

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Public Meeting held April 13, 2000

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice-Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Establishment of a Pennsylvania
Universal Service Fund

Docket No. M-00001337

Joint Petition of Nextlink Pennsylvania, Inc.;
Senator Vincent J. Fumo; Senator Roger Madigan;
Senator Mary Jo White; the city of Philadelphia;
The Pennsylvania Cable & Telecommunications
Association; RCN Telecommunications Services
of Pennsylvania, Inc.; Hyperion Telecommunications,
Inc.; ATX Telecommunications; CTSI, Inc.;
MCI WorldCom; and AT&T Communications of
Pennsylvania, Inc. for Adoption of Partial Settlement
Resolving Pending Telecommunications Issues

Docket No. P-00991648

Joint Petition of Bell Atlantic Pennsylvania, Inc.,
Conectiv Communications, Inc.; Network Access
Solutions; and the Rural Telephone Company Coalition
For Resolution of Global Telecommunications
Proceedings

Docket No. P-00991649

TENTATIVE ORDER

BY THE COMMISSION:

I. Procedural History

On March 24, 2000, the Frontier Communications of Breezewood, Inc. (“FC-Breezewood”), Frontier Communications of Canton, Inc. (“FC-Canton”), Frontier Communications of Pennsylvania, Inc. (“FC-PA”), Frontier Communications of Lakewood, Inc. (“FC-Lakewood), and Frontier Communications of Oswayo River, Inc. (“FC-Oswayo River”) (collectively “Frontier Companies”), the Office of Consumer Advocate (“OCA”) and AT&T Communications of Pennsylvania, Inc. (“AT&T”) (collectively referred to as the "Settling Parties") filed at the instant docket a Settlement Agreement ("Agreement" or “Settlement”) thereby seeking to resolve their differences regarding the Frontier Companies’ entitlement to reimbursement from the Universal Service Fund (“USF” or “Fund”).

By Order entered September 30, 1999 in the Global Proceeding,¹ this Commission endorsed the establishment of a Universal Service Fund for the purpose of reducing access and toll charges of the recipient incumbent local exchange carriers. Since the entry of the Commission’s Global Order, various interested parties have exchanged documents and met in order to implement the Universal Service Fund on an interim basis pending the adoption of regulations pursuant to a rulemaking at L-00000148 that would establish a Universal Service Fund for an initial 3-year period. The Rural Telephone Company Coalition

¹ Joint Petition of Nextlink Pennsylvania, Inc. et al. and Joint Petition of Bell Atlantic Pennsylvania, Inc. et al., Docket Nos. P-00991648 and P-00991649, Opinion and Order entered September 30, 1999, (“Global Order”).

("RTCC") has been instrumental in developing the calculations necessary to implement the Fund, as required by the PUC's Global Order.

During the course of that collaborative process, a disagreement arose between the Frontier Companies and AT&T relative to whether toll rate reductions from \$0.11 to \$0.09 per minute may be funded from the Universal Service Fund before increasing local residential basic rates up to a \$16.00 cap which was permitted by the Global Order.

Specifically, AT&T had filed a written objection on February 23, 2000 arguing that the revised RTCC USF calculations dated February 22, 2000, continued to erroneously include an amount of \$259,603 for the Frontier Companies' reduction of intraLATA toll from \$.11 to \$.09. AT&T argued this claim was unauthorized by the Commission and it should be omitted from the final calculation of the USF that is sized for purposes of collecting contributions from contributing companies including AT&T.

The Frontier Companies responded in writing to AT&T's written objection by arguing that the Commission's Global Order entered September 30, 1999, is unclear on this point, and not a basis for resolution. Frontier Companies argued that although the Commission permitted companies who have raised one-party residential rates up to \$10.83 per month to increase the service rate up to a \$16.00 cap, the Global Order contains no prohibition against alternatively recovering the money from the USF which is what the Frontier Companies intended to do.

The Office of Consumer Advocate (OCA) also filed a written response to AT&T's objection. OCA agreed with the Frontier Companies' position and argued that the Global Order did not compel local rate increases as the only means available to accomplish an intraLATA toll rate reduction to \$.09 per minute. The OCA argued that since the Frontier Companies would have a large local rate increase up to the \$16.00 cap, Frontier Companies should be permitted to recover revenues lost through intraLATA toll rate reduction to \$.09 from the Fund rather than from any increase in the companies' local rates.

The RTCC responded in writing that the issue was between the Frontier Companies and AT&T and the RTCC did not wish to enter the controversy. The RTCC's only concern was that it not be required to recalculate the USF calculation schedules prior to draft tariffs and final tariffs being offered for review. The RTCC requested that if the Frontier Companies were ordered to change their calculations, NECA would reduce the size of the USF by \$259,603 and the adjustment would not impact the other RTCC members fund receipts or their tariff rates.

At a meeting open to all of the Global parties held on March 8, 2000, AT&T, Frontier Companies, RTCC and OCA argued their respective positions, but ultimately indicated they wished to enter into settlement negotiations prior to a Commission ruling on this issue. On March 24, 2000, the Frontier Companies, the OCA and AT&T entered into and filed a Settlement of the outstanding issues in this proceeding as they relate to the

Frontier Companies. This Settlement Agreement is now ripe for a decision.

II. The Proposed Settlement Agreement

The substantive terms and conditions of this Settlement are as follows. First, the final calculations including Universal Service Fund disbursement and rate changes submitted by the RTCC on behalf of the recipient incumbent local exchange carriers on February 22, 2000, shall be submitted to the PUC for approval without revision, except for the treatment of the Frontier Companies' toll reduction from \$0.11 per minute to \$0.09 per minute as described below.

Second, the parties agree that the Frontier Companies' toll reduction from \$0.11 to \$0.09 combined with the net of the savings from ITORP and imputed CCL expense reductions and USF contributions results in a revenue shortfall of \$287,082 for the four companies whose toll rates are proposed to be modified.² The parties agree that this amount will be funded by a combination of a \$109,462 increase to residential basic local service rates, \$177,211 obtained from the Universal Service Fund and a \$409 decrease in the Frontier Companies' contribution due to a lower total Universal Service Fund.³

² The Commission notes that this figure is higher than the originally disputed \$259,603, but we will accept the change as the Settling Parties have agreed that the disputed amount is now \$287,082.

³ The amount of the Frontier Companies' receipts from the USF is adjusted based on the following steps that must occur to implement this Settlement Agreement. First, the additional adjustment to local rates column is frozen for all companies at the February 22, 2000 value reflected on the RTCC spreadsheets. Second, the local rate increases agreed to per this Settlement Agreement must be entered into the Local Rate Adjustment column for the Frontier Companies. Third, the result of Steps 1 and 2 is a reduction in Frontier Companies' receipts from the USF, which in turn will cause a reduction in the overall USF amount. Fourth, the reduction in the overall USF amount will reduce the contribution payments required of the RTCC members to achieve revenue neutrality. This Settlement Agreement

Third, in addition to monies distributed from the Fund for other purposes (e.g., for access reductions and the initial reduction in toll rates to \$.11), the Frontier Companies shall receive an additional \$177,620 (prior to total fund adjustments to implement this settlement) from the USF for the purpose of partially funding the reduction in toll rates from \$0.11 to \$0.09, to be distributed across the four (4) participating companies,⁴ as follows: FC-Breezewood, \$158; FC-Canton, \$14,022; FC-PA, \$143,500; and FC-Lakewood, \$19,531. Toll rate reductions equal to the monies received from the USF for that purpose shall become effective on the same date as the other recipient local exchange carriers' rate changes, which is currently scheduled for April 1, 2000.

Subject to Commission approval, the Settling Parties agree that Frontier Companies shall be permitted to increase residential local rates by \$0.43/month for FC-PA,⁵ \$0.46/month for FC-Breezewood, \$0.40/month FC-Canton and \$0.50/month for FC-Lakewood in order to offset that portion of the decrease in toll rates to \$.09 which is not obtained from the USF.

The Settlement provides that the Frontier Companies' toll rate reduction from \$0.11 to \$0.09 and all rate revisions to the Frontier Companies' local rates, as well as USF receipts related to the delayed reduction of three of the Frontier Companies' toll rates to \$0.09, will be implemented in conjunction with further rate revisions approved in

will result in a reduction to the USF total amount of \$119,240 and the Frontiers Companies will receive additional USF support in the amount of \$177,211.

⁴ FC-Oswayo River is in the Buffalo, New York LATA and does not provide any intrastate, intraLATA services. Hence, it is not participating in this aspect of the Universal Service Fund.

⁵ FC-PA equals \$0.43 (\$0.13 attributable to toll reduction to \$.11 plus \$0.30 attributable to further toll reductions to

the upcoming Frontier Companies' year 2000 rate rebalancing filing. The Frontier Companies' year 2000 rate rebalancing filing is to be filed on April 23, 2000, and become effective May 23, 2000. The Frontier Companies desire to reduce customer confusion by limiting the number of rate impacts to only one within a short period of time. The Settlement states that the Frontier Companies will coordinate the final reduction in toll rates to \$0.09 and the local rate impacts stipulated in Paragraph 4d of the Settlement with the year 2000 rate rebalancing under the Frontier Companies' Chapter 30 Access Settlement.⁶

The Settling Parties agree that so long as the year 2000 rate rebalancing changes, including the resulting rates, are in compliance with the Access Settlement and this Agreement, they have no objection thereto. The Frontier Companies agree that, as part of the year 2000 rebalancing, they will propose that the access reductions include lowering FC-PA's traffic sensitive rate elements by at least \$33,000.

The terms and conditions of toll rate change implementation to \$.09 by the other USF recipient companies except for Sprint/United is set forth in the RTCC's letter of March 10, 2000.⁷ The RTCC's letter states that the RTCC agrees not to make changes in

below \$.11).

⁶ The "Access Settlement" is a settlement agreement dated March 9, 1999, between the Frontier Companies, the Office of Trial Staff, the Office of Consumer Advocate and AT&T which reduces Frontier Companies' tariffed access rates. It is docketed at Frontier Communications of Breezewood, Inc., Docket No. R-00984414; Frontier Communications of Canton, Inc., Docket No. R-00984415; Frontier Communications of Pennsylvania, Inc., Docket No. R-00984411; Frontier Communications of Lakewood, Inc., Docket No. R-00984412; and Frontier Communications of Oswayo River, Inc., Docket No. R-00984413.

⁷ This Commission notes that Sprint/United is neither a signatory party to the Settlement nor did Sprint/United submit a letter regarding their position on the issue. Sprint/United is currently a recipient of the Fund.

their current tariff filings as a result of the Settlement Agreement. The RTCC did not make a commitment in its letter that no other member company other than the Frontier Companies pursuant to this Settlement Agreement will ever seek to obtain USF funding to finance any toll rate reduction from \$.11 to \$.09. In other words, the RTCC is not a signatory to the Settlement and has not expressly waived any future claim to utilize USF funds in order to further reduce their toll rates from \$0.11 to \$.09 before raising local residential basic phone rates up to the permitted \$16.00 cap provided for in the Global Order.⁸

The Settling Parties did agree that the use by the Frontier Companies of USF monies to reduce toll rates below \$0.11, and any PUC's order approving this Settlement Agreement, will not be cited nor considered precedent by any of the Settling Parties and/or any other current or potential recipient of the Fund in any dispute or proceeding concerning the Pennsylvania USF. The Settling Parties request that the PUC expressly set forth this restriction in its order approving this Settlement Agreement.

It was further agreed that the Frontier Companies will continue to implement the Access Settlement. The Frontier Companies, AT&T and the OCA agreed to consult before the April 23rd filing date of the 2001 and 2002 rebalancing filings scheduled under the Access Settlement. Issues to be discussed shall include, but are not limited to, further reductions to traffic sensitive components of access charges. Nothing in the Agreement is intended to modify the terms of the Access Settlement.

⁸ Global Order at 152.

Nothing in the Settlement relieves or prevents Frontier Companies from complying with any rate restructuring and/or rebalancing ordered by this Commission, the Federal Communication Commission ("FCC"), any court, or any other lawful authority in another proceeding.

Nothing in the Settlement precludes any party from participating in a generic Commission or FCC proceedings and advocating an access charge or toll rate structure or rates levels which are different than those which occur under this Settlement.

The Settling Parties submit that the benefits of this Settlement include:

- a) A rate rebalancing/restructuring proposal in the 2000 rebalancing filing which mitigates the local service increases that would have otherwise been sought in order to fund an intraLATA toll reduction to \$.09;
- b) Consistent \$.09 intraLATA toll rates to be made available to all ILEC toll consumers throughout the Commonwealth, including the Frontier Companies' ratepayers; and
- c) The avoidance of further administrative proceedings and litigation which are time consuming and expensive to the Settling Parties, the Commission and to customers.

IV. Discussion

A review of the Global Order reveals that permission was granted to those companies that had increased their one-party residential local exchange rate to an average of \$10.83 per month but still had not decreased their intraLATA toll rate to a \$0.09

average per minute and/or had not recovered sufficient revenues resulting from the establishment of a \$7.00 carrier charge, to increase their residential one-party local exchange charge to their end users to no more than \$16.00 per month, after taking into account their specific ITORP savings as an additional offset to the local rate.⁹ The Commission further held that: “[t]o the extent practicable, and on the condition that there will not be an increase in basic local exchange rates and other protected services, we will permit the ILECs to restructure their existing tariffed services on a revenue neutral basis within the limitation of that cap.”¹⁰

The Global Order expressly allows an ILEC to increase its local rate up to a \$16.00 cap, after taking into account ITORP savings, in order for the ILEC to reduce its intraLATA toll from \$.11 to \$.09. The Global Order does not expressly say that an ILEC may go directly to the Fund to recover loss in revenue due to a toll rate reduction of \$.11 to \$.09 per minute where it has not first raised its local rates up to the \$16.00 cap.

The Small Company Plan which was adopted by the Commission in its Global Order with modifications states: “[e]ach company will flow through the benefits derived from the Fund and ITORP expense decreases by lowering intraLATA toll rates. An average price floor of \$.09 per minute will be established.”¹¹

The Small Company Plan further states:

⁹ Id. at 152.

¹⁰ Id. at 152.

¹¹ Joint Petition of Bell Atlantic Pennsylvania, Inc. et al For Global Resolution of Telecommunications Proceedings, Docket No. P-00991649, March 18, 1999, Appendix II.A, p. 5.

The Small ILECs also will be given the opportunity to reduce their toll rates to an average rate not lower than \$.09 per minute.” (Footnote: There is no expectation, express or implied, that a toll rate of \$.09 per minute will be sufficient to meet competition throughout the life of the Settlement Plan. In fact, numerous interexchange carrier toll plans are substantially below \$.09. However, \$.09 was chosen as appropriate to the size of the Fund. Nothing in this Settlement Agreement or Appendix A precludes a Small ILEC from proposing lower toll rates in individual proceedings.)

The Small ILECs also will be permitted to increase their residential one-party basic, local rates up to an average monthly charge of at least \$10.83, to the extent necessary to offset the reduced toll rates. This change affects only eight companies. Any excess needed to fund the toll rate reduction is designed to come from the Fund.” (Footnote: Nothing in this Settlement Agreement or Appendix A precludes any local exchange carrier from proposing greater local exchange rates in individual proceedings. Further reductions to a level not below \$.09 will be provided by the Fund and ITORP expense savings.)¹²

The Small Company Plan does not take into consideration a \$16.00 cap on local rates. When this Commission established a cap on local rates of \$16.00, the Commission modified the above provision in the Small Company Plan which had allowed for Fund reimbursement to bring about toll reduction to \$.09 once the \$10.83 average monthly charge for local rates was reached. The Global Order effectively changes this provision such that a small ILEC can further reduce its toll from \$.11 to \$.09 and recover any loss in revenue through an increase in its local rates up to a \$16.00 cap. Any more needed to further fund the toll rate reduction to \$.09 once the \$16.00 cap is reached, can be taken from the Fund.

¹² Id. at 4.

The Global Order does not compel the Frontier Companies to further reduce their intraLATA toll rates from \$.11 to \$.09 per minute. However, since the Frontier Companies wish to further reduce their toll rates to an average of \$.09 per minute, this Commission is willing to approve the Settlement Agreement in its entirety and thus make an exception to the general rule that a company must first increase its local rates to \$16.00 before receiving reimbursement for the additional toll rate reduction from the Fund. By approving the Settlement Agreement, this Commission is allowing the Frontier Companies to withdraw \$177,211 from the Fund before increasing their local residential basic rates to \$16.00 in order to reduce the Frontier Companies' toll rate reductions from \$.11 to \$.09. The Commission is persuaded to allow this withdraw because the Frontier Companies will be simultaneously raising local rates by \$109,462 instead of seeking full reimbursement in the total amount of \$287,082 for lost revenues due to a further toll rate reduction from \$.11 to \$.09. Thus, the Frontier Companies will be receiving 38% of revenue reimbursement from an increase in their local rates and 62% of their revenue reimbursement from the Fund. This is acceptable to the Commission in the interest of resolving AT&T's, Frontier Companies' and OCA's differences and moving forward with resizing the Fund and adjusting the monthly contributions and reimbursements each company owes or is owed. However, we stress that Commission approval of this Settlement shall neither be construed as binding nor persuasive precedent in any other Commission proceeding except to effectuate the terms and conditions of this

Settlement; **THEREFORE,**

IT IS ORDERED:

1. The Settlement Agreement Between Frontier Companies, The Office of Consumer Advocate, and AT&T Pennsylvania, Inc. is hereby APPROVED in its entirety.

2. The approval of this Settlement Agreement shall neither be construed as binding nor persuasive precedent in any other Commission proceeding nor in any appeal from a Commission proceeding, except to effectuate the terms and conditions of this Settlement.

3. The use by the Frontier Companies of Universal Service Fund monies to reduce toll rates below \$0.11 and this Tentative Order approving this Settlement Agreement shall not be cited nor considered precedent by any of the Settling Parties and/or any other current or potential recipient of the Fund in any dispute or proceeding concerning the Pennsylvania Universal Service.

4. As the Frontier Companies have currently filed a tariff supplement on March 29, 2000, effective April 1, 2000, which reduced three of their companies' (FC of PA, FC of Lakewood and FC of Canton) intraLATA toll rates to \$0.11 instead of \$0.09, these Frontier Companies shall not receive reimbursements from the Fund for intraLATA toll rate reductions from \$0.11 to \$0.09 until such time as the Frontier Companies file a subsequent tariff supplement which further reduces their intraLATA toll from \$0.11 to \$0.09 and said tariff supplement becomes effective.

5. In order to further reduce their intraLATA toll rates from \$0.11 to \$0.09 per minute, the Frontier Companies may receive \$177,211 from the Universal Service Fund as long as they increase their local rates in accordance with the Settlement Agreement by a total of \$109,462.

6. The total size of the Universal Service Fund for the interim period is hereby reduced by \$119,240. Therefore the size of the Universal Service Fund is now \$31,220,606.

7. The RTCC is directed to update its final calculations filed on March 28, 2000, which are based upon the Settlement Agreement, taking into consideration the fact that three of the Frontier Companies reduced their toll rates to \$0.11 per minute effective April 1, 2000, rather than to \$0.09 per minute, which was the given assumption in calculating the schedules dated March 28, 2000.

8. After receipt of the RTCC's final calculations and Commission staff approval thereof, the Bureau of Audits is directed to recalculate the monthly contributions each participating carrier owes and direct the interim administrator of the Fund, the National Exchange Carrier Association (NECA), to reinvoice all participating carriers accordingly.

9. NECA is directed to inform carriers of any adjustments they should make to their monthly contributions and to make Commission-directed adjustments to the monthly amounts owed to recipient carriers.

10. Until such time as the carriers receive new invoices from the Administrator of the Fund, the carriers are directed to remit monthly contributions in accordance with the invoice/worksheets issued to the carriers on March 15, 2000.

11. This Tentative Order shall be served to all parties in the above-captioned proceeding. In the event no exceptions or comments are filed to this Tentative Order within seven (7) calendar days of entry, the Tentative Order shall become final without further action by this Commission.

BY THE COMMISSION:

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 13, 2000

ORDER ENTERED: April 18, 2000