

Legislative Budget and Finance Committee

A Report on the Pennsylvania ILEC Broadband Deployment

Report Comments by Jason R. Brehouse, Esq., Project Manager

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Good morning. My name is Jason Brehouse (Project Manager) and it is a pleasure to be here today with the members of the Legislative Budget and Finance Committee to discuss our report on the Pennsylvania Incumbent Local Exchange Carrier (ILEC) broadband deployment mandates. Present with me today is committee staff person, Anne Witkonis (Analyst II). We are also pleased to have with us today representatives of the Pennsylvania Public Utility Commission (PUC) and Department of Community and Economic Development (DCED).

Senate Resolution 2019-48 (SR 48) directed the committee: 1) to determine whether Pennsylvania ILECs met the broadband deployment mandates under Chapter 30, an alternative form of regulation of telecommunication services, of the Pennsylvania Public Utility Code, 2) to analyze efforts of the PUC and DCED regarding the compliance and administration of the Bona Fide Retail Request programs, known as BFRR programs, required to be implemented by certain ILECs, 3) to examine the use of joint venture arrangements to meet their broadband deployment commitments, and 4) to examine whether the PUC imposed any customer refunds under Chapter 30 or Chapter 33 civil penalties on ILECs.

Chapter 30 reflects the Commonwealth of Pennsylvania policy concerning the delivery of protected services, also referred to as basic universal services, such as residential and business consumer service necessary to complete a local exchange call; touch-tone service; switched access service; special access services; and the ordering, installation, restoration, and disconnection of these services; unless the PUC has determined such services to be competitive. It also covers nonprotective services, noncompetitive and

competitive telecommunication services throughout Pennsylvania that are meant to reinforce the Commonwealth's commitment to universal telephone service, and the desire to balance mandated deployment of broadband services with market driven deployment of broadband services. Chapter 30 specifically reflects that broadband service is considered to be of vital importance to Pennsylvania's rural, suburban, and urban communities.

Presently, Chapter 30 legislation consists of two stages:

- Act 67 of 1993 established the original Chapter 30 provisions, in recognition of the transition of the telecommunications industry and provided for alternative forms of regulation of in-state telecommunication services provided by ILECs, local telephone companies. It is important to note that Chapter 30 only applies to local exchange carriers and does not apply to other providers, such as cable, wireless via radio link, satellite wireless, etc. In fact, in 1999, the PUC noted that Chapter 30 requirements only applied to incumbent local exchange companies (ILECs), and it could not require competitive local exchange carriers, a carrier certified by the PUC after 1993, to implement Chapter 30 network modernization plan (NMP) requirements. The "accelerated telecommunications infrastructure modernization" provision allowed ILECs to voluntarily submit NMPs to accelerate deployment of technology and to have a fully deployed broadband capable telecommunication infrastructure in place by 2015, in exchange for the PUC's use of reduced alternative forms of regulation, and the authorization of ILECs to be removed from earning based regulation.

A 1993 PUC report titled, *Pennsylvania Telecommunications Infrastructure Study*, indicated that based on Pennsylvania ILECs' existing technology deployment schedules under rate based/rate-of-return regulation, such deployment would not occur until 2030.

- Act 183 of 2004 reauthorized an amended version of Chapter 30 that reflects the telecommunications industry's accelerated pace of evolution by providing ILECs with the ability to amend their respective NMPs to further accelerate broadband deployment, in exchange for additional economic incentives and less PUC regulation that included the following:
 - The elimination and/or reduction of inflation offset in annual rate adjustments for noncompetitive services,
 - Limitations on PUC reporting requirements, and
 - Streamlined procedures for competitive service declarations.

Chapter 30, as amended, provide the 37 Pennsylvania ILECs with three options to further accelerate a 100 percent broadband deployment as follows:

- **Option 1**, which was selected by most **Rural ILECs**, (RLECs) allowed them to commit to **100 percent** of broadband availability by **December 31, 2008**,
- **Option 2**, which was selected by the CenturyLink and Windstream PA **RLECs**, allowed them to commit to **80 percent** of broadband availability by **December 31, 2010** and **100 percent by December 31, 2013**, (~~or December 31, 2015~~) along with the requirement they establish a BFRR program and Business Attraction and Retention (BAR) program, and
- **Option 3**, which was selected by Verizon PA and Verizon North, the only two **Nonrural ILECs**, allowed them to remain committed to **100 percent** by **December 31, 2015**, (~~or December 31, 2013~~) along with the requirement they establish a BFRR program and BAR program.

In regards to the previously mentioned issues, the committee determined the following:

{Section III – ILEC Compliance}

Pennsylvania ILECs fulfilled their broadband deployment commitments as mandated under Chapter 30, which required ILECs to accelerate broadband, high-speed Internet network availability using any technology at the minimum download speed of 1.544 Mbps and upload speed of 128 Kbps in a balanced manner throughout rural, suburban, and urban areas. Broadband was to be made available to 100 percent of the ILECs' total access lines in their distribution networks to allow the customer and/or end-user to have access within ten business days of a customer's request by the corresponding deadline selected by each ILEC, such as December 31, 2008, December 31, 2013, and December 31, 2015.

We found that, as required by law, the ILECs filed amended NMPs and NMP biennial reports with the PUC. Our review confirmed the reports were filed by each ILEC and reflected that each ILEC met its 100 percent broadband availability commitment in a timely manner.

The acceleration of broadband availability via high-speed network implemented by ILECs operating in Pennsylvania was primarily based on Digital Subscriber Line, also known as DSL, or other copper wire systems, and a small amount of fiber with some ILECs utilizing wireless via radio link and satellite wireless pursuant to joint venture agreements to satisfy any potential shortfalls as the ILECs' respective commitment dates approached.

{Section IV – BFRR Program}

The PUC and DCED oversaw the successful implementation of the BFRR programs by the four ILECs, CenturyLink, Windstream PA, Verizon PA, and Verizon North, as required under Chapter 30 to implement

the program. The BFRR program allowed customers to obtain advanced services sooner in their respective communities than the mandated deadline for making broadband services available.

{Section V – Joint Venture Agreements}

As alluded to previously, four ILECs, CenturyLink, Windstream PA, Verizon PA, and Verizon North, appropriately used joint venture arrangements, in limited instances, to meet their broadband deployment mandates as provided for under Chapter 30.

{Section VI – Compliance Authority and Actions Under Chapters 30 and 33}

The PUC imposed no customer refunds under section 3015(a)(2) of Chapter 30, nor did it impose any Chapter 33 civil penalties on any of the Pennsylvania ILECs as no complaints warranted such action.

{Section III – ILEC Compliance}

It is also worth noting that the statutory goals and regulatory authority of Chapter 30 established pursuant to Act 183 of 2004 in relation to broadband deployment were essentially fulfilled upon reaching the stated final deployment date of December 31, 2015. The PUC continues to have some limited ongoing regulatory authority in relation to certain other provisions, for example the section 3016(f) prohibition against using revenues or expenses from noncompetitive services to subsidize competitive service. Additional statutory authority would be needed to enhance broadband deployment or existing download and/or upload speeds, or to extend broadband deployment mandates to other providers, such as cable, wireless via radio link, satellite wireless, etc.

{Section VII – Stakeholder Recommendations}

While we make no recommendations, we would direct the reader to look at the administrative and oversight recommendations of various stakeholders, although any such recommendations are somewhat inhibited, as we do not know what hypothetical broadband deployment mandates or goals might ultimately be proposed in any future Chapter 30 legislation.

In closing, we extend thanks to the various stakeholders that provided guidance and insight with regard to our numerous inquiries. In particular, we thank the staffs of the Pennsylvania Public Utility Commission and the Department of Community and Economic Development. We also thank the Pennsylvania Office of Consumer Advocate, and the representatives of the incumbent local exchange carriers, including the Pennsylvania Telephone Association, for their cooperation and input.