

Prepared Testimony of

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*Before the*

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Good afternoon, Chairman Phillips-Hill, Chairman Kane, and Honorable Members of the Senate Communications & Technology Committee. I appreciate this opportunity to speak with you today about the proposed 5G wireless legislation. My comments are brief.

I appreciate your recognition that having ubiquitous and ready access to fixed and mobile broadband networks and services for consumers for employment, education, healthcare, and other purposes has become even more important in the current Covid-19 pandemic. The pandemic has highlighted why the Federal Communications Commission (FCC) and other stakeholders concluded that a majority of Americans lack access to broadband service without access to mobile and fixed broadband.<sup>1</sup> A corollary to this conclusion is a recognition that mobile broadband has not yet become a viable substitute for fixed broadband.<sup>2</sup> And, affordability is the main obstacle to adoption.<sup>3</sup>

Today's hearing is focused on the Committee's concerns regarding the acceleration and deployment of the wireless network infrastructure that is critical to offering 5G mobile broadband service to Pennsylvanians. It is clear that 5G wireless networks are advanced networks that play a critical role in next-generation mobile broadband. However, what is not always clear to the public is the Public Utility

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<sup>1</sup> See e.g., *FCC Section 706 Report*, Docket No. 15-191 (January 29, 2016), paragraph 17.

<sup>2</sup> See e.g., *FCC Section 706 Report*, Docket 17-199, (February 19, 2018), paragraph 18

<sup>3</sup> See e.g., *In re: Lifeline Modernization and Reform*, Docket Nos. 11-42 and 10-90 (April 27, 2016), paragraph 2.

Commission's role when it comes to wireless networks like 5G and mobile networks and services. My comments reflect the Commission's jurisdiction.

The Commission has very limited jurisdiction over wireless networks and services under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102. Section 102 states that the Commission does not have jurisdiction over wireless providers that are not otherwise a public utility for voice service, including 5G wireless networks and providers. The Pennsylvania Supreme Court recently ruled in *Crown Castle NG E. LLC v. Pa. PUC*, 234 A.3d 665 (Pa. 2020), 2020 Pa. LEXIS 3835 (*Crown Castle*), that the Commission does have jurisdiction over Distributed Antenna Service (DAS) providers.

This is an important component of the Commission's jurisdiction because many 5G wireless providers may increasingly rely on DAS networks to provide services. DAS providers will assist wireless carriers to deploy 5G wireless services through their networks by providing the infrastructure needed to provision 5G service.

However, it must be emphasized that these DAS providers are not directly offering a retail wireless service to the public at large — a DAS provider is delivering a wholesale telecommunications service to the public for a fee, a public which consists of other companies. In its *Crown Castle* decision, the Supreme Court acknowledged this key fact and ruled that the Commission's jurisdiction is not confined simply to regulating utility service provided to retail customers only, but also encompasses utility services provided to carrier-customers too.

Additionally, the Commission exercises jurisdiction over a wireless carrier that seeks to become an “Eligible Telecommunications Carrier” (ETC) under federal law. Wireless providers seek ETC designation so that they can obtain federal universal service high-cost funding from the FCC to deploy and provide mobile voice and broadband service to eligible consumers. Wireless carriers can also seek to become Lifeline-only ETCs. This allows eligible consumers to receive \$7.95 a month to buy voice and mobile broadband service. Outside of these instances, Section 102 has no provision giving the Commission jurisdiction over mobile broadband networks or services such as those that might arise for 5G purposes.

This means that the Commission currently exercises very limited jurisdiction over wireless networks or services. Indeed, the Commission also has very limited jurisdiction over broadband networks and services as well. Chapter 30 of the Code, 66 Pa. C.S. § 3010 *et. seq.* addresses Commission jurisdiction over wireline broadband networks and service. Chapter 30 imposes on Incumbent Local Exchange Carriers (ILECs) the obligation to make broadband available within 10 days of a consumer’s request. That obligation makes ILECs, usually the “local phone company” to the public, the only provider that is legally required to make broadband available to customers, but only at Chapter 30 speeds. Those speeds are .128 Megabits (Mgps) up and 1.5 Megabits down.

Unfortunately, Chapter 30 speeds appear to have been overtaken by recent technology, consumer expectations, and federal policy changes. As the Commission does not exercise jurisdiction over wireless carriers, except in those limited circumstances

described above, the Chapter 30 obligation does not extend to mobile broadband service let alone the new 5G service.

The preceding discussion regarding the scope and breadth of the Commission's jurisdiction was necessary to clarify our jurisdiction but to also indicate that it remains an important consideration given the real possibility that disputes may arise from public utilities seeking to gain access to the public rights-of-way or the placement of equipment attachments on municipality's utility poles. I would also like to note here that the FCC's jurisdiction over pole attachments does not encompass municipal entities so the Commission's recently-exercised jurisdiction over pole attachments also would not extend to municipal rights-of-way. The aim to provide greater legal certainty and clarity on the rules in Pennsylvania regarding 5g networks and services is a goal that would greatly benefit Pennsylvanians.

I am happy to answer any questions that you may have.

Thank you.