

Prepared Testimony of

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Good morning Chairman Tomlinson, Chairwoman Boscola, Chairman Folmer, Chairman Farnese, and members of the Senate Consumer Protection and Professional Licensure Committee and the Senate Communications and Technology Committee. I appreciate the opportunity to speak with you today about Act 183 of 2004, which modifies the prior Chapter 30 provisions of the Public Utility Code. In brief, my comments will address:

- **Broadband Deployment Targets** -- The current status of broadband deployment in Pennsylvania and related obligations created by Act 183.
- **Broadband Deployment Progress Reports** -- How and when the local exchange carriers report their deployment progress to the PUC.
- **Broadband Deployment Programs and Funds** – Bona Fide Retail Request Program, Business Attraction or Retention Program, Broadband Outreach and Aggregation Fund, and Education Technology Fund
- **PUC Audit Process** -- The PUC's audit process in which we check on the accuracy of the broadband reports filed by local exchange carriers.

CHAPTER 30 IMPLEMENTATION

The PUC continues to implement key provisions of Act 183. Act 183 provides more economic incentives to facilitate deployment of a statewide broadband network compared to the original Chapter 30. It encourages earlier completion of existing network modernization plans (NMPs) by incumbent local exchange carriers (ILECs) by reducing the inflation offset under the companies' price cap form of regulation. It also

provides for less PUC regulation by reducing filing and reporting requirements for ILECs. Chapter 30 authorizes the PUC to oversee the NMPs that provide for broadband deployment. Chapter 30 also established several funds and programs meant to further facilitate broadband deployment beyond the deployment commitments contained in the ILECs' NMPs depending on which of three different deployment options is chosen by the ILEC. These additional programs and funds are the Bona Fide Retail Request Program (BFRR), the Business Attraction or Retention Program (BARP), the Broadband Outreach and Aggregation Fund (BOAF), and the Education Technology Fund (E-Fund).

By 2015, Act 183 requires that every Pennsylvanian will have access to broadband services, even in the most rural areas of the state. However, as I mentioned, Chapter 30 provides options for the alternative regulation and network broadband deployment for ILECs under the PUC's jurisdiction that allows for accelerated, universal deployment to occur before 2015. Within months of enactment, all thirty-three ILECs in Pennsylvania filed amended NMPs to reflect one of the three options provided in the new law.

Option 1 – 100% by December 31, 2008

Twenty-nine of the ILECs elected option 1, available only to rural ILECs, which provides for 100% broadband deployment by the end of 2008 with a 0% inflation offset value in their respective price cap mechanisms. Under this option, the ILEC is not required to offer either a BFRR or a BARP.

Option 2 – 100% by December 31, 2013

Option 2 is also only for ILECs classified as rural, *i.e.*, all ILECs except Verizon PA and Verizon North. The other two remaining ILECs, United Telephone Co. of

Pennsylvania d/b/a CenturyLink and Windstream Pennsylvania, Inc. elected option 2 and agreed to complete their broadband commitment by December 31, 2013, and invoke a 0% inflation offset value in their respective price cap mechanisms. Under Chapter 30, they are also required to offer a BFRR and BOAF.

Option 3 – 100% by December 31, 2015

The third option is only for ILECs classified as non-rural, *i.e.*, Verizon PA and Verizon North. Both companies did elect this option and agreed to complete their broadband deployment by December 31, 2015, and invoke a 0.5% inflation offset value in their respective price cap formulas. They too are required to offer a BFRR and BOAF.

Regardless of the chosen option, the ILEC also had to commit to universal broadband deployment for schools, industrial parks, and health care facilities on or before December 31, 2005, or at the election of an ILEC that serves more than ten exchanges in the state to December 31, 2006, for any exchange with less than 4,000 access lines.

BROADBAND DEPLOYMENT

In order to monitor compliance with their NMP commitments, ILECs continue to have the obligation to submit biennial NMP reports to the PUC, and the PUC has continued oversight over these reports including requiring the submission of additional information to ensure the accuracy of or to seek an explanation of the report. This oversight includes the ability to conduct an audit to ensure compliance with reporting obligations.

I am happy to report that all twenty-nine rural ILECs that chose option 1 reported 100% broadband deployment by the December 31, 2008 deadline agreed to in their amended NMPs as reported in their 2009 biennial reports. Further, on or about March 31, 2011, all the ILECs filed their most recent biennial reports, except for Verizon PA, which filed on June 15, 2011. Based on these reports, the remaining four ILECs under options 2 and 3 each appear to be on schedule to meet their 100% broadband availability commitment by 2013 or 2015. I can also report that all ILECs reported compliance with the universal broadband deployment commitment for schools, industrial parks, and health care facilities by the December 2005 deadline.

Finally, in terms of the reduced inflation offset under new Chapter 30, the PUC has authorized approximately \$0.5 billion in cumulative annual revenue and rate increases under the ILECs' NMP price cap mechanisms since 2005, primarily for non-competitive or protected local telephone services.

1. Bona Fide Retail Request Program (BFRR)

The BFRR is one of two programs Chapter 30 creates for ILECs to bring broadband availability to Pennsylvania residents while the companies continue to meet their statutory deployment deadlines. The BFRR provides a means for customers to obtain advanced services sooner than they may otherwise receive them through their local telephone company's deployment schedule.

Through the BFRR, customers may demonstrate that sufficient demand for advanced services exist in their area by submitting applications to their local telephone company. When the company receives applications from a minimum of fifty telephone

lines or 25% of the telephone lines within a carrier serving area, whichever is less, the telephone company must make that advanced service available to customers in that area within twelve months. “Carrier serving areas” are geographic areas served by the same central office or remote terminal. Typically, a carrier serving area will be all the homes and businesses within approximately two or three miles of one of these central offices or remote terminals.

As I earlier stated, Verizon PA, Verizon North, CenturyLink, and Windstream are each required to offer BFRR programs under Chapter 30. These participating companies must provide semi-annual reports to the PUC consisting of the number of requests for advanced service received during the reporting period by carrier serving areas and the actions taken by the company on those requests. These reports have become quite voluminous. The latest combined report received from the two Verizon companies in October 2011, for example, was over 80 pages in length and covered more than 15,000 individual BFRR requests submitted in over 2,500 carrier serving areas. The BFRR program has proved quite successful with the four companies together completing, as of last month, 611 deployments throughout the state in mostly rural areas since the start of the program. These are areas that received deployment sooner than they would otherwise if the companies followed their own rollout plans. Through these reports and the handling of consumer complaints, the PUC is required to monitor and enforce the compliance of the participating companies with their obligations to offer and administer a BFRR.

Finally, Chapter 30 sets limits, under which, in any given 12-month period, a company is not required to work on more than forty qualifying BFRRs or when there are more than twenty qualifying major build BFRRs requiring property acquisition, including rights-of-way or new construction. The two Verizon companies currently have certifications in place stating that they have met both the forty overall and twenty major build thresholds, which have resulted in the companies getting an extension for the completion of broadband deployment for qualifying BFRRs past the initial twelve-month deadline.

2. Business Attraction or Retention Program (BARP)

In addition to a BFRR, the same four companies who elected 100% broadband deployment by 2013 or 2015 are required to create a BARP to permit the Department of Community and Economic Development (DCED) to aggregate customer demand and facilitate the deployment of advanced or broadband services to qualifying businesses that DCED is seeking to attract or retain in the Commonwealth. Under this program, DCED may submit a request to these four companies on behalf of qualifying businesses in areas that DCED deems as a priority for economic development.

As part of their BARP, the participating carriers are required to designate and maintain a single point of contact to receive all written requests for broadband services submitted by DCED. The participating carriers must provide an anticipating service commencement date within 30-days of the execution date of a contract entered into as a result of a BARP. The service commencement date must be no more than one year from the date the contract was signed.

While DCED is mainly responsible for oversight of this program, the PUC is required to monitor and enforce the compliance of participating ILECs with their obligation to offer and administer a BARP. Unlike the other programs created by Chapter 30, under the BARP, very few actual requests have been made by qualifying businesses, and no entity has received broadband service through the BARP.

3. Broadband Outreach and Aggregation Program (BOAF)

As I already stated, Act 183 creates two different funds to help promote broadband deployment for those ILECs that did not commit to 100% deployment by the end of 2008. One of these funds is the Broadband Outreach and Aggregation Fund (BOAF). The BOAF is a grant program administered by DCED designed to help communities aggregate demand for broadband services and create outreach programs utilizing such broadband services for political subdivisions, economic development entities, schools, health care facilities, businesses, and residential customers. Act 183 provides the PUC with the authority to assess the participating ILECs' contributions to the BOAF and to verify the accuracy of the ILEC contributions. The PUC receives an annual report from DCED relating to the expenditure of the funds that we use to aid us in this verification process.

As with the BFRR and BARP, the state's four largest ILECs participate – Verizon PA, Verizon North, CenturyLink, and Windstream. While Chapter 30 caps the BOAF to a maximum size of \$5 million per year, the actual contributions to the fund are based on an assessment of any rate increases filed by the four participating companies. The PUC assesses 10% of the company's first year revenue increase for contribution to the fund.

In June 2011, the PUC approved a BOAF fund size of \$50,000 for fiscal year 2011-12. The four ILECs are assessable until they meet their 100% broadband deployment commitment. Between fiscal years 2005-06 and 2011-12, a total of \$8.463 million was assessed for payment to the BOAF. The BOAF will expire on July 1, 2016.

4. Education Technology Fund (E-Fund)

The E-Fund is the other grant program created by Act 183. The purpose of this fund, which is administered by the Department of Education, is to provide grants to schools to purchase or lease telecommunications services, equipment, infrastructure, or facilities to establish broadband networks between, among and within school entities. Grants can also cover distance learning initiatives that use these broadband networks and technical support services for the enumerated activities. As with the BOAF, Act 183 provides the PUC with the authority to assess the participating ILECs' contributions to the E-Fund and to verify the accuracy of the ILEC contributions.

As with the BOAF, the PUC assesses the four participating carriers 10% of the company's first year revenue increase for contribution to the E-Fund. However, the E-Fund has two additional funding mechanisms.

The first, written into Chapter 30, requires the non-rural ILECs electing the third option, Verizon PA and Verizon North, to contribute \$7 million per year in fiscal years 2005-06 and 2006-07 prorated between the two companies based on access line counts, and, thereafter, they must contribute, on the same prorated basis, the amount needed to bring the E-Fund up to \$7 million each year until the last contribution was made on June 30, 2010.

The second involves a commitment made by the two Verizon companies outside of the statutory requirements of Chapter 30 to make additional contributions in the fiscal years 2006-07 through 2010-11 of up to \$3 million to the E-Fund to ensure that it has a yearly minimum of \$10 million available. While the E-Fund expired on June 30, 2011, as provided by Act 183, during the life of the fund the four companies paid a combined total of \$60 million into the E-Fund.

THE PUC'S AUDIT PROCESS

Act 183 requires the PUC to monitor and enforce each ILEC's NMP commitments as approved by the PUC. This oversight includes the ability to conduct an audit to ensure compliance with reporting obligations. The PUC entered an order in 2005 concluding that we had the authority under the Public Utility Code, including the new Chapter 30, to perform investigative-type audits for the purpose of independently verifying the reported progress of any ILEC's NMP.

Pursuant to this decision, the PUC conducted an audit of Verizon PA's 2007 biennial NMP report, representing the company's implementation status for broadband deployment as of December 31, 2006. The PUC used an outside consultant to perform the audit, and the consultant issued a report in September 2008.

Generally, the audit found that Verizon PA had met all but one of its NMP broadband and other Chapter 30 commitments through 2006 and was compliant with the PUC's reporting guidelines for NMP biennial reports. The consultant's report contained almost two dozen recommendations for improvements to Verizon PA reporting protocols.

These included better reporting and provisioning commitment benchmarks, mechanizing the counting process to provide more accurate reporting of broadband availability, and other ways for improving how the company reported results.

While many of the recommendations were agreed to by Verizon PA, some were not. For the remaining disputed issues, the PUC convened a workshop between Verizon PA and the PUC's staff. This workshop resulted in a joint report being issued in February 2009 resolving all unsettled issues by establishing reporting and provisioning commitment benchmarks for measuring Verizon PA's performance on network modernization until 2012.

At that time, the PUC staff and Verizon PA will reconvene to establish provisioning performance benchmarks for the company's last two reports due in 2015 and 2016 that cover the time period ending December 31, 2014, and December 31, 2015, respectively.

CONCLUSION

To conclude, the PUC believes the implementation of Chapter 30, particularly relating to both the broadband deployment commitments contained in the ILECs' NMPs and to the two funds and the BFRR program created to further facilitate broadband deployment beyond the commitments made an ILEC's NMP, has been successful to date. The PUC continues to take an active role in monitoring NMP compliance to ensure that these broadband commitments are being met by all ILECs with NMPs. This oversight

includes performing audits, as necessary, to verify the reported progress of broadband deployment commitments contained in an ILEC's NMP.