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September 12, 2011

VIA OVERNIGHT DELIVERY

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*Re: AT&T Communications of Pennsylvania, LLC. v.
Verizon North Inc. and Verizon Pennsylvania Inc.,
Docket No. C-20027195*

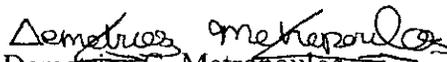
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Please find enclosed an original and nine (9) copies of the Reply Brief of AT&T for filing in the above-referenced matter. Please note that the Brief contains proprietary information, and should be treated accordingly. A public copy is also enclosed.

Please contact me if you have any questions or concerns with this matter.

Very truly yours,


Demetrios G. Metropoulos

DGM:pmp
Encls.

cc: Certificate of Service
Administrative Law Judge Cynthia Fordham
Cheryl Walker-Davis, Office of Special Assistants

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I. INTRODUCTION

The Commission re-opened this case to refresh an evidentiary record that, six years ago, supported ALJ Fordham's recommendation to reduce Verizon's intrastate access rates to interstate levels. As AT&T showed in its Main Brief, the updated record overwhelmingly confirms the same essential conclusion: Verizon's intrastate rates should be reduced immediately to interstate parity. The complete record shows this one step will benefit Pennsylvania consumers by making the market more competitive, by reducing discriminatory cost disparities between IXCs and other forms of communication that are not forced to pay the same access subsidies, by sending consumers appropriate pricing signals, by giving Verizon (and other carriers who must compete against Verizon) appropriate incentives to invest in new services and new technologies and to operate more efficiently, and ending Verizon's unsustainable dependence on implicit subsidies. In fact, the passage of time since ALJ Fordham issued her 2005 Recommended Decision has made the need for this reform even more urgent, and the ability to effect it even more straightforward. Simply stated, the Commission can – and should – give Pennsylvania consumers meaningful relief immediately in one stroke, and for less than \$1 per month per line in rebalanced retail rates.

Verizon, the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) would have the Commission believe that this reform is both unprecedented and dangerous. Those claims are thoroughly belied by the record. The parity reform that ALJ Fordham recommended adopting in 2005 is not rocket science. This same reform has been adopted in states across the nation, most of which are states in which an AT&T company is the incumbent telecommunications provider.¹ One of the most recent examples is occurring just

¹ See AT&T Stmt. 1.0 (AT&T Panel Direct Testimony), Exhibit G (identifying states with intrastate and interstate access rate parity).

across the Delaware River in New Jersey. The access reductions and rate rebalancing implemented in those states have not caused a telecommunications apocalypse. Rather, they have produced the benefits that the evidentiary record indisputably demonstrates will occur in Pennsylvania: a more level competitive playing field among competing telecommunications providers and technologies, reduced incentives and opportunities for harmful and wasteful access arbitrage, and, most importantly, greater consumer benefits. Indeed, AT&T's witnesses testified without contradiction at the hearing that reductions in intrastate access rates have directly led to sustained reductions in toll rates,² and further committed that reducing Verizon's intrastate rates to parity will result in AT&T eliminating its in-state connection fee.³

The opponents of reform (Verizon, OCA, and OSBA) do not provide any meaningful response to, much less dispute, this evidence. Nor can they. In truth, the relevant facts regarding the need for access reform are not even disputed. There is no dispute that Verizon's intrastate switched access rates are still harming Pennsylvania consumers: by inflating prices for wireline long-distance services, distorting the competitive playing field, depriving consumers of the benefits of fair choice, creating incentives for harmful and wasteful arbitrage, and taking money away from investment in advanced broadband facilities. There is also no dispute that the present system is unsustainable, as it simply drives consumers away from wireline networks to alternative technologies that do not bear the same access burden. And there is no dispute that the modest parity reform recommended by the AT&T will help Pennsylvania consumers. In short, there is a mountain of uncontradicted evidence confirming the ALJ's prior recommendation to bring Verizon's intrastate rates to parity with their interstate rates. Indeed, the Commission

² July 15, 2011 Hearing Tr. at pp. 423-24; AT&T Panel Surrebuttal Testimony, Attachment D.

³ July 15, 2011 Hearing Tr. at p. 420.

could decide the issue just by listening to Verizon itself, which has admitted that there is “overwhelming economic evidence about the benefits of [access] reform.”⁴

There is also no dispute that the entire recommended access reduction can be rebalanced immediately to local service rates (*if* Verizon chooses that route) while keeping those rates below the old \$18 rate cap (even though all parties agree, and the Commission has held, that \$18 is *too low*). Thus, there is no dispute that those local service rates will remain well within any legitimate measure of affordability. The record also shows that the *maximum* increase in local rates – *if* Verizon chose to rebalance the entire access reduction that way – is *less than a dollar per month, per line*. Here too, the evidence is overwhelming and the calculations are all there in the record, but the Commission need look no further than Verizon itself: Verizon’s witness admitted on cross-examination that it has not raised any issue regarding affordability.⁵

Yet, in the face of this compelling record, Verizon, the OCA and the OSBA want this Commission to do – NOTHING. And their most audacious argument for the Commission to sit on its hands is the most recent effort by this Commission to do something to implement access reform elsewhere in Pennsylvania: specifically, the Commission’s July 18, 2011 *RLEC Access Reform Order*. In a breathless display of pretzel logic, Verizon, the OCA, and the OSBA all take the position that the specific and comprehensive reforms that the Commission adopted in that Order, including substantial reductions in the RLECs’ intrastate access rates, somehow provide a basis for the Commission to do *nothing* about Verizon’s rates. In particular, they all point to the Commission’s adoption of a Carrier Charge common to all the RLECs, at the rate of \$2.50, as a reason that Verizon’s rates cannot be reformed.

⁴ AT&T Statement 3.0 (Panel Surrebuttal) Attachment A (Verizon Reply Comments in FCC Intercarrier Compensation Rulemaking), at p. 26.

⁵ June 14, 2011 Hearing Tr., at p. 210.

However, that “logic,” and its untoward focus on the RLEC Carrier Charge tree, completely misses the overall access reform forest embodied in the *RLEC Access Reform Order*. It is true that, from AT&T’s perspective, the Commission did not completely finish the job of reform in the *RLEC Access Reform Order*. But that should not be read to minimize the extent of the reforms and reductions that the Commission did effect. The Commission ordered all the RLECs to reduce their traffic-sensitive intrastate rates to parity with the corresponding interstate rates, and even the Carrier Charge it established reflects, for most RLECs, reductions – and in many cases significant reductions, from as high as \$17.99 per line per month (Ironton) – from current rates. By the Commission’s own estimation the reforms resulting from that Order will result in total access reductions of \$50 million. It is absurd to argue that an Order with this impact is actually an excuse to do nothing with regards to the rates of Pennsylvania’s largest ILEC, Verizon.

More fundamentally, the do-nothings are ignoring the Commission’s long-standing policy – expressly reinforced by the *RLEC Access Reform Order* itself – of considering Verizon’s rates separately from those of the RLECs. While the Commission has held the same general goal of reducing access rates for Verizon and the RLECs alike, it has been just as consistent that the specifics of implementing that goal among those carriers are very different. This approach dates back to the *Global Order*, which contains separate sections addressing access reductions for Verizon and the RLECs, with concomitant differences in implementing reductions between those two camps.

Likewise, when the Commission opened this proceeding in 2002, it bifurcated Verizon from the RLECs. This case therefore has a very different procedural history than the RLEC case. After an initial round of reductions from the first phase of this case in 2004, the Commission

remanded the case back to the ALJ, specifically rejecting an initial recommendation to close the case. Instead, the Commission said that “the ALJ’s [2003] Recommended Decision did not go far enough because it failed to establish ‘next steps’ to further reduce access rates in the near future.”⁶ The Commission also was not content with maintaining a \$0.58 Carrier Charge for Verizon. Rather, the Commission told the ALJ to recommend “a plan that addresses further reductions or even a complete elimination or phase-out of the Carrier Charge.”⁷

The Commission reaffirmed its consistent separation of Verizon and the RLECs in the same *RLEC Access Reform Order* that the opponents of reform purport to rely on here. That Order expressly states that “[r]eductions to Verizon’s access charges have been and will continue to be considered separately,” and specifically references this docket as the place where Verizon’s charges would be resolved.⁸

The Commission’s policy of separate implementation holds with even more force today, because this case is considerably easier than the RLEC case. *First*, in the RLEC investigation, the Commission was considering over 30 different companies with vastly different access rate structures, wildly different monthly per-line Carrier Charges (ranging all the way up through \$10.03 for Palmerton and even up to \$17.99 for Ironton), and varying local rates (as low as \$11 per month for Citizens’ of Kecksburg). Here, the Commission can count the Verizon companies with two fingers, and both companies have very similar access rate structures (in fact, the last access order in 2004 synchronized the rates for Verizon PA and Verizon North).

Second, the RLECs were already receiving support from the Pennsylvania Universal Service Fund (“PaUSF”), so the Commission considered the RLEC access case in conjunction

⁶ July 28, 2004 Order at pp. 15-16.

⁷ *Id.* at p. 20.

⁸ *RLEC Access Reform Order*, at p. 17 n. 24.

with PaUSF issues that had been addressed by ALJ Colwell. And because several RLECs had large Carrier Charges, and/or large differentials between their interstate and intrastate traffic-sensitive rates, the Commission considered whether to use the USF to help rebalance the proposed access reductions. In the end, the Commission decided to phase in access reductions and establish a new \$2.50 Carrier Charge so that it could rebalance the access reductions entirely through local rates without any additional use of the PaUSF.

Here, by contrast, Verizon's Carrier Charge is pocket change – 58 cents per line per month – and the entire access reform recommended by AT&T (including the elimination of the Carrier Charge) can be rebalanced for less than a dollar per line per month. The resulting local rates would still be less than \$18 a month, an amount that the Commission has found (and that every party here agrees) to be much lower than the affordability level. As a result, the OCA's claims (at p. 4) that the ALJ's modest recommendation of access parity would “place[] the Commission's universal service goals at risk” are baseless. The maximum impact on local rates here is *less* than the local rate increases the OCA itself *supported* in the RLEC case.

The best part is that Pennsylvania consumers will get a huge benefit for less than a buck. Because Verizon has far and away the largest access volumes, the modest access rate reductions recommended by the ALJ will result in [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] in aggregate access savings⁹ – and that's before you add in the hand-in-hand decreases in CLEC access rates that, by law, are capped by Verizon's rates. So the Commission could pretty much double down the \$50 million in access benefits that the *RLEC Access Reform Order* is estimated to bring to Pennsylvania consumers, just by

⁹ This amount consists of (i) the reductions in the Carrier Charge and traffic-sensitive rate elements (Verizon Statement 1.0 (Panel Direct) at p. 57) and (ii) the additional savings from reducing Verizon's non-traffic sensitive rate elements to parity with interstate rates (June 14, 2011 Hearing Tr. at p. 113 & AT&T Cross Exam. Ex. 9).

immediately implementing the ALJ's 2005 recommendation on this refreshed record. This case, in short, gives the Commission a chance to take control over its own state issues, and bring much needed access reform to Pennsylvania consumers throughout the Commonwealth.

II. VERIZON CONTINUES TO ADVOCATE REFORM, EXCEPT FOR ITS OWN UNJUST AND UNREASONABLE INTRASTATE ACCESS RATES.

Despite the fact that Verizon supports lower intrastate access rates and has touted the benefits of them elsewhere, Verizon asks the Commission to refrain from taking any action to reduce its own inflated rates in Pennsylvania. Of course, it is important to remember that Verizon Pennsylvania's intrastate access rates have not been reduced in over a decade – since the 1999 *Global Order*. Thus, for Verizon to claim that the time is not ripe for any further reductions is nothing short of ludicrous. The time was ripe ten years ago, and customers have been denied further reform for long enough.

Verizon offers two primary reasons for its do-nothing approach. First, Verizon claims that the Commission should wait for the FCC in the hope that the FCC will just handle everything. Second, Verizon argues that access rates should not be reduced because Verizon portrays itself as the victim of other regulatory burdens. Neither rationale provides any basis for forestalling the immediate intrastate access reductions supported by the refreshed evidentiary record.

A. The Commission Should Not Wait Any Longer For The FCC To Address Intrastate Switched Access Rates That Are Subject To This Commission's Jurisdiction.

Verizon claims that the possibility of FCC action should deter the Commission from taking any action to reduce its intrastate access rates. But Verizon sang an entirely different tune when the RLECs raised the same argument as a reason for staying the *RLEC Access Reform Order*. Verizon just told the Commission that it should *not* wait on the FCC when implementing

access reductions for the RLECs. In fact, Verizon stated that the public will be denied consumer benefits from lower RLEC access rates if RLEC access reductions are delayed to wait for the FCC.¹⁰ Verizon also said that “speculation about hypothetical future events cannot support issuing a stay.”¹¹ Verizon further argued that because both federal and state reforms are moving in the same direction by reducing intrastate access rates, and because access reform is long overdue, there is no basis to conclude that future federal reforms would not be consistent with the Commission’s July 2011 *RLEC Access Reform Order*.¹² Verizon also disagreed with the RLECs that there is a risk of consumer harm by moving forward with RLEC access reform.¹³ These same arguments warrant rejecting Verizon’s about-face when it comes to reducing its own intrastate access rates.

In the prior phase of this case, Verizon also argued that the Commission should wait for the FCC. In the *2005 Verizon Access Reform RD*, ALJ Fordham correctly rejected that suggestion. As the ALJ appreciated, “no one can predict when the FCC will act” or what plan it might adopt.¹⁴ The Commission nonetheless decided to stay this proceeding, at first for a year, and then granted extensions that lasted until 2010.

Time has shown that the ALJ’s recommendation was right on, and the Commission finally came around to that correct conclusion when it lifted the stay. After a decade of false starts and notices of proposed rulemakings, the FCC’s access reform efforts have still not

¹⁰ Verizon’s Answer to Petition for Reconsideration and Stay, Docket No. I-00040105, August 12, 2011, p. 4.

¹¹ *Id.* at p. 7.

¹² *Id.* at p. 8.

¹³ *Id.* at p. 9.

¹⁴ *2005 Verizon Access Reform RD*, at 58-59.

achieved any concrete results. In the FCC's own words, its prior efforts "stalled, leaving the current antiquated rules in place."¹⁵

The FCC still hasn't acted, but Verizon still claims that the Commission should do nothing but wait for the FCC. Verizon is still wrong. Indeed, it is incredible that Verizon would persist in its position, which Verizon itself rejects everywhere but here. Verizon itself has complained to the FCC about state *inaction*, telling the FCC to "avoid any framework under which a state could act as a bottleneck to much-needed reform by failing to act in a timely manner."¹⁶ And as just discussed, in the RLEC case (where Verizon is paying access charges rather than collecting them) Verizon has told this Commission *not* to wait for the FCC.

Verizon attempts to explain away this inconsistency by arguing that because the RLEC case is virtually complete, the Commission might as well finish the job. But that is just an argument for finishing the job here too. This case, too, is virtually complete; the ALJ issued a Recommended Decision in 2005, the parties have refreshed the record, and the evidence overwhelmingly supports the ALJ's prior recommendation of access parity. So there is no valid distinction and no explanation (other than bald self-interest) for Verizon's turnaround.

Verizon also contends that delay is warranted because the Commission noted its intent to address any FCC ruling that may have an impact on intrastate switched access charges.¹⁷ However, there has been no FCC ruling. To the extent there is one in the future, the Commission can certainly consider that ruling at the time it comes out. However, the Commission has long

¹⁵ *In re Connect America Fund: A National Broadband Plan For Our Future*, 2011 WL 466775, ¶ 501 (Notice of Proposed Rulemaking, rel. Feb. 9, 2011) ("2011 NPRM").

¹⁶ AT&T Statement 3.0 (Panel Surrebuttal) Attachment B, at p. 23 (Verizon Comments in FCC Intercarrier Compensation Rulemaking).

¹⁷ Verizon Main Brief at p. 7.

since repudiated the notion that it should halt all further reform in order to wait for a possible ruling that, as history shows, may not come when initially anticipated.

This Commission has certainly recognized that the FCC is moving forward with its intercarrier compensation docket, but nonetheless decided that it could no longer wait to adopt intrastate reform. Commissioner Gardner issued a Statement on June 30, 2011 acknowledging that “the FCC continues to review a series of federal initiatives that may impact certain matters under consideration here as part of its National Broadband Plan.”¹⁸ Similarly, Chairman Powelson recognized that the Commission has previously been hesitant to act due to the pending action at the FCC; however, Chairman Powelson stated that “[w]e have arrived at the point. . . where we cannot forestall action any longer.”¹⁹ In fact, Chairman Powelson actually pointed out that there are parties who want the Commission to continue its “wait and see” approach, just as Verizon advocates now, but the Chairman stated, “I do not believe this is a prudent option.”²⁰

At the June 30, 2011 Public Meeting, Commissioners Cawley, Gardner and Powelson all presented oral statements in which they discussed the existence of the FCC proceeding and the fact that it involves issues that may impact Pennsylvania. Commissioner Gardner acknowledged that there have been no significant intrastate access reductions in Pennsylvania over the years because of waiting for the FCC. Commissioner Gardner further recognized that the FCC continues to review a series of federal initiatives that may impact the state issues, and that this Commission’s task is made more difficult by pending developments at the federal level. Thus, the Commission explicitly recognized the moving target at the FCC and the fact that developments were continuing, but held that it could not wait any longer. Chairman Powelson,

¹⁸ Statement of Commissioner Wayne E. Gardner, June 30, 2011, p. 2.

¹⁹ Statement of Chairman Robert F. Powelson, June 30, 2011, p. 2.

²⁰ *Id.*

in his oral statement, said, “we cannot forestall any longer.” He further said that the Commission has been waiting for “big brother FCC” for the past two administrations, and it is now time to move forward.²¹

The fact that new proposals for reform have been submitted to the FCC is not a basis for delaying implementation of this Commission’s Order. New proposals are submitted constantly to the FCC. The “ABC Plan” referenced by Verizon is only one of several recent proposals. Any claim that the FCC is going to adopt this or any other reform plan in the near future is nothing but pure conjecture. History shows that the FCC has a pattern of releasing NPRMs and NOIs, and then failing to act for years. Although AT&T certainly hopes that the FCC finally will act to implement a comprehensive solution for untying the intercarrier compensation knot, there is no basis for this Commission to waste the tremendous amount of effort, time and resources that have gone into this proceeding (both in this year and in 2005) to develop a full record and arrive at a long-overdue Commission decision.

Moreover, the FCC has not told the states to delay their own efforts at reform, but instead has made clear that it expects states to move forward with intrastate access reform. As the FCC correctly recognized, *intrastate* access charges are the biggest problem area, and “[t]here is general industry sentiment that intrastate rates should be reduced first because they are the highest, and because eliminating the discrepancy between intrastate and interstate access charges could reduce arbitrage.”²² The FCC not only has encouraged states to move forward with reform, it has even proposed that states that have adopted meaningful access reforms would be first in line (or perhaps the only states in line) for the first phase of federal broadband funds, and

²¹ The Commissioners’ oral statements can be found on the Commission’s website at <http://www.puc.state.pa.us/general/PMAudio.aspx>.

²² 2011 NPRM, ¶ 554.

has “request[ed] accurate information concerning the status of intrastate access state reform activity to determine which states” have implemented enough reform to qualify for federal funds.²³ Indeed, the FCC expressly singled out “mirroring interstate rates” – the reform the ALJ recommended in 2005 and that the refreshed record compels here – as a possible criterion for federal support.²⁴

There is also no evidence that the FCC intends to punish, or harm, states that act first. Indeed, if that were the case, AT&T would suffer the most, because, as noted above, AT&T has already implemented access reform and retail rate rebalancing in many of the states where AT&T is the ILEC. The more compelling evidence, however, suggests that whatever action the FCC ultimately may take will credit states that already have engaged in access reform. With respect to the ABC Plan cited by Verizon, the FCC invited comment on how the ABC Plan would “affect states in different stages of intrastate access reform – those that have undertaken significant reform and moved intrastate rates to parity with interstate rates, those in the process of reform, and states that have not yet initiated reform.”²⁵ The FCC further sought comment on “the State Members propos[al] that the states reform intrastate rates and that the [FCC] facilitate this reform through state inducements rather than a federal framework.”²⁶ Thus, the FCC has made clear that it recognizes a need to coordinate its actions with the states, not harm those that are moving forward.

The Commission has already delayed much-needed reform for years because of the possibility of FCC action. As the Commission and Verizon itself have recognized, there is no basis for further delay.

²³ *Id.* ¶ 544 & n.819.

²⁴ *Id.* ¶ 544.

²⁵ FCC August 3, 2011 Notice of Inquiry at pp. 10-11.

²⁶ *Id.* at p. 12.

B. Verizon Cannot Hide Behind The RLEC Access Reform Order.

Before the Commission reopened this proceeding, Verizon argued that the Commission should not address Verizon's rates until it completed the RLEC access investigation. The Commission correctly rejected Verizon's approach "in order to resolve the outstanding issues with regard to access charges and the way they hampered competition in the telecommunications market that persisted at the time of the *Global Order*."²⁷

Now that the Commission *has* issued the *RLEC Access Reform Order*, Verizon *still* says the Commission should wait. Why? Because Verizon says the RLEC Order should have directed *more* reductions, and sooner, than it did. That much is right. But the appropriate response to Verizon's argument is for the Commission to grant reconsideration *in the RLEC case* (as the Commission has now done) and then fix the *RLEC* order.²⁸ Saying that the Commission should have implemented *more* reform for the RLECs is hardly a reason to do *nothing* about Verizon's access rates. Likewise, saying that the Commission should have made the RLEC reductions occur *sooner* is hardly a reason to *delay* action on Verizon.

Although the Commission has some more work to do in the RLEC case, that does not mean that this case has to stop. To the contrary, the Commission has already rejected Verizon's plan to consider access reform on a "piecemeal" basis – in Verizon's world, piecemeal means the other guys go first, and Verizon goes never – and held that Verizon's case is to proceed "concurrently with the other ILECs."²⁹ As the Commission correctly explained, "an entire decade has passed since the Commission began reforming access charges in the *Global Order*

²⁷ Opinion & Order entered May 11, 2010, at pp. 18-19.

²⁸ Verizon did not even file a Petition for Reconsideration of the *RLEC Access Reform Order* to try and modify those portions of the Order with which Verizon disagreed. Thus, Verizon continues its pattern of raising all possible complaints about other matters in this access case, rather than dealing with those other issues in the separate dockets where they belong.

²⁹ Opinion & Order entered May 11, 2010, at p. 19.

and many of the same areas of concern may still persist.”³⁰ As a result, “[t]his Commission cannot forgo such an opportunity to effectuate industry-wide access reform any longer.”³¹ Plainly, Verizon’s effort to exclude itself – and by far the majority of the Commonwealth’s access volume – from any reform is not the “industry-wide access reform” the Commission intended.

Finally, Verizon argues that, since the *RLEC Access Reform Order* established a \$2.50 Carrier Charge for the RLECs, Verizon should really get \$2.50 too, but it is willing to live with its existing 58-cent charge. Verizon’s display of “generosity” is just that – a display, and a false one, because the Commission has never authorized a \$2.50 charge for Verizon. The Commission established such a charge for the RLECs, but the very same *RLEC Access Reform Order* reaffirms that the specific “[r]eductions to Verizon’s access charges have been and will continue to be considered separately” from the RLECs’ charges.³² The ALJ correctly recognized this same point in denying Verizon’s motion to reopen the record.³³ The Commission has never accepted Verizon’s view that it is entitled to the same Carrier Charge as the RLECs; if it had, the Commission would have never remanded this case back to the ALJ specifically to reduce, or eliminate, Verizon’s \$0.58 Carrier Charge.

When it comes to Verizon, the Commission’s mandate is that “it is in the best interest of the public for the ALJ to address and recommend a plan that addresses further reductions or even a complete elimination or phase-out of the Carrier Charge.”³⁴ Indeed, the Commission has stated that the very same *Global Order* that established Verizon’s Carrier Charge recognized that the

³⁰ *Id.*

³¹ *Id.*

³² *RLEC Access Reform Order*, at p. 17 n. 24.

³³ Aug. 12, 2011 Prehearing Order #10 on Remand Addressing the Motions to Reopen the Record, at p. 6.

³⁴ July 28, 2004 Order, at p. 20.

Commission “may eventually dissolve the Carrier Charge” for Verizon.³⁵ The ALJ correctly followed the Commission’s mandate in her 2005 recommendation that “[t]he first step is to remove the carrier charge,”³⁶ and the refreshed record overwhelmingly confirms that the ALJ’s recommendation is even more correct today. Verizon’s do-nothing approach is certainly not the “further reductions or even a complete elimination or phase-out of the Carrier Charge” that the Commission directed the ALJ to consider, and is directly contrary to the plan that the Commission found to be “in the best interest of the public.”³⁷

C. Verizon’s Complaints About Local Service Regulations, And Its Claimed Losses On Local Service, Are Irrelevant To This Access Charge Proceeding.

Throughout this access charge investigation, Verizon has kept trying to change the subject and gripe about regulations and financial results for *non*-access services, namely basic local exchange service. As AT&T showed in its opening brief, Verizon’s diversions are outside the scope of this proceeding. Many of them are beyond the Commission’s power to consider in any proceeding, because they are complaints about statutes that only the General Assembly can address. Verizon’s complaints about local service existed long before this proceeding was reopened, and they will still exist even if the Commission adopts Verizon’s suggestion that it do nothing about access charges. Verizon never explains why it waited until this case – an access investigation – to raise its multitude of problems with the Commission’s regulatory practices, and with statutory requirements over which this Commission has no authority to modify.

1. Verizon’s Alleged Financial Distress Does Not Prohibit The Commission From Implementing Revenue Neutral Access Reform.

In an attempt to divert attention, Verizon argues that its local service operations are in “distress” and claims that the Constitution paralyzes the Commission from acting on Verizon’s

³⁵ *Id.*

³⁶ *2005 Verizon Access Reform RD*, at p. 65.

³⁷ July 28, 2004 Order, at p. 20.

access rates until Verizon's local service problems are fixed.³⁸ Verizon is wrong on the law and the facts.

Verizon misreads a Supreme Court case – *Hope Natural Gas* - to support its claim that the Commission may not reduce Verizon's intrastate access rates.³⁹ Verizon argues that this case holds that when determining just and reasonable rates, the regulator must consider the overall financial integrity of the regulated entity. Verizon then argues that because Verizon is allegedly in financial distress, the Commission is precluded from implementing any intrastate access reductions.

Verizon's reliance on *Hope Natural Gas* is completely off base. For one thing, *Hope Natural Gas* addresses traditional rate of return ratemaking that is no longer applicable to Verizon, because years ago Verizon voluntarily elected to move from rate of return regulation – with its concomitant revenue guarantee – and instead chose *to be regulated under a price cap plan* that permits Verizon to increase rates for many of its retail services if it believes such action would improve its financial situation.

Moreover, *Hope Natural Gas* does not apply because nothing in this proceeding will have an adverse affect on Verizon's earnings. This is not a case where a Verizon price is being cut and Verizon is being denied any opportunity to recoup the lost revenues from other sources. Quite the contrary. Here, at the same time Verizon will be directed to reduce its intrastate access charges to match its already-existing (and fully compensatory) interstate rates, Verizon will be allowed to implement offsetting increases to some (or all) of its remaining regulated retail rates – and that pricing authority is in addition to the considerable retail pricing flexibility Verizon already enjoys for its competitive services. The Supreme Court said in *Hope Natural Gas* that it

³⁸ Verizon Main Brief at p. 19.

³⁹ Verizon Main Brief at p. 10, citing *F.P.C. v. Hope Natural Gas*, 320 U.S. 591 (1944).

is “not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end.”⁴⁰ Here, given that the “total effect” of this case will be to give Verizon the opportunity to offset access reductions with retail rate increases, thereby remaining revenue neutral – when it already possesses unfettered pricing flexibility on the majority of its retail services – Verizon’s claims that those access reductions will be unconstitutionally confiscatory are meritless. Reducing Verizon’s intrastate access rates under these circumstances comes nowhere near violating *Hope Natural Gas*.

Likewise, and as noted above, there is certainly no constitutional issue with reducing Verizon’s intrastate access rates to parity with its interstate rates. Indeed, Verizon never claims that its *interstate* access rates – the rates AT&T recommends that the Commission adopt for intrastate calls here - are unjust and unreasonable. Nor does Verizon claim that its interstate access rates would be unconstitutional or “confiscatory” if the Commission adopts AT&T’s modest recommendation of access parity. Nor could it. Verizon has never complained about its interstate access rate levels (except maybe to argue that they should be reduced even lower). Those interstate rates are indisputably compensatory, and in fact they are well above the incremental cost of access service (which all parties agree is the same for interstate and intrastate calls). Verizon’s average interstate switched access rate is 0.7¢ per minute. This is approximately 10 times the reciprocal compensation rate of 0.07 cents per minute, which the

⁴⁰ *Hope Natural Gas*, 320 U.S. at 602. See also *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 311-12 (even with total exclusion of millions of dollars in prudently incurred expenses attributable to abandoned nuclear power project, “overall effect” of rate order was “well with the bounds of *Hope*” and thus not constitutionally objectionable.); *Public Advocate v. Philadelphia Gas Comm.*, 544 Pa. 129, 141, 674 A.2d 1056, 1062 (Pa. S.Ct. 1996) (“Any rate selected which falls within the broad zone of reasonableness cannot properly be attacked as unconstitutional for being confiscatory.”)

FCC found sufficient to “ensur[e] cost recovery,”⁴¹ and which the OCA agrees is a reasonable proxy for incremental access cost.⁴² Moreover, Verizon is asking the FCC to *reduce* interstate rates, so it cannot possibly complain that the existing interstate rates are too low.

Verizon also cited to *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168 (D.C. Cir. 1987) (en banc)⁴³ to argue that if a company presents evidence that it is experiencing financial distress, the Commission must not reduce any rates at all. However, that is not at all what *Jersey Central* held. To the contrary, the *Jersey Central* court took issue with the Federal Energy Regulatory Commission’s refusal, in the course of rejecting a rate increase, to hold a hearing, to make any findings, or to perform any balancing on the end result.⁴⁴ In stark contrast, the Commission in this case will have given the parties two full rounds of litigation, including two additional days of hearings, and will presumably consider all of the evidence presented before issuing its decision. More to the point, here the Commission will be giving Verizon *additional* retail pricing authority to offset access reductions, beyond the considerable flexibility Verizon already has.

In addition, in both *Hope* and *Jersey Central* the courts made clear that the company must present evidence showing extreme financial distress, to the point of being unable to maintain credit or attract capital. In *Jersey Central*, for example, the Court emphasized repeatedly that

⁴¹ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Traffic*, 16 FCC Rcd. 9151, ¶ 8 (April 27, 2001), *remanded on other grounds, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied, Core Communications, Inc. v. FCC*, 538 U.S. 1012 (2003), *subsequent mandamus, In Re: Core Communications, Inc.*, 531 F.3d 849 (2008); *order on remand, In re High Cost Universal Support*, WC Docket No. 05-337 (rel. Nov. 5, 2008).

⁴² OCA Statement 1 (Loube Direct) at pp. 7-8. There is no dispute that the process to originate or terminate a local interoffice call is the same in all material respects as a long-distance call. AT&T Statement 1.0 (Panel Rebuttal) at pp. 26-27.

⁴³ Verizon Main Brief at p. 19.

⁴⁴ *Jersey Central*, 810 F.2d at 1178.

there must be a showing of “deep financial hardship” where a company is unable to maintain its credit and attract capital.⁴⁵ The regulated entity in that case presented extensive evidence, contrary to what Verizon has presented here, that the company was on the verge of bankruptcy, that it had paid no dividends for four years and that it would continue to be unable to do so, that it had very little external capital, and that it was likely to default on bank loans given its dire financial situation.⁴⁶ Verizon has not anywhere alleged that its credit is in jeopardy or that it is on the verge of losing its ability to attract capital, or that it is even in jeopardy of being unable to continue operating in Pennsylvania.⁴⁷ Were that the case, Verizon would have an obligation to disclose such facts to its investors. It has not. At any rate, even if Verizon had made a showing, the D.C. Circuit Court held that “even where the sort of deep financial hardship described in *Hope* is present, the utility is entitled only to an ‘end result’ hearing, and is not entitled to any greater return on its investments unless it shows at the hearing both that the rate was unreasonable and that a higher return would not exploit consumers.”⁴⁸ The Court further held that “a regulated utility has no constitutional right to a profit, and a company that is unable to survive without charging exploitative rates has no entitlement to such rates.”⁴⁹

In this case, Verizon has not shown that the end result is in any way unreasonable. To the contrary, interstate access rates remain well above any cost-based levels. In addition, Verizon is

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Verizon’s own cost model actually shows that there is no real “distress.” Even taking Verizon’s model at face value, Verizon’s revenue from rate-regulated local services exceeds the direct costs of providing those services. AT&T Statement 1.0 (Panel Direct) at p. 39. So Verizon’s claim of “losses” comes entirely because it has dumped indirect costs like corporate overhead and unregulated advanced services into its calculation of local service results. At least some of those costs should have been assigned to unregulated advanced services. *Id.* at p. 40. Therefore, Verizon’s claim of financial distress is not even legitimate.

⁴⁸ *Jersey Central*, 810 F.2d at 1181 n.3.

⁴⁹ *Id.* at 1180-81.

actually being given the opportunity to *increase* its local rates to levels that will remain well within any definition of reasonable or affordable. Most importantly, the “end result” is that Verizon will have the opportunity to maintain revenue neutrality – it will receive neither a higher nor a lower return (even though Verizon is not even rate-of-return regulated any longer, so this should not even be a consideration). Finally, the evidence has conclusively shown that Verizon’s current intrastate access rates are in fact unreasonable and harmful to consumers, and therefore must be reduced.

The bottom line is that the cases cited by Verizon do not in any way prohibit this Commission from reducing Verizon’s intrastate access rates to interstate levels. Because Verizon will have the opportunity to rebalance any such reductions in a revenue neutral manner, Verizon’s financial situation remains utterly irrelevant to the issues in this case.

2. Verizon’s Complaints About Burdensome Regulation Are Not a Basis To Delay Intrastate Access Reform.

It is ironic that Verizon complains extensively about the alleged unfair regulatory burdens that apply to Verizon, but that do not apply to intermodal competitors such as VoIP and wireless. Verizon said that “the Commission must come to grips with the harms caused by continuing to impose asymmetrical legacy regulation that has no place in a modern communications industry, imposes massive unnecessary costs . . . , and artificially constrains Verizon’s ability to compete with unregulated competitors.”⁵⁰ *Exactly!* That is the precise reason why this Commission must reduce Verizon’s intrastate access rates – to address and eliminate the consumer harms and unfair competitive playing field caused by inflated access rates.

Verizon also claims that AT&T has previously discussed the need to reduce regulatory

⁵⁰ Verizon Main Brief at p. 34.

burdens that increase the costs of providing POTS service.⁵¹ AT&T has never denied that it supports reducing legacy regulatory burdens. However, what Verizon fails to mention is that AT&T did not once say that intrastate access rates should be kept at high levels until regulatory burdens are reduced. To the contrary, AT&T has always supported both avenues of reform. The problem with Verizon's position is that it wants to withhold the benefits of access reform until changes to legacy regulations have occurred. That position makes absolutely no sense, and must be rejected. In fact, that position is directly contrary to the position Verizon took in the RLEC case, and to the position Verizon's witness, Don Price, previously took in a New Jersey deregulation case.⁵²

Verizon's complaints are intentionally aimed at stalling any meaningful access reform, rather than achieving true regulatory reform. For instance, Verizon complains about many things this Commission cannot even change. Verizon provides an example of having to obtain approval to discontinue a service, citing to 66 Pa. C.S. § 1102.⁵³ Verizon also cites to assessment requirements arising from 66 Pa. C.S. §§ 510 and 511.⁵⁴ These are statutory requirements, ones this Commission cannot simply ignore or abolish. Similarly, Verizon cites to its broadband requirements⁵⁵ – a complaint that is especially egregious since those are requirements to which Verizon agreed as part of a *quid pro quo* for reduced regulation. Verizon cannot now complain that the Commission must keep intrastate access rates high so that Verizon can meet broadband obligations that Verizon voluntarily undertook.

The previous stays of this case gave Verizon *six years* to address its local-service

⁵¹ Verizon Main Brief at p. 25.

⁵² June 14, 2011 Hearing Tr. at pp. 162-167; *see also* AT&T Cross Exam. Exs. 2 & 3.

⁵³ Verizon Main Brief, at pp. 27-28.

⁵⁴ *Id.* at p. 34.

⁵⁵ *Id.* at pp. 32-33.

grievances and shore up local service results. If Verizon were truly experiencing “distress” of constitutional proportions that were caused by excessive regulation, it would have done something about those issues before now. Yet Verizon did nothing. To take an obvious example, Verizon could have petitioned the Commission to classify the remainder of its retail local exchange services as competitive, and, had it been successful – and Verizon appears to believe the evidence would support such a finding – that determination would have removed much of the regulatory burdens it is complaining about here. Verizon knows how to file such petitions, and has filed and prevailed on them in the past, yet it did not petition the Commission to reclassify the few remaining services in the six years of stays.⁵⁶ On cross-examination, Verizon’s own witness was at a loss to explain why.⁵⁷

Verizon’s complaints about burdensome regulation have no place in this intrastate access reform case. AT&T may ultimately support Verizon’s efforts to reduce unnecessary regulatory requirements, but AT&T does not support a position where customers are denied the benefits of access reform while waiting for the benefits of reduced regulatory requirements.

III. THE FACTS OF THIS CASE COMPEL THE CONTINUED REJECTION OF THE OCA’S AND THE OSBA’S “CONTRIBUTION” ARGUMENT.

Notwithstanding this Commission’s direction that the ALJ develop “a plan that addresses further reductions or even a complete elimination or phase-out of the Carrier Charge,”⁵⁸ the OCA and the OSBA argued in the prior phase of this proceeding that the Carrier Charge should be maintained as a “contribution” towards Verizon’s local loops. After considering a full

⁵⁶ June 14, 2011 Hearing Tr. at pp. 146-147.

⁵⁷ *Id.* at p 146.

⁵⁸ July 28, 2004 Order, at p. 20.

evidentiary record specific to Verizon, the ALJ correctly rejected the public advocates' arguments and recommended in 2005 that Verizon's Carrier Charge be eliminated.⁵⁹

Having been instructed by the Commission to refresh the record concerning that finding, the OCA and the OSBA did not introduce new evidence, but instead chose to rehash their old arguments about loop contributions. The OCA claims that the underlying issue that must be addressed in this case is "how will the cost of the joint and common plant of the public switched telephone network ("PSTN") be recovered."⁶⁰ However, when looking at the Commission's July 2004 Order initiating this remanded case, and the May 2010 Order re-opening it, not once does the Commission mention the allocation of joint and common costs as an issue to be addressed, much less the primary issue to be resolved in this remanded case. Instead, the main issue that the Commission directed the ALJ to consider is how to further reduce Verizon's intrastate access rates, including the possible elimination of the Carrier Charge.

In short, the public advocates' efforts to misdirect this proceeding from one charged with reforming Verizon's intrastate access rates into a platform for regurgitating outdated theories concerning loop contribution should be rejected. But even apart from its procedural irrelevance, those theories fail on the merits. As AT&T demonstrated in its opening brief, (i) Verizon itself has repudiated the OCA/OSBA's economic theories that services other than local service should "contribute" towards local loop costs, (ii) it is discriminatory, anticompetitive and unfair to impose contributions on customers of one long-distance technology (wireline IXCs) while competing technologies that also use Verizon's loops do not bear the same burden, and (iii) wireline IXCs will still make substantial contributions to Verizon's loop costs even without the Carrier Charge. The public advocates' briefs do not surmount any of these bars; to the

⁵⁹ 2005 *Verizon Access Reform RD*, at p. 63.

⁶⁰ OCA Main Brief, at p. 2.

contrary, they simply confirm that their outdated “contribution” theory rests on false premises. Indeed, the public advocates’ theory is contrary to their own statements in prior proceedings.

A. Contrary To The Public Advocates’ Scare Tactics, The ALJ’s Prior Recommendation Of Access Parity Will Help Consumers And Will Not Affect Universal Service.

The OCA’s contribution theory rests not on evidence but on empty scare tactics. The OCA claims that increasing Verizon’s “basic local service rates” would “place[] the Commission’s universal service goals at risk.”⁶¹ Other than this statement, there is absolutely no evidence to support such a conclusion. Keeping Verizon’s local rates below \$18, and far below the Commission’s most recent \$23 benchmark, cannot possibly jeopardize universal service.

The OCA itself has demonstrated that affordable rates would be in the range of \$32-\$42.91 per month.⁶² Verizon’s calculation of an affordable rate is even higher.⁶³ And in the RLEC case the OSBA argued – successfully – that there should be no cap on local service rates. The Commission has now eliminated the \$18 cap in favor of a \$23 benchmark. There is absolutely no “risk” that Verizon’s rates will come anywhere near that benchmark amount if the Commission implements access parity.

Equally baseless is the OCA’s argument that “captive customers . . . will be harmed as a result of the required revenue neutral rate rebalancing.”⁶⁴ Yet again, this statement is not supported by any evidence. The modest increases in local rates here will not harm consumers. To the contrary, consumers across the Commonwealth will reap the benefits of reduced long-distance prices, better competitive choice for long-distance service (because wireline IXCs will not be hamstrung by high access charges) and local service (because Verizon will not be shielded

⁶¹ OCA Main Brief, at p. 4.

⁶² AT&T Statement 1.0 at p. 23.

⁶³ *Id.*

⁶⁴ OCA Main Brief, at p. 5.

from competition by access subsidies), and reduced waste and incentives for harmful arbitrage.

Moreover, Verizon's local service customers are certainly not "captive." Verizon itself has demonstrated that it faces extensive competition.⁶⁵ Maintaining artificially low rates for Verizon through "contributions" is not only unnecessary (because competition will protect consumers) but also harmful (because it insulates Verizon against competitive forces and reduces Verizon's incentive to compete on the basis of innovation and better service quality).

The real "captive" customers are consumers all across Pennsylvania, who either (i) have to pay higher long-distance prices to fund the public advocates' "contribution" philosophy, or (ii) have to forego wireline long-distance service or cut the cord altogether. Worse, because AT&T and other wireline IXCs have to maintain long-distance prices on a statewide basis, Verizon's high access charges infect long-distance service everywhere in the Commonwealth.⁶⁶

So the public advocates' "contribution" scheme has no real benefits for consumers or universal service. Rather, it will simply continue to force consumers across the Commonwealth to make large "contributions" towards local service rates in the Verizon territories (on top of the local service rates that they already pay to RLECs or competing carriers) that are far below the affordability threshold and will stay far below the affordability threshold even if the reform proposed here is fully rebalanced. To the extent that the public advocates claim the contribution theory is necessary to support Verizon, that theory fails. Verizon itself has admitted that it does not agree that its local rates should receive a "contribution" from access charges.⁶⁷

B. The Public Advocates' Do-Nothing Plan Will Not Ensure That All Users Of The PSTN Contribute To The PSTN, But Will Instead Perpetuate The Anti-Competitive Inequities Of The Existing Regime.

With no concrete consumer benefits to offer and no substance to its universal-service

⁶⁵ Verizon Main Brief at pp. 22-26.

⁶⁶ AT&T Statement 1.0 (Panel Direct) at p. 10.

⁶⁷ AT&T Main Brief at pp. 37-38.

bogeyman, the OCA manufactures a purely philosophical platitude that the Commission should “ensur[e] that all users of the PSTN [public switched telephone network] pay to support the PSTN.”⁶⁸ The evidentiary record refutes that argument too.

In the first place, the public advocates’ contribution theory will certainly *not* ensure that all users of the PSTN will pay to support the PSTN. Access charges were developed in the monopoly days, when the PSTN was largely a closed system.⁶⁹ Back then, consumers had little choice but to use wireline long-distance service and thus to pay whatever “contributions” were embedded in long-distance prices through access charges.⁷⁰ Perhaps then, access charges on wireline long-distance services would make all users of the PSTN pay to support the PSTN. But today, wireline IXCs are competing against wireless carriers, cable, e-mail, social networking websites, Internet service providers and text messaging, all of which are largely immune from subsidy-laden access charges.⁷¹ The Commission cannot impose “contributions” on those other “users of the PSTN.”⁷² So the public advocates’ proposal simply forces *one* group of consumers (wireline long-distance customers) to continue subsidizing loops when customers served by competing technologies do not.

Worse, the OCA’s calculation of contribution “shares” essentially forces wireline long-distance providers and their customers to pay the “share” that should have been allocated to other technologies. The OCA makes absolutely no attempt to assign any “share” to those other technologies, and instead unrealistically assumes that network costs will be “shared” only by wireline local service and wireline long-distance service. True, the Commission cannot make

⁶⁸ OCA Main Brief at p. 19.

⁶⁹ AT&T Statement 2.0 (Panel Rebuttal) at p. 7.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

any of those other technologies pay any “share,” but that is no reason to ignore those technologies when it calculates a “share” for wireline IXCs, and it is certainly no reason to force wireline IXCs and their customers to pay the share that should have gone to their competitors.

As an example, in addition to traditional POTS local and toll wireline calls that may be completed over a loop, that same facility could be used to complete wireless or VoIP calls, and also be used for Internet and other broadband traffic. Assume that the calls completed over the loop are comprised of 20 percent local, 30 percent wireless, 49 percent broadband and just 1 percent wireline long distance. Under the OCA’s outdated allocation theory, the IXC (and its customer), with just 1 percent of the use, would nevertheless have to bear the broadband and wireless companies’ “fair share” because the Commission cannot require those carriers to pay for it. This is patently *not* “fair” but nonsensical and anti-competitive.

Simply put, the OCA’s “contribution” theory leads to anti-competitive and unfair results.⁷³ And in the end, it is unsustainable, as consumers will continue to be driven away from wireline networks, so ultimately none of the “users of the PSTN” that pay access charges will be left to make the contributions.

The ALJ correctly recognized this point in 2005, holding that “the carrier charge is no longer a valid way to address” loop costs given “the changes in the industry and the emergence of wireless and other technologies that use the local loop without paying the carrier charge.”⁷⁴ That conclusion applies with much more force today, as alternative technologies and competition have continued to expand dramatically.

The OCA itself knows this too. Dr. Loubé correctly testified in the RLEC case that “maintaining the status quo with regard to intrastate access charges would continue the unfair

⁷³ *Id.*

⁷⁴ *2005 Verizon Access Reform RD*, at p. 63.

advantages to the wireless industry,”⁷⁵ which does not bear the same access burden. Conversely, access parity would “create greater fairness among the carriers that interconnect with the RLECs.”⁷⁶ The evidence here confirms that maintaining Verizon’s high access charges would simply continue the unfair disadvantages to wireline IXCs and their customers, while access parity means greater fairness among providers and better choices for customers. Given its own previous recognition that access charges do not and cannot apply to “all users of the PSTN,” it is doubly disingenuous for the OCA to pretend that its proposal would “ensure” that all users contribute towards the PSTN.

Meanwhile, even if the Commission adopts the modest parity reform recommended by AT&T, wireline IXCs and their customers will still “pay to support the PSTN” – and pay handsomely. The evidence overwhelmingly demonstrates that IXCs will still be paying a substantial contribution towards the loop if Verizon’s intrastate access charges are set at parity with their interstate rates. Verizon’s average interstate switched access rate is 0.7¢ per minute. This is approximately 10 times the reciprocal compensation rate,⁷⁷ which the OCA agrees is a reasonable proxy for incremental access cost.⁷⁸ Thus, in the previous phase of the proceeding, the OCA’s fallback proposal was a NASUCA model which (like the ALJ’s 2005 recommendation here) uses interstate rates as a goal. And at the hearing in this phase, the OCA’s witness Dr. Loube acknowledged on cross-examination that access parity “could be consistent” with a loop contribution policy, and that contribution to the local loop “wouldn’t be

⁷⁵ AT&T Cross Ex. 7 (OCA Statement No. 1, Direct Testimony of Dr. Robert Loube, Docket No. I-00040105, Jan. 20, 2010) at p. 8.

⁷⁶ *Id.* at p. 11.

⁷⁷ *Id.* at p. 6.

⁷⁸ OCA Statement 1 (Loube Direct) at pp. 7-8. There is no dispute that the process to originate or terminate a local interoffice call is the same in all material respects as a long-distance call. AT&T Statement 1.0 (Panel Rebuttal) at pp. 26-27.

eliminated” if interstate parity were adopted.⁷⁹ Given these admissions, it is simply disingenuous for the OCA to ignore the fact that AT&T’s modest reform recommendation is fully consistent with the OCA’s philosophy that users of the PSTN should pay to support the PSTN.

C. The Adoption of Interstate Access Parity Will Not “Relieve” AT&T Of Any Asserted “Obligation” To Support Verizon’s Loops.

The OCA is simply engaging in more empty rhetoric when it claims that AT&T “wish[es] to be relieved of [its] obligation to support” the cost of Verizon’s loop through access charges, and that “someone else must pay for the cost of the network” if those access charges are reduced.⁸⁰ The OCA is mischaracterizing AT&T’s position and the record in multiple ways.

First, the modest reform recommended by AT&T will not “relieve” AT&T of any obligation. As the preceding section demonstrates, AT&T will still be paying access charges, and those charges will still include a substantial contribution towards Verizon’s loop costs.

Second, the OCA’s argument perpetuates, perhaps purposefully, a misconception about who is paying Verizon’s inflated access rates. To be sure, AT&T and the other IXCs cut the checks to Verizon, but it is ultimately consumers who bear the cost. Contrary to OCA’s fantasy, access charges are not simply paid to Verizon by the Bank of AT&T. In reality, those charges are already being paid by “someone else” – Pennsylvania consumers. All businesses pass their wholesale costs on to consumers, and AT&T is no different. AT&T is seeking to relieve *its end users* of those costs, because access costs are driving those consumers to alternative technologies that do not bear the same burden, even in those areas or situations where the consumers would prefer to use wireline long-distance. The “relief” to AT&T will be that it can lower its prices and otherwise compete more efficiently and more aggressively, and on a more equal footing, without

⁷⁹ June 14, 2011 Hearing Tr. at p. 306.

⁸⁰ OCA Main Br. at p. 3.

being saddled with an artificial disadvantage. Fair competition does not just give relief to AT&T; it drives even more benefits to consumers.

Thus, imposing a “contribution” on IXCs does *not* reduce the burden on end users. It simply forces consumers across the Commonwealth to pay higher wireline long-distance prices just to “contribute” to loops in the Verizon territories, even though there is no need for such support (and even though Verizon does not agree that access rates should be used to support the loop) given that Verizon’s subsidized basic local service rates are and will remain far below any party’s definition of affordability.

D. The Commission Should Disregard The OCA’s Semantic Arguments About Subsidies.

The OCA tries to pick a meaningless fight over semantics when it says that AT&T has not proved that Verizon’s access rates include a subsidy.⁸¹ There is ample – and in fact uncontroverted – factual support for the conclusion that Verizon’s in-state access rates are *providing a subsidy to basic local service. Historically, that is what Verizon’s access rates were designed to do, and the Commission made that finding in the 1999 Global Order.*⁸²

Verizon itself – the party *charging and collecting* switched access charges – does not dispute that the same conclusion holds true today. Its own direct testimony admits that Verizon’s “switched access rates were deliberately designed to subsidize below-cost retail services.”⁸³ Its discovery responses concede its costs for R1 and B1 services “have always exceeded those services’ revenues.”⁸⁴ In that same response, Verizon acknowledged that the Pennsylvania regulatory/access regime “was historically designed to provide subsidies and/or contribution to

⁸¹ OCA Main Br. at p. 13.

⁸² *Global Order* at pp. 11, 13, fn 8.

⁸³ Verizon Statement 1.0 (Panel Direct) at p. 51.

⁸⁴ AT&T Statement No. 2.0 (Panel Rebuttal) at p. 22 & Attachment G thereto (Verizon discovery response).

basic residential services so that such services could be provided at rates that were artificially suppressed.”⁸⁵

It is equally disingenuous for the OCA to suggest that AT&T was supposed to develop a complex “cost study” to reprove the obvious point about Verizon’s subsidies.⁸⁶ In the RLEC case, the Commission correctly rejected the same OCA argument and held that the local exchange carrier (which obviously knows what its costs are) has the burden of proving that its access charges are just and reasonable.⁸⁷ If there was any serious chance that Verizon’s intrastate switched access rates were at or below the related cost, or that the modest reform AT&T proposes here would take those rates below cost, Verizon would have been the first to protest, and it could and would have prepared and presented an access cost study to prove it. Yet neither Verizon nor anyone else has presented such a study. Nor has Verizon complained to the FCC that its lower interstate access rates – the rates AT&T wants this Commission to adopt for Verizon’s intrastate access services – are below cost. Verizon’s switched access rates for intrastate calls are *three times higher* than the corresponding rates for interstate calls, even though the access functions and costs involved are materially the same.⁸⁸ In fact, Verizon’s access rates for originating and terminating in-state long-distance calls are even farther above its cost-based “reciprocal compensation” rates for terminating local calls.⁸⁹ Thus, no one has disputed that Verizon’s interstate access rates are well above the associated incremental costs. The FCC recently observed that interstate access rates are above cost,⁹⁰ and Verizon has been telling the FCC to *lower* interstate rates, not raise them.

⁸⁵ *Id.* at pp. 22-23 & Attachment G.

⁸⁶ OCA Main Br. at p. 14.

⁸⁷ *RLEC Access Reform Order* at p. 91.

⁸⁸ AT&T Statement 1.0 (Panel Direct) at p. 9 & Ex. D (Verizon discovery response).

⁸⁹ *Id.* at p. 13.

⁹⁰ See *2011 NPRM*, ¶ 40 (access rates “remain . . . well above carriers’ incremental costs”).

The OCA's witness Dr. Loube himself agreed in his direct testimony (at p. 10) that Verizon's cost-based reciprocal compensation rates are a reasonable measure of Verizon's incremental access costs.⁹¹ After comparing those reciprocal compensation rates to Verizon's intrastate switched access rates, he agreed that Verizon's intrastate switched access rates are well above incremental cost.⁹² That fact, combined with the fact that Verizon's local service rates were deliberately set below cost, is the very definition of a subsidy.⁹³ The only dispute is the OCA's purely semantic argument that the "subsidy" should be called a "contribution," based on a philosophy that Verizon itself does not support. The Commission should not waste any time on the OCA's word play.

E. The OCA And The OSBA Have Refuted Their Own Arguments.

As demonstrated above, the record in this case refutes the public advocates' arguments about "contributions," whatever the Commission may have held under different facts in the separate RLEC case. For further confirmation, the Commission need look no further than the public advocates themselves. Both those parties are contradicting their own prior policies in trying to oppose access reform for Verizon now.

The OCA and its witness Dr. Loube *supported* access reform in the recent RLEC access case. They acknowledged – but decided not to follow – their philosophical position about "contributions," and instead advocated that the Carrier Charge should be eliminated, and that the RLECs' remaining (traffic sensitive) intrastate rate elements must be brought to parity with

⁹¹ OCA Statement 1 (Loube Direct) at pp. 7-8.

⁹² *Id.* at p. 10.

⁹³ From an economic perspective a subsidy exists when the price of a product X is insufficient to cover its incremental cost, but the firm prices its other products sufficiently to cover their incremental costs and the other costs of the firm. AT&T Statement No. 2.0 (Panel Rebuttal) at p. 24 & fn. 22.

interstate rates.⁹⁴ That is the same reform that the ALJ here previously recommended, and that AT&T supports, for Verizon. As Dr. Loube testified at the time, access parity would “create greater fairness among the carriers that interconnect with the RLECs,” while “maintaining the status quo with regard to intrastate access charges would continue the unfair advantages to the wireless industry.”⁹⁵ Dr. Loube also correctly acknowledged that it is irrational and unfair to maintain intrastate switched access rates that are well above the interstate rates for the materially identical access service.⁹⁶

The OCA fares no better trying to dance around its prior admissions than Verizon did. The OCA argues that its admissions in the RLEC case were part of a four-part “comprehensive proposal” and since the Commission did not accept that proposal, the OCA thinks itself free to ignore the facts and reverse itself. The OCA’s rationalization about “comprehensive proposals” was exposed on cross-examination, which showed that in this case AT&T’s recommendation of access parity is no different from the OCA’s “comprehensive proposal” in the RLEC case:

- Part 1 of the OCA’s plan was to eliminate the Carrier Charge and reduce the RLECs’ other intrastate switched access rates to parity with the corresponding interstate rates.⁹⁷ Of course, that is the same reform the ALJ recommended for Verizon in 2005, and that AT&T supports today.

⁹⁴ AT&T Statement 2.0 at pp.12-13.

⁹⁵ AT&T Cross Ex. 7 (OCA Statement No. 1, Direct Testimony of Dr. Robert Loube, Docket No. I-00040105, Jan. 20, 2010) at p. 8.

⁹⁶ AT&T Cross Ex. 8 (OCA Statement No. 1-S, Surrebuttal Testimony of Dr. Robert Loube, Docket No. I-00040105, April 1, 2010) at pp. 4-6.

⁹⁷ June 15, 2011 Hearing Tr. at p. 310; AT&T Cross Ex. 7 at p. 10.

- Part 2 of the OCA’s plan was to rebalance the access reductions through increases in local service rates, allowing the RLECs’ local rates to go above Verizon’s levels.⁹⁸ On this score, too, the OCA’s plan is identical to AT&T’s position here, because modest local rate increases are sufficient to rebalance the entire access reductions. In fact, in the RLEC case, the OCA supported local rate increases for many companies that were over \$3.50/line/month.⁹⁹ The OCA supported local rate increases of over \$1/month for 15 RLECs.¹⁰⁰ Under the OCA’s proposal in the RLEC case, if the full amount of the access reduction was rebalanced by increasing local service rates by these modest amounts, then there was no need to move to step 3, and the PaUSF did not come into play even under OCA’s comprehensive proposal.¹⁰¹ Thus, if Verizon had been a RLEC, Verizon would be fully rebalanced through its modest local increase of less than a dollar a month, just as AT&T is advocating.

- Parts 3 and 4 of the OCA’s plan dealt with use of the PaUSF to rebalance any access reductions that were not already offset by the local rate increases in part 2. As just discussed, even if Verizon did receive funds from the PaUSF, given the very small increases needed to Verizon’s local rates, it would not be permitted to take funds from the USF to rebalance its access reductions – even under the OCA’s proposal. It is thus clear that OCA has completely reversed its position without any reasonable explanation for doing so. Its excuse that the RLEC proposal was a “comprehensive plan” falls flat when actually evaluating the details of that plan. In addition, the Commission rejected these

⁹⁸ June 15, 2011 Hearing Tr. at pp. 310-311.

⁹⁹ AT&T Cross Ex. 7, RL-3.

¹⁰⁰ *Id.* See also June 15, 2011 Hearing Tr. at p. 316.

¹⁰¹ *Id.*

parts of the OCA proposal in the RLEC case, and that led the Commission not to adopt all the access reductions that were proposed in that case. Here, however, the USF aspects of the OCA's "comprehensive proposal" are simply inapplicable. Verizon can rebalance the entire access reduction through modest increases in local service rates in Part 2 of the OCA's plan. Thus, whatever the Commission did with Parts 3 and 4 of the OCA's comprehensive plan is simply irrelevant.

Moreover, the OCA's U-turn in this proceeding goes far beyond a mere change in proposals. The OCA is trying to ignore its own admissions about *facts*, like (i) the anticompetitive inequity of forcing wireline IXCs to "contribute" a Carrier Charge when competing technologies do not bear the same burden, (ii) the undeniable fact that the Commission cannot ensure that all users of the PSTN pay to support the PSTN, and (ii) the equally undisputed fact that the access reductions proposed here can easily be rebalanced without any impact on affordability or universal service. The OCA cannot simply ignore its own admissions of fact today.

The OSBA is also talking against itself here, because its endorsement of access subsidies in this proceeding is contrary to its opposition to subsidies in general. At the hearing, the OSBA's witness Dr. Wilson agreed that "competitive markets should not involve subsidies" – he even went so far as to acknowledge that "[i]t's really perverse to shift the cost so that the competitive services are subsidized."¹⁰² And in the rate cap/USF case before ALJ Colwell in Docket No. I-00040105, the OSBA correctly (and successfully) argued that there should be no local rate cap, and that there should be no Universal Service Fund without recipients proving a need for such funds. Specifically, the OSBA's witness in that case testified:

¹⁰² June 14, 2011 Hearing Tr. at p. 261.

Generalized support programs in today's open market should end. You can't have competition and at the same time provide general subsidies. That is simply a tax on one group of consumers to support another group of consumers without any voice in how or why the first group is being taxed. Universal service funds in today's market are not sustainable, enforceable or held to any real accountability standard. Why should small ILECs make excess profits while ratepayers of other ILECs are supporting their operations? How can competitors enter these markets when they can't get these subsidies to support their consumers? The answer is to allow the market to work and end company subsidies.¹⁰³

F. The Commission Should Reject The OSBA's Meaningless Reshuffling Of Access Charges From Usage-Sensitive Rates To The Carrier Charge.

The July 2011 *RLEC Access Reform Order* confirms the Commission's general goal of continued intrastate access reform, and AT&T's position here is fully consistent with that general goal. However, when it comes to the specifics of implementation, the Commission has always considered Verizon separately from the RLECs. As AT&T has stated above, it would be absurd to simply take the specific implementation procedures the Commission developed for the RLECs and try to transplant them here, as the public advocates contend. For a concrete demonstration of how absurd it would be to apply the RLEC reforms to Verizon, the Commission need look no further than the OSBA's brief.

The OSBA recognizes that, while the *RLEC Access Reform Order* established a \$2.50 Carrier Charge, that Order also directed the RLECs to reduce their intrastate traffic-sensitive switched access rates to parity with the corresponding interstate rates.¹ The OSBA suggests that the Commission should transplant that result to Verizon by (i) ordering Verizon to reduce its traffic-sensitive rates to parity, but then (ii) allowing Verizon to *increase* its Carrier Charge enough to exactly offset the reduction in traffic-sensitive rates.¹⁰⁴ That is simply absurd. The parties and the Commission have gone through two phases of proceedings over six years, and

¹⁰³ AT&T Cross Ex. 5 (OSBA Statement No. 1, Buckalew Direct, Docket No. I-00040105, Dec. 10, 2008) at p. 12 (emphasis added).

¹⁰⁴ OSBA Main Br. at p. 11.

have developed a Verizon-specific record showing that reform is necessary, beneficial to consumers, and easy to implement. Under the OSBA's approach, all that time and effort will have been wasted, as the end result would simply be a meaningless reshuffling of charges from one Verizon access pocket to another Verizon access pocket. The parties would then have to go to the trouble of implementing new systems and procedures that have no net impact on long-distance prices or local service competition. That's worse than doing nothing. And *increasing* the Carrier Charge cannot possibly comply with the Commission's directive that the ALJ develop a plan to phase out or eliminate that charge.

The OSBA itself recognizes that its out-one-charge-and-back-in-the-other suggestion is unreasonable on its face. Thus, its alternative proposal is that the Commission order Verizon to reduce its traffic-sensitive intrastate rates to parity, then rebalance the reductions to local service rates.¹⁰⁵ That's at least a step in the right direction, albeit not a very large one. But that just makes it clear how easy it will be to implement full parity. Once the Commission takes the half-step the OSBA is willing to support, all that remains is the Carrier Charge – just 58 cents per line per month. There is no valid basis for the public advocates to oppose taking that last step, when this Commission expressly directed the ALJ to consider eliminating the Carrier Charge, when it will unquestionably generate large benefits to consumers, and when rebalancing that small amount could not possibly have any impact on universal service or affordable rates.

¹⁰⁵ *Id.* at p. 12.

IV. CONCLUSION

The Commission should reject the “do nothing” arguments advanced by Verizon, the OCA and the OSBA. The Commission should instead follow, at last, the ALJ’s 2005 recommendation of access parity (and its own instruction that the Carrier Charge be phased down or, as the record here supports, eliminated). The Commission thus should order Verizon to immediately eliminate its Carrier Charge and to reduce its traffic sensitive intrastate access rates to mirror the level and structure of its interstate rates.

Respectfully submitted,

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DATED: September 9, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true copy of the Reply Brief of AT&T to be served upon the parties of record in Docket No. C-20027195 in accordance with the requirements of 52 Pa. Code Sections 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys) in the manner and upon the parties listed below.

Dated at Chicago, Illinois, this 12th day of September, 2011.

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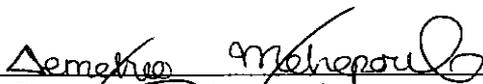
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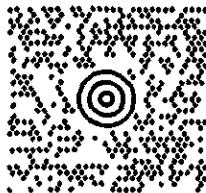
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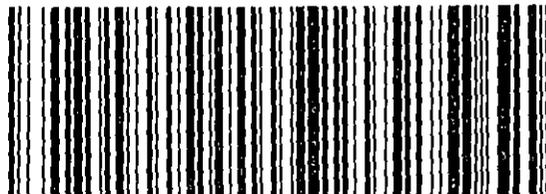


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