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May 13, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for filing, please find the Public Version of Sprint's Main Brief in the above-captioned matter, including an Appendix with Proposed Findings of Fact, Conclusions of Law, Ordering Paragraphs, and unreported cases. Because this Brief contains Proprietary information, the Public version of the Brief is being submitted for e-filing. The Proprietary version of the Brief will be submitted in hard copy via overnight delivery, along with the hard copy of the Public version and the e-filing confirmation.

Copies of this Brief have been served in accordance with the Certificate of Service. Thank you and please contact me if you have any questions.

Best regards,

STEVENS & LEE

Michael A. Gruin

Enclosures
cc: Hon. Kandace Melillo, ALJ
Certificate of Service

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, LLC Complainant	:	
v.	:	Docket No. C-2009-2098380, *et al.*
Armstrong Telephone Company - Pennsylvania, et al. Respondents	:	

SPRINT'S MAIN BRIEF

PUBLIC VERSION

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Sprint Communications Company L.P., Sprint Spectrum, L.P., and Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint" or "Sprint Nextel"), hereby submit this Main Brief. At the hearings, conducted on April 14-16, 2010, and presided over by the Pennsylvania Public Utility Commission's ("Commission") Administrative Law Judge Melillo ("ALJ Melillo"), a comprehensive, voluminous record was developed on the numerous issues identified for inclusion in this docket. As discussed below, that record compels only one reasonable outcome. The Commission should promptly order CenturyLink[1] and the PTA carriers[2] (collectively the "RLECs" or the "Pennsylvania RLECs") to reduce their intrastate switched access rates to mirror the level and structure of their interstate switched access rates. The Commission-imposed basic local service rate cap should be immediately adjusted to reflect inflation since it was last set, and should continue to be adjusted to track inflation on an annual basis.

In today's telecommunications world, the lines between local and long distance are blurred as customers are using wireless, wireline, interconnected VoIP, texting, emailing, blogging, Internet social networking sites, and other methods to communicate with each other. As the telecommunications industry moves forward in technology and scope, it makes little sense to continue to apply antiquated compensation regimes developed long-ago to the all-distance communications prevalent today. In today's competitive world, there is no rational basis to maintain RLECs' monopoly revenue streams by forcing competing carriers to pay substantially higher rates for terminating

[1] The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (f/d/b/a Embarq Pennsylvania) ("CenturyLink").
[2] The Pennsylvania Telephone Association ("PTA") represents every non-Verizon ILEC in Pennsylvania. Although CenturyLink is also a member of the PTA, it is separately represented in the instant docket.

switched access calls to customers that must traverse the same telecommunications facilities to reach their destination as other calls for which lower charges apply. Conversely, there are compelling reasons to reform intrastate switched access rates. Inflated access rates impair competition, increase administrative costs, encourage arbitrage, and deprive customers of retail price reductions and other benefits.

Federal and state law and regulatory decisions have recognized the harm done by the continuation of a system where a carrier and its customers, such as Sprint and its long distance and wireless customers, artificially subsidize their competitors. The Federal Communications Commission ("FCC") has been working since the passage of the Telecommunications Act of 1996 (the "Act") to encourage competition and has recognized the harms of maintaining differences in intercarrier compensation based upon artificial regulatory distinctions. For example, the FCC stated in 2005,

> These [artificial regulatory] distinctions create both opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions. The record in this proceeding makes clear that a regulatory scheme based on these distinctions is increasingly unworkable in the current environment and creates distortions in the marketplace at the expense of healthy competition.[3]

To that end, the FCC has reduced interstate access rates consistently since the passage of the Act. Despite reductions to their interstate access rates, neither CenturyLink nor the PTA carriers have challenged the FCC imposed interstate switched access reductions.

Despite the access reform efforts at the federal level, access rates in Pennsylvania are still inflated and in need of reform. The record shows that the RLECs' intrastate

[3] *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, 4687 (March 3, 2005)("FCC 2005 FNPR").

switched access rates are exorbitantly high by any measure, whether compared to their cost-based reciprocal compensation rates or interstate switched access rates charged for calls using the same network. In order to foster the development of a fully competitive telecommunications market in Pennsylvania, intrastate switched access rates must be reformed. High intrastate switched access rates inflate the price for all retail voice services which rely on access services as an input. The record shows that reductions to intrastate switched access rates will result in corresponding retail price reductions and other benefits for Pennsylvania consumers. Forcing carriers to compete on equal footing rather than allowing certain carriers to extract excessive profits for use of essential, monopoly-controlled network elements is the correct approach to reform.

Much evidence has been presented establishing the consumer benefits that will result from requiring RLECs to mirror their interstate access rates. With respect to the customer benefit of lower prices, the record establishes that access rate reductions will flow through to end users. Access rate reductions can lead not only to reduced retail long distance rates but to numerous other competitive and consumer benefits, including allowing Sprint and other carriers to have more resources to expand wireless service coverage, enhance service quality and develop new, innovative service offerings. These benefits cannot be seriously disputed and are consistent with the codified policies of the Commonwealth.

Rather than acknowledge the benefits that will be achieved through access rate reductions, the opponents to access reform in Pennsylvania have made unsupported revenue impact claims that the suggested access reductions cannot be implemented unless they are paired with (1) reductions to carrier of last resort ("COLR") obligations,

(2) increased basic local exchange service rates, and (3) increased Pennsylvania Universal Service Fund subsidy payments.

They tender these arguments despite the fact that the record establishes that the RELCs obtain significant revenue from products other than local phone service – services that that they did not offer when their switched access rates were first set. The most prominent amongst these competitive products are bundles of service including long-distance or all-distance calling services and high speed Internet. Such services are offered using the same facilities over which RLECs provide access services, but the RLECs argue that revenues from such services should not be acknowledged by the Commission when determining the appropriate level of switched access rates and revenue neutrality.

To be clear, Sprint is not advocating that the Commission price-regulate Bundled or Internet services. To the contrary, Sprint sees no reason the Commission should make any attempt to regulate such services. At the same time, there is no reason the Commission should not recognize – as it has determined it must do in prior cases – that RLECs obtain substantial revenues today from a host of services sold over the local network and have the opportunity to obtain significant additional revenue from these service going forward. Bundled and Internet services use the local network, but the RLECs assert that such services must be ignored relative to paying for their use of that network. This is fundamentally inequitable. Meanwhile, RLECs in Pennsylvania continue to be unduly enriched by Sprint and its customers and other companies and their customers. The day has come for the Commission to reform intrastate switched access rates in Pennsylvania so RLECs' competitors and their customers are not burdened by a

disproportionate obligation to enrich RLECs via inflated access charges. In a true competitive environment, carriers compete for customers rather than for continued unjustified subsidy streams.

Sprint urges the Commission to bring intrastate access rates to parity with interstate access rates without any further delay.

I. STATEMENT OF QUESTIONS AND SUMMARY OF POSITIONS

The presiding officer has directed the parties to provide a list of the issues involved in this docket and a succinct summary of the positions of the other parties to this docket, and to provide a response to those positions.[4] Sprint provides the following Statement of Questions and summaries and responses in conformity with the presiding officer's instructions.

A. Statement of Questions

The following is a list of the issues identified for inclusion in this phase of the Commission's investigation as those issues are currently constituted following the Commission's Order addressing the scope of the instant investigation.[5]

Original Issues from Commission's Investigation:

1. Whether intrastate access charges should be further reduced or rate structures modified in the rural ILECs' territories;
2. What rates are influenced by contributors to and/or disbursements from the PA USF;
3. Should disbursements from the PA USF be reduced and/or eliminated as a matter of policy and/or law;

[4] See Briefing Order, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, Docket No. I-00040105 et al., at p. 2 (April 23, 2010).

[5] *See* Opinion and Order, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, Docket No. I-00040105 et al., (entered November 19, 2010)(this order limited certain issues originally identified in ALJ Melillo's order announcing the scope of the reopened investigation).

4. Assuming the PA USF expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth;

5. What regulatory changes are necessary to 52 Pa. Code §§ 63.161 – 63.171 given the complex issues involved as well as recent legislative developments;

AT&T Complaint Issues:

6. AT&T's Complaint alleged that RLEC intrastate switched access charges are unjust, unreasonable, discriminatory or otherwise in violation of 66 Pa. C.S.A. §§1301 and 1304;

7. AT&T's Complaint also alleged violations of 66 Pa. C.S.A. §§ 3011(3), (4), (5), (8) and (9);

Sprint Issue:

8. Whether the nine-month period and retroactivity provision of Section 1309(b) of the Public Utility Code (Code), 66 Pa. C.S. §1309(b), is applicable;

Issues Identified by the Commission in Re-Opening the Investigation:

9. The Parties are to Address any Federal Communications Commission ruling in its *Unified Intercarrier Compensation* proceeding;

10. The Parties are to address intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§ 3015 and 3017;

11. The Parties are to address the Pennsylvania Universal Service Fund;

12. The Parties are to address the potential effects on rates for the basic local exchange services of the rural ILECs to the extent this is consistent with the Commission's determinations in the limited investigation;

PTA Issues:

13. The appropriateness of continuation of the PA USF to continue to support the access reforms already implemented, and/or the development and implementation of a Toll Line Charge or other universal service fund to recover any revenue deficiencies effectuated by any change in the current PA USF or the current rural access rates;

14. The appropriateness of eliminating current PA USF credits on local service customer bills and increasing access charges on access customer bills to the extent the current PA USF is reduced without replacement funding implemented;

15. The pool of service providers that should be assessed to contribute to universal service support in Pennsylvania (except that discussion of the inclusion of wireless or VoIP carriers is precluded);

16. The impact on rural intrastate access rates and/or rate structures from any further federal action on intercarrier compensation, access, and universal service issues; and

17. Whether further intrastate access charge reform is necessary in light of the elimination in Act 183 of the mandatory access reductions that were contained in the original Chapter 30 law;

Proscriptions Identified by the Commission:

18. Issues adjudicated by ALJ Colwell are not to be re-litigated; and

19. The inclusion of wireless or VoIP carriers in the PA USF is not to be litigated.

B. Summary of Positions

SPRINT. Sprint contends that the RLECs' high switched access rates are inconsistent with, and counterintuitive to, the development of a fully competitive telecommunications market in Pennsylvania. Consumers will benefit as the competitive balance in the market is improved through reductions in intrastate switched access rates. Sprint urges the Commission to order each RLEC to price its intrastate switched access at the same level and structure as its corresponding interstate switched access. Whether these intrastate switched access rate reductions can be accomplished in a revenue-neutral fashion must take into account revenues from the host of services the RLECs provide over the local network or which are dependant upon the local network. While Sprint does not mandate any specific retail rate changes, Sprint does support a residential basic local service rate affordability benchmark initially set at $21.97 (an inflationary catch-up to match the existing $18 rate cap to the level it would be at today had it been allowed to increase with inflation). The affordability benchmark would increase with inflation each year to

protect residential consumers that want only basic local service. If an RLEC can prove that the cost of intrastate local service is higher than the local service benchmark, the RLEC should be permitted limited recovery via the PA Universal Service Fund to fund the difference between the benchmark rate and the cost of service. Sprint fully believes, and the record shows, that the RLECs have the financial strength to complete the transition of intrastate access rates to interstate rate levels in Pennsylvania in a revenue-neutral fashion without actually increasing basic local service rates. Sprint has presented a variety of data that illustrates the RLECs' financial strength in direct contradiction of the RLECs' hollow words. Sprint strongly urges the Commission to move forward with this much needed reform.

PTA. In light of the substantial intrastate access reductions already implemented by the RLECs and the FCC's March 17, 2010 action, the PTA argues that the Commission should not rush forward toward further reform. The PTA believes that the Commission should not hurry to place its rural carriers ahead of the curve. The PTA Companies do not oppose access reform, but in their opinion flash cuts and high local rates do not represent rational or responsible reform. The PTA companies say they remain committed to work with the parties to resolving the issues. The PTA identified $18.94 as an appropriate rate to which to increase the existing rate cap.[6]

Sprint's Response to PTA. The PTA companies say they do not oppose reform and are willing to **work** with the other parties, yet their testimony is long in listing changes that PTA finds unacceptable and *extremely* thin on changes that are acceptable to PTA. Sprint does not view the PTA testimony as having a proposal for reform at all. To the extent PTA's proposal conflicts with Sprint's, Sprint disagrees with the proposal nearly

[6] Transcript at page 585, lines 12-15.

in its entirety. While Sprint and PTA both agree that the rate cap can increase, the parties' positions on the size of the increase are in no way similar.

CenturyLink. CenturyLink's position is essentially that its existing intrastate switched access **rates** are just and reasonable, not anti-competitive, discriminatory or harmful to end user consumers. CenturyLink contends that existing access rates ensure the promise of universal service and support COLR obligations, although CenturyLink has failed to quantify the cost of either. In fact, CenturyLink failed to establish that there are any COLR obligations in Pennsylvania whatsoever. CenturyLink's fundamental position is that access rate reductions are not necessary and that local rate increases are not a viable option. CenturyLink insist that if access reductions are ordered, the only viable replacement of access revenues is the PA USF or a new PA USF-like mechanism. CenturyLink did not propose a suggested reasonable increase to the basic local exchange rate cap of $18.

Sprint's Response to CenturyLink. Sprint strongly believes that CenturyLink's intrastate switched access rates must be reformed. Sprint and other parties have demonstrated unequivocally that high intrastate switched access rates are inconsistent with the development of competition and harmful to Pennsylvania consumers. CenturyLink has failed to provide data demonstrating a financial need to replace any access revenue reductions or a lack of ability to collect the revenues from their own customers. Sprint has shown that its customers and other carriers' customers should no longer be burdened with high RLEC intrastate access rates or PA USF subsidy payments that have no financial justification.

OCA. The OCA plan has four integrated and interlocking parts. OCA proposes that RLEC intrastate access rates be set equal to RLEC interstate access rates; the RLEC residential basic rate cap be raised to 120 percent of the Verizon average residential rate; the RLECs' business rates should increase by the same amount; and the remaining revenue required to offset the access revenue reductions in a revenue neutral manner should be recovered from the PA USF.

Sprint's Response to OCA. There are several areas of commonality between Sprint's position and OCA's. Sprint supports OCA's plan for access rate parity between inter- and intrastate switched access rates. Sprint also supports OCA's suggestion that residential and business basic local rates be increased, but Sprint believes that OCA-supplied data in the record supports a higher rate benchmark. OCA identified $23.14 as an affordable rate. Finally, Sprint disagrees that new PA USF support should be provided. There has not been any financial demonstration that the RLECs need the current level of subsidy or that they can not recover the remaining revenues from their own customers. Customers benefit by exposing these revenue streams to the discipline competitive markets provide.

OSBA. OSBA's position is that toll carriers should be required to support a reasonable share of the cost of the local access facility because those facilities are essential to their business. OSBA believes that further intrastate switched access reform would cause local exchange ratepayers to pay more which is harmful especially to RLECs' business customers. OSBA's position is that if access rates are reduced, the residential local rate cap should be increased to at least $20.65 and further universal service support should not be provided without a cost of service needs test.

Sprint's Response to OSBA. Unlike OSBA, Sprint believes access reform is essential. Sprint supports OSBA's proposal *only to the extent that* it concedes that if reform occurs, the local benchmark should be increased and that the Commission should require a cost of service demonstration if new universal service support is to be provided. Otherwise, Sprint opposes the OSBA proposal as to rates and the need for reform.

OTS. OTS contends that RLEC intrastate access rate are not excessive or subsidy laden. OTS avers that any further increase in the price of basic local exchange service would be unfair to basic local exchange service customers. OTS believes that shifting the carrier charge, which is comprised of mostly local loop cost recovery, from carriers to end users would allow IXCs to use the local network for free.

Sprint's Response to OTS. Sprint could not disagree more with OTS's position. Recovery of the cost of the local loop from the end users that order retail services over that loop is essential to the transition to a fully competitive market. RLECs are offering standalone broadband service over these loops and still collecting access charges and universal service support on those loops. There could be no clearer example of why loop costs must be recovered from the end users that order retail services from the RLECs.

Verizon. Verizon contends that it is time for the Commission to establish just and reasonable RLEC intrastate switched access rates. It is Verizon's position that the quickest and most efficient way for the Commission to satisfy its legislative charge to promote competition, eliminate market distortions, and create a level playing field for all telecommunications carriers is to move all carriers to a uniform intrastate switched access rate – Verizon's current intrastate switched access rate. Verizon avers that RLECs should have the opportunity and flexibility to rebalance access reductions to retail regulated

services. Verizon opposes under any circumstances an expansion of the carrier-funded PA USF.

Sprint's Response to Verizon. Sprint agrees with Verizon that access reform is essential and that RLECs can replace all access revenue reductions directly from end user services (although Sprint does not believe the RLECs will need to or want to raise their basic local service rates to accomplish revenue neutrality). Unlike Verizon, Sprint also believes all RLECs services sold over the local network are relevant for revenue neutrality, not just RLECs' rate regulated services. Finally, Sprint disagrees that Verizon's current intrastate access rates are the best rate benchmark for the RLECs. Since intrastate and interstate access are identical in function and the current interstate rates fully compensatory, each RLEC's own interstate access rate is the best rate benchmark for that carrier.

Qwest. Qwest argues that implicit subsidies in access rates should be removed and made explicit in a revenue neutral manner. Rate rebalancing should be permitted via local rates and/or USF support. Qwest supports an access rate benchmark equal to Verizon's current intrastate access rate. Qwest also supports separate local rate benchmarks equal to 125% of the current average RLEC local service rate for residential and business services.

Sprint's Response to Qwest. Sprint disagrees with the approach to revenue neutrality of looking only to local rates and the PA USF. PA USF support must be limited, and only available after a showing of financial need based on cost of service. As with its position relative to Verizon, Sprint disagrees that Verizon's intrastate access rate is the proper rate benchmark for RLECs access rates. Finally, Sprint disagrees that a local service rate

benchmark can be established based on the current rates instead of the current rate benchmark of $18.

Comcast. It is Comcast's position that intrastate switched access rates are excessive in relationship to cost and to the rates charged for identical uses of the same network function, such as interstate switched access. Comcast avers that RLEC intrastate rates should be reduced to the same level as interstate switched access rates. Such an approach benefits consumers, controls distortions in the competitive process, and combats rate arbitrage. Comcast contends that the vast majority of the access reductions should be recovered from RLEC end users. Comcast finds it highly questionable whether the RLECs need any subsidy from above-cost access charges or a separate PA USF to maintain local rates at affordable levels. Nevertheless, Comcast supports targeted funding from the existing PA USF to alleviate any hardships to subscribers, not to carriers.

Sprint's Response to Comcast. Sprint agrees with Comcast.

AT&T. AT&T supports a reform process under which each RLEC's intrastate switched access rates will be reduced to mirror their interstate switched access rates. AT&T proposes that basic local service rates would be permitted to increase to $22 immediately, and increase $1 each year for three years thereafter to minimize the burden of the PA USF. AT&T's proposal allows that access revenues reductions beyond its proposed local service rate cap would be recovered from the PA USF.

Sprint's Response to AT&T. Sprint believes the AT&T reform proposal is a workable solution to access reform.

II. FACTUAL AND LEGAL BACKGROUND[7]

On September 30, 1999, the Commission released its landmark *Global Order*[8] reducing the access charges of all local incumbent exchange carriers operating in Pennsylvania. The *Global* Order established the Pennsylvania Universal Service Fund ("PA USF") and required Pennsylvania rural ILECs ("RLECs") to reduce access charges and intraLATA toll rates. The establishment of the PA USF was carried out on a revenue-neutral basis and included the rebalancing of intrastate access charges, toll rates, and local rates by the RLECs. The PA USF was a modified version of a settlement plan submitted between the RLECs and Verizon (then Bell Atlantic-Pennsylvania, Inc.).

The Global Order required the following specific changes of RLECs:

a) Intrastate traffic sensitive switched access rates and structure (including local transport restructure) were converted to mirror interstate switched access rates and structure in effect on July 1, 1998.

b) The Common Carrier Line Charge ("CCLC") was restructured as a flat-rate Carrier Charge ("CC") and reduced to an intrastate rate not exceeding $7.00 per line and allocated to intrastate toll providers based on their relative minutes of use.

c) RLECs were given the opportunity to reduce their intrastate toll rates to an average rate not lower than $.09 per minute.[9]

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[7] The discussion of the background to this proceeding draws extensively from and relies heavily on summaries contained in the Commission's own orders.

[8] *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999)(*Global Order*); 196 P.U.R. 4th 172, *aff'd sub* nom. *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission,* 763 A.2d 440 (Pa.Cmwlth. 2000), *alloc. granted*, 844 A.2d 1239 (Pa. 2004).

[9] Intrastate toll has subsequently been declared a competitive service, so issues and actions relative to intrastate toll are historically noteworthy, but of little direct relevance to the instant investigation.

d) RLECs with low local exchange rates were permitted to increase their residential basic local rates to an average monthly charge of at least $10.83, to the extent necessary to offset the reduced toll rates.

e) Those RLECs with an average monthly R-1 rate above $16.00 were required to provide their customers with a Universal Service credit to effectively reduce the rate to $16.00 with the difference recovered by the RLEC from PAUSF receipts.

See Global Order at pp. 151-152.

A residential basic local service rate cap of $16.00 per month was also imposed. The *Global Order* acknowledged that the Commission desired further access reform by calling for an investigation to be initiated in January 2001 to determine how the carrier charge (CC) pool would be reduced.

On November 8, 2001, the FCC issued its *Second Report and Order* at CC Docket Nos. 01-304, 00-256, 96-45, 98-77, and 98-166, commonly referred to as the *MAG Order*. In the *MAG Order,* the FCC stated its intent to align the interstate access rate structure with a lower, more cost-based level, remove what the FCC deemed to be implicit support for universal service, and properly move carrier common line charges to end users as end users cause the entire cost of the local loop. Accordingly, the *MAG Order* lowered interstate access charges, increased the interstate SLC (the SLC, or subscriber line charge is a monthly charge to the end user) over a period of time, and phased out the Carrier Common Line Charge ("CCLC") by July 1, 2003. Increases to SLC caps resulted in increases to monthly per line SLC rates of up to $6.50.

On July 15, 2003, the Commission entered an order granting a Joint Procedural Stipulation filed on June 5, 2003, by the RLECs, OTS, OCA, OSBA, AT&T, and Verizon. This Order further reduced RLEC intrastate access charges and increased the rate cap on residential basic local service from $16.00 to $18.00 per month. The PA USF was left unchanged, however. The July 15, 2003 Order discussed implementing continuing access charge reform in Pennsylvania, and indicated that a rulemaking proceeding would be initiated no later than December 31, 2004, to address possible modifications to the PA USF and further access reform.

On December 20, 2004, the Commission instituted an investigation in the above-captioned docket into whether there should be further RLEC intrastate access charge reductions. This investigation was instituted as a result of the Commission's prior order of July 15, 2003. The December 20, 2004 order indicated that the following issues be addressed:

a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.

b) What rates are influenced by contributors to and/or disbursements from the PA USF?

c) Should disbursements from the PA USF be reduced and/or eliminated as a matter of policy and/or law?

d) Assuming the PA USF expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?

e) If the PA USF continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund? If included, how

will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier's contribution be based upon? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?

f) What regulatory changes are necessary to 52 Pa. Code §§63.161 – 63.171 given the complex issues involved as well as recent legislative developments?

Following the institution of this investigation, the Federal Communications Commission (FCC), on March 3, 2005, entered a further order addressing its intercarrier compensation proceeding at CC Docket No. 01-92. The FCC announced its intention to comprehensively examine the overall intercarrier compensation regime including interstate and intrastate access, reciprocal compensation and universal service. The FCC stressed that reform is needed because the current intercarrier compensation system is based on jurisdictional and regulatory distinctions that are no longer linked to technological or economic differences in the exchange of traffic.[10]

By order entered August 30, 2005, the Commission stayed the instant investigation for a period not to exceed 12 months unless extended by Commission order, or until the FCC issued its ruling in its *Unified Intercarrier Compensation* proceeding. The Commission also stated that it would entertain future requests for further stays of its investigation for good cause shown and for the purpose of coordinating the Commission's investigation action with the FCC's ruling in its *Unified Intercarrier Compensation* proceeding.

[10] *FCC 2005 FNPR* at ¶ 15.

On or about August 30, 2006, the RLECs, OTS, OCA and Embarq (now CenturyLink)[11] filed a Joint Motion for further stay of investigation. That Joint Motion was granted by order dated November 15, 2006, which again stayed the investigation pending the outcome of the FCC's Unified Intercarrier Compensation proceeding at CC Docket No. 01-92, or until November 15, 2007, whichever was earlier.

On July 11, 2007, the Commission issued an Opinion and Order in 2006 Annual Price Stability Index / Service Price Index Filing of Buffalo Valley Telephone Company, Conestoga Telephone & Telegraph Company, and Denver & Ephrata Telephone & Telegraph Company denying those companies requests to increase their switched access rates.[12] Therein the Commission stated the following.

> We do not, however, conclude that policy goals of access charge reform have been nullified as a result of Act 183. While Act 183 made changes to Chapter 30 and the regulation of LECs thereunder, the act retained several of the Commission's duties and also gave some additional powers and duties. *See* 66 Pa. C.S. § 3019(h).
> ... the absence of an express reference to access charge *increases* in Act 183 is more consistent with the view that the General Assembly was aware of, and approved, the Commission's direction in achieving access charge reform. That reform, while not prohibiting increases, *per se*, unequivocally encompassed removing implicit subsidies in these charges and moving them closer to cost.
> We do not, however, reach the conclusion that such market realities created by, *inter alia*, intermodal competition and the necessity for ILECs to increase revenues to meet an accelerated broadband deployment commitment to insinuate a movement toward the return to implicit subsidies in access rates. While the D&E Companies, OSBA, and OCA seem certain that the record does not establish the existence of such subsidies, we are not confident in the record in this matter.[13]

Ultimately, the Commission denied the requested access rates increases. Subsequently on April 24, 2008, the Commission reopened the investigation for the purposes of

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[11] The United Telephone Company of Pennsylvania, Inc. d/b/a CenturyLink, f/d/b/a Embarq.
[12] *See* Opinion and Order, *2006 Annual Price Stability Index / Service Price Index Filing of Buffalo Valley Telephone Company, et al.,* Docket Nos. P-00981428F1000 and R-00061375 *et al.* (July 11, 2007).
[13] *Id.* at 22-23.

conducting a limited investigation into the RLEC rate caps on residential and business rates, as well as the form and structure of the PAUSF. A recommended decision regarding the limited investigation was filed by Administrative Law Judge Susan Colwell ("ALJ Colwell"). Therein, ALJ Colwell concluded the following:

> The PA USF is a fund which exists because the ratepayers of other telecommunications providers have paid the money, unwittingly, as a hidden tax. It is not "free money" to be plundered at will and without concern for its origins or for whether it is the best use of the money. All parties agree that the concept of universal service is a worthy one. This fund should be reconstructed to provide assistance to those customers who need it, and for those companies who can meet a stringent test for determining that they serve an area whose costs are so high that the company itself deserves extra help for that area alone.
> ... Reconfiguration of the Fund to provide assistance to low-income customers, as well as assistance to those rural ILECs who can show that their specific circumstances in a particular area merit it, would be an approach which targets the problems.
> To this end, the Commission should open a rulemaking which proposes changes to its universal service regulations to reflect the Commission's policy regarding universal service in Pennsylvania. Pending the outcome of the rulemaking, the RLECs should neither be held to an $18.00 rate cap nor should they be permitted to take funding from the PA USF in order to obtain the revenues which would represent the difference between the $18.00 and their Chapter 30 plan entitlements. Rather, they should be permitted to raise rates consistent with their Chapter 30 plans, with the Commission performing a just and reasonable analysis where the raise is not consistent.[14]

On November 5, 2008, the FCC issued a pending *Intercarrier Compensation* Notice *of Proposed Rulemaking* ("ICC NOPR"), at CC Docket No. 01-92, which considered a rational restructuring of the intercarrier compensation system and federal USF as proposed by former FCC Chairman Martin. The plans contained in the ICC

[14] Recommended Decision, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, at 87 – 90 (July 22, 2009)("Recommended Decision"). Sprint contends that ALJ Colwell's observation that PA USF funds are not "free money" is equally true of access charge revenues. Access charge revenues are taxed from competitive carriers to RLECs and place a real, costly burden on society.

NOPR included the concept of subjecting all traffic to a new reciprocal compensation methodology designed to drive down interstate and intrastate access rates and to be implemented by state regulators. The plans further proposed to raise the cap on the national subscriber line charge up to $8.00 - $8.50 per month from the current $6.50 level.

On March 25, 2009, PTA, OCA, and CenturyLink filed a Joint Motion for further stay of the Commission's investigation. Verizon, Sprint, Qwest, and AT&T filed Answers to the Motion. Contemporaneously, 96 complaints requesting further intrastate access charge reductions were filed by AT&T, *In re: AT&T Communications of Pennsylvania LLC v. Armstrong Telephone Company – Pennsylvania, et al.;* Docket No. C-2009-2098380, *et al.; TCG New Jersey, Inc. v. Armstrong Telephone Company – Pennsylvania, et al.; Docket No.* C-2009-2099805, *et al.; and TCG Pittsburgh, Inc. v. Armstrong Telephone Company – Pennsylvania, et al.,* Docket No. C-2009-2098735, *et al.* In an Order released on July 23, 2009, the Commission denied the Joint Motion and consolidated the AT&T complaints with the pending investigation and reinitiated the instant docket.

Since the re-initiation of the instant docket, the FCC has also released its National Broadband Plan. While no part of the plan is binding on state Commissions or carriers, the National Broadband Plan indicates the FCC intends in the near term to drive intrastate access rates to interstate levels before ultimately moving to fundamentally alter intercarrier compensation in order to encourage investment in broadband technologies by discouraging the negative incentive, contained in the current system, to maintain outdated systems for the purposes of collecting compensation for traffic termination.

III. BURDEN OF PROOF

Under the Public Utility Code and the Commission's prior Orders, it is well-settled that the RLECs have the burden of proving that their existing intrastate access rates are just and reasonable.

The starting point for analysis of the burden of proof is the Public Utility Code. Section 315(a) of the Code states as follows:

> "In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility."

The instant proceeding clearly was initiated "upon the motion of the Commission", and clearly involves the "existing rates of public utilities", and therefore the burden on proof rests with the RLECs, as the public utilities whose rates are being examined. The Commission initiated this *RLEC Access Charge Investigation* with its Global Order and continued the Investigation with its Order entered December 20, 2004, for the express purpose of investigating whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers. (See Order dated December 20, 2004). Obviously, the RLECs are "public utilities" whose "existing rates" are being examined, and therefore, under Section 315(a), it is clear that the burden is on the RLECs to prove that their rates are just and reasonable.

The RLECs may argue that AT&T and parties aligned with AT&T have the burden of proof under 66 Pa. C.S. § 332(a), since they are "the proponent of a rule or order". This argument must fail. The Complaint filed by AT&T does not alter the burden of proof in this case. By Order entered July 23, 2009, the AT&T Complaint was

consolidated with and subsumed into the *RLEC Access Charge Investigation*. Therefore, Section 315(a) applies to this case, not Section 332(a), and the burden rests with the RLECs.

The Commission has previously held that the burden of proof provisions of Section 315(a) apply in an identical situation involving the investigation of Verizon's Intrastate Access Rates and a Complaint filed against Verizon related to those same rates. The Investigation of Verizon's rates had been initiated by the Commission in its Global Order and by a subsequent Commission Order dated July 28, 2004. Later, AT&T filed a Formal Complaint against Verizon seeking reductions in Verizon's intrastate access rates. The ALJ in that case initially held that AT&T had the burden of proof, as the proponent of a rule or Order under Section 332(a). The Commission reversed the ALJ, by Order entered December 30, 2006, and explained that the burden of proof rested with Verizon (as the utility whose rates were being examined) pursuant to Section 315(a), notwithstanding the fact that the docket bore a "C" designation.[15] The same conclusion must be reached in the instant proceeding.

[15] *See* Opinion and Order, *AT&T Communications of Pennsylvania, LLC v. Verizon North, Inc. and Verizon Pennsylvania, Inc.*, Docket No. C-20027195 (entered November 30, 2006).

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

A. Reducing LEC Switched Access Rates is Pro-Competitive and Good for Pennsylvania Consumers

1. Excessive Access Rates Harm Consumers by Forcing Carriers to Subsidize Their Competitors

Switched access is fundamentally a monopoly function.[16] All carriers that compete against a RLEC in the retail market must use that RLEC's switched access to terminate non-local calls to the RLEC's customers.[17] This includes traffic originated by wireless providers who are assessed terminating intrastate access on wireless calls made to RLEC customers when such calls cross any Major Trading Area ("MTA") boundaries, but originate and terminate within Pennsylvania.[18] Competing carriers cannot compete on equal footing with RLECs if RLECs are permitted to impose on their competitors input costs for use of monopoly-controlled, bottleneck facilities that are priced far above the actual cost of providing those functions.

Access prices were historically inflated as a mechanism to subsidize the price of basic local service in a regulated monopoly environment. But this interplay between local service rates and intrastate access services rates was established long before RLECs developed the ability to collect revenues from numerous other services provisioned over the same network on which they provide local exchange and exchange access services

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[16] Main Testimony of James A. Appleby, Sprint Statement 1.0 ("Sprint Main Testimony (Sprint Statement 1.0)") at 12; Transcript at page 242, lines 19-23, Transcript at page 255, lines 5-22; *see also* Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd 9610, at 9616-17 (rel. April 27, 2001)(the FCC acknowledges that terminating access is a monopoly).

[17] *Id.*; *see also Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd. 12962, 12966 (2000) ("CALLS Order")("IXCs were dependent on the BOCs and the independent LECs to complete the long-distance call to the end user").

[18] Sprint Main Testimony (Sprint Statement 1.0) at 5-6, AT&T Direct Panel Direct Testimony at 39-40 and Exhibit G; and s*ee generally* 47 C.F.R. § 51.701(b).

(*e.g.*, wireline long distance, numerous calling features, and broadband services).[19] RLECs' current and potential revenue growth from non-regulated services makes the collection of subsidies from competing carriers in the form of inflated access rates unnecessary and anti-competitive. As stated above, all carriers providing voice communication services in Pennsylvania must use a RLEC's switched access lines to terminate non-local calls to that RLEC's local customers. Because provision of switched access services involves monopoly controlled network elements, other carriers' service costs are increased by RLECs' inflated access rates. As the Virginia Corporation Commission noted in its Order resolving Sprint's petition challenging Embarq's access charges,

> The subsidies contained in intrastate access charges distort the true cost of providing service, the true value of such service, and the development of the market for telephone services.[20]

Accordingly, RLECs' inflated access rates merely increase the cost of the services provided by competing carriers. The FCC has identified as problematic compensation regimes under which a carrier relies not on its own customers to recover its costs, but on its competitors and their customers. As the FCC noted, "...if one type of carrier primarily recovers costs from other carriers, rather than its retail customers, it may have a competitive advantage over another type of carrier that must recover the same costs primarily from its own retail customers."[21] RLECs, and indeed all carriers, should collect

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[19] Sprint Main Testimony (Sprint Statement 1.0) at 17-24;Sprint Rebuttal Testimony (Sprint Statement 1.2) at 5 and 12; and Exhibits JAA-5 and JAA-6 to Sprint Main Testimony (Sprint Statement 1.0). *See also* AT&T Cross Examination Exhibit 2 showing that only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of CenturyLink's residential customers purchase stand-alone basic local service, and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** purchase service bundles.

[20] Order on Intrastate Access Charges, *Petition of Sprint Nextel for reductions in the intrastate carrier access rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.*, Case No. PUC-2007-00108, at 6 (May 29, 2009)("Virginia Order"). **(Included in Appendix)**

[21] *FCC 2005 FNPR* at 4696.

the costs of providing retail services from the customers purchasing those retail services instead of imposing a portion of those costs on competitors by charging inflated rates for monopoly switched access. This change is essential to developing a level competitive playing field for all service providers.

Consumers now have more choices for their voice communications needs than in years past when an ILEC was the only provider of service within its service territories.[22] Today, most consumers have a choice between alternative carriers providing bundles of local and long distance service. But each of these carriers pay inflated access rates to a RLEC to complete its customers' non-local calls to a RLEC's local customers.[23] Because all carriers strive to cover their costs and to earn a profit, these inflated input costs are impeding the retail offers available in the market.[24] Consumers are not receiving the best offers that could be made available in the market because high switched access rates, originally intended to allow below-cost local service, are now inflating the rates for all alternative services, or are limiting or dampening the entrance of competitors in these markets.[25]

2. Consumers Benefit From Access Reductions and Increased Competition

If RLECs' access rates are reduced, consumers will surely benefit from reduced prices for competitive retail service offerings. Experience shows that when there is a

[22] See Transcript at page 319, lines 2-4, page 352; lines 19-20, page 392, lines 3-8 (at least one competitor in each CenturyLink exchange), page 606, lines 2-6; *see also* page 136, lines 22-25 (since VOIP is available over any broadband connection, and as broadband is available in 100% of PTA territory, and most of CenturyLink territory, all PTA customers and most CenturyLink customers have competitive options for voice service); *See also* Sprint Supplemental Testimony (Sprint Statement 1.1) at p. 16 ("As of December 31, 2006, **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of RLEC customers could obtain broadband service from their RLEC.").
[23] Sprint Main Testimony (Sprint Statement 1.0) at 5.
[24] Sprint Rebuttal Testimony (Sprint Statement 1.2) at 26-27.
[25] *Id.*

reduction in input cost and one company passes that cost savings through to its customers while others do not, the company that dropped its prices will gain market share at the expense of the market share of any company or companies that do not pass the input cost savings through to their customers. This presses other competitors to follow suit and reduce prices as a basic tenet of competitive markets.[26]

Consumers also benefit from access reductions above and beyond the limited scope of flow-through reductions in standalone long distance toll rates, and it is easy to demonstrate that wireless customers have already enjoyed significant consumer benefits as a result of reduced access rates that have in turn contributed to a decrease in wireless providers' costs of providing service. Access cost savings are one of the factors driving down the price of wireless service.[27] Other consumer benefits will also accrue when LEC access rates are reduced. When access bills are lowered, and subsidies are removed, carriers will have more resources to subsidize handsets, expand service coverage, enhance service quality, or develop new and innovative service offerings.[28]

The Commission should also note that in less densely populated areas of Pennsylvania ALL providers have reduced ability to recover their fixed costs. It is undisputed that when carriers compete with RLECs, they have to invest to build such infrastructure as is necessary to provide service.[29] Accordingly, non-RLEC carriers must not only struggle to recover their fixed costs in these areas, but they must do so while also burdened with RLEC imposed access charges. For instance, Sprint has placed evidence in the record indicating that it has invested **[BEGIN HIGHLY CONFIDENTIAL]**

[26] *See* Transcript at page 186, lines 1-5, and 199, lines 12-13.
[27] *See* Sprint Rebuttal Testimony (Sprint Statement 1.2) at 24.
[28] *See* Transcript at page 273, lines 3-14.
[29] Transcript at page 336, lines 18-22, and page 444, lines 6-21.

[END HIGHLY CONFIDENTIAL] to build a rural network in Pennsylvania to directly compete with the Pennsylvania RLECs.[30] This calculation of Sprint's network investment is actually understated as it considers tangible assets only and does not count its considerable spectrum investments.[31] Carriers' network investment expenses, coupled with artificially suppressed RLEC retail rates that are subsidized by access charges, tends to discourage competitive entry.[32] For Sprint this situation is exacerbated because no Pennsylvania RLEC has agreed to pay Sprint terminating access charges, and Sprint's federal support is being phased out.[33] Accordingly, by reducing access rates the Commission will effectively be encouraging competitive entry into RLEC service territories and additional investment in those territories by already present competitive carriers such as Sprint. In either case, consumers will benefit.[34]

Furthermore, because all Pennsylvania consumers are impacted by RLECs' high access rates reflected in higher prices for all retail telecommunications services, the benefits to all Pennsylvanians purchasing various services must be considered, not just the alleged impact on each RLECs' local service customers.[35] The record shows that at least 77% of Pennsylvanians have wireless phones;[36] the record also shows that 18.4% of

[30] Sprint Rebuttal Testimony (Sprint Statement 1.2) at 31 and Exhibit JAA-2R.
[31] Sprint Rebuttal Testimony (Sprint Statement 1.2) at page 31.
[32] Sprint Rejoinder Testimony (Sprint Statement 1.3) at 6, lines 5-12.
[33] *See* Transcript at page 355, line 1 – page 359, line 14, and page 620, lines 1-9 (no carriers, including CenturyLink or PTA, have agreed to pay Sprint access charges); Transcript at page 249, line 14 – page 250, line 7 (Sprint's federal USF support is being transitioned to zero).
[34] Sprint Rebuttal Testimony (Sprint Statement 1.2) at page 24, line 14 – page 25, line 13.
[35] Sprint Rebuttal Testimony (Sprint Statement 1.2) at pages 24-30.
[36] Sprint Cross Examination Exhibit 4.

adults live in households with *only* wireless phones;[37] and the record shows that 24.4% of households with both wireless phones and wireline phones use their wireless phones exclusively or almost exclusively.[38] Thus, it is no longer particularly relevant to segregate Pennsylvania consumers into neat categories of local customers or wireless customers. The fact is that the vast majority – approximately 74.5%[39] of Pennsylvania local service consumers are also wireless phone consumers. As Pennsylvania consumers today overwhelmingly have wireless phones (9,615,349 customers statewide),[40] and Sprint alone has **[BEGIN HIGHLY CONFIDENTIAL]** [41] **[END HIGHLY CONFIDENTIAL]** wireless customers in RLEC service territories, any decision made to protect and prolong the RLECs' access subsidy will prevent competitive benefits from being realized by Pennsylvania rural customers.

One factor in the RLECs' customers continued consumption of RLEC provisioned basic local service undoubtedly is that given the artificially suppressed rates, they have not had to evaluate whether to obtain like services from another provider, whether cellular, cable telephone, VOIP or otherwise. The artificially suppressed rates have allowed these customers to continue consuming the same service – telephony –

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[37] Sprint Rejoinder Testimony (Sprint Statement 1.3) at Exhibit JAA-5RJ (page 2 of the exhibit: "Approximately 18.4% of all adults – 41 million adults – lived in households with only wireless telephones.")

[38] Sprint Rejoinder Testimony (Sprint Statement 1.3) at page 11, lines 12-20 and Exhibit JAA-5RJ.

[39] The exact number is difficult to determine, but using record data we can draw the following conclusions: if 11% of Pennsylvanians are wireless-only customers (Sprint Cross Examination Exhibit 4), and since telephone penetration in general has been close to 100% for decades (usually in the 96-98% range, but 100% is used herein for convenience), we can project that the remaining 89% (11,072,077) of Pennsylvanians purchase either wireline or both wireless and wireline service (total population from Sprint Cross Exhibit 4). If 9,615,349 Pennsylvanian's purchase wireless service (Sprint Cross Examination Exhibit 4), and 1,368,459 of those are wireless only customers, then 8,246,890 Pennsylvania wireless customers also purchase wireline service. Thus, 74.48% of Pennsylvania wireline subscribers are also wireless subscribers.

[40] Sprint Cross Examination Exhibit 4.

[41] Sprint Rebuttal Testimony (Sprint Statement 1.2) at page 31, lines 14-17. As noted in Sprint's pre-filed testimony, Sprint's actual customer count may be higher since Sprint was unable to provide a customer count for its iDEN customers by RLEC service area.

from multiple providers. 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?

It also bears mentioning that the RLECs' claims that reduced access rates will threaten their corporate health, jobs and have other adverse impacts ignore the fact that high access rates have an adverse impact on all those same categories for the RLECs' competitors. The record shows that the wireless industry employs 4,195 Pennsylvanians, has a Pennsylvania payroll of $304,799,000, and has an average employee salary of $62,000 in Pennsylvania.[42] Clearly, the wireless industry is a major contributor to the Pennsylvania economy. Sprint specifically, and the wireless industry in general, has invested in rural Pennsylvania,[43] has a considerable number of customers in rural Pennsylvania,[44] and remains committed to providing high quality service and cutting-edge technology to rural Pennsylvanians.[45] To the extent that the RLECs argue that reduced access revenues threaten them and their employees, it can hardly be ignored that that the converse is true as well: high access rates threaten wireless carriers and their Pennsylvania employees.

Furthermore, the Commission has considered and specifically rejected the RLECs' oft repeated theme that competitive pressures and the need to deploy broadband networks creates a need for continued access subsidies. "We do not, however, reach the

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[42] Transcript at page 387, line 7 – page 388, line 1. *See also* Sprint Cross Examination Exhibit 4.
[43] Sprint Rebuttal Testimony (Sprint Statement 1.2) at 31 and ExhibitJAA-2R.
[44] Sprint Rebuttal Testimony (Sprint Statement 1.2) at page 31, lines 14-17. As noted in Sprint's pre-filed testimony, Sprint's actual customer count may be higher since Sprint was unable to provide a customer count for its iDEN customers by RLEC service area. Additionally, while no customer counts from other wireless carriers are on the record it stretches credulity not to recognize that other carriers are active in rural Pennsylvania and have considerable subscribership as well.
[45] *See* Sprint Rebuttal Testimony (Sprint Statement 1.2) at Page 32, lines 17 – 19, and *see generally* Sprint Rebuttal Testimony (Sprint Statement 1.2) pages 30-33.

conclusion that such market realities created by, *inter alia*, intermodal competition and the necessity for ILECs to increase revenues to meet an accelerated broadband deployment commitment to insinuate a movement toward the return to implicit subsidies in access rates."[46] To the contrary, the Commission consistently has held that its policy is the reduction and removal of access subsidies from the Pennsylvania marketplace, and that intention was expressed by the Commission as a reason for reopening this very docket. "It has been, and continues to be the intention of this Commission, since the *Global Order* of 1999, to gradually lower intrastate access charges so as to allow for greater competition in the intrastate and interexchange toll markets ..."[47]

The Commission's rejection of the RLEC's oft-repeated claims that reduced access rates will threaten their corporate health, jobs and have other adverse impacts is consistent with its precedent favoring access reform. In determining whether rates are just and reasonable, the Commission must not elevate the interests of the RLECs unnecessarily or excessively as against all other interests, including the interests of the RLECs' customers. Furthermore, the Commission should differentiate between protecting customers and protecting carriers. There is no doctrine of law that indicates the Commission is duty bound to ensure that RLECs' rates are sufficient to ensure their financial integrity. To the contrary, long standing precedent indicates that the question of proper rate levels does not at all hinge on whether a rate is sufficient to ensure that a

[46] Opinion and Order, *Investigation Regarding Intrastate Access Charges And IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund; 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, et al.*, Docket Nos. I-00040105, P-00981428F1000, et al., at page 23 (July 11, 2007).

[47] Order, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, at 19 (entered August 5, 2009).

utility earns a given return or even remains in business. To the contrary, like all businesses, utilities must be exposed to business risks like any other financial venture.

> In cases where the balancing of consumer interests against the interests of investors causes rates to be set at a "just and reasonable" level which is insufficient to ensure the continued financial integrity of the utility, it may simply be said that the utility has encountered one of the risks that imperil any business enterprise, namely the risk of financial failure. The express language of the *Hope* decision weighs against regarding utilities as a protected class of business enterprises which are to be relieved of such normal business risks. Specifically, it was stated in *Hope, 320 U.S. at 603, 64 S.Ct. at 288, 88 L.Ed. at 345*, that investment returns to utility owners "should be commensurate with returns on investments in other enterprises having corresponding *risks*." (emphasis added). In addition, the *Hope* decision observed, "'regulation does not insure that the business shall produce net revenues.' [quoting *Federal Power Commission v. Natural Gas Pipeline Co.,* 315 U.S. 575, 590, 62 S.Ct. 736, 86 L.Ed. 1037, 1052 (1942)]." 320 U.S. at 603, 64 S.Ct. at 288, 88 L.Ed. at 345. The risks which utilities are to bear were further noted in *Natural Gas Pipeline, 315 U.S. at 590, 62 S.Ct. at 745, 86 L.Ed. at 1052*, where it was stated that "the hazard that the property will not earn a profit remains on the company in the case of a regulated, as well as an unregulated business." Since the risk of nonprofitability remains upon regulated utility companies, it follows that the consequence of that lack of profitability, to wit diminished financial integrity, also rests upon utility companies.[48]

As the record thoroughly indicates that consumers will benefit from access reductions,[49] the Commission's task is to balance the consumer benefit of access reductions *against* the RLECs' investors' interests in the handsome, and in some cases outsized returns.[50] Sprint suggests that the Commission can reach no conclusion other than that access reductions will benefit consumers and that swiftly moving access rates to interstate levels is the most reasonable, appropriate means of ensuring the long-overdue consumer benefits that will accrue through access reductions. Any contrary conclusion

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[48] *Pennsylvania Electric Company v. Pennsylvania Public Utility Commission*, 102 A.2d 130, 134 (Pa. 1985).
[49] *See e.g.* Transcript at page 186, lines 1-5, 199, lines 12-13, and 273, lines 3-14.
[50] *See* Sprint Rejoinder Testimony (Sprint Statement 1.3) at Page 7-8 and JAA-2RJ.

would ignore long-standing precedent and elevate the interests of the RLECs over contrary and compelling interests.

B. The FCC and Other States Have Actively Engaged in Reducing Access Rates

1. Federal Policy Dictates That Implicit Subsidies Be Removed From Access Rates To Encourage Competition

Since the passage of the Act in 1996 the FCC has focused on implementing Congress' expressly stated intent of removing implicit subsidies as they are "neither consistent with, nor sustainable in, a competitive market."[51] The FCC's Intercarrier Compensation FNPR provides a summary of the FCC's actions reducing interstate access rates and removing implicit access charge subsidies culminating in the 2000 CALLS Order for interstate price cap LECs and the 2001 MAG Order[52] for interstate rate-of-return LECs. The Intercarrier Compensation FNPR summarizes that the CALLS Order and the MAG Order reforms "were designed to rationalize the interstate access rate structure by aligning it more closely with the manner in which costs are incurred."[53] The combination of these FCC Orders implementing the pro-competitive policy objectives

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[51] *High-Cost Universal Service Support; Federal-State Joint Commission on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, at Appendix A ¶ 169 (rel. Nov. 5, 2008)("Intercarrier Compensation FNPR"). The Telecommunications Act of 1996, at Section 254(e), requires universal service support, if any, to be "explicit."

[52] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Commission on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613 (2001) ("*MAG Order*").

[53] *Intercarrier Compensation FNPR*, at Appendix A ¶ 177.

Congress expressed in passing the Act has reduced the implicit subsidies in interstate access charges significantly over the years.

Despite reductions in interstate rates, the FCC continues to recognize that differences in interstate and intrastate access rates and other termination rates caused by regulatory distinctions cannot continue. For example, the FCC stated in 2005,

> First, our existing compensation regimes are based on jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services. As the Commission observed in the *Intercarrier Compensation NPRM,* regulatory arbitrage arises from different rates that different types of providers must pay for essentially the same functions. Our current classifications require carriers to treat identical uses of the network differently, even though such disparate treatment usually has no economic or technical basis. These artificial distinctions distort the telecommunications markets at the expense of healthy competition. Moreover, the availability of bundled service offerings and novel services blur the traditional industry and regulatory distinctions that serve as the foundation of the current rules.[54]

The FCC provided further analysis as to why disparate compensation regimes for identical services harm competition as well as detailing the harm to competition caused by carriers who recover their costs from other carriers rather than from their own retail customers.

> These bundled offerings and novel services blur traditional industry and regulatory distinctions among various types of services and service providers, making it increasingly difficult to enforce the existing compensation regimes. Moreover, in a market where carriers are offering the same services and competing for the same customers, disparate treatment of different types of carriers or types of traffic has significant competitive implications. For instance, if one type of carrier primarily recovers costs from other carriers, rather than its retail customers, *it may have a competitive advantage over another type of carrier that must recover the same costs primarily from its own retail customers.*[55]

[54] Id. at 4693-94.
[55] Id. at 4696 (emphasis added).

Therefore, sound public policy frowns on the RLECs' disparate access rates and recognizes the competitive harm caused by RLECs seeking to recover costs (and perhaps excess profits) from other carriers' customers rather than their own retail customers.

The FCC has overtly recognized that left to their own devices, carriers will always prefer to be insulated from competition and gain a competitive advantage by recovering costs from their competitors rather than their customers. By doing so, such carriers are able to compete based not on quality of products and services and efficiency, but on the basis of a benefit conferred by regulation alone: the ability to shift their costs on their competitors instead of their customers.

> ... implicit subsidies cannot be sustained, however, in the competitive markets for telecommunications services envisioned by the 1996 Act ... we suggest that, *given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage*. Thus carriers have every incentive to compete, not on basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses.[56]

More recently, in its November, 2008 Intercarrier Compensation FNPR the FCC detailed the regulatory arbitrage problems caused by unequal compensation schemes including access stimulation schemes where certain RLECs enter into contracts with free conference calling or adult chat lines to stimulate access minutes that must be terminated by IXCs at artificially high rates.[57] The record firmly establishes that such unsavory practices are occurring in Pennsylvania today.[58] It also bears noting that the FCC's National Broadband Plan includes as part of its plan the near-term reduction of intrastate

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[56] *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, CC Docket 99-68, 16 FCC Rcd 9451, 9454 (rel. April 27, 2001)("ISP Remand Order")(emphasis added).
[57] *Intercarrier Compensation FNPR* at Appendix A, ¶ 185.
[58] *See* AT&T Rebuttal Testimony at pages 53-58.

switched access rates to interstate levels, and the longer-term goal of moving away from terminating access charges entirely.[59]

A glaring flaw in the RLECs' position is that they artificially and inappropriately advocate for recovery of carrier common line charges from their competitors. This flies in the face of all commonly accepted treatment of such costs. The FCC has long since acknowledged that elimination of common-line charges to competitors is appropriate. As long ago as 1983, the FCC indicated that its long-range goal was for common-line costs to be removed from the calculation of the cost of switched access.[60] In support of this conclusion, the FCC found that a customer which does not use his or her local-loop to place or receive even a single call generates the same local-loop expense as a customer who places calls over the local-loop; accordingly, every LEC customer causes the same local-loop cost, and does so regardless of whether the local-loop is ever used.[61] Thus, as the LEC customer causes 100% of the local-loop expense without any traffic-sensitivity, the FCC concluded that those costs should ultimately be bourn exclusively by the LEC customer and/or the LEC, and should not be shifted to competing carriers.

The FCC concluded its work in removing local-loop costs from switched access rates in its CALLS Order.[62] Therein, the FCC combined all local-loop expenses into a single subscriber charge. In describing its rationale for shifting *all* common-line cost onto subscribers the FCC stated that "... consistent with the 1996 Act, including

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[59] FCC, *Connecting America: the National Broadband Plan*, at p. 148 (rel. March 16, 2010).
[60] *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, Phase 1, 93 FCC 2d 241, 264-65 (1983); recon., 97 FCC 2d 682 (1983), second recon., 97 FCC 2d 834 (1984)("1983 Access Charge Reform Order").
[61] *Id.* at 278.
[62] *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board On Universal Service*; Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (rel. May 31, 2000)("CALLS Order").

Section 254(k), it simplifies the current rate structure and long-distance bills, reduces consumer confusion, and furthers the Commission's efforts over the past two decades to eliminate per-minute recovery of common line costs ... the proposal is a major step forward from the Commission's current access charge regime, and preferable in moving access charges to cost-based levels than the current process."[63]

Thus, at the federal level the expense of common line costs were shifted from carriers to a customer charge called the subscriber line charge ("SLC"). The important point is that in the federal jurisdiction, loop cost is not recovered through access charges to LECs' competitors but rather from the cost-causer: their own customers. This is in stark contrast to testimony in this docket and the manner in which such charges are recovered in Pennsylvania today.

In sum, the FCC has reduced interstate access rates significantly over time to reduce and eliminate the implicit subsidies formerly contained in interstate access rates. The FCC, too, understands the harms to competition and investment resulting from different compensation schemes for carriers performing essentially the same origination and termination functions for other carriers (like the difference between intrastate and interstate access rates in Pennsylvania). Finally, the FCC has taken the necessary steps to ensure that the cost of the common line is recovered from the cost causer – the local end user.

2. Potential Future FCC Access Reform And Its Effect On Pennsylvania Consumers Cannot Be Predicted And Should Not Deter The Commission From Implementing Reform

Although it is true that the FCC has in the recent past issued an order addressing intercarrier compensation for ISP-bound traffic and a notice of a possible rulemaking on

[63] *Id.* at 12990-91 (internal citations omitted).

broader issues,[64] as well as the National Broadband Plan, there is no reason for the Commission to delay intrastate access reform in Pennsylvania. Indeed, the Commission was fully cognizant of the developments at the FCC when it issued its Order re-opening this docket.[65] The Commission acknowledged the possibility of FCC action on intercarrier compensation, found the mere possibility of such action insufficient to further delay access reform in Pennsylvania, and ordered the instant investigation reopened.[66]

The Commission's decision to proceed to address intrastate access rates was correct. The FCC's record on intercarrier compensation reform is lengthy, complex and unfinished. Throughout its efforts, the FCC has long acknowledged that the states have an essential role in reforming intercarrier compensation. The FCC has long relied on cooperation from state commissions to accomplish its access charge reform initiative, encouraged reform efforts by state commissions in advance of final FCC action, and provided clear guidance on the need for access reform,

> [T]his Commission and the state public utility commissions have long shared the responsibility for regulating intercarrier compensation. Furthermore, this Commission has always strived to cooperate with the states to carry out this dual responsibility. In considering ways to reform intercarrier compensation, we are cognizant of the need to cooperate with the states, and the importance of not interfering unnecessarily with legitimate state policies.[67]

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[64] *See generally Intercarrier Compensation FNPR.*

[65] *See* the Commission's July 23, 2009 Order in the instant docket, where the Commission acknowledged the potential for FCC action on intercarrier compensation reform, but decided to proceed with its investigation: "Therefore, based upon these circumstances and our review of the parties' positions, we are persuaded that the access charge investigation should be resumed at this time. The pending proposals that are before the FCC to impose a $0.0007 rate to interstate and intrastate access charges alike nationwide and of pending federal legislation do not alone warrant a fourth one-year stay of the investigation as FCC action does not appear to be imminent." *Id.* at 19.

[66] *Id.*

[67] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. Apr. 27, 2001).

The FCC has not altered its stance whatsoever. To the contrary, in the draft reform proposal ("Chairman's Draft Order") appended to the Intercarrier Compensation FNPR, the FCC would rely heavily on the state commissions to achieve a uniform and fair system of intercarrier compensation. Indeed, although the Chairman's Draft Order proposes to *require* that state commissions ensure the intrastate access rates of all carriers mirror their interstate access rates by a date no more than two years from the effective date of the FCC's future order, it notes that state commissions need not wait for the FCC to reform intercarrier compensation rules: "We note that the reforms adopted today do not preclude … nor do they prevent state commissions from accelerating the glide path toward the final reciprocal compensation rate if they deem it appropriate."[68] Possible yet speculative FCC initiated comprehensive intercarrier and universal service reform should not deter the Commission from implementing needed intrastate switched access reform to benefit Pennsylvania consumers now.

3. Other States Have Implemented Access Reform

In considering whether to require LECs to mirror their interstate access rates, the Commission can look at access reform in other states. The record establishes that there are numerous examples of access reform – whether instituted via statute or regulation – in other states.[69] Today, many states require LECs' intrastate switched access rates to mirror their interstate access rates.[70]

In a recent instance of a state Commission electing to reform intrastate switched access rates by ordering LECs to mirror their own interstate switched access rates, the New Jersey Board of Public Utilities ("NJ BPU") issued a ruling on February 1, 2010 that

[68] *Intercarrier Compensation FNPR*, Appendix A at ¶192, fn. 500.
[69] *See* AT&T Panel Direct Testimony at Exhibit I; *see also* Sprint Direct Testimony at pages 7-8.
[70] *Id.*

requires CenturyLink, and all other LECs in New Jersey, to mirror its interstate switched access rates within 36 months of the Order.[71] The NJ BPU required CenturyLink to eliminate in its entirety CenturyLink's Common Carrier Line Charge within twenty (20) days of the Order.[72] The remainder of the difference between CenturyLink's intrastate and interstate switched access rates were ordered to be reduced in three equal increments at the 12, 24 and 36 month anniversary of the New Jersey Access Reform Order.[73]

After hearing arguments from CenturyLink, and other LECs, nearly identical to those arguments made by the RLECs in the instant docket, the NJ BPU found as follows:

- It is this Board's view, based upon the record in this proceeding that it is time to reduce these long standing subsidies that are neither necessary nor appropriate in the increasingly competitive marketplace. As noted in the record, many states and the FCC have reduced access charge rates over the years, some as many as 15 years ago. The policy decisions by the Board in the past to include significant subsidies in these rates were appropriate at a time when there was little or no competition. The Board is convinced that ***the current level of subsidies is no longer necessary today.***[74]

- ***[S]witched access service is a monopoly*** because there is no ability for an IXC or its customers to avoid excessive access charges. Furthermore, switched access is a monopoly because an originating carrier does not have a choice of terminating carriers.[75]

- AT&T argues that the functionality used to provide interstate and intrastate switched access do not materially differ ... The Board agrees. Accordingly, the Board HEREBY FINDS that ***there is no material difference in the functionalities used to provide interstate and intrastate switched access and,***

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[71] Order, *In the Matter the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates,* Docket TX08090830 (released February 1, 2010)("New Jersey Access Reform Order"). **Available at http://www.state.nj.us/bpu/pdf/telecopdfs/TX08090830.pdf. This decision was also attached to AT&T Panel Rebuttal Testimony at Attachment 2.**

[72] New Jersey Access Reform Order at 29.

[73] *Id. at 29-30.*

[74] *Id.* at 26-27 (emphasis added).

[75] *Id.* at 27 (emphasis added); *see also* Sprint Main Testimony (Sprint Statement 1.0) at 12; Transcript at page 242, lines 19-23, and page 255, lines 5-22; *see also* Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd 9610, at 9616-17 (rel. April 27, 2001)(the FCC acknowledges that terminating access is a monopoly).

as a result, any disparities in the Intrastate and Interstate Access Rates should be eliminated.[76]

- [T]he Board HEREBY FINDS that ***a reduction of Intrastate Access Rates will benefit customers because there is a relationship between reduced access charges and toll reductions.***[77]

- ***Furthermore, loop costs, which should not be included, are in some cases the largest cost elements in the cost model. These costs are inappropriate for inclusion in the access cost models*** ...[78]

- [CenturyLink] also argued that if the Board reduces Intrastate Access Rates, the Board should also eliminate their COLR obligations. However, ***the record shows that COLR obligations of ILECs have not been reduced or eliminated in any state that has also reduced Intrastate Access Rates. ... Furthermore, the ILECs have failed to quantify the cost of their COLR obligations in New Jersey.*** ... the ILECs current COLR obligations as codified in N.J.S.A. 48:2-23 and in the Board's rules and Board Orders, should not be eliminated.[79]

- The Board also HEREBY FINDS that the Board ***need not to wait for federal action from the FCC or from Congress on Intrastate Access Rate issues*** ... the Board regulates Intrastate Access Rates and it is within the Board's authority to review the complete record in this proceeding and render its decision.[80]

- The actions by the Board in this Order reflect a policy recognition that, ***in a mostly competitive field, legacy subsidies are no longer necessary or appropriate.*** As described above and as reflected in the record, the Board HEREBY FINDS that ***the ILEC interstate access rate that the Board is setting herein as the appropriate rate for Intrastate Access charges at the conclusion of the phase-in period, is in excess of cost for providing Intrastate Switched Access service. Therefore, the revenues from the reduced Intrastate Access Rates will continue to provide a contribution to LECs.***[81]

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[76] *Id.* (emphasis added); *see also* AT&T Panel Direct Testimony at page 36, lines 8-10; Sprint Main Testimony (Sprint Statement 1.0) at page 16, line 13 – page 17, line11.
[77] *Id.* (emphasis added); *see also* Transcript at 186, lines 1-5, and 199, lines 12-13.
[78] *Id.* (emphasis added); *see also* Sprint Main Testimony (Sprint Statement 1.0) at page 5, line 18 – page 6, line 24.
[79] *Id.* at 28 (emphasis added); *see also* Transcript at pages 170, 175-176, 190, 257, 325-326, 332, 370 – 371, 595-596, and 632-633; Sprint Cross Exhibits 1 and 2, PTA Cross Exhibit 4, and Sprint Rebuttal Testimony (Sprint Statement 1.2) at Exhibits JAA-11R and 12R.
[80] *Id.* (emphasis added); s*ee also* Commission's July 23, 2009 Order in the instant docket at 19.
[81] *Id.* (emphasis added); *see also* Transcript at 609, lines 1-3 (PTA admits that interstate rates include a reasonable return on investment).

Another state that recently elected to reform intrastate switched access rates is Kansas.[82] In a March 10, 2010 Order, the Kansas Commission ordered CenturyLink's Kansas intrastate switched access rates to mirror its interstate switched access rates. IN reaching this finding, the Kansas Corporation Commission made the following findings.

- The Commission believes the testimony and evidence provided by Sprint and AT&T has shown that [interstate] **parity will provide benefits in accordance with legislative policy goals, including enhancing the opportunity for greater competition and the opportunity for further telecommunications infrastructure development such as potentially greater broadband deployment.**[83]

- The Commission finds substantial competent evidence indicates reducing access rates to parity ... should benefit Kansas consumers, including [CenturyLink] customers.[84]

- The Commission finds **lowering [CenturyLink]'s access rates to parity will facilitate the advancement of telecom infrastructure at low, affordable prices.**[85]

- Obviously, the Commission cannot predict what the FCC will do. However, Kansas has already taken a leadership role on access reform. ... Other states have also implemented reforms aimed at achieving parity of interstate and intrastate rates ... The Commission agrees that is not highly likely that FCC action will occur quickly. The FCC [intercarrier compensation] docket ... has not seen significant recent activity and the new FCC Chairman has not indicated access rate reform is a priority ... The Commission appreciates the efforts of AT&T, which has filed comments urging the FCC to protect the interest of Kansas consumers ... Other "early adopter" states have also filed comments. It is also reasonable to believe that the FCC would give the interests of early adopter states consideration. For these reasons, **the Commission does not believe the potential of FCC action that would negatively affect Kansas customers, although troubling, is a factor that outweighs the benefits discussed in this Order.**[86]

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[82] Order, *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").
Available at http://www.kcc.state.ks.us/scan/201003/20100310103628.pdf
[83] Kansas Access Order at p. 38, ¶ 94.
[84] Kansas Access Order at p. 49, ¶ 128
[85] Kansas Access Order at p. 52, ¶ 138.
[86] Kansas Access Order, p. 65-66, ¶ 178 – 179.

- It is not necessary for the Commission to decide the appropriate cost method or inputs ... **the evidence presented here indicates [interstate] parity is a reasonable proxy** for costs.[87]

- 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 ... [88]

As is evident from the foregoing, Kansas concluded that access reduction to parity interstate with interstate rates is precompetitive, will lead to greater broadband deployment, can be conducted without cost studies as interstate is a reasonable proxy rate, and that reducing CenturyLink will have benefits for all Kansans. Sprint urges the Commission to reach all the same conclusions.

Another example of a state commission eliminating the competitive harms caused by large disparities between intrastate and interstate access rates is Massachusetts, which found in a 2002 Order:

> Nonetheless, we agree with AT&T, so the Department will reduce switched access charges to their economically efficient levels in Phase II of this proceeding to promote economic efficiency and competition for intrastate toll, as we did in the past through the rate-rebalancing process. Currently, intrastate switched access charges are higher than interstate switched access charges. *This creates a situation where it could cost more for Massachusetts customers to make a call across the state than it does to make a call across the country. The Department concludes that this is inefficient because the cost to Verizon of originating or terminating a toll call does not vary with the distance of the call. Therefore, intrastate switched access charges will be lowered to the more cost-based interstate levels.*[89]

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[87] Kansas Access Order, p. 73-74, ¶ 204

[88] Kansas Access Order, p. 84, ¶ 235.

[89] Order, *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts,* Mass. D.T.E. Docket No. 01-31 Phase I (May 8, 2002) (italics added), **2002 Mass PUC LEXIS 10**, *108-109. The Massachusetts Commission went on to find that that residential dial-tone rates would have to be increased to make up for lost subsidies, but that should not impact universal service.

The Massachusetts Department of Telecommunications and Cable ("DTC") recently took the additional step of requiring all CLECs to reduce their switched access rates to mirror their interstate rates.[90]

The principles underlying the need to reduce intrastate access rates in Massachusetts recently have been affirmed by the Hearing Examiner in Sprint's complaint at the Virginia Corporation Commission against CenturyLink (then "Embarq") seeking reductions in CenturyLink's intrastate access rates in Virginia.[91] In that case, the Hearing Examiner concluded, among other things, that "the subsidies collected by CenturyLink through its intrastate access charges have a detrimental impact on competition" in Virginia.[92] In support of his conclusion, the Hearing Examiner stated as follows:

> As the record in this case demonstrates, the distinction between providers of local exchange telephone service and the providers of other communication services, including wireless and interexchange, is becoming less and less defined. For example, a growing number of Virginia customers purchase their telecommunication services through "bundles" that include local exchange telephone service and other communication services. [citation omitted.] Consistent with Mr. Schollman's testimony, ***providers of local exchange telephone service in Virginia also provide other communication services and are impacted by the level of subsidies collected through intrastate access charges.*** AT&T witness Nurse testified that "[m]oving price away from cost reduces an efficiency and reduces entrants' ability to compete . . . ." [citation omitted.] More importantly from the perspective of the Local

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[90] Final Order, *Petition of Verizon New England, Inc., MCImetro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. for Investigation under Chapter 159, Section 14, of the Intrastate Access Rates of Competitive Local Exchange Carriers*, Massachusetts D.T.C. Docket No. 07-9 (June 22, 2009). **(Included in Appendix)**

[91] *In the Matter of the Petition of Sprint Nextel for Reductions in the Intrastate Carrier Access Rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.,* Report of Alexander F. Skirpan, Jr., Senior Hearing Examiner, Case No. PUC-2007-00108, January 28, 2009, (hereinafter, "Hearing Examiner's Report"). **Available at http://docket.scc.state.va.us/CyberDocs/Libraries/Default_Library/Common/frameviewdsp.asp?doc=86246&lib=CASEWEBP%5FLIB&mimetype=application%2Fpdf&rendition=native**

[92] *Id. at 40.*

> Competition Policy Statute, Embarq witness Dippon agreed that Embarq's intrastate switched access revenues contained subsidies that are used to keep Embarq's local service rates low. [citation omitted.] Mr. Dippon outlined the competition for local exchange telephone service faced by Embarq and the risks faced by Embarq if it increased rates to compensate for the loss of intrastate switched access subsidies. [citation omitted.] For example, in rural areas where Embarq currently faces little or no competition for local exchange telephone service, Mr. Dippon conceded that an increase in Embarq's rates could increase competition.
>
> > If Embarq were to raise rates in those areas – it all depends. I could see that there's an increase in competition, but the increase in competition comes from the fact that carriers might see there's some money to be made. [citation omitted.]
>
> Likewise, in areas where Embarq currently faces competition for local exchange telephone service, Mr. Dippon took the position that if a loss in subsidy caused Embarq to increase rates in such areas, Embarq's competitors would likely increase their market share. [citation omitted.]
>
> ***Thus, the subsidies collected through intrastate access charges continue to limit or dampen competition in opposition to the pro-competitive policies embodied in the Virginia Code §56-235.5:1.***[93]

On May 29, 2009, the Virginia State Corporation Commission ("SCC") issued its Order on Intrastate Access Charges. In that order the SCC, noting that CenturyLink (Embarq at the time of the decision) is the second largest ILEC in Virginia (as it is in Pennsylvania – behind only Verizon) and citing the Hearing Examiner's Report, agreed that "the subsidies contained in intrastate access charges distort the true cost of providing service, the true value of such service, and the development of the market for telephone service."[94] While largely adopting Sprint and AT&T's arguments, including a finding that CenturyLink would not be forced to increase local rates if access rates are reduced, the SCC did not adopt the Hearing Examiner's Report in whole and instead required

[93] Id. at 24-25 (emphasis added).

[94] Order, *In the Matter of the Petition of Sprint Nextel for Reductions in the Intrastate Carrier Access Rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.,* Case No. PUC-2007-00108, May 29, 2009, (hereinafter "Virginia Order")at 6. **(Included in Appendix)**

CenturyLink to reduce its Carrier Common Line Charge ("CCLC") by less than 100%. CenturyLink was ordered to make such access reductions without recovery of those revenues from a state USF, without obtaining any specific local rate increases, and without any relaxation of COLR or service quality regulations. The SCC concluded that if CenturyLink needed to defray the access reductions in Virginia, it could obtain the revenues from its own customers via its retail rates under its pre-existing pricing flexibility. The Virginia legislature recently passed legislation that will eliminate the remaining disparities between intrastate and interstate access rates.[95]

C. The RLECs' Pennsylvania Access Rates Are Excessive When Compared to Other Applicable Rates for Exchanging Traffic Over the Same Facilities

The Commission has set out in the instant investigation to determine the appropriate level intrastate switched access charges for Pennsylvania RLECs.[96] The record establishes that RLECs' intrastate switched access rates are inflated grossly when compared to other applicable rates for the exchange of traffic over the same facilities that are used to terminate switched access traffic. Regardless of the means of comparison used, it is beyond dispute that the ILECs' are receiving an enormous, anti-competitive subsidy from their competitors through their unchecked, inflated access charges.[97] The Commission should no longer tolerate the RLECs' highly inflated access charges when there is no justification for existing rate levels.

1. Forward-Looking Economic Cost

For the exchange of local traffic, carriers' rates often reflect the forward-looking economic cost of traffic exchange. These rates are commonly referred to as reciprocal

[95] Code of Virginia § 56-235.5:1.
[96] July 23, 2009 Order at 3 and 21.
[97] *See* Sprint Main Testimony (Sprint Statement 1.0) at 12.

compensation rates. These forward-looking, cost-based rates, either approved by the Commission or agreed to in negotiations, function to compensate LECs for another carrier's use of their local switches, tandem switches and transport facilities to complete local calls while ensuring that the rates charged for monopoly-controlled bottleneck facilities are efficient and stimulate competition.[98] The FCC noted the following regarding the TELRIC (Total Element Long Run Incremental Cost – "TELRIC") methodology that it developed and intended for state commissions to implement in rate-making.

> Adopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent LEC to engage in anti-competitive behavior. Congress recognized in the 1996 Act that access to the incumbent LECs' bottleneck facilities is critical to making meaningful competition possible ... Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels. We believe that our adoption of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection and unbundled elements based on costs similar to those incurred by the incumbents ...[99]

There is no functional difference between calls subject to reciprocal compensation and calls subject to switched access charges in terms of the network elements used.[100] In fact, they use identical network elements. Truly the only difference between reciprocal compensation calls and switched access (or toll) calls is that long ago before competition was present for the provision of telecommunications services, policy considerations

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[98] First Report & Order, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15846-47 (Released August 8, 1996)("Local Competition Order"); *vacated in part on other grounds Iowa Utils Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997); *rev'd in part sub nom AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S. Ct. 721 (1999).
[99] *Id.* at 15846-47.
[100] AT&T Main Testimony Page 36, line 4 – Page 40, line 16.

allowed overcharge for the completion of toll (access) calls in order to maintain inexpensive basic local service. Since competition today regulates prices and ensures that basic local service is widely available at affordable prices, there is no longer any justification for the differential call termination rates as between different types of calls.[101] In any event, because reciprocal compensation and access calls are functionally equivalent, reciprocal compensation rates can be used as a proxy for the forward-looking economic cost of providing switched access.

The record establishes that the reciprocal compensation rates for Pennsylvania RLECs are far, far below their intrastate switched access rates. For example, CenturyLink's reciprocal compensation rate is $0.0007,[102] and Consolidated Communications f/n/a North Pittsburgh Telephone Company charges $0.002814[103] for reciprocal compensation. The disparity between these RLECs' reciprocal compensation rates and their intrastate switched access rates is unsustainable in a competitive market.

To put this in perspective, when CenturyLink terminates a call to a CenturyLink customer and it assesses access charges (either a landline call that originates outside and terminates inside the local calling area, or a wireless call that originates and terminates in different MTAs within Pennsylvania), CenturyLink charges $0.0479[104], or **6,742%** more than it does for use of the same facilities when a call is considered local, is not subject to access charges, and is billed at CenturyLink's reciprocal compensation rate of $0.0007.[105]

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[101] Transcript page 319, lines 2-4 (CenturyLink admits service territory "hyper-competitive"); page 392, lines 3-8 (CenturyLink admits that in every one of its exchanges it has competitors); PTA has not conducted a study to determine the presence and intensity of competition in PTA carrier service territories (page 606, lines 2-6), but acknowledges that it will suffer customer losses – obviously to competitors – if it raises rates (page 596, line 25 – page 598, line 4).

[102] CenturyLink's has adopted the rate established by the FCC in the ISP Remand Order.

[103] *See* AT&T Main Testimony at Exhibit F.

[104] Current Composite Access Rate from AT&T Panel Surrebuttal Attachment 2.

[105] CenturyLink's reciprocal compensation rate from AT&T Panel Direct Testimony at Exhibit F.

Similarly, when Consolidated Communications terminates a call to a Consolidated Communications customer and that call is subject to access charges, Consolidated Communications charges $0.0462[106], or **1,542%** more than it does for use of the same facilities when a call is considered local, is not subject to access charges, and is billed at Consolidated Communications' reciprocal compensation rate of $0.002814.[107] As many of the RLECs collect nothing for non-access call termination,[108] it is not possible to show a percentage difference compared to their respective intrastate rates, but the point is equally clear that they, too, charge far, far more for intrastate access traffic than for traffic subject to reciprocal compensation. Clearly, these rate disparities for calls using the same network elements are anti-competitive and lead to market distortions.

There is absolutely no reason for these immense rate differentials and exorbitant ILEC access profits to exist today. The above comparisons illustrate how far above other rates for the same network elements the RLECs' intrastate switched access charges truly are, and the need for immediate access reductions. Nevertheless, Sprint only advocates to the Commission that the ILECs be required to mirror their interstate rates.

2. Comparison with Interstate Rates in Pennsylvania and Other Comparative Measurements

A comparison of Pennsylvania RLECs' intrastate switched access rate to their interstate switched access rates is highly illustrative. The implicit subsidies Pennsylvania RLECs collect on their intrastate switched access rates are extensive and excessive. CenturyLink collects a subsidy of $7.19 per line/month, for an annual total of **[BEGIN**

[106] Current Composite Access Rate from AT&T Panel Surrebuttal Attachment 2.
[107] Consolidated Communications' reciprocal compensation rate from AT&T Panel Direct Testimony at Exhibit F.
[108] AT&T Panel Direct Testimony, page 39, footnote (the footnote number is illegible in the service copy received, but this citation is to the only footnote on page 39); *See also* Transcript at 624, lines 3-10 and 626, lines 3-8.

CONFIDENTIAL] [109] **[END CONFIDENTIAL]** above interstate rate levels. The PTA carriers annually collect a subsidy of **[BEGIN PROPRIETARY] [END PROPRIETARY]** above interstate levels.[110] Certain PTA carriers actually collect more in monthly Carrier Charge receipts from their competitors than they collect from their own customers.[111] Such out-sized and inappropriate shifting of expenses from customers to competitors is axiomatic of the FCC's oracular observation that "given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage."[112] Clearly, that opportunity is available in Pennsylvania today and Pennsylvania RLECs are taking advantage of the opportunity to the fullest.

It is simple to illustrate how inflated the RLECs' intrastate switched access rates actually are by simply comparing those intrastate switched access rates to their interstate counterparts. Such a comparison is appropriate as the record establishes both that interstate and intrastate switched access traffic uses the same network facilities,[113] and that interstate rates include a reasonable return on investment.[114] The following chart illustrates how far above interstate levels Pennsylvania RLECs' intrastate rates are:[115]

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[109] There are a variety of estimates in the record, but the number used here is from CenturyLink Panel Direct Testimony, Statement 1.0, at page 17. There are other differences between CenturyLink's intrastate and interstate rates, but the other than the Carrier Charge, the other differences are de minimus.
[110] PTA Direct Testimony, PTA Statement No. 1, at PTA Exhibit GMZ -9, page 1.
[111] Transcript at page 581, lines 8-25 (comparing PTA Exhibits GMZ-7 and GMZ-9).
[112] ISP Remand Order at 9454.
[113] AT&T Panel Direct Testimony at page 36, lines 8-10; Sprint Main Testimony (Sprint Statement 1.0) at page 16, line 13 – page 17, line11.
[114] Transcript at 609, lines 1-3 (PTA admits that interstate rates include a reasonable return on investment).
[115] The data for this table is drawn from AT&T Panel Surrebuttal at Attachment 2.

Rank	PA RLECs	% Intrastate Above Interstate	Rank	PA RLECs	% Intrastate Above Interstate
1)	Citizens of Kecksburg	668%	17)	Palmerton	147%
2)	CenturyLink	560%	18)	Conestoga	129%
3)	Windstream	499%	19)	Consolidated Comm of PA	119%
4)	Lackawaxen	352%	20)	Frontier Canton	110%
5)	Marianna & Scenery Hill	342%	21)	South Canaan	105%
6)	Laurel Highland	316%	22)	Yukon Waltz	84%
7)	TDS - Sugar Valley	287%	23)	NEPA	79%
8)	TDS - M&M	274%	24)	North Penn	73%
9)	Ironton	271%	25)	Hickory	73%
10)	Frontier Oswayo River	238%	26)	Pennsylvania	72%
11)	Pymatuning	233%	27)	Bentleyville	52%
12)	Frontier Commonwealth	199%	28)	Armstrong Pennsylvania	50%
13)	Frontier Lakewood	171%	29)	Frontier Breezewood	24%
14)	Denver & Ephrata	168%	30)	Venus	17%
15)	Frontier Pennsylvania	162%	31)	Armstrong North	-50%
16)	Buffalo Valley	150%			

As the above chart graphically illustrates, with one exception, Pennsylvania RLECs' access rates are uniformly above interstate levels, and all but three of the PTA carriers have interstate rates that range from 668% above the interstate level to 50% above the interstate level. These disparities are shocking in light of the fact that interstate rates provide a reasonable return on investment and there is no difference between the facilities used to terminate either type of traffic.

Using a metric, teledensity, that the FCC used in setting interstate rates in its CALLS Order,[116] one can conclude that the population density in CenturyLink's and the PTA carriers' service areas allow the RLECs to recover their fixed costs far more easily

[116] *Access Charge Reform*, Sixth Report and Order, CC Docket 96-262, 15 FCC Rcd 12962, 13021-22 (rel. May 31, 2000)("CALLS Order").

than is the case for rural carriers elsewhere in the country.[117] In fact, the teledensity of *every* RLEC in Pennsylvania exceeds the national average of all non-Bell Operating Company ILECs combined. Similarly, at a holding level company – the measurement-level used by the FCC in the CALLS Order[118] – no RLEC in Pennsylvania today would be allowed to charge the higher switched access rate under the CALLS Order based on the teledensity of the service territory.[119] In light of these numbers, there appears to be no rational justification of Pennsylvania RLECs' access rates based on an examination of the nature of their service territories. The Commission should no longer tolerate Pennsylvania RLECs' highly inflated access charges when there is no direct or comparative analysis that justifies the existing rate levels.

D. Reducing LEC's Access Rates Will Not Result in Unaffordable Rates For Basic Local Exchange or Other Services, and Will Not Result in Hardship for the RLECs

There is no basis in the record to withhold or delay access reductions based on the RLECs' speculative claims that such relief cannot be afforded without basic local service rate increases or increased PA USF subsidy payments. Such claims must be rejected because the RLECs inappropriately omit and exclude critical information regarding their ability to recover their network costs from the wide array of services they already provide. The RLECs' position also misapprehends the relationship between revenue replacement and current revenue streams, but much of that discussion is reserved for later herein (*see* Section VI. i*nfra*).

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[117] *See* Sprint Main Testimony (Sprint Statement 1.0) at page 14, line 5 – page 15, line 8, and Exhibit JAA-3. Exhibit JAA-3 graphically illustrates RLEC access lines per square mile and compares that metric with the 19 lines per square mile that the FCC used as a threshold to justify higher rates. *See* CALLS Order at 13021-22.

[118] Calls Order at 13022, fn 304 (the "... target rate would be available to price cap LECs with a holding company average of less than 19 End User Common Line charge lines per square mile served").

[119] *See* Sprint Main Testimony (Sprint Statement 1.0) at Exhibit JAA-3.

All Pennsylvania RLECs have expanded significantly the array of services they offer to their local service customers, in addition to realizing substantial increases in average revenue per user. Today, Pennsylvania RLECs offer much more than just local exchange and exchange access services to their customer bases. They all offer basic local service, private line, voice mail, directory listing services, call forwarding, call waiting, special access, switched access, foreign exchange, EIS, and broadband.[120] Thirty-one (31) RLECs offer toll service.[121] At least four PTA carriers have competitive LEC affiliates to offer local service outside of their traditional service areas.[122] At least one RLEC has a cable affiliate, one or more are affiliated with Dish Network, and at least six PTA carriers offer cable television/IP television.[123] Two RLECs offer wireless service.[124] These services are packaged and bundled together with local exchange service.[125]

The discounts offered on these bundles provide significant incentives for customers to purchase all of their services from one provider.[126] With the development of these new services and the corresponding bundling of the new services with local service, Pennsylvania RLECs have significant, robust sources of cost recovery not limited solely to basic local service and other regulated services. Pennsylvania RLECs

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[120] Transcript at 655-666; *see also* Sprint Supplemental Testimony (Sprint Statement 1.1) at 12-13, JAA-5, JAA-6, and JAA-7.
[121] *Id.* and Sprint Cross Examination Exhibit 8. Sprint has included CenturyLink to the 30 PTA carriers listed as providing toll service in Sprint Cross Examination Exhibit 8.
[122] *Id.*
[123] *Id; see also* Sprint Supplemental Testimony (Sprint Statement 1.1) at JAA-7 for examples of RLEC advertising including their television offerings.
[124] *Id.*
[125] *See* Sprint Supplemental Testimony (Sprint Statement 1.1) at JAA-7 for examples of RLEC advertising of their bundled services.
[126] *See* Transcript at page 433, line 23 – page 434, line 9 (demand for non-telephony services over the local network is ever increasing); Transcript at 241, lines 4-6 (stand-alone service losing favor as customers want all-distance calling solutions offered in bundles); Transcript at page 322, line 22 – page 324, line 24 (discussing the low percentage of customers ordering stand-alone service from CenturyLink).

can now cover the basic network connection cost over a combination of services, *offered over the same network*,[127] that are driving higher average revenue per household.[128] Therefore, Pennsylvania RLECs are capable of recovering their full basic network connection costs from their own end user customers without relying on basic local service or intrastate access rates to recover their costs.

Sprint tried to obtain detailed Pennsylvania specific information on RLEC revenues from broadband and other non-basic local exchange services provided over the local loop. The Pennsylvania RLECs were universally uncooperative with Sprint.[129] CenturyLink's witnesses went so far as to admit that "either way, we would not have provided our broadband cost information."[130] Despite the RLECs' intransigence in the discovery process in this regard, Sprint has placed on the record evidence that illustrates that CenturyLink's average revenue per household, propelled by customer adoption of new services, has increased 12.7% between the first quarter of 2005 and the fourth quarter of 2008.[131] CenturyLink calculated that its monthly average revenue per household in Pennsylvania for 2008 was approximately **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL].[132] Windstream's average revenue per customer per month has increased 6.2% between the first quarter of 2007 and the first quarter of 2009. These increases are directly attributable to bundled service offerings.

The record also shows that for all Pennsylvania RLECs, the revenue generated over the local network from services other than local exchange service are very

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[127] *See* Transcript at page 654, lines 11-22 (RLEC DSL service offered over local network); *see also* Transcript at page 549, lines 16-19.
[128] *See* Transcript page 220, lines 7-10, and page 221, line 19 – page 222, line 4.
[129] *See* Transcript at page 371, line 19 – page 372, line 3; s*ee also* Sprint Rebuttal Testimony (Sprint Statement 1.2) at page 14, line 18 – page 15, line 4.
[130] Transcript at page 373, lines 22-23.
[131] Sprint Main Testimony (Sprint Statement 1.0) at page 19, line 18-21.
[132] Sprint Cross Examination Exhibit 5.

significant. The monthly average revenue per line from such services for all Pennsylvania RLECs in 2007 was **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[133] This means that Pennsylvania RLECs are earning more than **[BEGIN CONFIDENTIAL]** [134] **[END CONFIDENTIAL]** as much revenue per month from non-basic local services offered over the local network as they earn for basic local service. Such revenues have also been growing. Between 2005 and 2007, Pennsylvania RLECs revenues from non-basic local services offered over the local network increased **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** in two years.

The RLECs' revenue from switched access services above their interstate rate levels is **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[135] The RLECs' current PA USF subsidy is approximately **[BEGIN CONFIDENTIAL]** [136] **[END CONFIDENTIAL]**. Looking at the Pennsylvania RLECs' combined subsidy from intrastate access in excess of interstate levels and PA USF support, Pennsylvania RLECs garner a total combined subsidy of **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** per line. [137] The subsidy is dwarfed when compared to the approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** in revenue from non-local exchange services provisioned over the local network in 2007.[138] Clearly, the revenue from those services are significant and, as discussed later herein, must be

[133] Sprint Supplement Testimony at 14.
[134] *Id.*
[135] *See* Sprint Supplemental Testimony (Sprint Statement 1.1) at 15.
[136] *Id.*
[137] *Id.*
[138] *Id.*

considered in determining if access reductions will be revenue neutral and whether PA USF support payments are needed at all.

In light of this record evidence, it is obvious that the increasing adoption of bundled services by Pennsylvania RLECs' customer base has had a net positive impact on Pennsylvania RLECs' bottom line. Nevertheless, the Pennsylvania RLECs argue that they cannot reduce access rates unless competitors and consumers pay a dollar-for-dollar replacement for any reductions to the Pennsylvania RLECs' existing subsidy stream. This myopic view of their business paints a distorted view of both the Pennsylvania rural market and of the Pennsylvania RLECs' position and financial health within that market. Fortunately, and as explained later herein, the RLECs' position that their access revenue must be replaced, dollar-for-dollar, from increased basic local service rates and from PA USF subsidy payments is easily debunked. RLECs – should they choose to do so – have the ability to make access reductions without ever raising basic local service rates.

It bears noting that CenturyLink has detailed to its investors its strategy to offset access reductions, and that strategy **does not include increasing basic local rates**:

> During the last several years (exclusive of acquisitions and certain non-recurring favorable adjustments), we have experienced revenue declines in our voice and network access revenues primarily due to declines in access lines, intrastate access rates and minutes of use, and federal support fund payments. To mitigate these declines, we plan to, among other things, (i) promote long-term relationships with our customers through bundling of integrated services, (ii) provide new services, such as video and wireless broadband, and other additional services that may become available in the future due to advances in technology, wireless spectrum sales by the Federal Communications Commission ("FCC") or improvements in our infrastructure, (iii) provide our broadband and premium services to a higher percentage of our customers, (iv) pursue acquisitions of additional communications properties if available

at attractive prices, (v) increase usage of our networks and (vi) market our products and services to new customers."[139]

In summary, CenturyLink and the RLECs are fully aware their competitors cannot, will not and should not any longer be required to cover the RLECs' costs; and the RLECs are well positioned and prepared to overcome reductions in their access rates by intensifying their attention on providing more and better services to end users. While the RLECs do not want to see an end to the era in which their competitors provide a major source of easy revenue, fully opening Pennsylvania's markets to competition demands that the RLECs become better competitors in the market and recover their costs through the same means as competitive carriers: efficiency, innovation and their own customer base.

Pennsylvania RLECs are not just selling plain old telephone service to their customers anymore. CenturyLink and the PTA carriers have ever-increasing revenue opportunities from new services provisioned over the switched access network. Record evidence indicates these carriers are generating substantial and growing revenues for non-basic local service offered over the same lines on which they provision telephone service. These factors demonstrate that Pennsylvania RLECs have more than ample ability to recover their costs from their own customers, and do not need implicit subsidies in the form of high intrastate access charges.

[139] *See* Transcript at 218, lines 20-24; Sprint Rebuttal Testimony (Sprint Statement 1.2) at pages 39-40, and JAA-8 (CenturyLink 3rd quarter 2009 – 10Q, page 18, filed with the Securities Exchange Commission on Nov. 9, 2009).

E. Carrier of Last Resort ("COLR") and Service Obligations Need Not Be Reduced and are not an Impediment to Immediate Reform

Both the PTA carriers and CenturyLink made blatantly unsupported arguments that in order to implement access reform, the Commission would need to relieve the RLECs of their COLR obligations and other service quality obligations, presumably as cost saving measures. The ILECs' witnesses, however, have failed to present any evidence whatsoever regarding the cost of their COLR obligations.[140] On the other hand, no state Commission that has reduced an ILEC's access charges has concomitantly relieved it of its COLR obligations.[141] Furthermore, the record establishes that there are no COLR obligations imposed on RLECs in Pennsylvania which are not equally applicable to other carriers.[142] It also bears noting that unlike in other jurisdictions, Pennsylvania does not appear to actually have any specific rules or statutes imposing COLR obligations at all.[143]

Without any factual basis to support the RLECs' claims that COLR obligations must be reduced, the Commission should pay no attention to these unfounded claims. To the extent the cost of COLR obligations must be addressed at all, the RLECs remain free to seek relief from such obligations – if any such obligations in fact exist. Although the Pennsylvania RLECs are aware that they can petition to have their basic local services declared competitive – and thereby relieve themselves of the COLR obligations the RLECs failed to identify – they have not taken such action to date.[144] At such time as the RLECs request relief from their unidentified COLR obligations, they would presumably

[140] *See* Sprint Rebuttal Testimony (Sprint Statement 1.2) at JAA-11R and JAA-12R; *see also* Transcript at page 632, line 11 – page 633, line 4, and page 332, lines 11-16.
[141] *See* New Jersey Access Order at 28.
[142] Transcript at page 175, line 5 – page 176, line 2.
[143] Transcript at page 170, lines 22-24.
[144] Transcript at page 418, lines 2-14, and page 596, lines 17-19.

be required to present evidence that these obligations exist and are onerous to comply with – something they have entirely failed to do to date.

F. Current RLEC Rates Do Not Satisfy the Just and Reasonable Standard and are Discriminatory

It is beyond question that the RLECs' bloated access rates are unjust and unreasonable. As discussed above, Pennsylvania RLECs' switched access rates are excessive by any comparative measure. The Commission has long held, and continues to hold that it is the policy of the state and the Commission's goal to reduce or eliminate access subsidies. "It has been, and continues to be the intention of this Commission, since the *Global Order* of 1999, to gradually lower intrastate access charges so as to allow for greater competition in the intrastate and interexchange toll markets ..."[145] The Commission's statement, made a mere eight (8) months ago, is recognition that Pennsylvania RLECs' switched access rates are too high. The present question, however, is not whether the RLECs' switched access rates are too high – a question that the Commission has repeatedly answered in the affirmative since its 1999 *Global* Order; rather, the question is simply whether the Pennsylvania RLECs' rates violate statutory proscriptions against unjust and unreasonable rates.[146] The answer must be in the affirmative.

Pennsylvania and federal precedent prohibit regulated rates that are *excessively high.*[147] Pennsylvania Courts have held that "[i]n order to function in the public interest, the rates of a utility must be such as to cover legitimate operating expenses, and at the

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[145] *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Order, Docket No. I-00040105, at 19 (entered August 5, 2009).
[146] 66 Pa. C.S.A. § 1301.
[147] *See Pittsburg v. Pennsylvania Public Utility Commission*, 78 A.2d 35; 168 Pa. Super. 95 (Pa. Super. 1951); *See also Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 692-93 (1923)(a utility "has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.").

same time *not result in an excessive return upon the fair value of the property devoted to the public use.*"[148] While the language of the quote itself is quite obviously adapted to rate-of-return era rate-making, the principle that regulated rates can be excessive remains intact today in the current era of alternative form of regulation. As stated by the Commonwealth Court, "Chapter 30 requires the Commission to find that the rates proposed under an alternative form of regulation be 'just and reasonable.'"[149] The Commonwealth Court went on to indicate that whether under rate of return regulation or alternative form of regulation, it is within the discretion of the Commission "to strike a balance between the rates charged to the utility's customers and the returns conferred upon the utility's investors."[150] The Commonwealth Court also indicated that whether rates are just and reasonable may include consideration of factors such as comparing a LEC's rates with national averages.[151]

This is consistent with long-standing precedent which indicates that to determine whether rates are appropriate, state commissions traditionally look to rates that are "generally being made at the same time and in the same general part of the country" for like ventures to determine whether rates are too high or low.[152] By definition, each Pennsylvania RLEC's interstate switched access rates and reciprocal compensation rates are exactly those "being made at the same time and in the same general part of the country."[153]

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[148] *Pittsburg v. Pennsylvania Public Utility Commission*, 78 A.2d at 40.
[149] *Popowsky v. Pennsylvania Public Utility Commission,* 669 A.2d 1029, 1036 (Pa. Cmwlth. 1995); *reversed and remanded on unrelated grounds regarding competitive determination and productivity offset calculation Popowsky v. Pennsylvania Public Utility Commission* 550 Pa. 449, 706 A.2d 1197 (1997).
[150] *Id.* at 1038.
[151] *Id.* at 1037.
[152] *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 692-693.
[153] *Id.*

Against that backdrop, it cannot be denied that intrastate switched access rates that are substantially above the interstate and reciprocal compensation levels that the Pennsylvania RLECs' charge for the same network elements in the same state are *per se* unjust and unreasonable. Not only does the record establish that the RLECs charge the lower interstate rates in Pennsylvania for the same network elements when terminating interstate calls in Pennsylvania, but the record also establishes that the Pennsylvania RLECs charge substantially lower rates for traffic subject to reciprocal compensation – which also uses the same network elements. As described above, rates for the same network elements are **6,742%** higher in some instances when the traffic is charged at access rates rather than reciprocal compensation rates.

The chart provided herein at Section IV.C.2. indicates that the comparison is no more favorable when examining the Pennsylvania RLECs' intrastate and interstate switched access rates. Three Pennsylvania RLECs charge between 499% and 668% more for intrastate than for interstate traffic over the same facilities. Eight Pennsylvania RLECs charge between 200% and 400% more for intrastate than for interstate traffic over the same facilities. Ten Pennsylvania RLECs charge between 100% and 200% more for intrastate than for interstate traffic over the same facilities. Seven Pennsylvania RLECs charge between 50% and 100% more for intrastate than for interstate traffic over the same facilities. Two Pennsylvania RLECs charge 17% and 24% more for intrastate than for interstate traffic over the same facilities. There is no rational basis to conclude other than that these rate differentials illustrate that the Pennsylvania RLECs' intrastate switched access rates are unjust and unreasonable.

This conclusion is all the more obvious when one considers the record establishes that the interstate rates cover costs and include reasonable return on investment.[154] The Pennsylvania RLECs have provided no evidence whatsoever to support any different conclusion. It is obvious, then, that if the interstate rates charged by the same companies, in the same area, for the same facilities cover costs and include a reasonable return on investment, then rates that greatly exceed the interstate rates are unjust and unreasonable. The remaining question is merely how to prudently lower those rates to reasonable levels as is appropriate in a competitive market.[155]

From the foregoing discussion it seems obvious that the subsidies that the RLECs have so long enjoyed, and to which the RLECs feel so deeply entitled are by no means required to be continued. To the contrary, precedent indicates that determining a just and reasonable rate has little to do with ensuring the continuation of the affected utility, and involves a fair and just balancing of legitimate interests.

Indeed, as recently as 2007 the Commission stated that access reform "unequivocally encompassed removing implicit subsidies in these charges and moving them closer to cost."[156] Sprint does not here propose that RLEC rates need to be lowered to cost. To the contrary, Sprint consistently testified that lowering RLEC switched access rates to interstate levels is all that is required in this docket.

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[154] Transcript page 609, lines 1-7.

[155] *See Generic Investigation of Intrastate Access Charge Reform*, Recommended Decision, Docket No. I-00960066, at p. 5 (June 30, 1998)(" Finally, as the Commission recognized ... access charges must be closer in magnitude to access costs for there to be true competition in the toll market")(the findings from this Recommended Decision were incorporated by reference into the Commission's *Global Order*).

[156] *See Investigation Regarding Intrastate Access Charges And IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund; 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, et al.*, Docket Nos. I-00040105, P-00981428F1000, et al., Opinion and Order, at 22-23 (July 11, 2007).

G. Codified Policy Goals and the Proscription Against Cross Subsidization are Frustrated by Inflated Intrastate Switched Access Rates

At the outset of Chapter 30, the legislature delineated the goals of the state; and it is the Commission's responsibility to effectuate those goals.[157] Included in these goals are the following:

- to strike a balance between mandated deployment and market-driven deployment of broadband facilities;[158]
- Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis;[159]
- Ensure that rates for protected services do not subsidize the competitive ventures of telecommunications carriers;[160]
- Provide diversity in the supply of existing and future Telecommunications services and products in telecommunications markets throughout this Commonwealth by ensuring that rates, terms and conditions for protected services are reasonable and do not impede the development of competition;[161] and
- Encourage the competitive supply of any service in any region where there is market demand.[162]

Sprint contends that while the Commission has largely succeeded in effectuating the goal of having broadband service available in rural areas, it has made far less progress in realizing other statutory goals. The chief cause of the Commission's successes in other areas lagging behind rural broadband deployment is the continued presence of inflated access rates in Pennsylvania markets. As switched access is an input into services provided by competitors in a multi-modal marketplace, the burden of high access charges is far reaching.

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[157] Transcript at page 537, lines 1-18 ("I believe, yes, the Commission has a general policy and obligation to follow Chapter 30.")
[158] 66 Pa. C.S.A. § 3011(1).
[159] 66 Pa. C.S.A. § 3011(3).
[160] 66 Pa. C.S.A. § 3011(4). There is also a specific statutory prohibition against cross-subsidization in addition to the above cited policy statement. *See* 66 Pa. C.S.A. § 3016(f)(1).
[161] 66 Pa. C.S.A. § 3011(5).
[162] 66 Pa. C.S.A. § 3011(9).

It cannot be denied, and is well-reflected in the record, that the presence of inflated access charges has thwarted innovation and new products and services in the marketplace.[163] The extent to which access has injured competition is insidiously difficult to track because it is simply not possible to determine who declined to enter the market, which products were not offered in the market and which services were not offered in the market due to input costs swollen by high access rates.[164] Insofar as access rates have that affect, the Commission's continued toleration of inflated access rates thwarts the goal of realizing *market*-driven deployment of broadband;[165] prevents diversity in the supply of existing and future telecommunications services and products in telecommunications markets throughout the Commonwealth;[166] fails to ensure that rates, terms and conditions for protected services are reasonable and do not impede the development of competition;[167] and discourages the competitive supply of any service in any region where there is market demand.[168] The injuries from the failure to realize these policy goals are numerous and include higher retail rates paid by consumers[169] and

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[163] *See* Sprint Main Testimony (Sprint Statement 1.0) at 5; Sprint Rebuttal Testimony (Sprint Statement 1.2) at 26-27.
[164] *See* Sprint Rejoinder Testimony (Sprint Statement 1.3) at 6.
[165] Section 3011(1) states that a goal of the state is to balance mandated and market driven broadband deployment. Broadband deployment by intermodal competitors, while not measured on the record, undoubtedly trails the 100% deployment in the PTA territories, and the high deployment rate in CenturyLink's territory.
[166] Section 3011(5) indicates that a goal of the state is to have a diverse supply of products and services throughout the Commonwealth. While Sprint does not agree with the RLECs regarding what the record shows specific to Sprint's service, and the record shows that the RLECs failed to produce an expert witness on the wireless industry, it is undeniable that the there remain areas of rural Pennsylvania without cellular coverage. These coverage gaps are contrary to the stated goal to have a diversity of supply for existing and future services *throughout* the Commonwealth.
[167] Section 3011(5) also indicates that rates for protected services should be reasonable and do not impede the development of competition. The record, however, establishes that competition is impeded by high switched access rates. *See* Sprint Rejoinder Testimony (Sprint Statement 1.3) at 6.
[168] Section 3011(9) sets as a goal of the state the encouragement of competitive supply of any service in any region where there is demand. The record reflects that high access rates insulate RLEC markets from competition as RLECs are provided a competitive advantage via their access rates. *See* Sprint Rebuttal Testimony (Sprint Statement 1.2) at 26-27.
[169] Sprint Main Testimony (Sprint Statement 1.0) at 5.

suppression of the expansion of wireless telephony coverage, and associated wireless services into all markets in Pennsylvania.[170] Clearly, rural Pennsylvanians suffered from high rates for non-basic local services and in slower expansion of other services than would otherwise be the case.

It is also both a goal of the Commonwealth and a codified proscription to prevent rates for protected services from subsidizing competitive ventures.[171] In this regard the record is clear that there is a significant danger of statutory violations, if outright violations have not already occurred. The record is clear that the Commission takes no steps to enforce the statutory ban against cross subsidization.[172] The record is also clear that neither the RLECs, nor the Commission, are aware of the cost of either basic local service or access service.[173] Since there are few remaining non-competitive services, the risk is heightened that the considerable subsidy generated by switched access is being impermissibly applied to competitive ventures in violation of Chapter 30.

Additionally, the record establishes that the RLECs are inappropriately imposing their Carrier Charge on broadband-only lines.[174] This quite obviously is a direct and unequivocal violation of the statutory ban on cross-subsidization. The RLECs' practice of imposing a Carrier Charge on bundled lines is also a violation of the statutory ban against cross subsidization as rates for protected services are quite obviously subsidizing a competitive venture insofar as the rate charged for the bundle is defrayed directly and immediately by the revenues each carrier receives for its access charges.

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[170] Sprint Main Testimony (Sprint Statement 1.0) at 5.
[171] 66 Pa. C.S.A. §§ 3011(4) and 3016(f)(1).
[172] Transcript at page 546, lines 13-16.
[173] Sprint Cross Examination Exhibits 1 and 2 (CenturyLink does not know its cost of access or basic local service); Transcript at Transcript at page 544, line 11 – page 545, line 7 (staff is unaware of common line cost); Transcript at page 632, line 11 – page 633, line 4 (PTA has not calculated the cost of its carriers' access, basic local exchange service or COLR costs).
[174] Transcript at page 381, line 17 – page 382, line 1.

The RLECs have no idea what their cost of access or basic local exchange service is. It therefore follows that the risk for cross-subsidization is extremely high. It is obvious from the above examples that cross-subsidization is already occurring in the market in an overt fashion, and all that remains to be determined is the full extent to which cross subsidization is occurring through access overcharges. The record indicates that for multi-modal firms, such as the RLECs, it is difficult to track revenues from any particular service and determine whether they are spent on permissible or impermissible purposes.[175] To the extent that access charges are known to be priced above cost, a matter not contested by the RLECs,[176] and there is no apparent means of tracking how they are spent, the Commission has but one option in order to ensure that cross-subsidization is not occurring. That one option is to ensure that protected services are priced so as to cover costs and no more.

Sprint's position in the matter at bar, however, is not for rates for protected services (access and basic local exchange service) to be priced at cost. To the contrary, Sprint proposes that (1) rates for intrastate switched access be priced at interstate levels, (2) basic local exchange service to permitted to be priced up to a benchmark rate, and (3) to the extent a carrier establishes – via a cost-showing - that it needs support for below-cost basic local exchange service, for such limited support to be available from the PA USF. What Sprint contends here, in the context of the prohibition against cross subsidization, is 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

[175] Transcript at Page 97, lines 5-13.

[176] The RLECs claim that access charges must be maintained at current levels because they provide support to basic local service rates that the RLECs allege are – overall – priced below cost. If access rates provide support to basic local service, it cannot be claimed that they are not generating revenues above cost.

unduly enrich the recipient[177] or pollute the market and violate the statutory prohibition against cross subsidization. Although interstate access rates cover costs and provide a reasonable return on investment,[178] Sprint contends that if the Commission orders intrastate switched access rates and structure to mirror interstate switched access rates, the Commission can comfortably conclude that the profits generated by those rates are of greatly reduced concern for the purposes of cross subsidization.

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

A. Rate Levels

Sprint asks that the Commission order each RLEC to price its intrastate switched access services at the same level as its corresponding interstate switched access services. To ensure that access reductions occur in a revenue neutral fashion, the Commission must look to all services being sold by the RLECs over the local network to determine whether the RLECs have a reasonable opportunity to recover reduced access revenue from other sources.

Sprint does not propose any specific retail rate changes, but Sprint does support a residential basic local service rate affordability benchmark initially set at $21.97 and increasing with inflation each year. If an RLEC can prove, in a cost proceeding, that the intrastate portion of the cost of local service is higher than the local service benchmark, the RLEC should be permitted recovery of the difference between the then prevailing local rate and the cost of basic local service, established in a cost proceeding, via the PA USF for those lines providing only basic local service.

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[177] *See* Sprint Rejoinder Testimony (Sprint Statement 1.3) at 8.
[178] Transcript at page 609, lines 1-3.

B. Timing

Sprint contends that there is no cause or justification to delay much needed switched access charge reform. The RLECs have for too long imposed their anti-competitive subsidies on their competitors. The time is well at hand for reform to be instituted and Sprint advocates for access reform to proceed immediately. The Commission should also note that the FCC's National Broadband Plan indicates a 2 – 4 year timeframe for mirroring intrastate rates to interstate levels and structure.[179] Sprint contends that such timeframe is overly generous, but in no event should an order issue that exceeds the low end (2 years) of that timeframe.

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.A. § 3017?

A. Meaning of the Revenue Neutrality Requirement under § 3017.

1. The Parties Agree that Revenue Neutrality Requires Only a 'Reasonable Opportunity' To Offset Access Reductions

While the Parties may differ on the appropriate sources of recovery, there does not appear to be any serious disagreement that the revenue neutrality provision of 66 Pa. C.S.A. § 3017 requires only that a reasonable opportunity for revenue recovery be available. According to PTA, "[r]evenue neutrality should provide the PTA Companies with a realistic opportunity to increase revenues … on a dollar for dollar basis," and that companies must be provided a "reasonable opportunity" to recover revenues.[180] PTA

[179] FCC, *Connecting America: the National Broadband Plan*, at p. 148 (rel. March 16, 2010).
[180] PTA Direct Testimony at 51, lines 1-4.

further confirmed that it does not view revenue neutrality to mean a risk-free guarantee.[181]

CenturyLink, too, agrees that revenue neutrality is not to be interpreted as a guarantee, but as a reasonable opportunity. CenturyLink testified that competitive carriers "wrongly claim[] that RLECs are seeking guaranteed revenues rather than an opportunity ... Like other carriers, RLEC revenues are not "guaranteed" today and will not be in the future ... Recovery of any intrastate switched access revenue displaced by this proceeding must be reasonably expected to be obtainable, or viable."[182]

Accordingly, no party, not CenturyLink, the PTA carriers or any other party to this proceeding, has taken the position that revenue neutrality must equate to a dollar for dollar guarantee of revenue replacement. The record establishes that in a competitive market, a literal dollar-for-dollar replacement would actually go beyond the intention of the statute as it would fail to take into account line losses that may occur.[183] Revenue neutrality interpreted as a fixed-sum offset would reflect the "status prior," rather than the status quo, which would go beyond intention of the statute.[184] A fixed-sum replacement would essentially amount to a competition insulated revenue guarantee rather than revenue neutrality, and no party advocated for such an interpretation of the statutory revenue neutrality provisions.

Thus, the parties appear to be in uniform agreement that the revenue neutrality provisions of 66 Pa. C.S.A. § 3017 require only a reasonable opportunity to recover

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[181] PTA Surrebuttal Testimony at page 46, lines 16-19 ("Are the RLECs requesting "risk-free" guarantees from the PAUSF to recover the revenue losses associated with further reducing access rates to interstate parity? No.").
[182] CenturyLink Panel Surrebuttal Testimony at page 17, lines 14-22.
[183] *See* PTA Surrebuttal Testimony at page 47, lines 7-10 (supports recovery from PA USF per line rather than as a fixed sum "so that USF Fund receipts would fluctuate with changes in access lines.").
[184] Transcript pages 194, line 19 – page 195, line 13.

revenue reductions attendant to access reform. This area of agreement is only, however, the beginning of the inquiry, not the end. The parties are in substantial disagreement on the *source(s)* to which the Pennsylvania RLECs should look for revenue replacement. Most parties, if not all parties, other than CenturyLink, have indicated a rate-level to which they agree basic local service rates can be raised.[185] Most or all parties have also indicated an approach to allowing carriers to seek recovery from the Pennsylvania USF. No argument has been raised contending that the Commission is jurisdictionally constrained from relying on increased basic local service rates and/or the Pennsylvania USF as sources of revenue replacement to satisfy the revenue neutral requirements of Section 3017. There is disagreement, however, on whether the Commission can conclude that Pennsylvania RLECs are able to offset revenue losses from services previously declared competitive and from non-jurisdictional revenues earned over the local network constructed from rate-payer derived funds.

2. The Commission Would Need to Consider Other Existing Sources of Revenue Before Entertaining any ILEC Claims of the Need for Additional Retail Rate Relief.

CenturyLink and PTA argue that their intrastate access rates could not be reduced to parity with interstate rates without significant additional increases to their basic local service rates and/or Pennsylvania USF receipts. At the same time, they argue that the Commission should ignore CenturyLink's and PTA's ample revenues from services sold over the local network in bundles and/or other competitive services contrary to Sprint's position in the matter at bar.[186] The RLECs' position conflicts with Commission

[185] The summary of each party's position, *supra* Section I., indicates the rate to which each party agrees rates can be raised.

[186] Sprint position is expressed in Section I *supra*. *See also* Sprint Main Testimony (Sprint Statement 1.0) at 3-4 and Sprint Rejoinder Testimony (Sprint Statement 1.3) at 1-2.

precedent, is against public policy, arbitrarily distorts the financial picture the ILECs present to the Commission, and defies logic, reason and credibility.

There are compelling reasons why CenturyLink's and PTA's revenue recovery should not be so narrowly construed as to be limited to regulated services only. Most if not all bundled customers purchase both basic local service and non-regulated services such as long distance service.[187] Since CenturyLink's and PTA's own access costs will decrease if RLECs' access rates are reduced, CenturyLink and PTA are able to offset reduced access revenues with increased cost savings from their own long distance and toll services. The record indicates that the savings for the RLECs from access reductions will be approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL].**[188] This savings opportunity is substantial and must not be ignored. The cost-savings realized by the RLECs from access reductions *must* be taken into account when measuring revenue neutrality.

The RLECs arguments on excluding other revenues also would distort the financial picture presented to the Commission. It is also essential to note that that RLECs offer many services over the same facilities over which they offer basic local service, but they insist that only revenues for non-competitive services are relevant when considering contribution to these shared-use facilities.[189] Thus, despite the fact that the facilities over which access services are provided are the same facilities over which long distance services, broadband service (DSL), and vertical calling services are provisioned, the

[187] *See* Sprint Main Testimony (Sprint Statement 1.0) at p. 18; Sprint Rebuttal Testimony (Sprint Statement 1.2) at 20.
[188] AT&T Panel Direct Testimony at 58
[189] *See* discussion in Section IV.D. *supra* of the multiple lines of business the RLECs are in today. *See also* Transcript at page 654, lines 11-22 (PTA admits that its DSL service is fully dependent upon the copper network constructed with rate-payer derived revenues).

ILECs' position is that only those very few services that remain regulated should bear the *entire* cost burden for the shared-use facilities. Sprint and other parties contend that this is inappropriate.[190]

From a total company perspective, it is clear that by hiding a significant part of the overall picture, CenturyLink and PTA distort their true finances and obfuscate in the extreme the question of what is an affordable rate and what is the actual impact of reform on these companies. As described above, the total end-user revenues from all services other than local service offered over the local loop in 2007 of approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**[191] dwarfs the projected revenue reductions from interstate mirroring of **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.

These numbers do not tell the entire story. What these numbers hardly illustrate is that the net post-access-reform impact on the RLECs is small. PTA sounds the alarmist siren by announcing that "[t]he impact of complete mirroring on the PTA companies would be a reduction of intrastate revenue of $63,910,478 or 65%." This projection would be an accurate picture if the PTA carriers were not multi-modal competitors selling multiple lines of products to their customers, but that is far from the case as described at Section IV.D., *supra*. The appropriate method of reviewing the impact on the PTA carriers is to look at all the services they are selling over the local loop and to compare the impact of access reform to the revenues still attainable after access reform.

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[190] Transcript at page 549, line 20 – page 550, line 7 (OTS agrees that to the extent broadband services use the local network, those services must bear a fair-share of the cost of the network).
[191] *Id.*

Sprint attaches to its Main Brief a table with data, drawn entirely from the record, that illustrates the impact of access reform on the RLECs in the manner described above (*See* attached table, Appendix at I.). What becomes clear is that the RLECs will continue to earn considerable returns from all of their services following access reform, and that for the majority of the PTA carriers, the percentage impact to total revenues is far from devastating. Sprint believes that its chart even overstates the impact as it fails to reflect the opportunity for increased basic local exchange service rates that have been suggested by all parties as part of any reform initiative as well as the significant opportunity, and the increased incentive created by reform, to increase adoption of broadband and other services the RLECs offer. Those revenue increases would merely serve to further diminish the impact illustrated in the table.

As illustrated in the table, the overall static impact to the RLECs is an average of 13%, not the 65% indicated by the PTA carriers. For 6 of the RLECs, the impact is less than 5%; for 8 of the RLECs, the impact is 5% or less; for 15 of the RLECs, the impact is less than 10%; for 17 of the carriers the impact is 10% or less; for 25 of the RLECs, the impact is 15% or less; for 28 of the RLECs the impact is less than 20%; and for three of the RLECs the impact exceeds 20%. The data for the two RLECs showing the highest percentage impact – assuming the data received in discovery is accurate – indicates that these two RLECs earn far less from other services offered over the local network than they do from subsidy payments and basic local service revenues.[192] It seems likely that if the data provided is accurate, these carriers have considerable headroom to sell more services to their customer base and are overly reliant on subsidy payments from their

[192] It also bears noting that there are very, very few PTA carriers for whom the earnings from local service exceed the revenues from all other sources.

competitors. Their outsized reliance on subsidy payments[193] is indicative of their failure to obtain meaningful patronage levels on the very broadband networks that they agreed to build to discharge their network modernization obligations under Chapter 30. This surely was not what the legislature intended, and it is reflective of the FCC's observation that "given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage."[194]

As is obvious from the foregoing, the revenue impact of mirroring is far below the 65% revenue event the RLECs allege. To the contrary, for one-quarter of the RLECs the revenue impact will be 5% or less, and for half of the RLECs, the impact is less than 10%. In all cases, the RLECs will still have the ability to compete in the market to earn additional revenues from their considerable slate of service offerings in order to increase their revenues.

By showing only revenues from regulated services, despite the fact that substantial revenues are earned from competitive services that use the same facilities, CenturyLink and PTA present an incomplete inaccurate picture to the Commission. This inaccurate picture, however, is intentionally presented as it makes the RLECs appear as if they actually need to be subsidized. Nothing could be further from the truth. As the numbers above indicate, the RLECs have substantial revenues from non-regulated services, and there is no reason the Commission should not take into account those revenues for services that use the same facilities. For all of the foregoing reasons, it is clear that reducing intrastate access charges to interstate levels will neither jeopardize the affordability of local service rates, nor create a financial hardship for LECs.

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[193] To appreciate this outsized reliance on subsidy, one needs look no further than the differentials between revenues from basic local, access and all other services as illustrated on the attached table.
[194] ISP Remand Order at 9454.

B. Rate Increases

1. The Commission has Ample Jurisdiction and Authority to Look to Revenues from all RLEC Provisioned Services That are Dependant Upon the Local Network to Determine Whether Access Reductions Can Be Achieved in Revenue Neutral Manner

As explained earlier (Section I *supra*), Sprint contends that the appropriate means of determining revenue neutrality for the purposes of offsetting RLECs switched access rate reductions is to look to the RLECs' wide range of competitive services offered over the local loop. Sprint's suggested approach has been criticized in a number of ways by other parties in this docket. From a policy perspective, a failure to recognize the revenue opportunity from other source of revenue and succumbing to an RLEC ultimatum that the RLEC must either be permitted to continue receiving inflated access revenue or shift recovery of some or all access revenue reductions to the PA USF merely perpetuates the incentive for RLECs to extract an easily available income stream from their competitors rather than focus their effort on vigorously increasing end user adoption of the other services they offer. This should be avoided. In support of its position, Sprint will here discuss the reasons why the Commission is fully vested with the power, authority and jurisdiction necessary to issue a finding that revenue neutrality can be achieved by the RLECs from all other services earned over the local network.

It is generally understood that the Commission, like any agency, has jurisdiction only to the extent granted by statute. The Commission's jurisdiction includes the "power and authority to supervise and regulate all public entities doing business within this Commonwealth."[195] It is also understood and beyond dispute that the RLECs are public utilities within the definition of Section 501(b) and are subject to the Commission's

[195] 66 Pa. C.S.A. § 501(b).

jurisdiction. Where the parties differ, however, is in their position on whether the Commission's jurisdictional reach includes recognizing non-jurisdictional use of public facilities and the revenues derived from such use when establishing reformed access rates and determining revenue-neutrality.

Precedent squarely establishes that the Commission has full jurisdiction to recognize and address revenue from non-jurisdictional sources when those revenues are generated over the network built with rate payer revenues. (Lest there be any doubt, Sprint here points out that the record establishes that the broadband services offered by the RLECs are offered over the rate-payer supported network.)[196] Traditionally, in rate-of-return era rate-making, rates were based upon revenues from all property and equipment "used and useful" in the public service.[197] Over time, as competition, technology and industry advanced, questions arose over the handling of divergent uses of public utility property, which uses generated profits.

Time and again, the Commission addressed these developments and rightly concluded that revenues generated on the public utility plant must be included in public utility rates. For instance, the profits generated by ILECs from charging cable television operators for attaching equipment and wires to utility poles were recognized and included in setting ILEC rates.[198] Billing and collection services rendered by an ILEC were

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[196] Transcript at page 549, lines 16-19, and page 654, lines 11-22.

[197] *Popowsky v. Pennsylvania Public Utility Commission,* 665 A.2d 808, 809 (Pa. 1995)

[198] Opinion, *Re Cable Television Pole Attachments,* Docket No. M-78080077, 52 Pa. PUC 372 (Pa. PUC 1978)(" In this regard, we also note that utility poles clearly are an essential part of public utility plant, the cost of which must ultimately be recovered from the utility's ratepayer ... Utility revenues received from the use of pole space by CATV operators is taken into account in fixing utility rates, and thereby reduce customer charges."). **(Included in Appendix)**

included in rate-making.[199] Indeed, billing and collection services have in the past been expressly recognized for inclusion when setting access rates.[200]

These are but two examples of the Commission recognizing for inclusion in rate-making the revenues generated from services that use the local network. Another example is Yellow Page advertising. Regarding its jurisdiction over Yellow Pages advertising and its ability to consider revenues from Yellow Pages advertising in setting rates, the Commission stated as follows.

> The classified directory, i.e., Yellow Pages, has been determined to be not subject to direct regulation by the Commission because it is an advertising project competing with other advertising media. *Felix v. Pa. P.U.C., 187 Pa. Super. 578, 149 A.2d 347 (1959).* However, because the Yellow Pages business uses the assets and facilities supported by ratepayers, its expenses and revenues have always been considered "above-the-line" for ratemaking purposes. This is consistent with the regulatory philosophy that the Yellow Pages operation is incidental to the provision of regulated services and will induce increased usage of such services, accruing to the benefit of all ratepayers. This stimulation of additional revenue is a legitimate mode of extending the company's business, in direct furtherance of its charter object. *Erie Lighting Company, et. al. v. Pa. P.U.C., 131 Pa. Super. 109, 198* A.901 (1938). See also Pittsburgh Telecommunication Inc. v. Bell of Pennsylvania, Slip Opinion, Docket No. R-42772C001 (November 17, 1987).
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> It is appropriate to note at this point that when a service such as the Yellow Pages operation **requires utilization of public utility facilities and is an adjunct to the provision of telephone service, then its operations fall within the context of Commission jurisdiction** ... while the Commission may detariff a telecommunications service ancillary to regulated services, it does not render this Commission without jurisdiction to examine expenses and revenues associated with that service when it utilizes ratepayer supported property.[201]

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[199] *Re: Petition Requesting the Commission to Institute a Generic Investigation Concerning the Development of Intrastate Access Charges*, Docket P-830452 et al., 69 P.U.R. 4th 69 (August 8, 1995). **(Included in Appendix)**

[200] *Id.*

[201] *Donnelly Directory v. The Bell Telephone Company of Pennsylvania,* 66 Pa. PUC 376 (1988). **(Included in Appendix)**

As the Commission made clear in its above discussion, it need not have direct jurisdiction over a service to address such a service in the rate-making process. To the extent that a service utilizes public utility facilities, and generates revenues via those facilities, the Commission has long acknowledged that such revenues must be recognized in rate-making. Broadband service quite easily falls within the Commission's purview under this analysis. Broadband service has been added to the services offered over the local network and is 100% dependant upon the local network for its provision.[202] Broadband is offered in bundles with telephone service or separately without it. Broadband is an essential tool that CenturyLink is using to combat line loss.[203] Broadband consumption is ever increasing and adding value to the local network.[204] Clearly the RLECs' broadband services are akin to the Yellow Pages businesses, the revenues from which the Commission traditionally considered in rate-making.

In the *Donnelley* case, the Commission was forced to determine whether a Yellow Pages publishing competitor of the Bell Telephone Company of Pennsylvania ("Bell PA") had a right to certain information possessed by Bell PA and necessary to publish a competing Yellow Pages directory.[205] In reviewing the extent of its jurisdiction over the Bell PA's Yellow Pages operation, the Commission observed that

> Assuming, arguendo, that this Commission may not be able to require Bell to provide Donnelley with access to resources not traditionally considered to be associated with public utility services subject to regulation, *we could impute revenues for ratemaking purposes to regulated operations* if we concluded that Bell unreasonably failed to pursue revenues that would accrue to the benefit of all ratepayers, such failure being contrary to the public interest.[206]

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[202] Transcript at page 654, lines 11-22 and page 549, lines 16-19.
[203] Transcript at page 442, line 1 –25.
[204] Transcript at page 433, line 23 – page 434, line 9.
[205] 66 Pa. PUC 376.
[206] *Id.*

From the foregoing it is clear that the Commission consistently considered that operations that are dependent upon the facilities of public utilities and which generate revenue are to be included in rate-making regardless of whether the Commission has jurisdiction over the service directly. The Commission's stance on this issue is fully consistent with other courts and agencies on this issue. For instance, courts have held that profits from the sale of unregulated subsidiaries must be passed on rate-payers.[207] Numerous other decisions have held that state commissions are entitled to review non-jurisdictional activities and transactions in rate-making.[208]

This well established precedent has been recognized by the United States Supreme Court as well. In *Conway Corp.*, the Supreme Court reviewed the issue of whether a state commission has jurisdiction to review rates outside of its own jurisdictional sphere in order to set the rates within its jurisdictional sphere.[209] *Conway Corp.* involved an electric utility that sold electricity at wholesale and was also a competitor to its wholesale customers in the retail market. The Federal Power Commission, however, only had jurisdiction over the wholesale rates. The Supreme Court found that the Federal Power Commission was fully entitled to take into account not only the level of jurisdictional wholesale rates, but nonjurisdictional transactions affected by the jurisdictional rates. The Supreme Court held that the Federal Power Commission was fully empowered to look at the broad panoply of facts and

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[207] *New York Telephone Company v. Public Service Commission of the State of New York, 731 N.E.2d 1113; 95 N.Y.2d 40* (NY 2000)("the PSC is entitled to consider nonregulated asset transactions in setting rates or otherwise exercising its regulatory oversight of utilities for the benefit of ratepayers.").
[208] *Rochester Gas & Elec. Corp. v Public Serv. Commn.*, 754 F2d 99, 103 (2nd Cir 1985); *see also Matter of Rochester Tel. Corp. v Public Serv. Commn.*, 87 NY2d 17 (NY 1995)(imputing royalty income on unregulated transactions with nonutility affiliated corporations); *General Tel. Co. v Lundy,* 17 NY2d 373 (NY 1966)(unregulated subsidiaries overcharges to the parent corporation may be excluded from rate base).
[209] *Federal Power Commission v. Conway Corp.*, 462 U.S. 271 (1976).

circumstances that were outside its jurisdictional reach in order to determine the propriety of the jurisdictional rates.

> These facts will naturally include those related to nonjurisdictional transactions, *but consideration of such facts would appear to be an everyday affair.* As the Commission concedes, in determining whether the proposed wholesale rates are just and reasonable, it would in any event be necessary to determine which of the Company's costs are allocable to its nonjurisdictional, retail sales and which to its jurisdictional, wholesale sales - this in order to insure that the wholesale rate is paying its way, but no more. In this sense, consideration of the relationship between jurisdictional and nonjurisdictional rate structures is commonplace ...[210]

The application of the foregoing jurisdictional discussion to the matter at bar is fundamental and important.

First, it is clear that the RLECs are entirely wrong when they contend that the Commission cannot take into account revenues earned from nonjurisdictional revenues earned using the local network. To the contrary, the use of the rate-payer funded network to generate nonjurisdictional income is the very type of revenue event that has traditionally been taken into account in setting regulated rates as a matter of course. The fact that competitive carriers are among the rate-payers that contribute to the local network[211] makes all the more compelling the need to recognize the RLECs broadband revenues and other revenues earned over the local network for the purposes of reducing access rates and determining revenue neutrality.

Second, to the extent that the RLECs are generating revenues on the local network from a host of services that fall in the jurisdictional competitive, jurisdictional non-competitive, and non-jurisdictional categories, all of those revenues must be looked at to determine whether the rates for jurisdictional services are reasonable. If the RLECs are

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[210] *Conway Corp.* at 280.

[211] Transcript at page 654, lines 20-22 ("If by ratepayers you mean all customers *including access customers,* local customer, it is paid for and continues to be paid for by all customers.")(emphasis added).

able to suppress their basic local service rates by charging inflated access rates and recovering a cornucopia of revenues from non-jurisdictional sources, then they have affected competition in the regulated sphere. The Commission has ample jurisdiction to address the non-jurisdictional revenues in such circumstances.

In all instances where the local network is used to generate revenues from non-jurisdictional sources, the Commission is vested with ample authority to address those non-jurisdictional sources in rate-making. Thus, when the Commission is statutorily required to ensure that any switched access reductions are revenue neutral – that is, that the RLECs have a reasonable chance to recover lost revenues – the Commission may exercise its jurisdiction to look to non-jurisdictional revenues earned over the local network to determine whether there is an opportunity there to achieve revenue neutrality. This analysis is little different than the rate-of-return era cases that required consumers to reap the benefit of revenues earned on the local network.

In the rate-of-return era cases, state Commissions were uniformly expected to recognize non-jurisdictional revenues to ensure that consumers were not paying inflated rates. The basic concept was that income earned over the rate-payer supported network needed to be included in a Commission's determination of the maximum level of consumer rates needed to enable a regulated utility to achieve a rate-of-return.

In the instant case, Sprint advocates that instead of accepting the RLECs' oft-repeated argument that the only sources of revenues that the Commission can consider are basic local service revenues, access revenues and the PA USF, the Commission should follow its own precedent to conclude that it is fully entitled to look at all revenue sources earned over the local network. The net result will be for the Commission to look

to the full slate of revenues earned over the local network by the many lines of products and services the RLECs sell and determine if within the totality of those services the RLECs have a reasonable opportunity to earn new revenues to replace the revenues reduced through access rate rebalancing. Considering the record evidence establishing the considerable magnitude of the income from all sources (excluding basic local and access) earned from end users over the local network (**[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** in 2007[212]), it is beyond a certainty that the Commission will protect Pennsylvania consumers from inequitable results by recognizing that revenue and the significant opportunity and incentive to further increase these revenues when making its revenue neutral determination.

Without recognizing these revenues, the Commission is left with any number of options – none of them equitable. One the one hand the Commission can offset access rate reductions with increased basic local service rates. While Sprint has contended that the RLECs' revenues from other services will mitigate the need to *actually* increase rates at all (as opposed to the Commission granting permission to do so), the fundamental question is why the Commission would lean too heavily on increased basic local service rates as part of its decision. To be sure, Sprint supports an inflationary increase in the rate benchmark to $21.97 per month. The question is whether any change beyond that is required. Sprint contends that in light of existing non-jurisdictional revenues, and the substantial opportunity and increased incentive to generate additional non-jurisdictional revenue in the future, the answer is no.

Another option available to the Commission is to increase the size of the PA USF in order to offset access reductions. This is not reform at all and will do nothing to

[212] *Id.*

protect consumers. Increasing the PA USF subsidy to offset access reductions does nothing more than move the overcharges from access rates to PA USF contributions. Since consumers ultimately bear the burden of these overcharges, the Commission cannot protect consumers merely by prohibiting a line-item pass through on consumer bills. Ultimately subsidy requirements are passed on to consumers by carriers, whether directly on a bill or indirectly through their rates. The net result is the same, differing only in whether the methodology is transparent to consumers at the time they receive their bill.

As discussed above, neither of these two unattractive options needs to be considered in a vacuum. Sprint suggests that by recognizing *all* the sources of income which long-standing precedent establishes have traditionally been considered in rate making – i.e. all revenues from all sources which are generated on or otherwise dependent on the local network – the Commission can accomplish the most equitable result. It is beyond question that the broadband networks that the legislature partnered with the RLECs to construct are generating substantial revenues and capable of generating even greater revenues. It is also apparent that the network was built with revenues derived from access customers and basic local service customers.[213] Accordingly, those entities that supported the construction of the network are entitled, by logic and the force of precedent – to have *all* the revenues from the network considered in rate-making decisions. To do less is to ignore precedent, over-burden competitors, over-burden Pennsylvania consumers, and allow the RLECs to hide their wealth of new revenues.

[213] Transcript at page 654, lines 20-22.

C. Pennsylvania USF

The above discussion in Section VI.B.2. applies equally to the necessity for PA USF funding to be used as a source of funding to achieve revenue neutrality. The Commission should acknowledge that all revenue opportunities available on modern local networks must be taken into consideration. After reviewing RLEC revenues from all relevant sources, the Commission cannot help but conclude that each RLEC has a reasonable opportunity to realize revenue neutral access reductions without any increase of basic local service rates or the PA USF. Rather than continue in its current state as a subsidy stream devoid of any correlation to need, cost or other circumstances or considerations, the PA USF should be reformed. PA USF support should be available only to carriers that present evidence establishing that their cost of providing service exceeds the newly increased basic local service benchmark.[214]

VII. GENERAL LEGAL ISSUES

A. Retroactivity of any Access Rate Reductions

This proceeding in part involves a Complaint filed by AT&T seeking a reduction in the RLEC's intrastate switched access rates on the grounds that such rates are unjust and unreasonable. See AT&T Complaint. Under Section 1309(b) of the Public Utility Code, when the Commission receives a Complaint seeking a reduction in rates based on allegations that existing rates are unjust, unreasonable or otherwise in violation of law, the PA PUC is required either to issue a ruling on such Complaint within nine (9) months of receipt of the Complaint, or to make such relief that is eventually awarded retroactive

[214] *See* Recommended Decision, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, at 87 – 90 (July 22, 2009).

to a date nine (9) months after the Complaint is filed. 66 Pa. C.S. § 1309(b). Section 1309(b) of the Public Utility Code states that

> "... a final decision and order of the Commission which determines or fixes a rate reduction shall be retroactive to the expiration of such nine-month period.....This subSection shall apply only when the requested reduction 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, provided that, if 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 requested reduction pertains.

The statutory test for retroactive relief is met in this case. With respect to the "5% of customers test", the statute states that if the utility provides two or more types of service, the percentage shall be determined only on the basis of the customers receiving the type of service to which the requested reduction pertains. The RLECs provide more than two types of tariffed services. They provide basic local service, intrastate switched access service, interstate switched access service, special access service, etc. The requested reduction relates only to intrastate switched access service, and under the statute, only customers receiving switched access service are to be counted for purposes of the "5% test". It is clear that 100% of RLEC customers receiving intrastate switched access service will be affected by the requested reduction in RLEC intrastate switched access service. This was confirmed by CenturyLink witness Bonsick, who agreed that if intrastate access rates are reduced, the reduction would affect 100% of CenturyLink's intrastate access customers.[215] Therefore, it is clear that the "5% of customers" test is met.

The requested intrastate switched access charge reduction also meets the "3% of intrastate operating revenue test." The test in the statute is whether the "requested

[215] *See* Transcript at page 454.

reduction in rates" amounts to in excess of 3% of the total gross annual operating revenues of the public utility. In this case, because the RLECs provide two more types of service, only revenue derived from the type of service at issue – intrastate switched access service – is to be considered. PTA witness Zingaretti's testimony and exhibits make it clear that the reduction in intrastate access rates being sought in this case exceed 3% of the total gross annual operating revenues that the RLECs receive from intrastate access service. Specifically, PTA Exhibit GMZ-10 shows that the requested reductions in intrastate access rates exceed 3% of the total gross annual operating revenues that the RLECs receive from intrastate access service. As such, it is clear that the "3% of intrastate operating revenue test" is met, and retroactive rate relief under 1309(b) is applicable, if the Commission determines that the RLEC intrastate switched access rates are unjust and unreasonable.

Sprint understands that retroactivity of relief is one of the complicated issues involved in this proceeding. As Sprint witness Appleby stated in response to questioning by ALJ Melillo at the hearing, if retroactive relief becomes a "sticking point" that further delays overdue reform, Sprint prefers the Commission to focus on expediting access reductions going forward, rather than getting hung up on relief for access charges paid during the retroactivity period under Section 1309(b).[216]

B. Compliance

Sprint has several times above stated its position on implementing access rebalancing. To the extent that its position needs restating, Sprint provides the following summary of Sprint's position on implementation of reform.

[216] *See* Transcript at page 251.

- Each RLEC should be ordered to price its intrastate switched access rates at the same level as and structure as its corresponding interstate switched access rates;

- The Commission should take into account all revenues being earned by the RLECs over the local network in determining whether rebalancing is necessary;

- Sprint supports an inflationary increase to the local service benchmark, which should be reset at $21.97. The benchmark should be adjusted for inflation annually;

- Sprint recommends that if an RLEC can prove, in a cost proceeding, that its cost of local service exceeds the local service benchmark, the RLEC should be permitted to recover the difference between the then prevailing local rate and the cost-proceeding-established cost of basic local service via the PA USF for those lines over which it provides only basic local service;

- Sprint suggests that these changes be implemented immediately. Nevertheless, should the Commission determine that it desires to more gradually implement access rate rebalancing, the Commission should in no instance order an implementation schedule which exceeds the 2 – 4 year timeframe indicated in the FCC's National Broadband Plan. Sprint contends that the need for reform should guide the Commission not to exceed the low end (2 years) of the FCC indicated timeframe.

- Sprint has not made a specific recommendation to the Commission regarding enforcement of the prohibition against cross-subsidization, but Sprint suggests to the Commission that the risk of cross-subsidization will always exist until and unless access rates are correlated to cost.

VIII. CONCLUSION

The primary issue in this case is not whether RLECs switched access rates should be reduced to mirror interstate rates and the switched access subsidy eliminated, but in what timeframe. The Commission should make appropriate adjustments to the basic local exchange service rate cap, and must also recognize the substantial revenues earned over the local network. Access rate reform is necessary to foster a fully competitive market in Pennsylvania, and the time for access reform is at hand. The Commission

should quickly institute reform by ordering each RLEC to mirror the rate levels and structure of their interstate switched access charges.

Respectfully submitted this 13th day of May, 2010.

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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, LLC Complainant	:	
v.	:	Docket No. C-2009-2098380, et al.
Armstrong Telephone Company - Pennsylvania, et al. Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Main Brief upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55, via electronic mail and first class US Mail.

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