COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 8, 2006

R-00061377
P-00981430F1000

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DOCUMENT
FOLDER

Denver and Ephrata Telephone and Telegraph Company Supplement No. 251 to Tariff Pa. PUC No. 15
and Supplement No. 10 to Tariff Pa. PUC No. 16
&
2006 Annual Price Stability Index/Service Price Index Filing of Denver and Ephrata Telephone
and Telegraph Company

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on **December 7, 2006** has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Rpb
Encls
Cert. Mail

See Attached List for Parties of Record

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 7, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

Denver and Ephrata Telephone and Telegraph Company Supplement No. 251 to Tariff PA PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16	R-00061377
2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company	P-00981430F1000

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Petition for Reconsideration (Petition) filed by Denver and Ephrata Telephone and Telegraph Company (D&E) on July 10, 2006. By this Petition D&E seeks reconsideration of the Commission's June 23, 2006 Opinion and Order (June 23, 2006 Order) that addressed the Company's 2006 Price Stability Index/ Service Price Index (PSI/SPI) filing, at the above docketed proceeding. By Order entered on July 20, 2006, we granted the Petition pending further review of, and consideration on, the merits.

History of the Proceeding

On May 3, 2006, D&E filed its 2006 Annual PSI/SPI Filing and the associated tariffs to effectuate increases to local and access service revenues made under the provisions of the new Chapter 30 law, Act 183 of 2004, P.L. 1398 (66 Pa. C.S. §§ 3011-3019) (Act 183) and pursuant to its Alternative Regulation and Network Modernization Plan (Chapter 30 Plan).

D&E's annual calculation of its PSI/SPI formula, based on a 4.016% change in the 2004 and 2005 third quarter GDP-PI (Gross Domestic Product – Price Index), allows the Company to increase its noncompetitive service rates to produce a 3.70% increase its annual noncompetitive service revenues. In its accompanying tariffs, D&E proposed to implement its annual PSI/SPI by increasing various basic and non-basic local service rates in Tariff-Telephone Pa. P.U.C. No. 15 and its Switched Access Service[1] rates in Tariff-Telephone Pa. P.U.C. No. 16, to become effective on July 1, 2006. D&E proposed to apply the overwhelming majority of the rate increase, or 96%, to its switched access services and the remaining 4% of the increase to basic and non-basic local services.

The June 23, 2006 Order concluded that the proposed rate changes to local services were consistent with the Company's Amended Chapter 30 Plan and, thus, permitted the proposed rate increases for basic and non-basic services in its local Tariff-Telephone Pa. P.U.C. No. 15 become effective as filed. However, the Commission had two specific concerns with regard to D&E's PSI/SPI filing. First, the Commission expressed its concern about D&E's proposal which calculated its eligible revenue increase based on a calculated twelve-month average using the revenues for the month of

[1] Switched Access Services are protected services, pursuant to 66 Pa. C.S. § 3012, that local exchange carriers charge other telecommunications carriers for use of their facilities to provide toll services to end-users.

December 2005 multiplied by twelve, rather than using actual 2005 year-end revenues. The use of D&E's calculation would result in an annual revenue amount that is 5% higher than its actual annual revenue amount. As such, the Commission concluded that D&E's calculation is inconsistent with its PSI/SPI Price Stability Plan Formula, which was approved in its Chapter 30 Plan at Docket No. P-00981430F1000. The Commission, therefore, directed D&E to amend its calculations based on its actual intrastate revenues for the twelve-month period ending December 2005, and to adjust the eligible rate increases summarized in Exhibit 1 to its May 3, 2006 filing.

The Commission's second concern involved D&E's proposal to increase its switched access charges. In the June 23, 2006 Order, the Commission stated that D&E's proposal to increase access charge rates appeared to contradict the Commission's long-standing access service reform policy in Pennsylvania in which access charges have been decreasing, rather than increasing. The Commission further noted that the pending rural telephone company access charge investigation at Docket No. I-00040105, which is being conducted to determine how to implement additional access charge reductions among rural companies in Pennsylvania, has been stayed at the request of D&E and other rural carriers for twelve months from August 2005, or until the FCC makes a final determination in its proceeding to develop a Unified Inter-carrier Compensation regime. Furthermore, the Commission expressed concern about conflicts between the proposed access charge increases and the Pennsylvania Universal Service Fund's rules and policies, as well as D&E's current Amended Chapter 30 Plan. The Commission noted that the proposal by D&E is a departure from the current practice by LECs to recover PSI/SPI revenue increases from local service rates or to bank them for future increases. Accordingly, the Commission gave D&E the alternatives to either: (1) "bank" the remaining allowable revenue increases to its basic local exchange services rates, rather than to apply the increases on its access charges; (2) allocate the remaining allowable revenue increases to its basic local exchange services rates, rather than to apply the increases on its access charges; or (3) effectuate the proposed rate increases for access

services, subject to any final determinations on access reform, including the Commission's pending intrastate access reform proceeding at Docket No. I-0004015, and at the federal level.

D&E chose the third option and on June 28, 2006, it filed its revised PSI/SPI calculations and revised tariff rates in its Access Tariff-Telephone Pa. P.U.C. No. 16, to reflect those calculations. The compliance tariff was permitted to become effective on July 1, 2006.[2]

Accordingly, D&E's access service rate increases in its revised Access Tariff-Telephone Pa. P.U.C. No. 16, which were filed on June 28, 2006, are now subject to any final determinations that result from this Commission's access reform, including the pending intrastate access reform proceeding at Docket No. I-0004015, or any changes at the federal level.[3]

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[2] *See* July 13, 2006 Secretarial Letter at Docket No. R-00061375.

[3] It is important to note that by Order entered November 15, 2006, at Docket No. I-00040105, *et al.*, the Commission, *inter alia*, further stayed the rural telephone company access charge reform proceeding for another year, or until the FCC rules on its Unified Intercarrier Compensation proceeding, whichever is earlier. However, the Commission further directed, pursuant to 66 Pa. C.S. § 703(g), that the Office of Administrative Law Judge shall hold expedited hearings for the limited purpose of reconsidering the June 23, 2006 Order with regard only to that portion of the June 23, 2006 Order that allowed D&E to raise intrastate access charges and to determine whether any rescission or amendment of the Order would be warranted by the evidence, consistent with the Commission's access charge reform and universal service policies, and lawful under D&E's Chapter 30 Plan. The Commission further directed that a recommended decision be made on or before February 28, 2007. (*See* Ordering Paragraph No. 6). As such, this instant Opinion and Order will address and dispose of D&E's Petition for Reconsideration as it relates to D&E's request for the Commission to: (1) recall its "criticisms" against D&E for raising access charges, and (2) reversing the mandated changes to the manner in which D&E calculates its PSI/SPI formula.

As noted, on July 10, 2006, D&E filed the Petition for Reconsideration (Petition) of the June 23, 2006 Order. By Order entered on July 20, 2006, we granted the Petition pending further review of, and consideration on the merits.

On July 24, 2006, Verizon Pennsylvania Inc. (Verizon) filed its *Amicus Curiae* response to D&E's Petition under 52 Pa. Code § 5.502(d), noting that it is its first opportunity to submit an *Amicus Curiae* response since there was no briefing schedule for this case.

On July 31, 2006, D&E filed a Motion to Strike or Dismiss *Amicus Curiae* Response of Verizon alleging that is not in compliance with the Commission's Rules and Practice and Procedure.

On August 10, 2006, Verizon filed a letter, in lieu of a more formal response, objecting to D&E's Motion to Strike Verizon's *Amicus Curiae* Response.

Discussion

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(g) of the Code, 66 Pa. C.S. § 703(g), relating to rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572(b) of our Regulations, 52 Pa. Code § 5.572(b), relating to petitions for relief following the issuance of a final decision. The standards for a petition for relief following the issuance of a final decision were addressed in *Duick v. PG&W*, 56 Pa. PUC 553 (1982) (*Duick*).

Duick held that a petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not

previously heard or considerations which appear to have been overlooked or not addressed by us. *Duick* at 559.

We note that, pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572, our power to modify or rescind final orders is limited to certain circumstances. A petition to modify or rescind a final Commission order may only be granted judiciously and under appropriate circumstances, because such an order will result in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *City of Philadelphia v. Pa. PUC,* 720 A.2d 845 (Pa. Cmwlth. 1998); and *West Penn Power Company v. Pa. PUC,* 659 A.2d 1055 (Pa. Cmwlth. 1995).

1. D&E's Petition for Reconsideration

In its Petition, D&E states that it is seeking reconsideration of: (1) the criticisms raised in the June 23, 2006 Order regarding its proposal to increase its switched access service charges; and (2) the mandated changes in its PSI/SPI procedure. (Petition at 3).

With regard to the first issue, D&E is concerned about what it views as "criticisms" by the Commission's June 23, 2006 Order with regard to its proposal to increase switched access charges. D&E states that the June 23, 2006 Order opined that the switched access charge increases "contradict the policy of implementing switched access service reform" and "undermines the promotion of competitive markets by increasing the gap between access service rates and costs."[4] D&E requests that the Commission reconsider its "criticisms" for the following reasons: 1) D&E has significantly reduced its switched access charges pursuant to the Commission's policy (Petition at 8-10); 2) the June 23, 2006 Order overlooks the impact of intermodal

[4] June 23, 2006 Order at 11.

competition (Petition at 10-15); and 3) the switched access charge increases do not violate any Commission Order (Petition at 15-17).

In response to the Commission's concern that D&E's "proposed increase in access service rates as a vehicle to recover PSI revenues may contradict the policy of implementing switched access reform," D&E argues that its proposed rates now mirror its interstate rates, consistent with Commission policy. D&E also views its actual trend in its access rates over the longer term as being consistent with the Commission's access reform policy because the CCL rate, which at the time of the *Global Order*[5] was $6.11, was subsequently reduced to $4.04 and now, after the 2006 PSI filing, is $5.24.

With regard to its argument that the June 23, 2006 Order overlooked the impact of intermodal competition, D&E maintains that it is facing competition from cable companies and non-facilities based VoIP providers that offer telecommunications services over broadband connections, as well as from wireless carriers. (Petition at 10-12). In addition, D&E claims it continues to lose access lines from intermodal competitors and that any increases to local service rates would further accelerate its access line losses and revenue erosion. (Petition at 13). As such, D&E asserts that proposing increases to its switched access charges was the only realistic option for D&E to take. (Petition at 15).

Finally, as noted, D&E claims that the Commission has never issued any prior Order that would preclude it from making rate increases to its switched access charges. (Petition at 15).

With regard to its second request, D&E claims that its Chapter 30 Plan provides only that the base revenue for calculation of its annual PSI/SPI revenue

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5 *Joint Petition of Nextlink Pennsylvania, Inc., et al., 196 PUR 4th 172 (1996).*

entitlement is "the sum of effective rates (and units of demand) which were realized during the previous twelve-month period." D&E also maintains that it has consistently calculated the base revenues in the prior years, since 2002, by using December revenues and multiplying such revenues by twelve. (Petition at 5). D&E also argues that it is not reasonable for the Commission to change the way D&E calculates its entitlement after it committed to accelerate its broadband network commitment by seven years. (Petition at 5-6). Accordingly, D&E believes that there are sufficient grounds for reconsideration of the Commission's June 23, 2006 Order to change the PSI/SPI calculation back to the methodology it previously employed.

Disposition:

Initially, we will address whether D&E's Petition, with regard to the Commission's alleged "criticisms" is acceptable under *Duick*. As noted, D&E requests that the Commission withdraw the alleged "criticisms" that its access proposal to increase switched access charges "contradicts the policy of implementing switched access service reform" and "undermines the promotion of competitive markets by increasing the gap between access service rates and costs."[6] We conclude that this request by D&E and its supporting arguments are not persuasive.

First, we find that D&E's request does not seek any actual relief in this regard. It merely requests that we reconsider our remarks. We are of the opinion that our June 23, 2006 Order contains factual statements which we expressed based on this Commission's access charge policy that has been in place for over twenty years since the first access charge tariffs were approved in 1984.[7] In this regard, the Petition is contrary

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6 June 23, 2006 Order at 11.

7 It is important to note that the issue of access charge reform for rural ILECs has been addressed in our *Global Order* and is also currently being addressed in our investigation at Docket No. I-00040105.

to the standards established under *Duick*, in that D&E failed to provide us with any "new and novel arguments" as to why we should recall the specified comments in our June 23, 2006 Order. *Duick* at 559.

D&E also argues, without providing any substantial proof, that its access charges are favorable when compared to other rural ILECs. In this regard, D&E's argument totally disregards a condition to which it accepted in the Joint Access Proposal, in response to the Commission's Access Charge Investigation—Phase II, which was approved by this Commission on July 15, 2003, at Docket No. M-00021596, *et al.* D&E provided no substantive cost data to prove that its access charges are below costs and need to be increased from their present levels.[8]

Again, we find that D&E provided no credible arguments against our positions in its Petition for Reconsideration. Moreover, D&E's assertion that no prior Commission Order precludes D&E from raising access charges is erroneous. Even though our Orders did not explicitly impose a ban on proposing increases to access charges, as previously discussed, the Commission's *Global Order* strongly expressed a policy and

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[8] The Joint Access Proposal condition further reinforces our position that access charges should not be changed unless the ILECs can prove that each access rate element recovers its cost based upon the development of a cost study when the ILECs SPI allows for an increase. Specifically, that condition states that:

> Each ILEC reserves the right, subject to Chapter 30 Plan requirements, to change its access rates to ensure that each access rate element at least recovers its cost and the ILEC's service price index continues to be equal to or less than the ILEC's price stability index, in the event the ILEC's access rates are determined to be below cost based upon the development of a cost study.

See ATTACHMENT (Joint Access Proposal) to July 15, 2003 Order at Docket No. M-00021596.

schedules for further access charge reductions. Furthermore, this matter is being addressed in our Access Charge Investigation for rural ILECs at Docket No. I-00040105.

Also, we are not persuaded by D&E's intermodal competition argument. Any intermodal competition that exists today is faced by all LECs, and not just in D&E's territory[9]. In fact, D&E intentionally engages in competitive business ventures with its own affiliates and this assists D&E in countering outside competition.

D&E is also not taking into consideration access line loss due to customers moving to its own DSL service that is non-jurisdictional, or intermodal services provided by its own parent Company D&E Communications Inc., which provide cell phone, cable modem, and broadband phone services through high speed internet services. In light of the above, we shall deny D&E's request on this matter.

D&E's second request for reconsideration – that we reconsider directing D&E to use actual revenues for each month of the year rather than a twelve-month average based on the month of December – also fails to meet the standards established under *Duick*. D&E fails to introduce any convincing arguments that would persuade us to reverse our position regarding the appropriate period to use in its annual PSI calculation.

In support of this rationale, it is important to note, first and foremost, that D&E's Chapter 30 Plan, as amended pursuant to Act 183,[10] does not allow for an entitlement for additional revenues using a calculation of PSI based on one month or a particular month's revenue. D&E's Amended Streamlined Form of Regulation and Network Modernization Plan specifically directs how the PSI should be calculated:

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[9] D&E along with its affiliates Buffalo Valley Telephone Company and Conestoga Telephone and Telegraph Company are the only ILECs to date that have filed for access service rate increases.

[10] *See* 66 Pa. C.S. § 3011 *et seq.*

Part 3 – Price Stability Plan for Non competitive Services
A. Price Stability Mechanism (PSI and SPI)

4. Annually, the Company will calculate the new PSI, which will include the added impact of the exogenous events, according to the following methodology:

$$\mathbf{PSI_t = PSI_{t-1}\ (1+\%\ \Delta GDP\text{-}PI\text{-}X\pm Z)}$$

Which comprise the PSM formula," where:

PSI_t: The new index that determines the maximum for the noncompetitive service category based on the cumulative changes in the price cap index for the current twelve month period.

PSI_{t-1}: The current index that determines the current maximum prices for the noncompetitive service category based on the cumulative changes in the price cap index for the previous twelve month period.[3]

Foot note (3): The PSI applies to the **sum** of effective rates (and units of demand) which were **realized during the previous twelve month period**. (Emphasis added)

(D&E's Chapter 30 Plan at 8-10)

It is clear from the above formula that the new PSI equals the current index that determines the current maximum prices for the non-competitive service category based on the *cumulative* changes in the price cap index applied to the sum of effective rates and units of demand realized during the previous twelve-month period. The key here is that the combined *cumulative* sum of the effective rates on the units of demand during the previous twelve months is comprised of the actual revenue based on the sum of *effective rates (and units of demand)* which were *realized* during the previous twelve-month period and not just for the month of December. It is noted that by using just the December 2005 revenue to calculate annual revenue amount for the year reflects a four percent higher amount compared to using the actual cumulative twelve months' revenues. This is substantial in light of the fact that each successive year builds on the previous year's revenue.

Regardless of the manner in how D&E made its calculations in the past, it should, in future filings, adhere to the plain reading of its PSI formula, which clearly states that "[t]he PSI applies to the sum of effective rates (and units of demand) **which were realized during the previous twelve-month period."** (Emphasis added). We stress that it does not state that the PSI applies the sum of those "effective rates" and "units of demand" that were estimated, based on the last month of the previous year. As such, we direct D&E to use actual, rather than estimated, effective rates and units of demand in future PSI/SPI filings.

D&E also argues that in light of the fact that it changed its local residential and business one-party rates on August 1, 2005 of the base period, only five months of this rate change would be reflected in the actual revenues for the twelve-month period ended December 31, 2005. It argues that only through its methodology will the full twelve-month impact of the Gross Domestic Product Price Index on this change be reflected in the annual Chapter 30 revenue entitlement. (Petition at 7). We disagree. As noted above, the definition of the SPI_{t-1} is based on the *cumulative changes* in the price index for the previous twelve-month period, and not on the *annualized changes* in the price index based on the month of December of the prior year.

Finally, it is important to note that the directive in our June 23, 2006 Order to use actual year-end revenues rather than annualized revenues based on the month of December is considered a corrective step, rather than a newly "mandated change," that the Company must follow prospectively when calculating its annual PSI. Accordingly, we deny D&E's request for a reconsideration of this issue.

2. Verizon's *Amicus Curiae* Filing

On July 24, 2006, pursuant to 52 Pa. Code § 5.502(d), Verizon[11] filed its Response as *Amicus Curiae* (Response) to D&E's Petition for Reconsideration noting that it is its first opportunity to submit an *Amicus Curiae* response since there was no briefing schedule for this case.

In its A*micus Curiae* response, Verizon is concerned with D&E's access charge increases and its request that the Commission take back its "criticisms" of its access proposal and to allow them to become effective without comment. Verizon avers that D&E is not seeking any substantive changes in the Commission Order through its Petition. Nor is the Petition seeking any actual relief. Verizon contends that D&E's request to erase the Commission's "comments" is "illusory" because it seeks no actual relief and should, therefore, be denied on that basis alone. (VZ Response at 1).

Verizon strongly disagrees with D&E's characterization of its proposed access increase as being only "subtle" and "minor." Verizon expresses concern that D&E's per-line carrier charge is increasing by $1.20, or approximately 30%, resulting in a Carrier Charge of $5.24 per line.[12] (VZ Response at 3). Verizon also states that it effectively has to provide a double subsidy to D&E and other rural carriers. The first subsidy is in the form of universal service fund support, and the second is in the form of intrastate access rates that are very much higher than those assessed by Verizon on the rural carriers. By comparison, Verizon assesses a Carrier Charge of $0.58. (VZ

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[11] "Verizon" includes ILECs Verizon Pennsylvania Inc. and Verizon North Inc., CLEC MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services and IXCs MCI Communications Services Inc. and Verizon Select Services Inc.

[12] We note that the actual Carrier Charge filed by D&E in its compliance filing was $5.17 per line per month. This was a result of the directive in the June 23, 2006 Order to use actual calendar year 2005 revenues.

Response at 3-4). Verizon points out that D&E's instant rate increase alone is approximately twice as much as Verizon's entire carrier charge. As such, Verizon is of the opinion that the Commission was justifiably concerned about the high level of D&E's access charges. (VZ Response at 3).

Verizon argues that if other rural carriers follow D&E's approach (as D&E's affiliates Buffalo Valley Telephone Company and Conestoga Telephone and Telegraph Company already have), the collective financial impact on other carriers could be significant. Verizon also opines that if D&E's business plan cannot be self-sustaining, unless it obtains substantial new subsidization, the Commission is correct in questioning the wisdom of increasing the very implicit subsidies which it has repeatedly disavowed. (VZ Response at 4). Verizon also asserts that if this is D&E's position, the continuing need for a state universal service fund should be reexamined altogether. (VZ Response at 4).

In light of the above, Verizon requests that the Commission deny D&E's Petition on the access issue and decline to alter the language in it Order. (VZ Response at 5).

On July 31, 2006, D&E filed a Motion to Strike or Dismiss *Amicus Curiae* Response (Motion) of Verizon alleging that is not in compliance with the Commission's Rules and Practice and Procedure. In its Motion, D&E indicates that it provided notice of its PSI/SPI filing to all its access customers, including Verizon, and Verizon raised no objections to the proposed rate changes, filed no complaint in opposition thereto, filed no intervention therein and elected not to participate in any respect in the resolution of the filing. D&E argues that Verizon should not, therefore, be permitted to raise arguments that it already had an opportunity to raise. (D&E Motion at 2, 6).

D&E also argues that Verizon's *Amicus Curiae* is not in compliance with the Commission's Rules of Practice and Procedure and should, therefore, be stricken or dismissed on procedural grounds. D&E contends that Section 5.502(d) of the Commission's Regulations, 52 Pa. C.S. § 5.502(d), does not permit *Amicus* Response to a Petition for Reconsideration and that the only Commission rule that addresses the A*micus Curiae* status of a submission made to the Commission is 52 Pa. Code §5.502(d), which are only limited to briefs and does not authorize *Amicus* pleadings. (Response at 3-4).

D&E cites to Section 5.1(a) of our Regulations, 52 Pa. C.S. § 5.1(a), as to when pleadings are allowed and argues that this section does not recognize *amicus curiae* response to a petition as a permitted pleading. (Response at 4). It also cites to Section 1.36 of our Regulations, 52 Pa. C.S. §1.36, pertaining to verification of the facts, and asserts that Verizon's *Amicus Curiae* sets forth facts not part of D&E's filing. As such, D&E argues that if Verizon's *Amicus Curiae* response were viewed as a pleading (*i.e.*, an Answer to a Petition), it should fail because it does not conform to the Commission's Rules regarding answers to petitions under 52 Pa. Code § 5.1(a) and fails to comply with Section 1.36(a) of the Commission's Regulations. (Response at 4-5).

D&E also contends that should the Commission decide to view the *Amicus Curiae* as an allowable brief, it still does not conform to the Commission's Regulations regarding *Amicus Curia* briefs under Section 5.502(d) of the Regulations, 52 Pa. Code §5.502(d). D&E argues that Verizon uses much of its *Amicus* response to complain about the disparity between what D&E may charge for switched access compared to what Verizon may charge. As such, D&E opines that the Commission must strike or dismiss the *Amicus Curiae* response as being beyond that allowed by Section 5.502(d).

If the Commission does not act to strike or dismiss Verizon's *Amicus Curiae* response, D&E requests that the Commission reject Verizon's position for the following alleged reasons:

- There is no basis for Verizon's contention that D&E's access charge increases represent an "unprecedented proposal because: (a) D&E's TS and LS access charges have been increased to mirror D&E's interstate switched access charges (Response at 7); and (b) D&E's new $5.17 CCL rate is substantially below the $7.00 benchmark established in the *Global Order* and is significantly below the existing CCL rates of most other rural ILECs operating in Pennsylvania (Response at 8).

- There is no basis for Verizon's claim that D&E has not made "substantial progress" in lowering access rates when D&E's existing rates are compared to those in effect at the time of the *Global Order*. (Response at 9).

- There is no merit in Verizon's argument when it compares D&E's access charge rate levels with Verizon's own access charge rate levels because D&E does not have the scale of economy of Verizon so their costs and rates are higher. (Response at 10)..

- Verizon should not be permitted, in an *amicus* capacity, to use this proceeding to introduce USF policy issues in its favor relevant to upcoming proceedings (*i.e.*, the Commission's USF Investigation at Docket No. M-00021596). (Response at 10-12).

We conclude that Verizon's *Amicus Curiae* filing is acceptable under the provisions of 52 Pa. Code § 5.502(d). While D&E's position that our regulation refers specifically to the permission to file a brief and a brief is not expressly defined as a

"pleading" within the terms of 52 Pa. Code § 5.1, we conclude that the Verizon response is a submittal substantially in the nature of a brief and, based on our review, shall be considered as consistent with the provision. We shall, therefore, deny D&E's Motion to Strike or Dismiss *Amicus Curiae.*

It is important to note that the arguments raised by Verizon in its *Amicus Curiae* parallel those arguments that Verizon raised in its Answer to the Joint Motion of the RTCC, OCA, OTS and Embarq Pennsylvania to grant either a one-year further stay of the rural access charge investigation or until the FCC rules on its Unified Intercarrier Compensation proceeding, whichever is earlier.[13] In light of the fact that the same arguments will be raised in the expedited access charge investigation proceeding instituted by our November 15, 2006 Order at Docket No. I-00040105, *et al.*, we expect that the presiding ALJ will address in the recommended decision arising from that limited, expedited investigation the merits of Verizon's arguments as they pertain to the Company's desire to increase access charges.

Conclusion

Upon review and consideration of the record evidence, we conclude that the Petition does not meet the standards under *Duick* and, therefore, shall be denied consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That, consistent with the discussion in the body of this Opinion and Order, Denver and Ephrata Telephone and Telegraph Company's Petition for

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[13] *See, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, et al.,* Docket No. I-00040105, *et al.* (Order entered November 15, 2006).

Reconsideration of the Commission's June 23, 2006 Order at Docket Nos. R-00061377 and P-00981430F1000, is denied with regard to:

a. its request that the Commission reconsider recalling its "criticisms" against Denver and Ephrata Telephone and Telegraph because of its action to increase access charges; and,

b. its request that the Commission reconsider the mandated changes to the manner in which Denver and Ephrata Telephone and Telegraph Company's annual Price Stability Index/Service Price Index formula should be calculated.

2. That Denver and Ephrata Telephone and Telegraph Company's Motion to Strike Verizon Pennsylvania Inc.'s *Amicus Curiae* response is denied.

3. That the response of Verizon Pennsylvania Inc. as *Amicus Curiae* is accepted, consistent with this Opinion and Order, and that Verizon Pennsylvania Inc.'s concerns contained therein regarding increases to Denver and Ephrata Telephone and Telegraph Company's access charges, shall be addressed in the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006, at Docket No. I-00040105.

4. That this matter be marked closed upon entry of the final Order resulting from the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006, at Docket No. I-00040105, *et al.*

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 7, 2006

ORDER ENTERED: DEC 0 8 2006