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June 3, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

In 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 are an original and nine (9) copies of the Reply Brief of the Pennsylvania Telephone Association in the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By: Norman J. Kennard

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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. Armstrong Telephone Company of Pennsylvania, *et al.*	:	Docket No. C-2009-2098380, *et al.*

REPLY BRIEF OF
THE PENNSYLVANIA TELEPHONE ASSOCIATION

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Dated: June 3, 2010

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I. SUMMARY OF REPLY BRIEF

A. Summary of PTA Reply Brief

A regulated telephone company's tariffed rates must be "just and reasonable."[1] *All of them*. As the Commonwealth Court has said, in response to the Commission's position that, under Chapter 30, it retains complete discretion to determine the justness and reasonableness of tariffed rates: "... the statute expressly preserves the Commission's authority and responsibility to protect all ratepayers and protected services to ensure rates from proposed annual revenue increases are 'just and reasonable.'"[2]

As to overall, total company revenues, Chapter 30 defines the form of regulation and, for the majority of RLECs, it is not cost-based, rate of return regulation. Price cap regulation, as adopted by the Commission, applies an inflationary measure (GDP-PI) to the regulated revenues realized by the RLEC in the preceding year, resulting in a figure that represents the company's allowable revenues. Under price cap regulation, a telephone company may pursue profitability (consistent with its regulatory, utility obligations) in an increasingly competitive market and remaining customers are insulated from the losses that a competitive market may engender. This form of rate setting is in "complete substitution" of rate base rate of return.

Despite the fact that price cap regulation has provided the RLECs an opportunity to increase rates, the allowed increases have only been applied to local rates, although switched access service is also a "noncompetitive, protected" service subject to the price cap formula.[3] In the last ten years, access rates have been sliced in half (over 50%), while local rates have

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[1] 66 Pa. C.S. § 3015(g); *Buffalo Valley Telephone Company, Conestoga Telephone & Telegraph Company and Denver & Ephrata Telephone & Telegraph Company v. Pa. PUC*, 990 A.2d 67 (Pa. Commw. 2009) ("Buffalo Valley").

[2] *Buffalo Valley*, 990 A.2d. at 79. Given the broad scope of § 3015(g), and the Commission's ratemaking discretion, this ruling similarly applies to the type of rate balancing advocated here by the IXCs.

[3] 66 Pa. C.S. § 3012 (Definitions of "Noncompetitive Service" and "Protected Service").

increased by more than 60%.[4] This has been accomplished because the RLECs have only realized two-fifths of their "allowed revenue." No RLEC, with one exception, has sought to increase access rates. When *one* group of RLECs (the D&E Companies) proposed to do so, Verizon convinced the Commission to place a moratorium on any access increases whatsoever.[5] In other words, the IXCs have not incurred any increase whatsoever and, in fact, enjoyed almost one half a billion dollars in rate decreases over the last ten years.

The IXCs now seek *further* decreases for themselves *and* increases to local ratepayers. To be sure, the IXCs have sought to rationalize the access decreases on the basis of several arguments, including: a claim that the PUC "promised" ten years ago to decrease access[6] (ignoring the generic, 2003 access decreases implemented in 2004 and 2005, and individual company decreases thereafter); and that cost-based access charges send "proper price signals," whereas current access rates have prevented the development of a robust market.

There never was such a regulatory promise and, even if there were, the premise 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[7]). The IXCs' claim that "we-deserve-it-because-you-promised" is a heavy-handed type of "guilt tripping," which misstates the Commission's stated intention to revisit the current funding mechanisms and find a permanent one. Such arguments lack substance. Consideration of further access charge reductions in 2010 should rise and fall on its own merits.

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[4] PTA Direct at 10.

[5] Here, Verizon asserts that, under price cap regulation, noncompetitive rates may be increased each year by inflation, choosing to ignore the freeze it successfully urged be placed on any access increases under normal operation of the plan. Verizon Main Brief at 5.

[6] AT&T Main Brief at 20 and 10.

[7] *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).

The cost argument is equally unavailing. There is no Commission decision that would require access rates to be priced at cost, let alone a regulatory consensus on how a cost study would be undertaken or what it would measure. There is no mention of access rate levels in Chapter 30,[8] let alone a requirement that telephone company rates should be based on the cost of service.

There is no specific directive in Chapter 30 even requiring a reduction in access rates. The IXCs can point only to the preamble's general encouragement of competition. The introductory provisions do not mention access charges. While a general statutory policy statement may assist in defining the specific provisions, such does not create a free-standing directive that can be used to overcome the specific provisions.[9] It is conjecture to argue that general encouragement of competition *requires* access reductions. No IXC has indentified any violation, lack of compliance or inconsistency of current tariffed rates, or any provision of Chapter 30 or the RLECs' Chapter 30 Plans.

The IXCs' theoretic economic arguments are just that – theory. Yet this abstraction is the fundamental basis of the IXCs' claims that the record developed in this proceeding "overwhelmingly" proves access rate reductions will generate a favorable market response, thus benefiting end use customers. These are not facts.

The reality, as is often the case, departs from theory. Despite a second generic round of RLEC decreases in 2004 and 2005 and individual company decreases since then, AT&T's toll rates have actually gone up. The market is much more complex than the simplistic theory of input-output pricing. Indeed, market conditions are such that the IXCs are abandoning the toll

[8] Except the requirement of revenue neutrality, in the event access rates are reduced.
[9] *UMCO Energy, Inc. v. Department of Environmental Protection*, 938 A.2d 530, 537 (Pa. Commw. 2007) (preambles may not be used to create ambiguity where none exists, and even if used to resolve an ambiguous law, are not controlling) (citations omitted).

market and raising toll prices without regard to access rates, all while strengthening their wireless affiliates' status.

Beyond the rhetoric of the IXCs' policy arguments, the basic statutory rate setting questions are:

1. Whether current access rates are "just and reasonable," and
2. Whether the resulting local rates will be "just and reasonable," if all revenue responsibility for the IXCs' rate decreases is shifted there.

The IXC position on these two critical questions is patently inconsistent and fundamentally flawed.

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 RLECs' intrastate rates are higher than: 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 Commission that this renders the RLECs' intrastate access rates illegal, and that the next lowest rates, the RLECs' interstate rates, are a reasonable "compromise" (except Verizon, who wants the RLECs to mirror *its* access rates). This rate setting by comparison appears to be the principal, if not the only legal (as opposed to policy) rationale presented.

On the other hand, the IXCs inconsistently argue that benchmarking is *not* an acceptable rate setting principal to apply for the benefit of local ratepayers. The OCA and PTA positions that local rates should be "comparable" is flatly rejected 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." From this untenable position, the IXCs advocate ratemaking that would double the local rates in several cases and, overall, cause an average increase of $7.32 or 47%.[10]

The IXCs' one-sided approach of focusing *only* on comparability for themselves and affordability for local ratepayers is incomplete, simplistic, and self-serving. Ratemaking is much more subtle and complex than this. Against the overarching standard of "just and reasonable," telephone ratemaking considerations should include:

1. Compliance and consistency with Chapter 30 Plans and statute;
2. The RLECs' regulated revenue allowance levels;
3. Comparability/benchmarking;
4. Affordability and reasonableness;
5. Gradualism;
6. Customer benefits.

As to allowable telephone company rate levels, the statute is clear that *all* noncompetitive rates, including access rates, may increase with the rate of inflation. Access rates, however, have not increased with the GDP-PI. To the contrary, *only* local rates have increased. The lost allowed revenue, three-fifths of the total, has been stranded in the RLECs' "banks" (i.e., rate deferrals), which are being phased out and will never be recovered. Having foregone allowed revenue increases, the IXCs now want the RLECs to absorb further access decreases, by setting local rates without regard to marketability or sustainability.

These exorbitantly higher local rates will never be realized by the RLECs. At current local rate levels, the RLECs have lost 17% of all access lines and related traffic from 2005 to 2008 *and* absorbed all losses without recourse.[11] The implicit solace provided to the

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[10] PTA Direct at 18.

[11] *Id.* at 19-20. Price cap companies are free to pursue profitability and efficiency, while at the same time customers are insulated from competitive losses. Not one dime of revenue losses has been recovered from ratepayers, as the RLECs balance the obligation to serve and a competitive market.

Commission by the IXCs is the acknowledgment that local rates cannot be priced at the level proposed. Claiming it is "up to the RLECs" to determine if they really want to impose $25.00 tariffed rates (a $33.82 billing rate), the IXCs do not address the likelihood of recovery. Their use of the term "opportunity" to recover is code for "it will never happen."

The only clear legislative directive (and not a general policy preamble) is the one requiring "revenue neutrality." Yet, the IXCs propose that this provision should be ignored or only superficially observed, in pursuit of their version of the statute's general intent. Sprint is the most obvious offender, advocating a local benchmark of $21.97, after which the RLECs must pass an earnings test in order to recover lost revenue.

Ratemaking principals 3, 4, and 5, above-described, are also trampled in the stampede. Comparability/ benchmarking, as noted, should be of concern to *both* access *and* local ratepayers. At $25.00, the RLEC local rates would be almost $10.00 higher than Verizon's urban rates, about $9.00 - $12.00 higher than Verizon's rural rates, and almost $10.00 higher than the national average.[12] Affordability is exceeded, as the proposed rate is higher than the OCA's *maximum* affordability ceiling of $22-$23.00. Gradualism is not even acknowledged. The average proposed increase in local rates is $7.32 or 47% overall, and, for some RLECs, more than double. The IXCs' main position is this change should occur "immediately" or, under AT&T's "compromise," 75% in the first year, with the remainder being imposed upon local ratepayers over the next three successive years.

For all of this, there are no or only *de minimus* customer benefits created by access rate decreases. Again, the IXCs are long on the economic theory of an efficient market, and short on any specific benefits. Indeed, in testimony, under the caption "Pennsylvania Consumers and

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[12] *Id.* at 18.

RLECs Will Benefit From Reducing Intrastate Switched Access Rates to Interstate Levels," the AT&T witnesses actually recited a series of local rate increases.[13] When it comes to detailed customer benefits, no IXC makes any definitive (or even general) commitment to expand service, create a new service, lower toll rates or to undertake any other action that could be considered a customer benefit, except AT&T's suggestion that it might lower the in-state toll additive, by pennies. Given that IXC pricing is undertaken on a national level, while the access rate decreases are proportionally large to the RLECs, they are a mere drop in the megacarrier's ocean. Further, such assurances of an efficient market are contrary to the toll price increases over the last several years, occurring at a time when access rates remained stable or were decreasing. Generalized economic rhetoric certainly is not enough to overcome the very real and large increases for rural local ratepayers that the IXCs urge.

Glaringly absent from the IXCs' access charge "reform" is universal service funding. Under the MAG and CALLS orders, changes to interstate access and lost access rate revenues were not simply shifted to retail end-use customers, as the IXCs propose here.[14] Rather, the federal USF programs picked up a substantial revenue differential resulting from lowered access prices and increased end-user rates.

The current federal USF funding levels on industry participants (which include wireless and VoIP providers) represent 15.3% of total interstate revenues of the contributing carriers.[15] By contrast, the current PA USF represents 1.165% of IXC and LEC revenues.[16] Even were the

[13] AT&T Direct at 54.
[14] See PTA *Main Brief* at 15.
[15] See Public Notice at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-427A1.pdf, 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").
[16] Tr. 493.

OCA's $97.3 million USF implemented, the contribution rate would only increase to 3.347%.[17] On the other hand, were funding expanded to include wireless carriers, the USF contribution rate would remain at a very reasonable 1.331%.[18] Yet, this "third leg" of the access reform stool at the federal level is ignored by the IXCs and, when it comes to Pennsylvania, further USF funding is adamantly opposed.

The IXCs' exclusive focus on their own welfare and lack of acknowledgement of the other interests represented to this case, other customers and the RLECs themselves, creates a very poor, even terminally catastrophic, public policy. Nor are state changes in access timely. The FCC now appears poised to undertake national access rate reform which would include changes in intrastate access charges.

B. Summary and Response to Parties' Positions

1. The OCA's Proposal

The OCA has proposed its own plan, which consists of intrastate access rate parity with interstate access rates, a local rate benchmark of $17.09, and PA USF that increases from $33 million to $97.3 million.[19] It has the following major components:

- RLEC intrastate access rates would be set equivalent to their respective interstate rates, including elimination of the CCL.
- Residential rates that are currently below 120% of the Verizon PA state wide average rate would be increased (currently average Verizon rate of $14.25 x 1.2 = $17.09, the new benchmark).
- RLEC local rates above the $17.09 benchmark would remain at current levels.
- Any remaining revenue required to offset access revenue decreases would be recovered from the PA USF.

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[17] Tr. 494.
[18] OCA Direct at 17. Including VoIP contributions might allow the current factor to remain constant or even decrease.
[19] *Id.* at 17.

- The PA USF contributors should be expanded to include any service provider that uses the PSTN, including wireless and VoIP carriers.

The OCA repeatedly cautioned against adopting any single portion of this plan and not the whole, because simply eliminating the state CCL "would be extremely harmful to RLECs and their residential customers [.]"[20]

2. The Other Statutory Advocates' Positions

The OTS is of the opinion that the record in this proceeding is devoid of any evidence that access rates should be reduced and, therefore, "OTS maintains that the status quo should be continued."[21]

> Maintaining the status quo will ensure that IXCs continue to pay for use of the RLECs local loop, which is appropriate because IXCs originate and terminate traffic to customers without having to invest the time and expense to build a network to connect these customers.[22]

This is the common sense-based conclusion, in view of the failure of the IXCs to demonstrate any reason to reduce access.

The OSBA's primary position supports access rate *increases*:

> The RLECs have already reduced their intrastate access rates on two previous occasions. There is no need for further reductions at this time.... Rather than reducing access rates, the Commission should allow the RLECs to raise their intrastate access rates in order to help fund broadband deployment and ensure that toll carriers and intermodal competitors who use the RLECs' loops pay their fair share of those deployment costs.[23]

The OSBA notes that, "as required by Section 3017(a), an RLEC that has its intrastate access charges reduced must have that revenue made up, in its entirety, with revenue from other

[20] *Id.* at 12.
[21] OTS Main Brief at 10.
[22] *Id.* at 1.
[23] OSBA Main Brief at 2.

noncompetitive services."[24] OSBA also agrees that: "If the Commission orders additional reductions in the RLECs' intrastate access rates, the Commission must face the choice of raising the RLECs' noncompetitive service charges, increasing funding to the PaUSF, or, most likely, both."[25] Under this alternative proposal, however, there would be no rate cap. The USF would be available only if the RLEC could pass an undefined "needs test.... similar to the low-income tests that determine eligibility for a customer assistance program."[26]

3. AT&T's Proposal

Stating that it is "genuinely impressed with the leadership demonstrated by the OCA's testimony," AT&T then follows the OCA plan only to the extent it advantages itself. AT&T adopts the OCA's offer of an immediate (and massive) access rate decrease, but ignores the other two aspects of the OCA's recommendation, a residential rate cap of $17.09 and ongoing state USF support. There is no cap. There is no state USF. In other words, AT&T's position did not change, except as to slightly delayed timing. As Mr. Zingaretti wryly observed: "This is equivalent to the PTA accepting the OCA's leadership in proposing a $90 million increase to the fund, but rejecting the part where access rates are reduced."[27]

AT&T's Attachment 5 details its proposal. In year 1, AT&T and the other IXCs would be awarded the full $82.6 million decrease (their calculation[28]) in bringing access rates to parity. Of that amount, the IXCs would return $19.6 million to the PAUSF. Local rates would immediately spike by almost $64 million or an average of $5.82 per line per month.

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[24] *Id.* at 24.
[25] *Id.* at 28.
[26] *Id.* at 28. This aspect is too vague to be useful. Allusions to the low income test applied to a person do not help in designing a needs test for an RLEC. Without definition, there is a likely violation of the OSBA's acknowledgement of § 3017(a) and clearly one as it relates to the price cap form of regulation.
[27] PTA Surrebuttal at 56.
[28] 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. See my Direct Testimony at 16." PTA Surrebuttal at 56.

Specifically, 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 rate payers (or, more likely, the RLECs themselves) absorb the entire loss. At the end of year four, AT&T's original objective (large access reductions without any USF support) is obtained, with most of the reduction (76% of it) front end loaded into the first year.

Achieving three quarters of the full objective in the first year and the remainder over the ensuing three years, while using its lowered rates to pay the USF as a transition, is, Mr. Zingaretti concluded, "a very good deal for AT&T and the rest. However, new local rates at or above $33.82 (tariffed rates plus taxes and surcharges) is a very bad deal for those RLEC customers who may remain after the massive proposed increases, and to the RLECs themselves since they are not likely to receive any benefits from the IXCs."[29]

4. Sprint's Proposal

Sprint proposes that intrastate access charges be reduced to the interstate level *immediately*. Sprint then recommends the current rate cap be increased to $21.97 and adjusted for inflation thereafter.[30] There are no calculations by Sprint of the effects, but given the proximity of that rate to AT&T's initial $22.00, the local increase spike is in the magnitude of $64 million.

USF support for any additional shortfall would be available *only* in very limited circumstances, if at all. Sprint positions the remainder of the access decrease, almost $20 million, as non-recoverable. Each RLEC would be required "to establish its cost of residential

[29] PTA Surrebuttal at 57.
[30] Sprint Rebuttal at 45.

basic local service using a TELRIC based cost of service study."[31] Only to the extent that this calculated cost under TELRIC is above the permitted $21.97 local rate would the RLECs potentially recover, but even that is severely limited.[32] If the customer purchases any features whatsoever, including long distance or vertical features, "the RLEC will not receive any PAUSF support on those lines."[33]

The Sprint proposal is designed with an obvious intention to preclude any recovery by RLECs from the USF, forcing the RLEC to absorb any access revenue losses above the $21.97 allowed rate. Mr. Zingaretti explained:

> Of course, by identifying TELRIC as a selected method, Sprint has already positioned itself as the winner of that debate. The problem with the TELRIC method and the lack of loop allocation is that nobody pays for the loop. In other words, the local loop is orphaned and only partially recovered. Sprint's assertion that this should be sufficient because all customers purchasing anything more than stand-alone dialtone service "purchase enough [other] services provisioned over the local network to permit the RLEC to manage the transition away from access charges," [citing Sprint Rebuttal at 52] is no more than wishful thinking....[34]

Sprint's proposal is a very crude and obvious attempt to violate basic ratemaking principals, including the state statutory requirement of revenue neutrality.

5. Verizon's Proposal

Verizon's initial proposal was very simple and predictably that of an IXC with competitor affiliates, including wireless. Verizon seeks to decrease its access expense and advantage its competitive affiliates by increasing the RLECs' local rates. Verizon advocates that

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[31] *Id.* at 50.
[32] *Id.* at 50.
[33] *Id.* at 51.
[34] PTA Surrebuttal at 59. A TELRIC cost study does not include allocation of the loop and the cost of service without the loop included would likely be very low. Moreover, the FCC has rejected use of a forward looking cost model for universal service purposes for rural carriers. *Id.* at 7.

the RLECs' intrastate access rates should be reduced to parity with *Verizon's* intrastate access rates. This change would result in greater revenue loss than parity with the RLECs' interstate rates.[35] There would be no retail local service benchmark, and there should be no Pennsylvania universal service support.

Subsequently, ostensibly in reaction to AT&T's proposal to take the parity reductions immediately and use the USF over three years to phase up local rates, Verizon suggested instead to simply phase down the access reductions.[36] Verizon's request for an "upfront loading" of access decreases with a target to interstate parity and spiking local rates are the same as urged by AT&T. The only difference is whether the PA USF plays a transitional accounting role.

6. Qwest's Proposal

The PTA appreciates the fact that Qwest's position in this case is "much more responsible than its brethren IXCs. This may reflect the fact that Qwest does not operate wireless carriers in Pennsylvania, as do AT&T and Verizon, or have any interest in promoting migration to cable telephony, as do Sprint and Comcast."[37] Qwest recommends that the RLECs' intrastate switched access rates mirror those of Verizon, a matter with which the PTA disagrees, as noted before. However, Qwest also recommends a benchmark approach to local rates and "would not object to a benchmark set at 120% of the Verizon Pennsylvania level."[38] The PTA believes that Qwest then supports a funding of the difference from a universal service fund. Of all of the IXCs, Qwest's proposal is the most reasonable and rational of the four.

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[35] *Id.* at 60.
[36] Verizon had also suggested that the *current* USF be raided to fund, in part, this round of access reductions. See Verizon Surrebuttal at 3 and 15. Mr. Zingaretti pointed out the errors of this double-counting. PTA Rejoinder at 1-5.
[37] PTA Surrebuttal at 60.
[38] Qwest Rebuttal at 5.

7. The PTA's Proposal

The PTA's primary position is that access rates should not be reduced, as there is no reason to do so. It is far wiser to await the FCC's potentially game-changing NPRM, rather than undertake a third round of rural intrastate decreases in advance.

The PTA, however, has also described its alternative proposal in its Main Brief[39] and perceives itself to be a moderate in this debate. Access reductions are acceptable, so long as flash cuts and high local rates are avoided. The appropriate local service benchmark is $18.94, based upon benchmarking to Verizon's urban rates. The PTA Companies would support a reduction in intrastate access rates to interstate parity over a reasonable period of time (seven to ten years).

Access rates can be reduced, provided these principals are observed and the PA USF is available to fund the difference. Price Cap Companies experiencing line (i.e., customer) losses should receive reduced USF support.[40] The PTA Companies believe that the contribution base for the PA USF should be expanded to include wireless carriers and VoIP service providers.

These principles are an accommodation of all parties' perspectives, represent a moderate and rational point of view, and importantly would minimize harmful impacts to consumers. It is inaccurate to claim the RLECs want to maintain high access rates or a huge USF.[41] The RLECs are willing to increase local service customer rates as well, thereby acknowledging all three aspects of access "reform" (lower access, higher local rates and a USF).

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[39] PTA Main Brief at 3-4. These PTA suggestions, simply because they include access reductions, are not an admission that current access rates are either unjust or unreasonable, contrary to Verizon's claims. Verizon Main Brief at 10. This is another example of "litigation bravado" being counterproductive to the solution. See PTA Direct at 57.

[40] *Id.* at 3-4.

[41] Verizon Main Brief at 2.

II. FACTUAL AND LEGAL BACKGROUND

The PTA's Main Brief extensively reviewed the factual and regulatory background that shapes this proceeding.[42]

III. BURDEN OF PROOF

The PTA Companies agree that, in an investigation pursuant to Section 315(a) of the Public Utility Code, the RLECs have the burden of proving that their existing intrastate access rates are just and reasonable.[43] For the reasons stated in the PTA's Main Brief,[44] the PTA Companies have met that burden.

The PTA Companies' current rates are tariffed, approved by the Commission, and in full compliance with all applicable statutes, rules, and orders regarding intrastate access rates. No party has contended otherwise. Further, no statute or existing Commission Order has mandated that the RLECs further reduce their rates. Again, no party has contended otherwise.

As a matter of policy, the Commission may determine to reduce those rates further, but is not compelled to do so. To the extent that other parties advance proposals affecting the RLECs' existing rates, those parties bear the burden of proof with respect to those proposals.[45] The RLECs have established without dispute the legality of their existing rates, and the absence of any statutory or regulatory *mandate* to reduce them further. Thus, to the extent the IXC/wireless parties, Verizon, AT&T, and Sprint, and the cable company Comcast, advance proposals to

[42] PTA Main Brief at 10-20.

[43] Verizon Main Brief at 10; AT&T Main Brief at 16-17; Sprint Main Brief at 21-22. Comcast presented no argument other than the unsupported statement that, as an IXC, it has met its burden. Comcast Main Brief at 4.

[44] PTA Main Brief at 22-23, 30-32.

[45] *Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010), 2010 WL 1259684 (Pa. PUC) (While the public utility bears the burden of its existing and proposed rates and tariffs, when other parties submit their own proposals, they bear their own burden of proof with respect to those proposals.).

reduce the RLECs' intrastate access rates, it is incumbent upon them to prove, by a preponderance of evidence, that further access reductions are in the public interest. This, they have not done.[46]

IV. SHOULD RLECS' INTRASTATE SWITCHED ACCESS RATES BE REDUCED?

A. Competitiveness of the Stand Alone Toll Market

AT&T provides no record citations at all where it claims that "much" of the erosion in its toll business "can certainly be attributed to the fact that IXCs face artificially higher costs than their competitors."[47] The PTA Companies are sympathetic to AT&T's reduced business, since the cause is the wireline LEC's own loss of market to intermodal competition. The cause, however, is the increased number of competitors[48] and the attractiveness of their products.[49] It has more to do with AT&T's decision to exit the toll market, a decision that had nothing to do with access rates, but rather was attributed to other reasons, among which access was never mentioned.[50] 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.

The IXCs also claim that the RLECs have a monopoly on terminating access services (Sprint, with its usual rhetorical excess, refers to it as "monopoly-controlled, bottleneck

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[46] AT&T simply asserts that access rates were not "just and reasonable" when set and still are not because "things have changed." AT&T Main Brief at 16-17. Otherwise, the AT&T Brief does not address the just and reasonable standard in its advocacy.
[47] AT&T Main Brief at 21.
[48] Neither cable nor wireless carriers offer customers the right to use an alternative toll provider. There is no option to choose a "Preferred Interexchange Carrier" ("PIC").
[49] PTA Direct at 42-43.
[50] PTA Main Brief at 23-26.

facilities"[51]). Such a proposition is true to the extent that to call my customers, you need to use my network. The statement ignores the obvious corollary, that for me to call your customers, I need to use your network. As noted here, and in the PTA's Main Brief, CLECs mirror, either on a territory specific or blended basis, the ILECs' access rates[52] and, therefore, have equal benefits from access revenues. Wireless is a different story, but one of the FCC's intentional creation.

AT&T and the other IXCs argue that their toll service prices exceed access charges. For example, in its direct testimony, AT&T argues that the average RLEC access rate of 5.2¢ exceeds AT&T's average toll price of 4.4¢.[53] Of course, AT&T, as do all the other IXCs, prices toll on a national, or at least statewide, basis.[54] AT&T compares its *statewide* average toll price against a *subset of the access* charges it pays (and a small subset at that). When compared, more accurately, on a total basis, statewide toll to statewide access, the profitability of AT&T's toll services is very substantial.[55] If successful in this case, AT&T's profit from toll services will become even more pronounced.[56]

B. Wireless Compensation

The PTA's Main Brief anticipated and rebutted much of the IXCs' claims regarding the asymmetry that the FCC created in wireless-wireline intercarrier compensation.[57] As noted there, however, any conclusion the Commission reaches in this case will not affect the FCC's

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[51] Sprint Main Brief at 23. See also claim that terminating access is a monopoly service which the IXCs, that are voluntarily in the toll business are forced to pay. Verizon Main Brief at 6 and 14.
[52] PTA Main Brief at 28-29.
[53] AT&T Direct at 41.
[54] Tr. 148. See also *Implementation of the Telecommunications Act of 1996: Imputation Requirements for the Delivery of IntraLATA Services by Local Exchange Carriers*, No. M-00960799 (Order entered January 29, 2002), at 14.
[55] PTA CX Ex. 2 (Not cited in brief because marked confidential by AT&T).
[56] PTA CX Ex. 3. (Not cited in brief because marked confidential by AT&T).
[57] PTA Main Brief at 26-29.

rules.[58] The FCC has approved a different compensation scheme for different technologies; this is a federal policy decision.[59] Pennsylvania should not redesign intrastate access rates to remedy any perceived unfairness that may result from a Federal policy.

Moreover, the IXCs present a distorted picture.[60] Wireless and wireline do not pay any compensation (or pay reciprocal and symmetrical rates) to each other for *intra*MTA traffic.[61] This can hardly be of concern. The complaint is only on *inter*MTA traffic, where the FCC allows the wireline carriers to collect access rates. However, the traffic is *de minimus*. 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.[62]

Moreover, in the absence of an interconnection agreement, the wireless carrier pays nothing anyway. As Mr. Zingaretti noted: "For most of the RLECs, Sprint has not paid anything for termination of their wireless calls for years. It is inconsistent with Sprint's actual experience to say that there is any imbalance in the rates."[63] While Mr. Appleby, Sprint's witness, may claim (with no record support) that Sprint pays "millions" in access fees for wireless service nationally, the Pennsylvania number was not presented. When asked on cross-examination, Mr. Zingaretti responded: "The only thing we've heard about Pennsylvania is that for CenturyLink it's less than 5 percent of their total access traffic. So I guess I stand by my testimony."[64]

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[58] *In the Matter of Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling at ¶ 14 (Released July 3, 2002).
[59] PTA Direct at 44.
[60] See, for example, Sprint Main Brief at 23.
[61] PTA Main Brief at 26-27.
[62] PTA Surrebuttal at 21.
[63] *Id.* at 22.
[64] Tr. 615.

Incredulously, Sprint claims that "high access rates threaten wireless carriers and their Pennsylvania employees,"[65] despite every other shred of evidence in this case and our own personal experience, which shows that the wireless industry, and our use of it, has been exponentially exploding.[66] Equally ridiculous is the hyperbole that the RLECs' access rates "tend to discourage competitive entry,"[67] while at the same time, its witness brags that at least 77% of Pennsylvanians have wireless phones and 18.4% of adults live in households with *only* wireless phones.[68]

Sprint's market share avarice is so great that it actually complains that the wireless customers continue to subscribe to wireline services also: "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?"[69]

The wireless industry is in a booming business cycle. Neither crocodile tears nor the RLECs' intrastate access rate levels can wash away that essential fact.

C. CLEC Compensation Is Also Fair

As explained in the PTA's Main Brief, under the Public Utility Code, CLECs are entitled to charge access rates equal to the underlying ILEC[70] and do so using territory specific or unified blended rates.[71] Thus, CLEC to RLEC rates are reciprocal and symmetrical.

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[65] Sprint Main Brief at 29.
[66] Elsewhere Sprint acknowledges that "the vast majority - approximately 74.5% of Pennsylvania local service consumers are also wireless phone consumers." Sprint Main Brief at 28.
[67] Sprint Main Brief at 27.
[68] Sprint Rejoinder at Exhibit JAA-5RJ.
[69] Sprint Main Brief at 29.
[70] 66 Pa. C.S. § 3017(c).
[71] PTA Main Brief at 28-29; *See* 66 Pa. C.S. § 3017.

Regardless, the IXCs claim that inflated access has slowed local competition,[72] has "thwarted innovation,"[73] and thwarts "market driven" broadband deployment.[74] Verizon claims that potential local entrants simply will not enter.[75] Again, there is no proof of these claims, only witness' opinions based upon economic theories of efficient markets and without facts.

Not only does the CLECs' use of the same access rates belie this claim, so to does the daily migration of RLEC customers to CLECs, as was described in the PTA's Main Brief. The line losses to the PTA Companies are "staggering and reflect the reality of the major shift now occurring in telecommunications."[76] The PTA Companies served 841,981 access lines in 2005. By 2008, this figure dropped to 717,935, a 17% decline over 3 years.[77] The table below illustrates the year to year decline:[78]

Year	Lines	Line Loss %
2005	841,981	
2006	813,179	-4.1%
2007	766,757	-6.4%
2008	717,935	-7.2%

Where, the PTA asks, is the suppression of competition occurring? The IXCs never say.

D. Access Rates Are Not Discriminatory

As explained in the PTA's Main Brief, there is no discrimination.[79] If the call is intrastate, the IXCs all pay the same Commission-approved rate. The Commission has approved these tariffed rates and the tariffs are applied uniformly.[80] The only exception is IntraMTA

[72] Verizon Main Brief at 15-16.
[73] Sprint Main Brief at 63.
[74] *Id.* at 63.
[75] Verizon Main Brief at 16.
[76] PTA Main Brief at 77.
[77] *Id.*
[78] *Id.*
[79] PTA Main Brief at 29-30.
[80] PTA Direct at 46.

traffic exchanged with wireless carriers, in which case the parties pay each other reciprocal compensation per FCC rules.

E. The PTA Companies' Existing Intrastate Access Rates Are Just and Reasonable

1. AT&T's Argument That Access Rates Were, But Are No Longer, Just and Reasonable, Because "Things Have Changed," Is Exaggerated and Not Relevant

AT&T argues that, even were the RLECs' access rates just and reasonable "when they were last set," they are no longer because the market "has changed so substantially" since then.[81] AT&T's position is both legally and factually unsound. While the extent of *local* competition may be greater today than existed in 2005[82] (i.e., more RLEC access lines are lost to competition), the existence and nature of the competitive *toll* market was already well formed even *before* the RLECs' intrastate access rates were last approved by the Commission in 2005.

Nor has AT&T's advocacy changed from 2005, when it announced the rationale for its changing business plan in a pleading before the FCC:

> Carriers today must compete with "[n]ew, powerful competitors . . . [including] wireless carriers offering "all-you-can-eat" plans [who are] stealing away more and more minutes from traditional IXCs every year[, t]he RBOCs [winning] authority to offer interLATA services throughout the country, and [ ] competing aggressively and winning market share very quickly[,] E-mail and instant messaging [are] also reducing traditional carriers' minutes of use."[83]

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[81] AT&T Main Brief at 17.

[82] The RLECs' current intrastate access rates were set by an order approving access decrease tariff changes through December *2005*, not effective in 2003 as alleged by AT&T. Moreover, several of those rates have been further reduced by the individual companies.

[83] PTA Rejoinder at 7.

AT&T makes the same exact statements today, five years later.[84]

Moreover, this Commission was fully aware of AT&T's "market conditions" arguments in 2005:

> AT&T contends that ... the emergence of wireless providers as well as internet services like "instant messaging" have created new competitors and new alternatives for traditional toll service.... Wireless carriers pay cost-based reciprocal compensation rates rather than access charges.... VOIP and VFX services are also growing in popularity[.][85]

Of course, as the PTA demonstrated in its Main Brief, AT&T's diminished role in the IXC market was self-initiated without regard whatsoever to intrastate access rates.[86] This, too, was confirmed before the Commission in *2005*: "AT&T and MCI are no longer pursuing mass market customers[.]"[87] The market has not changed substantially. AT&T simply dislikes the deliberative time frame the Commission has employed for addressing intrastate access rates. Nevertheless, "this Commission has, on several occasions, following notice and opportunity to be heard, made a deliberate and considered decision that the public interest requires that the proceedings be stayed."[88]

[84] AT&T Direct at 11-12. "New competitors, most of them substantially less regulated, have deployed new technologies (some not even contemplated in 1984, and some barely in existence in 2003) to give consumers a broad range of options for long distance communications[, including] internet service providers, VoIP providers, text messaging providers, e-mail providers, wireless carriers, social networking websites[.]"

[85] *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.*, Docket No. C-20027195 (ALJ Recommended Decision on Remand entered November 30, 2005) at 40 (footnotes with citations to record omitted); summarized by the Commission in *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.*, Docket No. C-20027195 (Order entered January 8, 2007) at 10-11.

[86] PTA Main Brief at 23-26.

[87] *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.*, Docket No. C-20027195 (ALJ Recommended Decision on Remand entered November 30, 2005) at 35.

[88] *AT&T Communications of Pennsylvania, LLC et al. v. Armstrong Telephone Company – Pennsylvania, et al.*, Docket No. C-2009-2098380 et al. (Order entered July 29, 2009) at 15, note 7 (emphasis added).

Nor are the general policy provisions of Act 183 upon which AT&T relies substantially new. Rather, they echo the same legislative goals expressed in 1993.[89] Thus, AT&T likewise lacks legal support. The mere passage of time, particularly absent a legal mandate and time frame for change, does not render the RLECs' intrastate access rates unjust and unreasonable. This is particularly so in light of the fact that those rates, and the state of the regulatory environment, have been annually considered by the Commission resulting in a stay of those rates through 2009.

2. Cost Is Not a Relevant Pricing Standard

Comcast's brief leads with the declaration that the RLECs' intrastate access rates "are many times greater than the actual cost" of providing service.[90] Similarly, Verizon complains that the RLECs' rates are "not cost justified."[91] AT&T argues that the RLECs "should be recovering the costs of their retail services from their own retail customers[.][92]

There are several basic problems with these claims, not the least of which is that no cost of service study was presented in this proceeding. Furthermore, even if one were, the results would be irrelevant. It is the PTA's position, and that of numerous of the parties, including these same IXCs,[93] that there is no purpose served by submitting local or access service cost studies in this case, given the absence of cost studies in this Commission's access reform efforts over the past decade. Simply stated, cost is not a recognized factor in setting "just and reasonable" telephone company rates.

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[89] *Cf* Sections 3001(2), 3001(3), 3001(4), 3001(7), and 3001(8) of original Chapter 30, 66 Pa. C.S. §§ 3001-3009 (repealed), with Sections 3011(3) (reasonable charges for protected services); 3011(4) competitive ventures not subsidized); 3011(5) (provide diversity in services); 3011(8) (provide diversity in suppliers); and 3011(9) (encourage competitive supply where there is demand).
[90] Comcast Main Brief at 1.
[91] Verizon Main Brief at 13.
[92] AT&T Main Brief at 20.
[93] AT&T Rejoinder at 5 ("no purpose served"); Verizon Rejoinder at 12 (Verizon's "rates are not set based upon cost.").

There is no state legal requirement that access charges be set at cost. Cost-based rates have never been required of the RLECs in Pennsylvania. Cost has never been set as the ultimate objective by the Commission. Certainly, there is no such prescription contained in any of the RLEC's Chapter 30 Plans. The Commission, in approving the RLEC's Plans, rejected AT&T's proposal that "above-cost access charges" be proscribed.[94]

The Commission has never stated that all implicit subsidies, if there are any, must be removed. The access reductions adopted by the Commission in 2000 and 2003-04, as noted previously, were completely revenue-driven. The Commission found that the rates resulting from the *Global Order* "shall be considered just and reasonable rates for the purpose of resolving the Companies' Chapter 30 Plans."[95]

Nor is there any federal requirement that states adopt access rates in relation to costing theory. 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."[96]

> ... 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.[97]

The rates approved for telephone companies have *always* been set in a regulatory process that allowed regulators to advance the public policy goals of just and reasonable local rates and universal service. Telephone rates were established for regulated telecommunications services

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[94] *Re: Armstrong Telephone Company-Pennsylvania v. Pa. PUC*, 2000 WL 350440 at *22 (Pa. PUC) (reciting AT&T Exceptions at 5).
[95] *Id.* at *23.
[96] *Qwest v. FCC*, 398 F.2d 1222, 1231 (10th Cir. 2005)
[97] *Id.* at 1232 (citations omitted).

under a regulatory process known as "residual pricing" or "residual ratemaking."[98] The Commission acknowledged this concept during the Global Proceeding.[99]

In its Main Brief,[100] the PTA noted this Commission's prior difficulties in seeking cost studies, and its subsequent abandonment of them. While, ALJ Michael Schnierle did suggest that cost based access rates be implemented, as AT&T points out,[101] the Commission did not adopt his Recommended Decision, because resolution was impossibly complicated.

The Commission's efforts to develop a cost methodology "were not fruitful,"[102] as the Commission spun its wheels attempting to formulate one. The Commission asked the parties to develop a cost model, a benchmark rate, and a USF plan and was presented with "no fewer than four models" to consider.[103] In attempting to reconcile these in its Universal Service Order, the Commission defined the local loop as a joint cost and not a direct cost of local service.[104] The result was not satisfactory. "Even that model pushed what the Commission considered to be too much revenue responsibility on the local ratepayer and setting access upon any cost model was never adopted... The reality is that there is no accepted cost methodology upon which the RLECs could develop a study."[105]

That is why the Commission adopted a practical, common sense revenue-based solution in the *Global Order* and again in 2003.[106] It approved an access reform plan that reduced and

[98] PTA Surrebuttal at 3.
[99] *Global Order* at 15, note 10. ("... access and toll rates, as well as vertical local services, are priced at rates well above their costs, but at prices that the market will bear, in order to keep basic local exchange telephone service rates affordable.")
[100] PTA Main Brief at 59-67. *See also* PTA Surrebuttal at 3-9.
[101] AT&T Main Brief at 6-7 and *passim*.
[102] PTA Surrebuttal at 5.
[103] *Id.* at 6.
[104] 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 28, 1997) at 83.
[105] PTA Surrebuttal at 6-7.
[106] *Id.* at 6-7.

reformulated access rates on a revenue-neutral basis, *and* established a PAUSF that provided for universal service support based *strictly* upon the revenues lost as a result of the access reductions.[107] These were not based upon individual RLEC cost studies or individual review of access line densities.[108]

Nor is the revenue-setting format for the price cap RLECs cost-based. Allowable rate increases (and decreases) are derived by multiplying the revenues received from PA PUC-jurisdictional, noncompetitive (i.e., regulated) services by the change in the rate of inflation as measured by GDP-PI.[109] This completely supplants cost-based ratemaking:

> The [price cap formula] set forth in the Plan is in complete substitution of rate base/rate of return regulation and is the exclusive basis upon which the Company's rates and services are regulated on and after the date of Commission approval of this Plan. All tariff filings for noncompetitive services are subject to review under the terms of this Plan.[110]

The percent change in GDP-PI is the substitute measure of these companies' revenue needs under alternative regulation. To require that individual rates be set not on the inflationary measure, but at cost, would be an impermissible back door form of rate of return regulation. "If individual RLEC rates were limited to some cost basis, then the overall company revenues would no longer be price cap regulated."[111]

The IXCs seek to draw several adverse conclusions from the absence of a cost study. Sprint argues that the RLECs must justify their rate on a cost basis or reduce them -- "it now

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[107] *Id.* at 4.
[108] *Id.* at 4.
[109] PTA Surrebuttal at 9.
[110] See e.g. *Amended Alternative Form of Regulation and Network Modernization Plan of Alltel Pennsylvania, Inc., Part 3*, p. 20.
[111] PTA Surrebuttal at 10.

makes sense that before permitting the RLECs to continue collecting overcharges [they] must be required to prove that their residential basic rates are provided below cost."[112]

Sprint even goes so far as to claim that the studies that were not conducted were adverse to the RLECs. The logic is as follows -- Sprint asked the RLECs to produce cost studies, which they did not do, so therefore; "I conclude that the RLECs' financial information must not support the RLEC contention that subsidies are needed or the RLECs would disclose the results."[113] As Mr. Zingaretti noted: "The PTA answer was that we did not possess such studies, not that we would not disclose them."[114]

As advocates for the factual proposition that access rates exceed costs, none of the IXCs provided a cost study to support their claim that access rates are above cost. Nor did any IXC seek to obtain the information necessary to conduct such a study on its own.[115]

In making their claim of subsidy without a cost study, the IXCs rely upon two basic arguments: a general Commission statement made during the 1999 aborted attempt to review costs that access rates exceeded cost; and comparison of access rates to the TSLRIC-based (forward-looking, incremental cost) reciprocal compensation rate applied by the FCC to the exchange of local traffic between local exchange carriers. Both claims are unreliable.

As to the first, the ten year-old statement by the Commission may no longer be true. The subsequent overwhelming decline in the RLECs' access lines and traffic volumes is such that, under rate of return regulation, prices would have increased. Further, the RLECs, since the *Global Order* proceeding, have both generically and individually lowered intrastate access

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[112] Sprint elsewhere claims: "If the RLECs cannot prove a financial need, then high access rates are not a subsidy at all, they are simply excess profits for the RLECs." Sprint Rebuttal at 19.
[113] *Id.* at 15.
[114] PTA Surrebuttal at 15.
[115] *Id.* at 11. Despite the fact that the OCA conducted a cost study of local service in the proceeding before ALJ Colwell to rebut the IXC claim that local service rates were below cost, the IXCs undertook "no corollary study of their own."

charges. Moreover, there have been additional network improvements, investments and expenses, as the RLECs accepted the accelerated timeframe for network improvement under Chapter 30 as amended. As to the second claim, there has been no acceptance of TSLRIC pricing for access charges. Indeed, the use of incremental cost methodology for access charges has been rejected by both the FCC and this Commission.[116] Even in doubt is applicability of TSLRIC to rural LECs.

Nevertheless, the lack of a cost study has not precluded the IXCs from repeatedly claiming that access provides a subsidy. Almost any mention of the term access charges, which of course is frequent in this proceeding, is prefaced by terms intended to be pejorative, such as "inflated," "excessive," "high," "burden," "subsidy," "distortive price signals," "profit laden," "incumbent favoring," "enriching," "unjustified," "bloated," and "overcharged." These descriptions of the degree to which access rates are above-cost are unproved and can only be considered as rhetorical. The only real proof presented by the IXCs is that they prefer to pay lower access charges for use of the RLECs' networks and will resort to unjustified name calling.

3. There Is No Revenue Cross Subsidization

With rhetorical bravado and, in the absence of facts, Sprint postulates that, since no cost studies have been performed, "the risk for cross-subsidization is extremely high," and, therefore, cross-subsidization has occurred.[117] Continuing, the Sprint position asserts "that only by moving access rates towards cost can the Commission reduce the considerable risk that these access rates are not merely overcharges that either unduly enrich the recipient or pollute the market..."[118]

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[116] See discussion, *infra*, Section V.A., re benchmarking, and *supra* Section I.B.4., re Sprint's proposal.
[117] Sprint Main Brief at 65.
[118] *Id.* at 65-66 (citation omitted).

Sprint's position possesses no statutory relevance and suffers from a lack of record development.[119] The applicable statutory section, 66 Pa. C.S. § 3016(f)(1), reads as follows: "A local exchange telecommunications company shall be prohibited from using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services." The Commission's Code of Conduct regulations at 52 Pa. Code §§ 63.141 et seq. mirror this provision.[120]

Cross-subsidization is not an issue within the stated scope of this proceeding or contained in the issue lists shared by the parties. AT&T's complaint did not allege a violation of either § 3016(f)(1) or the Commission's Code of Conduct. Nor did AT&T aver that the general cross subsidization proscriptions of 66 Pa. C.S §3011(4) had been violated.[121]

If it is an issue in the case, the burden of proof is upon Sprint, as the Commission noted in establishing its Code of Conduct:

> Whether cross subsidization is actually occurring will be a factual matter to be addressed at a hearing wherein the burden of proof would be on the party alleging cross subsidization.[122]

In order to convince the Commission of a violation, Sprint must show that "revenues earned or expenses incurred" in providing a "noncompetitive service" are being used to subsidize a

[119] While Sprint claims that "the RLECs" bill the CCL to non-voice broadband lines, the exchange occurred with a CenturyLink witness and was never addressed with the PTA Companies. Sprint Main Brief at 64. The PTA does not believe that the proposition was proved as to CenturyLink and notes that it was never raised as to any other RLEC, Sprint's sweeping generalities aside.
[120] 52 Pa. Code § 63.143(4)
[121] See ALJ's Order Granting, In Part, Sprint's Motions To Compel Responses To Set I Interrogatories Propounded Upon CenturyLink and PTA dated February 22, 2010 at 7 ("....Sprint asserted that AT&T raised the issue of potential access charge revenue subsidization of competitive services through its reference in the AT&T Complaints to 66 Pa. C.S § 3011(4). Upon review of these Complaints, I could find no reference to 66 Pa. C.S. § 3011(4); instead, reference is made to 66 Pa. C.S. §§ 3011(3), (5), and (9). See also, Order Addressing Scope of Consolidated Proceedings, pp. 23-24, adopted in relevant part by Commission Opinion and Order entered December 10, 2009 at the within docket.")
[122] *Rulemaking Re Generic Competitive Safeguards Under 66 Pa.C.S. §§ 3005(b) and 3005(g)(2)*, Docket No. L-00990141 (Order entered June 16, 2003) at 20-22. Section 63.144 identifies the appropriate forms for resolution as the Commission's alternative dispute resolution process, Commission complaint or civil action.

"competitive" service. Obviously, Sprint has never proved that access services are priced above cost, let alone that the revenue derived is being used to under-price competitive services. This would take a comprehensive cost study, which Sprint has not done.

As fundamentally, neither of the two services cited by Sprint as beneficiaries of the putative excess access revenues are classified as "competitive." The only services that Sprint specifically points to in its long, unfocused diatribe are broadband and bundles, both of which are regulated services for the RLECs.

Broadband is regulated under the federal jurisdiction and is an FCC tariffed service for the PTA Companies.[123] Similarly, RLECs' bundles are regulated[124] and revenues reported in the constituent jurisdictional accounting baskets.[125] As the Commission has noted: "the legal and technical nature of basic service as a 'protected service' does not change if and when the 'protected service' becomes part of a bundled service pricing plan under Section 3016(e)."[126]

Finally, Sprint's claim is inconsistent with its main theory of the case -- that access rates provide support to basic local service, which must be increased. To make this new argument, Sprint now alleges that the putative access revenue above cost also performs the simultaneous duty of supporting competitive ventures. This is a classic case of "double counting."

[123] See discussion *infra*.

[124] *Rulemaking Re: Provision of Bundled Service Package Plans at a Single Monthly Rate by Local Exchange Carriers, Proposed Rulemaking Order*, Docket No. L-00060179 (Order entered July 3, 2006) at 2. (For example, the Commission has granted conditional waivers of various sections of Chapter 64 "to permit companies to offer bundled services packages while still preserving the customer protections currently in place to enable consumers to maintain basic telephone service as long as they meet their payment obligations regarding basic service.")

[125] *Id., Final Rulemaking Order* (Order entered March 27, 2009) at 11(footnote 13) (The Commission notes that the separate listing of the stand alone basic rate "acts as a safeguard against the LEC using revenues from noncompetitive services to subsidize its competitive services. *See* 66 Pa. C.S. § 3016(f)(1).")

[126] *Id., Final Rulemaking Order* at 8. The Commission also exercises jurisdiction over formal complaint cases involving bundled service packages. *See, Havennig v. Trinsic Communications*, Docket No. F-02146362 (Order entered September 29, 2008).

Parenthetically, in Sprint's record testimony, the claim of "cross subsidization" was argued differently, based upon a misunderstanding of jurisdictional accounting rules. These arguments were not included in Sprint's Main Brief and, ostensibly, have been dropped.[127]

4. The Claimed Tendency of Carriers to Charge Other Carriers

The IXCs, particularly Sprint, repeatedly recite FCC language from the FCC's *ISP Declaratory Ruling*[128] for the proposition that access rates, by their very existence, create the incentive for a carrier to charge other carriers, rather than end-use customers.[129] The FCC's *ISP Declaratory Ruling* was designed to address the reciprocal compensation terminating access game engaged in by many CLECs for traffic destined to Internet service providers. Internet traffic, with its long call duration, is a perfect vehicle for creating large imbalances between ILEC and CLEC terminating and originating minutes, allowing the CLEC to collect huge amounts of compensation for terminating local access with little or no investment. As described by the FCC, "certain CLECs appear to have targeted customers that primarily or solely receive traffic, particularly ISPs, in order to become net recipients of local traffic."[130]

The circumstances of the quoted FCC statement are inapposite to the current situation. The RLECs have not gone into business for the purpose of receiving intercarrier compensation. They have not structured their customer base to receive "primarily or solely" incoming traffic. Moreover, the RLEC traffic at issue here is voice calling, not Internet bound.

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[127] To the extent Sprint, instead, is improperly reserving these argument for Reply Brief, the PTA asks that the reader review the PTA's Surrebuttal Testimony at 37-39.

[128] *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 (Declaratory Ruling and Notice of Proposed Rulemaking released February 26, 1999)("*ISP Declaratory Ruling*").

[129] See, for example, Sprint Main Brief at 34.

[130] *In the Matter of Developing a Unified Intercarrier Compensation Regime,* Further Notice of Proposed Rulemaking, CC Docket 01-92, FCC-05-33, 20 FCC Rcd 4685 (March 3, 2005) at ¶11.

5. Arbitrage and "Traffic Pumping"

AT&T postulates that interstate parity "will help to avoid or mitigate problems associated with various arbitrage schemes."[131] Arbitrage is a problem for the RLECs and, where carriers attempt to skew the compensation scheme, the RLECs have sought to address these problems through enforcement.[132] As noted elsewhere, arbitrage between inter and intrastate compensation is *one* reason to bring the two closer to parity, 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.

Unfortunately, AT&T has chosen this proceeding to accuse two Pennsylvania RLECs of engaging in "the unscrupulous practice of call pumping, also known as traffic pumping."[133] While AT&T uses the term "traffic pumping," it fails to distinguish its terminology from the basic, universal economic objective of business growth. Service to a chat room operator is not, in and of itself, improper, but this is all that AT&T alleges. There is nothing untoward about service to a customer with high volumes in the context of an RLEC's operation. The RLECs are "common carriers" with a COLR obligation to serve all customers, including those that operate chat rooms.

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[131] AT&T Main Brief at 27.

[132] *Palmerton v. Global NAPs*, Docket No. C-2009-2093336, is an example of a complaint proceeding enforcing compensation rules.

[133] AT&T Main Brief at 28. AT&T says that it "learned" of increased volumes "toward the end of 2009," but said nothing to the individual companies, and then filed rebuttal testimony in this case in March 2010. AT&T Rebuttal at 53 (footnote 83).

As common carriers, neither AT&T nor the RLECs are responsible for the content of a call. If an RLEC customer purchases service to operate a chat line and AT&T's customers call that chat line, then that is the AT&T end-use customers' preferences and of no business to the connecting carriers. AT&T is paid toll charges to provide service to the calling end user. Certainly, one could go on AT&T's U-verse broadband product (same as Verizon FiOS) and access any number of pornographic websites. This reflects not at all upon the scruples or legality of the carrier's operations.

"Traffic pumping" does not occur because intrastate access charges are higher than interstate. In other words, this is not PIU arbitrage, taking advantage of the difference in inter and intrastate rates.[134] The FCC Order on the topic states Farmers and Merchants began its operations "for the purpose of increasing its *inter*state switched access traffic and revenues."[135] The Iowa Utilities Board stated that the companies' *inter*state access rates were "even the more important factor given the [higher] percentage of [chat line customer] traffic that is interstate."[136]

The PTA declines to be drawn into defending individual company practices in this generic investigation of access rate levels. AT&T's interest appears to be more in "regulatory spin," than in discovering the facts and seeking carrier to carrier resolution, if a problem exists. The issues of this case should be conducted on the merits.

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[134] In fact, it is not arbitrage at all.

[135] *Qwest Commns. Corp. v. Farmers and Merchants Mut. Tel. Co.*, Second Order on Reconsideration, 24 FCC Rcd. 14801 (2009) at ¶3.

[136] *Qwest Commns. v. Superior Tel., et al.*, Iowa Utilities Board Docket No. FCU-07-2 (Final Order issued September 21, 2009 at 57)(footnote 22).

F. Putative Customer Benefits of Reduced Access Rates

The IXCs' evidence of customer benefits of reduced access rates is best summarized as abstract, indefinite, and noncommittal.

Verizon argues that the RLECs' access charges are "harmful to consumers" because of "carriers that must pay" intrastate access rates.[137] In other words, the claimed "impact" on the IXC customers is the "diver[sion of] large sums of revenue away from their own operations . . . to the ultimate detriment of their customers."[138] The PTA does not dispute Verizon's last point, that reducing RLEC access rates will benefit the carriers themselves, but any rate decrease will have that effect.

Largely, it is the IXCs' wireless affiliates that will benefit, as these companies are in the process of abandoning the wireline business model.[139] Thus, greater revenues will not be used to benefit IXC customers. Sprint admits this, stating that access reductions will allow "Sprint and other carriers to have more resources to expand wireless service coverage, enhance service quality and develop new, innovative service offerings[,]"[140] enhance their provision of bundles,[141] "subsidize handsets,"[142] and generally displace traditional local service in the RLECs' markets, which Sprint calls "duplicative."[143]

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[137] Verizon Main Brief at 14.
[138] *Id.* 14.
[139] PTA Main Brief at 23-25, incorporating comments filed by AT&T Inc. December 21, 2009 in *In the Matter of International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act, A National Broadband Plan for Our Future, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket Nos. 09-47, 09-51, and 09-137.
[140] Sprint Main Brief at 3.
[141] *Id.* at 25.
[142] *Id.* at 26. Even these putative benefits, however, are not ones to which Sprint has committed or even previously suggested, as review of the transcript and testimony pages cited in Sprint's footnotes 27 and 28 reveals. Rather than reflecting specific price and service commitments, review of the transcript at page 273, lines 3-14 (actually starting at page 272, line 19) reveals the Verizon witness specifically *declining* to commit to specific benefits, stating "no one really knows how those benefits will be flowed through[.]" And while Sprint's witness Appleby suggested *potential* customer benefits in his rebuttal testimony (Sprint Statement 1.2 at 24 as cited), cheaper handsets is a new speculation offered for the first time in brief.
[143] *Id.* at 28-29.

The IXCs' formulation of customer benefits through lower toll rates is based completely upon economic theory and not the realities of the marketplace. AT&T's claim that access price decreases will engender toll rate decreases is belied by AT&T's own evidence. For the period 2006 through 2008, AT&T's long distance prices increased from 3.8¢ to 4.4¢, despite the fact that the RLECs' average access rate remained relatively constant.[144]

As to claims that the RLECs' access rates diminish competitive options, there is no evidence that is happening. Both the PTA and CenturyLink witnesses testified there is robust competition in the RLECs' service areas. It simply is not ubiquitously available in the more rural areas.[145] Given the competitive carriers' disinterest in ETC status in RLEC service territories, it likely never will be, because without ETC status there is no COLR obligation. Verizon itself admits it is certificated in RLEC territories, but solicits business, not residential, customers.[146] These carriers' reports to the SEC confirm that competition is robust in areas where it is profitable and less robust in areas where it is less profitable.[147] In its own access proceeding Verizon responded to Qwest's "pro-competition" claims stating that "Qwest's argument is undermined by its own behavior. . . . Despite having benefited from a significant decrease in access rates in Pennsylvania, Qwest still does not provide any local exchange service in Pennsylvania."[148] Similarly, despite having received nearly $500 million in rural access relief over the past decade,[149] not all RLEC customers have competitive options, though solicitation of profitable customers is rampant.

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[144] AT&T Direct at Ex. H.
[145] E.g. Tr. 604-05.
[146] Verizon Main Brief at 6 (MCIMetro, Verizon's CLEC, provides competitive retail service to enterprise (large business) customers).
[147] PTA Rejoinder at 8.
[148] *Id.* quoting Verizon Statement 1.2 Remand Surrebuttal Testimony of James J. Kane and Ann Amalia Dean, Docket No. C-20027195, dated July 11, 2005.
[149] PTA Direct at 10.

The recitation of specific end-use customer benefits remains as vague and noncommittal in brief as it was in testimony. Verizon states "[c]ost savings *may* be reflected in reduced rates . . . competitors in the long distance market *may* choose . . . to invest in [technology or service or features]."[150] Unwilling to commit, the Commission must trust that "[c]ompetition will ensure that such benefits are passed along to consumers *in one way or another*."[151]

Relying on "simple economics" to flow through benefits, AT&T continues its equivocation, stating "it would be premature for AT&T or any other IXC to commit to specific price reductions."[152] AT&T also claims that it has reduced its rates in Pennsylvania more than it has realized in access reductions and that its long distance average revenue per minute has decreased more than the amount of access decreases,[153] thus proving that customer benefits inherently result from reduced access rates. However, neither of these claims proves that customer benefits will result from reduced access rates as AT&T purports. Rather, AT&T's "evidence" of alleged customer benefits that will assuredly flow through from reduced access rates is no more than an example of Mr. Zingaretti's "fallacy of causation."[154]

Long distance revenue per minute has decreased in general because of changing technologies and customer preferences, the long distance model itself having been long abandoned by AT&T and others.[155] Thus, a demonstration of two numbers alone – long distance revenues and access rates – does not prove their correlation. In fact, review of AT&T's evidence[156] shows that in some states long distance revenues per minute decreased even as access rates remained static or increased. If trusted to the market for a direct correlation between

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[150] Verizon Main Brief at 18 (emphasis added).
[151] *Id.* at 18 (emphasis added).
[152] AT&T Main Brief at 26.
[153] AT&T Main Brief at 26.
[154] Tr. at 604.
[155] PTA Main Brief at 24; PTA Ex. GMZ-15.
[156] AT&T Ex. 8.

reduced access rates and resulting customer benefits, as the IXCs urge, the opposite would have resulted. Clearly this proves the PTA's position, that it is not access rates, but rather something larger such as changing technologies and customer preferences, at work.

Similarly AT&T's comparison of a few RLECs' access rates to AT&T's average in-state long distance price[157] fails to show a direct correlation, and thus a direct benefit, between access rates and price. This is because the price reflected includes Verizon's and CLECs' access prices,[158] which skews the comparison, and because AT&T has several different long distance plans each with multiple rates,[159] which again skews the comparison.

Verizon's own prior record position before this Commission also comports with the PTA's position that vague references to "consumer benefits" are not evidence of *actual* consumer benefits. As Verizon stated in its own pending access proceeding: "Qwest vaguely refers to 'benefits,' but it does not demonstrate that consumers will actually enjoy lower prices or enhanced services as a result of the access reductions it demands."[160] "[L]ower cost alternative calling plans have been and continue to be available to end users without any further reduction to access rates. AT&T has not demonstrated that any new, lower cost plans were introduced as a result of the last rebalancing."[161] Verizon also confirmed that it is "rapid technological changes and industry consolidation that are occurring now [that] are much more likely to impact the prices and products available to end users than would a reduction in intrastate access charges[.]"[162]

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[157] AT&T Ex. H

[158] Tr. 148.

[159] Tr. 153.

[160] PTA Rejoinder at 7, citing Verizon Statement 1.2 Remand Surrebuttal Testimony of James J. Kane and Ann Amalia Dean, Docket No. C-20027195, dated July 11, 2005.

[161] *Id.* at 8.

[162] *Id.* at 8.

AT&T's suggestion, that it may reduce the instate connection fee, is unenforceable and meaningless on a relative scale. First, this is the same type of monthly recurring fee AT&T *increased* after the RLECs' Phase II access reductions in 2003-2004.[163] Clearly trusting the market to provide a direct correlation failed there. Second, even if the entire fee were eliminated, not just reduced, it would not begin to approximate in value to any RLEC customers the level of local rate increase being proposed by the IXCs in this case,[164] nor is it likely to match or even approximate in magnitude the amount of access savings that AT&T will realize.[165] Only those customers subscribing to AT&T's stand-alone long distance service, the same service that AT&T abandoned in 2004 allowing customers to "dwindle away over time through churn,"[166] will see a benefit from that reduction. As Mr. Zingaretti aptly described it, the only commitment of record "offers very little to very few."[167]

V. IF THE RLECS' INTRASTATE SWITCHED ACCESS RATES SHOULD BE REDUCED, TO WHAT LEVEL SHOULD THEY BE REDUCED AND WHEN?

A. Benchmarking Is Appropriate, If Used Properly and Includes Considerations Affecting Local Rates, Including USF Funding

One traditional rate setting tool, and the *only* one specifically advocated here by the IXCs for access rate setting, is benchmarking. The IXCs' approach is decidedly one-sided, as they adamantly oppose benchmarking for local rates as well.[168]

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[163] PTA Ex. GMZ-15, ¶34.
[164] PTA Direct at 37.
[165] PTA Surrebuttal at 50.
[166] PTA Ex. GMZ-15 at ¶9.
[167] PTA Surrebuttal at 51.
[168] See, for example, Verizon Main Brief at 31 (no state mandate for comparability).

Sprint argues that the RLECs' intrastate access rates are *per se* unjust, unreasonable and discriminatory because they do not match their interstate access rates.[169] Neither TCA-96 nor Act 183, however, requires the federal or state jurisdictions to mirror access elements, and the continuation of implicit state support may be an expressly just, reasonable, and non-discriminatory option.[170]

Citing *Mobilfone*, Verizon argues that the RLECs' intrastate rates are not just and reasonable because they are higher than the rates charged by other carriers.[171] This case has limited precedential value. Benchmarking was used in that proceeding to verify cost results (which are not relevant here). Nor was comparison of rates the *only* basis for rate setting.

Verizon also relies upon the explicit limits placed by the General Assembly upon CLEC access pricing, which sets the underlying ILECs' access rates as a ceiling unless the CLEC can cost justify a higher rate.[172] It is, of course, appropriate for Verizon to use this as an example of benchmarking being used in another context, but inappropriate to suggest that such a provision "endorses" requiring the RLECs, who are not operating in Verizon's territory obviously, to adopt the same rates.[173] Moreover, there is no basis to claim, at least on the record of this case, that Verizon's access rates can "serve as a proxy for the 'competitive' rate that the RLECs, like the other market participants [ostensibly CLECs], should be required to accept."[174] There is no testimony on what a "competitive" access rate might be.

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[169] Sprint Main Brief at 60.
[170] *Qwest v. FCC, supra*, 398 F.2d at 1233.
[171] Verizon Main Brief at 13.
[172] *Id.* at 21.
[173] *Id.* at 2.
[174] *Id.* at 22.

1. RLEC Intra and Interstate Rates

The logical points of comparison of the Pennsylvania RLECs' intrastate access rates would be by comparison to other RLEC intrastate access rates and the RLECs' own interstate rates.

The IXCs did not develop any calculations of other RLECs' intrastate access rates, but it is common for intrastate rates to exceed their interstate counterpart, as the FCC noted in 2008:

> Although some states have chosen to mirror interstate access charges, others continue to maintain intrastate access charges that far exceed interstate charges.[175]

With respect to the Pennsylvania RLECs' interstate rates, there never has been any question that intrastate rates in many cases are higher. As other parties have recognized, the principal difference between the RLECs' inter and intrastate rates is the CCL.[176] Both at the time of the 1999 and 2003 rebalancings, the state CCL was higher than the interstate CCL.[177] The traffic sensitive elements were mirrored twice, once in 1999 and again in 2003, but the CCL has never been, for obvious reasons.

The PTA Companies reemphasize that their *current* intrastate access rates are just and reasonable. There is no reason demonstrated that they should be decreased. There is no directive that intrastate rates equal their interstate counterpart.

However, in acknowledgment of the IXCs' concerns and those of the Commission stated previously, the PTA Companies are not opposed to meaningful access reform. The PTA has stated that it would support a moderate and rational rebalancing. Nor does the PTA oppose a program which would eventually have intrastate rates reaching the interstate level.

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[175] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking released November 5, 2008 at ¶177 (noting intrastate terminating switched access rates of *five to ten times higher than interstate rates*).

[176] Verizon Main Brief at 11.

[177] PTA Direct at 15; PTA Main Brief at 15-17.

Having said this, however, like the OCA plan, it is *absolutely essential* that *all* aspects of ratemaking principals be acknowledged. Local service rates should be benchmarked as well. Universal Service Fund support should be made available to the RLECs for revenues shifted from access charges. And as a matter of equity, the PA USF should be supported by all carriers that benefit from the interconnected network, including wireless and VoIP carriers.

The IXCs incorrectly focus exclusively on the federal rate, ignoring the federal USF support that was provided for that rate. It is unfair and unacceptable, even illegal, for the inquiry to stop with the IXC rate reductions. *The RLECs' interstate rates* are lower as a result of the FCC's access reform proceedings, particularly CALLS and MAG, which *included* additional USF support. As Mr. Zingaretti described: "The FCC reduced access rates, but only allowed small increases in the SLC and established new USF support mechanisms. It would be improper simply to compare the rates."[178]

The PA USF must fund the difference, as did the Federal USF, when the interstate access rates were implemented that the IXCs now want to benchmark.

2. Verizon Intrastate Rates

In its Main Brief, Verizon follows its witness' recommendation that the appropriate benchmark is Verizon's access rates. The PTA Companies serve rural markets without the benefit of Verizon's sizable urban and suburban markets and have wholly different cost characteristics. For these reasons, the FCC did not require the rural companies that operate under price caps to adopt the RBOCs' access target rates. This Commission should not do so either. Verizon's local rates are lower than the RLECs and so are its access rates.[179]

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[178] PTA Surrebuttal at 15.
[179] PTA Direct at 8, 47.

3. Reciprocal Compensation

The IXCs also bring reciprocal compensation into the benchmark comparison, arguing that intercarrier compensation for local calling is lower than the compensation paid for interexchange (toll) traffic.[180] The IXCs incorrectly compare reciprocal compensation and access rates. They were developed using different pricing standards and cost allocations.

Reciprocal compensation is based upon TELRIC methodology, an incremental cost modeling used for UNEs and local transport and termination (reciprocal) compensation and not interexchange (toll) access. The FCC has never required the use of TELRIC for the development of access rates. In fact, the FCC stated that "the reciprocal compensation provisions of Section 251(b)(5) for transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic."[181] In developing transport and termination rates, the FCC concluded that non-traffic sensitive costs should not be considered additional costs when a carrier is terminating a local call originated on a competing carrier's network.[182] This is the key reason why reciprocal compensation rates are lower than access rates, and does not mean that access rates are not just and reasonable.

The Commonwealth Court in the *Bell Global Appeal*, an appeal from the *Global Order*, concluded that Verizon's access charges should not be reduced to incremental cost, stating:

> The Office of Consumer Advocate responds to AT&T by submitting that there is no legal authority requiring the PUC to reduce access rates to the incremental cost of access service. OCA witnesses testified that such a reduction could require customers other than the long distance carriers to pay all of the joint and common costs of the network and therefore should be rejected. The logic of that analysis commends it.... One of the lessons of this proceeding is that the cost of excessively priced elements must be reduced..., *but not so greatly as to eliminate*

[180] Sprint Main Brief at 45-48; Comcast Main Brief at 5; Verizon Main Brief at 20.
[181] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325, CC Docket Nos. 96-98 and 95-185, First Report and Order at ¶ 1034.
[182] *Id.* at 1057.

> *the support such revenue provides to other areas of the system that need that support.*[183]

While the FCC has mentioned an option of using TSLRIC for exchange access pricing,[184] it has never done so.

B. Timing -- This Commission Should Wait for the FCC's Decision

The Commission, last month, described the game changing nature of the FCC's National Broadband Plan ("NBP")[185]:

> ...there has been a *major, notable* development, which occurred after the due date for the submission of the last round of status reports, that may have a *profound effect* on intrastate switched access charges. That development is the issuance of the FCC's National Broadband Plan (NBP), which was released on March 16, 2010.[186]

Given the scope and breadth of the NBP and the FCC's intention to assist in the funding of any attempts to reduce intrastate rates to interstate rates, Pennsylvania is much better off if it awaits the outcome of that debate. As Mr. Zingaretti described:

> ... Pennsylvania ratepayers' bills will be higher, the PA USF will be larger, and the level of federal USF flowing into Pennsylvania would be less. Acting before federal changes are in place could exacerbate Pennsylvania's current status as a net contributor into federal universal service support.[187]

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[183] *Bell Atlantic-Pennsylvania v. Pa. PUC*, 763 A.2d 440, 480 (Pa. Commw. 2000) *vacated in part sub nome, MCI Worldcom v. Pa PUC*, 844 A.2d 1239 (Pa. 2004)(as to UNEs, determining that a state court lacked jurisdiction to review unbundled network elements) ("*Bell Global Appeal*") (emphasis added).
[184] Sprint Main Brief at 45-46.
[185] Described in PTA's Main Brief at 43-45.
[186] *AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc. and Verizon Pennsylvania Inc.*, Docket No. C-20027195 (Order entered May 11, 2010) at 22.
[187] PTA Surrebuttal at 49.

VI. IF THE RLECS' INTRASTATE SWITCHED ACCESS RATES SHOULD BE REDUCED, HOW SHOULD ANY REVENUE REDUCTIONS BE RECOVERED IN COMPLIANCE WITH 66 Pa.C.S. § 3017?

A. IXC Interpretation of Revenue Neutrality

The PTA spent considerable time in its Main Brief discussing revenue neutrality under Commission practice and Act 183.[188] Notably, Verizon concurs that any rebalancing must occur within the Commission's jurisdictional revenues.[189] The PTA also appreciates the OCA and OSBA acknowledgements that access revenue reductions are properly transferred only to other noncompetitive revenues.[190]

B. Imputation of Nonjurisdictional and Competitive Services Is Inappropriate

Several of the IXCs, again notably Sprint, disregard the statute and the RLECs' Chapter 30 plans, and attempt to shift the revenue responsibility to non-jurisdictional and competitive services.[191] Sprint alleges, with only its witness' unsubstantiated opinion as verification, that there are many "new" services available to support the voice network than were unavailable in 2003 when the Commission undertook its second phase of rural access rate reductions.[192] There are numerous problems with Sprint's attempt to claim that non-jurisdictional and deregulated services should be increased.

Not the least of the PTA's concerns is the fact that Sprint's arguments rely heavily on a completely new, non-record exhibit (Attachment I) which it attached to its Main Brief. Appendix I is unclear, misleading, and untimely. In compiling this Appendix, Sprint uses non-record evidence, provides citations to "evidence" that fail to support the conclusions drawn, and

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[188] PTA Main Brief at 45-53.
[189] Verizon Main Brief at 26-27.
[190] OCA Main Brief at 36-38; OSBA Main Brief at 24-25.
[191] Sprint Main Brief at 69-73.
[192] *Id.* at 52.

alters the data provided. These myriad of flaws warrant complete disregard of it and Sprint's related arguments.

Obviously, because the data is interpreted for the first time in brief, there is no opportunity to cross examine Sprint witness Appleby on the construct of his Appendix, which is confusing to say the least.[193] Further, there are patent inconsistencies in the data and Sprint's use of it that remain unexplained.[194] Moreover the time frames do not match. The data provided in Sprint Exhibit JAA-15R, purportedly used for Column E in Appendix I, is for the year 2008. However, Sprint claims in brief that the total represented is for the year 2007.[195] Further, Sprint altered the data from one source (PTA Exhibit GMZ-9) used in its Appendix. Without explanation, Sprint omitted from Column K data for at least one PTA Company provided in PTA Exhibit GMZ-9, the purported source for Column K.

As importantly, the document is not "drawn entirely from the record," as Sprint claims.[196] The sum of column E does not appear anywhere in the record. The transcript references do not support the numbers either.[197] Sprint converts the sum to a per line charge, which also appears nowhere in the record and, again, is not supported by the transcript citation at all.[198] Additionally, Sprint includes data for the D&E Companies on Appendix I, using a discovery response in the Colwell Benchmark/USF Proceeding that was not introduced into evidence – then or now.

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[193] For example, Columns H and J are captioned "Revenue Post-Mirroring Pre-Alternative Recovery" and "Mirroring Impact as % of Rev. Post-Mirroring Pre-Alternative Recovery." However, there is no discussion in Sprint's brief of the meaning of "pre-alternative recovery," and Column J is referred to in brief as an "overall static impact." Sprint Main Brief at 72.

[194] For example, the sum of column E in Appendix I is represented in the table as on number [marked confidential], but in brief Sprint contends that "total end-user revenues from all services other than local service offered over the local loop in 2007" is another number [also confidential]. Sprint Main Brief at 71.

[195] *Id.* at 71.

[196] *Id.* at 72.

[197] *Id.* at 71 (footnote 191) cites Tr. 549.

[198] *Id.* at 81 (footnote 212) cites Tr. 654.

Appendix I could have (and should have) been presented on the record. When Sprint first presented Sprint Ex. JAA-15R, its witness "reserve[d] the right to conduct further analysis of this information and *supplement my testimony* accordingly."[199] Sprint had all the final discovery data as of March 23, 2010, before surrebuttal and rejoinder were filed, and well before evidentiary hearings were held. Sprint served its updated Exhibit JAA-15R on the parties on April 8, stating in cover that "[t]he final version of the Appleby Rebuttal Testimony submitted at the hearing will incorporate this updated version of the Exhibit." Rather than *incorporating* this exhibit at hearing, it merely *appended* it, without further elaboration, evading record challenge to the conclusions it apparently intended to draw in its new post-record Appendix I. Sprint should have included its interpretation of the data in testimony, which would have allowed for cross examination and responsive testimony. Instead, Sprint simply waited until Main Brief. There is no excuse for these tactics.

Moreover, the inapposite record citations noted above are also not isolated incidents. For example, Sprint asserts that 31 RLECs offer toll services.[200] However, review of the transcript pages cited reveals that PTA witness Zingaretti clarified at least *four times* on cross-examination that it is not the PTA Companies that offer long distance toll service, but rather their affiliates.[201] Sprint likewise ignores that fact from its Cross Exhibit 8, which expressly shows the names of the PTA Companies' long distance related affiliates.

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[199] Sprint Rebuttal at 48.

[200] Sprint Main Brief at 52, citing Tr. at 655-666 (Id.) and Sprint Cross Ex. 8.

[201] *See* Tr. at 657-58 ("there is at least one, possible two, that don't provide any toll service whatsoever. But for – that's a correct statement for the majority [that toll service is provided through affiliates]"; Tr. at 660 ("it would be the RLEC affiliates [that] earn money from toll service. So just to be clear."); Tr. at 663 ("all of these [internet, CLEC, cable, IP services] are offered by the affiliate. Not the company itself."); Tr. at 666 ("[M]any, if not all, of those additional – those last few services aren't provided by the telephone companies in a non-competitive manner. They're provided by affiliates and in fact can be provided by non-affiliated competitors as well. So I wouldn't agree that the RLECs are offering all those services.").

Sprint also misinterprets the information provided when it argues that the Commission must "look at all the services [the PTA carriers] are selling over *the local loop*."[202] However, Sprint Exhibit JAA-15R, the source document for Column E in Appendix I was an interrogatory response (Sprint-PTA 2-9)[203] which asked for "2008 revenue ... from ... all services, other than local ... which services use or rely on *facilities* that the PTA company uses[.]" In response, the PTA Companies reported the revenues from any and all services that use or rely in any way upon any facilities that are also used to provision local services. Obviously that figure would include almost all of the RLECs' services, including non-loop services. The PTA's response, thus, is broader than revenues received from use of the "local loop" alone and there is a mismatch between what the PTA provided and how Sprint interprets it.

On the substance, the conclusions Sprint seeks to draw from Appendix I and other sources are too broad and sweeping to be of any value. Sprint's witness breathlessly claimed that "[n]early everything has changed" and "the RLECs *now* offer a full slate of services over the local exchange access network from which to recover their network costs (i.e., local, toll, long distance, high speed Internet, and "other services)."[204] However, Sprint admitted it did not review the availability of the RLECs' services in 2003[205] or those available now. When asked a series of questions regarding Mr. Appleby's understanding of the RLEC's services in 2003 and now, the repeated response was: "Sprint does not posses the requested information."[206] Indeed,

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[202] Sprint Main Brief at 71-72 (emphasis added).
[203] Sprint's claims that the RLECs were "universally uncooperative" with respect to providing information regarding broadband equally distorts the evidence. Sprint Main Brief at 53. Sprint was provided precisely what it asked for. Sprint's inability to correlate the data provided to its conclusions drawn is more a result of the questions Sprint asked, and not a reflection of the cooperation of the responding parties. See Tr. at 206-07 and cross-examination of Sprint's witness' erroneous testimony that what was requested in discovery was not provided. The PTA Companies fully responded to all discovery, with Sprint always having available the option to compel more if appropriate.
[204] Sprint Rebuttal at 5.
[205] See PTA Exhibit GMZ-17.
[206] PTA Surrebuttal at GMZ-17.

the witness' response states: "Each RLEC is aware of the services offered in 2003 and offers today."[207]

Indeed the RLECs were "aware" and explained these services were all available in 2003: "Only the mix is different."[208] For Sprint's most cited target of revenue recovery, the service is the same – Internet access. Only the network provisioning has changed (from narrowband dial-up to broadband; e.g., DSL). As Mr. Zingaretti explained, there has been an overall reduction in RLEC lines used for internet dial-up in favor of DSL-provisioned lines, while at the same time, much of this newer, broadband access shifted to cable modem service (now representing 34.1% of all high speed connections) instead of the RLECs (DSL is only 28.3%).[209] "So the RLECs have had a shift in the type of usage (narrowband vs. broadband), but not in the overall usage or even necessarily in the amount of usage of their facilities for internet access."[210] There has been a substitution in service delivery, not the creation of a new service, as Sprint claims.

Equally deficient, Sprint's observations about increasing revenues per household is based upon non-record evidence[211] or the unsupported, overly narrow opinion of its witness. While Sprint claims that revenues *per line* are increasing,[212] it undertook no analysis of total company revenue trends overall and the impact of losing access lines (customers) – 17% in the last 3 years. The missing link in Sprint's logic is that, even if the few remaining customers do buy more, overall revenues are declining. Yet it repeatedly recites this per household figure as if it demonstrated higher revenues overall and the claimed RLEC ability to absorb access decreases through increases to other services.

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[207] *Id.* at GMZ-17 (Sprint responses to PTA 1 and 2).
[208] *Id.* at 11.
[209] *Id.* at 11 -12
[210] *Id.* at 12.
[211] For example, Sprint's claim about Windstream's average revenue per customer in its Main Brief at 53, carries no record citation.
[212] Sprint Main Brief at 52-53.

From its Appendix I calculations, Sprint extrapolates the proposition that the proposed access reduction to interstate parity is a *de minimus* amount, "dwarfed" by the revenue received from the non-local exchange services provisioned over the local network.[213] Basically, it appears that Sprint is arguing that the RLECs "have plenty of money." The comparison is simply one of all revenues except local (and ostensibly only that received for standalone service). Of this amount, the reduction to parity has a revenue effect of approximately 25%.[214] Even just simplistically comparing the figures, how can Sprint argue a 25% loss of revenue is *de minimus*?

Also critically flawed, Sprint fails to determine the ability of any of these services to increase and absorb the proposed lost access revenues, but simply notes the overall size of the non-local "pot" and then implicitly asks the reader to assume that these other services can be increased. Sprint even goes so far as to call these a "cornucopia of revenues."[215] Then, purely from this vantage point, Sprint argues that the RLECs surely must be capable of recovering $125 million if intrastate access charge-related (including PAUSF) revenues that were lost.

There are largely jurisdictional problems associated with Sprint's proposed revenue substitution. The number that Sprint finds so large represents essentially all the revenues received by the RLECs and their affiliates from various regulated, unregulated, and nonjurisdictional sources, including both inter and intrastate access charges, broadband services, vertical features (e.g., caller ID), special access, private lines, etc.

This Commission has no jurisdiction to impute revenues from interstate access charges, broadband over copper (i.e., DSL) or, in those few limited cases, affiliated video, to cover access losses. These are federally jurisdictional services, controlled exclusively by federal tariff and the FCC. This is a major flaw, which Sprint refuses to acknowledge.

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213 *Id.* at 54 and 71.
214 *Id.* at 71.
215 Sprint Main Brief at 80.

"The FCC has sole jurisdiction over DSL service."[216] The revenues from a federal service cannot be used to compensate for intrastate revenue reductions. There is no basis, as Sprint proposes, to lay claim in a state rebalancing proceeding, to broadband revenues. Nor does Sprint's method of allocating loop costs to broadband make any sense even were a cost study relevant and the service not federally jurisdictional.

The FCC has determined that DSL is an interstate service.[217] Therefore, the FCC has sole jurisdiction over DSL service and has ruled that existing interstate loop allocations capture all interstate uses of the loop, including DSL. The FCC has already considered the cross subsidization argument and dismissed it. Before the FCC, AT&T argued that the change in regulatory treatment of broadband services "means that the treatment of broadband costs must be revised so that costs are not lumped in with regulated services cost."[218] Contrary to this position, Verizon argued "... there is no realistic threat of cross-subsidy between broadband and regulated services...."[219] The FCC sided with Verizon, finding that the cost of reclassifying broadband transmission from regulated accounts "would impose significant burdens that outweigh these potential benefits."[220] As Mr. Loube for the OCA confirmed, contribution to local loop cost from broadband services is not required by the FCC for policy reasons.[221] No further allocation is required or permitted for DSL service. The PA PUC cannot countermand that federal directive regarding interstate services.

A related service which Sprint wants to use for intrastate revenue rebalancing is video over copper, for which the RLECs may provide the broadband access necessary to facilitate

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[216] PTA Surrebuttal at 13.
[217] *Framework for Broadband Access to the Internet over Wireline*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking released September 23, 2005 ("*FCC Wireline BB Order*").
[218] PTA Surrebuttal at 25-26 citing AT&T letter to the FCC dated March 25, 2004, in CC Docket No. 02-33.
[219] *Id.* at 26 citing Verizon letter to the FCC dated January 6, 2004 in CC Docket No. 02-33.
[220] FCC Wireline BB Order at ¶ 134.
[221] OCA Direct at 43-44.

IPTV. This is not widespread, as video over copper is provided, by an affiliate, in the service territory of only six Pennsylvania RLECs. Moreover, Sprint would ignore the substantial additional costs of providing the IPTV services, as Mr. Zingaretti explained:

> Additionally, Mr. Appleby fails to account for the extraordinary amount of investment, including reduction of loop length to produce the band width necessary to provide video services. It is my experience that video service providers incur large expenses including programming and franchise fees. Sprint's video over copper argument must be dismissed since the vast majority of RLECs do not provide this service, and Sprint fails to take into account investments and expenses which offset this revenue.[222]

Attempting to support its seizure of other revenues whose sources and limitations it has not investigated, Sprint resorts to citing the treatment of directory advertising revenues under rate base/rate of return regulation.[223] The cases are inapposite. The cases cited precede TCA-96 and even Chapter 30, including the PTA Companies' Chapter 30 Plans. The Commission has jurisdiction only over noncompetitive rates as defined in the statute and in the companies' Plans which form the basis for regulation.

Sprint's exercise is completely inconsistent with price cap regulation and its proposal to impute revenues into the Plans for purposes of revenue neutrality is illegal and bad public policy, as the PTA described in its Main Brief.[224] Sprint is improperly relying upon pre-Chapter 30 rate base/rate of return ratemaking principles to fulfill Act 183's mandate that access reductions be revenue neutral within the Commission's jurisdiction and not by reference to non-jurisdictional or competitive services.

Nor is the proposal good public policy. Mr. Loube, witness for the OCA, warned against imputing affiliate revenues:

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[222] PTA Surrebuttal at 12.
[223] Sprint Main Brief at 76-79.
[224] PTA Main Brief at 49-52.

> I would caution this Commission [not] to rely on the profits of the affiliates to support an underlying network because if you rely on the profits of the affiliates, then you might also have to cover their losses when there are losses. So I don't think it's a good idea....[225]

C. Local Rate Increases

In its Main Brief, the PTA fully discussed the implication of local rate increases, particularly the $25 rate proposed by AT&T (and implicitly supported by Verizon).

The PTA does, in this Reply Brief, wish to address the fact that "some customers" might defect to competitors "actually confirms that universal service would not be jeopardized by an increase in basic local exchange rates."[226] This is incorrect, because not all customers have competitive options. The challenge in this proceeding is to establish local exchange rates, particularly a single exchange rate, that applies to both competitive and non-competitive customers.

As noted by the PTA, while competition is growing, it is not ubiquitous.[227] As the PTA observed, "the RLECs continue to be the only service providers and guarantors of universally available voice service" for perhaps 40% of the households in their rural areas.[228]

So a rate that is too high jeopardizes universal service and places large increases upon customers with no options. At the same time, the IXCs complain (on behalf of their affiliates) that the rate suppresses competition. Again, the solution is one of compromise and moderation, and not severe escalations in local service pricing.

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[225] Tr. 485. As Sprint continues to press the point, Dr. Loube again reiterated: "And again, I caution very sharply anybody relying on that because I don't think this commission wants the liability of losses of those affiliates." Tr. 486.
[226] Verizon Main Brief at 40.
[227] PTA Main Brief at 75-76.
[228] *Id.* at 75.

1. Carrier of Last Resort Obligation

AT&T and Sprint continue to contest the extent of the incumbent RLECs' carrier of last resort ("COLR") obligations, with AT&T disputing its very existence.[229] This spurious argument does not justify the time necessary to reply. As these parties well know, this burden is not imposed on any other non-incumbent carrier absent their application for ETC, or eligible telecommunications carrier, status.[230]

D. Pennsylvania USF

The IXCs refuse to recognize the need for PA USF support for the tens of millions of dollars in additional reductions in access rate expenses they seek. They argue that, because other states have implemented access reform, one sided relief (access reductions only) is appropriate in Pennsylvania.[231] That argument is meaningless unless the Commission reviews the totality of the circumstances in those other jurisdictions.

Sprint cites to Kansas, for example.[232] If Pennsylvania were to implement further access reductions as was done in Kansas, this Commission would adopt the PTA's proposals.[233] Unlike Pennsylvania, the Kansas Corporation Commission is obligated by state statute to reduce intrastate switched access over a three year period to equalize interstate and intrastate rates.[234]

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[229] AT&T Main Brief at 32; See also Sprint Main Brief at 57.
[230] PTA Main Brief at 64-67.
[231] Sprint Main Brief at 38-45.
[232] *Id.* at 41.
[233] The PTA notes, however, that Kansas, as well as New Jersey, two states addressed by Sprint, appear to lack the still very active independent rural company industry that Pennsylvania has. Unlike this Pennsylvania RLEC investigation, which involves the rates of thirty-one RLECs, the order in Kansas to reduce intrastate access rates applies exclusively to CenturyLink. This is essentially the case in New Jersey as well, where the order applies to three carriers, Verizon and CenturyLink being two of the three.
[234] K.S.A. 2009 Supp. 66-2005(c), cited throughout *In the Matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., d/b/a Sprint, to Conduct General Investigation into the Intrastate Access Charges of United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas, d/b/a Embarq.*, Docket No. 08-GIMT-1023-GIT (March 10, 2010)("*Kansas Access Order*"), per Sprint available at the Kansas Corporation Commission's website.

Kansas has a state USF which from 1997 through 2003 ranged in size from a high of $100 million to a low of $60 million.[235] The Kansas Commission, in its most recent order, rebalanced access reform on a revenue neutral basis *through the Kansas USF.*

Further, the Kansas Commission specifically surcharges wireless and VoIP carriers[236] as PTA and many other parties contend should be implemented in Pennsylvania. While this is specifically addressed by statute in Kansas, the PTA agrees with the OCA that specific statutory authority need not be provided in Pennsylvania. As the OCA previously noted, previous cases relied upon by wireless carriers for the notion that the Commission lacks jurisdiction to require those carriers to contribute to the PA USF addressed service or other matters of "public utility" regulation. They did not address the Commission's authority to require PA USF contributions from wireless or VoIP carriers.[237] In fact, the Voice-Over-Internet Protocol Freedom Act[238] specifically retains the Commission's authority to enforce applicable state or federal statutes regarding universal service funding.[239] Moreover, the Commission may always seek such authority if it deems it necessary.

Also, while Sprint holds out that recent Kansas Commission decision for the proposition that this Commission may consider *deregulated* service revenues in any revenue neutral calculation, that part quoted by Sprint *omitted* critical information (replaced instead with an ellipsis), reflects that Kansas did exactly the opposite, and precisely what the PTA advocates here:

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[235] Available at the Kansas Corporation Commission's website at http://www.kcc.state.ks.us/telecom/kusfhistory.pdf.
[236] K.S.A. 66-2008(a).
[237] *See e.g.* OCA Answer to Wireless Carriers' Motion to Strike, filed May 25, 2010, at 9-10, citing *Passarell v. AT&T Wireless Services, Inc.*, Docket No. C-20028278 (Order entered August 14, 2003) and *Crown Communications v. Zoning Hearing Bd.*, 705 A.2d 427 (Pa. 1997).
[238] 73 P.S. §§ 2251.1 -2251.6.
[239] 73 P.S. § 2251.6(1)(iii).

> The Commission does not here disagree with the argument that the statutory scheme *may* provide it with substantial flexibility with regard to rebalancing and that it *may* have the ability to recognize revenue sources from deregulated lines in its determination under K.S.A. 2009 Supp. 66-2005(c). However, *the Commission believes rebalancing through the KUSF is the best choice for these circumstances*, and so it will leave that debate for another time and not address those arguments.[240]

Clearly, in context and in consideration of all piece parts, the Kansas Commission's actions are entirely consonant with the PTA's recommendations: Lower intrastate access charges over a measured period of time and rebalance the revenues to the state USF. State universal service funds are increasing in number. Since NRRI published its 2006 statistic indicating state USF support in at least 22 states,[241] at least three more states have implemented functional USF support including for access rebalancing.[242]

The PA USF is legally instituted and may be expanded. 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*.[243]

Verizon suggests that, "in light of today's different Chapter 30 statute and under today's very different market conditions,"[244] the Commission has no statutory authority to augment the existing PA USF. Verizon also refers to any new USF funding as a "hidden tax"[245] and contends

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[240] *Kansas Access Order* at 84, ¶235 (emphasis added).
[241] PTA Main Brief at 83.
[242] 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).
[243] Verizon Main Brief at 27.
[244] *Id.* at 43.
[245] *Id.* at 41.

that while Act 183 requires new access reductions to be revenue neutral, it did not establish a state USF. These are precisely the arguments Verizon raised before, and had rejected by, the Commonwealth Court a decade ago.

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."[246] 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 to the Commission.

Verizon argues that a 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.[247] Such slight change in verbiage is insufficient to signal a major policy shift by the General Assembly against USF support, particularly because the General Assembly has continued to express support for a universal service policy.[248]

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."[249] Verizon also contends that implicating the USF further in this proceeding would cause "considerable litigation

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[246] *Bell Global Appeal*, 763 A.2d at 497.
[247] Verizon Main Brief at 45.
[248] The PTA could as easily refer to the General Assembly's multiple recognition of a universal service policy 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)), to refute any suggestion that its support of USF has waned. To do otherwise would create an unfunded statutory mandate, which did not occur in 1993 and was not intended in Act 183.
[249] *Bell Global Appeal*, 763 A.2d at 497.

and debate."[250] 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.

Verizon submits that it can ameliorate the need for additional USF funding for additional access reductions by shifting approximately $8.4 million from the existing USF to new access reductions.[251] As set forth by the PTA in Section VII, below, were the Commission to reduce the existing PA USF, the RLECs would have the right and ability to reverse $8.4 million in existing PA USF credits and well as past access reductions to maintain the revenue neutral effect of the past reductions.

AT&T's posturing on PA USF support for further access rate reductions is meritorious in that it recognizes the principle that universal service support is necessary to avoid rate shock and unreasonable local rate levels, and allows for the provision of further access reductions on a revenue neutral basis in compliance with Section 3017. It is lacking, however, in its short-lived proposed effectiveness.

AT&T's USF proposal is based upon a misrepresentation of the Commission's intent regarding and commitment to universal service support in Pennsylvania. AT&T continuously rails against USF support on the basis that USF in general was implemented by the Commission as a "transitional tool"[252] to provide "interim funding"[253] and that after "notice for over ten years"[254] it is time for the Commission to "eliminate implicit subsidies in intrastate access

[250] Verizon Main Brief at 55. Verizon also contends that a rulemaking would be required, a point directly contradicted by AT&T, which states that "[t]here is no need for a rulemaking to increase the size of the USF when the increase is as a result of access reductions. The USF was specifically intended to be used for access reductions, and therefore no regulations need to be altered to implement AT&T's proposal." AT&T Main Brief at 62.
[251] Verizon Main Brief at 57.
[252] AT&T Main Brief at 60.
[253] *Id.* at 60.
[254] *Id.* at 31.

rates."[255] AT&T also repeatedly contends the Commission has promised for over ten years to mirror interstate rates. This is not what the Commission stated in its orders.

AT&T misconstrues the terms "transitional" and "interim" to mean finite, when instead they were intended simply to describe the PA USF, as it was sized in 1999, until a more permanent funding mechanism could be developed in conjunction with further review of access rate reductions. The PA USF was to be revisited in order to determine the best mechanism:

> 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**.[256]

While the current PA USF was funded as a result of setting the *traffic sensitive* access rate elements to interstate parity, the CCL was the part of the equation that, together with possible reformulation of the existing fund, was to be considered in later review for establishment of a further funding mechanism, much as the FCC has established the SLC and additional USF as the CCL equivalent on the federal side.[257]

The Commission expected to continue the *process* and revisit and possibly revise the *form* of the funding mechanism that allowed for the recovery of the explicit universal service support. *Elimination of all support, access and USF,* was never a goal of either the FCC or the Pennsylvania Commission. As this Commission clearly 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."[258] This Commission today, ***if*** it deems the pursuit of further access rate reductions proper public policy, must simply continue on the type

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[255] *Id.*
[256] *Global Order* at 46 (quoting Sprint's Main Brief) (emphasis added).
[257] PTA Main Brief at 14-15.
[258] *Global Order* at 26-27 (emphasis added).

of reforms the FCC has implemented on the interstate side, including mirroring the traffic sensitive access rate elements, and replacing the CCL with a separate universal service funding mechanism like the FCC accomplished on the interstate side.

VII. GENERAL LEGAL ISSUES

A. Retroactivity of Any Access Rate Reductions

Never having raised the issue, AT&T, the complainant, confirms it does not seek refunds.[259] Sprint, the only party to raise and pursue the issue, is willing to concede refunds if they become a "sticking point."[260] Refunds, however, are inapplicable. Refunds apply **only when** "the requested reduction in rates . . . affects more than 5% of the customers and . . . amounts to in excess of 3% of the total gross annual intrastate operating revenues of the public utility" ("5%/3% rule").[261]

Sprint contends that "[t]he RLECs provide more than two types of tariffed services"[262] and, thus, argues the exception. The RLECs, however, provide the same utility service -- telecommunications. The statute does not dissect the same type of utility service based upon which tariff applies. Similar "type of service" and "5%/3%" standards exist in Sections 1308(d)[263] and (d.1)[264] of Chapter 13 of the Public Utility Code. A utility providing more than one type of service means a utility that provides service "such as electric and gas."[265] The

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[259] AT&T Main Brief at 61.
[260] Sprint Main Brief at 85.
[261] 66 Pa. C.S. §1309(b)
[262] Sprint Main Brief at 84.
[263] Section 1308(d) describes as a general rate increase a tariff filing that affects "more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenues of the public utility." It likewise provides that "[i]f the public utility furnishes two or more types of service, the foregoing percentages shall be determined only on the basis of the customers receiving and the revenues derived from, the type of service to which the tariff filing pertains."
[264] Section 1308(d.1) prohibits multiple filings "for the same type of service."
[265] 52 Pa. Code § 52.53(d).

regulations do not distinguish between different services based upon the applicability of different tariffs so long as all tariffs are for the same public utility service.[266] The PTA Companies issue all telecommunications tariffs and provide all services under the single authority of their Commission ILEC certificates. Customers and revenues have never been segregated by class or tariff section to determine whether the percentage thresholds are achieved. This also comports with Chapter 30, which addresses "telecommunications services" as a whole, and under which both local and access are "protected services."[267]

Public policy also mandates against refunds. As the Commission noted when consolidating AT&T's complaints with the reactivated RLEC access investigation:

> [T]he *RLEC Access Charge Investigation* has been inactive because *this Commission has*, on several occasions, following notice and opportunity to be heard, *made a deliberate and considered decision that the public interest requires that the proceedings be stayed.*"[268]

Adoption of Sprint's interpretation of Section 1309(b) would place the Commission in the indefensible position of having previously found that the public interest required that the RLEC access rates remain in place, but then subjecting these same companies to retroactive relief under Section 1309(b), which implicitly requires a finding that such status quo was contrary to the public interest. The Commission cannot find for and against the public interest at the same time.

Finally, if subject to Sprint's interpretation, then Verizon must be held responsible for over eight years of refunds, since AT&T's complaint against Verizon's access rates has been pending since 2002.[269]

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[266] *See also Masthope Rapids Property Owners Council v. PA PUC*, 581 A.2d 994 (Pa. Commw. 1990) (addressing the Section 1308(d)(1) prohibition against simultaneous general rate increases for the *same type of water utility service*).
[267] 66 Pa. C.S. § 3012 (definition of "Protected Service").
[268] July 29, 2009 Consolidation Order at 15, note 7 (emphasis added).
[269] *AT&T Communications of PA, Inc. v. Verizon North Inc.*, Docket No. C-20027195 (Order entered December 24, 2002).

B. Compliance

PTA agrees with AT&T that the process to implement any changes that the Commission may impose should be informal as was done in both the Global and Phase II access reform proceedings.[270] PTA also agrees that the existing PA USF regulations do not require modification.

Although the Commission may increase funding under the existing PA USF regulations, a reduction of funding would require a rulemaking and would be prohibited without the implementation of replacement funding. For example, the Commission may not adopt Verizon's suggestion that there is an "excess" $8.4 million in existing PA USF funding related to a decrease in access lines. In order to accept Verizon's proposal, the Commission would have to ignore the terms of the PAUSF that Verizon sponsored, including the formula for calculation of the support that was codified in regulations that Verizon helped craft and support. The terms of the Fund specifically provided a fixed level of explicit support calculated to support the access rate reductions ordered in the Global Proceeding, and to "be adjusted annually to reflect [each Fund recipient carriers'] annual access line *growth*."[271] Thus, the PA USF was designed to capture investment related to access line growth. It was not designed to be reduced in relation to access line losses. That fixed contribution adjusted for access line growth was memorialized by the Commission in the PA USF regulations.[272]

There are further legal complications if the support provided by the existing PA USF is reduced as Verizon suggests. The terms of the PA USF adopted by the Commission in the *Global Order* provided that "[i]f the Fund is permitted to be dissolved with no alternative

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[270] AT&T Main Brief at 62.
[271] PTA Rejoinder at 3.
[272] See 52 Pa. Code §63.165 ("W = Increase in funding requirement due to growth in access lines of recipient carriers.")

funding established, residential and business Universal Service Credits will be eliminated, and toll and access rates will immediately return, at the company's option, to their pre-funded levels pursuant to a compliance filing[,]"[273] a term recognized by the Commonwealth Court as applicable to the current PA USF.[274]

VIII. CONCLUSION

WHEREFORE, the Pennsylvania Telephone Association requests that the Pennsylvania Public Utility Commission grant relief consistent with its Main and Reply Briefs.

Respectfully submitted,

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[273] PTA Rejoinder at 5.

[274] *Bell Global Appeal,* 763 A.2d at 494 ("[T]he basic content of the PUC's USF decision is as follows: . . . If the Fund is dissolved with no alternative established, residential and business Universal Service Credits will be eliminated, and toll and access rates will return, at the company's option, to their pre-funded levels pursuant to a compliance filing.").

<u>**CERTIFICATE OF SERVICE**</u>

I hereby certify that on this 3rd day of June, 2010, I did serve a true and correct copy of the foregoing upon the persons below via electronic mail and first class mail as follows:

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