

c. Should the level of high-cost support be based on revenue, e.g., because of intrastate intercarrier compensation reforms, rate rebalancing, residential rate benchmarks, etc.

d. Should the level of high-cost support to eligible carriers operate as “supplemental support” to any Federal high-cost support?

e. Should Pennsylvania high-cost support continue even if corresponding Federal USF high-cost support mechanisms expire?

f. Should the level of Pa. USF high-cost support to eligible carriers be ascertained on the basis of need and associated criteria including:

i. An overall rate of return benchmark that is periodically adjusted and applicable on both the regulated and unregulated operations of the eligible Pa. USF recipient carriers?

ii. An overall rate of return benchmark that is periodically adjusted and applicable only on the intrastate regulated operations of the eligible Pa. USF recipient carriers?

iii. A cost and revenue relationship where network access costs are determined by cost model or other acceptable method and revenues are inclusive of retail and wholesale telecommunications services and unregulated services?

iv. Unregulated services and operations exclusive of costs and revenues of video content delivery?

v. A cost and revenue relationship that is limited to the eligible recipient's intrastate regulated telecommunications operations?

vi. Other criterion or criteria?

g. Reporting requirements

i. Should reporting be in conjunction with, or supplemental to, Federal USF (inclusive of CAF fund use) reporting requirements, as revised by the Universal Service Reform Order? Why or why not?

ii. Should reporting requirements ensure that Pa. USF support distributions are utilized for the intended and relevant purposes and not for the support of unrelated operations or activities of the recipient carrier? For example, should recipients provide details on how Pa. USF distributions are used for the support of network facilities that are jointly utilized by both regulated and unregulated retail and wholesale services that are provided by the recipient carrier? Why or why not?

13. Should a recipient of Pa. USF support be required to document its network and service cost costs in a public

on-the-record proceeding to ensure an accurate demonstration of the support to be draw from the Fund?

14. Size of the Pa. USF

a. Should the Pa. USF continue to use the support floor contained in the November 10, 1997 Joint Petition In Settlement adopted in the Global Order, Docket Nos. P-00991648, P-0991649, (September 30, 1999)? Why or why not?

b. Should the PUC adjust the support floor for each eligible recipient carrier based on factors such as intrastate carrier access charge reform or additional proposed uses of the Pa. USF? Why or why not? What factors should be used?

15. Computational formula of 52 Pa. Code § 63.165

a. Should the PUC alter the computational formula of 52 Pa. Code § 63.165?

b. Should the formula allow for negative access line growth? If so, how?

c. Should the calculation reflect current Fund Recipient access line counts?

d. Should the calculation be adjusted for exogenous events for each eligible recipient carrier for factors such as intrastate access charge reform or additional proposed uses of the Pa. USF?

e. Should the computational formula be modified so that the levels of Pa. USF support distributions to each eligible carrier can be periodically adjusted within a calendar year with corresponding adjustments to the Pa. USF contribution levels? For example, other state-specific USFs and the Federal USF permit for quarterly adjustments in both the contribution payments and support payment disbursements during a calendar year.

16. How may the regulations address technological advances, especially regarding contributing telecommunications provider and fund recipient reporting procedures?

17. What are the linkages and interactions of the existing Federal and Pa. USF. Address at a minimum the following areas:

a. Should the Pa. USF contribution mechanism align with the corresponding contribution mechanism of the revised Federal USF? If they do not align, provide concise discussion of what legal and technical issues may arise and how such issues may be resolved.

b. If the FCC adopted a telephone numbers-based contribution system for the Federal USF, should the Pa. USF contribution mechanism follow that approach?⁷⁸

c. Describe the legal and technical issues that may arise for the operation of the Pa. USF if, as a result of the FCC Federal USF Contribution Base FNPRM, the Federal USF contribution mechanism crosses jurisdictional boundaries through, e.g., assessment of intrastate revenues. Provide a concise discussion of the relevant issues for the Pa. USF mechanism and their potential resolution.

18. How would alterations to the Pa. USF affect broadband deployment under current obligations?

19. Are non-jurisdictional services provided by affiliates of telecommunications providers that hold certificates of public convenience (CPCs) for regulated services within

⁷⁸ See generally, *In re Universal Service Contribution Methodology*, et al., (FCC, Rel. April 30, 2012), WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46 (FCC Federal USF Contribution Base FNPRM).

Pennsylvania relevant to the size or scope of the Pa. USF? Why or why not? Is provision of VoIP services relevant? Why or why not?

20. Should the Commission's support for the networks and services needed to advance universal service in Pennsylvania continue to be recovered via assessments on services from retail intrastate revenues alone, or should the contribution base be expanded to include revenues from all regulated and unregulated services provided over a supported network, including wholesale revenues and other services, given that the supported network can provide, among other things, regulated and unregulated services such as wireless backhaul transport and internet service?

21. Should the Commission continue prohibiting a stand-alone surcharge on individual consumers to recover the cost of universal service?

22. Should the 1% uncollectable additive referenced in 52 Pa. Code § 63.165 be moved from 1% to 5% to reflect the PUC's current practice? Why or why not?

23. Should the PUC establish a monetary penalty for those companies that do not timely submit an assessment form? Why or why not? If so, what would an appropriate fee be for a late filing? Would other enforcement action be appropriate?

24. Should the PUC consider revising the current late payment fee of 1.5% per month for failure to make timely payments? Why or why not? If so, what should the fee be going forward? Should there be a built-in adjustment factor?

25. Should the PUC revise the regulations to require a lump sum, quarterly or monthly payment of Pa. USF assessments? What thresholds would be appropriate for each remittance interval?

26. Should the PUC revise the regulations to change the de minimis threshold from \$120 as set forth in 52 Pa. Code § 63.169(c) to another amount? Why or why not? If so, to what amount?

27. Should the PUC require a contributing carrier to the Pa. USF to provide documentation when reporting a certain minimum threshold? Why or why not? What would be an appropriate threshold? What should the mechanism be?

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?

29. What would be an appropriate process to ensure that all intrastate VoIP providers are properly reporting and being assessed?

30. What mechanism, other than certification of VoIP providers, can the Commission use to implement the universal support provisions of the VoIP Freedom Bill and ensure compliance with the provisions of the Code and the VoIP Freedom Bill?

31. Should the PUC allow VoIP providers that do not hold a CPC to voluntarily contribute to the USF? Why or why not? If so, what should the mechanism be?

32. Should a company that has abandoned jurisdictional service but that continues to provide VoIP service be required to contribute to the USF? Why or why not? If so, how?

33. How should the Commission address the issues outlined in Chairman Dutrieuille's statement in the Application of Sprint Communications Company L.P. for approval of abandonment of services, Docket No. A-2021-3028993 (August 25, 2022) in this proceeding?

34. Does competition remain a valid focus when it comes to supporting networks and services given that over 95% of today's consumers are served by the "last mile" network owned by two industries, i.e., telephone and cable, with cable and fiber networks lacking an open access mandate for competitors under federal law and precedent?

Appendix B

§ 63.161. Statement of purpose and policy.

On July 8, 1993, the General Assembly enacted 66 Pa.C.S. Chapter 30 (relating to alternative form of regulation of telecommunications services) which provides for the regulatory reform of the telephone industry in this Commonwealth.

(1) The General Assembly's first declaration of policy in Chapter 30 is to "[m]aintain universal telecommunications services at affordable rates while encouraging the accelerated deployment of a universally available state-of-the-art, interactive, public switched broadband telecommunications network in rural, suburban and urban areas." See 66 Pa.C.S. § 3001(1) (relating to declaration of policy).

(2) The General Assembly assigned to the Commission and this Commonwealth's telecommunications providers responsibility for assuring and maintaining universal service in this Commonwealth. Given an increasingly competitive telecommunications marketplace, it is necessary to establish a competitively-neutral universal service funding mechanism to assure and maintain universal service and to promote the development of competition in telecommunications markets throughout this Commonwealth.

(3) The purpose of the Fund is to maintain the affordability of local service rates for end-user customers while allowing rural telephone companies to reduce access charges and intraLATA toll rates, on a revenue-neutral basis, thereby encouraging greater competition.

§ 63.162. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Assessment rate—The percentage rate which when multiplied by each contributing telecommunications provider's total intraState end-user telecommunications retail revenue for the prior month will determine that provider's monthly contribution to the annual Fund budget. The assessment rate is computed annually under § 63.165 (relating to calculation of contributions).

Basic universal service—An evolving set of telephone services, as defined by the Commission, which represents the set of services essential for a resident of this Commonwealth to participate in modern society at any point in time.

Contributing telecommunications providers—Telecommunications carriers that provide intraState telecommunications services. Whether a provider or class of providers is a telecommunications carrier will be determined based upon whether the provider or class of providers is considered a telecommunications carrier under Federal law as interpreted by the Federal Communications Com-

mission except that wireless carriers are exempt from this subchapter under 66 Pa.C.S. § 102(2)(IV) (relating to definitions).

End-user revenue—Revenues received from telecommunications subscribers who consume the final service unadjusted for any expense or other purpose. Total intrastate end-user telecommunications retail revenue does not include those revenues received from access, resale (toll or local), or the sale of unbundled network elements or other services which are essentially wholesale in nature.

Fund—The Universal Service Fund.

Fund recipient—An entity which receives funds from the Fund. Incumbent local exchange carriers operating in this Commonwealth, with the exception of Verizon Pennsylvania and Verizon North, Inc. are eligible Fund recipients.

Local service provider—A telecommunications company to which retail customers subscribe for basic universal service.

§ 63.163. Universal service fund administration.

(a) The Commission will designate within the context of a competitive bidding process a third-party administrator and a fund auditor to maintain and audit the Fund consistent with this subchapter.

(b) The Fund shall be administered in a manner ensuring that the Fund is exempt from State, Federal, and local taxes. The Fund administrator shall seek tax exempt status from the Internal Revenue Service.

(c) The Fund shall be established and kept separate from any other Commonwealth general fund.

(d) The administrator shall be responsible for assessing contributing telecommunications providers for contributions to the Fund as provided for in § 63.165 (relating to calculation of contributions). The administrator shall also be responsible for receiving contributions, validating contributions and distributing payments to fund recipients.

(e) The administrator shall file with the Commission by September 1 of each year an annual report which shall include an income statement of the Fund's activity for the preceding calendar year, a list of recommendations pertaining to operations of the Fund, and a proposed budget and assessment rates for the upcoming year. A copy of the report will be served contemporaneously upon the Office of Consumer Advocate, Office of Small Business Advocate and all telecommunications carriers participating in the Fund.

(f) Interested parties shall be provided the opportunity to file comments to the administrator's report within 30 days of its submission to the Commission. Replies to comments shall be filed within 15 days thereafter. Comments should be addressed to the Pennsylvania Public Utility Commission's Secretary's Bureau, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265. The comments should be filed at Docket No. M-00001337.

§ 63.164. Commission oversight.

The Commission will issue an order within 90 days of receipt of the administrator's annual report, which establishes the size of the Fund, a budget, assessment rate for contributing telecommunications providers, and administrative guidelines for the upcoming calendar year.

§ 63.165. Calculation of contributions.

(a) Contributing telecommunications providers shall submit an affidavit to the administrator by March 31 of each year, identifying the provider's total intrastate end-

user telecommunications retail revenue for the previous calendar year. A copy shall be served upon the Commission.

(b) In determining the annual assessment rate, the administrator will utilize the following calculation:

$$\frac{W + X + Y + Z \times B}{A} = C$$

W = Increase in funding requirement due to growth in access lines of recipient carriers. W equals the access line growth percentage for each recipient carrier multiplied by each recipient carriers' prior year net support (prior year funding minus prior year payment). The individual recipient carriers' required fund increases are totaled to yield W. $W = ALG \times (PYF-PYP)$.

X = Prior year's size of fund minus the estimated surplus from the prior year or plus any shortfall from the prior year.

Y = Surcharge for uncollectables is 1% times (X + W).

Z = Commission approved administrative and auditing expenses.

A = Aggregate Statewide end-user intrastate retail revenue of all contributing telecommunications providers for the previous calendar year.

B = Individual contributing telecommunications provider's end-user intra-state retail revenue for the prior calendar year.

C = Individual contributing telecommunications provider's monthly contribution.

(c) To the extent the funding received from providers in any 1 year exceeds the disbursements required for the Fund plus the cost of administering the Fund (including 1% of the total size of the Fund to cover delinquent accounts and contingencies), the excess shall remain in the Fund, and the subsequent year's Fund size reduced by that surplus.

§ 63.166. Administrator criteria.

The administrator shall meet the following criteria:

(1) The administrator shall be neutral, impartial and independent from telecommunications service providers operating in this Commonwealth.

(2) The administrator may not advocate specific positions before the Commission in nonuniversal service administrative proceedings related to telecommunications issues.

(3) The administrator may not be an affiliate of any provider of telecommunications services. The administrator may not be closely associated with any provider of telecommunications services in a dependent or subordinate position.

(4) If the administrator has a board of directors that includes members with direct financial interests in entities that contribute to or receive support from the Fund, no more than a third of the board members may represent any one category (for example, local exchange carriers or interexchange carriers) of contributing carriers or support recipients, and the Board's composition shall reflect the broad base of contributors to and recipients of Fund assets. For purposes of this restriction, a direct financial interest exists when the administrator or Board member:

- (i) Is an employee of a telecommunications carrier.
 - (ii) Owns any equity interests in bonds or equity instruments issued by any telecommunications carrier.
 - (iii) Owns mutual funds that invest more than 50% of its assets in telecommunications securities.
- (5) If the administrator's board composition changes during its contractual period, the administrator shall notify the Commission immediately.

§ 63.167. Administrator's duties.

The administrator shall have the following duties:

- (1) Maintain a database to track contributing telecommunications providers.
- (2) Develop Commission-approved forms which all telecommunications service providers will submit to the administrator on a monthly basis with their monthly contributions.
- (3) Review the completed forms to ensure completeness and accuracy of reported revenue and Fund assessments and contact providers whose accounts contain unexplained variances in reported revenues or Fund assessments.
- (4) Assess late-payment charges of 1.5% per month pro rata per diem on contributions that are 30 days or more past due.
- (5) Send initial notices of delinquency to delinquent contributors when a payment is 30 days past due and follow up with at least one subsequent written notice, phone call, or both, to the contributor to pursue collection of Fund payments that are 60 days past due.
- (6) Maintain logs of notices to delinquent contributors and refer to the Commission for further enforcement, on a monthly basis, all accounts more than 90-days past due.
- (7) Immediately inform the Commission if the administrator has reason to believe that a contributing telecommunications provider has submitted false information to the administrator with the intent of obtaining fraudulent funding or underreported end-user revenue, or if any other irregularity occurs in the operation or administration of the Fund. Penalties that will be assessed to the contributing telecommunications provider are addressed in § 63.171 (relating to enforcement).
- (8) Invest Fund moneys in interest-bearing instruments designed to minimize risk of loss while providing maximum liquidity. Return on investment shall be placed into the Fund. Permitted investments include:
 - (i) Marketable obligations directly and fully guaranteed by the United States government.
 - (ii) Federally-insured checking, money market accounts or certificates of deposit.
 - (iii) Other accounts expressly approved by the Commission.
- (9) Promptly advise the Commission if the administrator projects any potential Fund shortfall or if Fund disbursements exceed receipts in a given month.
- (10) In January of each year, mail reporting forms to each contributing telecommunications provider to acquire appropriate data to determine the following:
 - (i) Each contributing telecommunications provider's intraState end-user telecommunications retail revenue for the prior calendar year.
 - (ii) The Fund recipients' access line growth which translates into a dollar amount increase in the size of the next year's Fund.
 - (iii) Aggregate Statewide end-user intraState retail revenue of all contributing telecommunications providers for the previous calendar year.
 - (iv) Each contributing telecommunications provider's contribution for the following calendar year.
- (11) Cooperate with the auditor selected by the Commission and provide data and information reasonably required to support audit activities.
- (12) Promptly respond to Commission requests for information pertaining to Fund administration.
- (13) Maintain adequate principal liability insurance coverage, criminal liability coverage, and a sufficient umbrella liability policy.
- (14) Prepare reports of Fund activity for the Commission on a monthly basis detailing carrier assessments, delinquent payers, late-payment charges, fund disbursements, interest earned and cumulative results.
- (15) Maintain records by contributor and by recipient.
- (16) Provide additional reports as requested by the Commission.
- (17) Maintain a statement of financial condition (balance sheet) and income statement for the total fund, and a sources and uses of funds statement, which will tie to the total Fund income statement.
- (18) Deliver the balance sheet, income statement, and sources and uses of funds statement to the Fund auditor by May 1 of each year so that the auditor may prepare its report.
- (19) Maintain a system of internal controls.
- (20) Consider the auditor's report in preparing the annual report for submission to the Commission and include any undercollections or overcollections identified by the audit report in developing a proposed budget for the upcoming fiscal year.
- (21) Submit the administrator's annual report by September 1 or 60 days following receipt of the audit report, whichever is later.
- (22) With prior Commission approval, borrow monies to cover the short-term liabilities of the Fund caused by undercollections.
- (23) At least 60 days before short-term borrowing is necessary, the administrator shall provide formal notice to the Commission which identifies the amount, the proposed lending source and the terms and conditions of the loan.
- (24) Comply with the contract and Commission orders. Any dispute between the administrator and any contributing telecommunications provider shall be submitted to the Commission for resolution.
- (25) Have access to the books of account of all telecommunications service providers to the limited extent necessary to verify their intraState end-user telecommunications retail revenues and other information used by the administrator in determining assessments and disbursements for the Fund.
- (26) Treat competitive and financial information received as confidential and proprietary and only release that information upon order of the Commission.

(27) Operate on a fiscal year which shall be the same as the calendar year.

§ 63.168. Auditor's duties.

(a) An independent external auditor chosen by the Commission will audit the Fund records covering both collections and disbursements for the fiscal year. The costs for conducting audits will be included in the computation of Fund requirements. Thereafter, an audit of the Fund collections and disbursements will be done annually.

(b) Following the audit, the Fund auditor will prepare and submit a report to the Commission and the administrator by July 1 of each year. The audit report should make recommendations regarding the finances of the Fund and should identify undercollections or overcollections experienced by the Fund in the previous year.

§ 63.169. Collection of universal service fund contributions.

(a) At the beginning of the calendar year, the administrator will provide monthly reporting forms to each contributing telecommunications provider. Each carrier will complete the form monthly using the calculation as described in § 63.165 (relating to calculation of contributions) and remit the form to the administrator along with its monthly contribution in full.

(b) Failure to make timely payment will result in the levy of a late payment charge of 1.5% per month pro rata per diem on the delinquent contribution.

(c) If a carrier's contribution to the Fund in a given year is less than \$120, that carrier will not be required to submit a contribution.

§ 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.

§ 63.171. Enforcement.

A telecommunications service provider that fails to pay, in a timely manner, any contribution required under this subchapter may be prohibited from providing service in this Commonwealth and be subject to other penalty as authorized under law.

Statement of Vice Chairperson Stephen M. DeFrank

Today, the Commission takes long overdue action to issue an Advance Notice of Proposed Rulemaking (ANOPR) to review and amend our regulations governing the Pennsylvania Universal Service Fund (PA USF). The PA USF is a vital tool to ensure that those Pennsylvanians who want access to safe and reliable basic local exchange service at just and reasonable rates have such access.

As an initial matter, I would like to commend the Commission staff who drafted this rulemaking. It is a clear and concise summary of a decades-long history of a complicated and often controversial matter and asks the difficult but important questions.

I recognize that the matter we are voting on today raises some tough issues to which there are no easy answers. As noted in the ANOPR, there is a clear convergence of less total end-user intrastate revenues,

fewer access lines, and a diminishing contribution base that undergirds potential PA USF reform. At the same time, we must examine what is "basic universal service" in today's world.

Nonetheless, our job is to raise those difficult issues and seek reasonable answers to them. Anywhere in the state, a Pennsylvanian should be able to pick up a landline telephone and connect to the public switched telephone network to call a neighbor across the street, a loved one across the country, or access emergency services when there is a fire or they need medical attention—all at a high quality and at an affordable rate. This has always been the challenge of Chapter 30. . .to "maintain universal service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas."⁷⁹

As a result, I am glad to see that we are moving forward on this matter and vote in favor of issuing the ANOPR. Again, I thank staff for their fine work which enable us to take this step today.

STEPHEN M. DeFRANK,
Vice Chairperson

Statement of Commissioner John F. Coleman, Jr.

Before the Pennsylvania Public Utility Commission (Commission) is an Advance Notice of Proposed Rulemaking (ANOPR) to amend our regulations governing the Pennsylvania Universal Service Fund (Pa. USF or fund).⁸⁰

In support of initiating this rulemaking, the ANOPR cites to the long-standing requests for Pa. USF reform from Pennsylvania stakeholders⁸¹ and to the sweeping changes with universal service that have occurred at the federal level.⁸² Upon review, this rulemaking is intended to address whether and what type of reform is needed with the current Pa. USF program. To that end, the ANOPR contains a list of questions in Appendix A probing possible fund reforms.

I have gone on record in other Commission proceedings as stating my belief that any review of the Pa. USF should be comprehensive. In other words, I believe that a full range of Pa. USF reforms should be on the table at this stage of the process. While I commend staff on the quality of the work product presented today, I have a few additional areas of inquiry for the ANOPR.

Appendix A includes a question about whether the Commission should amend the definition of "basic universal service" in our Pa. USF regulations to reach beyond telephone service. Appendix A also includes a question about whether the definition of "contributing telecommunications providers" in our Pa. USF regulations should be amended to include wireless providers. In addition to addressing these "should" issues, I believe we also need to address whether the Commission can amend the definitions in the manner contemplated by these questions. Therefore, I request that commentors address whether the Commission has the authority to (a) amend the

⁷⁹ 66 Pa.C.S. § 3011(2).

⁸⁰ The current Pa USF was born out of a compromise over how Pennsylvania could best balance intrastate access charge reform and local rates. The current Pa USF was established to reduce intrastate access charges, on a revenue-neutral basis and to foster competition, while also maintaining universal telecommunications services at affordable rates.

⁸¹ Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. 1-00040105. *AT&T v. Armstrong Telephone Company, et al.*, Docket No. C-2009-2098380 et al.

⁸² Implementation of the Federal Communications Commission's Order of November 18, 2011, as Amended or Revised and Coordination with Certain Intrastate Matters, Docket No. M-2012-2291824 at 66-67 (August 9, 2012).

definition of “basic universal service” to reach beyond telephone service and (b) amend the definition of “contributing telecommunications providers” to include wireless providers.

According to the ANOPR, expanding the Pa. USF beyond basic telephone service would align with federally applicable principles regarding supported services. To the extent the ANOPR asks whether the Commission should model its approach after federal universal service and require a fund recipient to (a) construct a network that supports Internet service at federal speeds and (b) offer Internet services to all consumers in a designated area, I request that commentors address whether the Commission has the authority to establish such requirements.

In addition, Appendix A includes a question about whether the Pa. USF contribution mechanism should follow a telephone numbers-based contribution system if such an approach is adopted for the federal USF. To the extent this approach implicates wireless services, I request that commentors address whether the Commission has the authority to establish a numbers-based contribution system for the Pa. USF.

Further, Appendix A does not address whether the Pa. USF currently is necessary or proper and should continue. I believe this issue is a threshold issue that should be addressed. Therefore, I request that commentors respond to the following questions:

- 1) Does the Commission have the authority to eliminate the Pa. USF?
- 2) What are the benefits and drawbacks of eliminating the Pa. USF?
- 3) If eliminated, should it occur through a hard-stop termination at the end of a fund year or gradually through a phase-out?
- 4) If through a phase-out,
 - a. Over what period should a phase-out occur?
 - b. How should a phase-out be structured in terms of reducing contribution and support amounts to the point of elimination of the fund?

Let me be clear: I am not advocating for any specific outcome with Pa. USF reform at this time. So, my additional questions addressing the elimination of the fund should not be construed as my advocating to eliminate it. Rather, the questions are intended to ensure that the Commission conducts a comprehensive review of the Pa. USF and receives input on the full range of Pa. USF reform options available to us.

In addition, I request that commentors identify any interest they have in the fund. For example, does the commentor have an interest as a net contributor/recipient? Or, as another example, is the commentor an end-user telecommunications representative?

Finally, I echo the statement in the ANOPR welcoming all useful comments regarding the Pa. USF and regulatory reform. I also encourage commentors to raise any matters or issues that may have been overlooked in the ANOPR.

JOHN F. COLEMAN, Jr.,
Commissioner

Fiscal Note: 57-344. No fiscal impact; recommends adoption.

[Pa.B. Doc. No. 23-1544. Filed for public inspection November 10, 2023, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 135]

Lands and Buildings; General Provisions

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its September 16, 2023, meeting to amend § 135.2 (relating to unlawful actions) to prohibit a person from using or possessing a controlled substance or drug paraphernalia on Hunter Access Program (HAP) properties.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the September 16, 2023, meeting of the Commission. Comments can be sent until January 24, 2024, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

State Game Wardens (SGW) and Deputy State Game Wardens (DSGW) are encountering an increasing number of individuals who are in possession of controlled substances and/or drug paraphernalia on State game lands and HAP properties. The Commission is proposing to amend § 135.2 to prohibit a person from using or possessing a controlled substance and/or drug paraphernalia on HAP properties. The text of sections 721(b) and 925(b)(9) of the code (relating to control of property; and jurisdiction and penalties) would set the grading for the proposed regulatory usage violation as a summary offense of the fifth degree carrying a potential fine penalty of \$100—\$200.

State game lands are comprised of approximately 1.5 million acres of lands and waters located within this Commonwealth that are owned by the Commission and predominantly used to create and maintain game and wildlife habitat and areas for the public to access hunting and furtaking opportunities. Conversely, HAP properties are comprised of approximately 1.7 million acres of lands and waters located within this Commonwealth that are privately owned, but where certain hunting and trapping rights have been conveyed to the Commission pursuant to written agreement under sections 709 and 729 of the code (relating to cooperative agreements relating to land; and public access projects).

The Commission controls authorized usage of State game lands and HAP properties under the authority of section 721(a) of the code. Section 721(a) states “[t]he administration of all lands or waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations consistent with the purpose of this title for its use and protection as necessary to properly manage these lands or waters.” The Commission has further promulgated regulations for State game lands only under § 135.41 (relating to State game lands). The Commission has also further promulgated regulations for both State game lands and HAP properties under § 135.2.

Section 135.41(c)(10) currently states it is unlawful to “[u]se or possess any controlled substance or drug paraphernalia” as defined or classified under The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S.

§§ 780-101—780-143).” However, as previously identified, this usage violation only applies to lands and waters designated as State game lands. Furthermore, there is no similar provision located within § 135.2 that is applicable to HAP properties. The absence of a similar provision creates two limitations for the Commission.

The first limitation concerns the absence of a charging alternative to minor controlled substance or drug paraphernalia violations under The Controlled Substance, Drug, Device and Cosmetic Act that occur on HAP properties. For example, a SGW who identifies a person to be in possession of a controlled substance or drug paraphernalia on State game lands currently has the discretion to charge the more serious misdemeanor graded offense under The Controlled Substance, Drug, Device and Cosmetic Act or, in the alternative, the less serious summary graded usage offense under § 135.41(c)(10). A SGW or prosecuting attorney similarly has this lesser charging alternative available for plea discussion in pending Controlled Substance, Drug, Device and Cosmetic Act cases that occurred on State game lands. The Commission has determined that a similarly structured progressive grading alternative structure would be a valuable tool in disposing of the multitude of different controlled substance and drug paraphernalia violations occurring on HAP properties.

The second limitation concerns the comparatively lesser authority of a DSGW as compared to an SGW. An SGW who identifies a person to be in possession of a controlled substance or drug paraphernalia on HAP property currently has the authority to directly enforce The Controlled Substance, Drug, Device and Cosmetic Act under the authority of section 901(a)(17) of the code (relating to powers and duties of enforcement officers). Section 901(a)(17) states “[a]ny officer whose duty it is to enforce this title or any officer investigating any alleged violation of this title shall have the power and duty to . . . apprehend or arrest any individual suspected of violating any provision of Title 18 (relating to crimes and offenses) or any other offense classified as a misdemeanor or felony.” (Emphasis added.) Offenses under The Controlled Substance, Drug, Device and Cosmetic Act are graded as either misdemeanors or felonies, therefore an SGW’s authority includes enforcement of this act. However, under the text of section 902(a) of the code (relating to deputy Game Commission officers) that explicitly bars the extension of section 901(a)(17) to DSGWs, these officers are consequently not authorized to enforce The Controlled Substance, Drug, Device and Cosmetic Act directly.

Without an applicable regulation like § 135.41(c)(10) to address controlled substances and drug paraphernalia violations on HAP properties, DSGWs must request assistance from an SGW, a local police department or State Police to address the violation outside of their direct authority. When these options are not available in a timely fashion, these violations will often go unaddressed. The addition of the proposed text to § 135.2 would create a usage violation for persons found in possession of a controlled substance or drug paraphernalia that will be directly enforceable by both SGWs and DSGWs. This will consequently improve the efficiency of the enforcement operations of the Commission by reducing the necessity of alternate personnel to be called upon to attend to minor controlled substance and drug paraphernalia offenses occurring on HAP properties.

Section 721(a) of the code provides “[t]he administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole

control of the Director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters.” The amendments to § 135.2 are proposed under this authority.

2. Regulatory Requirements

This proposed rulemaking will amend § 135.2 to prohibit any person from using or possessing a controlled substance and/or drug paraphernalia on HAP properties.

3. Persons Affected

Persons concerned with the possession of controlled substances or drug paraphernalia on HAP properties within this Commonwealth will be affected by this proposed rulemaking.

4. Cost and Paperwork Requirements

This proposed rulemaking should not result in any additional cost or paperwork.

5. Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. Contact Person

For further information about this proposed rulemaking, contact Jason L. DeCoskey, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-503. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter A. GENERAL PROVISIONS

§ 135.2. Unlawful actions.

In addition to the prohibitions in the act on lands, waters or buildings under Commission ownership, lease, agreement, control or jurisdiction, it is unlawful, except with the permission of the person in charge of the lands, or the written permission of the Director to:

(1) Camp or use campsites.

(2) Plant, gather, cut, dig, remove or otherwise injure plants or parts thereof, including trees, shrubs, vines, flowering plants, cultivated crops, mushrooms and fruits of berry-producing plants.

(3) Travel on lands by means of vehicle or conveyance propelled by motorized power. This provision is not intended to restrict travel by certain devices used for persons with mobility disabilities as specifically authorized under Subchapter C (relating to State game lands).

(4) Swim in a dam, pond, lake or stream.

(5) Injure, destroy or cause damage to property—real, personal or mixed.

(6) Remove or attempt to remove any manmade or natural object except wildlife and fish lawfully taken. Objects which may not be removed include animals, rocks, minerals, sand and historical or archaeological artifacts.

(7) Participate in, become a part of, contribute to or engage in disorderly conduct as defined in 18 Pa.C.S. §§ 5503 and 5505 (relating to disorderly conduct; and public drunkenness).

(8) Kindle, use or maintain an open fire.

(9) Travel on roads open to vehicular travel with vehicle or conveyance propelled by motorized power which is not licensed or authorized for operation on a public highway under 75 Pa.C.S. (relating to the Vehicle Code).

(10) Violate, fail or neglect to follow instructions posted on signs authorized by the Director.

(11) Travel by mechanical or motorized conveyance or ride animals on newly constructed, seeded or planted roads, or other areas, when posted against the travel.

(12) Possess, maintain, operate, occupy or travel by snowmobile or ATV in a manner not in accordance with the standards in 75 Pa.C.S. Chapter 77 (relating to Snowmobile and All-Terrain Vehicle Law).

(13) Construct, place, maintain, occupy, use, leave or abandon structures or other tangible property, except in the manner otherwise authorized and limited by § 135.41(c)(11) (relating to State game lands).

(14) Use or possess a controlled substance and/or drug paraphernalia as defined or classified under The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144).

[Pa.B. Doc. No. 23-1545. Filed for public inspection November 10, 2023, 9:00 a.m.]