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September 17, 2010

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2nd Floor)
Harrisburg, PA 17105-3265

Re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, Docket No. I-00040105

AT&T Communications of Pennsylvania, LLC v. Armstrong Telephone Company - Pennsylvania, *et al.*, Docket No. C-2009-2098380, *et al.*

Dear Secretary Chiavetta:

Enclosed for filing please find the Replies to Exceptions of the Pennsylvania Telephone Association, which is being filed electronically in the above-captioned matter. Copies of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By: Norman J. Kennard

NJK:tlt
attachments
cc: Administrative Law Judge Kandace F. Melillo
James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Wayne E. Gardner, Commissioner
Robert F. Powelson, Commissioner
John F. Coleman, Jr., Commissioner
Cheryl Walker-Davis, Office of Special Assistants

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLIES TO EXCEPTIONS OF
THE PENNSYLVANIA TELEPHONE ASSOCIATION

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Dated: September 17, 2010

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I. SUMMARY OF REPLIES TO EXCEPTIONS

The PTA identified in its Exceptions the critical and fatal flaws contained in the Recommended Decision that render it unacceptable from both a legal and policy perspective. Having determined, contrary to consistent Commission precedent, that loop costs recovered in the state CCL charge should be stripped out, the ALJ recommends complete intrastate parity with both the interstate traffic sensitive ("TS") and non-traffic sensitive ("NTS") elements, but wholly fails to follow the means by which the federal rate was achieved in reliance upon the mistaken belief that the interstate rate still recovers loop costs from access customers. Elimination of the CCL charge, without providing corresponding PA USF support for loop recovery, would be a reversal of this Commission's consistent precedent.

Such a decision constitutes no less than the complete abandonment of the Commonwealth's universal service policy, in contravention of Act 183. Local rates will escalate by $7.32 per month on average, a 47% increase. This creates an *average* monthly residential tariff rate exceeding $23.00 for the PTA Companies in aggregate and an average billing rate higher that $32.07. Some RLEC tariffed rates will be in the high twenties and low thirties. The Recommended Decision also completely ignores the absence of tangible end use customer benefits associated with such changes and the RLECs' inability to fully recover the lost revenue.

The IXCs, of course, laud the precipitous drop in access rates from the current $.048 per minute to $.019, an unprecedented 67% rate decrease. Rather than gratefully accept this unjustified regulatory gift, the IXCs greedily argue that the Recommended Decision does not go far enough – that the access reductions should be immediate or close to it.

Prominent is the claim that the Commission "promised" ten years ago to decrease access. This is false. There never was a regulatory promise to drop intrastate access rates to parity, cost or otherwise, as noted in the PTA's Exceptions. The CCL charge was intentionally designed by

the Commission as a transitional element subject to review, but not elimination. The IXCs' claim that "we-deserve-it-because-you-promised-and-you've-made-us-wait" is mere heavy-handed "guilt tripping," which misstates the Commission's original intention to reduce access rates generally, but without identifying the final objective.

What is now sought by the IXCs far exceeds anything done in the past. Under the 1999 *Global Order*, the PTA Companies' access rates were reduced from $.066 to $.051, a 22% reduction. As a result of the Phase II access rate efforts in 2003, the RLECs further decreased access rates to current levels ($.048 or 6% lower).

Asserting that the Recommended Decision "failed to focus on the fastest, most straightforward way" to obtain its 67% rate reduction, AT&T wants to reap net 76% of the reduction in Year 1 and the remainder over the next 3 years, by receiving the complete reduction immediately and using the PA USF as a temporary bridging mechanism. AT&T's alternative recommendation, ratcheting up local rates in rapid $3.50 increments until complete parity is achieved, is even worse, with 48% of the 67% access decrease accomplished within 20 days, and 90% within 12 months.

AT&T attempts to describe its approach as "implement[ing] local service increases gradually over time, and in a manner that generally tracks with inflation, such that, in real terms, consumers will not be paying substantially more for local telephone service than when the $18 cap was implemented in 2003."[1] This is not at all what AT&T is suggesting. AT&T simply shifts the access decreases to local service customers. The resulting local rates are declared "just and reasonable" by mathematical default, not because they are reasonable on their own merits.

While the current rate cap is $18.00, most PTA RLECs' local rates are below this level. The average PTA Company tariffed local rate is $15.57. AT&T proposes to drive the *actual*

[1] AT&T Exceptions at 23.

rates up to and beyond $25.00. Moreover, AT&T does not follow an inflation-based index. Its own calculation of the current benchmark of $18.00 adjusted for inflation is $22.00, not $25.00.[2] Under AT&T's implementation proposal, eighteen of the thirty-one RLECs, a majority, will have rates in excess of that level. Nor should inflation drive individual rate design.

These machinations simply highlight the inadvisability of implementing the Recommended Decision in the first place. The resulting local rate effects are neither comparable nor affordable by local rural ratepayers. Nor are they recoverable by the RLECs, contrary to the statutory requirement of revenue neutrality. The objective of complete parity without PA USF support is, itself, flawed.

There is no need, either practical or policy based, for such draconian decreases. The IXCs are not losing money on intrastate toll service. Their state toll revenues exceed, by a comfortable margin, their state-wide access rate related expense. The profitability of AT&T's toll services is very substantial and will only become even more pronounced if the Recommend Decision is implemented.

The reduction in access rates, while immensely significant to the RLECs, is the proverbial drop in the bucket to the IXCs. AT&T is the largest communications holding company *in the world* by revenue, with 2008 reported consolidated revenue of more than $124 billion and $12.9 *billion* in profits, up 7.7% from 2007. Verizon's operating revenues for 2008 were $97.4 billion, an increase of 4.2 over the prior year and operating income of $18.1 *billion*, a 9.2% improvement over the prior year. In 2008, Comcast grew its consolidated revenue by 10.9%, to approximately $34.3 billion and increased consolidated operating income by 20.7% to approximately $6.7 *billion*.

[2] AT&T Rebuttal at 5.

As explained in the PTA's Exceptions, the revenues at stake are conversely very large for the RLECs. For the PTA RLECs, 17.5% of their *total* intrastate revenues is at risk. For a majority, sixteen RLECs, the decrease to complete interstate parity represents 20-30% of their total state revenues. The state regulated revenue of three RLECs will be slashed by 40-50%. This is income to the RLECs, representing more than 80% of the RLECs' operating income that will be potentially slashed. The PTA Companies use this money, earned under their Chapter 30 Plans, to maintain and improve their networks, the only network that guarantees voice and broadband access for all.

Current access rate levels have not harmed the toll market. The toll market is declining for a variety of reasons, but none of these relates to access charge levels. AT&T decided well over six years ago that it would no longer serve stand-alone toll customers in the mass markets and chose to allow this market to be "dwindled away over time through churn." AT&T, then, raised rates for its all-distance bundles in Pennsylvania by anywhere from $2.00 to $5.00, and increased the monthly recurring charge on many plans typically by either $1.00 or $2.00, *while at the same time receiving access reductions in Pennsylvania.*

The IXCs claim that federal intercarrier compensation rules applicable to wireless calling have allowed an unlevel playing field to develop, which has allowed wireless carriers to unfairly gain market share. This is nonsense. Wireless service is growing because of mobility, convenience, and the high tech functionalities of the phones. Access rates have nothing to do with it. The impact described by AT&T is both exaggerated and inaccurate.

Access rates are not harmful to any other aspect of the telecommunications market. When a CLEC serving area includes multiple LECs, it is allowed to develop and bill a blended access rate for all traffic. There is no discrimination. All carriers pay the same rates. The remaining two reasons given by AT&T for reducing intrastate access rates are mere make

weights also. The proclaimed reduction in RLEC billing cost with set of rates has no record quantification and certainly it cannot come close to the revenue losses the RLECs will experience. Percent Interstate Use arbitrage is only one form of access avoidance, which in and of itself is not a basis for blindly lowering intrastate access rates. It is *one* factor.

On the policy side of this debate, the IXCs' position suffers from the same infirmities as the Recommended Decision, which adopted their arguments. The first fallacy is that removing all implicit support from access charges means that intrastate access rates must mirror interstate rates as has been previously explained. Indeed, the IXCs' position that access rates should be reduced to "cost" actually supports an intrastate rate that is *higher* than the interstate rate, because, in Pennsylvania, the loop remains a joint, shared cost subject to recovery in access rates.

The second critical flaw in the IXCs' pricing theory is the assertion that, once identified, all "implicit" support must be placed upon local ratepayers (or simply forsaken by the RLECs). Explicit does not mean that at all. The Commission has always stated, the goal is to "*replace* the system of implicit subsidies with 'explicit and sufficient' support mechanisms to attain the goal of universal service in a competitive environment," recognizing that the promotion of competition is not mutually exclusive to the preservation of universal service.

In their extensive and admiring recitation of ALJ Schnierle's 1998 landmark Recommended Decision in the original access charge case, the IXCs selectively quote only the sections that favor them, those that relate to removing implicit subsidies, and intentionally ignore the inconvenient passages that also recommend the use of a rural/urban comparability benchmark and the simultaneous establishment of the PAUSF, both of which support the PTA position here, and comport with prior Commission practice.

Prominent in ALJ Schnierle's recommendations was that "any solution to the access charge situation requires both rate rebalancing *and* universal service funding." This ALJ saw the necessity of balance between the three legs of access rates, local rates, and USF -- that access charge reductions should be offset by a combination of rebalanced rates and universal service fund payments. ALJ Schnierle expressly rejected Verizon's complaint about funding the USF as one-sided. "If a system is to be devised to have generally equal prices between urban and rural customers (as required by the Telecommunications Act), then the urban customers, of necessity, will be subsidizing the rural." This finding is directly contrary to the complete insulation of Verizon from any further USF contribution that ALJ Melillo now suggests is appropriate. If ALJ Schnierle (and this Commission) "were right over twelve years ago" then they were right in all aspects.

The PTA's primary position continues to be that, until the FCC gives a clearer indication of the direction it intends to pursue, this Commission should retain the status quo. An alternative suggested by the PTA is that the Commission sponsor a collaborative process, which is confidential so candor is encouraged, where the parties work out their differences instead of engaging in litigation bravado.

A third option supported on this record, if the Commission desires some immediate movement, could be a reduction to traffic sensitive (TS) parity (a $10.4 million or 10% decrease) phased in over a reasonable period of time. For those companies whose intrastate TS elements are higher than interstate, local rates should increase up to, but not exceed the $18.94 comparability benchmark. The impact upon the PA USF would not be significant, perhaps a 1% increase in the current level of the fund. For those RLECs who would realize a revenue gain because their intrastate TS rates are lower than the interstate counterpart, the intrastate CCL charge would be reduced on a dollar-for-dollar basis to maintain revenue neutrality.

Any decreases in access rates beyond TS parity, however, should not occur until the Commission resolves the PA USF rulemaking proposed in ALJ Colwell's Recommended Decision. While the PTA does not support the rulemaking changes suggested by ALJ Colwell, in both proceedings the parties have clearly concurred that some PA USF structural mending is necessary. There are several significant structural USF reform issues that should be addressed, if the PA USF continues, which it should, including the funding formula, disbursements to price cap RLECs as access lines decrease, and whether to include wireless and VoIP carriers.

If the CCL charge (the NTS element) and, therefore, loop recovery is intended to be reduced or even eliminated per the Recommended Decision, the PA USF needs to be revised structurally to accomplish the task As always, the objective is a fund that fairly and equitably supports necessary USF obligations identified by the Commission. As the Commission noted in the *Global Order*, the PA USF was to be revisited in order to determine the best mechanism to address the CCL:

> The small/rural company fund is a transitional fund to be used until the Commission establishes a permanent universal service fund, consistent with federal rules. The Commission will initiate an investigation on or about January 2, 2003 to develop a long-term solution to universal service. This proceeding should be coordinated with the long-term review of the Carrier Charge.[3]

The PTA respectfully submits that the best mechanism to address the CCL is not, as the ALJ has recommended, the wholesale elimination of that intrastate element and the support it provides to maintain and preserve universal service.

[3] *Re Nextlink Pennsylvania, Inc.*, Docket Nos. P-00991648 and P-00991649 (Order entered September 30, 1999) ("*Global Order*") at 46 (quoting Sprint's Main Brief).

II. REPLIES TO EXCEPTIONS

A. Access Rates Are Neither Unjust Nor Unreasonable (Reply to AT&T Exception 1 and Sprint Exception 1)

1. AT&T Exaggerates Competitive Effects

Fully the first one-half of AT&T's Exceptions by length consists of explaining that access rates must be reduced, which is the predicate for its position that the change must occur *immediately*.[4] Sprint follows a similar line of argument.[5] AT&T complains that it is unable to compete. "AT&T presented uncontroverted evidence that its wire line traffic is significantly eroding and much of this is attributable to the fact that IXCs face artificially higher costs than their competitors."[6]

This is litigation posturing. In published articles and sworn testimony to the FCC, the IXCs have listed many reasons for the pressures on their long distance businesses. Peculiarly, the level of access rates is not among them.[7] Such positions are a façade attempting to justify the proposed transfer of hundreds of millions of dollars, over multiple years, from rural local service providers and their customers to the largest long distance and wireless carriers in the country, while at the same time enhancing the competitive positioning of their wireless and cable operations by increasing the RLECs' end user rates.

Reductions to the intrastate access rates to 14% of Pennsylvania's incumbent access lines mean a combined savings of about $83 million to the several well heeled mega-carriers. While hugely significant to the RLECs, the sum will have little or no effect on further promotion of wireline toll competition, particularly in rural service territories.[8]

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[4] AT&T Exceptions at 1-20
[5] Sprint Exceptions at 3-5.
[6] AT&T Exceptions at 14; *See also* Sprint Exceptions at 4.
[7] PTA Direct at 4-5.
[8] *Id.* at 41.

AT&T is the largest communications holding company *in the world* by revenue[9] and the nation's largest provider of broadband. AT&T's operating income increased $2.7 billion or 13% in 2008 primarily due to continued growth in wireless service and data revenues.[10] AT&T offers voice coverage in more than 215 countries, data roaming in more than 185 countries, and a 3G network in more than 100 countries. AT&T is the nation's largest Wi-Fi provider. AT&T is one of the world's largest providers of IP-based business communications services. AT&T's 2008 reported consolidated revenue was more than $124 billion, with $12.9 *billion* in profits, up 7.7% from 2007.[11]

Verizon's operating revenues for 2008 were $97.4 billion, an increase of 4.2%, or 5.1% on an adjusted basis over the prior year.[12] Adjusted operating income was $18.1 *billion*, which was an increase of 9.2% for the year. Adjusted earnings from continuing operation were $2.54 per share, a 7.6% increase. By Verizon's own comparison, only three other companies in the Dow Jones 30 generated more cash from operations.[13] As of December 31, 2008, Verizon's network served in excess of 36,161,000 wireline access lines, 8,673,000 broadband connections, and 1,918,000 FiOS TV customers in 28 states and the District of Columbia.[14]

In 2008, Comcast grew its consolidated revenue by 10.9%, to approximately $34.3 billion and increased consolidated operating income by 20.7% to approximately $6.7 *billion*.[15] Comcast's 2008 consolidated pro forma revenue growth attributable to phone service grew by 48% in 2008.[16] As of December 31, 2008, Comcast's cable systems served approximately 24.2

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[9] PTA Direct at 31.
[10] PTA Direct at 31 citing http://www.att.com/Common/about_us/annual_report/pdfs/2008ATT_Management.pdf at 23.
[11] *Id.* at 32.
[12] *Id.*
[13] PTA Direct at 32 citing Verizon Annual Report at 1.
[14] PTA Direct at 32 citing Verizon 10-K at 9-10.
[15] PTA Direct at 32.
[16] PTA Direct at 32 citing http://www.cmcsa.com/our_company.cfm

million video customers, 14.9 million high-speed Internet customers and 6.5 million phone customers.[17] In early 2009, Comcast announced that it had surpassed Qwest as the third largest phone service provider in the county.[18] Comcast declined in discovery to identify how many customers it serves in Pennsylvania, but clearly its position is very large and growing.

In the context of a *single* market in which the mega-carrier AT&T operates -- the long distance market -- it complains that its business has dwindled "as more and more customers leave traditional wire line long distance for lower priced (and subsidy-free) options."[19] While this may be AT&T's state ligation version, the actual facts as presented by AT&T to federal regulators are substantially different. The toll market is declining for a variety of reasons, but none of these relates to access charge levels. The IXCs have been in the process of abandoning the IXC market due to factors much more powerful than access, including primarily changing technology and customer preferences.

In a declaration filed before the FCC, AT&T explained its June 2004 decision (well after the RLEC Phase I and II intrastate access reductions) to abandon the long distance mass markets.[20] AT&T set forth a broad range of reasons why its wireline toll business plan was failing, including: the existence of "powerful competitors;" wireless package plans; the RBOCs authority to offer interLATA services "competing aggressively and winning market share very quickly;" E-mail; and instant messaging,[21] as all "contribut[ing] to the decline and abandonment of AT&T's long distance business plan."[22]

AT&T decided well over six years ago that it would no longer serve stand-alone toll customers in the mass markets, "scale back our operations to retain existing infrastructure only

[17] PTA Direct at 32 citing Comcast 10-K at 1, 2.
[18] PTA Direct at 32 citing www.comcast.com/About/PressRelease/PressReleaseDetail.sashx?PRID=844
[19] AT&T Exceptions at 19.
[20] PTA Direct at 4-5 and PTA Ex. GMZ-15.
[21] PTA Ex. GMZ-15 at ¶ 4.
[22] PTA Direct at 37-38.

enough to serve customers at a high level of service as they migrate[.]"[23] It intended that stand alone toll customers would be "dwindled away over time through churn."[24] AT&T, then, raised rates for its all-distance bundles in Pennsylvania by anywhere from $2.00 to $5.00, and increased the monthly recurring charge on many plans typically by either $1.00 or $2.00, *while at the same time receiving access reductions in Pennsylvania.*[25] This was in the same time frame during which AT&T was receiving additional rural access reductions in Pennsylvania though the rural Phase II reform proceeding. This well documented market abandonment through churn and price increase strategy completely undercuts AT&T's claims of historic benefits and promises of future customer benefits. These representations are "illusory and deceptive."[26]

AT&T decided to grow its revenues in other lines of businesses, and drastically reduced its investment into the wireline segment because of a shift in technology, not because of the level of rural intrastate access charges.[27] As AT&T stated: "Due to technological advances, changes in consumer preference, and market forces, the question is *when*, not *if*, POTS service and the PSTN over which it is provided will become obsolete."[28]

The IXCs are not losing money on intrastate toll service. State toll revenues exceed, by a comfortable margin, the IXCs access rate related expense, despite the protests to the contrary. For example, in its direct testimony, AT&T argued that the average RLEC access rate exceeds AT&T's average toll price of 4.4¢.[29] Comparing a *statewide* average toll price against a *subset of the intrastate access* charges it pays (and a small subset at that) is misleading. When compared, more accurately, on a total basis, statewide toll to statewide access, the profitability of

[23] PTA Ex. GMZ-15 at ¶ 1.
[24] *Id.* at ¶ 9.
[25] *Id.* at ¶¶ 2, 33-34.
[26] PTA Direct at 39.
[27] *Id.* at 40.
[28] *Id.* at 40.
[29] AT&T Direct at 41.

AT&T's toll services is very substantial.[30] And, obviously, if successful in this case, AT&T's profit from toll services will become even more pronounced.[31]

Turning to the wireless market, AT&T also complains that: "There are now substantially more wireless phones than wireline phones in Pennsylvania."[32] AT&T claims that federal intercarrier compensation rules have allowed an unlevel playing field to develop, which has allowed wireless carriers to unfairly gain market share.[33] Mr. Zingaretti characterized this argument as "[n]onsense":

> Wireless service is growing because of mobility, convenience and the high tech functionalities of the phones. The iPhone is a phenomenon by any measure. Wireless phones no longer offer just voice service, or voice and camera services. They have "apps." Web browsing and data transmission over wireless phones are exponentially expanding wireless' viable options. Consumers in younger generations are very willing to use wireless exclusively for their communications needs. VoIP phones are gaining widespread favor. Reliability and privacy are less valued features.[34]

"This overall maturation of technology and usability has driven the growth of competitors' lines, including the wireless carriers, at the expense of the traditional fixed lines."[35] Access rates have nothing to do with it.

The rule, which applies access charges only to calls outside the rather large Metropolitan Calling Area ("MTA") (i.e., inter-MTA calls), was designed by the FCC many years ago. The principal wireless carriers that have benefited from the FCC's rate design are the biggest ones -- AT&T Wireless, Verizon Wireless and Sprint/Nextel. Any policy, therefore, that allegedly favors wireless carriers already favors the complainant and IXC intervenors, AT&T, Verizon,

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[30] *See* PTA CX Ex. 2 (Figures not recited in Replies to Exceptions because marked confidential by AT&T).
[31] *See* PTA CX Ex. 3. (Figures not recited in Replies to Exceptions because marked confidential by AT&T).
[32] AT&T Exceptions at 16. ("Of critical importance here, none of the growing competitive alternatives are saddled with access charges in the same way as traditional wireline long distance, placing a disproportionate -and patently unfair - subsidy burden on the IXCs. For example, wireless carriers generally only pay the very low reciprocal compensation rates, which are often as low as seven one-hundredths of a cent ($0.0007) per minute.")
[33] AT&T Exceptions at 18.
[34] PTA Direct at 42-43.
[35] PTA Direct at 43.

and Sprint. Indeed, AT&T supported the FCC ruling.[36] "It is disingenuous for them to complain about it to gain further advantage on the IXC side of their house."[37]

Moreover, the IXCs present a distorted picture. Neither wireless nor wireline pays any compensation (or pays reciprocal and symmetrical rates) to the other for *intra*MTA traffic. The fact that calls carried between wireline and wireless carriers do not pay access charges in either direction is an advantage to the IXCs. The interMTA traffic where access applies is *de minimus* ("at or close to 0%").[38] Placed in context, AT&T's hyperbole about "[c]harging some types of service providers over 14,000% [the highest access rate] more than their competitors [the lowest wireless incremental rate]"[39] is pure exaggeration.

But as importantly, even were this a problem (which it is not), any conclusion the Commission reaches in this case will not impact the wireline carriers' ability to bill access charges for terminating cellular traffic.[40] While the IXCs complain that the FCC has approved a different compensation scheme for different technologies, this is a federal policy decision.[41]

The designer of the rule, the FCC, applies its own interstate access rates to the wireline carriers on the basis of tariffed local calling areas, and to wireless on the basis of the MTA. Compliance with the federal rule by the PTA Companies and this Commission is required regardless of whether the PTA companies agree or disagree with it. If that is how the FCC

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[36] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499,16016, ¶ 1036: *See also T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, released February 24, 2005 ("As a consequence, most traffic sent to CMRS providers from small incumbent LECs is terminated without compensation.").

[37] PTA Direct at 43.

[38] PTA Surrebuttal at 21. As Mr. Zingaretti explained: "The quantification of traffic that is inter-MTA is a negotiated percentage that is part of the interconnection agreement. It is my experience that inter-MTA traffic has been represented by wireless carriers at or close to 0% of overall wireless to wireline traffic. This results in no (or only very marginal) access charges being assessed to wireless carriers.")

[39] AT&T Exceptions at 18.

[40] *See* Declaratory Ruling in WT Docket No. 01-316, *In the Matter of Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges*, ¶ 14 (Released July 3, 2002).

[41] PTA Direct at 44.

designed intercarrier compensation for wireless. It is a fact of life, not a reason to arbitrarily change intrastate access rate levels.

Indeed, reducing the RLECs' access rates while simultaneously increasing RLEC customer's local rates simply benefits the IXCs' wireless affiliates even more. As the IXCs increase the RLECs' local service rates above a reasonable benchmark, they are also substantially increasing the likelihood of accelerating line loss on the RLECs' networks. AT&T Wireless, Sprint Nextel and Verizon Wireless, therefore, all stand to realize even greater competitive gains because of potential unreasonable local rate increases proposed in this proceeding.[42] Sprint's market share avarice is so great that it actually complains that the wireless customers continue to also subscribe to wireline services: "The question must be asked by the Commission: in light of consumers' overall spend on communications services, is it appropriate to continue a subsidy system that suppresses rates and leads to duplicative consumption?"[43]

As to CLECs, Sprint claims that "the present system of high access charges is both competitively harmful and unsustainable."[44] Sprint asserts, with no proof, that CLECs operating in rural markets only bill the largest ILEC access rate.[45] "Sprint fails to recognize that when a CLEC serving area includes multiple LECs, it is allowed to develop and bill a blended access rate for all traffic."[46] The FCC has expressly concluded that "a weighted average calculation based on the number of minutes of use generated by a competitive LEC's end-user customers in different LEC territories is consistent with this standard."[47] Mr. Zingaretti's firm has done so

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[42] *Id.* at 44.
[43] Sprint Main Brief at 29.
[44] Sprint Exceptions at 4.
[45] State law permits them to charge the RLEC's rate as well. 66 Pa. C.S. § 3017(c).
[46] PTA Surrebuttal at 23.
[47] PTA Surrebuttal at 23 citing *Eighth Report and Order in the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket 96-262 (Released May 18, 2004) at ¶ 48.

numerous times. "It is not difficult to develop or apply this rate, nor should the prospect of such rate application be given any weight as discriminatory or anti-competitive."[48]

Nor is there any "discrimination."[49] All carriers pay the same rates. If the call is intrastate, IXCs *all* pay the same Commission-approved rate. The Commission has approved these tariffed rates and the tariffs are applied uniformly.[50] The same applies to an interstate call, for which carriers all pay the FCC tariffed rate. The Commission previously debunked AT&T's "discrimination" argument as follows:

> Finally, in response to AT&T's allegation that the *Global Order* did not address or consider compliance with the Section 3004(d)(4) requirement that the access rates "not unduly or unreasonably prejudice or disadvantage a customer class or providers of competitive services," we agree with the [RLECs] that there is no basis for this allegation because, when rates are found to be "just and reasonable," such finding encompasses the finding that the rates are not discriminatory and, therefore, satisfy the Section 3004(d)(4) requirement. We also point out that AT&T, as an interexchange carrier of toll services, is not being treated any differently than any other type of IXC toll carrier. As such, we fail to understand why AT&T believes they are being unreasonably prejudiced or disadvantaged as a customer class.[51]

The lack of intra/interstate parity is not discriminatory either. The FERC and the Commission set rates, in their respective jurisdictions, for similar natural gas and electric services.[52] To the extent the discrimination claim relates back to wireless, the distinctions between wireline and wireless compensation are *federal* policy determinations and not the result of any action of this Commission or any RLEC.

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[48] PTA Surrebuttal at 23.
[49] AT&T Exceptions at 18.
[50] PTA Direct at 46.
[51] *Petition of the Following Companies for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan: Armstrong Telephone Company-Pennsylvania et al.*, Docket Nos. P-00981425 et al. (Order entered March 30, 2000) at 15 ("*PTA SCG March 30, 2000 Order*"); *Accord Petition of ALLTEL Pennsylvania, Inc. for Approval of an Alternative Form of Regulation and Network Modernization Plan*, Docket No. P-00981423 (Order entered March 30, 2000) at 15 ("*ALLTEL March 30, 2000 Order*").
[52] PTA Direct at 45-46.

2. Reducing the RLECs' Administrative Cost for their Own Benefit Is a Red Herring

AT&T next proclaims that the RLECs will benefit by reduced billing cost, "if for no other reason than they will only have one set of rates to bill instead of two."[53] There is no record quantification of this alleged benefit. Certainly it cannot even come close to the revenue losses the RLECs will experience. This claim should be viewed for what it is – a make weight.

3. Reduction of Arbitrage Is Also an Exaggerated Solution

Finally AT&T states: "Third, bringing intrastate rates to parity with interstate levels reduces the incentive and opportunity for harmful and costly arbitrage schemes - schemes that the evidence proved are occurring in Pennsylvania."[54] Potential arbitrage between inter and intrastate compensation is *one* reason to bring the two closer, but in a way that is moderate and rational and recognizes all other competing factors. Inter/intrastate (Percent Interstate Use or "PIU") arbitrage is only one form of access avoidance. Some carriers also disguise traffic as local or decline to include their carrier identification so the call cannot be billed to them. Other carriers simply refuse to pay. PIU arbitrage in and of itself is not a basis for blindly lowering intrastate access rates. It is *one* factor.

B. "Explicit" Does Not Mean All Loop Recovery Must Come From The RLECs' Customers (Reply to AT&T Exception 1; Sprint Exception 1; Verizon Exception 4)

The IXCs' Exceptions suffer from a lack of intellectual rigor, and even candor, in two basic instances, both of which are critically central to the IXCs' "mirroring-without-USF" advocacy. Initially, however, the PTA wants to rectify a misconception fostered by the IXCs. To the extent access rates are above cost, this is not profit to the RLEC, but rather is "support"

[53] AT&T Exceptions at 12.
[54] AT&T Exceptions at 13.

for the maintenance of comparable and affordable local rates throughout all of Pennsylvania. AT&T claims that the RLECs have "reaped huge windfalls"[55] and Sprint declares, with no basis in fact, that the "RLECs reap profits from a panoply of services provided over the local network."[56] To the extent that any subsidy exists, it is an inter class subsidy.[57] No party has claimed or attempted to prove that any RLEC is in violation of its price cap plan or, for rate of return companies, is overearning.

1. Cost-Based Intrastate Rates Are Higher Than Interstate Rates

On the substance of their argument, the first misrepresentation is the IXCs' position that removing all implicit support from access charges means that intrastate access rates must mirror interstate rates.

The interexchange carriers intentionally ignore, and even misrepresent, the federal costing policy regarding loop recovery and it deviance from Pennsylvania precedent, as well as the consistent use by both state and federal regulators to establish explicit USF support to recover a part of the previously implicit support once identified and removed from access charges. The IXCs simply assert that current access rates, both intrastate and intrastate, are above cost without one shred of proof or even review of how access rates, particularly federal rates, were developed. AT&T asks the Commission to accept its "facts" on faith: "As the Commission well knows, high access rates have caused Pennsylvania consumers to pay more than they should for intrastate wire line long distance service."[58] (The IXCs also ask the Commission to ignore, too, their refusal to agree to flow access reductions to toll customers.)

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[55] AT&T Exceptions at 25.
[56] Sprint Exceptions at 5. While Sprint lost this issue before the ALJ and did not file an exception, it to make the argument nevertheless. *See* discussion *infra*.
[57] Elsewhere, AT&T concedes that "hidden access subsidies, have been [used] to maintain inordinately low local rates." AT&T Exceptions at 23.
[58] AT&T Exceptions at 2.

The assertion does not consider whether interstate rates are, in fact, set on a cost basis and, if so, what costs have been allocated to access rates for recovery. The level of "support" in any rate is completely dependant upon one's view of the proper costs intended to be recovered. Costs are defined by the methodology used. As explained in the PTA's Briefs and Exceptions, federal access rates do not include recovery of all fixed costs, notably loop costs. The FCC sets access rates at cost under their own "no loop" theory.[59] The FCC has accounted for recovery of the loop through federal USF support and SLC.

A policy that allocates no loop costs to exchange access rates is in complete contradiction of twenty years of consistent Pennsylvania precedent from both the Commission and Commonwealth Court that the fixed costs of the loop are a joint and shared cost, a portion of which intrastate access customers must pay.[60] Therefore, the IXCs position that access rates should be reduced to "cost" actually supports an intrastate rate that is *higher* than the interstate rate, because while the interstate rate does not contribute to recovery of the loop, in Pennsylvania the loop remains a joint, shared cost subject to recovery in access rates.

If this Commission were to eliminate the state CCL charge without providing corresponding PA USF support for loop recovery, as was done on the federal level, this Commission would be reversing its consistent history of requiring all users of the network to contribute to its recovery. Instead, intrastate access rates would contribute nothing to recovery of the loop costs, and the policy of universal service would be borne by the RLECs and their customers alone. In other words, the Commission's universal service policy would be abandoned.

[59] PTA Exceptions at 27-36.
[60] PTA MB at 36; PTA RB at 25; PTA Exceptions at 29-31.

Verizon claims that the ALJ's finding that interstate rates recover their cost relies "on the RLECs' admission that their interstate access rates cover their costs and provide a reasonable return...."[61] Having successfully confused the ALJ, Sprint also piles on to this erroneous finding of fact in various ways, claiming that the "RLECs will at all times continue to make a profit on switched access."[62] This, too, is distortive.

What the PTA witness actually stated is that the FCC rates are cost-based "for the elements which it is being applied, yes....for the traffic sensitive portion..."[63] This detail, ignored by Verizon, and apparently overlooked by the ALJ, is actually an acknowledgement that non-traffic sensitive costs such as the loop are *excluded from* the FCC's cost definition, but not this Commission's. Again, as a result of the *CALLS and MAG Orders*, NTS costs are now recovered via a $3.00 SLC increase and various USF mechanisms.

Therefore, AT&T's repeated accusations of "huge subsidy payments"[64] and Sprint's allegations of "inflated switched access rates"[65] are not accurate descriptions of Pennsylvania law no matter how many times repeated. And AT&T's claim that intrastate parity promotes "moving local rates closer to cost"[66] intimates that even interstate rates are above cost and is completely inaccurate.

It adds nothing to the debate to observe, as does AT&T several times, that "the undisputed fact that there is no material difference in the cost of terminating a wireless and a wire line call."[67] The PTA agrees, but this rather trivial observation has nothing to do with the

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[61] Verizon Exceptions at 2.
[62] Sprint Exceptions at 5.
[63] Tr. 609.
[64] AT&T Exceptions at 2, 7 ("High subsidies"), 14 ("artificially higher costs"), 14 ("access subsidy burden"), 15 ("access subsidy burden"), 19 ("disproportionate -and patently unfair - subsidy burden"), 25 ("excessive access subsidies"), and 30 ("anti-competitive bloat").
[65] Sprint Exceptions at 5
[66] AT&T Exceptions at 24.
[67] AT&T Exceptions at 18; *See also* AT&T Exceptions at 12.

issue pending before this Commission -- how are costs to be allocated? The Commission has no legal obligation to change its own rate setting principles to accommodate the FCC.

As the 10th Circuit agreed: "The [FCC] has repeatedly stated that the [TCA-96] does not mandate that states transition from implicit to explicit subsidies."[68]

> Congress intended that the states retain significant oversight and authority and did not dictate an arbitrary time line for transition from one system of support to another.... Nor did Congress expressly foreclose the possibility of the continued existence of state implicit support mechanisms that function effectively to preserve and advance universal service.... we will not disturb the Commission's statutory interpretation.[69]

2. Explicit Support Should Also Come from the PA USF

The second critical flaw in the IXCs' reasoning is the assertion that, once identified, all "implicit" support must be removed *and* placed upon local ratepayers (or simply forsaken by the RLECs). Explicit does not mean that at all. Making a charge "explicit" simply means externalizing it and then providing for recovery by another means. Again on this topic, the PTA advises the Commission to follow its own precedent (and that of the vast majority of states) and employ a universal service fund as an aspect of recovering the explicit charge.[70]

Universal service funding has been available in *all* prior instances where access was reduced in Pennsylvania. Further, as the PTA has demonstrated,[71] USF support has been consistently available on the federal side as well, and particularly after the *CALLS* and *MAG Orders*, when new federal universal support mechanisms were established as the "explicit" support source for loop recovery once the CCL was eliminated.

From the very beginning, the goal has been to *replace* implicit subsidies with explicit and provide sufficient support to assure continued universal service in a competitive environment.

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[68] *Qwest v. FCC*, 398 F.2d 1222, 1231 (10th Cir. 2005).
[69] *Id.* at 1232 (citations omitted).
[70] PTA MB at 79-87; PTA RB at 53-59; PTA Exceptions at 56-57.
[71] PTA Exceptions at 27-36.

The goal has never been to shift all responsibility to local ratepayers or expose the RLECs to meaningless market opportunities to recover the lost revenues.

As the Commission stated, the goal is to "*replace* the system of implicit subsidies with 'explicit and sufficient' support mechanisms to attain the goal of universal service in a competitive environment."[72] This Commission has also previously recognized that the promotion of competition is not mutually exclusive to the preservation of universal service. Rather, if done on a *competitively-neutral* basis, both goals can be addressed as both TCA-96 and Chapter 30 require:

> 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.[73]

The concerns of AT&T, Sprint, and Verizon that the existing PA USF unfairly impedes their ability to compete because the contributions are derived solely from wireline competitors, and not wireless and VoIP providers, is best remedied by expanding the contribution base, not eliminating a public policy goal as important as universal service.

The purpose of the PA USF is to moderate rate impacts upon local service customers:

> It is in furtherance of this objective that we proposed the establishment of a state universal service fund and continue on the course to finalize these regulations. Like the FCC's mechanism in *Rural Telephone Coalition*, our objective in this rulemaking is not to subsidize the income of impoverished telephone users, but to assure that the telephone rates are within the means of the average subscriber.[74]

Adverse consequences to rural ratepayers in particular is to be avoided:

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[72] *Global Order* at 26-27 (emphasis added); *See also Rulemaking to Establish a Universal Service Funding Mechanism*; 52 Pa. Code §§ 63.141, *et seq.*, Docket No. L-00950105, (Final-Form Rulemaking Order entered June 21, 1996) at 33. ("Establishment of a fund is destined to promote and encourage the provisions of competitive services by a variety of providers and the competitive supply of all services in all regions and geographic areas of the Commonwealth. 66 Pa. C.S. § 3001(7) and (8).") ("*Rulemaking to Establish a Universal Service Funding Mechanism*").

[73] 52 Pa. Code § 63.161(2).

[74] *Rulemaking to Establish a Universal Service Funding Mechanism* at 29-30 (footnote omitted).

> OCA witness Brockway testified that to the extent network modernization is intended to benefit rural areas, these benefits are lost if rural customers cannot afford basic exchange service. High prices for basic rural service would also have a negative impact on employment. OPASTCO also found that more than a third of rural business respondents either said they would consider relocating to avoid a 25% telephone rate increase or could not rule out such a move. OCA witness Brockway opined that this is an implied loss of jobs that rural Pennsylvania could scarcely afford. OCA Stmt. 2.0 (Brockway) at p. 28.[75]

Cost-based rates are not achievable without USF participation:

> We further find that no amount of rate rebalancing will help the small ILECs in Pennsylvania which serve principally high cost exchanges. In some rural exchanges, rates reflective of cost would result in increases five to seven fold at times. The result is intolerable and antithetic to the very principle of universal service.[76]

The USF mechanism provides a bridge between lower access rates, the encouragement of competition, network deployment and reasonable local rates:

> However, tensions between the primary objectives of competition, universal service and infrastructure modernization, make the successful attainment of one goal without sacrificing the other difficult, necessitating policy reform. The mechanism created today will bridge the gap... Our decisions today are guided in large part by our continued commitment to achieving and ensuring compliance with Chapter 30's objectives in a timely manner. *There is no more effective way of accomplishing Chapter 30's many mandates than through a state universal service funding mechanism.*[77]

The ALJ dismisses these concerns, concluding that it is unreasonable to expect other carriers to pay into the PA USF. The proposal now is that rural local ratepayers be exclusively responsible for paying for loop and other non-traffic sensitive costs. Universal service is no longer an appropriate public policy. Rather, it is up to the rural customers themselves to fund universal service. This wholly flies in the face of any reasonable standard of regulatory policy

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[75] *Id.* at 19.

[76] *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 entered January 27, 1997), at 28 ("*Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies*").

[77] *Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies* at 21.

and constitutes no less than an abandonment of a state universal service policy, in contravention of Act 183.[78]

AT&T clearly argues that, once made explicit, the RLECs' own customers should cover *all* costs of service[79] (with a very small and very temporary USF).[80] Reiterating its rhetoric before the ALJ, Sprint also opposes the use of the PA USF and argues that "the only question is whether the RLECs will elect to shift the subsidies contained in switched access to their own consumers once they are precluded from saddling their competitors with that burden."[81] (intimating, of course, that they will not be able to fully recover). Verizon refuses any notion of explicit support through the USF, contending any expansion of the PA USF, even if temporary, is both bad policy and one for which the Commission lacks any legal authority.[82]

Even in extensively reciting ALJ Schnierle's 1998 landmark Recommended Decision in the original access charge case, the IXCs quote only the sections that favor them, those that relate to removing implicit subsidies.[83] The IXCs intentionally ignore the inconvenient passages that also recommend the simultaneous establishment of the Pennsylvania Universal Service Fund, which the Commission, of course, adopted in the *Global Order*.

At the time that the Commission was working on the above cited USF regulations, ALJ Schnierle was tasked with access rate design. Prominent in ALJ Schnierle's recommendations was the following -- "any solution to the access charge situation requires both rate rebalancing

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[78] Like its predecessor under which the existing PA USF was legally enacted, Act 183 clearly supports the Commission's continued preservation of its existing universal service policies. *See* 66 Pa. C.S. §§ 3011(2) ("maintain universal service"), 3011(7) ("promote . . . competition . . . without jeopardizing the provision of universal telecommunications service"), 3011(12) ("promote . . . broadband . . . without jeopardizing the provision of universal service").

[79] AT&T Exceptions at 20.

[80] AT&T Exceptions at 26; *See* discussion of AT&T's plan, *infra*.

[81] Sprint Exceptions at 5.

[82] Verizon Exceptions at 8.

[83] *See e.g.* AT&T Exceptions at 9-10.

and universal service funding."[84] This ALJ also saw the balance as necessary between the three legs of access rates, local rates, and USF:

> The OCA and OTS argue that local rates should not be raised to reduce access charges and toll rates. They prefer using USF payments to offset reduced access charges. In general, the telephone companies disagree, urging that access charge reduction be offset by a combination of rebalanced rates and universal service fund payments. I agree with this latter view.[85]

Responding to Verizon's opposition because it would be a net contributor to the PA USF, the ALJ recognized that, even back then, that such a position is one sided:

> To the extent that BA-PA has the most urban service territories in the state, its service costs can be expected to be the lowest because, as discussed earlier, a major cost factor or telephone service is the cost of the loop, and the loops tend to be much shorter in an urban environment. On the other hand, the small rural ILECs are likely to have higher costs because their loops are longer. If a system is to be devised to have generally equal prices between urban and rural customers (as required by the Telecommunications Act), then the urban customers, of necessity, will be subsidizing the rural.[86]

This finding is directly contrary to the complete insulation of Verizon from any further USF contribution that ALJ Melillo now suggests is appropriate.[87]

If, as AT&T asserts, "ALJ Schnierle and this Commission were right over twelve years ago[,]"[88] then they were right in all aspects, access rate reductions *coupled with local rate increase and USF support*, not just the pro-access reduction excerpts AT&T chooses to quote.

AT&T further observes that "[t]he [RD's] determinations are fully supported by the record, and should be sustained to align Pennsylvania with the growing list of states - 25 at last count - that have acted to reform intrastate access charges."[89] Once again, however, in the

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[84] June 30, 1998 Recommended Decision of ALJ Michael Schnierle, *Investigation of Intrastate Access Charge Reform*, Docket No. I-00960066, at 54 ("*Schnierle Recommended Decision*") (emphasis added).
[85] *Schnierle Recommended Decision* at 53-54.
[86] *Schnierle Recommended Decision* at 55-56.
[87] RD at 132-33.
[88] AT&T Exceptions at 10.
[89] AT&T Exceptions at 1.

relentless shell game of the IXCs' attempt to reduce their rates, the role that explicit universal service support has played at the federal level and across the nation is written out, as if it were not there. What AT&T fails to disclose this time is that, in many of those states, access rates were not set at parity and, where required, access reform was implemented in tandem with explicit universal service support.[90]

Verizon challenges every aspect of the Commission's authority to implement PA USF support for additional access decreases, much as it did when the Commission established the existing PA USF in the *Global Order*.[91] Verizon suggests that Act 183 does not support a state universal service policy as did Chapter 30.[92] Verizon also continues to refer to any new USF funding as a "hidden tax."[93] These arguments lack merit.

The PA USF is legally instituted. In its appeal of the *Global Order*, Verizon (then Bell Atlantic) challenged the Commission's authority to establish a state USF. The Court expressly confirmed that "the state and federal statutes do confer upon the PUC the power to establish a Universal Service Fund, as Bell and other 1649 Petition signers requested the PUC to do."[94] Chapter 30 then, like Act 183 now, contained the General Assembly's express conveyance of the policy goal of maintaining universal service, without expressly creating a state USF, leaving that regulatory task to the Commission.

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[90] *See* CTL Panel-1 (exhibit attached to CTL St. 1.0); *see also* PTA Direct at 24 (At the state level, according to a report of the National Regulatory Research Institute ("NRRI"), twenty-two of the states had a functioning or transitioning high-cost funds in 2006. Several of the states reported that AT&T and Verizon receive support from their high cost fund, as well as wireless carriers) and PTA Reply Brief at 55 (Since NRRI published its 2006 statistic indicating state USF support in at least 22 states, at least three more states have implemented functional USF support including for access rebalancing. These additional states specifically are Indiana, Louisiana, and Michigan. *See Re Universal Service Reform*, Cause no. 42144, 2006 WL 3798724 (Ind. U.R.C. 2006); *In Re: Review of the Existing State Universal Service Fund as Established by LPSC General Order dated April 29, 2005, as amended May 18, 2005*, Docket No. R-30480 (Order entered February 9, 2009); and Michigan statute MCL 484.2310, amended December 17, 2009, specifically Section 310(7) (establishing an intrastate switched toll access rate restructuring mechanism as a separate interest-bearing fund to restructure intrastate access rates and requiring contributions from all providers of retail intrastate telecommunications services including wireless).

[91] Verizon Exceptions at 9-11.

[92] Verizon Exceptions at 9, note 3.

[93] Verizon Exceptions at 11.

[94] *Bell Atlantic - Pennsylvania, Inc. v. Pa. PUC*, 763 A.2d 440 (Pa. Cmwlth. 2000) ("*Global Order Appeal*") at 497.

Verizon argues that a slight difference between Chapter 30 and Act 183 is the appearance of the words "consistent with this chapter" in Section 3019(b)(3), which Verizon contends reflects a difference in legislative intent.[95] Such slight change in verbiage is insufficient to signal a major policy shift by the General Assembly against USF support, particularly in light of the fact that not only did the General Assembly continue to express support for a universal service policy in Act 183, it did so multiple more times than originally in Chapter 30.[96] Thus, contrary to Verizon's suggestion, legislative support for a continued universal service policy was in fact augmented, and not restricted, under Act 183.[97]

Any allusion to the PA USF constituting a "hidden tax" was equally dispelled by Commonwealth Court: "[T]he USF process has nothing to do with raising revenue for the support of government. It therefore does not constitute an unauthorized tax."[98] Verizon also contends that implicating the USF further in this proceeding would cause "considerable litigation and debate."[99] PTA submits that threats of appeals should not sway the Commission's public policy deliberations, particularly when such threats resulted in failed appeals on the same subject in the past.

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[95] Verizon Exceptions at 9, note 3.

[96] The General Assembly recognized the importance of universal service in three different places in Section 3011 of Act 183 (subparts (2), (8), and (12)), compared to its singular reference to such policy in Chapter 30 (Section 3001(1)), refuting any suggestion that legislative support of USF has waned.

[97] The ALJ was "not troubled by the lack of specific mention of universal support funding in Act 183 regarding whether additional funding can be authorized." R.D. at 132.

[98] *Global Order Appeal*, 763 A.2d at 497.

[99] Verizon Exceptions at 9.

C. Local Rates Are Too High Under the IXCs' Proposals (Reply to AT&T Exception 3 and App. D; Verizon Exceptions 1 & 3; Sprint Exception 2)

The Recommended Decision would push local rates up to the OCA's *maximum* affordability ceiling of $23.00 and beyond.[100] Recovery of the access reduction from local customers will double local rates in several cases and, overall, cause an average increase of $7.32 (47%).[101] The PTA has excepted to this recommendation on several grounds,[102] but basically because the resulting rates will not be comparable by any benchmark and are not recoverable by the RLECs in a competitive market.

AT&T claims that the RLECs' local rates are "inordinately low."[103] Again, this is an exaggeration. The average PTA Company tariffed local rate is $15.57.[104] By comparison, however, the national average local tariffed rate is $15.03 per month.[105] Verizon's own Pennsylvania rural rates, ranging between $12.00 to $15.50, are also markedly lower.

Having filed no affordability analysis themselves,[106] Verizon and AT&T, nevertheless, challenge even the $23.00 figure as too low. Verizon postulates that *just for basic dial tone service* (stand alone service; no features, no expanded calling; no toll) an affordable rate is $43.25, because that is how much rural customers currently pay in rural areas for dial tone, features and toll.[107] Sprint abandons its position before the ALJ that the current benchmark should be adjusted for inflation and set at $21.97[108] and now advocates an affordability

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[100] FOF Nos. 74. The Recommended Decision equivocates on this point, stating that, "I am not treating the $23.00 rate as a benchmark for purposes of triggering PA USF support." RD at 116. Instead, the question of whether even higher rates should be required or USF support provided beyond that level should await the outcome of the PUC rulemaking recommended by ALJ Colwell. *Id.*
[101] PTA Direct at 18.
[102] PTA Exception No. 3.
[103] AT&T Exceptions at 23.
[104] PTA Ex. GMZ-7.
[105] Colwell Benchmark/USF Proceeding, PTA Ex. JJL-3.
[106] FOF 72.
[107] Verizon Exceptions at 7.
[108] Sprint Rebuttal at 45.

benchmark of $86.50 per month without explaining its extra-record calculation.[109] AT&T estimates the affordable rate at $34.34 by challenging the OCA's assumptions and pointing out that customers pay wireless carriers $50.00 per month for an unlimited calling bundle (including toll).[110] These positions are absurd. Local rates at $45.00, even $85.00 and higher, have no basis in reality. The IXC positions have no balance. The avarice of the position that access rates be dropped by two thirds without any countervailing USF contribution drives an untenable result.

These positions are notable in their disregard for the record and common sense. First, there is confusion over nomenclature. The Commission sets tariffed rates to which various other charges -- E911, the federal subscriber line charge, taxes and other line charges -- are added.[111] The appropriate additive to use is $9.12.[112] Therefore, a $23.00 tariff rate results in a $32.12 rate to the end user. The OCA's maximum affordability rate (stated as a billing rate) is $32.00.[113] So, $23.00 is already $0.12 over the only testimony of record.

Moreover, these positions are taken without regard to "comparability," which, as explained by the PTA, has been consistently used as an element of telephone rate design, including in the *Global Order*.[114] ALJ Schnierle found rural/urban rate comparability to be a legal requirement of local rate setting under federal law.[115] Even if not a legal requirement, as this Commission has contended, it certainly is sound public policy. The $23.00 exceeds the comparability rate by $4.06.

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[109] Sprint Exceptions at 5-6.
[110] AT&T Exceptions at 36-38.
[111] *See* PTA Exceptions at note 139.
[112] Tr. 508-09. The ALJ's Findings of Fact do not reference the additive.
[113] Finding of Fact No. 73.
[114] PTA Exceptions at 44-46.
[115] *Id.* at 45.

Thirdly, it is inconsistent for Verizon, for example, to advocate that the RLECs adopt its access rates, but then oppose using its local rates as a benchmark as well. Equally arbitrary is AT&T's support for interstate mirroring of access and the rejection of mirroring local rates.

On the one hand, access rates are claimed to be *un*just and *un*reasonable by comparison to other access rates and forms of intercarrier compensation. The other parties have repeatedly pointed out that the RLECs' intrastate rates are higher by comparison to their own interstate rates; Verizon's intrastate rates; and reciprocal compensation. Verizon, AT&T and Sprint all spend considerable briefing time and effort seeking to convince the ALJ that this renders the RLECs' intrastate access rates "unjust and unreasonable" and, therefore, illegal. This rate setting by comparison is *the* principal legal (as opposed to policy) rationale presented.

Yet, the IXCs and the ALJ flatly reject the OCA and PTA positions that local rates should be "comparable" on the rationale that there is no express reference in Chapter 30 to this ratemaking concept (ignoring that this is true also of access rate benchmarking). Under the IXC theory of ratemaking, the *only* proper consideration in local rate setting is "affordability."

While AT&T attempts to describe its approach as "implement[ing] local service increases gradually over time, and in a manner that generally tracks with inflation, such that, in real terms, consumers will not be paying substantially more for local telephone service than when the $18 cap was implemented in 2003,"[116] this is not at all what AT&T has done. AT&T simply shifts access decreases to local service customers and seeks to have the resulting local rates declared "just and reasonable" by default.

AT&T's calculation of the current benchmark adjusted for inflation is $22.00, not $25.00.[117] Under its proposal, eighteen of the thirty-one RLECs, a majority, will have rates in

[116] AT&T Exceptions at 23.
[117] AT&T Rebuttal at 5.

excess of that "inflation based level."[118] Twelve will have tariffed rates that even exceed the ALJ's affordability benchmark of $23.00. Twenty five RLECs would have rates that exceed the PTA's comparability benchmark of $18.94.

Even were AT&T actually using the rate of inflation, as it claims, this would be incorrect. Simply applying the rate of inflation to the current rate cap of $18.00, as some parties propose, does not measure either comparability or affordability. As Mr. Laffey stated:

> Inflation is not relevant to calculating affordability in the first place and is not an accurate measure of the continuing affordability of telephone rates going forward. Indeed, escalation in other costs could jeopardize affordability, if income is static or even declining. Household income is the appropriate measure to change the affordability rate, if it is to be changed.[119]

While Act 183 allows revenue increases to be based upon inflation, individual local rates are not set to follow inflationary indices. Also, as the PTA demonstrated, over 3/5ths of the RLECs' "inflation based" allowable increases are lapsing under their banking provisions, and have not been taken.[120] Therefore, inflation is not a meaningful measure. Nationally, the "residential monthly charge" in urban areas has increased from $12.58 in 1986 to $14.47 in 2006. If the 1986 rate had been escalated at the rate of inflation, the 2006 rate would be $33.48, instead of $14.47. The comparable nominal single line business rate has increased even less, relatively speaking, from $31.06 in 1989 to $36.59 in 2007.[121] Using only the rate of inflation to set individual rates is neither relevant nor appropriate.

The *existing* Pennsylvania $18.00 rate cap is already almost $3.00 higher than the current national average. The FCC's Wireline Competition Bureau's Statistics of Communications

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[118] AT&T Rebuttal at Att. 5.
[119] Colwell Benchmark/USF Proceeding, PTA St. No. 1R (Rebuttal) at 21-22.
[120] The RLECs have not been raising rates under their price cap plans at the rate of inflation. *See* PTA Exceptions at 6, and 50-55.
[121] Colwell Benchmark/USF Proceeding, PTA St. No. 1R (Rebuttal) at 22.

Common Carriers' Report (released June 2008) calculates the most recent national average rate for residential local service as $15.03 per line per month.[122]

Finally, as explained in the PTA Exceptions, the IXCs oppose any plan that would require them to share any of the $91.8 million (RLEC total, including CenturyLink) access expense savings they will realize,[123] leaving the RLECs and their customers to shoulder the corresponding and equal revenue shortfall. Nevertheless, AT&T can not help but wrap itself in the flag of consumer welfare when it proclaims: "The evidence shows that each month without access reform is costing the IXCs and their customers nearly $6 million/month."[124] Nothing could be further from the truth when it comes to the RLECs' customers, about whom AT&T's plan cares not at all. It certainly are benefits to be gained by AT&T, but the only certainty for customers are the local rate increases. There is no prospect for reduced IXC toll rates for customers.

D. Glide Path Depends Upon the Objective (Reply to AT&T Exceptions 1, 2 and 4; Verizon Exceptions 1 and 2; and Sprint Exception 1)

1. There Is No Basis for the IXCs to Assert That They Are Owed Elimination of the CCL Charge

Having obtained the sought-after recommendation from the ALJ to eliminate the CCL charge, the IXCs' exceptions now complain that the implementation time frame suggested by the ALJ (two to four years depending on the RLEC) is "too long."

The IXCs seek to rationalize the *immediate* reduction in access charges (to one-third of their current level -- a 65% decrease) on the basis of several arguments. Most prominent among them is the claim that the Commission "promised" ten years ago to decrease access[125] (ignoring

[122] Colwell Benchmark/USF Proceeding, PTA Ex. JJL-3.
[123] PTA Exceptions at 21-26.
[124] AT&T Exceptions at 26.
[125] AT&T Main Brief at 20 and 10.

the Phase II access decreases implemented in 2004 and 2005, as well as individual company decreases).[126] This premise is false. There never was a regulatory promise to drop intrastate access rates to any particular level, parity, cost or otherwise, as noted in the PTA's Exceptions.[127] The CCL charge was intentionally designed by the Commission and was subject to review only, not elimination. Even if this promise was ever made, it is *dicta*, which is not binding upon the Commission ten years later (*res judicata* is not even recognized in administrative law, since the regulatory agency must be free to change policy over time[128]).

The IXCs' claim that "we-deserve-it-because-you-promised-and-you've-made-us-wait" is mere heavy-handed "guilt tripping," which misstates the Commission's original intention to reduce access rates generally, but without identifying the final objective. In particular, during the period of intrastate access reductions which began under the *Global Order* and continued under a Phase II round in 2003-04, the Commission stated that these changes were not the final word and that further reductions could be anticipated.[129] However, this statement of intent carried no substance. It only indicated the direction (down) without setting forth any specific terms or objective for doing so, and certainly did not the promise elimination of the CCL charge.

At no time was anything approaching the draconian level of decrease that the ALJ now recommends ever intimated by the Commission. Prior access rate decreases, while significant, never approached the level now recommended by the ALJ.[130] Under the *Global Order*, the PTA Companies' access rates were reduced from $.066 to $.051, a 22% reduction.[131] As a result of

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[126] *See* AT&T Exceptions at *passim*; Sprint Exceptions at 3.
[127] PTA Exceptions at 14-16.
[128] *Bell Atlantic v. Pa. PUC,* 672 A.2d 352 (Pa. Commw. 1995)(administrative agency not bound by prior precedent, but should render consistent opinions by following, distinguishing, or overruling prior precedent).
[129] *Access Charge Investigation Per Global Order of September 30, 1999,* Docket No. M-00021596 (Order entered July 15, 2003) ("*July 15, 2003 Order*").
[130] These historic dollar reductions were implemented at a time when the RLECs' access lines and access minutes were much higher.
[131] PTA Direct at 8.

the PTA Companies' Phase II access rate efforts in 2003-04, the RLECs further decreased access rates to current levels ($.048 or 6% lower). At no time was anything approaching the now proposed 67% reduction suggested, hinted at, or intimated, let alone "promised."

The Recommended Decision's cost-based objective, particularly the shifting of all loop costs to local ratepayers or the RLECs' risk, is completely novel and over shoots any reasonable mark, *if* the objective is a balanced rate structure for the telephone companies, as pointed out in the PTA Exceptions.[132] Cost-based rates have never been the Commission's objective, stated or implied. Where the Commission has addressed cost, it has rejected rate structures that would shift all fixed costs, including the loop, to end user customers.

Secondly, AT&T asserts that once parity is declared the lawful rate, then any rate above that level is not "just and reasonable" and violates the Public Utility Code from the date of that order. But, as pointed out by the PTA's Exceptions, there is no legal requirement that access rates be reduced at all. As the PTA has explained, "the matter of intrastate access reform is purely a matter of Commission policy and the public interest."[133] Consideration of the public interest requires that access reductions be implemented via a balanced approach that insures that local rates are maintained at levels that are both comparable and affordable. This can only be accomplished through a plan that includes a reasonable transition period and provides additional PA USF when that local rate benchmark is exceeded.

2. AT&T's Plan Is Flawed

The PTA agrees with AT&T that the Recommended Decision's implementation plan is cumbersome and over engineered, but more so because the objective it defines is overly aggressive and then focuses the "solution" solely upon local rates, refusing to employ PA USF

[132] PTA Exceptions at 61-65.
[133] PTA Exceptions at 14.

funding. The glide path defined in the Recommended Decision, however, is only different from that proposed by AT&T in terms of the means employed to get to a destination that, ultimately, is unfavorable to the RLECs and their local customers.

Asserting that the Recommended Decision "failed to focus on the fastest, most straightforward way to promptly bring intrastate access rates to just and reasonable levels,"[134] AT&T complains that local rates do not increase quickly enough to suit its purpose, asserting that companies' local rates should be raised further.[135] The principal complaint is that under its non-record calculations of the Recommended Decision's plan, only 34% of the parity objective is accomplished after Year 1 and "only" 60% after Year 2.[136]

AT&T wants to net 76% of the reduction now and the rest over 3 years. AT&T's proposal is that the IXCs *be immediately awarded the full $82.6 million* decrease (their calculation) including CenturyLink[137] in bringing access rates to parity and then gives progressively less back over a four year period. Of the total $82.6 million RLEC access decrease, the IXCs would return $19.6 million to the PAUSF in Year One. Local rates would immediately spike by almost $64 million or *an average* of $5.82 per line per month, higher than the ALJ. In Years 2, 3, and 4, while the IXCs continue to benefit from the full access rate reductions, the IXCs return progressively less to the PA USF, specifically $9.8 million, $4.2 million and, finally, less than $1 million, respectively, as local ratepayers (and the RLECs themselves) absorb the entire loss. At the end of year four, AT&T's original objective (large

[134] AT&T Exceptions at 30. AT&T presents Appendix D, which is not of record, as its version of the timing recommended by the ALJ. AT&T Exceptions at 32 (note 74) and App. D.
[135] AT&T Exceptions at 31-32. Focusing on the few companies where local rate increase are small or occur at the tail end of the recommended 2-4 year process and ignoring those that jump immediately by magnitudes of $7.00, $5.50 and $4.50 *in the first year*. AT&T Exceptions at App. D.
[136] AT&T Exceptions at App. D.
[137] Mr. Zingaretti noted; "I do not agree with AT&T's calculation of the rate impact at AT&T Rebuttal at 23. I calculated that parity would create an almost $64 million revenue loss." PTA Surrebuttal at 56.

access reductions without any USF support) is obtained, with most of the reduction, 76% of it, front end loaded into the first year.[138]

AT&T's posturing is only meritorious in that it recognizes, in theory only, the principle that universal service support is necessary to avoid rate shock and unreasonable local rate levels. From a practical perspective, however, AT&T's plan ignores both of these principles as local rates would increase significantly at implementation and additional USF support is both minimal and short lived. This is shallow thinking.

On this proposal, the IXCs fall to fighting among themselves to maximize the windfall handed to them in the Recommended Decision. Verizon and AT&T part ways due to reasons associated with the current design of the PA USF rather than any disagreement over principles. Both argue over which corporation will realize the greater benefit.

AT&T claims that "[e]ven with the modest increases to the PaUSF proposed by AT&T, Verizon [*not its customers*] will still be better off under AT&T's proposal."[139] Verizon opposes the use of the PA USF because "AT&T immediately begins enjoying the benefits of access savings [*again, not its customers*], but would have other carriers temporarily replace the RLECs' access revenue with a transfer of their own revenue through the state USF."[140] Verizon's position is that, under the design of the PA USF (to which Verizon agreed in the *Global Order*), the Verizon ILECs pay a disproportionate amount relative to the level of access reductions because funding is based upon jurisdictional end-user revenue and, of course, Verizon PA and North are the largest ILECs in Pennsylvania.[141] Verizon threatens to appeal if the PA USF is

[138] PTA Surrebuttal at 56.
[139] AT&T Exceptions at 28.
[140] Verizon Exceptions at 8.
[141] Verizon Exceptions at 10 ("Simply put, the AT&T transitional USF proposal would benefit AT&T at the expense of the Verizon ILECs.") and 10 (footnote 4).

employed in any way, arguing that the Commission has no authority to do so,[142] an assertion PTA has already refuted.

This corporate wrangling over the gained spoils from the RLECs and their local ratepayers is truly disturbing, particularly given these same IXCs' assertions of "the clear benefits to consumers by having intrastate rates at parity with interstate rates..."[143]

Finally, now well outside the record, AT&T has yet another recommendation designed also with the objective of ratcheting up local rates as quickly as possible – raise rates by $3.50 until parity is achieved.[144] Under this scenario, local customers end up at the same grotesquely high levels, but in a way that *48% of the access decrease is accomplished within 20 days, and 90% within 12 months*! Seven of the thirty one RLECs would be forced to raise local rates by up to $7.00 over two years. Eleven of the RLECs shift "$7.00 to $10.50" over 3 years.[145] And three RLECs' local rates escalate by "$10.51 or more" over 4 years. Four companies' rate schedules are unable to accommodate even this aggressive schedule within the 4 year time frame presented.

3. Sprint's Plan Is to Simply Jam Down the Local Increases and Is No Plan At All

Sprint simply argues, without any details, that access rates be reduced to parity "immediately."[146] Sprint does not even pretend to care where funding for the $83 million of regulated revenue loss comes from or whether it is even recoverable. The irresponsible attitude of shifting "profits reaped" from access services to the "panoply" of other services[147] is simple hyperbole and not supported in the record. The ALJ rejected both of Sprint's arguments that

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[142] Verizon Exceptions at 9. Verizon acknowledges that it has done so once before and lost, but claims that this time is different.
[143] AT&T Exceptions at 6.
[144] AT&T Exceptions at 34 and Appendix C.
[145] For unexplained reasons, 2 of the companies' local rates are stopped by AT&T at the level of $25.50 per month.
[146] Sprint Exception No. 1.
[147] Sprint Exceptions at 5.

underlie this position (cross subsidization and revenue neutrality outside of state regulated revenues).[148] Sprint has intentionally not excepted to these finding ("Sprint will refrain from taking exception to each of the individual conclusions with which it disagrees"[149]) and, therefore, should not continue to make the assertion. The PTA previously addressed both of these spurious arguments.[150]

4. The PTA's Plan Continues To Favor the Practical

The PTA's primary position continues to be that, until the FCC gives a clearer indication of the direction it intends to pursue, this Commission should retain the status quo.[151]

Another alternative suggested by the PTA is that the Commission sponsor a collaborative process, which is confidential so candor is encouraged, where the parties work out their differences instead of engaging in litigation bravado.[152] The solution must remain focused on the three acknowledged moving parts, access rates, end user rates and the PA USF, which are balanced to obtain a reasonable result which benefits them all.

History demonstrates that a collaborative can succeed. The Global Order adopted the "Small Company Plan" as developed by the PTA Companies, which was concurred in by all parties. The PTA Companies' access rates were reduced by $15.8 million. As a result of the PTA Companies' Phase II access rate efforts, the RLECs further decreased access rates by $27.2 million. Each of these changes occurred as a result of collaboration and compromise.

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[148] RD at COL No. 15 ("There is insufficient evidence of record to determine that any RLEC is using noncompetitive services revenue to subsidize competitive services. 66 Pa. C.S. §3016(f)(1)."); COL No. 27 ("The Commission has no authority granted to it by the General Assembly to direct LECs to increase rates for competitive services and therefore cannot require access reductions on that basis. 66 Pa. C.S. §3019(g)"); and COL No. 28 ("Only revenue from noncompetitive services can be considered by the Commission in a revenue neutrality analysis under 66 Pa. C.S. §3017(a). *Buffalo Valley Telephone Company et al. v. Pa. P.U.C.*, 990 A.2d 67 (Pa. Commw. 2009).").

[149] Sprint Exceptions at 2.

[150] PTA RB at 28-31 (cross subsidization) and 44-52 (revenue neutrality within jurisdictional revenues).

[151] See PTA Exceptions at 1-2.

[152] See PTA Exceptions at 63-64.

The PTA opposes the IXCs' proposals, however, because no matter how implemented, the objective is flawed and, for these reasons, should be rejected. As the PTA articulated in its Exceptions:

> The Commission should not force rapid escalations in local rates. Since lowering state access rates to interstate parity without USF support has this result, either USF support must be provided or access rates not set so low. If the Commission does not want to expand the USF, then a lesser access charge reduction should be considered that would increase local rates only up to an acceptable benchmark. For example, setting the traffic sensitive component of access rates at parity is a $10.4 million rate reduction for the IXCs.[153]

There are other options, if the Commission desires some immediate movement. As suggested in the PTA's Exceptions, a reasonable resolution at this stage of the proceeding could be a RLEC reduction to traffic sensitive parity (a $10.4 million or 10% decrease) phased in over a reasonable period of time. For those companies whose intrastate TS elements are higher than interstate, local rates should increase up to, but not exceed the $18.94 comparability benchmark.[154] The PA USF would fund any shortfall above the benchmark, but the PTA does not believe that the impact upon the PA PUSF would be significant, perhaps a 1% increase in the current level of the fund. For those RLECs who would realize a revenue gain because their intrastate TS rates are lower than the interstate counterpart, the intrastate CCL charge would be reduced on a dollar-for-dollar basis to maintain revenue neutrality.

Any decreases beyond TS parity, however, should not occur until the Commission resolves the PA USF rulemaking proposed in ALJ Colwell's Recommended Decision. While the PTA does not support the rulemaking changes suggested by ALJ Colwell, it does agree that changes are needed. In both proceedings, the parties have clearly concurred that some PA USF

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[153] PTA Exceptions at 61.

[154] The exact rebalancing should be proposed by each RLEC according to its individual circumstances, including the presence of contracts for service that fix rates for the term of the agreement.

structural mending is necessary. "AT&T agrees that the current PaUSF is in need of reform..."[155]

There are several significant issues that have been raised. As noted herein, Verizon is opposed to the current funding formula as it pays more than AT&T relative to the benefits it receives, because its retail end user revenues are higher. This is clearly a structural USF reform issue that should be addressed, if the PA USF continues, which it should.

As a means to control the size of the USF going forward, the PTA has already agreed to prospectively modify the design of the existing fund so that USF support would decrease for price cap companies that experience decreases in access lines.[156] CenturyLink offered a similar revision to provide support going forward on a per line charge.[157] The ALJ properly rejected Verizon's proposal to do so on a retroactive basis as an impermissible retroactive revision to the current PA USF regulations.[158] Verizon re-argues the issue here in a footnote, but not as a specific exception.[159] The PTA continues to disagree on retroactive application for the same reasons as it did previously.[160] The point, however, is that there is agreement that this Fund change occur prospectively and will have the effect of limiting the size of the PA USF going forward.

There are contribution issues that have been delayed for resolution by the Commission. The PTA and the OCA have both consistently advocated that wireless and VoIP carriers should contribute to the PA USF. Federal USF funding levels on industry participants (which include wireless and VoIP providers) currently represents 12.9% of the total interstate revenues of the

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[155] AT&T Exceptions at 27. AT&T states its support for the Colwell changes. For its part, Verizon has always and continues to oppose the PA USF and will not concede reform is an option.
[156] RD at 136 and 142; PTA MB at 3-4; PTA Surrebuttal at 61-62.
[157] CenturyLink RB at 61.
[158] RD at 134.
[159] Verizon Exceptions at 11 (footnote 4).
[160] PTA RB at 61-62.

contributing carriers.[161] By contrast, the current PA USF represents 1.165% of IXC and LEC intrastate revenues.[162] Even were the OCA's entire $97.3 million USF implemented and no local rate rebalancing implemented, which the PTA does not support, the contribution rate would only increase to 3.347%.[163] On the other hand, were funding expanded to include just wireless carriers, the USF contribution rate would remain at a very reasonable 1.331%, lower than today.[164]

The Commission previously ruled that wireless carriers could be required to contribute:

> Under Section 3(a)(49) of the Federal Act, a "telecommunications carrier" is defined to include all service providers *including cellular carriers*, PSC/PCN providers and RCCs. Accordingly, under the express language of Section 254(f), if a given state establishes a state universal service funding mechanism to preserve and advance universal service in that state, all telecommunications carriers, *regardless of their jurisdictional status in that state, must contribute to the state universal service funding mechanism.*[165]

The FCC is also considering the means by which states may uniformly require nomadic VoIP carriers to fund a state's USF, which is not opposed by Vonage, if done so on a prospective basis.[166] The resolution of this issue has been delayed by the Commission, but now should be addressed.

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[161] *See* FCC Public Notice released September 10, 2010 at Docket No. DA 10-1716, "*Proposed Fourth Quarter 2010 Universal Service Contribution Factor*" ("In this Public Notice, the Office of Managing Director (OMD) announces that the proposed universal service contribution factor for the fourth quarter of 2010 will be 0.129 or 12.9 percent."), which the PTA requests be recognized under the Commission's regulations at 52 Pa. Code §§ 5.406(a)(2), official FCC statistical data available to the public, and 5.408, official and judicial notice of fact. *See also* Tr. 519 (federal contribution rate "passed about 11 percent").

[162] Tr. 493.

[163] Tr. 494.

[164] OCA Direct at 17. There are no VoIP figures available, so the OCA calculated wireless only. Including VoIP contributions also might allow the current factor to remain constant or even decrease.

[165] *Rulemaking to Establish a Universal Service Funding Mechanism*; 52 Pa. Code §§63.141, *et seq.*, Docket No. L-00950105, Final-Form Rulemaking Order entered June 21, 1996 at 68-69; See also Id. at 69 ("Although it is debatable whether the Commission could require telecommunications carriers which are non-jurisdictional under state law to contribute to a state fund, it is clear that once a Pennsylvania state funding mechanism is established, these carriers must contribute to the funding mechanism to meet their obligations under federal law.")

[166] *Nebraska Public Service Commission and Kansas Corporation Commission Petition for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket 06-122, Vonage Holdings Corp. ex parte letter filed July 16, 2009.

If the CCL charge and, therefore, loop recovery is intended to be reduced, the PA USF needs to be revised structurally to accomplish the task As always, the objective is a fund that fairly and equitably collects necessary USF obligations chosen by the Commission. And, of course, the Commission should continue to monitor the FCC's pending NOPR and access reform efforts.

As the Commission noted in the *Global Order*, the PA USF was to be revisited in order to determine the best mechanism to address the CCL:

> The small/rural company fund is a transitional fund to be used until the Commission establishes a permanent universal service fund, consistent with federal rules. The Commission will initiate an investigation on or about January 2, 2003 to develop a long-term solution to universal service. This proceeding should be coordinated with the long-term review of the Carrier Charge.[167]

While the current PA USF was funded as a result of setting the *traffic sensitive* access rate elements to interstate parity and restructuring and reducing CCL, further reductions to the CCL charge was the part of the equation that, together with possible reformulation of the existing fund, was to be considered in a later review, much as the FCC has established the SLC and additional USF as the CCL equivalent on the federal side.[168]

5. Technical Conferences

On the topic of "technical conferences," the PTA opposed Verizon lengthy and formulaic series of filing comments and reply comments as "overly formalistic" and, rather, generally suggested that "a more efficient manner of implementing any mandated rate changes, including updating rate elements, would be technical conferences involving the parties and Commission staff as were used in both previous rural access reform proceedings."[169] The ALJ agreed, but

[167] *Global Order* at 46 (quoting Sprint's Main Brief) (emphasis added).
[168] PTA MB at 14-15.
[169] PTA MB at 89; PTA Rejoinder at 11-12.

then went on to design the process any way in a way that is also highly formalistic.[170] The IXCs criticize the process as overly complicated and time delaying. To the PTA the process is critically important to ensure that the Commission and parties are aware of the final outcomes and have the opportunity to adjust for a bad outcome.

Contrary to AT&T's assertion that the exercise is easy -- reduce access and tell the local ratepayers what they owe -- the calculations are much more detailed than that.[171] And, of course, the AT&T approach assumes, the PTA hopes incorrectly, that the Commission will not also incorporate the PA USF into the solution.

The PTA supports the technical conference approach because the Commission will be making decisions on the various merits of particular issues with no knowledge of the specific impacts. Indeed, the Recommended Decision was unable to resolve issues regarding benchmarking and the revenue source for access reductions above that level. For its part, the PTA would agree to initially report within 45 days of the Commission's order, including resolution of any post-order motions.

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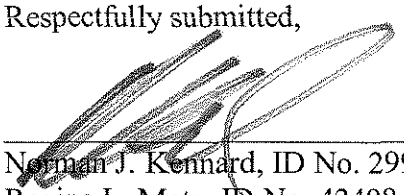
[170] RD at 45 and FOF No. 90.

[171] Interstate access rates are not uniform among the PTA Companies. The relative level of intrastate access minutes differ among them, as do the intrastate access rates themselves. Thus the results of any access rate change is widely divergent among them. There are thirty one (31) RLECs involved in this dock, all with different rate structures and rate impacts. There are several federal rate setting mechanisms employed, including both cost and price cap. PTA Surrebuttal at 39. Some participate in the National Exchange Carrier Pool and others in the ICORE Pool. Some are in their own pool.

III. CONCLUSION

For the reasons discussed above, the Pennsylvania Telephone Association, on behalf of its member companies, respectfully requests these Reply to Exceptions be granted.

Respectfully submitted,



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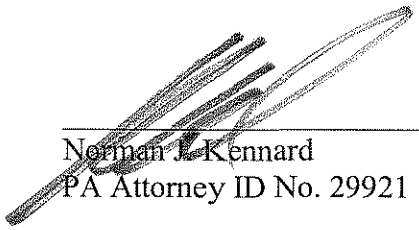

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