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September 17, 2010

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

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

Dear Secretary Chiavetta:

Enclosed please find Sprint's Reply Exceptions in the above-captioned matter, which were electronically filed today.

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

Best regards,

STEVENS & LEE

Michael A. Gruin

Enclosures
cc: Cheryl Walker Davis, Office of Special Assistants
Honorable Kandace F. Melillo, Administrative Law Judge
Certificate of Service

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

SPRINT'S REPLY TO EXCEPTIONS

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September 17, 2010

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I. Introduction

Sprint Communications Company L.P., Sprint Spectrum, L.P., and Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint" or "Sprint Nextel"), hereby submits its Reply to Exceptions in the above-captioned, consolidated docket. The Recommended Decision ("RD") of Administrative Law Judge Melillo ("ALJ Melillo") in the Pennsylvania Public Utility Commission's ("Commission") *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 *et al.* is well decided, and the Exceptions to the RD provide no reason to set aside the reasoning or recommendations contained in the RD. ALJ Melillo's overall conclusion regarding the appropriate level of Rural Local Exchange Carrier ("RLEC") switched access rates was appropriately decided. As discussed below, the Exceptions are little more than repetition of the positions the anti-reform parties unsuccessfully argued before ALJ Melillo.

Accordingly, while Sprint does reply to certain arguments made by the parties, for the sake of preserving the Commission's resources Sprint does not endeavor to respond to all arguments. To do so would accomplish little more than to reiterate arguments contained in Sprint's earlier filed pleadings, an exercise that would not substantially assist the Commission in deciding the case at bar. Sprint does suggest that the Commission may wish to review Sprint's earlier filed Main Brief and Reply Brief to the extent that Sprint's arguments are fully stated therein.[1] To that end, Sprint incorporates

[1] Conforming with 52 Pa. Code § 5.535 ("[a] reply must be concise and incorporate by reference relevant passages in previously filed briefs."), Sprint shall provide citation to its earlier filed Briefs as applicable.

those pleadings herein by reference.[2] For the reasons stated below, and more fully stated in Sprint's earlier filed briefs, the Commission should implement the RD with only those changes identified by Sprint in its Exceptions.

II. The Record Before ALJ Melillo

Any review of the RD must acknowledge the *extensive* record developed in this docket and the comprehensive treatment of that record afforded by ALJ Melillo. ALJ Melillo has done a marvelous job of distilling the essence of the sizeable record before her in the thirteen page Findings of Fact contained the RD.[3] Many of ALJ Melillo's findings were ignored or inappropriately discounted by the RLECs, so Sprint here emphasizes, grouped by category, many of the key findings reached by ALJ Melillo. When reviewed in there totality, the unassailable logic of ALJ Melillo's RD becomes all the more clear. The record before ALJ Melillo established the following.

<u>Competition and Consumer Benefits</u>

- Inflated access charges artificially depress BLES and insulate RLECs from having to improve efficiency or offer better services. (FoF[4] 10);
- The RLECs failed to identify service areas lacking competition, and the telecommunications marketplace is hyper-competitive. (FoF 12, 14);
- Pennsylvania consumers have a wide range of competitive options. (FoF 13);
- Interstate access charges disproportionately impact IXCs and it is inequitable to disproportionately burden one industry segment with subsidy payment obligations. (FoF 13 and 15);
- Consumers benefit when service providers compete on a level playing field based on real cost and quality differences. (FoF 16);
- Consumers are harmed when their choices are distorted by subsidy payment obligations. (FoF 16);

[2] *Id.*
[3] RD at 32 – 45.
[4] The Findings of Fact section of the RD is abbreviated as "FoF" in this section only.

- The present system of high access charges is competitively harmful and unsustainable. (FoF 20);

- Reductions in access charges will lead to consumer benefits. (FoF 20); and

- Reductions in access charges will lead to lower long-distance rates, and AT&T has committed to specific reductions. (FoF 20 and 21).

Unjust and Unreasonable Intrastate Switched Access Rates

- There are no differences between the termination of interstate and intrastate calls. (FoF 17);

- RLEC intrastate switched access rates range from 688% to 17% higher than intrastate rates. (FoF 18); and

- The five (5) largest Pennsylvania RLECs have intrastate rates three (3) to four (4) times higher than their interstate rates (FoF 19)

Interstate Parity

- RLEC interstate rates cover their costs and provide a reasonable return. (FoF 30);

- Rates at parity with interstate rates will still include a contribution to loop cost. (FoF 31);

- RLECs already have systems in place to accomplish interstate parity since those carriers will merely be charging rates they already charge for interstate calls. (FoF 32);

- Interstate parity will achieve billing costs since RLECs will have only one rate to bill. (FoF 33);

- Interstate parity is consistent with the FCC's position expressed in the National Broadband Plan. (FoF 35);

- Interstate parity will reduce or eliminate various rate arbitrage schemes. (FoF 36); and

- Interstate parity can be instituted presently without waiting for further FCC action as interstate parity is consistent with the FCC's own suggested solution and FCC action could be over-long in coming. (FoF 41).

PA USF Expansion

- Expanding the PA USF to offset access reductions is merely a gambit to guarantee a dollar-for-dollar recovery of access reductions. (FoF 44);

- Guaranteeing a dollar-for-dollar recovery of access reductions results in a windfall to the RLECs as it fails to acknowledge and adjust for line loss and reduced access revenues that is currently and will continue to decline. (FoF 45);

- The PA USF should not be modified and used to guarantee against RLEC competitive losses. (FoF 46);

- The PA USF is not currently structured to require support commensurate with network usage. (FoF 87);

- It is unreasonable and anticompetitive to expect competitors to fund RLECs given the competitive environment for services. (FoF 88); and

- Requiring competitors to fund the PA USF diverts funds away development of new products, new services, or even reduced rates. (FoF 89).

<u>RLEC Customer Losses</u>

- There is no evidence that RLEC have experienced customer losses in reaction to price increases. (FoF 51 – 53); and

- RLEC customers are increasingly purchasing more expensive, bundled services instead of less expensive basic local exchange service. (FoF 54).

<u>Rate Rebalancing</u>

- The majority of CenturyLink's customers spend an average of $57.63 per month on services from CenturyLink. (FoF 54);

- All RLECs can accomplish access rebalancing if they implement changes so as to optimize rate design. (FoF 57);

- No RLEC has made any effort to design rebalanced rates that would minimize residential rate increases. (FoF 58);

- RLEC business rates are low and can be increased without making those rates unreasonable. (FoF 59);

- National average business line rates are $10 per month higher than CenturyLink's current rate. (FoF 61);

- RLEC services other than merely residential local service rates can be increased. (FoF 63);
- OCA determined that $32.00 per month, on a total bill basis, is affordable. (FoF 72);
- A $32.00 per month bill is merely 0.75% of the Pennsylvania median rural income. (FoF 73);
- What is an affordable rate would increase as household incomes increase. (FoF 78); and
- Access reductions will not result in revenue reductions due to revenue neutrality. (FoF 92).

From even a cursory review of the foregoing summary, it is evident that the conclusions reached in the RD are well supported by the record. While the RLECs, OCA and OSBA may be dissatisfied with ALJ Melillo's conclusions and recommendations, no party can credibly allege that with ALJ Melillo's conclusions and recommendations were not supported by the record; nevertheless, several parties do just that. Despite those parties' baseless arguments to the contrary, the RD's findings of fact are easily sufficient to support all conclusions reached in the RD, and the reform recommendations contained therein. While the RLECs bore the burden of proof to establish that their access rates are just and reasonable, the above listing of facts established on the record makes abundantly clear that the parties advocating for access rate reform established clearly and convincingly that RLEC switched access rates are unjust, unreasonable, anti-competitive, and sorely in need of reform. The RD also correctly finds that the RLECs' intrastate access rates can be reduced on a revenue neutral basis by implementing rate rebalancing plans that maximize revenue not only from residential services, but also from other noncompetitive sources, such as business and ancillary services.

III. The Public Interest Benefits of Access Reductions Are Accurately Considered and Measured in the RD

Both the Pennsylvania Telephone Association ("PTA") and CenturyLink ("CTL") argue that the public interest benefits of access reductions are overstated,[5] but their positions are easily disproven. Sprint addressed this issue directly in its Main Brief wherein it discussed at length record evidence illustrating the public interest benefits of access reform.[6] The record establishes that switched access is a monopoly function.[7] Any carriers competing with an RLEC in the retail market must use RLEC switched access to terminate non-local calls to the RLEC's customers.[8] This is true for all wireline competitors as well as for traffic originated by wireless providers who are assessed terminating intrastate access on wireless calls made to RLEC customers when such calls cross any Major Trading Area ("MTA") boundaries, but originate and terminate within Pennsylvania.[9] These competing carriers cannot compete on equal footing with RLECs if RLECs are permitted to impose on their competitors input costs for use of monopoly-controlled, bottleneck facilities that are priced far above the actual cost of providing those functions.

Historically, access prices were inflated as a mechanism to subsidize the price of basic local service in a regulated monopoly environment. This interplay between local service rates and intrastate access services rates, however, was established long ago in a

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[5] PTA Exceptions at 21, CTL Exceptions at 22, 52.

[6] *See* Sprint Main Brief at 23-31.

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

[8] *Id* at 12.; *see also Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd. 12962, 12966 (2000) ("CALLS Order")("IXCs were dependent on the BOCs and the independent LECs to complete the long-distance call to the end user").

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

business and regulatory environment far different from that of today.[10] Despite many regulatory and competitive changes in the industry, all carriers providing voice communication services in Pennsylvania still must use a RLEC's switched access lines to terminate non-local calls to that RLEC's local customers. Because provision of switched access services involves monopoly controlled network elements, other carriers' service costs are increased by RLECs' inflated access rates; and RLECs' inflated access rates increase the cost of the services provided by competing carriers.

The FCC has recognized that a compensation regime under which carriers recover their costs not from their own customers, but from their competitors and their competitors' customers is inherently problematic. As the FCC noted, "...if one type of carrier primarily recovers costs from other carriers, rather than its retail customers, it may have a competitive advantage over another type of carrier that must recover the same costs primarily from its own retail customers."[11] Ideally, carriers should collect the costs of providing retail services from the customers purchasing those retail services instead of imposing a portion of those costs on competitors by charging inflated rates for monopoly switched access. Implementing such a system is essential to developing a level competitive playing field for all service providers.

Consumers today have more choices for their communications needs than in past years when an ILEC was the lone provider of service within its service territory.[12] Today,

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

[11] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket 01-92, FCC-05-33, 20 FCC Rcd 4685, 4696 (March 3, 2005)("FCC 2005 FNPR").

[12] See Transcript at page 319, lines 2-4, page 352; lines 19-20, page 392, lines 3-8 (at least one competitor in each CenturyLink exchange), page 606, lines 2-6; *see also* page 136, lines 22-25 (since VOIP is

consumers typically have a choice between multiple carriers providing bundles of local and long distance service. Despite the presence of competitive service providers, each competing carrier must pay inflated access rates to a RLEC to complete its customers' non-local calls to a RLEC's local customers.[13] This built-in subsidy stream impedes retail offers available in the market.[14] The end result is to deprive consumers of the best offers that could be made available in the market. "Best offers" are inhibited because high switched access rates inflate the rates for all alternative services, constrain market entrance by new competitors, and impede the proliferation of new or expanded services in these markets.[15]

The proponents of reform have established that if RLECs' access rates are reduced, consumers will benefit from reduced prices for competitive retail service offerings.[16] When there is a reduction in input cost and one company passes that cost savings through to its customers while others do not, the company that dropped its prices will gain market share at the expense of the market share of any company or companies that do not pass the input cost savings through to their customers. This influences competitors to reduce prices, and is a basic operative principle in competitive markets.[17]

Flow-through price reductions in standalone long distance toll rates are far from the only benefits expected to occur if access rates are reduced. Wireless customers have already enjoyed significant consumer benefits as a result of reduced access rates that have in turn contributed to a decrease in wireless providers' costs of providing service. Access

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available over any broadband connection, and as broadband is available in 100% of PTA territory, and most of CenturyLink territory, all PTA customers and most CenturyLink customers have competitive options for voice service).

[13] Sprint Main Testimony (Sprint Statement 1.0) at 5.

[14] Sprint Rebuttal Testimony (Sprint Statement 1.2) at 26-27.

[15] *Id.*

[16] *See* RD at 35-36 (Findings of Fact 16, 20 and 21).

[17] *See* Transcript at page 186, lines 1-5, and 199, lines 12-13.

cost savings are one of the factors driving down the price of wireless service.[18] When LEC access rates are reduced, and subsidies are removed, carriers will have more resources to subsidize handsets, expand service coverage, enhance service quality, or develop new and innovative service offerings.[19]

The Commission should also note that ALL providers have reduced ability to recover their fixed costs in less densely populated areas of Pennsylvania. It is undisputed that when carriers compete with RLECs, they have to invest to build such infrastructure as is necessary to provide service.[20] Thus, non-RLEC carriers seeking to provide services in rural areas must not only struggle to recover their fixed costs in such areas, but they do so while also burdened by inflated RLEC access charges. Network investment expenses, artificially suppressed RLEC retail rates, and inflated access charges, all discourage competitive entry.[21] By reducing access rates the Commission will encourage competitive entry and additional investment in RLEC service territories, which in turn will benefit consumers.[22]

Additionally, because all Pennsylvania consumers are impacted by the RLECs' high access rates which are reflected in higher prices for all retail telecommunications services, the benefits to all Pennsylvanians purchasing various services must be considered, not just the alleged impact on each RLECs' local service customers.[23] The record establishes that at least 77% of Pennsylvanians have wireless phones;[24] 18.4% of

[18] *See* Sprint Rebuttal Testimony (Sprint Statement 1.2) at 24.
[19] *See* Transcript at page 273, lines 3-14.
[20] Transcript at page 336, lines 18-22, and page 444, lines 6-21.
[21] Sprint Rejoinder Testimony (Sprint Statement 1.3) at 6, lines 5-12.
[22] Sprint Rebuttal Testimony (Sprint Statement 1.2) at page 24, line 14 – page 25, line 13.
[23] Sprint Rebuttal Testimony (Sprint Statement 1.2) at pages 24-30.
[24] Sprint Cross Examination Exhibit 4.

adults live in households with *only* wireless phones;[25] and 24.4% of households with both wireless phones and wireline phones use their wireless phones exclusively or nearly so.[26] In light of this record evidence, it is no longer relevant or accurate to segregate Pennsylvania consumers into neat categories of local customers or wireless customers since approximately 74.5%[27] of Pennsylvania local service consumers are also wireless phone consumers. As Pennsylvania consumers today overwhelmingly have wireless phones (9,615,349 customers statewide),[28] any decision made to protect and prolong the RLECs' access subsidy will simultaneously prevent competitive benefits from being realized by Pennsylvania rural customers.

Furthermore, the Commission must differentiate between protecting customers – the Commission's primary duty – and protecting carriers. There is no doctrine of law requiring the Commission to *guarantee* that RLECs' are successful. To the contrary, long standing precedent indicates that the question of proper rate levels does not at all hinge on whether a rate is sufficient to *guarantee* a utility's success. Precedent holds that, utilities must be exposed to business risks like any other financial venture.[29] As the record convincingly establishes that consumers will benefit from access reductions,[30] the Commission's task is to balance the consumer benefit of access reductions *against* the RLECs' interests in outsized monopoly profits.[31]

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[25] Sprint Rejoinder Testimony (Sprint Statement 1.3) at Exhibit JAA-5RJ (page 2 of the exhibit: "Approximately 18.4% of all adults – 41 million adults – lived in households with only wireless telephones.")
[26] Sprint Rejoinder Testimony (Sprint Statement 1.3) at page 11, lines 12-20 and Exhibit JAA-5RJ.
[27] The exact number is difficult to determine. *See* Sprint Main Brief at 28, fn. 39 for explanation of Sprint's calculation.
[28] Sprint Cross Examination Exhibit 4.
[29] *Pennsylvania Electric Company v. Pennsylvania Public Utility Commission*, 102 A.2d 130, 134 (Pa. 1985).
[30] *See e.g.* Transcript at page 186, lines 1-5, 199, lines 12-13, and 273, lines 3-14.
[31] *See* Sprint Rejoinder Testimony (Sprint Statement 1.3) at Page 7-8 and JAA-2RJ.

ALJ Melillo recognized as much in finding that RLEC access rates are hindering consumer benefits and preventing competitive forces from bringing the best prices, products and services to market. In support of her RD, ALJ Melillo made the following findings regarding the benefits of interstate mirroring. The breadth and comprehensiveness of these findings make abundantly clear that ALJ Melillo exhaustively reviewed the extensive record before her and based her RD on substantial evidence of consumer benefits flowing from access reductions. (For the Commission's convenience, the numbering contained in the RD Findings of Fact are maintained herein.).

10. To the extent access charges are subsidizing local service, RLEC rates are being artificially maintained and RLECs are insulated from having to improve efficiency and offer better service. Thus, consumers are being denied the real benefits of competition. OSBA St. No. 3, p. 2 (ALJ Colwell record); CenturyLink St. No. 1.2, Panel 8; AT&T St. No. 1.2, pp. 50-51.

16. Consumers benefit from a free choice among competitors that compete aggressively on a more level playing field, based on real differences in quality and cost. Conversely, consumers are harmed when their choice is distorted by artificial differences in price driven by high access costs. AT&T St. No. 1.0, p. 52.

20. While the present system of high access charges is both competitively harmful and unsustainable, reductions in access charges will be beneficial to consumers. AT&T St. No. 1.0, pp. 42-45, AT&T St. No. 1.2, pp. 50-52.

21. Reductions in access costs will lead to lower long-distance rates. AT&T St. No. 1.0, p. 42; AT&T St. No. 1.2, pp. 51-52.

22. AT&T has committed to reduce its In-State Connection Fee (ISCF) and prepaid calling card charges once access reductions occur. AT&T made the same commitment in Pennsylvania that it made (and has now implemented) in New Jersey upon implementation of access reform in that state. AT&T St. No. 1.0, p. 59; AT&T St. No. 1.2, p. 50.

Other consumer benefits were identified by ALJ Melillo, but Sprint has focused on those listed above as these benefits are exclusively related to access reductions, while other benefits listed in the RD are listed in reference to other elements of the decision, like the illogic of expanding the Pennsylvania Universal Service Fund ("PA USF"), for instance. The benefits listed above are tangible, significant, cognizable, proven, and supported by the record. While it is obvious that the RLECs and certain other parties are dissatisfied with the RD, it cannot be said that the ALJ Melillo failed to reflect in the RD the considerable record developed in favor of access charge reform.

Sprint suggests that the Commission must conclude that access reductions will benefit consumers and that swiftly moving access rates to interstate levels is the most reasonable, appropriate means of ensuring the long-overdue consumer benefits that will accrue through access reductions. Any contrary conclusion would ignore long-standing precedent and elevate the interests of the RLECs over contrary and compelling interests. The RD appropriately addresses these arguments and concludes that the parties advocating reform have presented compelling evidence and arguments establishing public interest benefits will accrue from access reductions.[32] For all the foregoing reasons, the RD's conclusion that public interest benefits will accrue from implementation of access reform should be upheld.

IV. Expanding the Pennsylvania Universal Service Fund to Accommodate Access Reductions Is Appropriately Rejected

The PTA, CTL and the Office of the Consumer Advocate ("OCA") each take issue with ALJ Melillo's refusal to recommend the expansion of the PA USF in order to shift implicit subsidies contained in carrier access rates to explicit subsidies contained in

[32] RD at 77-78.

the PA USF.[33] ALJ Melillo recognized that "[t]here simply has been no showing of need for these *massive subsidy transfers*. Instead, in a competitive environment, the market should be relied upon, in large measure, to keep rates affordable and there has been no proof of any RLEC service area that lacks sufficient competitive options."[34] This astute observation by ALJ Melillo adequately and effectively silences the criticism leveled by PTA, CTL and OCA.

The fundamental flaw in the reasoning tendered by OCA and the RLECs is that they failed to provide proof of *any* need for subsidy whatsoever. Despite bearing the burden of proof to justify their own rates,[35] the RLECs failed to establish their cost of providing access. Lacking cost information, there is no basis upon which to conclude that the RLECs are reliant upon the access subsidy to provide anything other than a reliable source of excess profits. In this regard, it is worth noting that in the Commission's last individual review of an RLEC's access rates, the Commission concluded that the RLEC's access rates were excessive. As stated by the Commonwealth Court, "[t]he Commission specifically found that Petitioners' access charges were already excessive, above cost and higher than rates charged by others for the same service."[36]

Over a decade ago, Administrative Law Judge Schnierle ("ALJ Schnierle") clearly articulated the role of competition in delivering consumer benefits, and the failure of a universal service fund to short-circuit the perceived problem.

> In short, politically unpopular though it may be, rate rebalancing is required, along with access charge reductions, if there is to be competition

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[33] *See* PTA Exceptions at 27 and 55; CTL Exceptions at 25, 45 and 56; and OCA Exceptions at 13, 20 and 24.
[34] RD at 133.
[35] *See* RD at 46 – 50.
[36] *Buffalo Valley Telephone Co. v. Pennsylvania Public Utility Commission*, 990 A.2d 67, 75 (Pa. Cmnwlth 2009).

> for all customers in all locations, and if urban customers are not to be saddled with excessive universal service fund costs. I am aware of no other way to solve this problem, and the parties here have presented no other proposal that is likely to solve the problem. Moreover, the very point of introducing competition to the local exchange market is to bring about lower prices through the operation of the market. An unwillingness to rebalance rates suggests an unwillingness to trust the market to bring about lower prices. If that is the case, I suggest that society rethink the notion of attempting to have competition in the local exchange market.[37]

Sprint wholeheartedly agrees with ALJ Schnierle 's assessment and contends that it rings as true today as when originally articulated in 1998. The problem with a universal service fund is that it does not "fix" any problem in the market, it merely perpetuates the problem by shifting the burden sought to be addressed to a wider base without finding a solution for the underlying issue.

The same parties that take exception with the RD tried and failed to convince Administrative Law Judge Colwell ("ALJ Colwell"), in a different proceeding conducted within the instant docket, of the propriety of continuing or expanding the PA USF. After presiding over a hearing on the issue of rate caps and the PA USF, ALJ Colwell concluded as follows:

> The PA USF is a fund which exists because the ratepayers of other telecommunications providers have paid the money, unwittingly, as a hidden tax. It is not "free money" to be plundered at will and without concern for its origins or for whether it is the best use of the money. All parties agree that the concept of universal service is a worthy one. This fund should be reconstructed to provide assistance to those customers who need it, and for those companies who can meet a stringent test for determining that they serve an area whose costs are so high that the company itself deserves extra help for that area alone ... At some point, the market is meant to rely on competition to keep rates affordable. Institutionalizing the PA USF in its present form to provide subsidies to companies who do not have to prove need will not assist the market in reaching its goals and will, instead, provide barriers to entry for new carriers.[38]

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[37] *In Re: Intrastate Access Charge Reform*, Docket No. I-00960066, Recommended Decision, at 28 (June 30, 1998)(emphasis added).
[38] ALJ Colwell Recommended Decision, Docket No. I-00040105 at 87-88 (June 22, 2009)

ALJ Colwell recognized the same fundamental problem as did ALJ Schnierle many years earlier: the market, not a universal service fund, must be trusted to control prices, coerce the introduction of new products, and force the improvement and expansion of services.

Despite their failure to convince ALJ Colwell (and indeed, to convince ALJ Schnierle over a decade ago) of the wisdom of instituting, expanding or continuing the PA USF, PTA, CTL and OCA continue to complain that subsidies "lost" in the process of access reductions must be replaced by subsidies from the PA USF in order to effectuate access charge reform. While it is beyond dispute that such an approach is a method of affecting access charge reductions, such an approach cannot truly be deemed 'reform' since subsidy streams will continue to be collected from competitors and will stymie the full, healthy and complete development of competition. ALJ Melillo, as did ALJ Colwell and ALJ Schnierle, has recognized that the time for monopoly era subsidies has passed, and the time to trust the market to protect consumers is well at hand.

In support of her conclusions, ALJ Melillo made the following findings regarding the illogic of expanding the PA USF. ALJ Melillo's broad and comprehensive findings make obvious that she reviewed and understood the extensive record before her, and that the RD is based on substantial evidence disfavoring the expansion of the PA USF. (For the Commission's convenience, the numbering contained in the Findings of Fact are maintained herein.).

12. The RLECs were unable to identify any areas of their service territory which lacked competitive options. Tr. 318, 604-606.

45. Access rate reform should not be used as a windfall to the RLECs or to lock in their current levels of access revenues which are otherwise continuing to decline

due to competition. AT&T St. No. 1.2, p. 16; Verizon St. No. 1.1, p. 5; Verizon St. No. 1.2, pp. 14-16.

46. The purpose of the PA USF on a going forward basis should not be to guarantee the RLECs' competitive losses. AT&T St. No. 1.2, pp. 27-28; AT&T St. No. 1.2, p. 16.

87. The PA USF is not currently structured to require support commensurate with usage of the PSTN. Tr. 512.

88. It is unreasonable and anticompetitive to expect other carriers and their customers to fund the RLECs' operations through an expanded PA USF in today's competitive environment. Verizon St. No. 1.1, pp. 42-43.

89. Expansion of the PA USF would require companies like Verizon, Comcast and AT&T that pay into the PA USF to divert additional revenue each year to support the RLECs' operations. Their customers would be denied the benefits of that revenue which otherwise could have been used to improve the companies' products, services, or networks, or even reduce rates. Verizon St. No. 1.1, pp. 48-49.

Read in conjunction with the many findings supporting the RD, it is clear that the RLECs absolutely failed to establish that they have any need for subsidy, let alone subsidy in the form of an expanded PA USF. Faced with a dearth of evidence establishing the need for current or future PA USF funding, ALJ Melillo wisely declined to recommend expanding the PA USF. ALJ Melillo's findings in this regard are entirely consistent with ALJ Colwell, who recently recommended that the current PA USF should be reformed and that PA USF funding should target primarily consumers in need of support, and secondarily companies in need of support – but only after a cost-based showing of need.

As has been recognized time and again by the Commission's administrative law judges, competition, not subsidy, should govern the market. Sprint has expressed its agreement with ALJ Colwell's concept that PA USF funding can be made available to carriers that make a cost-based showing of need, and indeed that was an integral part of Sprint's reform proposal in this docket. Sprint suggests to the Commission that the competition alone is sufficient to regulate the markets, and should be trusted to perform its role. This cannot occur, however, when carriers are forced to subsidize their competitors whether through access charges or through a PA USF subsidy. ALJ Melillo's findings and conclusions in this regard should be adopted without change.

V. Comparability

PTA, CTL and OCA each challenge whether the RD properly considers whether the rates recommended in the RD satisfy the allegedly applicable comparability standard.[39] The fundamental problem with this argument is that there is in fact no applicable comparability standard. The flawed arguments are premised on 47 U.S.C. § 254(b)(3). That statute, however, does not apply to states or intrastate rates. Furthermore, that statute merely lists governing principles for consideration by the FCC and the Federal-State Joint Board on Universal Service. There is no requirement under Pennsylvania law requiring consideration of comparability, whether under the above statute or otherwise, and the parties' arguments in this regard are unfounded. Sprint suggests that Commission review the discussion of this issue contained in Verizon's Main Brief as Verizon has already thoroughly addressed and discounted these arguments.[40]

VI. Revenue Neutrality

CTL and PTA both argue that the RD fails to satisfy the statutory requirement that access reductions be revenue neutral.[41] The RLECs contend that for statutory revenue neutrality obligations to be satisfied, revenue neutrality must be realizable. While Sprint agrees that revenue neutral access reductions must be realizable lest the statutory

[39] *See* PTA Exceptions at 36; CTL Exceptions at 25; and OCA Exceptions at 6.
[40] *See* Verizon Main Brief at 31-33.
[41] *See* CTL Exceptions at 25, 45, and 61; PTA Exceptions at 36.

requirement be reduced to mere words without purpose, the record supports the proposition that there is considerable leeway for RLEC rate increases.[42] OCA's testimony indicated both that many customers in Pennsylvania presently spend $114 for telecommunications services from their ILEC,[43] and that $23.14 is an affordable rate.[44] Testimony from AT&T indicates that CenturyLink customers purchasing only local service spend an average of $30.19 per month,[45] and that the majority of CenturyLink customers are bundle customers that spend an average of $57.63 per month on their service.[46] Despite the RLECS protests to the contrary, the artificially suppressed $18 rate for local service, held in place by the Commission for seven years, is well below reasonable, sustainable levels. Raising rates to higher, but still affordable, levels satisfies the revenue neutrality requirement as such an increase is realizable.

Claims by the RLECs that they cannot increase their rates without risking line losses are misleading. The record establishes that CenturyLink is losing 7% to 8% of its access lines annually.[47] The cause of these line losses, according to PTA's witness, is that competitive services offer mobility, convenience, high tech functionality, camera service, "apps," web browsing, data transmission, and VoIP, and "[t]his overall maturation of technology has driven growth of competitors lines, including wireless carriers, at the expense of traditional lines."[48] In light of the obvious advantages of alternatives to basic local exchange service, the question is not whether RLECs will lose customers following rate rebalancing attendant to access reform, but how many of those

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[42] In conformity with 52 Pa. Code § 5.535, Sprint notes for the Commission that Sprint has addressed nearly identical arguments in its Reply Brief at pgs. 41 – 46, and in its Main Brief at pages 67 – 82.
[43] Transcript at p. 481, lines 6-20.
[44] Transcript at p. 508, lines 7-10.
[45] AT&T Statement 1.2 (AT&T Rebuttal Testimony) at p. 10, lines 5-6.
[46] AT&T Statement 1.2 (AT&T Rebuttal Testimony) at p. 10, lines 7-8.
[47] Transcript at p. 433, lines 13-16.
[48] *See* PTA Statement 1.0 (PTA Direct Testimony) at 42-43.

customers would have left regardless of rate increases. RLEC customers are leaving RLECs at a considerable pace, and maintaining inflated access rates will not staunch that exodus. Neither will offsetting access reductions with another anti-competitive subsidy such as the PA USF. A decision to lower access rates will empower the market to bring about consumer benefits and lower prices.[49] Thus, there is simply no evidence supporting the RLEC position that rate rebalancing to accomplish access reform would not conform to statutory revenue neutrality obligations.

ALJ Melillo made a number of findings of fact that directly support the arguments made above and in Sprint's briefs. Regarding revenue neutrality and rate rebalancing, ALJ Melillo made the following findings of fact.

- The majority of CenturyLink's customers spend an average of $57.63 per month on services from CenturyLink. (FoF[50] 54);
- All RLECs can accomplish access rebalancing if they implement changes so as to optimize rate design. (FoF 57);
- No RLEC has made any effort to design rebalanced rates that would minimize residential rate increases. (FoF 58);
- RLEC business rates are low and can be increased without making those rates unreasonable. (FoF 59);
- National average business line rates are $10 per month higher than CenturyLink's current rate. (FoF 61);
- RLEC services other than merely residential local service rates can be increased. (FoF 63);
- OCA determined that $32.00 per month, on a total bill basis, is affordable. (FoF 72);

[49] *See In Re: Intrastate Access Charge Reform*, Docket No. I-00960066, Recommended Decision, at 28 (June 30, 1998).
[50] Findings of Fact here abbreviated as "FoF".

- A $32.00 per month bill is merely 0.75% of the Pennsylvania median rural income. (FoF 73);

These findings of fact are easily adequate to support the ALJ Melillo's finding that access reform can be accomplished, and can be accomplished in a revenue neutral fashion. It is critical for the Commission to note ALJ Melillo's observation that the RLECs have the ability to recover decreased access revenues not only from increased residential BLES rates, but also from redesign to business and other noncompetitive and ancillary service rates.[51] The Commission should reject the RLECs false choice of achieving revenue neutrality only from increased residential rates or an expansion of the PA USF. It is also important to recognize that the revenue neutrality obligation must be deemed applicable only within a short period. Without a temporal limit to the revenue neutrality obligation, there would be an endless process of rate rebalancing to maintain revenue neutrality into perpetuity. There is nothing on the record or in the statute that would support such an interpretation.

VII. The Burden of Proof Was Properly Applied

CTL, PTA and OSBA all contend that the ALJ Melillo inaccurately applied the burden of proof in her RD.[52] As explained below, ALJ Melillo understood and appropriately applied the burden of proof.[53] It is well-settled that under the Public Utility Code and the Commission's prior Orders the RLECs have the burden of proving that their existing intrastate access rates are just and reasonable. The appropriate point of departure for analysis of the burden of proof is the Public Utility Code. Section 315(a) of the Code states as follows:

[51] R.D. at 134 -140

[52] *See* CTL Exceptions at 4, 17, 22 and 52; PTA Exceptions at 9, 14, 16, and 21; and OSBA Exceptions at 7.

[53] *See also* Sprint Main Brief at 21-23.

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

The matter at bar clearly was initiated "upon the motion of the Commission", and quite obviously involves the "existing rates of public utilities." Accordingly, the burden on proof rests with the RLECs, as the public utilities whose rates are being examined.[54] This *RLEC Access Charge Investigation* was initiated by the Commission with its *Global Order* and continued the investigation with its December 20, 2004 Order. The express purpose this investigation is to determine whether further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers should be implemented. (See Order dated December 20, 2004). The RLECs are obviously "public utilities" whose "existing rates" are being examined, and therefore, the burden is on the RLECs to prove that their rates are just and reasonable.

In an earlier investigation of Verizon's access rates, the Commission held that the burden of proof provisions of Section 315(a) required Verizon to bear the burden of proof to establish that its rates are just and reasonable. That earlier investigation of Verizon's rates had been initiated by the Commission in its Global Order and by a subsequent Commission Order dated July 28, 2004. AT&T subsequently filed a Formal Complaint against Verizon seeking reductions in Verizon's intrastate access rates. The ALJ in that case initially held that AT&T had the burden of proof, as the proponent of a rule or Order under Section 332(a). The Commission reversed the ALJ, by Order entered December 30, 2006, and explained that the burden of proof rested with Verizon (as the

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[54] RD at 46 – 47.

utility whose rates were being examined) pursuant to Section 315(a), notwithstanding the fact that the docket bore a "C" designation.[55] The same conclusion must be reached in the instant proceeding, and ALJ Melillo's recitation of the burden of proof is entirely accurate.

Beyond determining merely which party bears the burden of proof, it is also essential to note the extent to which that party must 'prove' their case. The RLECs were required to establish that their rates are just and reasonable by a preponderance of the evidence;[56] and this they failed to do as explained in exacting detail within the RD.

Another argument that is repetitively advanced by the RLECs is that their rates are somehow insulated from being found presently and prospectively unjust and unreasonable due to the fact that they were previously approved by the Commission, and/or that Act 183 prohibits their rates from being declared unreasonable. These arguments ignore rulings on this very topic by the Commission, ALJ Melillo in this docket, and simple logic.[57] These erroneous arguments misinterpret Act 183 and the Commission's consistent policy of pursing switched access reform. The argument should be given no greater weight today than they have when rejected previously. In an earlier, related docket, the Commission addressed like arguments regarding the affect of Act 183 on the Commission's ability to reform intrastate switched access rates. Therein, the Commission observed the following.

> We are mindful of the necessity for this Commission, as a creature of statute, to give effect to the intent of the General Assembly in the enactment of Act 183. We do not, however, conclude that policy goals of

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[55] See RD at 47; *see also* Opinion and Order, *AT&T Communications of Pennsylvania, LLC v. Verizon North, Inc. and Verizon Pennsylvania, Inc.*, Docket No. C-20027195 (entered November 30, 2006).
[56] RD at 48.
[57] In conformity with 52 Pa. Code § 5.535, Sprint notes that it presented arguments regarding current review of Commission approved rates in its Reply Brief at 4 – 7.

> access charge reform have been nullified as a result of Act 183. ... Contrary to the interpretation of Section 3017 argued by OSBA, the absence of an express reference to access charge *increases* in Act 183 is more consistent with the view that the General Assembly was aware of, and approved, the Commission's direction in achieving access charge reform. **That reform**, while not prohibiting increases, *per se*, **unequivocally encompassed removing implicit subsidies in these charges and moving them closer to cost** ... We do not, however, reach the conclusion that such market realities created by, *inter alia*, intermodal competition and the necessity for ILECs to increase revenues to meet an accelerated broadband deployment commitment to insinuate a movement toward the return to implicit subsidies in access rates ... [W]e are reluctant to abandon a generic, industry-wide approach to achieve access charge reform ...[58]

There can be no doubt that the Commission has deemed that removal of implicit subsidies from access rates and moving access rates closer to cost is still within its jurisdiction and remains a valid goal and policy of the Commission even after passage of Act 183. Similarly, there can also be no doubt that the Commission's above stated opinion has withstood appellate review. The Commission's above quoted order was appealed to the Commonwealth Court by certain PTA members dissatisfied with the Commission's refusal to allow them to increase their access rates. Reviewing the Commission's order, the Commonwealth Court agreed with the Commission's that the Commission has ample and obvious authority under Act 183 to reduce RLEC switched access rates.

> Under *66 Pa.C.S. § 3017* the Commission has specific authority to rebalance revenue among noncompetitive services by reducing access rates and making revenue neutral increases to other noncompetitive rates. *Section 3017* states that "[t]he Commission may not require a local exchange telecommunications company to reduce access rates **except on a revenue neutral basis**." (Emphasis added). Therefore, *Section 3017* envisioned situations where the Commission would require a rural LEC to

[58] Opinion and Order, *2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, et al.*, Docket No. P-00981428F1000 *et al.*, p. 22-23 (entered July 11, 2007)(italics in original, bold emphasis added)

> reduce access rates and provided an independent basis for the Commission to require Petitioners to reduce access rates …[59]

To the extent that this issue had been reviewed and rejected by the Commission and the Commonwealth Court, it must be rejected here again.

The RLECs also argue that as their intrastate switched access rates were approved under their Alternative Regulation Plans and are contained in tariffs, those rates are insulated from any Commission determination that those rates are unjust and unreasonable.[60] This argument, too, has been specifically rejected by the Commission. Indeed, ALJ Melillo previously considered and rejected these arguments *in this same docket*.

> I have considered the parties' arguments and disagree with PTA that the alleged commonly included Plan language (concerning restrictions on Section 1309 complaints), in light of Section 3015(g), somehow constrains the Commission's rate authority. I note that the Commission apparently does not subscribe to this position, as indicated in its Advance Form Brief in Buffalo Valley Telephone Company et al. v. Pa. P.U.C. (No. 847 C.D. 2008) and Popowsky v. Pa. P.U.C. (No. 940 C.D. 2008), pages 25-27. Therein, the Commission interpreted the second sentence of Section 3015(g) of the Code as not limiting its authority over rate proposals to a determination of whether rate changes comply with the applicable Chapter 30 plan. As stated by the Commission, the effect of Section 3015(g) is to preserve Commission authority, not limit it. Otherwise, those sections of Act 183 (such as the first sentence of Section 3015(g) and Section 3019(h)) which expressly preserve the Commission's authority under Section 1301 (concerning the "just and reasonable" rate requirement), would be read out of the statute, contrary to principles of statutory construction in 1 Pa. C.S. §1921.
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> Indeed, the Legislature clearly dispelled any notion that Chapter 30 plan language supersedes the Commission's rate review authority under Sections 1301 and 1309 of the Code, when it enacted Section 3019(h). That provision, in no uncertain terms, states that the plan's terms shall

[59] *Buffalo Valley Telephone Co. v. Pennsylvania Public Utility Commission*, 990 A.2d 67, 80 (Pa. Cmnwlth 2009)(emphasis in original).

[60] This argument appears in the Burden of Proof section of PTA's Exceptions, so it is addressed in the Burden of Proof section herein, although other parties may have addressed this issue in other sections of their Exceptions.

supersede conflicting provisions of the Public Utility Code, **other than** Sections 1301 (relating to rates to be just and reasonable, 1302 (relating to tariffs; filing and inspection), 1303 (relating to adherence to tariffs), 1304 (relating to discrimination in rates), 1305 (relating to advance payment of rates; interest on deposits), 1309 (relating to rates fixed on complaint; investigation of costs of production) and 1312 (relating to refunds). Under principles of statutory construction, the letter of the statute is not to be disregarded when, as in the instant case, the words are clear and free from all ambiguity. 1 Pa. C.S. §1921(b).

> Accordingly, PTA's argument ... is rejected.[61]

ALJ Melillo's reasoning is wholly and entirely accurate, and Sprint also notes that it is in accord with Commission precedent, a plain reading of the statute, and simple logic. The Commission addressed this issue in its *Global Order* as well as in the more recent *Buffalo Valley* case quoted from above. In the *Global Order* the Commission stated as follows:

> **[T]he fact that we may have found BA-PA's access rates to be just and reasonable at some earlier point is of no relevance here**. As explained earlier in this opinion and order, the Commission's fundamental and continuing authority to ensure that rates are just and reasonable has not been abrogated by adoption of BA-PA's Chapter 30 Plan. In addition to the continuing oversight authority and responsibility provided by various sections of Chapter 30 ... the Commission has continuing authority over the rates charged and all services rendered by jurisdictional utilities pursuant to other provisions of the Public Utility Code, 66 Pa.C.S. §§ 1301, 1309, 1325 and 1501, and may amend the duration and terms of previous orders upon notice and opportunity to be heard, 66 Pa. C.S. §§ 703(e) and (g). Therefore, state law provides ample authority to address BA-PA's access charges in this proceeding.[62]

The Commission's authority to review rates is neither diminished nor extinguished by virtue of Commission approved Alternative Regulation Plans. RLECs'

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[61] *See Order Denying Preliminary Objections and Motion for Consolidation or Stay*, Docket No. I-00040105, p. 7 (June 22, 2009)(emphasis in original).

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

switched access rates at all times remain subject to the Commission's jurisdiction to determine whether regulated rates remain just and reasonable.

It should also be noted that the Commission earlier expressed its intent that the RLECs current interstate access rates not be considered final rates.[63] When the Commission last set the RLECs' access rates, the Commission stated "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 for Pennsylvania in an efficient and productive manner."[64] Quite obviously, the Commission announced that the RLEC access rates it set seven years ago were merely an interim step in access reform. The RLECs' access rates were at all times intended to be subject to further review and adjustment. The Commission went so far as to include in its 2003 Order the requirement for a proceeding to be instituted no later than the end of 2004 to investigate issues related to access and the PA USF.[65] With the foregoing in mind, it is inescapable that RLECs access rates were intended to remain subject to the Commission's continuing authority and obligation to ensure that rates charged by public utilities are just and reasonable.

VIII. Loop Costs

PTA, OCA and OSBA argue that loop costs must be recovered and that a failure to allocate a subsidy for such costs is inappropriate. The flaw in their argument that competitors should pay loop costs – which are not traffic sensitive – has long since been

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[63] Order, *Access Charge Investigation per Global Order of September 30 ,1999,* Docket No. M-00021596, *et al.* (entered July 15, 2003).
[64] *Id.* at 12.
[65] *Id.* at 12; *see also* Order, *Investigation Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund,* Docket No. I-00040105, p. 4 (entered December 20, 2004).

laid to rest by the FCC and every other jurisdiction that has reviewed this issue.[66] Sprint addressed this issue at considerable length in its testimony and briefs, but to the extent that this counter-intuitive argument has been again advanced in the Exceptions, Sprint will again address this argument herein.

In 1983 the FCC announced that it would pursue the removal of common-line costs from the calculation of the cost of switched access.[67] The FCC found that a customer which does not use his or her local-loop to place or receive even a single call generates the same local-loop expense as customers that do place calls over the local-loop. Thus, every LEC customer causes the same local-loop cost, and does so regardless of local-loop usage.[68] As the LEC customer causes 100% of the local-loop expense upon ordering the loop, the FCC concluded that those costs should ultimately be borne exclusively by the LEC customer and/or the LEC, and should not be shifted to competing carriers. The FCC has never wavered from this conclusion, and federal appeals courts have upheld the FCC's position when challenged.[69]

The Commission, too, is well aware that the local-loop is a non-traffic sensitive network element. In the *Global Order* the Commission commented on non-traffic sensitive elements of the local network.

> In providing switched access for the completion of a toll call, a LEC will incur both non-traffic-sensitive (NTS) costs and traffic-sensitive (TS) costs. NTS costs are those associated with providing and maintaining the local loop. They consist of the facilities required to connect the customer's

[66] In conformity with 52 Pa. Code § 5.535, Sprint notes that it presented arguments regarding loop costs in its Main Brief at 35-36 and its Reply Brief at 19-23.
[67] *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, Phase 1, 93 FCC 2d 241, 264-65 (1983); recon., 97 FCC 2d 682 (1983), second recon., 97 FCC 2d 834 (1984)("1983 Access Charge Reform Order").
[68] *Id.* at 278.
[69] *See In the Matter of Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd. 12962, 12999-1300 (rel. May 31, 2000)("CALLS Order"); *see also Southwestern Bell Telephone v. Federal Communications Commission,* 153 F.3d 523, 559 (8th Cir. 1998).

> premises to the local central office. NTS costs are not dependent on the number or length of telephone calls and cover parts of the local telephone network such as cables and poles. TS costs, on the other hand, vary with the amount of usage of the telephone network.[70]
>
> ... [NTS] costs pose particularly difficult problems ... because all of the facilities would be required even if they were used only to provide local service.[71]

ALJ Schnierle reached a similar determination in a related docket, and his findings were incorporated by reference into the *Global Order*.[72] "Once a loop and switch are in place, however, there is very little additional cost involved in providing "access" to toll services, or vertical services such as Call Waiting. Thus, most of the cost involved in rendering telephone service is incurred in simply providing the minimum equipment necessary to render basic service."[73] CenturyLink reiterated this point in this docket before ALJ Colwell by indicating unequivocally that the entire loop cost is directly caused by basic local exchange service.

> Therefore the cost causation to [the RLEC] for the loop is basic local exchange service. Dial tone requires a loop to a requesting customer. If a customer chooses to add other services, such as long distance or a custom calling feature, the dial tone must be there first. Loop investment is a direct cost of basic local exchange service.[74]

There is no credible dispute that the RLEC end user causes the entire cost of the local loop.[75] Nevertheless, and despite the unanimity of thinking on this cost allocation issue in other jurisdictions, the issue of whether or how best to allocate these costs is

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[70] *See Global Order*

[71] *Global Order* at fn. 7.

[72] *In Re: Intrastate Access Charge Reform*, Docket No. I-00960066, Recommended Decision, at 28 (June 30, 1998) (" the cost of the local loop that connects an end user to the telephone company's switch does not vary with usage ...").

[73] *Id.*

[74] *See* Sprint Statement 1.2 (Sprint Rebuttal Testimony) at JAA-13R at p. 7 (Rebuttal Testimony of Christy V. Londerholm, Docket No. I-00040105, at 7, January 15, 2009).

[75] It should be noted that while the RLECs did make some claims that there *can* be a minimal degree of traffic sensitive loop elements, the RLECs failed to provide any evidence illustrating the degree to which this is true within their networks or the magnitude of the costs involved – undoubtedly minimal if any truly exist.

disputed. It is essential to begin the loop cost allocation analysis with the recognition that in the context of switched access traffic termination, the local loop is a monopoly controlled network element.[76] Monopoly control over the local loop prevents competition from driving prices to levels reflective of the broader competitive market.[77] Sprint addressed this situation and suggested that

> the Commission can permit the marketplace to constrain RLEC profits by exposing the inflated access revenue to the discipline of the marketplace. By requiring RLECs to replace their access overcharges with revenues received through the prices they charge for retail services, instead of through "hidden taxes" in access charges or a "universal service" fund, consumers will be provided information about the RLECs costs of retail services. The consumers can use this improved information to pick the provider that fits their needs best.[78]

Sprint contends that local loop costs must be included in basic local service rates that are explicit, apparent to customers, and subject to competitive forces. In that manner, the Commission can be sure that any excess charges currently contained in the carrier charge, the sole Pennsylvania RLEC rate element for local loop charges, will be reduced to just and reasonable levels by market forces.

CenturyLink makes a related argument that at the federal level reallocation of loop costs involved more than merely increasing consumers' rates. This point Sprint does not challenge. What CenturyLink's ignores, however, is that it would be highly inadvisable for this Commission to engage in access reform by coming up with a system

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[76] Transcript at p. 242, lines 19-23, and p. 255, lines 5-22.

[77] Order, *In the Matter the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates,* Docket TX08090830, at p. 27 (released February 1, 2010)("New Jersey Access Reform Order")(" [S]witched access service is a monopoly because there is no ability for an IXC or its customers to avoid excessive access charges."). Available at http://www.state.nj.us/bpu/pdf/telecopdfs/TX08090830.pdf. This decision was also attached to AT&T Panel Rebuttal Testimony at Attachment 2.; *see also* Sprint Main Testimony (Sprint Statement 1.0) at 12; Transcript at page 242, lines 19-23, and page 255, lines 5-22; *see also* Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd 9610, at 9616-17 (rel. April 27, 2001)(the FCC acknowledges that terminating access is a monopoly).

[78] Sprint Statement 1.2 (Sprint Rebuttal Testimony) at p. 19-20 (internal footnote omitted).

reflective of the federal system which involves multiple subsidy vehicles bearing a half-dozen different names. The FCC has targeted its own subsidy system for reform beginning in the fourth quarter of 2010.[79] Rather, the Commission should shift the local loop cost to the cost causer – the basic local exchange service customer that orders the access line. This result is all the more appropriate considering the RLECs refusal to produce cost data in defense of their own rates. If the RLECs seek contribution to the *cost* of the local loop, it is absurd that they have not even attempted to establish that cost on the record. As has become obvious in the course of this docket, however, the RLECs are not particularly interested in contributions to *cost*, but in the continuation of their excessive subsidy streams. Nevertheless, even after appropriately allocating loop costs to the cost-causer, it must be acknowledged that intrastate access rates will still cover costs, recover a contribution towards loop costs, and recover a reasonable return when set at parity with interstate rates.[80]

IX. Conclusion

Reviewing the record in this instant case, ALJ Melillo reached the inescapable conclusion that the RLECs intrastate access rates are unjust, unreasonable and sorely in need of reform. The arguments contained in the parties' Exceptions fail to support the continuation of inflated access rates. The Commission must act to correct the competitive distortions caused by the RLECs' unjust and unreasonable rates, and should now continue to move forward with the longstanding goal of setting access rates closer to cost. To accomplish its long-standing reform goal, the Commission should immediately order

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[79] *See* AT&T Cross Examination Exhibit 4.
[80] *See* RD, Findings of Fact Nos. 30 and 31.

each of the RLEC's to reduce their intrastate access rates to mirror the rate levels and structure of their interstate access charges.

Respectfully submitted this 17th day of September, 2010.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund	:	Docket No. I-00040105

AT&T Communications of Pennsylvania, LLC Complainant v. Armstrong Telephone Company - Pennsylvania, et al. Respondents	:	Docket No. C-2009-2098380, et al.

CERTIFICATE OF SERVICE

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

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