

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17105-3265**

Public Meeting held July 10, 2003

Commissioners Present:

Terrance J. Fitzpatrick, Chairman  
Robert K. Bloom, Vice Chairman  
Aaron Wilson, Jr.  
Glen R. Thomas  
Kim Pizzingrilli

Access Charge Investigation per Global	:	Docket Nos. M-00021596
Order of September 30, 1999	:	P-00991648
	:	P-00991649
Verizon Pennsylvania Inc.'s 2003	:	
Price Change Opportunity	:	Docket No. M-00031694
	:	
AT&T Communications of	:	
Pennsylvania, Inc.,	:	
v.	:	Docket Nos.
	:	M-00031694C0001
Verizon Pennsylvania Inc.	:	P-00930715
Re: Verizon Pennsylvania Inc.'s	:	
2003 PCO	:	

**ORDER**

**BY THE COMMISSION:**

Presently before this Commission for consideration is the Joint Procedural Stipulation filed on June 5, 2003, by the Rural Telephone Company Coalition (RTCC), The United Telephone Company of Pennsylvania (Sprint/United), Office of Trial Staff (OTS), Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), AT&T Communications of Pennsylvania, Inc. LLC (AT&T), Verizon Pennsylvania Inc., Verizon North Inc. (Verizon), and MCI WorldCom Network Services, Inc. (MCI). The Joint Procedural Stipulation concerns the RTCC/Sprint United Joint Proposal for Access Charge Reductions (Joint Proposal) for the rural telephone companies that had been filed on December 16, 2002, pursuant to the generic access charge investigation at M-00021596.

## Procedural History

The *Global Order*<sup>1</sup> of September 30, 1999 reduced access charges of all local incumbent exchange carriers operating in Pennsylvania. That Order directed a Pennsylvania Universal Service Fund (PaUSF) be established to enable the rural incumbent local exchange carriers (ILECs) and Sprint/United to reduce access charges and intraLATA toll rates while at the same time, ensuring that residential basic local service rates do not exceed the designated price cap of \$16.00 per month. The *Global Order* also called for an investigation to be initiated in January 2001 to further refine a solution to the question of how the carrier charge (CC) pool can be reduced and to consider the appropriateness of a toll line charge to recover any resulting reductions.

By Secretarial Letter dated October 24, 2001, the Commission postponed the formal statewide access charge investigation and initiated a collaborative to determine whether the parties could reach an agreement. Also at that time, the RTCC and Sprint/United were given some time to put together an access charge settlement proposal in an effort to save time and costs involved with litigation and to narrow the issues. It was expected that the settlement proposal would take notice of the recent Federal Communications Commission's (FCC) *MAG*<sup>2</sup> and *CALLS*<sup>3</sup> orders, which had further reduced interstate access charges for rural and non-rural companies, respectively. Ultimately, we opened a docket at M-00021596 in January 2002 to accommodate the access charge investigation required by the *Global Order*.

In a related matter, on March 21, 2002, AT&T filed a formal complaint against Verizon-North Inc. (Verizon-North) seeking to have Verizon-North's access charges reduced to Verizon Pennsylvania Inc.'s (Verizon-Pa.) levels pursuant to the requirements in our *Merger Order* at A-

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<sup>1</sup> *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999)(*Global Order*); 196 P.U.R. 4<sup>th</sup> 172, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlth. 2000), *alloc. granted*.

<sup>2</sup> *In re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*, *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 98-77 and 98-166*, FCC 01-304, November 8, 2001.

<sup>3</sup> *In Re: Coalition for Affordable Local and Long Distance Service (CALLS) Access Charge Reform, et al.*, *Sixth Report and Order in CC Docket Nos. 96-262 and 94-1 Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45*, May 31, 2000.

310200F0002.<sup>4</sup> The complaint was docketed at C-20027195. Thereafter, the complaint was initially dismissed by Chief Administrative Law Judge Robert Christianson, but later reinstated by Commission Order entered December 24, 2002. That order also bifurcated the access charge investigation at M-00021596 so that all Verizon matters (*i.e.*, those pertinent access charge matters pertaining to Verizon-Pa. and Verizon-North, including the complaint, were to be litigated at the C-20027195 docket).

On November 26, 2002, Verizon-Pa. submitted its annual Price Change Opportunity (PCO) filing requesting authority to use its \$17.7 million negative PCO money for 2003 to fund its contributions to the PaUSF. That filing was docketed at M-00031694 and P-00930715 (Verizon-Pa.'s Chapter 30 Plan docket). On January 31, 2003, AT&T filed a complaint at M-00031694C0001 challenging Verizon-Pa.'s proposal to use its negative PCO money to support Verizon's 2003 contribution to the PaUSF. On February 27, 2003, Verizon-Pa. filed an answer and motion to dismiss the complaint.

On December 16, 2002, RTCC, Sprint/United, OCA, OTS and OSBA filed a Joint Proposal seeking revenue-neutral access charge reductions. This Joint Proposal was published January 4, 2003, at 33 Pa.B. 97. Comments and replies were received by the Commission. AT&T and MCI WorldCom filed comments opposing the proposal. Specifically, AT&T and MCI WorldCom called for more detail about the resulting access rates. AT&T and MCI WorldCom emphasize the need to move switched access rates to cost-based levels. Verizon filed comments that placed conditions on their acceptance of the proposal. Verizon wanted to also reduce its access charges in a revenue-neutral method and it wanted approval to use its PCO monies to fund any future contributions owed the PaUSF as a result of the Joint Proposal.

On April 2, 2003, Verizon-Pa. filed a letter with the Commission stating that it did not oppose the RTCC/Sprint Joint Proposal at M-00021596. On the same date, Sprint/United and the RTCC filed letters in support of Verizon-Pa. being able to use its negative PCO money to pay its 2003 contribution to the PaUSF.

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<sup>4</sup> *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket No. A-310200F0002, etc.(Opinion and Order entered November 4, 1999)(*Merger Order*).

On May 5, 2003, the Commission, acknowledging that there was opposition at that time to the Joint Proposal by the comments filed by AT&T and MCI WorldCom, ordered the Joint Proposal be assigned to an Administrative Law Judge for evidentiary hearings and a recommended decision regarding an appropriate level of access charges for Sprint and the rural incumbent local exchange carriers operating in Pennsylvania, and whether the PaUSF should be continued beyond the *Global Order's* expiration date of December 31, 2003, the expiration date specified in the *Global Order*. Further, the Commission expected the ALJ to issue a recommended decision regarding whether Verizon-Pa. could properly use its negative 2003 Price Change Opportunity (PCO) monies to fund its PaUSF contributions.

On May 15, 2003, the RTCC and Sprint/United provided MCI and AT&T with further data reports. On May 20, 2003, pursuant to 52 Pa. Code §5.572, the RTCC and Sprint/United filed a Petition for Reconsideration concerning portions of our May 5, 2003 Order. A prehearing conference was held on June 4, 2003 before ALJ Michael Schneirle, at which time all of the parties that had filed comments to the Joint Petition came to an agreement. Subsequently, on June 5, 2003, a Joint Procedural Stipulation signed by OCA, RTCC, Sprint/United, OTS, OSBA, AT&T, Verizon, and MCI was filed with the Commission.

### **Background of Global Order**

We established the PaUSF through our *Global Order* wherein we stated:

The USF is a means to reduce access and toll rates for the ultimate benefit of the end-user and to encourage greater toll competition, while enabling carriers to continue to preserve the affordability of local service rates. Although it is referred to as a fund, it is actually a pass-through mechanism to facilitate the transition from a monopoly environment to a competitive environment – an exchange of revenue between telephone companies which attempts to equalize the revenue deficits occasioned by mandated decreases in their toll and access charges.

*Global Order*, page 142.

The establishment of the PaUSF was carried out on a revenue-neutral basis and included the rebalancing of intrastate access charges, toll rates, and local rates by the rural local exchange carriers. The PaUSF was a modified version of a settlement plan submitted by the RTCC and Bell Atlantic-Pennsylvania, Inc. (Bell now Verizon-Pa.).

The components of the PaUSF, from the standpoint of the RTCC members, are briefly summarized below:

1. All small incumbent local exchange carriers, which included all ILECs other than Bell and GTE North (GTE North is now Verizon-North), were directed to be recipients of the PaUSF. The PaUSF was established for the purpose of the rate rebalancing needs of the rural local exchange carriers including reductions in their intrastate access and toll rates. All Pennsylvanian telecommunications service providers (excluding wireless carriers) were directed to contribute to the PaUSF based upon their intrastate end-user revenues.

2. The RTCC members were permitted to restructure, modify and reduce their access, toll and local rates, as follows:

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

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

c) The RTCC members were given the opportunity to reduce their intrastate toll rates to an average rate not lower than \$.09 per minute.

d) The RTCC members with low local exchange rates were permitted to increase their residential one-party basic, local rates to an average monthly charge of at least \$10.83, to the extent necessary to offset the reduced toll rates.

e) Those RTCC members with an average monthly R-1 rate above \$16.00 (inclusive of touch-tone) were directed to provide their customers with a Universal Service credit to effectively reduce the rate to \$16.00 with the difference coming out of the PaUSF.

*See Global Order* at pp. 151-152. Sprint was not an original participant in the RTCC plan in the Global proceeding, but after pleading its inclusion in the USF at the *Global Order* hearings, the Commission ordered that it be included as a recipient carrier and in exchange for access charge reductions, it be allowed to draw \$9,000,000 from the PaUSF annually.

We also stated in our *Global Order*:

[W]e shall initiate an investigation on or about January 2, 2001, to further refine a solution to the question of how the Carrier Charge (CC) pool can be reduced. At

its conclusion, but no later than December 31, 2001, the pool will be reduced. In addition, we shall consider the appropriateness of a Toll Line Charge (TLC)[or an intrastate Subscriber Line Charge] to recover any resulting reductions.

*Global Order* at 60. By Secretarial Letter dated October 24, 2001, the Commission postponed the formal statewide access charge investigation and initiated a collaborative to determine whether the parties could reach an agreement.

### **Further Intrastate Rate Rebalancing**

In addition to the Commission's competitive undertakings on the intrastate side, the FCC instituted numerous proceedings aimed at further addressing an orderly transition from monopoly to a more competitive environment.

Pursuant to TA-96, the FCC undertook reform of both interstate access charges and federal universal service support mechanisms. Beginning in 1997, the FCC adopted several measures to move interstate access charges for price cap carriers toward lower, cost-based levels by revising the recovery of loop and other non-traffic sensitive costs from per-minute charges to flat rate per line charges thereby aligning rates more closely with the way the costs are incurred. For example, in order to phase out Carrier Common Line ("CCL") charges, the per-minute charges assessed on interexchange ("IXC") carriers through which ILECs recover their residual interstate loop costs that are not recovered through their capped federal SLCs, the FCC created the presubscribed interexchange carrier charge ("PICC"), a flat, per line monthly charge imposed on IXCs. The FCC also shifted the non-traffic sensitive costs of the line ports from per-minute local switching charges to the common line category and established a mechanism to phase out the per-minute transport interconnection charge (TIC). The FCC held that more rate structure modifications would be required to create a system that accurately reflects the true cost of service in all respects. The FCC believes the market-based approach, in which competitive forces primarily drive access charges down to cost-based levels, would serve the public interest better than regulatory-prescribed rates.

In the *Interstate Access Support Order*<sup>5</sup> the FCC adopted in large part the CALLS plan, continuing the process of access charge and universal service reform for price cap carriers. This order prescribed a more straightforward, and purportedly economical rational, common line rate structure by increasing the caps on the federal SLC, a flat monthly charge assessed directly on end-users to recover interstate loop costs, and phasing out the PICC, which the FCC viewed as economically inefficient due to the indirect flow of loop costs to end-users through IXC's. The FCC also revisited the controversial "X-factor," changing its function from a productivity offset to a tool for reducing per-minute access charges to target levels proposed by the CALLS members.

The FCC also established a new interstate access support mechanism, capped at \$650 million annually, to replace what the FCC deemed implicit support included in the interstate access charges of price cap carriers, finding \$650 million to be a reasonable amount that would provide sufficient, but not excessive, support. In this regard, it observed that a range of funding levels might be deemed "sufficient" for purposes of TA-96, and that "identifying an amount of implicit support in our interstate access charge system to make explicit is an imprecise exercise."<sup>6</sup>

In recognition of the need for a more comprehensive and distinctly different review of the issues of access charge and universal service reform for the remaining 1300 or so rural carriers serving less than 2% of the nation's access lines, the FCC placed such reforms for the non-price cap carriers on a separate track. As documented in a series of white papers prepared by the Rural Task Force, which was constituted by the FCC to study the differences between the provision of telecommunications services in rural and non-rural areas, rural carriers generally have higher operating and facilities costs due to lower subscriber density, smaller exchanges and limited economies of scale.<sup>7</sup> Significantly, rural carriers rely more heavily on revenues from access charges and universal service support in order to provide ubiquitous and affordable local service. On May 23, 2001, the FCC released its *Fourteenth Report and Order and Twenty-Second Order*

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<sup>5</sup> *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, May 31, 2000, (*Access Charge Reform Order*) at 15998 Par. 35.

<sup>6</sup> *Interstate Access Support Order* at 13046 par. 201.

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9164-65 (1977) (*Universal Service First Report and Order*) at 8917 par. 253 (subsequent history omitted); *Rural Task Force Order*.

*on Reconsideration, and Further Notice of Proposed Rulemaking, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC RCD 11244 (released May 23, 2001) (“*Rural Task Force Order*”).

The *Rural Task Force Order* compelled several changes to the manner in which rural interstate universal service support is currently calculated and applied. Among other things, the *Rural Task Force Order* endorsed use of a modified embedded cost mechanism for rural carriers, as opposed to a forward-looking cost mechanism required for price cap carriers, to determine rural carrier support, and included implementation of a rural growth factor (the sum of annual line growth and a general inflation factor) and a safety net additive and safety valve to provide support for new investment and growth above stated thresholds. While created as an interim plan, the FCC also made clear its intention to develop “a long-term plan that better targets support to carriers serving high-cost areas, while at the same time recognizing the significant differences among rural carriers, and between rural and non-rural carriers.”<sup>8</sup>

Having taken major steps in beginning to reform interstate high-cost support, interstate access charges and universal service support systems for non-rural carriers through a series of Reports and Orders in the matter of *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 and the *Interstate Access Support Order*, and the interstate high-cost support for rural carriers through the *Rural Task Force Order*, the FCC has now begun to address the matter of interstate access charge and universal service support reforms for the rural carriers. On November 8, 2001, the FCC issued its *Second Report and Order* at CC Docket Nos. 01-304, 00-256 (MAG Plan), 96-45 (USF), 98-77 (Access Charge Reform) and 98-166 (Authorized ROR), in what is referred to as the MAG Order. In the *MAG Order*, the FCC states its intent to align the interstate access rate structure with a lower, more cost-based level, remove what the FCC deemed to be implicit support for universal service and replace it with explicit, portable and competitively neutral support. Specifically, the *MAG Order* lowers interstate access charges from approximately \$0.046 per minute to possibly as low as \$0.022 per minute; increases the interstate SLC over a period of time; and phases out the CCL by July 1, 2003, and replaces it with a portable Interstate Common Line Support (“ICLS”) universal service mechanism. In

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<sup>8</sup> *Id.* at 11249 par. 8.

addition, SLC caps were increased effective January 1, 2002, raising monthly per line rates from \$3.50 to \$5.00 for residence and single line business, and from \$6.00 and \$6.50, respectively. These interstate changes have resulted in significant increases to most Pennsylvania consumers which are in addition to the interstate increases in local service rates under Chapter 30 rate rebalancings.

## **Discussion**

The Joint Procedural Stipulation is threefold. First, the parties request Commission approval and implementation of the Joint Proposal as filed on December 16, 2002, as it is no longer opposed by any of the parties that filed comments against it. Second, the parties agree that the existing PaUSF contained in the Commission's regulations at 52 Pa.Code §63.161-63.171 shall remain in full force and effect until further Commission rulemaking. The parties agree to the initiation of a rulemaking proceeding prior to December 31, 2004, to address any needed modifications to the PaUSF regulations and the simultaneous initiation of a rate proceeding to determine whether any rate changes should be made in the future in the event that disbursements from the PaUSF are reduced. Third, the parties agree that AT&T's complaint against Verizon-Pa.'s PCO filing should be resolved separately from the Joint Proposal on cross-motions for summary judgment without the need for a hearing on the issue as the Complaint raises only a legal issue and no genuine issues as to any material facts. In other words, the PCO Complaint does not aver that the amount of the PCO money (\$17.7 million) is in dispute, only the use of the money, which is a legal issue, not a factual one.

## **Joint Proposal**

In view of the many changes that have taken place and the increases customers have experienced in their interstate and intrastate rates for access to basic local service over the last few years, the RTCC members have been reluctant to advocate a flash cut reduction in access charges to achieve full access reform on an intrastate basis. The RTCC/Sprint Proposal is offered as the next transitional step in access charge reform in Pennsylvania in an attempt to avoid a rate shock to Pennsylvania local telephone consumers. The Joint Proposal advocates a continuation of the current PaUSF under the existing regulations codified at 52 Pa.Code §§63.161-63.171, until a future rulemaking determines otherwise. The Joint Proposal requests further access charge reductions in a revenue-neutral method that are recovered not through an

increase in the size of the PaUSF, but rather through gradual increases to local residential and business rates.

The Joint Proposal essentially provides for each RTCC company to do what is permitted under their respective Chapter 30 Plans, that is, restructure rates on a revenue-neutral basis in a manner that does not increase local rates by more than \$3.50 per month. The Joint Proposal is a means of effectuating further access reform while also mitigating the administrative costs involved in pursuing 31 company-specific Chapter 30 filings. Further, while the decision to pursue a Chapter 30 rate rebalancing is at the companies' sole discretion, the Joint Proposal mandates certain filings that in turn will assure access charge reductions of approximately \$25 million<sup>9</sup> within the next eleven months. The access reductions resulting from the Joint Proposal exceed by almost 20% the combined toll and access reductions order in the *Global Order*.

We commend the parties' united efforts in agreeing to one proposed access charge reduction plan at this time. The RTCC and Sprint/United have offered cost data to support their petition. The Commission has reviewed the cost data from the rural ILECs and Sprint/United and we are satisfied that the Joint Proposal, if implemented, will be revenue-neutral. At this juncture, the Commission is persuaded that the proposed access charge reductions are in the public's interest and in accordance with the Commission's objective to reduce implicit subsidy charges such as access charges that impede competition in the telecommunications market. As implicit charges become explicit charges, competitors are better able to compete for local and long distance customers in an ILEC's service territory because IXCs are not hindered by paying ILECs excessive access charges in providing competitive toll services and CLECs are better able to compete with ILEC local service rates that have been kept artificially low as a result of the access charge subsidies. Thus, although our approval of the Joint Proposal will allow the rural ILECs and Sprint/United to raise their local residential monthly service rates up to a cap of \$18.00 per month, (\$2.00 more than the current \$16.00 cap), this increase is incremental so as to avoid customer rate shock, and, at the same time, encourages the IXCs, CLECs and wireless telecommunications carriers to compete on a more level playing field with the ILECs.

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<sup>9</sup> There will also be an additional \$2.2 million reduction in access charges for the smaller ILECs in January 2004.

Furthermore, there has been some demonstrated savings to IXC customers in their long distance calls since April 2000 when the PaUSF was initiated and the initial access charge reductions took effect. In our *Global Order*, IXCs were required to file annual reports reflecting price reductions and flow through expense savings resulting from the access charge reductions in April, 2000. On June 6, 2000, and November 2, 2000, MCI WorldCom filed reports showing what its savings were from recent access reductions and how they have been flowed through to the Pennsylvania residential and business toll consumers. On May 4, 2000, AT&T filed a tariff showing the flow-through of Verizon-Pa.'s access charge reduction to AT&T's business and residential customers. As a condition of approving the Joint Petition and ordering further access charge reductions, the Commission directs that all of the IXCs that benefit from these reductions, demonstrate through the filing of annual reports due on March 31 of each year how the additional reductions in access charges will reduce the IXCs' average revenue per minute proportionately on a dollar for dollar basis to residential and business customers in Pennsylvania. *Global Order* at pp. 41-42. Failure on the part of IXCs operating in Pennsylvania to file annual reports will result in enforcement action by the Commission.

We further look to the Federal Communications Commission's (FCC) recent decisions in the *CALLS* and *MAG* orders for precedence in ordering implicit charges to become explicit, through either an increase in basic local telephone service rates, or through service line charges on customer bills. This enables other carriers to compete due to reduced subsidies. While the Joint Proposal does not require a rural ILEC or Sprint/United to mirror interstate access charges, the fact that this is a step towards making the charges closer to cost and closer to the interstate access charges will help to avoid arbitrage and will help competition enter the ILECs territories.

This is a unanimous Joint Proposal. Thus, even though no evidentiary hearing has been held, we believe due process is being afforded the parties in ruling to approve the Joint Proposal since the Joint Proposal was published, and all parties that filed comments to the Joint Proposal are in agreement with the Proposal. Accordingly, since we find the Joint Proposal to be in the public interest, we shall order that the Joint Proposal, included as "Attachment A" to this Order is granted. The PaUSF will continue beyond December 31, 2003, until amended through a rulemaking proceeding which will commence before December 31, 2004. We shall direct the recipient carriers to file their calculations required to implement paragraph No. 7 of the Joint

Proposal by October 1, 2003, in order to allow Commission Staff and the National Exchange Carrier Association (NECA) enough time within which to make a recommendation to the Commission regarding changes to the disbursements of the PaUSF for the next calendar year, and in time for the Commission to issue its annual order adjusting the contribution factors and setting the next calendar year's Fund size, contributions, disbursements and budget.

Given that this is a compromise proposal that merely seeks to extend and continue additional access reform as initially begun in the *Global Order*, we will not require the ILECs to incur the expense of producing detailed cost studies. However, we do not intend to declare the access rates established by this Order as the final word on access reform. Rather, this is the next step in implementing continued access reform in Pennsylvania in an efficient and productive manner. Thus, for all of the aforementioned reasons, the Commission finds that the Joint Proposal is in the public's interest and shall be granted.

#### **Pennsylvania Universal Service Fund**

Our Global Order calls for the PaUSF to expire December 31, 2003, subject to the provisions of an access charge investigation.<sup>10</sup> However, the PaUSF regulations codified at 52 Pa.Code §§ 63.161-63.171 do not have a sunset provision. The Joint Proposal calls for a continuation of the PaUSF beyond December 31, 2003, until a further Commission Rulemaking determines otherwise. The Commission stated in its *Final Rulemaking Order* entered November 29, 2000, at L-00000148 that, "if the Commission wants to rescind this [Universal Service Fund] regulation at some point, it should do so by promulgating another regulation."

The Commission agrees to open a rulemaking proceeding to be initiated no later than December 31, 2004, to address what if any modifications should be made to the PaUSF regulations and we agree to the simultaneous institution of an appropriate proceeding for consideration of any and all rate issues and rate changes which should or would result in the event that disbursements from the PaUSF are reduced. The proceedings may be combined as one proceeding.

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<sup>10</sup> *Global Order at 151.*

## Verizon's PCO Proposal

As stated previously, on January 31, 2003, AT&T filed a formal complaint at M-00031694, M-00031694C0001 and P-00930715 challenging Verizon-PA's proposal to use its negative PCO money to fund Verizon's 2003 contribution to the PaUSF. In the May 5, 2003 Order, the Commission consolidated Verizon's PCO filing and AT&T's formal complaint regarding the same with the RTCC/Sprint/Public Parties Joint Access Proposal. The matters were consolidated because "the issue of whether Verizon-Pa. has authority to use its negative PCO . . . is intricately related to issues expressed in the RTCC/Sprint Joint Proposal." Order at 6. Although Verizon initially agreed with this statement in its Prehearing Memorandum, the Joint Procedural Stipulation provides that AT&T's complaint against Verizon's PCO filing shall be resolved separately on cross-motions for summary judgment without hearings. AT&T, MCI and Verizon have filed motions for summary judgment. Briefs were due by July 3, 2003. The parties request that the Commission resolve the PCO dispute separately from the Joint Proposal by August 29, 2003. The Commission respects the requests of the parties, and given the time constraints, directs that Commission staff prepare a draft Order for the Commission's consideration regarding the cross-motions for summary judgment to be decided before August 29, 2003. **THEREFORE, IT IS ORDERED:**

1. That the Joint Procedural Stipulation is granted in its entirety.
2. That the RTCC/Sprint/OCA/OTS/OSBA Joint Proposal as filed on December 16, 2002, and attached hereto as "Attachment A" is granted.
3. That recipient carriers to the Pennsylvania Universal Service Fund are directed to file their calculations required to implement paragraph No. 7 of the RTCC/Sprint/OCA/OTS/OSBA Joint Proposal by October 1, 2003.
4. That upon receipt of the recipient carriers' calculations and Commission staff approval thereof, the National Exchange Carrier Association (NECA) as the Administrator of the Pennsylvania Universal Service Fund shall recalculate contributions and disbursements owed for the calendar year 2004.

5. That the Pennsylvania Universal Service Fund shall continue under the existing regulations codified at 52 Pa.Code §§ 63.161-63.171 until a further Commission rulemaking determines otherwise.
6. That Staff is directed to issue another Request For Proposals to hire an Administrator of the Fund for a contractual period from January 1, 2004 through December 31, 2006.
7. That the cross-motions for Summary Judgment filed on or about June 20, 2003, shall be assigned to the Law Bureau for a recommended draft Order to be decided on or before August 29, 2003.
8. That all IXCs shall file annually, by March 31 of each year a report showing how the additional reductions in access charges will reduce the IXCs' average revenue per minute proportionately on a dollar for dollar basis to residential and business customers in Pennsylvania. Failure on the part of IXCs operating in Pennsylvania to file annual reports will result in enforcement action by the Commission.
9. That a copy of this Order be delivered to all telecommunications carriers operating in Pennsylvania and the National Exchange Carrier Association.
10. That a copy of this Order be delivered for publication to the *Pennsylvania Bulletin*.

BY THE COMMISSION:

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: July 10, 2003

ORDER ENTERED: July 15, 2003

**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,<sup>11</sup> 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,<sup>12</sup> 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.**

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<sup>11</sup> 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.

<sup>12</sup> 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.