

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Developing a Unified Intercarrier) Docket No. CC 01-92
Compensation Regime)
)
Missoula Intercarrier) DA 06-1510
Compensation Reform Plan)
)

**THE COMMENT OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (PaPUC) files this Comment in response to the Federal Communication Commission’s (FCC) Public Notice at DA 06-1510 issued July 25, 2006 (the “Missoula Plan Notice”).

The Missoula Plan Notice solicits comments on an intercarrier compensation plan filed by the National Association of Regulatory Utility Commissioners (NARUC) on July 24, 2006. NARUC filed the Missoula Plan but takes no position on it.

The Missoula Plan is supported by AT&T, BellSouth Corp., Cingular Wireless, and 336 rural service providers entitled the Rural Alliance. The Pennsylvania supporters are North Pittsburgh Telephone Company, Commonwealth Telephone Company (CTC), and the Rural Telecommunications Company Coalition (RTCC). The major opponents are the Broadband Coalition of Pennsylvania (BCAP), the Competitive Coalition (the CLECs), Pennsylvania’s Office of Consumer Advocate (OCA), and Verizon Communications Corporation entities which include Verizon Wireless and various Verizon incumbent and competitive local exchange carrier subsidiaries.

The PaPUC Comment

Preliminary Observations. The PaPUC appreciates the opportunity to respond to the Missoula Plan Notice. The PaPUC particularly appreciates the FCC's decision to extend the Comment period from September 25, 2006 to October 25, 2006, providing the PaPUC with time to prepare a more-detailed and Pennsylvania-specific Comment.

The PaPUC Comment should not be construed as binding on the PaPUC in any proceeding before the PaPUC nor the views of any Commissioner or group of Commissioners. The Comment could change in response to subsequent events including review of filed Comments or developments under state and federal law.

Background to the PaPUC Comment. The FCC issued the Missoula Plan Notice following NARUC's submission of the Missoula Plan. The Missoula Plan is the latest in a series of proposals to reform interstate, and now intrastate, intercarrier compensation rates incurred for use of, and delivery of services on, the public switched transportation network (PSTN).

Following submission of the Missoula Plan, NARUC conducted several webinars in which proponents and opponents of the Missoula Plan expressed their views and interpretations on different components of the Missoula Plan. In addition, other states in our region conducted separate proceedings and solicited comments from interested members of the public.

The PaPUC scheduled a workshop on the Missoula Plan for September 11, 2006. The PaPUC published notice of the workshop in the *Pennsylvania Bulletin* and posted notice of the workshop on the Commission's website.¹ The PaPUC received Comments

¹The *Pennsylvania Workshop on the Missoula Plan (Pennsylvania Workshop)* is docketed in Docket No. M-00061972. The information for the workshop is posted on the Commission's website at http://www.puc.state.pa.us/telecom/Missoula_Plan. The transcript is available in Docket No. M-00061972 as well.

from AT&T Communications of Pennsylvania, LLC in alliance with Level 3 and North Pittsburgh Telephone Company, the Broadband Coalition of Pennsylvania (BCAP), Cavalier Pennsylvania, the Competitive Coalition consisting of Core Communications, Inc., DCI VoiceSolutions, and Xspedius, Embarq, the OCA, Pac-West Telecomm, Inc., RTCC, Verizon and Verizon Wireless, and XO Communications, Inc.,

There were nine presentations at the workshop. The presenters were AT&T Communications of Pennsylvania, LLC, Level 3, North Pittsburgh Telephone Company, the OCA, Embarq, Verizon, XO Communications, RTCC, BCAP, Cavalier, and Pac-West. The Commission received Reply Comments from BCAP, the Competitive Coalition consisting of Core Communications, XO Communications, DCI Voice Solutions, Xspedius Communications, Cavalier Telephone Mid-Atlantic, Broadview Communications, Pac-West Telecomm and One Communications, Frontier Communications, Inc., the OCA, and Verizon.

The workshop and documents provided the PaPUC with an opportunity to fully evaluate and review the Missoula Plan. Based on this workshop and the PaPUC's work in other proceedings, the PaPUC provides the following Comment.

Summary of the Comment. The PaPUC Comment expresses concern with six major issues. These are preemption, funding reform, the 3-track carrier system, the Early Adopter Fund, interconnection rules, and phantom traffic.

On preemption, the Plan has not shown any basis for preemption under Sections 252 or 253 of TA-96. There has been no evidence that Pennsylvania failed to implement federal law under Section 252(e)(5) warranting federal preemption by the FCC. The Plan has not shown that Pennsylvania's policies lack any Section 253(b) justification sufficient to allow the FCC to preempt under Section 253(d).

The reform funding relies primarily on Subscriber Line Charges (SLCs) and the Restructure Mechanism (RM). These funding mechanisms increase Pennsylvania's net

contributor role in current federal programs by imposing larger SLCs and an RM assessment on Pennsylvania even if some Pennsylvania carriers continue to be net recipients of federal support.

The 3-carrier track system replaces an intercarrier compensation structure based on type of service with a new structure in which rates will vary among carriers based on their study area. A carrier's originating and terminating rates will also vary. This may only be replacing one form of rate arbitrage with another.

The proposed \$200 million in the EAF does not compensate Pennsylvania for its reforms let alone those in place in other states. An increase in the EAF will further burden end-users if the FCC implements a plan that relies on end-user surcharges as opposed to other forms of support.

The interconnection rules propose changes that may not be advisable. The PaPUC shares the concern that moving traffic termination to access tandems instead of local tandems or end offices will translate current revenue opportunities into costs for carriers with interconnection arrangements in place at local tandems or end-offices. The proposal to replace the current "one POI/POP per MTA" for wireless with a "multi-edges per LATA" rule could impose avoidable costs and increase rates. The PaPUC is further concerned that proposals to deregulate transit service may harm competition.

The PaPUC shares the concern with phantom traffic. The PaPUC suggests that this matter be pursued independent of any action on the Missoula Plan.

Summary of Pennsylvania Reforms. The PaPUC has actively implemented the local and access rate reforms contemplated by TA-96 and state law.

As of 2006, Pennsylvania expended in excess of \$1.014 billion dollars from 1997 through 2005 to support access and local rate reforms. This consists of \$605.9 million on Verizon's access rate reductions, \$189.4 million on rural carrier access rate reductions,

and \$218.3 million from a Pennsylvania Universal Service Fund (PaUSF) to support these reforms.

As of 2006, Pennsylvania spends approximately \$127 million yearly on intercarrier compensation rate reforms. \$90.4 million is spent on Verizon's access rate reductions and \$36.9 million is spent on rural carrier access rate reductions. \$32.4 million is spent on the PaUSF,

The Missoula Plan proposes to support local rate reforms similar to those already in place in Pennsylvania. A proposal that rewards states with minimal reforms in place by further burdening states with reforms in place provides no discernible benefit to the vast bulk of Pennsylvania end-users. Pennsylvania spent in excess of \$1,014 billion dollars since 1997. They continue to pay an average of \$127 million in rates to support access and local rate reforms. The proposal to further burden Pennsylvania's net contributor role largely benefits carriers in states and areas outside Pennsylvania so that they can implement the kind of reforms already in place in Pennsylvania. Their understandable reluctance to undertake this economically difficult work, as Pennsylvania did, provides no sound basis for imposing their burden on Pennsylvania's end-users.

Rural carriers in Pennsylvania that benefit from this reform do so in a more limited manner compared to the costs already incurred to reform local and access rates. Rural carriers, moreover, will also have to increase their contribution to support reform in states and regions that have not undertaken the kind of reforms in place in Pennsylvania. Pennsylvania created a self-contained state universal service fund and an \$18 residential local rate cap, supported by our state universal service fund, to comply with federal law while balancing economic development with universal service on a competitively neutral basis.

The disproportionate benefits set out in this proposal undermine Pennsylvania's efforts by relying on an unnecessarily broad preemption of state authority. The proposed preemption stops Pennsylvania from continuing these local and access rate reforms.

Detailed Discussion

The PaPUC Comment focuses on six issues. These are preemption, reform funding, primarily SLCs and a RM, the 3-track carrier classification system, the EAF, interconnection rules, and phantom traffic.

Preemption. The Missoula Plan proposes a preemption of state authority to set intrastate access rates. Intrastate access rates are within the state commissions' purview under Section 252 and 251(b) of the Telecommunications Act (TA-96).

The PaPUC questions the legality and need for preemption under the relevant provisions addressing preemption in TA-96. The two compelling sections are Section 252(e)(5) and Section 253.

Section 253(e)(5) authorizes the FCC to preempt state interconnection, arbitration, and mediation if the state commission refuses to act. The FCC has long held that it does not take an "expansive" view of what constitutes a "failure to act" sufficient to warrant preemption.² The FCC has previously preempted state law in unique circumstances in which a state has declined to interpret or implement federal law.³

Section 253 authorizes the FCC to preempt express restrictions on entry, but also restrictions that indirectly produce that result. However, competitively neutral provisions

²*Local Competition Order*, CC Docket No. 96-98, 11 FCC Rcc at 16128, 1285 (1996); *Petition of MCI for Preemption Pursuant to Section 252(e)(5) of TA-96*, CC Docket No. 97-166 (September 26, 1997), paragraph 7 (Petition to preempt Missouri Public Service Commission arbitration proceeding denied); *American Communications Services, Inc. Petition for Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of Ta-96*, CC Docket No. 97-100 (December 23, 1999), 91 (state law provision is narrowly preempted based on a conflict with federal rules on the evidentiary standard and thereby effectively prohibits an entity to provide local exchange service in competition with a rural carrier).

³*Starpower Communications Petition for Preemption of Virginia State Corporation Commission Pursuant to Section 252(e)(5) of TA-96*, CC Docket No. 00-52 (June 14, 2000), paragraph 5.

that are consistent with Section 254 and necessary to achieve public interest objectives under Section 253(b) are excluded from preemption.⁴

In making Section 253 determinations, the FCC first determines whether the challenged state law,⁵ regulation, or legal requirement violates the terms of Section 253(a) standing alone. If the FCC finds that it violates Section 253(a) considered in isolation, the FCC then determines whether the requirement nevertheless is permissible under Section 253(b). If a law, regulation, or legal requirement otherwise impermissible under Section 253(a) does not satisfy Section 253(b), the FCC preempts. On the other hand, if the same law, regulation, or legal requirement satisfies Section 253(b), the FCC cannot preempt even if it would otherwise violate subsection (a) considered in isolation.⁶

The PaPUC is not a state commission that has failed to pursue the competition and broadband deployment objectives of TA-96 or to implement local and access rate reforms while balancing those reforms with the universal service mandate. The PaPUC undertook rate reform as early as 1995 when it certificated a competitive local exchange carrier in advance of TA-96. Since that time, the PaPUC implemented a statewide universal service fund that supports local and access rate reforms by allocating monies obtained from an assessment on revenues, primarily though not exclusively from Pennsylvania's largest carrier, to wit: Verizon Pennsylvania Inc., to lower intrastate access rates and increase local rates.

As of 2006, Pennsylvania's spent a total of \$218.3 million on local and access rate reform supported by its universal service fund (Exhibit 1). Pennsylvania also spent a total

⁴*In the Matter of the Public Utility Commission of Texas, The Competition Policy Institute, Teleport Communications Group, Inc., City of Abilene Texas Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995, CCBPOL. 96-13, 96-14, 96-16, 96-19, (October 1, 1997)(Texas Preemption Order), paragraph 41.*

⁵66 Pa.C.S. §§3011-3019, Alternative Form of Regulation of Telecommunications Services.

⁶*Texas Preemption Order, paragraph 42.*

of \$605.9 million on access rate reductions in Verizon's service territory on a cumulative annual basis from 1997 through 2005 (Exhibit 2). Pennsylvania also spent a total of \$189.4 million on cumulative access rate reductions in rural carrier study areas from 2000 through 2005 (Exhibit 2).

The minimum amount Pennsylvania could seek from the EAF for prior rate reduction reforms is \$1,014 billion dollars from 1997 through 2005. This does not include the millions of dollars in rate rebalancing that occurred as part of Pennsylvania's reform efforts under state and federal law as well.

This total-to-date figure does not include current spending. \$32.3 million is spent annually for universal service (Exhibit 1). \$90.4 million is spent annually on access rate reductions in Verizon's study area (Exhibit 2). \$36.9 million is spent annually on rural carrier access rates reductions as well (Exhibit 2).

This means that Pennsylvania spends \$127 million annually on intercarrier compensation rate reforms in place in the study areas of Verizon and our rural carriers. Pennsylvania also spends \$32.3 million annually on its universal service efforts to support the same intercarrier compensation and universal service reforms.

Consequently, the Pennsylvania minimum from any EAF could be \$1.014 billion for prior expenditures, \$127 million in annual access rate reductions, and \$32.3 million on universal service. This totals to \$1,173 billion dollars in total EAF support claims.

The PaPUC also endorsed various rate increases, particularly rate rebalancing, under our state law⁷ as well. Verizon's local service rates for residential and business service have increased from 1999 through 2006 (Exhibit 3). Commonwealth Telephone Company (CTC) monthly rates for local service in their largest Rate Group 5 went from \$8.18 in 1999 to \$14.28 in 2006 for residential service. This represents an 8.28% annual compound rate of growth. CTC's business rate also went from \$12.92 in 1999 to \$21.03 in 2006 as well. This represents a 7.98% annual compound growth rate (Exhibit 4).

⁷66 Pa.C.S. §§3011-3019.

The PaPUC also approved significant local rate increases in Track 2 rural carrier rates to support intrastate access rate reforms. For example, Embarq Pennsylvania rates for residential service went from \$12.50 in 1999 to \$18.00 in the largest Rate Class II category or by a 5.35% annual compound rate of growth. Moreover, their business rates went from \$23.45 in 1999 to \$26.53 during the same time period (Exhibit 5).

Windstream Pennsylvania increased residential rates from \$13.71 in 1999 to \$16.00 in 2006. This represents a 2.23% annual compound rate of growth. Windstream's business rates went from \$21.39 in 1999 to \$25.00 in 2006 and this represents a 2.25% annual compound rate of growth (Exhibit 5).

The PaPUC further approved significant local rate increases in Track 3 rural carrier rates as well during the same period and for the same purposes. For example, North Pittsburgh, a company supporting the Missoula Plan, increased its residential rates from \$10.70 in 1999 to \$17.54 in 2006. Its business rates also went from \$22.00 in 1999 to \$25.74 in 2006 (Exhibit 6).

This combination of universal service support for local and access rate reforms, the reduction of intrastate access rates, and the concomitant increase in local rates underscore Pennsylvania's compliance with the obligation to implement universal service and intrastate access rate reform policies. Those policies and regulations lowered our rural carriers' access rates and increased their local service rates. It should be noted that the pace of Pennsylvania reforms increased the local exchange service prices for certain of the above-referenced ILECs at an annual rate that outpaced the corresponding levels of general economic and consumer inflation.

The PaPUC has clearly implemented the economically difficult task of local and access rate reform, most particularly in Pennsylvania's intrastate access rates, in the ten years since enactment of TA-96. The PaPUC did this through a combination of price-caps, local rate and access rate reforms, end-user surcharges, and the creation of a state universal service fund (PaUSF).

These actions comply with the competition and broadband deployment mandates of TA-96 with due regard to the “just and reasonable” rate and universal service obligations imposed on the PaPUC under state law and Section 254 of TA-96. The PaPUC is particularly concerned that preemption will undermine further reform efforts and impose avoidable costs on Pennsylvania end-users to finance rate reductions in other states and regions that have not undertaken similarly significant reform efforts.

These facts do not present any state refusal to act sufficient to warrant preemption under Section 252(e)(5). Moreover, these facts cannot be construed to warrant preemption because they erect a discriminatory barrier to entry under Section 253(a) not otherwise allowed under Section 253(b). Finally, no provision of law, regulation, or policy that produced these results constitutes a conflict with federal law sufficient to warrant preemption.

For these reasons, the PaPUC urges the FCC to proceed very cautiously when considering preemption of state authority to set intrastate access rates under some preemption power not expressly apparent in TA-96. The PaPUC does not see any facts or to support a legal conclusion that our difficult and expensive reform efforts constitute a failure to implement federal law under Section 252(e)(5) or that our policies contravene federal law under Section 253.

The SLC Funding Reform Mechanism. The Missoula Plan proposes to increase SLCs from \$6.50 to \$10.00 on end-users in the Track 1 regions and proposes smaller increases on SLCs for end-users in the Track 2 and Track 3 regions. The revenues from these asymmetrical SLC increases will support reform largely in regions outside Pennsylvania and beyond our region.

The PaPUC is concerned about these disparate SLC rates given that the bulk of the revenues will support access rate reform in other states and regions that may not have undertaken similarly significant reform efforts. Pennsylvania already provides a

significant source of universal service designed to maintain just and reasonable rates in the less populated regions of our nation.

The OCA provided information at the Pennsylvania workshop indicating that the FCC's own staff reports establish that Pennsylvania pays 4.2% of federal USF support. USF costs could increase by 32% if the plan is adopted.⁸ Although these figures are gross and do not reflect an adjustment for Pennsylvania's net recipient carriers, the increase in rates and federal universal service support requirements will be clear to Track 1 end-users in Pennsylvania. Moreover, the PaPUC is concerned about the absence of any true-up mechanism that would ensure that any net recipient carrier does not recover SLC revenues greater than the carrier's losses.⁹

The PaPUC suggests that asymmetrical SLCs that burden heavily populated states, particularly on the coasts, to benefit other states or regions that have not undertaken similarly significant reform efforts is not in the nation's interest. Such an approach may be so fundamentally unsound that it violates federal law.

Moreover, the reform mechanism appears to move public policy subsidies into the competitive market because there is no offset for revenue losses due to intermodal competition or any showing of need.¹⁰ That could become a particular problem because the plan imposes contribution obligations on wireless, CLEC, and cable providers although the resulting revenues are allocated solely to incumbent carriers in net recipient states. If, as Verizon indicated at the Pennsylvania workshop, carrier reform costs must be a form of universal service to come within the FCC's authority, the failure to allow portability may also violate federal law.¹¹ By the same token, however, the PaPUC's

⁸*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 86.

⁹*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 88.

¹⁰*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 86-90.

¹¹*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 128.

concerns are tempered by claims made by rural carriers at our Pennsylvania workshop indicating that 97% of the 235% increase in federal universal service costs since 1999 is attributable to expanding universal service eligibility to wireless carriers.¹²

In addition, the plan may also be subsidizing carrier access rates. That occurs because the plan pushes reciprocal compensation rates to one-fourth of what was previously believed to be the cost and the difference is made up with SLCs.¹³ The PaPUC is concerned that a proposal that pushes rates below even an incremental cost may not be competitively neutral and it may constitute an illicit subsidy of those rates.

Also, Pennsylvania's intrastate access rate contains a Common Line charge (CLC) not addressed in the Plan. The plan does not address support for elimination of this CLC component for Track 2 and Track 3 carriers. Elimination of this component may require the imposition of charges on end-users in order to meet the requirement of Section 3017(a) of Chapter 30. That provision requires that Commission-ordered access rate reductions be recovered on a revenue-neutral basis. Pennsylvania's SLC may be even higher to recover lost CLC revenue in addition to the SLC costs imposed on our end-users to compensate other states without significant reforms in place.

The PaUSF relies on similar assessments to support a self-contained universal service fund. That fund supports access rate reform and caps residential basic local exchange service rates at or below \$18.00 to balance reform with universal service and penetration goals.¹⁴ That approach is consistent with federal law while promoting economic development and universal service in Pennsylvania.

¹²*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 187.

¹³*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 84.

¹⁴*Joint Stipulation regarding Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596; P-00991648 and P-00991649 (July 15, 2003), Attachment A, p. 17 (Exhibit 7).

The Plan's proposal to increase Track 1 SLC charges by approximately \$4.10 will adversely impact the qualifying poor in Pennsylvania who opt not to participate in the federal government's Lifeline/Link-Up program for whatever reason. Currently, approximately 17% of households qualifying for Lifeline/Link-Up actually participate in the programs.

The impact on this class and our \$18.00 residential rate cap is a major concern of the PaPUC.¹⁵ That is because approximately 17% of the eligible Lifeline customers rely on federal funds. The proposal to tie limits on SLCs in that low income category to lifeline-using customers imposes an additional hardship. Such a burden could undermine penetration rates in that low-income category and require an increase in our state USF to ameliorate a negative result.

Pennsylvania's low-income consumers in that category should not bear the additional financial burden of reforming intrastate access rates in other states outside Pennsylvania. The PaPUC should not be expected to increase our existing residential local rate cap beyond \$18.00 to support those efforts. The PaPUC is reluctant to do this because of the adverse impact on universal service as reflected in penetration rates.

The proposed SLC increases are set out in "average" guidelines.¹⁶ This suggests that the SLC increases that will be implemented by the ILECs under the Plan can vary within their respective service areas and, most likely, in response to the levels of competition that the ILECs face and the resulting demand elasticity for ILEC services. However, such a variation in the federal SLC levels within the service area of any given ILEC can and will give rise to claims that they are not competitively neutral¹⁷ and that

¹⁵ *Lifeline and Link-Up Programs*, Docket No. M-0005187F0002 (Order Adopted May 18, 2005), p. 19 citing *FCC Report*, April 29, 2004, FCC 04-87, Table 1.A, Baseline Subscription Information (Year 2002) (Exhibit 8).

¹⁶ *Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 89-92.

¹⁷ Competitive neutrality is a requirement under FCC preemption precedent. *Texas Preemption Order*, paragraphs 41-42. There is no explanation for why this does not apply to the FCC also.

they constitute unlawful rate discrimination.¹⁸ The situation could become more of a problem if, as proposed, SLCs increase by inflation at the end of the transition.

On rate indexing, the PaPUC notes that the SLCs are indexed for inflation at the end of the transition period. Our concern about the disproportionate reliance on SLC revenues from end-users in heavily populated states is exacerbated by the fact an inflation index produces rate increases to support revenue neutrality in a declining-cost industry.

The Restructure Mechanism (RM) Funding Reform. The RM is another funding component that will underwrite access reform not otherwise recovered from SLCs. The RM, however, has no clear funding source. The RM is also, by far, the smallest component of the proposed restructuring cost recovery mechanisms. If the reliance on asymmetrical SLCs and net state contributions to the federal USF mechanism are a barometer, Pennsylvania becomes a net contributor to the RM. The RM fund, as with the asymmetrical SLCs, reforms rates in states and regions outside Pennsylvania so that those areas attain the same significant reforms already in place in Pennsylvania. This aggravates Pennsylvania's net contributor role. The plan takes the most difficult component, SLCs, as a preferred alternative compared to using less burdensome alternatives like assessments on interstate revenues or larger assessments on numbers to fund the RM.

The 3-Track Carrier Structure. The Missoula Plan proposes to create a 3-track carrier structure to set intercarrier compensation. These are Track 1 (RBOC, CLECs, and wireless), Track 2 (somewhat rural), and Track 3 (rural) categories. This 3-track carrier structure hopes to resolve carrier arbitrage in the interstate access, intrastate access,

¹⁸Pennsylvania's public utility law still prohibits unreasonable rate discrimination. 66 Pa.C.S. §1502.

reciprocal compensation, wireless, and dial-up Internet markets. However, the rate differentials between the 3-tracks may simply replace service-based rate arbitrage with study-area arbitrage since markets invariably, and cleverly, respond to price signals. This includes price signals premised on a carrier's study area as well as services rendered.

The absence of a uniform rate for access to all networks, including any technologically advanced or upgraded structure that performs the same essential function, places a considerable burden on Pennsylvania's end-users and carriers with no appreciable benefit. Although the Plan continues the current structure of originating and terminating carrier rates, comments at the Pennsylvania workshop and the NARUC webinars indicate that rates for originating and terminating services will diverge.¹⁹ Rate divergence for originating and terminating traffic occurs within the tracks and between the tracks. Implementation of rate divergence using a reformed Minute-of-Use (MOU) rate structure, premised as that structure is on outmoded distance and capacity constraints, may not be a good price signal for achieving competition and broadband deployment.

The Early Adopter Fund (EAF). The Missoula Plan proposes an EAF in the \$200 million range to compensate states that engaged in intrastate access rate reform before the Missoula Plan. The proposed EAF amount is inadequate to recover net contributions from Pennsylvania let alone any other state or region. Pennsylvania could claim a minimum of \$1.014 billion for prior reform costs. This consists of \$218.3 million for the PaUSF, \$605.9 million in access rate reductions in Verizon's study areas, and \$189.4 million for access rate reductions in rural carrier study areas. This figure does not reflect the additional millions of dollars in local rate rebalancing that occurred as well.

Pennsylvania could also seek an annual support of \$127 million annually for the cost of our state universal service fund support for access rate reforms in Verizon and rural carrier study areas. \$90.4 million is spent on access rate reductions in Verizon's

study areas and \$36.9 million is spent on access rate reductions in rural carrier study areas. \$32.3 million is spent annually on universal service to support these reform efforts.

In addition to the lack of specificity on EAF funding, the EAF does not specify how, and in what amounts, states or regions that will be net beneficiaries from the Missoula Plan are expected to contribute to compensate Pennsylvania for prior reforms.

The plan does not propose any requirement that a net recipient's end-users must pay SLCs identical to those imposed on a net contributor's end-users. The plan does not suggest any "needs based" test or showing that a net recipient carrier must meet before obtaining support from any access reform fund. The plan does not explain why a net contributor carrier with a lower rate of return must collect larger SLCs to insure revenue neutrality for a net recipient carrier with a higher rate of return in states without substantial access reforms in place. Finally, the plan does not analyze the possible contribution available from a net recipient carrier if all revenues from the carrier's panoply of services, including interstate and information services, were balanced against any purported decline in access revenues.

If the plan's disproportionate reliance on asymmetrical SLCs is a barometer, Pennsylvania will pay as net contributors to an EAF that would assess Pennsylvanians to compensate Pennsylvania for efforts already undertaken in Pennsylvania. Essentially, Pennsylvania's carriers and end-users are penalized for efforts at access rate reform required under federal law compared to states that wisely waited until being forced to do so by regulatory fiat.

The PaPUC recognizes that one alternative could require states in less populated states with minimal access reform efforts in place to implement surcharges to recover an amount equivalent to the \$1,014 billion dollars spent since 1997 on Pennsylvania reforms. However, if the comments provided by parties at our workshop are accurate, the FCC would have to compensate these states for those efforts if those efforts are in support of

¹⁹*NARUC Webinars* on Missoula Plan, September 14, 2006 and September 25, 2006.

federal universal service. The FCC could impose such a mandate only by classifying intercarrier compensation as a universal service effort and with an expansive interpretation of its preemption authority. Both approaches would be a marked departure from prior practice.

Given these considerations, the PaPUC questions the wisdom of requiring universal service net recipient states to impose rate reforms that will only be ultimately compensated from net contributor states. The same holds true if the FCC requires these same net recipient states to somehow compensate Pennsylvania for \$1,014 billion dollars spent since 1997 million on reforms in place. This \$1,014 billion dollars spent since 1997 would go higher by including the millions of dollars in local rate rebalancing as well.

Ultimately, net recipient states are compensated for their RM and EAF costs from other net contributor states that engaged in earlier reforms. For these reasons, the PaPUC urges the FCC to seriously examine the size and funding source of the EAF.

Interconnection Rules. The Missoula Plan proposes to allow a carrier to designate more than one “edge” per Metropolitan Statistical Area (MSA). The Missoula Plan would also require each carrier to assume the cost of transmitting traffic from any tandem edge.

The alleged unification of the intercarrier compensation regime contained in the Plan also ignores the fact that the setting of reciprocal compensation rates for local interconnection is within the purview of the state utility regulatory commissions that choose to enforce the relevant provisions of TA-96, and the total element long-run incremental cost (TELRIC) standards duly promulgated by the FCC and sustained by the U.S. Supreme Court.²⁰ The PaPUC has actively implemented the reform mandates of TA-96 and state law. The PaPUC has particularly pursued interconnection matters as required by TA-96 and fully intends to do so in the future. Consequently, any suggested

²⁰*Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002).

or implied federal preemption of the PaPUC under the proposed Plan is totally unwarranted under federal law on matters that pertain to local interconnection and reciprocal compensation under TA-96.

Similarly, the PaPUC's enforcement of the FCC's prescribed TELRIC standard cannot result in reciprocal compensation and traffic termination rates that are below the ascertained economic costs for providing the requisite interconnection arrangements. This proposal to set reciprocal compensation below an approved TELRIC cost is a matter of concern as well.²¹

The PaPUC suggests that the FCC address the concern expressed by some carriers, and the wireless carriers and cable providers in particular, about the proposal to allow carriers to designate more than one "edge" in a MSA/MTA.²² MSA/MTA edges appear to be the Missoula Plan equivalent of a Point of Interconnection (POI) or Point of Presence (POP). A proposal that increases the number of edge connections in an MSA/MTA would increase interconnection costs ultimately recovered in customer service rates.

The PaPUC is also cognizant of concerns expressed by some competitors, and CLECs and ISPs in particular, that the proposal to deregulate transit service at the end of the transition period may harm competition. Transit service is currently a tariffed service that is used to connect two or more distinct networks. Consequently, the PaPUC suggests that the FCC consider an approach to transit service in which that service is deregulated only upon a showing that there are multiple alternative service providers ubiquitously available throughout any MSA/MTA in which transit service is deregulated. Moreover, the PaPUC further suggests an additional requirement that any deregulation of transit service in an MSA/MTA will be reversed when the users of transit service establish that

²¹*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 83-84.

²²*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 129-133 and 140.

there is less than a predetermined number of alternative transit service providers ubiquitously available throughout any MSA in which transit service is deregulated.

Finally, the PaPUC recognizes the concern expressed by Verizon Communications and XO Communications at our workshop about the cost and revenue implications of the edge proposal. The proposal apparently shifts from “end office” edges to “tandem” edges in a manner that undermines many existing interconnection agreements. As a result, new costs arise because carriers that receive compensation for transmitting traffic from a tandem to an end-office would have to assume the cost of carrying that same traffic from the tandem edge to the same end-office. The PaPUC urges the FCC to address this concern because of the transformation of a net contributor’s revenue opportunity into a new network cost for the net contributor.

Phantom Traffic. The Missoula Plan proposes interim rules to mitigate the practice of mislabeling or misidentifying traffic as part of the endemic practice of rate arbitrage on the PSTN. The Missoula Plan also relies on industry working groups to address technological limitations and to establish standards governing future traffic identification practices.

The PaPUC agrees that phantom traffic is an issue that warrants examination. However, the PaPUC urges the FCC to consider implementing the steps needed to address phantom traffic independent of the Missoula Plan based on comments at the Pennsylvania workshop.

Interstate and Intrastate Rates. The Missoula Plan establishes lower interstate rates within a Track and then lowers the intrastate access rates to that interstate rate. This means that states and carriers in Track 2 and Track 3 are paid by states and carriers in Track 1 states and regions to lower their rates.

The PaPUC is concerned that carriers and commissions in states with a large number of Track 2 and Track 3 carriers that avoided intrastate access rate reform will become net recipients of access reform support. Given that Pennsylvania is a net universal service contributor, Pennsylvanians will be assessed the costs to lower rates in states and regions with higher costs and less reform in place.

That concern is aggravated when, as here, the structure imposes the bulk of total reform costs on end-user SLCs compared to, for example, a larger assessment on numbers or revenues derived from interstate services. A numbers-based approach minimizes the cost to net contributor states by reducing access support for growing states with an increased demand for numbers and without substantial access reforms in place.

In addition, the SLC could be set at a uniform level. SLCs in states with significant Track 1 carriers like Verizon should not be higher than SLCs in states with large numbers of Track 2 and Track 3 carriers.

Another way to minimize this cost would be to require states that have not undertaken significant access reform to assume the up-front cost of lowering their interstate rates to Verizon's Track 1 interstate rates before obtaining RM or SLC support. This could also minimize the end-user SLCs.

The Missoula Plan does not address substantial access reforms already in place in Pennsylvania and other states. In Pennsylvania, the intrastate local carrier switching originating and terminating rate per MOU for Verizon declined from \$.018217/MOU in 1999 to \$.006212/MOU in 2006. This represents a 65.9% overall decrease. The intrastate carrier rate for end office local switching per MOU for North Pittsburgh Telephone Company also dropped from \$.0253308/MOU in 2001 to \$.020297/MOU in 2004. This represents an overall decrease of 19.87% and an annual compound decrease of 7.12%. While these are representative figures, similar access reductions were implemented since 1999 for Pennsylvania's Track 1, 2, and 3 carriers. (Exhibit 9).

The PaPUC urges the FCC to seriously consider the wisdom of a broad preemption that would include Pennsylvania. Pennsylvania's efforts are consistent with Section 252(e)(5) and Section 253 of TA-96. The PaPUC also urges the FCC to recognize and develop some kind of compensation mechanism, not otherwise supported by end-users in reforming states, to compensate end-users in states with significant reforms already in place. The PaPUC imposed significant rate increases on Pennsylvania's end-user customers since 1999 to support the reforms already in place. The PaPUC would be hard pressed to justify rate increases that reward other states and regions without substantial reforms in place by providing them with additional support to reform their rates even as they are not compensating Pennsylvania for its reforms.

Alternative approaches to a national intercarrier compensation policy. The Missoula Plan as proposed plan may be so seriously defective that amendments cannot correct the flaws. The Missoula Plan seems to be impractical and in violation of federal law as well.

However, the PaPUC understands the importance of intercarrier compensation reform based on Pennsylvania's prior experience. Notwithstanding our very serious and grave reservations about the Missoula Plan, the PaPUC provides the following suggestions for consideration in connection with developing a broad national policy.

Preemption. The PaPUC urges the FCC to refrain from preempting the states in order to impose some intrastate access rate reforms that benefit a limited number of states or regions by imposing disproportionate burdens on other states or regions. If the FCC concludes that preemption is warranted notwithstanding the litigation it will almost certainly entail, the PaPUC suggests that the FCC limit preemption to states that have not undertaken any access rate reforms as of the date of issuance of any preemption order.

Funding Intercarrier Reform. The PaPUC recognizes that the three major alternatives for funding reforms are SLCs, interstate funds, and assessments on scarce numbering resources. SLCs impose a disproportionate burden on wireline customers in heavily populated states or regions to benefit narrowband voice service carriers in other regions. SLC burdens are imposed without considering several viable alternatives like an assessment on all carrier revenues, including information services using traditional networks, or ensuring that the FCC's separations rules properly allocate a far larger portion of loop costs to interstate services now that interstate services are relying on that loop far more than in the past.

The PaPUC also recognizes that there are other alternative solutions like an expanded federal universal service fund, such as an RM, that is more properly funded by an assessment on all carriers' accessing the national network as opposed to large SLCs on end-users of traditional narrowband services.

Another viable alternative could be assessments on numbering resources. This suggestion reflects comments made during the Pennsylvania workshop²³ and the NARUC webinars²⁴ on assessing numbers. A \$.30 assessment would generate \$2.25 billion of the total estimated reform cost of \$9 billion.²⁵ If \$.30 assessment could generate \$2.25 billion, a \$1.20 assessment on the same numbering resources generates the entire \$9 billion cost. A \$1.20 assessment is less burdensome than the proposed \$4.50 increase on end-users in Pennsylvania's major Track 1 carrier's study area e.g., Verizon.

Importantly, the PaPUC suggests that any federal SLC must be equal throughout the nation regardless of Track. The PaPUC urges the FCC to consider the legal and policy ramifications of imposing higher SLCs on end-users in net contributor states to underwrite reforms, and smaller SLC rates, on end-users in net recipient states.

²³*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 30-31.

²⁴*NARUC Webinars on the Missoula Plan*, September 14, 2006 and September 25, 2006.

Also, the FCC should not allow a carrier to de-average the SLC on a geographic or inter-customer class basis. For example, a carrier should not comply with some federal average rate mandate by imposing higher SLC rates in rural areas and lower rates in urban areas, or vice versa. A carrier should not be allowed to collect lower SLCs on customers that purchase “bundled” voice, data, and video services while collecting a higher SLC from customers that only purchase a stand-alone service.

Finally, the PaPUC suggests that the FCC consider some kind of “needs based” test before imposing federal reform costs on the states. The PaPUC questions the policy appeal of imposing costs on Track 1 carriers with lower access rates and rates of return in order to fund higher access rates and rates of return for Track 2 and Track 3 carriers. At a minimum, any alleged revenue need claimed by a net recipient carrier should be adjusted to reflect revenue based on Track 1 carrier rates of return derived from the current ARMIS data.

The Carrier Rate Structure. The PaPUC recognizes the wisdom of requiring that there be a uniform rate for all carrier categories, regardless of track, to prevent arbitrage. The rate, moreover, might be a blend of a carrier’s current interstate, intrastate, and reciprocal compensation rates. Moreover, states or regions that failed to implement substantial intrastate access rate reform should be required to contribute an amount equal to Pennsylvania’s reforms and to also bring their rates down to the level of rates in major reform states like Pennsylvania.

Phantom Traffic. As indicated above, the PaPUC suggests that the FCC pursue the proposed phantom traffic recommendations, or a variant thereof, independent of any action on the Missoula Plan. Resolution of the phantom traffic problem would go a long

²⁵*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 30-31.

way to providing accurate measurements of network traffic flows and to correcting current practices on the existing network.

Setting Interstate and Intrastate Rates. The current interstate access rates should be retained, as opposed to lowered, in order to minimize RM, EAF, and SLC costs. States should be permitted the option to reduce their intrastate rates to the respective carrier's current interstate rate to minimize costs. A state should not be penalized if considerations warrant retention of rate differentials between a respective carrier's interstate and intrastate access rates.

Alternative Funding Mechanisms. The PaPUC suggests that the FCC consider alternative methods for funding intercarrier compensation reform. The FCC should consider approaches that minimize end-user surcharges on customers in Pennsylvania's Track 1 study area. The PaPUC suggests two possibilities that may warrant additional consideration. These are assessments on Tariff Title II Common Carrier services and a broader definition of telecommunications facilities.

Option 1: FCC Assessment on Title II Common Carrier Services. The PaPUC Comment recognizes that the FCC already granted, and is now considering other requests to grant, forbearance from many Title II Common Carrier obligations. This includes special access as a tariffed Title II Common Carrier service.

A consideration behind forbearance petitions and transit deregulation proposals, and special access in particular, is recognition of the role that special access plays in providing access to carrier networks under tariff rates as opposed to private contracts. If the FCC grants forbearance for special access, special access is no longer a tariffed and publicly priced service. It becomes, instead, a private contractual service. The Broadband Cable Association of Pennsylvania (BCAP) indicated at our Pennsylvania

workshop that transit service and special access are critical means that competitive providers use to access their end-user customers over other carrier networks. The PaPUC suggests that the FCC carefully consider the wisdom of forbearance from tariffing special access or deregulating transit service if those actions deprive the FCC of universal service assessment options.

The PaPUC suggests, in the alternative, that continuation of special access and the regulation of transit service as tariffed common carrier services provides the FCC with better tariff mechanisms to fund intercarrier compensation compared to end-user SLCs. While those costs would most likely be passed through to end-users anyway, the number of customers providing intercarrier compensation reform support would be greatly expanded. This is particularly true if, as expected, more and more end-users opt to purchase broadband services from providers that must rely on special access and transit service to deliver their services. Forbearance from special access tariffs or the deregulation of transit service could eliminate these options if they become a private contract as opposed to a public tariff service.

Importantly, there is some question as to whether or not any FCC forbearance of special access or deregulation of transit service will exempt those services from any federal universal service obligation. The FCC should consider denying forbearance and not deregulating transit service given the competitive impact and the possible loss of alternative funding mechanisms.

In the alternative, the FCC could stipulate that forbearance or deregulation does not absolve the recipient of its obligation to support universal service through an assessment on those revenues. To the extent that comments in the Pennsylvania workshop stressed that RMs and EAFs must be universal service costs to come within the FCC's legal authority,²⁶ the PaPUC urges the FCC to consider this approach because it preserves options for the FCC.

²⁶*Pennsylvania Workshop*, Docket No. M-00061972, September 11, 2006, Tr. 128.

Option 2: Support from a Broader Definition of Telecommunications Facilities.

Another solution not presented in the Missoula Plan is a broader definition of what constitutes “telecommunications facilities” for purposes of imposing an intercarrier compensation assessment on interstate revenues attributable to telecommunications facilities. The ongoing commitment to a narrow definition of telecommunications facilities, reflected most particularly in the *DSL* and *Cable Modem* decisions, does not include networks that are the functional equivalent of traditional networks constructed from telecommunications facilities.

Under the current approach, many cable, wireless, BPL, and even broadband networks used to provide voice, data, and video service, or any combination thereof, are not classified as telecommunications facilities. As such, the FCC may find it difficult to impose any universal service costs, in this case intercarrier compensation, if every network used to provide services similar to narrowband voice is not classified as telecommunications facilities.

The PaPUC Comment suggests a broader definition of telecommunications facilities. This broader approach expands the contribution base needed to fund access reform necessitated by the competition and broadband deployment mandates of TA-96. This expansive approach, particularly given that intercarrier compensation may have to be classified as another variant of universal service to come within the FCC’s authority, recovers legitimate costs from a larger pool.

This ability to spread intercarrier compensation reform costs among a broader pool of telecommunications facilities has less end-user rate impact. The PaPUC remains concerned that this plan focuses almost exclusively on funding from SLCs imposed on the end-user customers of Track 1 carriers in net contributor states. The resulting rate increases may precipitate a decline in telephone penetration rates for traditional

narrowband voice service.²⁷ In Pennsylvania, those end-users are located largely in Verizon's study area.

Respectfully submitted,
Pennsylvania Public Utility Commission

Joseph K. Witmer, Esq.
Assistant Counsel,
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-3663
Email:joswitmer@state.pa.us

²⁷*Telephone Subscribership Rates in the United States*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Division, (October 2006), Table 2, p. 8 and Chart 3, p. 10. Every state in the Mid-Atlantic region, with the exception of Virginia's .1 increase and West Virginia 5.3% increase, saw declining penetration rates compared to 1983. Pennsylvania's rate declined .03%.

ATTACHMENTS

- Exhibit 1: Pennsylvania Universal Service Fund Support
- Exhibit 2: Verizon and Rural Carrier Local Rate Reform (1997-2006)
- Exhibit 3: Verizon Local Rate Increases
- Exhibit 4: Commonwealth Telephone Rate Increases (1999-2006)
- Exhibit 5: EMBARQ and Windstream Rate Increases (1999-2006)
- Exhibit 6: North Pittsburgh Rate Increases (1999-2006)
- Exhibit 7: Pennsylvania Universal Service Fund Attachment A Rate Cap of \$18.00
- Exhibit 8: Pennsylvania Commission Lifeline Order (May 23, 2005)
- Exhibit 9: Pennsylvania Access Rate Reforms (1999-2006)

Dated: October 25, 2006

Exhibit 1

Period	Amount given recipient carriers
April 1, 2000 - July 31, 2001	\$35,113,553
August 1, 2001 - December 31, 2002	\$49,037,000
2003	\$33,515,402
2004	\$33,525,868
2005	\$33,565,233
2006	\$33,565,234
Total	\$218,322,290
Yearly Average Support	\$32,344,043

Exhibit 2

Exhibit 3

Pennsylvania Local Rate Reforms (1999-2006)

Verizon PA - Local Exchange Rates

	Cell 1	Cell 2	Cell 3	Cell 4
Residence Single Line (1)				
1999	\$ 13.43	\$ 13.73	\$ 12.13	\$ 12.53
2001	\$ 13.43	\$ 13.73	\$ 12.13	\$ 12.53
2004	\$ 13.43	\$ 13.73	\$ 12.13	\$ 12.53
2005	\$ 14.23	\$ 14.53	\$ 12.93	\$ 13.33
2006	\$ 14.63	\$ 14.93	\$ 13.29	\$ 13.69
Business Single Line (2)				
1999	\$ 28.63	\$ 31.13	\$ 33.23	\$ 35.73
2001	\$ 28.63	\$ 31.13	\$ 33.23	\$ 35.73
2004	\$ 28.63	\$ 31.13	\$ 33.23	\$ 35.73
2005	\$ 29.43	\$ 31.93	\$ 34.03	\$ 36.53
2006	\$ 29.60	\$ 32.10	\$ 34.20	\$ 36.75

(1) Exchange service consists of the Dial Tone Line and Local Usage. Rates include Local Area Unlimited Usage for \$8.85 (Cells 1 and 2) and \$6.85 (Cells 3 and 4). Rate changes have been due to changes in the Dial Tone Line rate.

(2) Exchange service consists of the Dial Tone Line and Local Usage. Rates include Local Area Valu-Pak Usage for \$18.40 (Cells 1 and 2) and \$18.00 (Cells 3 and 4). Local Area Unlimited Usage has been grandfathered. Rate changes have been due to changes in the Dial Tone Line rate.

Exhibit 4

Pennsylvania Local Rate Reforms (1999-2006)

Commonwealth Telephone Company

Local Exchange (Rate Group 5)

	Residence		Business
1999	\$ 8.18	\$	12.92
2001	\$ 8.96	\$	12.92
2004	\$ 10.42	\$	14.38
2005	\$ 12.88	\$	19.63
2006	\$ 14.28	\$	21.03

Exhibit 5

Pennsylvania Local Rate Reforms (1999-2006)

EMBARQ PA - Local Exchange Rates

Rate Class II

	Residence		Business
1999	\$ 12.50	\$	23.45
2001	\$ 14.37	\$	24.20
2004	\$ 17.02	\$	25.60
2006	\$ 18.00	\$	26.53

Pennsylvania Local Rate Reforms (1999-2006)

Windstream PA - Local Exchange Rates

	Rate Band 6	Rate Band 4
	Residence	Business
1999	\$ 13.71	\$ 21.39
2001	\$ 14.29	\$ 21.39
2004	\$ 14.75	\$ 22.45
2006	\$ 16.00	\$ 25.00

Exhibit 6

Pennsylvania Local Rate Reforms (1999-2006)

North Pittsburgh - Local Exchange Rates

	Band D		
	Residence		Business
1999	\$	10.70	\$22.00
2001	\$	10.60	\$21.85
2004	\$	14.55	\$22.75
2006	\$	17.54	\$25.74

PaPUC Staff: FUS: Janet Tuzinski, Mgr.
Joe Spandra, Analyst
Bill Townsend, Analyst
Law: Joe Witmer, Esq.

Exhibit 7

ATTACHMENT A
RTCC/SPRINT/OCA/OTS/OSBA
JOINT ACCESS PROPOSAL
IN RESPONSE TO THE COMMISSION'S
ACCESS CHARGE INVESTIGATION - PHASE II

Defined Terms

As employed herein, the following terms shall have these specified meanings:

"ILEC" means an RTCC member or The United Telephone Company of Pennsylvania d/b/a Sprint ("Sprint").

"RTCC" means Rural Telephone Company Coalition. The RTCC members are ALLTEL Pennsylvania, Inc. ("ALLTEL"), Armstrong Telephone Company . PA, Armstrong Telephone Company. North, Bentleyville Communications Corporation, d/b/a The Bentleyville Telephone Company, Buffalo Valley Telephone Company ("Buffalo Valley"), Citizens Telephone Company of Kecksburg, Citizens Telecommunications Company of New York,¹¹ Commonwealth Telephone Company ("Commonwealth"), Conestoga Telephone and Telegraph Company ("Conestoga"), Denver and Ephrata Telephone and Telegraph Company ("D&E"), Deposit Telephone Company, Frontier Communications of Breezewood, Inc., Frontier Communications of Canton, Inc., Frontier Communications of Lakewood, Inc., Frontier Communications of Oswayo River, Inc., Frontier Communications of Pennsylvania, Inc. ("Frontier PA"), The Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Inc., Laurel Highland Telephone Company, Mahanoy & Mahantango Telephone Co., Marianna & Scenery Hill Telephone Company, The North-Eastern PA Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company ("NPTC"), Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Sugar Valley Telephone Company, Venus Telephone Corporation, and Yukon-Waltz Telephone Company.

"Larger ILEC," for purposes of this Proposal only,¹² means ALLTEL, Buffalo Valley, Commonwealth, Conestoga, D&E, Frontier PA, NPTC, and Sprint.

"Smaller ILEC," for purposes of this Proposal only, means any RTCC member that is not a Larger ILEC.

¹¹ Because Citizens Telecommunications Company of New York has and continues to operate under New York access tariffs, it is not to be deemed a party to this proposal. Likewise, West Side Telephone Company was not included in the Global proceeding and is excluded here.

¹² The designation of larger and smaller ILEC was based upon the factor of 20,000 access lines and was for purposes of this Proposal only, for the purpose of redirecting monies out of the existing USF that were previously allocated to Sprint.

Elements of Proposal

- 1) If an ILEC's intrastate traffic sensitive (TS) rates exceed its interstate TS rates, the ILEC may, at its sole discretion, lower its intrastate TS rates to match or move closer to its interstate TS rates, and simultaneously increase its Carrier Charge (CC) by a corresponding revenue neutral amount using the 12 months ended August 31, 2002, or the most current 12 month period, thereby creating a revised CC. An ILEC may, at its sole discretion, lower its intrastate TS rates to match or move closer to its interstate TS rates, and simultaneously increase its Carrier Charge (CC) by a corresponding revenue-neutral amount, again in 2004, using a recent 12 month period, thereby creating a further revised CC. All references to CC herein shall be to the then current revised CC if the ILEC has chosen to implement this element of the proposal.
- 2) Pursuant to an Order entered adopting this access proposal without modification, and after notice through bill insert, bill message or separately mailed notice to all customers at least 30 days prior to the date of any rate change, each ILEC will increase local rates, based upon one-day tariff compliance filing, to be effective on a date between January 1, 2003 and December 31, 2003 (as to be determined at the sole discretion of the individual ILEC) as follows:
 - (a) Each ILEC with a weighted average R-1 rate below \$10.83 as of December 31, 2002, will increase its R-1 rates in a manner to achieve a weighted average R-1 rate of \$11. If the increase results in R-1 rates greater than 150% of the current rate, then the increase shall be implemented in two steps, the second of which shall become effective no later than December 31, 2003. This increase shall be subject to the Company's Chapter 30 Plan rate rebalancing limitation with respect to the limitation on calendar year per line increases, i.e. not more than \$3.50 per line per month in rate increases in any one year, but shall not be subject to any other Chapter 30 process or requirements. To the extent that any ILEC shall not be able to complete the required rate increase within any year, such rate increase may be deferred to the following year subject to the Company's Chapter 30 Plan rate rebalancing limitations. Any rate rebalancing in excess of that specifically referenced in Paragraph 2 shall be subject to the Chapter 30 Plan rate rebalancing process and requirements.
 - (b) Each ILEC with a weighted average R-1 rate between \$10.83 - \$12 as of December 31, 2002, will increase its R-1 rates in a manner to achieve a weighted average R-1 rate of \$13.50.
 - (c) Each ILEC with a weighted average R-1 rate between \$12.01 - \$14 as of December 31, 2002, will increase its R-1 rates in a manner to achieve a weighted average R-1 rate of \$15.
 - (d) Each ILEC with a weighted average R-1 rate between \$14.01-\$16 as of December 31, 2002, will increase its R-1 rates in a manner to achieve a weighted average R-1 rate of \$16.

- (e) Each ILEC may, at its sole option, increase its weighted average Business line rate by up to the same amount that its weighted average R-1 rate is increased, but in no event may the B-1 rate be less than the R-1 rate.
- 3) Pursuant to an Order entered adopting this access proposal without modification, and after notice through bill insert, bill message or separately mailed notice to all customers at least 30 days prior to the date of any rate change, each ILEC may increase local rates, based upon a one-day tariff compliance filing, to be effective on a date between January 1, 2004 and December 31, 2004 (as to be determined at the sole discretion of the individual ILEC) as follows:
- (a) Each ILEC with a weighted average R-1 rate of \$11 (or less) as of December 31, 2003 (as described and calculated in Step 2 above) may increase its R-1 rates in a manner to achieve a weighted average R-1 rate of \$13.50.
 - (b) Each ILEC with a weighted average R-1 rate of \$13.50 as of December 31, 2003 (as described and calculated in Step 2 above) may increase its R-1 rates in a manner to achieve a weighted average R 1 rate of \$15.
 - (c) Each ILEC with a weighted average R-1 rate of \$15 as of December 31, 2003 (as described and calculated in Step 2 above) may increase its R-1 rates in a manner to achieve a weighted average R-1 rate of \$17.
 - (d) Each ILEC with a weighted average R-1 rate of \$16 as of December 31, 2003 (as described and calculated in Step 2 above) may increase its R-1 rates in a manner to achieve a maximum weighted average R- 1 rate of \$18.
 - (e) Each ILEC may, at its sole option, increase its weighted average Business line rate by up to the same amount that its weighted average R-1 rate is increased, but in no event may the B-1 rate be less than the R-1 rate.

Any rate rebalancing in excess of that specifically referenced in Paragraphs 2 and 3 shall be subject to the Chapter 30 Plan rate rebalancing process and requirements.

- 4) The monthly \$16.00 cap on R-1 average rates established in the Global Order and any ILEC-specific weighted average rate cap which may have been established in any individual ILEC's Chapter 30 Plan will be increased for all ILECs to the weighted average \$18.00 cap for a minimum three (3) year period January 1, 2004 through December 31, 2006. As to any ILEC which as of July 1, 2002 has hit the \$16.00 cap and takes a credit from the USF, the ILEC shall continue to receive and apply the credit but would be limited to recovering from its customers future R-1 increases of \$2.00 under the foregoing \$18.00 cap reflecting the USF credit in effect as of July 1, 2002. Any approved future increases in rates above the \$18.00 rate cap for any ILEC shall also be recoverable from the USF under the exact same terms and conditions as approved in the Global Order. For example, if ILEC A's R-1 rates are currently \$17.25, then their customer is billed \$17.25 but receives a credit of \$1.25 from USF, receiving a net bill of \$16.00. ILEC A could, as of December 31, 2004, implement the provisions of Paragraph 3 hereof, increase its rates, if justified, by \$2.00 to \$19.25, charge its customers \$19.25, reflect a credit of \$1.25 to its customers, receive \$1.25 from the USF, and then send a net bill to its customers of \$18.00. If ILEC A justified an R-1 rate of \$20.25, then it would be entitled to \$2.25 from the USF and will send a net bill to its customers of \$18.00.
- 5) Pursuant to an Order entered adopting this access proposal without modification, each ILEC shall have the right, in whole or in part, in lieu of raising local service rates as provided in Paragraphs 2 and 3 hereof to raise rates on other services by an equivalent amount, based on a one-day tariff compliance filing.
- 6) To offset the increase to local rates described above in Paragraphs 2 and 3, each ILEC (except Sprint) will file a compliance tariff(s) to reduce its CC or TS rates, or any combination thereof, by a revenue-neutral amount (depending upon changes undertaken in Paragraph 1, above), effective on dates consistent with the increases in Paragraphs 2 and 3.
- 7) In addition to any rate modifications undertaken pursuant to Paragraphs 2 and 3, each Smaller ILEC that increases its rates consistent with Paragraph 2, above, or is at the \$16.00 capped rates on December 31, 2003, will additionally reduce its CC or TS rates, or any combination thereof, by the equivalent of \$2 per line per month effective January 1, 2004 and shall receive an equal (a revenue-neutral) amount of support from the PA USF (annual total for all Smaller ILECs ranging from an estimated \$1.8 million to \$2.2 million), as provided in Paragraph 8.b. For ease of administration, the amount of additional USF received by the Smaller ILECs under this proposal will be determined as of December 31, 2003, and will be applied effective January 1, 2004 and each year thereafter for the duration of the Pa. USF (as addressed in Paragraph 1 of the Conditions of Proposal.) Beginning in 2005, any growth in access lines shall be accounted for in accordance with the annual USF calculation in 52 Pa. Code §63.165 and the Smaller ILECs'

total receipt from the Pa. USF, including the amount provided for herein, shall be included in the Smaller ILECs' prior year funding.

- 8)
 - (a) To offset the increase to Sprint's local rates described above in Paragraph 2, above, Sprint will file compliance tariff(s) to reduce its CC or TS rates, or any combination thereof, by a revenue-neutral amount (depending upon changes undertaken in Paragraph 1, above) effective on dates consistent with the increases in Paragraph 2.
 - (b) Beginning on or after January 1, 2004, Sprint will reduce its receipt from the current PA USF equal to the \$2 per line per month reduction to the CC or TS, from Smaller ILECs as expressed in Paragraph 7. These dollars (annual total ranging from an estimated \$1.8 million to \$2.2 million) will be directly paid to the Smaller ILECs, as described in Paragraph 7, from the PA USF to offset the Smaller ILECs' reduction in access charges on a revenue neutral basis.
- 9) On/or after January 1 of each year beginning in 2005 each ILEC may request such rate changes or rate rebalancing as are permitted by any Chapter 30 Plans and/or applicable statutory and regulatory provisions.

Conditions of Proposal

- 1) The only change to the existing universal service fund in PA is that Sprint will be shifting a portion (estimated to be \$1.8 m - \$2.2m) of its current fund receipt (\$9 million) to Smaller ILECs as noted in Paragraphs 7 and 8 above. This Proposal is dependent upon all other aspects of the PA universal service program and the USF regulations remaining intact, including the recovery of rates above the rate cap into the future, specifically beyond December 31, 2003. The existing universal service fund, including the recovery of monies under Paragraph 4 of Elements of Proposal above, and regulations promulgated thereunder shall, as provided in the regulations, continue in place until modified by further Commission rulemaking.
- 2) Each ILEC reserves the right, subject to Chapter 30 Plan requirements, to change its access rates to ensure that each access rate element at least recovers its cost and the ILEC's service price index continues to be equal to or less than the ILEC's price stability index, in the event the ILEC's access rates are determined to be below cost based upon the development of a cost study.
- 3) This proposal is made in its entirety and no part hereof is valid or binding unless all components are accepted by all parties. Should any part be specifically modified or otherwise adversely impacted at any later date as to any ILEC or party, the ILEC or party shall have full unilateral rights to withdraw from the plan or revisit the plan in its sole discretion. This potential agreement is proposed by the parties to settle the instant

controversy and is made without any admission against or use that is intended to prejudice any positions which any party might adopt during subsequent litigation, including further litigation in related proceedings. This agreement is conditioned upon the Commission's approval of all terms and conditions contained herein, except for the terms of this paragraph. If the Commission should fail to grant such approval or should modify the terms and conditions herein, this agreement may be withdrawn upon written notice to the Commission and all parties within five business days by any of the parties and, in such event, shall be of no force and effect. In the event that the Commission does not approve the Settlement or any party elects to withdraw as provided above and any proceeding continues, the parties reserve their respective rights to submit testimony or other pleadings and briefs in this or a related proceeding.

- 4) Elements of this Proposal shall constitute rate rebalancings or rate filings as defined and allowed under each ILEC's Chapter 30 Plan only to the extent of determining the maximum amount of an increase allowed per year, but shall not preclude the filing of one additional rate restructuring/rebalancing filing in the calendar year so long as the total rate rebalancing rate increases do not exceed the maximum annual increase allowed and comply with other Chapter 30 Plan limitations and requirements. That is, implementation of proposed Paragraphs 2, 3 and 5 under Elements of Proposal are not considered rate rebalancings under the Chapter 30 Plans except in determining the maximum limitation on per year line rate increases to monthly dial tone rates. All parties retain all other rights under the approved Chapter 30 Plan to implement or oppose all rate rebalancings and other rate filings permitted under its Chapter 30 Plan. All parties reserve all rights in any proceedings relative to Chapter 30.
- 5) Increases to weighted average business rates on a dollar basis will be less than or equal to the increases to weighted average residential rates on a dollar basis.
- 6) This access proposal will be revenue neutral relative to each ILEC implementing a rate change. Absolutely no changes shall be required which are not revenue-neutral. Other access reductions that are not revenue neutral are permissible at the ILEC's sole option, but not required.
- 7) When notice is sent to each company's customers as provided in Paragraphs 2 and 3 under elements of Proposal, it will also be served upon all parties to this Proposal.

Exhibit 8

PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 19, 2005

Commissioners Present:

Wendell F. Holland, Chairman
Robert K. Bloom, Vice Chairman
Kim Pizzingrilli

Re: Lifeline and Link-Up Programs

Docket No. M-00051871

FINAL ORDER

BY THE COMMISSION:

By this Final Order, we adopt participation in the National School Free Lunch Program and income-based criterion at or below 135% of the Federal Poverty Guidelines as additional eligibility criteria for Pennsylvania's Lifeline 150 and Link-Up programs in order to make our programs consistent with the Federal Communication Commission's (FCC) default Lifeline/Link-Up programs, as announced on April 29, 2004, *Report and Order and Further Notice of Proposed Rulemaking In the Matter of Lifeline and Link-Up*, at CC Docket No. 04-87, WC Docket No. 03-109. We also modify the Lifeline 150 program and rename it Lifeline 135, since the income eligibility level has changed.

Procedural History

In 1984, the FCC established a Lifeline program to promote universal telephone service by providing low-income consumers with discounts on the monthly cost of dial tone service. By 1987, the FCC implemented Link-Up America (Link-Up) to help low-income households pay phone connection charges. With the passage of the Telecommunications Act of 1996 (TA-96), the FCC expanded its rules¹ so that Federal

¹ *Federal-State Board on Universal Service*, (FCC May 8, 1997) CC Docket No. 96-45, FCC 97-157.

Lifeline service could be provided to low-income consumers in every state regardless of whether a state provided related support; under the amended rules, telephone companies designated as eligible telecommunications carriers (ETCs) must provide Lifeline service to eligible consumers and receive federal universal service funding support for doing so.

Until November 30, 2004, the effective date of Act 183², all local exchange carriers (LECs) operating in the Commonwealth were required to provide Lifeline service and to have a Lifeline plan and rates filed in their tariff. On June 28, 1994, the Commission first ordered Bell Atlantic - Pennsylvania, Inc. (BA-PA) (now Verizon PA), to submit for approval a revenue-neutral Lifeline program and a Universal Telephone Assistance Program (UTAP). On August 3, 1995, the Commission granted BA-PA's petition and ratified a Lifeline Settlement Agreement.³ BA-PA's Lifeline program was implemented in 1996 and was the first such program in the Commonwealth. In 1997, BA-PA revised its Lifeline program in Docket No. R-00974153, Order entered November 21, 1997, so Lifeline customers had a choice in local service options. The order also increased the customer discount. Additionally, BA-PA requested that the Commission designate BA-PA as an ETC so that it could receive federal Universal Service Fund (USF) support. Given the federal initiative, the Commission subsequently, at I-00940035, on July 31, 1997, directed each LEC to file a Lifeline plan to become effective January 1, 1998. On September 30, 1997 the Pennsylvania Telephone Association (PTA) filed a petition for the Approval of Lifeline Service Plan on behalf of its member companies. The PTA companies' Lifeline eligibility requirements mirrored the BA-PA plan except that the BA-PA Lifeline program provided Lifeline customers with a larger credit for monthly service. By Order entered November 21, 1997⁴ the

² Act 183 of 2004 is the new Chapter 30 to Title 66 of Pennsylvania Consolidated Statutes. House Bill 30 (P.N. 4778) was signed into law by the Governor on November 30, 2004, and became effective immediately.

³ *Pennsylvania Public Utility Commission v. Bell Atlantic – Pennsylvania, Inc.*, P-00930715, P-00950958, entered August 4, 1995.

⁴ Petition of the Pennsylvania Telephone Association Lifeline Service Plan at Docket Nos. I-00940035, P-00971274, Order entered November 21, 1997.

Commission approved the PTA plans which led to the implementation of the statewide Lifeline program.

Lifeline programs were addressed in the *Global Order*.⁵ Three orders approving the later-filed Lifeline/Link-Up tariffs of BA-PA, GTE North, and the PTA, respectively, were addressed at the *Global Order* dockets and were entered August 17, 2000.⁶ These orders approved the tariff filings and defined the program eligibility requirements further by adding the State Blind Pension program and the Temporary Assistance for Needy Families Program (TANF) to the list of eligible social assistance programs.

Pennsylvania's telephone current Universal Service Programs are as follows:

Lifeline – Verizon PA⁷ and Verizon North are the only companies offering this. It provides qualified customers with a credit (currently between \$11.55 and \$12.00)⁸ towards their basic monthly phone charges with the option of choosing either the local area standard usage service or the local area unlimited usage service. Eligible customers may qualify if they have incomes at or below 100% Federal Poverty Income Level Guidelines (FPG) or receive General Assistance (GA), Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF). This program did not permit customers to subscribe to Call Waiting or other optional services. However, customers were permitted to subscribe to Call Trace Service at regular cost under special circumstances.

Lifeline 150 – All LECs operating in Pennsylvania carry Lifeline 150 in their tariffs. It provides qualified customers with a credit (currently between \$7.80 and 8.25)⁹

⁵ *Joint Petition of Nextlink Pennsylvania, Inc., et al. and Joint Petition of Bell Atlantic Pennsylvania, Inc., et al.*, P-00991648 and P-00991649, September 30, 1999 (*Global Order*).

⁶ *Pennsylvania PUC v. Bell Atlantic-Pennsylvania, Inc., Pennsylvania PUC v. Pennsylvania Telephone Association, Pennsylvania PUC v. GTE North Incorporated*, P-00991648, P-00991649, August 17, 2000.

⁷ Verizon PA also offers eligible Lifeline customers and qualified Lifeline applicants (with a pre-existing basic service arrearage) financial assistance to restore their basic telephone service through its Universal Telephone Assistance Program (UTAP). The Salvation Army manages UTAP and distributes funds to qualified customers and Lifeline applicants.

⁸ Verizon PA and Verizon North Lifeline credit is a monthly amount equal to their federal subscriber line charge of \$6.05 for Verizon PA and \$6.50 for Verizon North plus a \$2.50 contribution from Verizon and \$3.00 from the Federal USF.

⁹ Verizon PA and Verizon North Lifeline 150 credit is a monthly amount equal to their federal subscriber line charge of \$6.05 and \$6.50 respectively plus \$1.75 from the Federal USF. Lifeline 150 for all other ILECs is each company's federal subscriber line charge, currently capped at \$6.50 plus \$1.75. CLECs provide similar Lifeline credit amounts, regardless of whether or not they designate a federal subscriber line charge on customer bills.

towards their basic monthly phone charges with the option of choosing either the local area standard usage service or the local area unlimited usage service. Eligible customers may qualify if they have incomes at or below 150% of the FPG and participate in certain assistance programs.¹⁰ Further, a customer was restricted to one line with either local area standard usage package or local area unlimited usage package, and one optional service such as Call Waiting, Caller ID, home voice mail, *etc.*, at regular charges.

On April 29, 2004, the FCC released a *Report and Order and Further Notice of Proposed Rulemaking In the Matter of Lifeline and Link-Up*, at CC Docket No. 04-87, WC Docket No. 03-109. The FCC modified its rules (most of which became effective July 22, 2004), so as to increase the national telephone penetration rate above the current level of 94.7% and make phone service affordable to more low-income households. The order expanded the federal default eligibility criteria so as to include an income-based criterion of 135% of the Federal Poverty Guidelines (FPG)¹¹ and added the National School Lunch Program's free lunch program (NSL)¹² as a qualifying social assistance program. In prior years, consumers whose state followed the federal program had to participate in one of the qualifying programs to qualify for Lifeline. Now low-income consumers can qualify based on household income alone. Thus, more households nationwide arguably could qualify for the federal default program.

In order to combat fraud, the FCC added a proof of eligibility provision that places an additional administrative requirement on the LECs to get their customers to certify in writing, under oath, that they meet the eligibility requirements for household income or participation in qualifying social assistance programs.

¹⁰ These social assistance programs include: General Assistance (GA), Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF), Food Stamps, Low Income Home Energy Assistance Program (LIHEAP), Medicaid, and Federal Public Housing Assistance. Verizon also includes State Blind Pension as an eligible program.

¹¹ At or below 135% of the FPG is \$24,840 for a family of four.

¹² To be eligible for the NSL free lunch program, a consumer's household income must be at or below 130% of the FPG, which is currently \$23,920 for a family of four. *2003 FPG*, 68 Fed. Reg. at 6456-58. In addition, children are automatically eligible to participate in the NSL free lunch program if their household receives Food Stamps, benefits under the Food Distribution Program on Indian Reservations or, in most cases, benefits under the TANF program. <http://www.fns.usda.gov/cnd/About/faqs.htm>.

On September 3, 2004, this Commission entered a Tentative Opinion and Order at Docket No. P-00951005¹³ that addressed the Settlement Agreement and Further Settlement Agreement regarding the *Petition of the Frontier Companies for approval under Chapter 30 of the Public Utility Code for Approval of an Alternative Regulation and Network Modernization Plan* (September 3, 2004 Order). The September 3, 2004 Order modified one aspect of the Further Settlement Agreement by rejecting the provision allowing customers who receive the Lifeline discount to purchase up to two vertical services on the basis that it was inconsistent with the Commission's conclusion in the *Global Order* on this issue. Ordering Paragraph No. 8 of the September 3, 2004 Order also directed Commission staff to submit a recommendation to the Commission within 60 days of the entry date of that Order regarding how the Pennsylvania Lifeline program should be structured as a result of the recent FCC Lifeline Order.

On November 19, 2004, Pennsylvania's legislature passed House Bill 30 -- an amended version of the original Chapter 30 provisions concerning alternative rate regulation for the telecommunications industry and network modernization plans. The Governor signed House Bill 30 into law as Act 183, with an effective date of December 1, 2004. Among other things, Act 183 expressly mandates significant changes to Pennsylvania's universal service programs. Specifically, the provisions outlined in Section 3019(f) state the following:

§3019(f) Lifeline Service.--

(1) All eligible telecommunications carriers certificated to provide local exchange telecommunications service shall provide lifeline service to all eligible telecommunications customers who subscribe to such service.

¹³ The Tentative Opinion and Order became final in accordance with Ordering Paragraph No. 6 that stated: "That if none of the Parties object to the modifications to the Settlement Agreement and Further Settlement Agreement, within the time specified in Ordering Paragraph No. 3 of this Tentative Order, then it is further ordered that this Tentative Opinion and Order shall become final, and a Secretarial Letter shall be issued to that effect, without further action by the Commission." All of the Parties subsequently notified the Commission that they do not object to Settlement and Further Settlement Agreement as modified by the Tentative Opinion and Order.

(2) All eligible telecommunications customers who subscribe to lifeline service shall be permitted to subscribe to any number of other eligible telecommunications carrier telecommunications services at the tariffed rates for such services.

(3) Whenever a prospective customer seeks to subscribe to local exchange telecommunications service from an eligible telecommunications carrier, the carrier shall explicitly advise the customer of the availability of lifeline service and shall make reasonable efforts where appropriate to determine whether the customer qualifies for such service and, if so, whether the customer wishes to subscribe to the service.

(4) Eligible telecommunications carriers shall inform existing customers of the availability of lifeline service twice annually by bill insert or message. The notice shall be conspicuous and shall provide appropriate eligibility, benefits and contact information for customers who wish to learn of the lifeline service subscription requirements.

(5) When a person enrolls in a low-income program administered by the department of public welfare that qualifies the person for lifeline service, the department of public welfare shall automatically notify that person at the time of enrollment of his or her eligibility for lifeline service. This notification also shall provide information about lifeline service including a telephone number of and lifeline subscription form for the person's current eligible telecommunications carrier or, if the person does not have telephone service, telephone numbers of eligible telecommunications carriers serving the person's area, which the person can call to obtain lifeline service. Eligible telecommunications carriers shall provide the department of public welfare with lifeline service descriptions and subscription forms, contact telephone numbers, and a listing of the geographic area or areas they serve, for use by the department of public welfare in providing the notifications required by this paragraph.

(6) No eligible telecommunications carrier shall be required to provide after the effective date of this section any new lifeline service discount that is not fully subsidized by the federal universal service fund.

On March 8, 2005, the Commission entered a Tentative Order proposing to expand Lifeline 150 and Link-Up program eligibility requirements consistent with the provisions of Act 183. Comments from the Pennsylvania Telephone Association

(PTA)¹⁴, the Office of Consumer Advocate (OCA) and Verizon were filed with the Commission.

Discussion

PTA's Comments

The PTA comments that the Commission should delay implementation of the 135% income eligibility standard. PTA claims that the FCC reduced its standard from 150% to 135%. Thus, the PTA proposes maintaining the 150% income standard in light of the FCC's statement that it will explore further whether to adopt a 150% income standard. Requiring ETCs to adopt the more restrictive 135% standard now while the possibility remains that those companies will be required to return to the 150% standard in the near future will create an unnecessary administrative burden. Further, PTA argues that consumers will benefit as the current standard is less restrictive.

We disagree with PTA regarding this issue. The current standard of 150% Federal Poverty Guidelines and participation in one of a list of approved social assistance programs is more restrictive than just meeting a 135% of Federal Poverty Guidelines household income standard. Not all consumers with household incomes of 150% FPG or less are also enrolled in a social assistance program. Whereas, by changing the two-prong test to a single prong test, the consumer need only meet either the income standard or the participation in a social assistance program standard, and not both. To date, there has been no final decision from the FCC regarding expanding its default Lifeline/Link-Up program income qualifying criteria from 135% to 150%. In fact, this Commission does not believe PTA's statement that the FCC reduced its income qualifying criteria from 150% to 135% is inaccurate. There was previously no federal income requirement - only a requirement for participation in social assistance programs. Should the FCC

¹⁴ The Pennsylvania Telephone Association represents more than 30 incumbent local exchange carriers operating in Pennsylvania.

decide in the future to expand the qualification from 135% to 150%, this Commission will reevaluate its own Lifeline/Link-Up programs.

PTA also comments that it does not oppose including the National School Lunch Program's free school lunch program as a qualifying program for Lifeline eligibility so long as the customer is responsible for providing the ETC with verification of enrollment as this program is not overseen by the Department of Public Welfare. The PTA believes the companies should be permitted to recover the additional costs incurred in implementing this addition. PTA asserts such recovery could be through the exogenous event factor recognized in the companies' price cap formula.

Although there are approximately 500,000 students in Pennsylvania who currently qualify for free school lunches, this Commission does not know exactly how that translates into number of households in Pennsylvania that qualify. Further, it is likely that if one or more children in a household are receiving their school lunches at no cost, that household's income is below 135% FPG and that household receives social assistance in the form of food stamps, LIHEAP, Medicaid, TANF, SSI, or some other approved program.¹⁵ Therefore, since there is likely an overlap of program participation, the administrative costs incurred by the companies as a result of the addition of NSL do not seem on the surface to be that overly burdensome as many households can already qualify with the DPW database check.

Any ILEC can of course petition for recovery through price stability mechanisms or a rate increase, but would have to be able to demonstrate how this additional cost qualifies as an exogenous event within the meaning of its Chapter 30 plan. Further, we recognize there is as of yet no national database with household information regarding

¹⁵ In order to qualify for participation in the National School Lunch Program's free lunch program, a household's income cannot exceed 130% multiplied by the Federal Income Poverty Guidelines for the year 2005. *United States Department of Agriculture's Notice of Child Nutrition Programs – Income Guidelines*, 70 Fed. Reg. 52, p. 13161, March 18, 2005.

the children qualifying and participating in the National School Lunch free lunch program. Thus, we are willing to accept as sufficient evidence of participation in the program, a copy of the letter from the program administrator to the household identifying the child's name and address and the year for which the child qualifies. The address would have to match the address of the household requesting the Lifeline/Link-Up credit. There need not be separate verification through the Pennsylvania Department of Education or a national database at this time.

Finally, PTA comments that it does not oppose changing the language of the *Global Order* from "and" to "or" provided that those customers applying for Lifeline service pursuant to the income criteria bear responsibility for documentation of their income. PTA claims that income-based eligibility cannot be verified through any state-maintained database. The applicants' eligibility, therefore, must be confirmed by the customers themselves through verified forms detailing their income. According to the PTA, ETCs do not have the resources or inclination to continuously follow-up with customers enrolled in Lifeline, and requiring ETCs to do so would cause unreasonable administrative burden. PTA avers that any obligation for providing or updating the relevant information in a timely manner should be borne by the customers themselves. In order to deter fraud, PTA argues that customers seeking to enroll on the basis of income alone should be required to submit their income information using an independently verified format, such as a state or federal income tax return.

Currently, Verizon uses the Pennsylvania Department of Revenue (DOR) to separately check if the customer's income meets the 150% FPG standard if the customer first is not found to be on one of the qualifying social assistance programs according to the Department of Public Welfare's (DPW) database. The DOR charges \$5.00 per inquiry as it is a manual task and is not automated. DOR reports that in 2003 there were approximately 2900 inquiries, dropping to roughly 2000 in 2004, and in 2005, so far there have been 260 inquiries. Of these statistics, more than half of the inquiries are from

Verizon. So, the expense may likely be no more than \$10,000 - \$15,000 per year for Verizon, and for the other ETCs, probably substantially less. This Commission finds that the companies ought to use the DPW's database first to establish if there is acceptable social assistance program participation. If the household qualifies, then no further investigation or verification need be done. The household qualifies based on program participation or income verification. If the household does not appear to be enrolled in one of the approved social assistance programs, then 135% FPG income or less may be verified through either copies of written state or federal income tax returns for the prior year, or the carrier may contact DOR and pay the nominal fee to have the customer's household's income verified. We agree with PTA that self-certification without some form of reasonable independent verification is suspect for fraudulent abuse and will not be acceptable in Pennsylvania as a means for qualifying for our Lifeline/Link-Up programs.

Finally, PTA asserts that it does not oppose the Commission's proposed annual recertification requirement as long as no additional recertification obligations exceed those put in place by the FCC. We agree with the PTA regarding this issue, and are satisfied that the statistically valid sampling method imposed by the FCC is sufficient and will be adopted here in Pennsylvania, with the exception that the FCC has a deadline of June 22, 2005 for the sampling to be complete, and we will offer jurisdictional LECs an additional six months until December 31, 2005 to submit their samples to the Universal Service Administration Company (USAC). The sample may be verified through DPW, DOR or LIHEAP's separate program.

Verizon's Comments

Verizon Pennsylvania Inc. and Verizon North Inc. (collectively "Verizon") commented first that the Commission should permit at least the incremental costs of administering the expanded Lifeline 135 program to be recovered by Verizon and other ETCs. Verizon predicts that the proposed changes in the Tentative Order will likely

result in tens of thousands of Verizon customers in the 135% and under group applying for Lifeline service, which will likely exponentially increase Verizon's costs for the Department of Revenue's certification of applicants' income eligibility based on tax returns as well as Verizon's internal administrative costs for the manual handling of applications. Accordingly, Verizon requests we allow Verizon and other ETCs to track and recover at least the additional administrative costs incurred in connection with the Lifeline programs. Verizon requests that monies set aside for Lifeline purposes from the 2004/2005 Price Change Opportunity should be available to offset the additional administrative costs.

* It is premature to estimate how much more administrative costs Verizon and the other ETCs will incur as a result of the impact of Act 183, which eliminated the restriction on vertical services from the prior Lifeline 150 program, and other proposed changes outlined in our Tentative Order. Currently, Verizon does not do a cross-check on income even though the current *Global Order* says "150% FPG income and participation in an approved social assistance program." Verizon infers that the customers' income must be at or less than 150% FPG for him or her to be receiving such social assistance. This is logical and it saves Verizon the unnecessary cost of a separate \$5 fee per inquiry from DOR. If the customer is listed as an approved social assistance program participant, the customer is accepted into the Lifeline/Link-Up programs. If the customer is not listed as a social assistance program participant, Verizon searches for LIHEAP qualification, and if that doesn't confirm eligibility, Verizon inquires at the DPW. The DPW inquiry does not cost Verizon anything, and DPW has automated its database. The search is quick, efficient and not costly. DOR costs \$5 per inquiry because it involves a manual search on the part of DOR employees and DOR has no plans to automate its system especially since the number of inquiries has been decreasing over the years. The ETCs are permitted to track costs associated with administering the Lifeline programs, but we are not prepared at this point to allocate any 2004/2005 PCO monies towards covering any additional administrative costs for Verizon. Verizon may

make this type of request in a future PCO filing if it has evidence of substantial additional administrative costs in implementing the new program.

Second, Verizon argues that Lifeline eligibility should not be expanded to include the National School Lunch Program as a criterion until compliance with the criterion is verifiable. We will work with the Pennsylvania Department of Education to determine if a state-wide data base can be made available to the phone carriers for independent verification. However, we are satisfied that at this time, a written document showing the name of the child, his or her address, and the year for which he/she qualifies for free school lunches is sufficient to qualify for the Lifeline/Link Up credit as long as the address matches the household address of the customer seeking the credit.

Finally, Verizon argues that the implementation period for the Lifeline 135 eligibility changes should be longer than 30 days. Verizon argues the FCC provided default states a full year after the date its Lifeline Order was published in the Federal Register to implement the same eligibility changes as the Commission proposes to make final here. Verizon requests a 6-month delay to allow Verizon and other ETCs needed time to gear up to handle the expected heavy volume of additional Lifeline applicants and time to get a separate National School Free Lunch program verification system set up. Six months delay in implementation is a little long given that LECs have been on notice of possible changes since the FCC entered its April 29, 2004 Lifeline Order, and the Commission subsequently entered its Tentative Order in March, 2005, adopting the federal default program requirements. We will grant the ETCs four months from the date of entry of this Order to begin implementation of the new eligibility standards for Lifeline/Link-Up programs in Pennsylvania. Four months is sufficient to draft tariff supplements, form applications for the Lifeline/Link-Up programs, and brochures. Further, the LECs have until December 31, 2005, to do the verification of existing customers through sampling. We will not delay implementation pending the establishment of an independent National School Lunch free lunch program verification

system since we do not know definitely when that will occur, and are not immediately requiring independent verification of customer documentation of participation in the National School Lunch free lunch program.

OCA's Comments

OCA filed comments in support of the Tentative Order. OCA supports adding the National School Lunch free lunch program for the same reasons as the FCC gave in its *Lifeline Order*.

The Impact of Act 183

Section 3019(f) (1) requires all ETCs¹⁶ to provide Lifeline service to all eligible customers. The Commission's *Global Order* required all LECs (including non-ETCs) to file Lifeline tariffs and provide this service to eligible customers. The current pool of ETCs consists of all 37 ILECs and three CLECs (MCI Metro Access Transmission Services, Service Electric Telephone, Inc., and RCN Telecom Services of Pa., Inc.) and two wireless companies (Nextel Partners, Inc. and Sprint PCS). In accordance with Section 3019(f) (1), CLECs that are not ETCs are no longer required to provide Lifeline service. The FCC does not permit pure CLEC resellers to seek ETC status. However, these companies are permitted to offer Lifeline by purchasing a discounted Lifeline service from an ILEC such as Verizon. CLECs that are facilities-based may seek ETC status from this Commission. Non-ETC CLECs¹⁷ reported that 587 of their customers received Lifeline 150 service in 2003. As of December 31, 2003 the non-ETC CLECs had 489 Lifeline customers still enrolled in the Lifeline 150 program. The majority of

¹⁶ Act 183 appears to apply only to ETCs. We interpret Chapter 30, specifically Section 3019 to preclude the Commission from continuing to require non-ETC LECs to provide Lifeline/Link-Up programs because the legislature used the specific term, "ETCs" instead of "LECs." Therefore, the Commission may reasonably infer using statutory interpretation principles that the use of this explicit term means to the exclusion of all non-ETC LECs.

¹⁷ These numbers are based on the 2003 Annual Lifeline Tracking Reports submitted by the following companies: Comcast Phone of Pennsylvania, LLC, CEI Networks, CTSI LLC, IDT Corporation, Penn Telecom, Vartec Telecom, Inc., and Z-Tel Communications Inc.

these Lifeline customers were divided between two large CLECs, Comcast (329) and CTSI (140). The remaining 20 Lifeline customers were split among four smaller CLECs

The Commission encourages all CLECs to continue offering Lifeline and Link-Up services and to revise their Lifeline offering to comply with the expanded program set forth in this Order. As per the *Global Order*, Verizon will continue to provide CLEC resellers discounted rates for Lifeline services. This means that CLEC resellers may continue to provide Lifeline and Link-Up services. The Commission also encourages facilities-based CLECs to seek ETC status so they may provide Lifeline and Link-Up services and be reimbursed from the federal universal service fund. CLECs that choose to remove Lifeline and/or Link-Up provisions from their tariffs must provide their customers with notice. This notice will advise customers that the CLEC will no longer offer Lifeline or Link-Up service. In addition, the notice must provide customers with details on how to migrate their local service to an ETC LEC operating in the same area.

Companies' outreach efforts have generally been limited to sending out an annual bill insert, providing information in their directories, and in some cases, developing their own Lifeline brochures. Generally, Act 183 directs ETCs to expand their outreach efforts. Section 3019(f)(4) states that ETCs shall inform existing customers of the availability of Lifeline service twice annually by bill insert or message. Under Section 3019(f)(3) whenever a prospective customer seeks to subscribe to local exchange telecommunications service from an ETC, the carrier shall explicitly advise the customer of the availability of Lifeline service and shall make reasonable efforts where appropriate to determine whether the customer qualifies for such service and, if so, whether the customer wishes to subscribe to the service. Automatic notification is also discussed in Act 183. Section 3019(f)(5), states that the DPW shall automatically notify people about Lifeline service when they enroll for qualifying low-income programs administered by DPW.

Pennsylvania's current Lifeline 150 program restricts the purchase of vertical services to one service. Under Section 3019(f)(2) of Act 183, "[a]ll eligible telecommunications customers who subscribe to Lifeline service shall be permitted to subscribe to any number of other eligible telecommunications carrier telecommunications services at the tariffed rates for such services." Therefore, the prior restriction to one vertical service is now lifted, and there are no restrictions on the number of vertical services a Lifeline customer can choose.

Default vs. Non-Default State

At the time the *Global Order* was entered in September 1999, the Commission determined Pennsylvania was a "default" state based on the language then present in 47 C.F.R. §54.409 of the FCC's regulations. A non-default State mandates its own Lifeline/Link-Up programs and there are contributions other than federal universal service fund contributions being made toward the Lifeline/Link-Up credit. The significance of being a non-default state is that the Commission or the state legislature can establish rules specific to Pennsylvania to address any issues that may be unique to the Commonwealth. Whereas, a default state does not mandate Lifeline/Link-Up programs; thus, carriers operating in default states are required to follow the FCC's regulations and the Lifeline/ Link-Up eligibility requirements are directed by the FCC. In 1999, Section 54.409(b) stated:

To qualify to receive Lifeline in states that do not provide state Lifeline support, a consumer must participate in one of the following programs: Medicaid; food stamps; Supplemental Security Income; federal public housing assistance; or Low-Income Home Energy Assistance Program.

Now, the same Section 54.409(b) states:

To qualify to receive Lifeline service in a state that does not mandate state Lifeline support, a consumer must participate in one of the following federal assistance programs: Medicaid; food stamps; Supplemental Security Income; federal public housing assistance; and Low-Income Home Energy Assistance program.

In 1999, we viewed our state as a default state for the Lifeline 150 program because Pennsylvania did not provide any funding for the program and we did not require LECs to provide additional support for this program. The Commission viewed the Lifeline 150 as a separate program that would be totally funded by federal support. At that time, we did not believe that contributions from BA-PA for its Lifeline 100 program would be viewed by the FCC as state contribution for the Lifeline 150 program. Therefore, Lifeline 150 customers could not qualify based on income alone and would have to participate in qualifying assistance programs.

The companies also viewed Pennsylvania as a default state in 1999 as evidenced in the Replies of PTA, BA-PA, and GTE North (now known as Verizon North) to the exceptions of OCA regarding these three Lifeline Compliance Tariffs filed on or about November 30, 1999. At that time BA-PA stated,

The Commission's requirement that Lifeline recipients participate in one of the enumerated programs is completely consistent with the FCC's requirements for receiving federal universal service support for eligible Lifeline customers. . . . The OCA's interpretation – that Lifeline eligibility can be met through income alone - is flatly inconsistent with the FCC's regulations, and could jeopardize BA-PA's ability to obtain federal universal service fund reimbursement for the Lifeline 150 program.¹⁸

Further evidence that BA-PA once viewed Pennsylvania as a default state was their petition to the FCC for a waiver of one of FCC's rule Section 54.409(b) to permit BA-PA to use Pennsylvania Department of Public Welfare (DPW) database to verify the eligibility of Lifeline subscribers.¹⁹ This petition was granted by the FCC on December 27, 2000. In its order approving the petition, the FCC stated:

¹⁸ *Reply of Bell Atlantic – Pennsylvania To Exceptions of the Office of Consumer Advocate to Lifeline Compliance Tariff*, June 12, 2000, pp. 3-4.

¹⁹ *See Bell Atlantic-Pennsylvania, Inc., Petition for Waiver of Section 54.409(b) of the Commission's rules and Regulations*, filed December 22, 1999.

Option 2 [Lifeline 150] expands eligibility for support to all subscribers with incomes at or below 150% of the federal poverty level and permits those customers to add vertical services. Because the program is funded entirely from federal support, Commission rules require Bell Atlantic to obtain written certifications of eligibility from subscribers to Lifeline Option 2.

Bell Atlantic seeks a waiver of the written certification requirement for subscribers of the Lifeline Option 2 who are listed in the Pennsylvania DPW database. It asks that, given its four years of successful experience with the DPW database, it be allowed to continue to rely on that database when the database indicates that a customer is eligible for Lifeline Option 2 [Lifeline 150]. Bell Atlantic agrees that if its waiver request is granted, it will continue to require the written certification specified in Section 54.409(b) of the rules where consumers qualify for the program based on their enrollment in the federal public housing assistance or Low-Income Home Energy Assistance programs, because data about participation in those programs is not contained in the DPW database.

We find that Bell Atlantic has demonstrated that good cause exists to waive section 54.409(b) of the Commission's rules.²⁰

However, despite the prior FCC order, Pennsylvania was not listed as a default state in the FCC's Appendix G of the *FCC Lifeline Order*. Appendix G listed 16 states that are considered to be default states because these states did not mandate their own Lifeline/Link-Up programs. Arguably then, we are a non-default state. Commission staff was told by the FCC that Appendix G is not necessarily up to date or accurate, but at the same time, there was no dollar contribution amount threshold requirement before a state could be classified as non-default. In Pennsylvania, only Verizon North and Verizon PA are required to provide support to the Lifeline program (Lifeline 100 only). Because Verizon is mandated to contribute to its Lifeline programs Pennsylvania qualifies as a "non-default" state according to the FCC rules. None of the other LECs who offer Lifeline are required to provide support for this program. Still, this seems to be enough

to now satisfy the FCC's definition of a non-default state. Pennsylvania mandates support for a Lifeline program and contributions other than Federal monies are being made. Further, a representative from the Universal Service Administration Company (USAC) represented that we were a non-default state and OCA as well as the LECs participating in staff's Lifeline survey all agreed that Pennsylvania is a non-default state.

Pennsylvania is a "state that mandates state Lifeline support" based on the support provided by BA-PA for the Verizon Lifeline 100 program. Universal service goals are furthered even though the state Lifeline support does not apply to all Pennsylvania Lifeline programs. Thus, the Commission has some flexibility pursuant to Section 54.409(a) of the FCC's Lifeline regulations to establish eligibility criteria so long as they are "narrowly targeted qualification criteria that are based solely on income or factors directly related to income." 47 C.F.R. §54.409(a). As the FCC explained, this flexibility allows states such as Pennsylvania "to consider federal and state-specific public assistance programs with high rates of participation among low-income consumers in the state." *FCC Lifeline Order* par. 5.

Lifeline Program Take Rates

Consumer advocates, staff, and members of the General Assembly²¹ have all expressed concern about the low levels of participation in Pennsylvania's Lifeline programs. As shown on the chart below, Pennsylvania's customer participation has grown since 2000. Even so, the penetration rates for these programs have been disappointing given the number of eligible consumers and the amount of money Pennsylvania ratepayers²² contribute to the federal USF. According to the Office of Consumer Advocate and the DPW, there are over a million people who participate in Medicaid living in Pennsylvania. For August 2004, the DPW reports the unduplicated

²⁰ *In the Matter of Federal-State Joint Board On Universal Service, Bell Atlantic Pennsylvania, Inc., Petition for Waiver of Section 54.409(b) of the Commission's Rules and Regulations*, CC Docket No. 96-45, December 27, 2000, pp. 2-3.

²¹ House Bill 2571, Introduced by State Representative Veon.

number of persons eligible for Medical Assistance totaled 1,713,023. *Medical Assistance Eligibility Statistics, August 2004.*²³

**End-of-Year Lifeline Enrollment 2000-2003
Major Telephone Companies²⁴**

Company	2000	2001	2002	2003
ALLTEL	1,356	3,388	3,902	4,106
Comcast	NA	NA	NA	329
Commonwealth	694	997	1,195	1,485
MCI Local	45	163	434	555
United	1,083	1,334	1,563	1,913
Verizon North*	3,070	3,794	6,890	6,763
Verizon PA*	46,459	68,630	95,969	118,987
Total *	52,707	78,306	109,953	134,138

**Includes Lifeline and Lifeline 150*

N/A not available

Adding the non-major LECs' end-of-year enrollment figures to the major LECs' subtotal of 134,138 yields a total Lifeline enrollment total of about 137,000. Assuming a maximum of 1.7 million households eligible, this calculates the take rate to be possibly as low as 8%.

According to the FCC, Pennsylvania's take rate is 16.2% compared to the nationwide take rate of 33.7%.²⁵ We have seen an enrollment increase since the *Global Order* from approximately 35,000 Lifeline customers in September 1999 to 137,000 as of December 31, 2003, but we are still very short of enrolling all consumers who could benefit from the Lifeline credit. If other states act to add the new income-based eligibility criteria of 135% of FPG, to remain unchanged in our policy may result in Pennsylvania incurring increased federal USF responsibility (as the size of the Fund increases) with no improvement in the percentage returned to the Commonwealth in terms of federal USF low-income support.

²² Some LECs and IXC's collect federal universal service funding as a line item on their monthly bills.

²³ While the Commission is not completely certain how 1.7 million Medicaid participants translates into number of households which participate in Medicaid, we believe it is likely there are significantly more than 137,000 households that would be considered Medicaid-participating households.

²⁴ These are LECs with 50,000 or more residential customers. Comcast does not have ETC status.

²⁵ FCC Report, April 29, 2004, FCC 04-87, Table 1.A, Baseline Lifeline Subscription Information (Year 2002).

Pennsylvania is a Net-Contributor to the Universal Service Fund

We are concerned that in 2003, Pennsylvania received \$13.6 million in low-income support yet our ratepayers contributed over \$126.4 million to all four federal USF programs²⁶ of which approximately \$24 million went towards the low-income federal USF.²⁷ Thus, Pennsylvania is a net-contributor regarding the low-income portion of the federal USF. Last year approximately \$10 million dollars collected here through federal USF charges were not used by our Lifeline customers, but rather were used by other states' low-income programs. This disparity will only widen as a result of the recent FCC rules changes unless the Commission follows the FCC's lead and broadens its Lifeline 150 eligibility criteria in addition to removing the vertical services restriction barrier to enrollment. The Commission recognizes that in a pooled fund, such as the federal USF, not all states can be net recipients. However, increasing Pennsylvania's participation levels will allow more dollars to remain within the state.

Examination of Other States

An examination of other states similar to Pennsylvania shows that Florida's Public Service Commission recently recognized that even though it is not a default state, "it is in Florida's best interest to also adopt this criterion." *In re: Adoption of the National School Lunch Program and an income-based criterion at or below 135% of the Federal Poverty Guidelines as eligibility criteria for the Lifeline and Link-Up programs*, Notice of Proposed Agency Action Order Expanding Lifeline Eligibility at 4, Docket No. 040604-TL (Fl.PSC Aug. 10, 2004) (Florida PSC Order). As the Florida PSC stated, "[w]e are concerned that if we do not adopt the 135% criterion for all ETCs, it could result in

²⁶ The four federal USF programs include: (1) low-income; (2) schools and libraries; (3) rural health care; and (4) high-cost support.

²⁷ FCC Federal-State Joint Board *Universal Service Monitoring Report*, CC Docket No. 98-202, Table No. 2.4 (rel. Oct. 2004). This table states Pennsylvania received \$13.6 million in low income support. The Commission estimates Pennsylvania ratepayers contributed \$24 million based on the most recent data staff could obtain, from the Universal Service Administrative Company Annual Report of 2002 based upon 2001 data. The Commission also notes that Pennsylvania received a total of \$126,408,000 from the USF in 2001 for the four programs including: 1)

compounding Florida's status as a net contributor into the USF Low Income Support Mechanism and keep some consumers that would otherwise be eligible out of the program." Florida PSC Order at 4-5. Like Pennsylvania, Florida's LECs already used TANF as an eligibility criterion. Florida PAA Order at 1.

In 2003, Kansas (another non-default state) decided to enroll low-income consumers with incomes at or below 150% of FPG. Kansas also enrolls consumers in Lifeline based on eligibility for the Free School Lunch Program. *See In Re: Investigation into the Lifeline Service Program and Methods to Ensure Awareness of the Program*, Docket No. 00-GIMT-910-GIT, Order (KS, SCC, Jan. 21, 2003).

As stated previously, we are still a long way from enrolling all consumers who could benefit from the Lifeline credit, and failing to modify our policy may result in Pennsylvania incurring more of the federal USF funding liability as other states act to add the new income-based eligibility criteria of 135% of FPG. The FCC has already stated that it has weighed the impact on the federal USF if all states added the new income-based eligibility criteria of 135% of FPG and found that the benefits of "adding new low-income subscribers and retaining existing subscribers outweigh the potential increased costs." *FCC Lifeline Order*, par. 12.

Even though many LECs said that they were unclear whether enrollment in Lifeline service would increase should Pennsylvania make these changes to its Lifeline program, we may logically deduce from the factual information that is currently available to the Commission that the proposed changes would not result in lowered enrollment, and could, in fact, result in significant increases in enrollment.

low-income, 2) high cost support; 3) Schools and libraries; and 4) rural health care. However, our ratepayers consistently year after year contribute more than what is returned through the USF.

Many consumers in Pennsylvania could be benefiting from the Lifeline/Link-Up credit but are not because they do not qualify under the current 2-prong test, or possibly because of lack of awareness of the availability of the program. The Commission believes it is likely that the addition of household participation in NSL as a Lifeline eligibility criterion may increase Lifeline enrollment in Pennsylvania even though the FCC noted that statistics are not available that translate into the number of NSL recipients into a household count. Therefore, the Commission believes it should expand the Lifeline 150 program to include NSL and change the 150% “and” requirement to 135% “or.” We would lose no current enrolled customers and this change could boost enrollment figures. Moreover, we would be on more even footing with other states and imposing standards consistent with those in the federal regime. While some additional administrative costs may be incurred by LECs in order to implement revisions allowing NSL and income as eligibility factors, the benefits to Pennsylvanians outweigh this burden.

Increasing Subscriber Line Charges

The federal USF low-income program is designed to help low-income consumers’ bills remain affordable as the FCC continues to raise the subscriber line charge (SLC), which currently is capped at \$6.50 per line on all monthly phone bills. If our program eligibility is more restrictive than the federal rules, and the SLC continues to increase, we may be doing a disservice to Pennsylvanian low-income ratepayers.

Notification Requirements

Section 3019(f)(4) requires ETCs to inform existing customers of the availability of Lifeline service twice annually by bill insert or message. The notice must be conspicuous and must provide appropriate eligibility, benefits and contact information for customers who wish to learn of the Lifeline service subscription requirements. 66 Pa. C.S. § 3019(f)(4). In keeping with tradition, we will direct our Bureau of Consumer Services to work with the Pennsylvania Telephone Association to develop biannual

Lifeline bill inserts or bill messages that are written consistent with the Commission's plain language policy guidelines at 52 Pa.Code § 69.251.

Conclusion

In the *Global Order*, the Commission recognized that eligibility criteria identified by the FCC in 47 C.F.R. Section 54.409(b) established, *prima facie*, income-based eligibility. Thus, in the *Global Order* and subsequent orders approving compliance filings, the Commission did not limit eligibility criteria strictly to those set forth in Section 54.409(b) of the FCC's Lifeline regulations. Instead, the Commission required LECs "to broaden eligibility requirements" by adding Temporary Assistance for Needy Families (TANF), General Assistance (GA), and State Blind Pension (Verizon only) to the FCC's list of eligible social assistance programs. *In re Nextlink, Inc.*, 93 Pa.P.U.C. 172, 244 (Sept. 30, 1999). *See also, Pa. PUC v. Pa. Telephone Ass'n*, Docket No. P-00991648, P-00991649, Order at 2, 5 (Aug. 17, 2000) (*PTA Lifeline Order*). *Pa.P.U.C v. Bell Atlantic-Pennsylvania, Inc.* Docket No. P-00991648, P-00991649) (*BA-PA Lifeline Order*).

The Commission shall again broaden, on a prospective basis, the Lifeline eligibility criteria to benefit low-income Pennsylvania telephone consumers. As the FCC stated in its April 2004 Order, "we believe there is more we can do to make telephone service affordable for more low-income households." *FCC Lifeline Order*. In Pennsylvania 1,842,724 children were enrolled in the National School Lunch Program as of October, 2004. Of that number, 498,604 were eligible to participate in the NSL free lunch program.²⁸ Upon adoption of the NSL program, we will coordinate with the Pennsylvania Department of Education, and Department of Public Welfare, and other organizations to incorporate the program into Pennsylvania's current Lifeline and Link-Up outreach initiatives. Adding the NSL program will benefit Pennsylvania by increasing

²⁸ *National School Lunch Program Approved Free and Reduced Applications, Building Data Report for October 2004 Children Eligible*, October, 2004, Sandy Souder, Administrator, National School Lunch Program.

the number of eligible consumers for the Lifeline and Link-Up programs. We hereby adopt the NSL program for purposes of determining eligibility in the Lifeline and Link-Up programs in Pennsylvania.

For ease in comparison, the following is a table comparison between the old and new FCC Lifeline eligible requirements, and the Commission’s current Lifeline 150 program requirements and the new eligibility requirements established under this Final Order.

Telephone Universal Service Program Eligibility Requirements			
<i>Old FCC Lifeline Program</i>	<i>PA PUC Lifeline 150 Program</i>	<i>New FCC</i>	<i>New PaPUC Order and Act 183</i>
Medicaid	Medicaid	Medicaid	Medicaid
Federal Public Housing Assistance (Section 8)	Federal Public Housing Assistance (Section 8)	Federal Public Housing Assistance (Section 8)	Federal Public Housing Assistance (Section 8)
Low-Income Home Energy Assistance Program (LIHEAP)	Low-Income Home Energy Assistance Program (LIHEAP)	Low-Income Home Energy Assistance Program (LIHEAP)	Low-Income Home Energy Assistance Program (LIHEAP)
Supplemental Security Income (SSI)	Supplemental Security Income (SSI)	Supplemental Security Income (SSI)	Supplemental Security Income (SSI)
Food Stamps	Food Stamps	Food Stamps	Food Stamps
	Temporary Assistance to Needy Families (TANF)	Temporary Assistance to Needy Families (TANF)	Temporary Assistance to Needy Families (TANF)
	State Blind Pension*		State Blind Pension*
	General Assistance		General Assistance
		National School Lunch Program	National School Lunch Program
No separate income requirement	AND Income at or below 150% of the Federal Poverty Guidelines	OR income at or below 135% of the Federal Poverty Guidelines	OR income at or below 135% of the Federal Poverty Guidelines
No restriction on vertical services	Only allowed one vertical service	No restriction on vertical services	No restriction on vertical services

* Only Verizon North and Verizon PA.

Lifeline enrollment in Pennsylvania will tend to increase if the Commission requires all Pennsylvania LECs to modify their existing Lifeline 150 programs in two ways:

(1) Change the current eligibility limitation from the conjunctive “and income at or below 150% of FPG” to a new disjunctive eligibility criterion so Lifeline eligibility may be determined based on participation in a public benefit program “or income at or below 135% FPG.”

(2) Add participation in the National School Lunch free lunch program (NSL) as an additional program-based eligibility criterion.

While these changes may increase administrative costs to the ETCs administering the programs, any such increase is outweighed by the potential benefits in terms of increased enrollment and in securing a greater portion of the federal USF benefits that Pennsylvania consumers are already paying for. Moreover, the proposal is consistent with FCC standards. Accordingly, the Commission will expand the eligibility criteria to include the National School Lunch Free Lunch program (NSL), and a separate income-based eligibility criterion of 135% of FPG.

THEREFORE,

IT IS ORDERED:

1. That the current income limitation in the Lifeline 150 programs of “and income at or below 150% of Federal Poverty Guidelines” is hereby amended to a new separate eligibility criterion so Lifeline eligibility may be determined based on participation in a public benefit program “or income at or below 135% of Federal Poverty Guidelines.”

2. That we hereby add the National School Lunch free lunch program (NSL) to the list of qualifying social assistance programs for purposes of determining eligibility in the Lifeline and Link-Up programs in Pennsylvania.

3. That Commission Staff continue to explore a means of independent state or federal verification of household participation in the National School Lunch free lunch program.

4. That ETCs accept written documentation of eligibility and participation in the National School Lunch free lunch program in Pennsylvania for the current year within which the customer is applying for the Lifeline/Link-Up program.

5. In accordance with 66 Pa. C.S. § 3019(f)(1), ETCs are directed to file tariff revisions on or before four months from the date of entry of this Order to: (1) change the current income limitation in the Lifeline 150 programs of “and income at or below 150% of Federal Poverty Guidelines” to a new separate eligibility criterion so Lifeline eligibility may be determined based on participation in a public benefit program “or income at or below 135% of Federal Poverty Guidelines;” and (2) add the National School Lunch free lunch program (NSL) for purposes of determining eligibility in the Lifeline and Link-Up programs in Pennsylvania.

6. That in accordance with 66 Pa. C.S. § 3019(f)(2), all ETCs shall permit customers who subscribe to Lifeline service to subscribe to any number of other telecommunications services including vertical services at the tariffed rates for such services.

7. That in accordance with 66 Pa. C.S. § 3019(f)(3), each ETC in the Commonwealth shall explicitly advise new service applicants of the availability of Lifeline service and shall make reasonable efforts where appropriate to determine whether the applicant qualifies for such service and, if so, whether the applicant wishes to subscribe to the service.

8. That the Bureau of Consumer Services work with the Pennsylvania Telephone Association to develop biannual Lifeline bill inserts or bill messages that are written consistent with the Commission's plain language policy guidelines at 52 Pa. Code § 69.251.

9. That LECs offering Lifeline and Link Up services are directed to recertify their Lifeline and Link-Up customers at least annually in accordance with FCC procedures established at 47 C.F.R. § 54.410 (relating to certification and verification of consumer qualifications for Lifeline) and § 54.416 (relating to verification of qualifications for Link-Up).

10. That we hereby adopt the statistically valid random sampling method established by the Federal Communications Commission at 47 C.F.R. §54.410©(ii) as a proper means of continued verification of eligibility for Lifeline and Link-Up and that LECs have until December 31, 2005, to submit the results of their samples to the Universal Service Administration Company, and this verification shall occur annually by December 31 of each year going forward.

11. That any non-ETC CLECs that choose to remove Lifeline and/or Link-Up provisions from their tariffs shall be required to provide their customers with 60 days notice of the type described herein, which has been reviewed and pre-approved by the Commission's Bureau of Consumer Services.

12. That all LECs operating in Pennsylvania, the Pennsylvania Telephone Association, Nextel Partners, Inc., Sprint PCS, Office of Consumer Advocate, Department of Public Welfare, Pennsylvania Utility Law Project, Department of Revenue, Department of Education and AARP shall be served with a copy of this Final Order.

13. That a copy of this Final Order shall be published in the *Pennsylvania Bulletin*.

14. That the deadline for implementation of the new eligibility standards is 120 days from the date of entry of this Final Order.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 19, 2005

ORDER ENTERED: May 23, 2005

Exhibit 9

Pennsylvania Access Rate Reforms (1999-2006)

Verizon PA - Access Rates

	<u>1999</u>	<u>2001</u>	<u>2004</u>	<u>2006</u>
Carrier Common Line/Carrier Charge (1)	\$ 0.005369	\$ 0.61	\$ 0.58	\$ 0.58
Local Switching - MTS, Per MOU				
Lineside BSA (originating)	\$ 0.014969	\$ 0.014969	\$ 0.014969	\$ 0.010331
Feature Group A (originating)	\$ 0.015630	\$ 0.015630	\$ 0.015630	\$ 0.010787
Feature Group A (terminating)	\$ 0.026716	\$ 0.026716	\$ 0.026716	\$ 0.018430
Trunkside BSA-950 Option (originating)	\$ 0.015501	\$ 0.015501	\$ 0.015501	\$ 0.010698
Feature Group B (originating)	\$ 0.015630	\$ 0.015630	\$ 0.015630	\$ 0.010787
Feature Group B (terminating)	\$ 0.018217	\$ 0.009000	\$ 0.009000	\$ 0.006212
Trunkside BSA-101XXXX Option (originating)	\$ 0.018091	\$ 0.018091	\$ 0.018091	\$ 0.012486
Feature Group D (orig. and term.)	\$ 0.018217	\$ 0.009000	\$ 0.009000	\$ 0.006212
End Office Trunk Ports				
Dedicated - Per Month, Per Trunk				\$ 12.00
Shared - Per MOU				\$ 0.001598
Tandem Switched Transport				
Tandem Switching - Per MOU	\$ 0.000983	\$ 0.000983	\$ 0.000983	\$ 0.000983
Tandem Transport - Per MOU	\$ 0.000195	\$ 0.000195	\$ 0.000195	\$ 0.000195
Tandem Transport - Per Mile, Per MOU	\$ 0.000045	\$ 0.000045	\$ 0.000045	\$ 0.000045
Dedicated Trunk Ports - Per Month, Per Trunk				\$ 12.00
Entrance Facility - Per Month (2)	\$ 210.00	\$ 210.00	\$ 210.00	\$ 210.00
Direct Trunk Transport - Per Month (3)	\$ 75.00	\$ 75.00	\$ 75.00	\$ 75.00
Direct Trunk Transport - Per Month, Per Mile (3)	\$ 25.00	\$ 25.00	\$ 25.00	\$ 25.00

(1) The rate shown for 1999 is for the Carrier Common Line Charge which was on a per access minute basis. The rates for the other years are for the Carrier Charge which is a monthly rate per access line/trunk.

(2) The rate is for DS1 in Cell 1. There has been no rate changes in any of the categories for this element.

(3) The rates are for DS1. There has been no rate changes in any of the categories for this element.

Pennsylvania Access Rate Reforms (1999-2006)

Commonwealth Tel Co. - Access Rates

	1999(1)	2001	2004	2006
Carrier Line Access Service				
per access line, per month	\$0.04330	\$7.00	\$7.00	\$7.00
(1) per access minute basis				
	1999	2001	2004	2006
Local Transport Premium Access				
Enterance Facility - Per termination (Voice Grade)				
Two Wire	\$35.09	\$35.09	\$35.09	\$35.09
Four Wire	\$56.140	\$56.140	\$56.140	\$56.140
Direct Trunked Transport - Per Mile (Voice Grade)	\$2.50	\$2.50	\$2.50	\$2.50
Direct Trunked Termination - Per Termination (Voice Grade)	\$25.11	\$25.11	\$25.11	\$25.11
Tandem Switched Transport - Switched Facility - Per Access M	\$ 0.002670	\$ 0.002670	\$ 0.002670	\$ 0.002670
Tandem Switched Termination - Per Access Minute Per Termin	\$ 0.001316	\$ 0.001316	\$ 0.001316	\$ 0.001316
Tandem Switching - Per Access Minute Per Tandem	\$ 0.002763	\$ 0.002763	\$ 0.002763	\$ 0.002763
Transport Interconnection Charge - Per Access Minute	\$ 0.008242	\$ 0.008242	0.001096	0.001096
End Office				
Local Switching - Per Access Minute	\$ 0.025719	\$ 0.025719	\$ 0.025719	\$ 0.025719
Information Surcharge - Per 100 Access Minutes	\$ 0.017300	\$ 0.017300	\$ 0.017300	\$ 0.017300

Pennsylvania Access Rate Reforms (1999-2006)

Embarq PA - Access Rates

	1999(1)	2001(1)	2004(1)	2006
Carrier Line Access Service				
per access line, per month	\$0.032954	\$0.040732	\$ 0.041364	\$8.20
(1) per access minute basis				
	1999	2001	2004	2006
Local Transport Premium Access				
Entrance Facility - Per termination (Voice Grade)				
Two Wire		\$40.00	\$40.00	\$40.00
Four Wire		\$55.00	\$55.00	\$55.00
Direct Trunked Transport - Per Mile (Voice Grade)		\$0.000493	\$0.000490	\$0.000490
Direct Trunked Termination - Per Termination (Voice Grade)				
Tandem Switched Transport - Switched Facility - Per Access Minute		\$0.000111	\$ 0.000022	\$ 0.000022
Tandem Switched Termination - Per Access Minute Per Termination		\$0.000382	\$ 0.000449	\$ 0.000449
Tandem Switching - Per Access Minute Per Tandem		\$0.001651	\$ 0.001438	\$ 0.001438
Transport Interconnection Charge - Per Access Minute				
Residual Interconnection Charge - Per Access Minute				
End Office				
Local Switching - Per Access Minute	\$ 0.009291	\$0.016527	\$ 0.016527	0.003892(1)
Information Surcharge - Per Access Minutes	\$ -	\$ -	\$ -	\$ -

(1) Feature Group D Originating and terminating

Pennsylvania Access Rate Reforms (1999-2006)

Windstream PA - Access Rates

Carrier Common Line Charge	1999(1)	2001	2004	2006
Per Access Line, per month (1) per access minute basis	\$0.038172	\$ 7.00	\$ 4.88	\$ 4.88
	1999	2001	2004	2006
Local Transport Premium Access				
Enterance Facility - Per termination (Voice Grade)				
Two Wire	\$18.63	\$18.63	\$18.63	\$ 18.63
Four Wire	\$29.81	\$29.81	\$29.81	\$ 29.81
Direct Trunked Transport - Per Mile (Voice Grade)	\$0.92	\$0.92	\$0.92	\$ 0.92
Direct Trunked Termination - Per Termination (Voice Grade)	\$13.34	\$13.34	\$13.34	\$ 13.34
Tandem Switched Transport - Switched Facility - Per Access	\$0.000225	\$ 0.000225	\$ 0.000225	\$ 0.000225
Tandem Switched Termination - Per Access Minute Per Terr	\$0.000772	\$ 0.000772	\$ 0.000772	\$ 0.000772
Tandem Switching - Per Access Minute Per Tandem	\$0.000996	\$ 0.000996	\$ 0.000996	\$ 0.000996
Transport Interconnection Charge - Per Access Minute				
Residual Interconnection Charge - Per Access Minute	\$0.001518	\$ 0.001518	\$ 0.001518	\$ 0.001518
End Office				
Local Switching - Per Access Minute	\$0.008116	\$ 0.008116	\$ 0.008116	\$ 0.008116
Information Surcharge - Per Access Minutes	\$0.000630	\$ 0.000630	\$ 0.000630	\$ 0.000630

