

DATE: May 3, 2006
SUBJECT: R-00061484; R-00061485;
R-00061375; R-00061376;
R-00061377; P-00981435F1000
TO: Bureau of Fixed Utility Services
FROM: James J. McNulty, Secretary *ddt*

DOCUMENT
FOLDER

**Annual Price Stability Index and Service Price Index
Reports**

DOCKETED

MAY 03 2006

Attached please find copies of the following 2006
Annual Price Stability Index and Service Price Index reports:

R-00061484 Hickory Telephone Supplement Number 124 to
Tariff Telephone Pa PUC Number 6;

R-00061485 Lackawaxen Telephone Supplement Number
116 to Tariff Telephone Pa PUC Number 2;

R-00061375 Buffalo Valley Telephone Supplement Number
54 to Tariff Telephone PA PUC Number 7 (Local Exchange)
and Supplement Number 8 to Tariff Telephone Pa PUC
Number 8 (Access Service);

R-00061376 Conestoga Telephone and Telegraph
Supplement Number 206 to Telephone Pa PUC Number 10
(Local Exchange) and Supplement Number 7 to Telephone
PA PUC Number 11 (Access Service);

R-00061377 Denver & Ephrata: Supplements Number 251
to Telephone Pa PUC Number 15 (Local Exchange) and
Supplement Number 10 to Telephone Pa PUC Number 16
(Access Service)

P-00981435F1000 The North-Eastern PA Telephone
Company Annual PSI/SPI Report (no tariff supplements);

Please note the above filings contain confidential
materials.

The above-referenced matters are hereby assigned to your Bureau for appropriate action.

Enclosures

cc: Office of Trial Staff: non-confidential material only



THOMAS, THOMAS,
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August 17, 2007

ORIGINAL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

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

2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley
Telephone Company
Docket Nos. P-00981428F1000 and R-00061375

2006 Annual Price Stability Index/Service Price Index Filing of Conestoga
Telephone and Telegraph Company
Docket Nos. P-00981429F1000 and R-00061376

2006 Annual Price Stability Index/Service Price Index Filing of Denver and
Ephrata Telephone and Telegraph Company
Docket Nos. P-00981430F1000 and R-00061377

Dear Secretary McNulty:

Enclosed herewith for filing on behalf of Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, and Denver and Ephrata Telephone and Telegraph Company are an original and three (3) copies of their Reply to Verizon's Answer to Petition for Reconsideration. A Certificate of Service is attached thereto.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

Michael L. Swindler

DOCUMENT
FOLDER

cc: Certificate of Service (w/enclosure)

KJR

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AUG 17 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ORIGINAL

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access	:	I-00040105
Charges and IntraLATA Toll Rates of	:	
Rural Carriers and the Pennsylvania	:	
Universal Service Fund	:	
2006 Annual Price Stability Index/Service	:	P-00981428F1000
Price Index filing of Buffalo Valley	:	R-00061375
Telephone Company	:	
2006 Annual Price Stability Index/Service	:	P-00981429F1000
Price Index filing of Conestoga Telephone	:	R-00061376
and Telegraph Company	:	
2006 Annual Price Stability Index/Service	:	P-00981430F1000
Price Index filing of Denver and Ephrata	:	R-00061377
Telephone and Telegraph Company	:	

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AUG 17 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKETED
AUG 21 2007

BUFFALO VALLEY TELEPHONE COMPANY,
CONESTOGA TELEPHONE AND TELEGRAPH COMPANY, AND
DENVER AND EPHRATA TELEPHONE AND TELEGRAPH COMPANY
REPLY TO VERIZON'S ANSWER
TO PETITION FOR RECONSIDERATION

**DOCUMENT
FOLDER**

NOW COME, Buffalo Valley Telephone Company ("Buffalo Valley"),
Conestoga Telephone and Telegraph Company ("Conestoga"), and Denver and
Ephrata Telephone and Telegraph Company ("D&E Telephone") (hereinafter
collectively "D&E carriers" or "Companies"), all subsidiaries of D&E
Communications, Inc. ("D&E"), and reply to the Answer filed by the Verizon
Companies ("Verizon") to the Petition for Reconsideration filed by the D&E carriers
in the above-captioned matter on July 26, 2007, as follows:

I. INTRODUCTION

1. By Opinion and Order entered July 11, 2007 ("July 11, 2007 Order"),
the Commission, with Vice Chairman James H. Cawley and Commissioner Tyrone

J. Christy dissenting, addressed the D&E carriers' 2006 Annual PSI/SPI Chapter 30 rate filings. The said Order rescinded and amended the Commission's prior June 23, 2006 Orders and rejected the increases in access rates of the D&E carriers implemented pursuant to said Orders. The July 11, 2007 Order also directed the Companies to file tariffs designed to recover their revenue entitlements consistent with their Chapter 30 Plans and provide refunds for access rates from November 15, 2006 forward. Ordering paragraph 4 reads, as follows:

4. That the D&E Companies shall file tariffs or tariff supplements designed to recover their allowable 2006 Annual PSI/SPI revenue in any manner consistent with their Chapter 30 plans. The proposed increases to access charge rates is [sic] expressly rejected. Said tariffs or tariff supplements shall be made within thirty (30) days of the entry date of this Opinion and Order and shall provide refunds for access rates from November 15, 2006 forward.

July 11, 2007 Order, ordering paragraph 4.

2. By Petition for Reconsideration ("PFR") dated July 26, 2007, the D&E carriers sought reconsideration, clarification, and amendment of the July 11, 2007 Order on various grounds. One of the grounds is the D&E carriers' request to amend or clarify ordering paragraph 4 to recognize that any local rate increases pursuant to their Amended Chapter 30 Plans should likewise be applied retroactive to November 15, 2006. In addition, D&E Telephone requests clarification of the July 11, 2007 Order contending that the universal service funding resulting from its basic exchange rates exceeding the applicable universal service rate caps should be retroactive to November 15, 2006.

3. On August 6, 2007, the Office of Consumer Advocate ("OCA") filed an Answer supporting the PFR to the extent D&E Telephone seeks recovery from the

Pennsylvania Universal Service Fund ("PaUSF") retroactive to November 15, 2006, in lieu of the company's residential customers bearing increases above the Commission's established \$18.00 monthly R-1 universal service rate cap.

4. On August 8, 2007, Verizon filed an Answer to the PFR arguing that the PFR does not satisfy the Commission's standards for granting a petition for reconsideration. Verizon then sidesteps the PFR's retroactivity issue and, in an effort to convince the Commission not to recognize D&E Telephone's universal service fund recovery rights retroactive to November 15, 2006, sets forth **new** and **novel** arguments contesting D&E Telephone's right to PaUSF recovery.¹

5. The D&E carriers are compelled to file this Response to the **new** and **novel** contentions raised and relief sought by Verizon and request that the Commission accept this Response as a reply to an answer seeking affirmative relief or raising new matter pursuant to 52 Pa. Code §5.63.² In the alternative and under

¹See Verizon Answer at 2.

²Although not expressly labeled as such, Verizon's Answer to the PFR seeks affirmative relief and raises new matter conforming to the guidelines of 52 Pa. Code §5.62 as set forth in Re Duquesne Light Company, 72 Pa. P.U.C. 131 (1990), and justifying the within reply under 52 Pa. Code §5.63. Verizon's Answer raises questions of law or fact common to those of the petition, including, inter alia, that D&E's PFR "is simply a vehicle for the D&E companies to make a new proposal to extract cash from other carriers ... (Verizon Answer at 2); "Moreover, it is not a foregone conclusion that D&E is entitled to **any** additional subsidies from the USF to support implementation of its annual price change opportunities" (Verizon Answer at 3) (emphasis in original); "The Commission cannot simply accept D&E's claimed entitlement to new USF subsidies without further examination – an examination that should occur in a separate proceeding with notice to all affected parties. It is not a foregone conclusion, as D&E would have the Commission believe, that in choosing to raise its basic service rates Denver & Ephrata is automatically entitled to new USF subsidies" (Verizon Answer at 8); "If the Commission were even to consider providing Denver & Ephrata with any new USF subsidies, it would first have to create a mechanism to obtain the funds to do so..." and "Third, it is not even clear that the \$18 R-1 benchmark still survives today" (Verizon Answer at 9); "... in light of current market realities [the \$18.00 cap] may not be the correct level to determine when a carrier should be permitted to make a claim to the USF. At the very least, it should have increased each year based on the change in the rate of inflation" (Verizon Answer at 10). Verizon challenges the proportionate credit for a cap in B-1 rates expressly resulting from the Global settlement (Verizon Answer at 11).

Second, there is an injury claimed to be suffered by the participant filing the Answer that D&E would "get through the back door the same result that the Commission rejected in its July 11, 2007 (continued...)

the circumstances, D&E requests that this Response be considered under 52 Pa. Code §1.2. Without the Commission's recognition of this Response, D&E will be unfairly denied the opportunity to address Verizon's newly conceived arguments.

II. ARGUMENT

A. The PFR Satisfies 52 Pa. Code §5.572 and the Duick Standard

6. Verizon states that D&E's PFR "does not actually seek reconsideration" but rather "is simply a vehicle for the D&E companies to make a new proposal to extract cash from other carriers...."³ Contrary thereto, D&E's PFR was properly filed pursuant to 52 Pa. Code §5.572, entitled "Petitions for relief." Section 5.572(a) describes such petitions for relief as petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like. Accordingly, the fact that the D&E PFR primarily seeks clarification and amendment on reconsideration of the July 11, 2006 Order is completely appropriate relief under §5.572.

²(...continued)

Order" (Verizon Answer at 2); "that D&E intends to recover revenue from other carriers [including Verizon] rather than from its end users" (Verizon Answer at 7).

Lastly, there is relief sought against D&E. "If the D&E companies wish to make a separate claim to expand their receipts from the USF, then the Commission should address that claim in a separate proceeding and should provide notice and an opportunity to be heard to all carrier contributors to the USF" (Verizon Answer at 3); "At the very least, there is no basis for D&E to claim entitlement to an automatic subsidy for business rates without further examination" (Verizon Answer at 11). "Meanwhile, Denver & Ephrata can file a tariff supplement proposing to charge its customers more than \$18 for R-1 rates and \$23.58 to B-1 rates without USF subsidy, and ask the Commission to waive whatever caps might still exist" (Verizon Answer at 12) (emphasis added).

Having raised additional questions of law and fact, alleged injury and requested relief, Verizon's Answer seeks affirmative relief and raises new matter, warranting this reply by D&E under §5.63.

³Verizon Answer at 2.

7. Verizon further argues that the D&E carriers misstate the Duick standard in their PFR.⁴ To the contrary, the Companies directly quote from the Commission's Duick decision.⁵ Verizon argues the Companies should have also cited that portion of the Duick decision that requires a petition for reconsideration to address "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission."⁶ This is **precisely** what the PFR does. D&E raises in its petition that while the July 11, 2007 Order directs the D&E carriers to refund the increased access rate revenues back to November 15, 2006, it provides *no specific direction* that any new local exchange rates and any resulting PaUSF recovery should likewise have retroactive application to November 15, 2006.⁷ Thus, the retroactivity of local rate increases and PaUSF recovery to counterbalance the retroactive refund of the access charge increase is not a "manufactured omission" but is a matter that was clearly "overlooked or not addressed" in the July 11, 2007 Order. Accordingly, the Companies are justified in seeking clarification or amendment of the Order under §5.572.

8. With its 2006 Annual PSI/SPI average residential rate now exceeding the applicable \$18.00 R-1 universal service rate cap, D&E Telephone is seeking amendment or clarification of the July 11, 2007 Order to recognize its right to

⁴Verizon Answer at 3.

⁵See D&E PFR at 6.

⁶Verizon Answer at 3.

⁷PFR at 8.

PaUSF recovery retroactive to November 15, 2006, consistent with its Amended Chapter 30 Plan. At pages 18-19, under Consumer Protections, the Plan provides:

During the pendency of the Pennsylvania USF, the Company retains the right to change and rebalance its intrastate rates in accordance with the PSP [Price Stability Plan], and if such rates are found to be just and reasonable, they shall be permitted to become effective. Further, should the new rates exceed the \$16.00 monthly residential rate ceiling and applicable business rate ceiling established in the Global Order for the duration of the Pennsylvania USF, the Company is permitted to recover the revenue difference arising from application of the Global Order rate ceilings from the Pennsylvania USF. By Order entered July 15, 2003, at Docket No. M-00021596, et al., the Commission approved modifications to the Global Order including a continuation of the USF and an increase of the \$16.00 residential cap to \$18.00.

The July 11, 2007 Order fails to recognize this right and is in need of clarification or amendment to address the application thereof from a timing perspective.

Contrary to Verizon's claim, this is not "a new proposal at the thirteenth hour."⁸ This precise contention was set forth in D&E witness Beurer's testimony where he stated that, "because D&E Telephone's average R-1 rate is approximately \$17.50, allocating the entire 2006 PSI increase to local rates would have increased the average R-1 rates for D&E Telephone above the \$18.00 rate cap requiring the amounts in excess of \$18.00 billed to end users to be credited and collected from the PaUSF."⁹ This testimony was simply overlooked in the July 11, 2007 Order justifying reconsideration under the Duick standard.

B. D&E Telephone's Right to Recovery from the Universal Service Fund

9. **Ignoring** the straight-forward provisions of D&E Telephone's Amended Chapter 30 Plan, the Verizon Answer entertains a lengthy discussion to

⁸Verizon Answer at 3.

⁹D&E Statement No. 1-R at 6.

convince this Commission that D&E Telephone is not entitled to any PaUSF recovery let alone recovery retroactive to November 15, 2006. D&E respectfully submits that Verizon's new and novel statements are contradictory to D&E's Amended Chapter 30 Plan and, therefore, violate ordering paragraph 4 of the July 11, 2007 Order.

1. PaUSF Plan and Global Order

10. Verizon argues that the PaUSF is for the "limited purpose" of supporting access and toll rate reductions¹⁰ and there is "no mechanism" for additional USF funding.¹¹ This argument is flawed.

The existing PaUSF arose from the settlement plan sponsored by Verizon in its petition commencing the Global proceeding at Docket No. P-00991649. In that petition, Verizon (formerly Bell Atlantic-Pennsylvania, Inc.) and the Rural Telephone Company Coalition, et al., proposed a universal service funding plan which they labeled in paragraph 81 of the petition as the "Small Company Universal Service Fund Settlement." The plan was attached in Appendix II to the petition. The alternative petition filed in Global by Nextlink Pennsylvania, Inc., et al., at Docket No. P-00991648, supported the Small Company universal service funding plan with various modifications.¹² The plan was ultimately approved in the Global Order subject to modifications.¹³

¹⁰Verizon Answer at 9.

¹¹Verizon Answer at 10.

¹²Joint Petition of Nextlink Pennsylvania, Inc., et al., Docket Nos. P-00991648 and P-00991649, Order entered September 30, 1999 ("Global Order") at 48-50.

¹³Id. at 150-155.

11. A review of the Small Company Universal Service Fund Settlement plan sponsored by Verizon and as adopted with modifications in the Global Order, shows that the plan was initially established for funding access and toll rate reductions on the part of the rural ILECs. The plan calls for the size of the fund to be recalculated annually to reflect actual access line growth. In addition, the plan specifically recognizes that on an annual basis the size of the fund is "**expected to expand/contract for various reasons**"¹⁴ (emphasis added). Thus, the PaUSF, as approved in the Global Order, does provide for the expansion of the fund for various reasons.

12. One of those reasons is when a fund recipient's local rates exceed the rate cap imposed by the Commission. The initial PaUSF Plan as sponsored by Verizon initially established the monthly average R-1 cap at \$16.00 and the B-1 at the "proportionate amount."¹⁵ Appendix II to the Verizon petition in Global, at page 5, reads as follows:

5) Small ILECs with monthly residential one-party basic, local rates above \$16.00 at the time the Fund is implemented will provide a Universal Service credit in an amount that will effectively reduce the rate to \$16.00 with their business rates receiving a proportionate credit.

The modified plan sponsored by the Nextlink parties and spelled out on pages 48-50 of the Global Order specifically recognized that the fund is to be increased when an ILEC's rates exceed the R-1 rate cap stating: "If insufficient funds exist to cover the new level of USF support to assure compliance with the

¹⁴See Verizon Petition at Docket No. P-00991649, Appendix II, Appendix A at 3.

¹⁵In other words, only when the average R-1 rate exceeds the applicable R-1 cap does an ILEC calculate the "proportionate" B-1 rate cap for universal service funding purposes.

\$16.00 rate ceiling, the Commission will require that the USF be increased to the required level with all contributors paying their respective share of the increase."¹⁶

13. The Commission in the Global Order recognized this **additional** PaUSF funding provision stating, "if such ILEC's one-party residential rate is above \$16.00 per month, and is found to be just and reasonable by the Commission, the revenue associated with the difference between the rate ceiling and the approved rates will be recovered from the Pennsylvania USF."¹⁷ Pursuant thereto, the initial PaUSF level was established to assist those rural ILECs with funding to the extent their local rates exceed the \$16.00 R-1 cap and proportionate B-1 cap.

14. In summary, the PaUSF was not established for the sole purpose of funding access and toll rate reductions by the applicable ILECs as Verizon has stated. Instead, the PaUSF was also established to provide funding for other reasons including those instances where the Commission approves just and reasonable rates for an ILEC which exceed the applicable R-1 rate cap. Further, the Commission's modified PaUSF plan in Global did provide for increasing the funding level.

2. Access Charge Order

15. The Commission in its subsequent Access Charge Order entered July 15, 2003,¹⁸ adopted a Joint Procedural Stipulation sponsored by Verizon, the Rural Telephone Company Coalition and others, that continued the PaUSF beyond

¹⁶See Global Order at 49.

¹⁷Global Order at 201.

¹⁸Access Charge Investigation per Global Order of September 30, 1999, et al., Docket Nos. M-00021596, etc., Order entered July 15, 2003.

December 31, 2003, and increased the applicable average R-1 monthly rate cap from \$16.00 to \$18.00.¹⁹ This Joint Procedural Stipulation specifically provided "[a]ny approved future increases in rates above the \$18.00 rate cap for any ILEC shall also be recoverable from the USF under the exact same terms and conditions as approved in the Global Order."²⁰ Consequently, the Commission in the Access Charge Order again recognized for PaUSF funding purposes those ILECs whose rates exceed the applicable R-1 rate cap of \$18.00. Since the Access Charge Order, the aforesaid cap has not been modified or terminated by the Commission.²¹

3. D&E Carriers Amended Chapter 30 Plans

16. Following the implementation of Act 183,²² D&E Telephone filed an Amended Chapter 30 Plan accelerating its universal broadband commitment to December 31, 2008. The Amended Plan was approved by the Commission.²³ This Amended Plan which remains in effect today specifically provides under Consumer Protections:

During the pendency of the Pennsylvania USF, the Company retains the right to change and rebalance its intrastate rates in accordance with the PSP [Price Stability Plan], and if such rates are found to be

¹⁹See Access Charge Order at Attachment A at 18.

²⁰Id.

²¹In fact, the Commission in its pending investigation into intrastate access charges, intraLATA toll rates, and the PaUSF, at Docket No. I-00040105, has stayed the investigation and continued the PaUSF "until such time as regulations are promulgated eliminating or modifying the Fund." See Order entered November 15, 2006, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, ordering paragraph 9. The said November 15, 2006 Order directed no modifications in the \$18.00 R-1 universal service cap established under the Access Charge Order.

²²66 Pa.C.S. §3011-3019.

²³Petition for an Amended Alternative Regulation and Network Modernization Plan for the Denver and Ephrata Telephone and Telegraph Company, Docket No. P-00981430F1000, Order entered June 3, 2005.

just and reasonable, they shall be permitted to become effective. Further, should the new rates exceed the \$16.00 monthly residential rate ceiling and applicable business rate ceiling established in the Global Order for the duration of the Pennsylvania USF, the Company is permitted to recover the revenue difference arising from application of the Global Order rate ceilings from the Pennsylvania USF. By Order entered July 15, 2003, at Docket No. M-00021596, et al., the Commission approved modifications to the Global Order including a *continuation of the USF and an increase of the \$16.00 residential cap to \$18.00.*

D&E Telephone Amended Chapter Plan at 18-19.

17. Ordering paragraph 4 of the Commission's July 11, 2007 Order directs D&E Telephone to design rates to recover its allowable revenues "consistent" with its Chapter 30 Plan and without increasing its access rates. The local rates set forth in the PFR are designed **consistent** with the D&E Telephone Amended Chapter 30 Plan and such rates exceed the \$18.00 R-1 cap and proportionate B-1 cap. Consequently, under the Plan, D&E Telephone is entitled to PaUSF support to the extent its rates exceed the applicable caps. All D&E Telephone is seeking through the PFR is clarification of the July 11, 2007 Order to provide that the universal service funding should be retroactive to November 15, 2006, the date of the access rate decreases. Without retroactive recovery, D&E Telephone will not be permitted to fully recover its allowable revenue opportunity under its 2006 Annual PSI/SPI Filing. It must be emphasized that D&E Telephone under the Access Charge Order and its Amended Chapter 30 Plan is **not** allowed to charge rates in excess of an average \$18.00 R-1 and the proportionate B-1 rate caps. Instead, D&E Telephone is permitted to recover the revenues from the PaUSF. Violating these two consumer safeguards would be a violation of D&E Telephone's Amended Chapter

30 Plan which in turn would violate the July 11, 2007 Order which requires the new tariffs to be consistent with the Chapter 30 Plan.

18. It is also important to recognize Act 183 at 66 Pa.C.S. §3013(b) states that, "[E]xcept for changes to existing alternative form of regulation and network modernization plans as authorized by this chapter, no change to any alternative form of regulation or network modernization plan may be made without the express agreement of both the Commission and the Local Exchange Telecommunications Company." Accordingly, the Consumer Protections provisions of the Amended Chapter 30 Plan recognizing a \$18.00 R-1 rate cap and proportionate B-1 rate cap with universal service funding must be followed.

4. Verizon's New and Novel PaUSF Contentions are Erroneous

19. As discussed in paragraphs 10-15 hereof, Verizon has been a major participant in the establishment of the current PaUSF recognizing that funding levels may be increased when an ILEC's rates exceed the applicable rate cap and are found just and reasonable by the Commission. In lieu of abiding with the PaUSF, decisions of this Commission and the D&E carriers' Amended Chapter 30 Plans, Verizon has made **erroneous** contentions, which could cloud the appropriate course of action by this Honorable Commission.

20. For example, Verizon states that the only purpose of universal service funding was for "access and toll rate **reductions**."²⁴ Yet, as stated above, the Global Order recognized that funding levels could increase when an ILEC's rates exceed the applicable rate cap. Likewise, Verizon was a sponsor of the Joint

²⁴Verizon Answer at 9.

Procedural Stipulation addressed in the Access Charge Order which specifically recognized PaUSF funding to keep rates below the average \$18.00 R-1 cap.

21. Verizon also states that there is "no mechanism" to obtain additional funds from contributing carriers. This is in sharp contrast to the Small Company Universal Service Fund Settlement Plan that it sponsored in Global which recognized the PaUSF could be expanded for "various reasons." Further, it is in sharp contrast to the Global Order which recognized additional universal service funding when an ILEC's rates exceed universal service rate caps.

22. Verizon claims that D&E cannot engage in rightful recovery of amounts over the set \$18.00 cap without an examination in a separate proceeding with "notice and an opportunity to be heard to all carrier contributors to the USF."²⁵ Verizon's claim is without merit. No complex, independent examination is required. D&E Telephone's Amended Chapter 30 Plan provides for USF funding when the residential R-1 rate cap is exceeded. There is certainly no necessity for further notice and hearings for the purpose of directing the fund administrator to expand the PaUSF consistent with the Global Order to permit D&E Telephone recovery of its 2006 Annual PSI/SPI revenue entitlement under the provisions of its Amended Chapter 30 Plan. Again, the Global Order citing the modifications to the universal service plan sponsored by Nextlink, et al., specifically recognized that the Commission "will require that the USF be increased to the required level" when the R-1 rate cap is exceeded.

23. Moreover, the Commission recognized in its Access Reform Order that due process had been afforded parties regarding the terms of the PaUSF:

²⁵Verizon Answer at 3.

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

Access Reform Order at 11.

24. Verizon further contends that the \$18.00 R-1 "benchmark" may not survive today.²⁶ The \$18.00 R-1 rate cap (not benchmark) was established in the Access Charge Order. The cap has never been terminated by the Commission. Moreover, the cap is set forth in D&E Telephone's **effective** Amended Chapter 30 Plan. The July 11, 2007 Order has instructed D&E Telephone to adjust its rates consistent with its Chapter 30 Plan.

25. Verizon also states "there is no basis in today's competitive environment for D&E to claim that it is entitled to USF subsidies from other carriers to cap its business rates."²⁷ Again, the PaUSF has been established by this Commission providing for both residential and business rate credits and universal service funding when the R-1 \$18.00 rate cap and proportionate B-1 rate are exceeded. The D&E Telephone Amended Chapter 30 Plan is consistent therewith. The July 11, 2007 Order has instructed D&E Telephone to adjust its rates consistent with its Chapter 30 Plan.

²⁶Id. at 9-10.

²⁷Id. at 11.

26. It appears that Verizon, on page 11 of its Answer, where it states D&E Telephone's existing B-1 rate already exceeds the applicable rate cap, does **not** understand how the PaUSF process was established, works, and is administered. D&E Telephone did not previously request universal service funding for business rates because the initial criteria for receiving additional PaUSF support for B-1 rates had not been triggered. Only when the average residential local service rate exceeds the \$18.00 rate cap does an ILEC calculate the proportionate business line cap.

5. Other Erroneous Verizon Assertions

27. Verizon, in its Answer, puts forth several other misleading assertions which the D&E carriers are compelled to reply so that such misinformation may be brought to the attention of the Commission:

Verizon Answer - Page 2: Verizon states that "D&E proposes to get through the back door the same result that the Commission rejected in the Order." This is **not** correct. In D&E Telephone's original 2006 Annual PSI/SPI Filing, it sought recovery of its allowable revenue entitlement, in part, through increases in access rates. The revised filing as set forth in Appendix A of its PFR increases local service rates to offset reductions in access rates as directed by the July 11, 2007 Order. The rate design is directly consistent with the provisions of its Amended Chapter 30 Filing. There is certainly nothing "back door" about the filing.

Verizon Answer - Page 3: Verizon states that "[t]he Commission should not allow the D&E companies to use the pendency of this PFR to delay their access reductions." Again, this is **not** the case. The D&E carriers filed on August 13, 2007,

tariff supplements decreasing their access rates consistent with the July 11, 2007 Order.

Verizon Answer - Page 6: Verizon alleges that the Commission by directing refunds only back to November 15, 2006, is "allowing the D&E companies to keep approximately \$1 million in revenues obtained from carrier access customers through these now invalidated rate increases." While the revenue opportunity from the access rate increases was approximately \$1 million, the D&E carriers only billed and collected \$552,135 from non-affiliated carriers for the period July 1, 2006 to November 14, 2006. By comparison, the D&E carriers have spent over \$30 million in capital expenditures to improve their networks in order to become 98% universal broadband compliant at this time. Obviously, the aforesaid additional revenue from access customers pales in comparison to the ongoing capital carrying cost associated with these additional capital expenditures.

Verizon Answer - Page 7: Verizon claims that D&E "does not actually propose to recover **any** of the revenue ostensibly allocated to basic rates from its end users, but rather intends to recover it from other carriers." This is again **incorrect**. D&E Telephone's revised 2006 Annual PSI/SPI Filing set forth in Appendix A to the PFR increases local service rates. These increases now result in 28% of the revenue opportunity originally assigned to access customers to be recovered from end users via local rate increases and 72% recovered via the PaUSF to conform with its Amended Chapter 30 Plan. As a result of exceeding the rate cap in 2006, D&E Telephone's revised 2007 Annual PSI/SPI Filing does not bank any revenue opportunities but instead increases local service rates. The 2007

revenue opportunity would now be 45% recovered from end users via local rate increases and 55% recovered from the PaUSF.

Verizon Answer - Pages 7-8: Verizon claims that if the PFR is approved, D&E Telephone will collect, on an annual basis going forward, an amount from the PaUSF which is "actually more" than the amount its increased access rates were to produce. We respectfully submit that the Verizon numbers are based upon a two-year period reflecting the impact of the revisions to the 2006 and 2007 Annual PSI/SPI Filings. Verizon is comparing the two-year total from PaUSF to the one-year filing originally in access. Thus, Verizon's claim is nothing more than an apples and oranges comparison and has no value whatsoever. The truth of the matter is that D&E Telephone in the PFR reduced access rates and increased local rates consistent with the provisions of its Amended Chapter 30 Plan and pursuant to the directions given by the Commission in its July 11, 2007 Order. This Chapter 30 rate design produces no excess PaUSF recovery whatsoever. D&E Telephone simply requests clarification that its PaUSF recovery rights in accordance with its Chapter 30 Plan are retroactive to November 15, 2006.

III. CONCLUSION

WHEREFORE, Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, and Denver and Ephrata Telephone and Telegraph Company respectfully request that the Verizon Answer seeking affirmative relief and raising new matter be denied and the D&E carriers' Petition for Reconsideration in this proceeding be granted in its entirety.

Respectfully submitted,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Michael L. Swindler
PA Attorney ID No. 43319
Jennifer M. Sultzaberger
PA Attorney ID No. 200993

Attorneys for Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, and Denver and Ephrata Telephone and Telegraph Company

THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7600

Dated: August 17, 2007

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation Regarding Intrastate Access : I-00040105
Charges and IntraLATA Toll Rates of Rural :
Carriers and the Pennsylvania Universal Service :
Fund :
: P-00981428F1000
2006 Annual Price Stability Index/Service Price : R-00061375
Index filing of Buffalo Valley Telephone :
Company : P-00981429F1000
: R-00061376
2006 Annual Price Stability Index/Service Price :
Index filing of Conestoga Telephone and :
Telegraph Company : P-00981430F1000
: R-00061377
2006 Annual Price Stability Index/Service Price :
Index filing of Denver and Ephrata Telephone
and Telegraph Company

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of August, 2007, served a true and correct copy of the foregoing Reply to Verizon's Answer to Petition for Reconsideration, upon the persons and in the manner listed below:

Via Email and First Class Mail

Robert V. Eckenrod, Esquire
Office of Trial Staff
2 West, Commonwealth Keystone Bldg.
P.O. Box 3265
Harrisburg, PA 17105-3265
roeckenrod@state.pa.us

Steven Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
sgray@state.pa.us

Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
jcheskis@paoca.org

Robert C. Barber, Esquire
AT&T Communications of PA, Inc.
Room 3-D
3033 Chain Bridge Road
Oakton, VA 22185
rbarber@att.com

Suzan D. Paiva
Assistant General Counsel
Verizon Pennsylvania Inc.
1717 Arch Street, 10W
Philadelphia, PA 19103
suzan.d.paiva@verizon.com



Michael L. Swindler

COMMONWEALTH OF PENNSYLVANIA

DATE: November 15, 2006
SUBJECT: I-00040105, P-00981430F1000, R-00061377,
P-00981428F1000, R-00061375, P-00981429F1000,
R-00061376
TO: Director, Bureau/Office of ALJ
FROM: James J. McNulty, Secretary

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2006 NOV 16 AM 9:26
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SECRETARY'S BUREAU

I-00040105
Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund.

P-00981430F1000
R-00061377
2006 Annual Price Stability Index/service Price index filing of Denver & Ephrata Telephone and Telegraph Co.

P-00981428F1000
R-00061375
2006 Annual Price Stability Index/service Price index filing of Buffalo Valley Telephone and Telegraph Co.

P-00981429F1000
R-00061376
2006 Annual Price Stability Index/service Price index filing of Conestoga Telephone and Telegraph Co.
The Commission at Public Meeting held ~~date~~ *11-9-2006* adopted an order in the above entitled proceeding

Please direct your attention to the "Ordering Paragraph(s)" for your Bureau's/Office's ongoing responsibility as identified therein.

Kindly acknowledge receipt of this memo by signing below and return this memo to:

Secretary's Office
Attn: Docketing Section
KEYSTONE BUILDING 2ND FLOOR

Thank you for your cooperation in this matter!

Receipt acknowledged:

(signature) *Vernice Smith*
(date) *11/15/06*

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OFFICE OF ALJ
2006 NOV 15 AM 9:33
PA PUC

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DEC 04 2006

DOCUMENT
FOLDER



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

ORIGINAL

November 17, 2006

SECRETARY'S BUREAU
PA PUC

2006 NOV 17 PM 3:57

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James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

DOCUMENT
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Re: 2006 Annual Price Stability Index/Service
Price Index Filing of Denver & Ephrata
Telephone and Telegraph Company
Docket No. P-00981430F1000; R-00061377

2006 Annual Price Stability Index/Service
Price Index Filing of Buffalo Valley
Telephone Company
Docket No. P-00981428F1000; R-00061375

2006 Annual Price Stability Index/Service
Price Index Filing of Conestoga Telephone &
Telegraph Company
Docket No. P-00981429F1000; R-00061376

Dear Secretary McNulty:

KJR

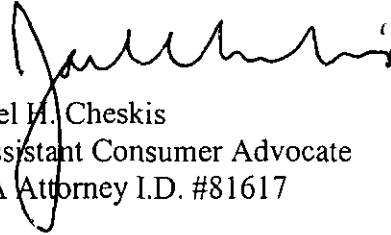
Enclosed please find for filing an original and three (3) copies of the Office of
Consumer Advocate's Notice of Intervention and Public Statement in the above-captioned
proceeding.

50

Page 2

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,



Joel M. Cheskis
Assistant Consumer Advocate
PA Attorney I.D. #81617

Enclosures

cc: All parties of record
Office of Special Assistants
Hon. Susan D. Colwell, ALJ
*91609

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

2006 Annual Price Stability Index/Service :
Price Index Filing of Denver & Ephrata :
Telephone and Telegraph Company :
: Docket No. P-00981430F1000; R-00061377

2006 Annual Price Stability Index/Service :
Price Index Filing of Buffalo Valley :
Telephone Company :
: Docket No. P-00981428F1000; R-00061375


2006 Annual Price Stability Index/Service :
Price Index Filing of Conestoga Telephone :
& Telegraph Company :
: Docket No. P-00981429F1000; R-00061376

NOTICE OF INTERVENTION

Pursuant to 52 Pa. Code Sections 5.71-74, the Office of Consumer Advocate hereby gives Notice of Intervention in the above-captioned proceeding. A copy of all correspondence and notices, documents, orders or other communications with respect to the above-captioned proceeding should be addressed to the following:

Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D. #81617
Email: jcheskis@paoca.org
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Respectfully submitted,


Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D. #81617
Email: jcheskis@paoca.org

DOCUMENT
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DOCKETED
NOV 21 2006

DATED: 11/17/06

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SECRETARY'S BUREAU

*91619

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

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SECRETARY'S BUREAU

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 19, 1976, authorizes the Consumer Advocate to represent the interests of Pennsylvania consumers before the Pennsylvania Public Utility Commission ("PUC" or "Commission"). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Notice of Intervention to represent the interests of Pennsylvania telephone consumers in the matter involving the Commission's reconsideration of its June 23, 2006 Order which allowed Denver & Ephrata Telephone & Telegraph Company, Conestoga Telephone Company and Buffalo Valley Telephone Company ("the Companies") to raise intrastate access charges.

On June 23, 2006, the Commission adopted an Order approving the Companies' respective 2006 Annual Price Stability Index/Service Price Index filings that were filed pursuant to their alternative regulation plans under Chapter 30 of the Public Utility Code. In response to that June 23rd Order, the Companies raised their intrastate access charges. Access charges are the rates paid by one company to another to originate or terminate a call on the other company's network. On November 15, 2006, however, the Commission determined to reconsider its June 23, 2006 Order and hold further hearings to examine, among other things, how the Companies' increases in intrastate access charges may affect the Pennsylvania Universal Service Fund.

The Consumer Advocate has determined to intervene and participate in this proceeding to protect the interests of Pennsylvania's telecommunications users. Chapter 30 of the Public Utility Code generally prohibits the Commission from ordering the Companies to reduce access rates except on a revenue-neutral basis. As such, if the Companies' access rates are reduced, the Companies' may seek to increase other rates, such as their basic local service rate, in order to be

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revenue-neutral. The Companies are also generally prohibited from raising monthly basic local service rates beyond an \$18 rate cap, unless increases above \$18 are obtained from the state universal service fund. The \$18 rate cap is an important protection for customers of Pennsylvania rural incumbent local exchange companies.

Important issues will be raised in this reconsideration proceeding. The Consumer Advocate determined to file a Notice of Intervention and participate in this proceeding to protect the interests of the Companies' customers.

CERTIFICATE OF SERVICE

Re: 2006 Annual Price Stability Index/Service Price Index Filing of Denver & Ephrata Telephone and Telegraph Company
Docket No. P-00981430F1000; R-00061377
2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company
Docket No. P-00981428F1000; R-00061375
2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone & Telegraph Company
Docket No. P-00981429F1000; R-00061376

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Notice of Intervention and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17th day of November, 2006.

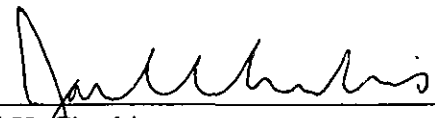
SERVICE BY INTER-OFFICE MAIL

Office of Trial Staff
Pa. Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Patricia Armstrong, Esq.
Thomas Thomas Armstrong & Niesen
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500


Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D.#81617

Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

November 21, 2006

Honorable Susan D. Colwell
Administrative Law Judge
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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2006 NOV 22 AM 11:32
PA P.U.C.
SECRETARY'S BUREAU

Re: 2006 Annual Price Stability Index/Service
Price Index Filing of Denver & Ephrata
Telephone and Telegraph Company
Docket No. P-00981430F1000; R-00061377

**DOCUMENT
FOLDER**

2006 Annual Price Stability Index/Service.
Price Index Filing of Buffalo Valley
Telephone Company
Docket No. P-00981428F1000; R-00061375

2006 Annual Price Stability Index/Service
Price Index Filing of Conestoga Telephone
& Telegraph Company
Docket No. P-00981429F1000; R-00061376

Dear Judge Colwell:

Enclosed please find the Office of Consumer Advocate's Prehearing
Memorandum in the above-captioned proceeding.

PA PUC
06 NOV 22 AM 8:00

Page 2

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel H. Cheskis". The signature is written in a cursive style with a large, looping initial "J".

Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D. #81617

Enclosures

cc: All parties of record
*91671

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index/Service :
Price Index Filing of Denver & Ephrata :
Telephone and Telegraph Company :
: Docket No. P-00981430F1000;
: R-00061377
2006 Annual Price Stability Index/Service :
Price Index Filing of Buffalo Valley :
Telephone Company :
: Docket No. P-00981428F1000;
: R-00061375
2006 Annual Price Stability Index/Service :
Price Index Filing of Conestoga Telephone :
& Telegraph Company :
: Docket No. P-00981429F1000;
: R-00061376

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. §333, and the Prehearing Order of Administrative Law Judge Susan D. Colwell dated November 14, 2006, the Pennsylvania Office of Consumer Advocate ("OCA") hereby submits this Prehearing Memorandum:

I. INTRODUCTION

On November 15, 2006, the Pennsylvania Public Utility Commission ("Commission") entered an Order in the above-captioned dockets referring the proceedings back to the Office of Administrative Law Judge to reconsider its Order of June 23, 2006 at the same dockets pursuant

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to Section 703(g) of the Public Utility Code. The Commission's June 23, 2006 Order allowed Denver & Ephrata Telephone & Telegraph Company, Connestoga Company and Buffalo Valley Telephone Company (collectively referred to as "the Companies") the option, among other things, to raise intrastate access charges as part of their 2006 Annual Price Stability Index/Service Price Index filings.

The Companies increased their access charges despite the criticism of the Commission in its June 23, 2006 Order, that doing so "appeared to contradict long-standing access service reform in Pennsylvania." November 15th Order at 13. The Commission further noted that "if the companies did not bank the proposed increases or allocate them to basic local exchange services, the instant investigation would be expanded to include an examination of whether the three companies' access rate increases are consistent with the regulations and policies governing the [Pennsylvania Universal Service Fund]." Id. The Commission added that it is "concerned as to how increases in intrastate access charges proposed by those same companies that participate in the Pennsylvania Universal Service Fund will ultimately affect the fund." Id. at 14.

By Notice dated November 14, 2006, the Commission established a Prehearing Conference for November 28, 2006 before ALJ Colwell. ALJ Colwell issued a Prehearing Conference Order on the same day. The OCA files this Prehearing Memorandum in response to that Prehearing Conference Order.

II. ISSUES

The Consumer Advocate intervened in this proceeding to protect the interests of Pennsylvania's telecommunications users. Section 3017 of the Public Utility Code generally prohibits the Commission from ordering incumbent local exchange companies to reduce access

rates except on a revenue-neutral basis. 66 Pa. C.S. § 3017(a). Access charges are the rates charged by telephone companies to other telephone companies seeking access to the local loop in order to provide services to the end-user. As such, if the Companies' access rates are reduced, the Companies' may seek to increase other rates, such as their basic local service rate, in order to be revenue-neutral. Pursuant to prior Commission Orders, however, the Companies are generally prohibited from raising monthly basic local service rates beyond an \$18 rate cap, unless increases above \$18 are obtained from the state universal service fund.

This proceeding follows an Order by the Commission, entered at Docket No. M-00021596 on July 15, 2003, that approved a settlement allowing for a reduction in rural telephone companies' intrastate access charges. That settlement, of which the OCA was a part, allowed offsets to the reduction in access charges with increases in basic local residential rates up to the cap of \$18.00 per month. Any amounts above \$18.00 must come from the Universal Service Fund. This limitation was subsequently codified in Section 3015(g) of Act 183 of 2004. Section 3015(g) states "the annual rate change limitations set forth in a local exchange telecommunications company's effective Commission-approved alternative form of regulation plan or any other Commission-approved rate change limitation shall remain applicable." The \$18 rate cap is an important protection for customers of Pennsylvania rural incumbent local exchange companies.

At issue in this proceeding is the Companies' ability to collect their revenue increase allowed under their 2006 PSI filings in light of the \$18 rate cap and the Commission's continued efforts to reduce intrastate access rates. The OCA intends to participate fully in this investigation to protect the Companies' consumers. The OCA may issue discovery if necessary. If any additional issues arise as a result of this investigation, the OCA will raise them in testimony.

III. WITNESSES

The OCA has not determined at this point whether a formal witness will be required in this proceeding. However, the OCA specifically reserves the right to call a witness, as necessary. As soon as the OCA has determined whether a witness will be necessary for any portion of its case, the ALJ and all parties of record will be notified.

IV. PROTECTIVE ORDER

The OCA is unaware at this time of a need for a Protective Order to be entered in this proceeding.

V. DISCOVERY

The OCA does not propose any changes to the discovery regulations at this time.

VI. PROPOSED PROCEDURAL SCHEDULE

The OCA and other anticipated active parties are in discussions to develop a schedule for this proceeding so that all the different issues can be addressed. The OCA will cooperate with the ALJ and other parties in establishing a schedule for this proceeding.

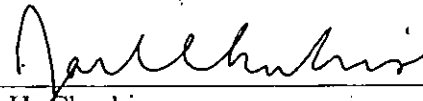
VII. MISCELLANEOUS

The OCA will be represented in this case by Assistant Consumer Advocate Joel H. Cheskis. The OCA requests that copies of all documents be served on the OCA as follows:

Joel H. Cheskis
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
Telecopier: (717) 783-7152
E-mail: jcheskis@paoca.org

The OCA is amenable to settlement discussions and will participate in whatever settlement discussions are scheduled.

Respectfully submitted,



Joel H. Cheskis
Assistant Consumer Advocate
PA Atty I.D. # 81617

For: Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

Dated: November 21, 2006

91657

CERTIFICATE OF SERVICE

Re: 2006 Annual Price Stability Index/Service Price Index Filing of Denver & Ephrata Telephone and Telegraph Company
Docket No. P-00981430F1000; R-00061377
2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company
Docket No. P-00981428F1000; R-00061375
2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone & Telegraph Company
Docket No. P-00981429F1000; R-00061376

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:


Dated this 21st day of November, 2006.

SERVICE BY INTER-OFFICE MAIL

Office of Trial Staff
Pa. Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Patricia Armstrong, Esq. (E-Mail & 1st Class)
Thomas Thomas Armstrong & Niesen
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500


Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D.#81617

Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

*91610

November 21, 2006

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

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SECRETARY'S OFFICE

In re: 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company
Docket Nos. P-00981428F1000 and R-00061375

2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone and Telegraph Company
Docket Nos. P-00981429F1000 and R-00061376

2006 Annual Price Stability Index/Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company
Docket Nos. P-00981430F1000 and R-00061377

Dear Secretary McNulty:

Enclosed for filing on behalf of Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company and Denver and Ephrata Telephone and Telegraph Company are an original and three (3) copies of their Prehearing Memorandum in the above-referenced proceeding. Copies of the Prehearing Memorandum are being served in accordance with the attached Certificate of Service.

**DOCUMENT
FOLDER**

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By 

Michael L. Swindler

Enclosures

- cc: Certificate of Service
- Leonard J. Beurer (w/encl.)
- Jeanne Price (w/encl.)
- John Rutkowski (w/encl.)

KJR

31

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability	:	Docket No. P-00981428F1000 and
Index/Service Price Index Filing of	:	R-00061375
Buffalo Valley Telephone Company	:	
	:	
2006 Annual Price Stability	:	Docket No. P-00981429F1000 and
Index/Service Price Index Filing of	:	R-00061376
Conestoga Telephone and Telegraph	:	
Company	:	
	:	
2006 Annual Price Stability	:	Docket No. P-00981430F1000 and
Index/Service Price Index Filing of	:	R-00061377
Denver and Ephrata Telephone and	:	
Telegraph Company	:	

PREHEARING CONFERENCE MEMORANDUM
OF
BUFFALO VALLEY TELEPHONE COMPANY,
CONESTOGA TELEPHONE AND TELEGRAPH COMPANY,
AND DENVER AND EPHRATA TELEPHONE AND TELEGRAPH COMPANY

To The Honorable Susan D. Colwell:

At the request of the Presiding Officer, Buffalo Valley Telephone Company ("BVTC"), Conestoga Telephone and Telegraph Company ("Conestoga") and Denver and Ephrata Telephone and Telegraph Company ("D&E") (collectively "Companies") submit this Prehearing Conference Memorandum for purposes of the Initial Prehearing Conference scheduled for November 28, 2006 at 10:00 a.m. in Hearing Room 5.

I. Name and Address of Companies' Attorneys:

Michael L. Swindler
PA Attorney ID No. 43319
Regina L. Matz
PA Attorney ID No. 42498

D. Mark Thomas
PA Attorney ID No. 15611
THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
Phone: (717) 255-7600
Fax: (717) 236-8278
Email: mwindler@ttanlaw.com
rmatz@ttanlaw.com
dmthomas@ttanlaw.com

II. Procedural Background

1. D&E is a rural telephone company providing local exchange service in portions of Berks, Lancaster, and Lebanon Counties. Conestoga is a rural telephone company providing local exchange service in portions of Berks, Chester, Lancaster, and Montgomery Counties. BVTC is a rural telephone company providing local exchange service in portions of Northumberland, Snyder, and Union Counties.

2. On June 20, 2000, D&E, Conestoga and BVTC, each implemented its respective Chapter 30 Plan pursuant to Commission Orders entered January 20, 2000, and March 30, 2000, at Docket Nos. P-00981430, P-00981429 and P-00981428, respectively. The Plans included each Company's commitment to deploy universal broadband availability by December 31, 2015. The regulatory *quid pro quo* for this commitment was the inclusion in each of the Plans of a Price Stability Mechanism ("PSM"). The PSM incorporated an Annual Price Stability Index/Service Price Index ("PSI/SPI") permitting each of the Companies to change rates on an annual basis. The PSM was intended to provide each of the Companies with an opportunity to annually increase its revenues on an inflationary basis with a 2% inflation offset. The PSM is a substitution of

traditional rate base/rate of return regulation and are the exclusive basis upon which the Company's noncompetitive rates are regulated.

3. On February 25, 2005, each of the Companies filed an Amended Chapter 30 Plan pursuant to Act 183.¹ This Amended Chapter 30 Plan accelerated the Companies' 100% broadband availability commitment from December 31, 2015 to December 31, 2008. To provide the Companies with additional revenues to execute this accelerated commitment, each of the Amended Chapter 30 Plans retained the PSM but eliminated the 2% inflation offset therein consistent with the provisions of Act 183.

4. On April 28, 2006,² each of the Companies filed its respective annual PSI/SPI Chapter 30 filing ("2006 Filing") under its PSM which "determines the allowable change (increase or decrease) in rates for noncompetitive services based upon the annual change in the Gross Domestic Product Price Index" (Chapter 30 Plan, Part 3.A.2). The 2006 Filing was prepared using the identical procedure previously employed in all of the Companies' prior annual PSI/SPI Chapter 30 filings (with the exception of the 2% offset).

5. The rate changes in the Conestoga 2006 Filing included (i) a \$0.33 decrease in the Carrier Common Line ("CCL") charge and increases of \$.000962 per Minute of Use ("MOU") for Tandem Switching ("TS") and \$0.007644 MOU for Local Switching ("LS") to bring these rates into parity with interstate rates and (ii) non-basic local service rates for Return Check Charge, Foreign Exchange

¹See 66 Pa.C.S. §3011 *et seq.*

²Notice of the filings was provided as required in the Companies' Chapter 30 Plans, specifically including notice to access customers. No complaints or objections were filed.

Mileage charges, increases to off-premise extension mileage charges and charges for Business Private Line Services for non-mileage related services.

6. The rate changes in the D&E 2006 Filing included (i) a \$1.20 increase in the Carrier Common Line ("CCL") charge and increases of \$.000939 per Minute of Use ("MOU") for Tandem Switching ("TS") and \$0.00636 MOU for Local Switching ("LS") to bring these rates into parity with interstate rates and (ii) non-basic local service rates for Return Check Charge, Foreign Exchange Mileage charges, and charges for Business Private Line Services for non-mileage related services.

7. The rate changes in the BVTC 2006 Filing included (i) a \$0.97 increase in the Carrier Common Line ("CCL") charge and increases of \$0.002402 per Minute of Use ("MOU") for Tandem Switching ("TS") and \$0.000247 MOU for Local Switching ("LS"), (ii) a per line increase of \$0.30 for basic local services, PBX and Pay Telephone rates, and (iii) non-basic local service rates for Return Check Charge, Foreign Exchange Mileage charges, increases to off-premise extension mileage charges and charges for Business Private Line Services for non-mileage related services. BVTC filed the increase in the Tandem Switching rate to bring this rate into parity with interstate rates even though BVTC does not have an access tandem and cannot bill the Tandem Switching rate to its customers based on its network configuration.

8. On June 23, 2006, the Commission issued Orders permitting the proposed rate changes to be implemented after adjustment of the PSI/SPI

procedure for calculating the Chapter 30 revenue entitlement.³ Although the Commission's June 23 Orders⁴ raised criticisms of the increases placed on the Companies intrastate access charges and provided the Companies with the alternative to instead increase basic exchange rates or bank the revenue entitlements. The June 23 Orders, however, provided the Companies with the option of implementing the proposed rate changes if adjusted for a change in the annual revenue entitlement calculation procedure, as described above and they expressly permitted implementation of the adjusted rate changes. If the Companies pursued the latter alternative, the Commission directed that certain issues related thereto be consolidated with the USF/Access III Investigation. On June 28, 2006, the Companies filed revised rates consistent with the procedural modification directed in the June 23 Orders.

9. On July 10, 2006, the Companies sought reconsideration of the Commission's June 23 Orders from the standpoint of the adjustment to the PSI/SPI procedure. Specifically, the Companies filed Petitions for Reconsideration, which are incorporated herein by reference, requesting reconsideration of the change directed in their revenue entitlement formula and addressing the Commission's criticisms raised in the June 23 Orders regarding increases in their intrastate access charges. In these Petitions, the Companies summarized (i) the extensive steps they have taken beginning with the Global

³The June 23 Orders directed that the Companies revise their calculations of eligible revenue increase from an annualized increase using December 2005 revenues to using actual 2005 year-end revenues.

⁴See Orders entered June 23, 2006, at Docket Nos. R-00061377 and P-00981430F1000, Nos. R-00061375 and P-00981428F1000, and Nos. R-00061376 and P-00981429F1000, collectively "June 23, 2006 Orders."

proceeding,⁵ to achieve intrastate access reform, (ii) their commitment to rural Pennsylvania evidenced by the acceleration in their Chapter 30 broadband commitments under Act 183 to achieve universal broadband availability throughout their rural service territories by December 31, 2008, and (iii) the extensive intermodal competition they are facing hindering their ability to grow revenues and earnings to offset the capital cost arising from their accelerated Chapter 30 broadband commitments under Act 183. The Companies explained that intermodal competition precluded further increases in their basic exchange rates and that the minor increases proposed to their intrastate access charges were the only realistic means to achieve additional revenues to carry-out their accelerated Chapter 30 broadband commitments.

10. By Order entered November 15, 2006, the Commission pursuant to Section 703(g) of the Public Utility Code sought reconsideration as to whether any rescission or amendment of the June 23 Order was appropriate consistent with the Commission's access charge reform and universal service policies and the Companies' Chapter 30 Plans.

III. Statement of Issues

1. Whether the Companies' raising intrastate access charges in the amounts and manner provided in their 2006 PSI Filings contradicted the *Global Order*?
2. Whether the Companies' raising intrastate access charges in the amounts and manner provided in their 2006 PSI Filings affected the PA USF or those Companies' draw from the PA USF?
3. Whether since the issuance of the *Global Order* the Commission has precluded incumbent local exchange carriers from increasing intrastate access charges in the amounts or in the manner provided by the

⁵ *Joint Petition of Nextlink Pennsylvania, Inc., et al.*, 196 PUR4th 172 (1999).

Companies in their 2006 PSI Filings, in other words, has the Commission precluded companies from mirroring interstate and intrastate traffic sensitive rates and increasing the CCL?

4. Whether the Companies' raising intrastate access charges in the amounts and manner provided in their 2006 PSI Filings impacts the calculation of the PA USF?
5. Whether the Companies' raising intrastate access charges in the amounts and manner provided in their 2006 PSI Filings were consistent with Act 183 and with the Companies' Chapter 30 Plans?

IV. Proposed Witnesses

As previously stated, Companies believe that the scope of this proceeding is limited to that indicated in the PUC's November 9 Order and will present Leonard J. Beurer, Vice President, Regulatory and External Affairs, to address this issue. Companies reserve the right to submit additional testimony and witnesses *should it be necessary*.

V. Proposed Procedural Schedule

Given the limited scope of the instant proceeding, the Companies believe the following schedule is appropriate:

Testimony (if only Company) or if others submitting testimony	- January 8, 2007
Direct	December 15, 2006
Rebuttal	December 30, 2006
Surrebuttal	January 10, 2007
Hearings	- January 16, 2007
Briefs	- January 26, 2007
Reply Briefs	- February 2, 2007
Recommended Decision	- February 28, 2007

Respectfully submitted,

By Michael L. Swindler /umj
Michael L. Swindler
PA Attorney ID No. 43319
Regina L. Matz
PA Attorney ID No. 42498
D. Mark Thomas
PA Attorney ID No. 15611

Attorneys for Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company and Denver and Ephrata Telephone and Telegraph Company

THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7600

Dated: November 21, 2006

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company	:	Docket Nos. P-00981428F1000 and R-00061375
2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone and Telegraph Company	:	Docket Nos. P-00981429F1000 and R-00061376
2006 Annual Price Stability Index/Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company	:	Docket Nos. P-00981430F1000 and R-00061377

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of November, 2006, served a true and correct copy of the foregoing Prehearing Memorandum on behalf of Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company and Denver and Ephrata Telephone and Telegraph Company upon the persons set forth below:

VIA HAND DELIVERY

Honorable Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265

John Simms, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
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Steven Grey, Esquire
Office of Small Business Advocate
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SECRETARY'S BUREAU
NOV 21 2006

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Michael L. Swindler

Suzan DeBusk Paiva
Assistant General Counsel



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Suzan.D.Paiva@Verizon.com

ORIGINAL

November 27, 2006

VIA UPS OVERNIGHT DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: 2006 Annual Price Stability Index/ Service Price Index filing
of Buffalo Valley Telephone Company
P-00981428F1000 and R-00061375

2006 Annual Price Stability Index/Service Price Index filing
of Conestoga Telephone & Telegraph Company
P-00981429F1000 and R-00061376

2006 Annual Price Stability Index/Service Price Index filing
of Denver & Ephrata Telephone & Telegraph Company
P-00981430F1000 and R-00061377

Dear Mr. McNulty:

Enclosed please find an original and three copies of the Petition to Intervene and Entry of Appearance of Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon"), in the above-referenced matter.

Do not hesitate to contact me if you have any questions.

Respectfully,

Suzan D. Paiva

DOCUMENT
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VIA E-Mail and First Class US Mail

cc: The Honorable Susan Colwell
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

2006 Annual Price Stability Index/	:	
Service Price Index filing of Buffalo	:	P-00981428F1000
Valley Telephone Company	:	R-00061375
2006 Annual Price Stability Index/	:	
Service Price Index filing of Conestoga	:	P-00981429F1000
Telephone & Telegraph Company	:	R-00061376
2006 Annual Price Stability Index/	:	
Service Price Index filing of Denver &	:	P-00981430F1000
Ephrata Telephone & Telegraph Company	:	R-00061377

**PETITION TO INTERVENE AND ENTRY OF
APPEARANCE OF THE VERIZON COMPANIES**

Pursuant to 52 Pa. Code §§ 5.71-5.74, Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon") petition to intervene as parties in the above-captioned proceedings.

1. By three separate orders entered June 23, 2006, the Commission reviewed the 2006 Annual Price Stability Index/Service Price Index ("PSI") Filings of Denver & Ephrata Telephone & Telegraph Company ("D&E"), Buffalo Valley Telephone Company ("Buffalo Valley") and Conestoga Telephone & Telegraph Company ("Conestoga") (collectively the "D&E Companies").¹ Each company had proposed to implement its annual PSI/SPI filing by increasing switched access rates. The

¹ See Orders entered June 23, 2006 at Docket Nos. R-00061377 and P-00981430F1000 ("D&E Access Order"), Nos. R-00061375 and P-00981428F1000 ("Buffalo Valley Access Order") and Nos. R-00061376 and P-00981429F1000 ("Conestoga Access Order").

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Commission gave each company the choice of reallocating these increases to basic service rates or allowing the access rate increases to go into effect. However, if the companies chose to increase access rates, then the Commission's acceptance was on the express condition that these rates would be subject to further investigation in the Rural Access Reform Investigation at Docket No. I-00040105.

2. The Commission noted that "access services are protected services, subject to proof that the rates are just and reasonable under 66 Pa. C.S. § 3109(h), Chapter 13 of Code, as well as the Company's amended Chapter 30 Plan. The Company fails to provide adequate justification on whether the proposed rate increase for access services is in the public interest and whether or not it will negatively affect competition and, in addition, universal service in Pennsylvania. Furthermore, since the Company did not submit any cost studies with its filing establishing that the current rates are below cost, we cannot ascertain whether or not access services rate elements are priced below cost or unfairly above cost level." (D&E Order at 12; Conestoga Order at 12; Buffalo Valley Order at 12). The Commission therefore determined to expand the investigation at Docket No. I-00040105 to examine among other issues whether these access rate increases are "consistent with the regulations and policies governing the Pennsylvania Universal Service Fund, the Company's previously granted request for suspension of further intrastate access reform in Docket No. I-00040105, the Company's previously approved Amended Chapter 30 Plan set forth in Docket P-00981430F1000, and the continuing statutory obligations set forth in Sections 3011(1)-(13), 3019(h) and Chapter 13 of the Public Utility Code." (*Id.* at Ordering ¶ 7).

3. After the Commission entered these June 23 orders, a group of rural ILECs, including the D&E companies, moved to extend the stay of the investigation at Docket No. I-00040105. Certain of the Verizon companies that were existing parties to the investigation opposed the motion to extend the stay, in part because the D&E companies' actions to increase their access rates during the previous stay period were inconsistent with the request for an extension of the stay, and that an extension would delay resolution of the important issues relating to the D&E companies' access rates that this Commission had deferred to the investigation proceeding. Alternatively, Verizon argued that if the stay were extended then the Commission should bifurcate the question of whether the D&E companies' access rates are just and reasonable and whether those companies should continue to receive subsidies from the USF, and investigate those issues immediately.

4. The Commission by order entered November 15, 2006 granted the motion to extend the stay, but also pursuant to 66 Pa. C.S. § 703(g) determined to reconsider its June 23 Orders relating to the D&E companies' PSI/SPI filings. The Commission decided to hold further hearings immediately to afford the parties due process and to determine "based on the record, whether any rescission or amendment would be warranted by the evidence, consistent with our access charge reform and universal service policies, and lawful under the companies' Chapter 30 Plans." (11/15/06 Order at 14-15). The Commission specifically stated that the bifurcation of the D&E matters for immediate hearings was intended, in part, to address concerns raised by certain of the Verizon companies in opposition to the motion to stay the Investigation at Docket No. I-00040105. (*Id.*). The Commission directed the investigation of the D&E

companies' access rates to be completed on an expedited basis, with a recommended decision issued by February 28, 2007.

5. The Verizon companies are eligible to intervene in this proceeding under the criteria set forth in 52 Pa. Code § 5.72(a). Verizon has a direct and substantial interest in this proceeding and its participation in this proceeding would be in the public interest. The Verizon companies are access customers of D&E, Buffalo Valley and Conestoga, and accordingly as ratepayers are directly affected by the access rate increase proposed by these companies. Verizon also retains an interest in the matters subject to investigation here by virtue of its status as a party to the original Universal Service Fund ("USF") Settlement adopted by the Commission in the *Global Order*, and as the largest contributor to the USF under its present configuration. The Verizon companies accordingly have a direct interest in the matters included in this investigation and may be bound by any Commission action taken here.

6. Verizon will be represented by the following counsel in this proceeding, whose names should be included on any service list or e-mail distribution:

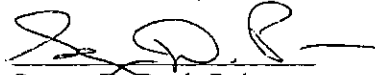
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Verizon
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Philadelphia, PA 19103
Phone (215) 466-4755
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E-mail: Suzan.d.paiva@verizon.com

7. Verizon's participation in this proceeding will ensure that its interests are protected.

8. Verizon's interests cannot be adequately represented by any other party in this proceeding.

WHEREFORE, Verizon respectfully requests that it be permitted to intervene as a party in these proceedings and that its counsel listed above be placed on any service lists relating to these matters.

Date: November 27, 2006



Suzan DeBusk Paiva
Verizon
1717 Arch Street, 10th Floor
Philadelphia, PA 19103
(215) 466-4755

Attorney for Verizon

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon's Petition to Intervene and Entry of Appearance, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 27th day of November, 2006.

VIA E-MAIL AND USPS FIRST CLASS MAIL

Michael L. Swindler, Esquire
Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
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Robert Eckenrod, Esquire
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November 27, 2006

VIA UPS OVERNIGHT DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
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**RE: 2006 Annual Price Stability Index/ Service Price Index filing
of Buffalo Valley Telephone Company
P-00981428F1000 and R-00061375**

**2006 Annual Price Stability Index/Service Price Index filing
of Conestoga Telephone & Telegraph Company
P-00981429F1000 and R-00061376**

**2006 Annual Price Stability Index/Service Price Index filing
of Denver & Ephrata Telephone & Telegraph Company
P-00981430F1000 and R-00061377**

Dear Mr. McNulty:

Enclosed please find an original and three copies of the Prehearing Conference Memorandum and proposed Protective Order of Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCI Metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon"), in the above-referenced matter.

Do not hesitate to contact me if you have any questions.

Respectfully,



Suzan D. Paiva

VIA E-Mail and First Class US Mail
cc: The Honorable Susan Colwell
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BEFORE THE
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2006 Annual Price Stability Index/ Service Price Index filing of Buffalo Valley Telephone Company	:	:	P-00981428F1000 R-00061375
2006 Annual Price Stability Index/ Service Price Index filing of Conestoga Telephone & Telegraph Company	:	:	P-00981429F1000 R-00061376
2006 Annual Price Stability Index/ Service Price Index filing of Denver & Ephrata Telephone & Telegraph Company	:	:	P-00981430F1000 R-00061377

**PREHEARING MEMORANDUM
OF THE VERIZON COMPANIES**

Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon") submit this Prehearing Memorandum for purposes of the prehearing conference scheduled for November 28, 2006.¹

I. HISTORY OF PROCEEDING

On May 3, 2006, Denver & Ephrata Telephone & Telegraph Company ("D&E"), Buffalo Valley Telephone Company ("Buffalo Valley") and Conestoga Telephone & Telegraph Company ("Conestoga") (collectively the "D&E Companies") made their 2006 Annual Price Stability Index/Service Price Index ("PSI") filings. These companies

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¹ Verizon is filing this date a Petition to Intervene in the above-captioned matters.

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BEFORE THE
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2006 Annual Price Stability Index/ Service Price Index filing of Buffalo Valley Telephone Company	:	P-00981428F1000 R-00061375
2006 Annual Price Stability Index/ Service Price Index filing of Conestoga Telephone & Telegraph Company	:	P-00981429F1000 R-00061376
2006 Annual Price Stability Index/ Service Price Index filing of Denver & Ephrata Telephone & Telegraph Company	:	P-00981430F1000 R-00061377

PROTECTIVE ORDER

THEREFORE,

IT IS ORDERED:

1. This Protective Order, submitted by Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon"), is hereby established for use in this proceeding with respect to all materials and information identified at Paragraph 2 of this Protective Order which are filed with the Commission, produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies and other materials which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures or cross-examination or provides as a courtesy to a party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index / Service	:	
Price Index Filing of Denver & Ephrata	:	Docket Nos. P-00981430F1000;
Telephone & Telegraph Company	:	R-00061377
	:	
2006 Annual Price Stability Index/Service	:	
Price Index Filing of Buffalo Valley	:	P-00981428F1000;
Telephone Company	:	R-00061375
	:	
2006 Annual Price Stability Index/Service	:	
Price Index Filing of Conestoga Telephone	:	P-00981429F1000;
& Telegraph Company	:	R-00061376

AMENDED NOTICE OF APPEARANCE

TO THE SECRETARY:

Please enter the appearance of the Office of Trial Staff of the Pennsylvania Public Utility Commission in the above-captioned proceedings.

All service on and communications to the Office of Trial Staff in this proceeding should be addressed:

ROBERT V. ECKENROD, ESQUIRE
Pa. Public Utility Commission
Office of trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265
roeckenrod@state.pa.us
(717) 787-1976

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FOLDER**

DOCKETED
DEC 04 2006

Dated: December 1, 2006



Robert V. Eckenrod
Prosecutor
Office of Trial Staff
PA Attorney I.D. #84889

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index / Service	:	
Price Index Filing of Denver & Ephrata	:	Docket Nos. P-00981430F1000;
Telephone & Telegraph Company	:	R-00061377
	:	
2006 Annual Price Stability Index/Service	:	
Price Index Filing of Buffalo Valley	:	P-00981428F1000;
Telephone Company	:	R-00061375
	:	
2006 Annual Price Stability Index/Service	:	
Price Index Filing of Conestoga Telephone	:	P-00981429F1000;
& Telegraph Company	:	R-00061376

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Amended Notice of Appearance**, dated December 1, 2006, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

Honorable Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17105

Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101

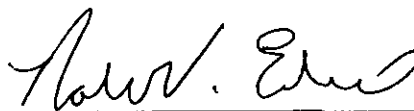
Patricia Armstrong, Esquire
Regina Matz, Esquire
Thomas, Thomas, Armstrong & Niesen
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PO Box 9500
Harrisburg, PA 17108-9500

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Cindy Bryan
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Ephrata, PA 17522-0458

Suzan D. Piava
Verizon Pennsylvania Inc.
1717 Arch Street Floor 10
Philadelphia, PA 19103



Robert V. Eckenrod
Prosecutor
Office of Trial Staff
PA Attorney I.D. #84889

Dated: December 1, 2006
Docket No. P-00981430F1000, *et. al.*

Suzan DeBusk Paiva
Assistant General Counsel



**DOCUMENT
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Verizon Pennsylvania Inc.
1717 Arch Street, Floor 10
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Tel: (215) 466-4755
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

December 31, 2007

VIA UPS OVERNIGHT DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**RE: 2006 Annual Price Stability Index/ Service Price Index filing
of Buffalo Valley Telephone Company
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P-00981429F1000 and R-00061376**

**2006 Annual Price Stability Index/Service Price Index filing
of Denver & Ephrata Telephone & Telegraph Company
P-00981430F1000 and R-00061377**

Dear Mr. McNulty:

Enclosed please find the original and three copies of the Answer of the Verizon Companies to the Office of Consumer Advocate's Petition for Reconsideration, being filed in the above-referenced matter.

Do not hesitate to contact me if you have any questions.

Very truly yours,

Suzan D. Paiva
Suzan D. Paiva

Via E-Mail and UPS Delivery
cc: The Honorable Susan Colwell
Robert Marinko
Cheryl Walker Davis
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2006 Annual Price Stability Index/	:	
Service Price Index filing of Buffalo	:	P-00981428F1000
Valley Telephone Company	:	R-00061375
2006 Annual Price Stability Index/	:	
Service Price Index filing of Conestoga	:	P-00981429F1000
Telephone & Telegraph Company	:	R-00061376
2006 Annual Price Stability Index/	:	
Service Price Index filing of Denver &	:	P-00981430F1000
Ephrata Telephone & Telegraph Company	:	R-00061377

**THE VERIZON COMPANIES' ANSWER TO
OCA's PETITION FOR RECONSIDERATION**

Pursuant to 52 Pa. Code § 5.572(e), the Verizon companies¹ hereby answer the Petition for Reconsideration ("PFR") filed by the Office of Consumer Advocate ("OCA") of this Commission's December 7, 2007 Order on Reconsideration.

INTRODUCTION

On December 7, 2007 the Commission resolved the limited issues raised by D&E's² PFR of the Commission's July 11, 2007 Order – in which, following an evidentiary proceeding, the Commission rescinded D&E's attempt to implement 2006 PSI/SPI filings by raising switched access rates and directed D&E to provide refunds and rate reductions, but

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¹ The "Verizon companies" include Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc. d/b/a Verizon Business Services.

² The "D&E companies" (also referred to herein collectively as "D&E") include Denver & Ephrata Telephone & Telegraph Company ("Denver & Ephrata"), Buffalo Valley Telephone Company ("Buffalo Valley") and Conestoga Telephone & Telegraph Company ("Conestoga").

allowed it to recover this revenue instead in any other “manner consistent with” the companies’ “Chapter 30 plans.” (7/11/07 Order, Ordering ¶ 4).³

D&E’s PFR did not seek to reinstate the disallowed access rate increases or to overturn the required refunds to access customers – and no other party timely challenged the decision to disallow access increases. Instead, D&E informed the Commission through its PFR that Conestoga and Buffalo Valley would bank the portion of the increase that they had originally allocated to access rates rather than reallocate the revenue to other rates, but that Denver & Ephrata intended to raise rates and wished to do so retroactively to recover the amount required to be refunded to its access customers from November 15, 2006. The primary issue raised in the PFR was D&E’s request to be “reimbursed” by other carriers through an expansion of the carrier-funded state universal service fund (“USF”) to cover Denver & Ephrata for both the refund and the forward-looking rate increases.

After many months of consideration, the Commission’s December 7, 2007 Order denied D&E’s PFR in a thorough and well-reasoned decision that balanced the important interests at issue in this specific case, but rightly left the more comprehensive decisions to be made in the rural carriers’ access investigation at docket I-00040105.

OCA has now filed a second PFR, but it raises no “new” or “novel” arguments or issues that the Commission “overlooked” or failed to consider in its previous orders in this proceeding.⁴ Rather, OCA reargues the *same* issues it had the opportunity to address on the record and raises the exact same arguments it already made in response to D&E’s PFR.

³ The D&E companies were permitted to keep the additional revenue they collected from carrier access customers from the July 1, 2006 effective date of the access increases through November 15, 2006 – which the record projected would be approximately \$1 million. *But see* 12/7/07 Order at 17, n. 13 (D&E claims to have “billed and collected” \$552,135 for this time period).

⁴ *Duick v. Philadelphia Gas and Water Co.*, 56 Pa. PUC 553 (1982).

Specifically, OCA contends that under no circumstances should D&E or any other carrier be permitted to raise its average basic residential rate above \$18, which OCA contends is a “cap” on rural carriers’ residential rates that cannot be altered “without considering the impact on the affordability of rural telephone service.” (OCA PFR at 6). But this Commission already correctly rejected OCA’s arguments about the \$18 rate cap under the facts of this case. Moreover, OCA had ample opportunity to present any evidence it desired regarding the “affordability of rural telephone service” and failed to do so.

In its December 7, 2007 Order on reconsideration the Commission rejected D&E’s claim for reimbursement from other carriers through an expanded USF, but based on D&E’s argument that it would have to raise Denver & Ephrata’s residential rates above the \$18 benchmark to recover the revenue through end-user rate increases, the Commission determined that it would be just and reasonable under these facts to provide Denver & Ephrata a realistic option other than banking to comply with the Commission’s July 11, 2007 Order and specifically authorized it to exceed \$18 for purposes of recovering the 2006 PSI/SPI revenue originally allocated to access rates. The Commission thoroughly considered the history of the \$18 benchmark and recognized that there are serious issues about its continued validity and effectiveness – issues the Commission intends to address in the generic rural carriers’ access investigation. In light of the fact that the residential \$18 benchmark “was set several years ago by agreement without a comprehensive study of affordability,” that it is “not included in our PAUSF regulations” and that it is now almost four years old, the Commission determined that it would be just and reasonable under the facts of this case to provide a limited waiver of the benchmark, to the extent the benchmark even survives. (12/7/07 Order at 35). The Commission went on to note that it specifically intended to address “whether the

maximum weighted average R-1 rate of \$18 . . . remain[s] in effect” in the context of its broader investigation of rural carrier access rates at docket I-00040105. (*Id.* at 36).

OCA now seeks reconsideration, asking this Commission to do precisely what it refused to do in its December 7 Order — to make a sweeping declaration, without any evidence of “affordability” or any participation in this litigation by the affected members of the industry or the public, that the \$18 benchmark is sacrosanct and cannot be waived even under the compelling circumstances presented here. While OCA’s PFR should be “Exhibit A” in favor of immediately reopening the rural carriers’ access investigation at docket I-00040105 to address these broader issues, it should not be allowed to delay closure of this limited proceeding regarding the 2006 PSI/SPI filings of the D&E companies, nor should it be permitted to serve as a further excuse for D&E to withhold the refunds the Commission has directed it to pay to its access customers.

ARGUMENT

A. OCA’s Petition Is Untimely Under 52 Pa. Code § 5.572(c) and 66 Pa. C.S. § 703(f)

While styled as a PFR of the Commission’s December 7, 2007 Order, OCA’s petition contains arguments that could have and should have been raised in a PFR of the Commission’s original July 11, 2007 Order, in which the Commission rescinded D&E’s access rate increases. Accordingly, OCA’s PFR is untimely because it could have and should have been filed within 15 days of the entry of the Commission’s July 11, 2007 Order. *See* 52 Pa. Code § 5.572(c); *see also* 66 Pa. C.S. § 703(f).

The essence of OCA’s argument is that “[t]here is nothing in Act 183 . . . that suggests that no part of these inflation-based rate increases can be imposed on access charges and that the entire brunt of these increases must be borne by basic service customers.” (OCA PFR at

4). This contention is nothing more than a challenge to the Commission's July 11 decision to disallow D&E's access rate increases and to allow D&E to recover this revenue instead in any other "manner consistent with" the companies' "Chapter 30 plans." (7/11/07 Order, Ordering ¶ 4).

Any arguments OCA wished to make in favor of assigning this revenue to access rates or against raising Denver & Ephrata's residential rates over \$18 could have and should have been raised in the record of this case, or at the very latest in a PFR of the July 11, 2007 Order. OCA did not learn for the first time with the December 7, 2007 Order that Denver & Ephrata might raise its residential rates over \$18 if its access increases were rejected. To the contrary, it has been clear from the outset of this case that there were only four possible options for the D&E companies' implementation of their 2006 PSI/SPI filings: (1) increases to the D&E companies' access rates (which the Commission disallowed following a detailed hearing on the issues, through its July 11, 2007 Order); (2) banking of all or part of the revenue opportunity (the option ultimately chosen by Buffalo Valley and Conestoga, but not by Denver & Ephrata); (3) increases to nonresidential noncompetitive rates, such as basic business service or others; or (4) increases to basic residential rates. It also has been no secret that, at least for the ILEC Denver & Ephrata, the fourth option would likely require it to raise its average basic residential rates over \$18. Verizon pointed out in its Main Brief in January of 2007 that Denver & Ephrata "would raise its residential rates by \$0.86 more than the \$18 affordability benchmark if it allocated the increases evenly among all basic service rates." (Verizon Main Brief at 35). OCA was a full participant in this case.

The Commission's denial of D&E's PFR does not provide a second opportunity for OCA to initiate a new round of PFR briefing to raise issues that it should have raised in the

record or, at the latest, in a PFR of the July 11, 2007 Order. OCA's PFR should be dismissed as untimely.

B. OCA's Petition Raises No New Arguments And Does Not Satisfy The *Duick* Standard For Petitions For Reconsideration

Under this Commission's holding in *Duick v. Philadelphia Gas and Water Co.*, 56 Pa. PUC 553 (1982), "what we expect to see raised in . . . petitions [for reconsideration] are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Id.* OCA raises no such new or novel issues.

As discussed above, it has been clear from the outset to all parties involved that Denver & Ephrata would have to raise its residential rates over \$18 if it reallocated this revenue evenly to basic service rates. Verizon pointed this fact out in its main brief filed in January of 2007. OCA was a full participant in this case, filed briefs and reply exceptions, and had the opportunity to present any arguments it wished against raising Denver & Ephrata's residential rates above \$18, including any arguments regarding the "affordability" of local service following any such increase. OCA's apparent dissatisfaction over its own failure to present any such evidence of "affordability" in the underlying record should not and cannot be a reason, at the eleventh hour, to try to halt this proceeding by claiming the Commission failed to consider issues of affordability.

If OCA had any doubt that Denver & Ephrata was considering increasing its residential rates above \$18 if its access increases were disallowed, the matter was certainly clear following D&E's July 26, 2007 PFR, in which the company explicitly stated that it would raise its rates over \$18 and requested reimbursement from the state USF. (D&E PFR at 10). OCA answered D&E's PFR on August 6, 2007 for the primary purpose of arguing that

“the average residential local telephone bill is capped at \$18 per month,” as a result of the *Global Order* and the July 15, 2003 Order adopting the rural ILECs’ rate rebalancing proposal – the precise same argument it makes again here. (OCA Response to D&E PFR at 4).

According to OCA’s answer to D&E’s PFR, Denver & Ephrata could not increase its residential rates over \$18 unless it obtained recovery from the USF to prevent charging residential end users more than \$18. These are exactly the same argument that OCA raises now, in this second PFR.

The Commission clearly has “previously heard” and “considered” the OCA’s arguments regarding the \$18 rate level, both in the record prior to the July 11 Order and in the pleadings on D&E’s PFR. OCA should not be permitted to come in again, almost 6 months *after* this Commission’s July 11, 2007 final order and following the Commission’s considered resolution of these complex issues, including one previous round of briefing on reconsideration, with a second PFR purporting to raise purportedly “new” arguments against allowing Denver & Ephrata’s basic residential local rates to exceed \$18. It would violate both the letter and the spirit of the *Duick* standard to allow OCA a third bite at the apple by considering its PFR on the merits. Instead, OCA’s PFR should be denied for failure to satisfy the *Duick* standards for reconsideration.

In this instance, denial of OCA’s PFR will not foreclose it from making these arguments to the Commission in another proceeding. OCA will have the opportunity to raise its arguments again in the rural carriers’ access investigation, with full participation of all affected parties and in a forum that will allow this Commission to consider OCA’s arguments in the context of all of these complex, interrelated issues as they pertain to all of the rural ILECs. The consequence of denying OCA’s PFR and finally closing these proceedings over

the D&E companies' 2006 PSI/SPI filings are limited and have already been fully litigated. Closing the case will simply allow one carrier – Denver & Ephrata – the option of either banking its additional revenue opportunity or implementing a limited residential rate increase that would exceed the \$18 rate benchmark for its 2006 SPI/PSI filing. The larger policy issues implicated by OCA's arguments will remain to be addressed in the rural carrier access investigation.

C. The Commission Should Not Make Sweeping Decisions Regarding The \$18 Rate Level In This Limited Case.

In its December 7, 2007 Order this Commission was careful *not* to decide more than what was absolutely necessary to resolve the immediate issue before it. D&E's PFR did not challenge the Commission's disallowance of its access rate increases, but rather presented a limited question relating to Denver & Ephrata's reallocation of its 2006 PSI/SPI revenue increase to other noncompetitive rates. Based on D&E's representation that this reallocation would require Denver & Ephrata's basic residential rates to exceed \$18, and after making a well-reasoned and thoroughly explained decision to deny D&E's request to be reimbursed by the USF, the Commission held as follows:

In order to ensure that D&E Telephone would be permitted to recover its allowable PSI/SPI revenue increase, we shall, to the extent a waiver to charge beyond the current \$18.00 rate cap is necessary, grant D&E Telephone such a waiver and permit it to increase its local R-1 rates beyond the \$18.00 cap on the condition that the difference between the benchmark/rate cap and the new R-1 rates are to be recovered from D&E Telephone's customers and not from the PaUSF.

(12/7/07 Order at 36). Although the Commission recognized that serious questions exist regarding its continued viability, the Commission did not finally decide whether the \$18 benchmark continues to be effective in this Order. It did not "increase" or otherwise "modify" the \$18 benchmark as a matter of general applicability, as OCA asserts. (OCA PFR

at 6). Presuming the benchmark is effective, the Commission did not waive it for any other company or for all rural ILECs generally, nor did it waive it for D&E for any other PSI/SPI company or for all rural ILECs generally, nor did it waive it for D&E for any other PSI/SPI filing beyond the 2006 filing that is the subject of this proceeding. The Commission's decision was deliberately limited and targeted to the facts of this case, to allow Denver & Ephrata an option to recover the revenue from its 2006 PSI/SPI through some method other than raising access rates.

The Commission made clear that any more sweeping decisions about the \$18.00 benchmark, and all of the other interrelated issues regarding rural carrier ratemaking and universal service, would be addressed in the rural carriers' access investigation. The Commission stated:

We will address this matter [as to whether any limitations on residential or business rates continue in effect], as well as whether the \$18.00 benchmark/rate cap and its application to recover rate increases resulting from PSI/SPI filings under the new Chapter 30 rules should be modified when we consider the pending motions for further stay of our generic access charge investigation in our Order at Docket No. I-00040105.

(12/7/07 Order at 37).

The Commission's decision to defer these larger issues to the generic investigation, where all affected parties would have the opportunity to participate and where a thorough record on these larger policy issues can be assembled, is consistent with Verizon's position in response to D&E's PFR. There is simply no good reason why the Commission should reconsider this decision and take on the sweeping and comprehensive issues raised in the OCA's PFR and the other issues that would necessarily have to be decided with them in this limited case. OCA will have its

opportunity to make those arguments in the rural carriers' access investigation.⁵

Attempting to sweep them in here will do nothing but delay and complicate this case --

Attempting to sweep them in here will do nothing but delay and complicate this case --

a case that the Commission rightly determined should be promptly closed.

D. If The Commission Does Consider OCA's Arguments, Then It Should Reject Them

Most of OCA's arguments regarding the history of the \$18 rate cap simply repeat the arguments made and considered in connection with D&E's PFR. The only new claim OCA makes in support of its overall contention that the Commission cannot exceed the \$18 benchmark -- a general argument that it already made in response to D&E's PFR -- is that Act 183 purportedly "codified" the \$18 "rate cap" and deprived this Commission of any discretion to waive it for Denver & Ephrata because it can "only be changed based on record evidence -- i.e., what is an affordable rate." (OCA PFR at 14). But OCA could have and should have raised this claim together with its other arguments in response to D&E's PFR, and should not be permitted another round of briefing to make an argument in favor of the \$18 benchmark that it failed to make when it had the opportunity to do so.

For this proposition that Act 183 codified the benchmark OCA relies upon 66 Pa. C.S. § 3015(g), which provides in pertinent part that "any other commission-approved annual rate change limitation shall remain applicable and shall be deemed just and reasonable under section 1301." But OCA reads much more into this statutory language than the statute actually says. The statute does not "codify" an \$18 rate cap, and indeed does not mention \$18

⁵ Verizon and other carriers have advocated for an immediate reopening of that investigation. OCA supports the rural ILECs' request to stay this case for another twelve months. If the Commission agrees with OCA's position, then it may well be faced with waiving the \$18 benchmark on an ad hoc basis for other carriers for other PSI/SPI filings during the time that the comprehensive investigation continues to be stayed. (See 12/7/07 Order at 33) (recognizing that other rural carriers may be near the \$18 level). But OCA should not be heard to insist on strict enforcement of an \$18 benchmark while insulating the substance of that benchmark from substantive review by seeking a further stay of the investigation of comprehensive issues relating to rural carrier ratemaking and universal service.

or any other monetary limit. At most, this provision codifies this Commission's authority to establish and maintain an "annual rate change limitation." OCA attempts to convert a provision that confirms the Commission's discretion over noncompetitive service rate increases into a provision that limits and constrains this Commission's discretion. Clearly the General Assembly intended to leave these matters to the Commission's sound and expert discretion, which is likely why there is nothing in the statute that codifies \$18 as an absolute cap on rural residential basic local rates.

OCA's reading that Section 3015(g) would preclude the Commission from waiving the \$18 benchmark for Denver & Ephrata -- presuming it even continues in effect -- is not supported by the plain language of Section 3015(g). First, it is not clear that the \$18 benchmark is an "annual rate change limitation," a term that is not defined. But even if it is, the preservation of authority to enforce "commission-approved" annual rate change limitations necessarily also preserves the Commission's discretion and authority to determine that such a limitation has expired by its own terms or to issue a discrete and limited waiver of such limitation as just and reasonable under the circumstances. As discussed above, the waiver granted was limited only to this company and this particular PSI/SPI filing, and more comprehensive consideration of the \$18 benchmark is left to the generic access investigation. OCA's interpretation that Section 3015(g) strips the Commission of even the discretion to issue such a limited waiver is contrary to the plain language of the statute. "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa. C.S. § 1921(b).

Moreover, OCA is not contending that this statutory language absolutely prohibits the Commission from altering or eliminating the \$18 benchmark; it only contends that the

benchmark can “only be changed based on record evidence – i.e., what is an affordable rate.” (OCA PFR at 14). As discussed above, it has been clear from the outset that Denver & Ephrata’s residential rates might exceed the \$18 benchmark if the access increases were disallowed. The Commission specifically remanded the issue of reformulating D&E’s 2006 PSI/SPI filing to an ALJ for the development of a record and the parties took advantage of that opportunity to submit evidence, which the Commission relied upon in making its final decision. OCA had ample opportunity to present “record evidence” of what is an “affordable rate” in Denver & Ephrata’s territory. If OCA now believes the evidence is not sufficient, it has no one to blame but itself. Having failed to present such evidence, OCA should not be heard to come in at the eleventh hour and argue that the Commission cannot waive the benchmark for Denver & Ephrata because it does not have sufficient record evidence.

Moreover, OCA’s contention that D&E did not request the waiver is irrelevant. The Commission is not directing Denver & Ephrata to exceed the benchmark, but only allowing it the choice of that option. The company remains free to choose to bank the revenue opportunity instead. If it did not want the waiver, as OCA suggests, then it will choose banking and OCA’s concerns will be only theoretical.

E. If D&E Continues To Withhold The Required Refunds In Reliance On The Pendency Of OCA’s PFR, Then The Commission Should Require The Payment Of Interest From The December 7, 2007 Date Of The Commission’s Order Disposing Of D&E’s PFR

Although it has been nearly six months since the Commission ordered D&E to provide a refund to Verizon and its other access customers for a portion of the charges made under the disallowed access rates, and although D&E has not challenged the merits of either the rejection of the access rate increases or the requirement for refunds, D&E still has not provided the required refunds. D&E previously withheld payment on the basis that its own

PFR remained pending. Now that the Commission has denied that PFR, D&E should not be heard to use the OCA's PFR as an excuse to continue to withhold refunds that are due to Verizon and its other customers.

The Commission's November 15, 2006 Order specifically warned that revenues from D&E's increased access charges "may be subject to refund." (11/15/06 Order, Ordering ¶ 10). The July 11, 2007 Order rejected D&E's access rate increases and directed the D&E companies to reduce their tariffed rates going forward and to "provide refunds for access rates from November 15, 2006. . ." (7/11/07 Order, Ordering ¶ 4). D&E's PFR did not challenge the invalidation of the access rate increases or the required refund, but simply argued that one of the three companies, Denver & Ephrata, should be reimbursed for its portion of the refund through the state USF. While D&E filed tariff supplements decreasing its access rates effective August 13, 2007, D&E has not provided Verizon the refund of overpayments from November 15, 2006 through August 13, 2007, and Verizon presumes it has not refunded its other access customers either. When Verizon questioned D&E's failure to make the required refund, D&E responded in October of 2007 that it believed it had no obligation to make any refund while its PFR was pending.⁶

Verizon does not agree with this analysis. Because no party challenged the obligation to make a refund, D&E should have made the refunds to Verizon promptly after the July 11 Order. This is particularly true with respect to Buffalo Valley and Conestoga, which stated their intention to bank the revenue and were not planning to recover the revenue elsewhere. *See, e.g.*, 66 Pa. C.S. § 703(f) ("No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any existing order, except

⁶ See Letter from counsel for D&E to counsel for Verizon dated October 9, 2007 (attached hereto as Exhibit A).

as the commission may, by order, direct. “) However, even if one accepted D&E’s theory that its pending PFR absolved it of the obligation of complying with the refund order until the PUC resolved Denver & Ephrata’s request for USF reimbursement, the Commission’s December 7, 2007 Order disposed of D&E’s PFR and it should make the refund now.⁷

If D&E continues to withhold the refunds due to the pendency of OCA’s PFR – which does not challenge D&E’s obligation to make these refunds – then the Commission should take action to ensure that D&E’s access customers do not suffer financially from D&E’s delay in providing the refunds. Pursuant to 66 Pa. C.S. § 3012(a) this Commission may direct a refund that includes “interest at the legal rate from the date of each such excessive payment.”⁸ This Commission’s July 11, 2007 refund order did not explicitly direct the payment of interest. So that D&E does not continue to profit from holding money that the Commission long ago directed to be refunded to its access customers, the Commission should require D&E to pay interest at the legal rate from December 7, 2007 (the date of the order denying in part D&E’s PFR).⁹ D&E could avoid the payment of interest by making the refunds now, without waiting for the Commission’s disposition of OCA’s PFR.

⁷ Certainly there is no excuse for Buffalo Valley or Conestoga to withhold the refunds at this point, since OCA’s PFR raises no issue with respect to those companies.

⁸ The “legal rate” of interest is 6 percent per annum. 41 P.S. § 202. See *Duquesne Light Co. v. Pa. Public Util. Com.*, 117 Pa. Commw. 28, 36 (Pa. Commw. Ct. 1988).

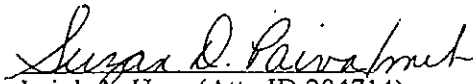
⁹ Verizon does not waive the right to seek to compel D&E to provide the refund prior to disposition of OCA’s PFR.

CONCLUSION

For the foregoing reasons, OCA's PFR should be denied consistent with the above discussion.
For the foregoing reasons, OCA's PFR should be denied consistent with the above discussion.

Date: December 31, 2007

Respectfully submitted,



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Attorneys for the Verizon Companies

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Answer of the

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Answer of the Verizon Companies to the Office of Consumer Advocates Petition for Reconsideration, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 31st day of December, 2007.


VIA E-MAIL AND UPS OVERNIGHT DELIVERY

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DEC 31 2007

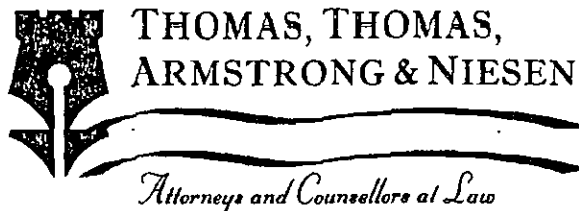
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT A

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DEC 31 2007

PA PUBLIC UTILITY COMMISSION
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October 9, 2007

EMAIL AND FIRST CLASS MAIL

Suzan D. Paiva
 Assistant General Counsel
 Verizon Pennsylvania Inc.
 1717 Arch Street, Floor 10
 Philadelphia, PA 19103

In re: 2006 Annual Price Stability Index/Service Price Index Filings of Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company and Denver and Ephrata Telephone and Telegraph Company
 Docket Nos. P-00981428F1000, R-00061375, P-00981429F1000, R-00061376,
 P-00981430F1000 and R-00061377

Dear Suzan:

I am in receipt of your correspondence dated September 28, 2007 regarding Verizon's demand for refunds in the above matters. While D&E's Petition for Reconsideration ("PFR") may not directly challenge the refund issue, it is nevertheless inextricably intertwined in Ordering Paragraph 4 of the July 11, 2007 Order so as to warrant receipt of the Commission's ruling on D&E's PFR before action on the refunds is taken. Moreover, given the pendency of D&E's PFR, the Commission's July 11, 2007 Order is not considered final. Thus, all issues - not simply those expressly raised in D&E's PFR - remain subject to appellate review upon the Commission's entry of a Final Order. This procedure is not altered by D&E's voluntary filing on September 14, 2007, of tariff supplements reducing its access charges going forward which D&E elected to implement without delay in order to avoid billing issues with other carriers.

In addition, prior to filing its PFR, D&E was notified by Commission Staff of its desire to hold meetings to discuss compliance filing material including material involving refunds. Once D&E filed its PFR, Staff notified D&E that meetings would have to be placed on hold until the PFR was resolved. It is D&E's understanding that the Commission Staff desires to "validate" compliance with the July 11, 2007 Order which D&E interprets as reviewing refund amounts prior to the provision of any such refund(s). Accordingly, for all of the above reasons, D&E believes that it is entirely appropriate for D&E to await a Final Order of the Commission and determine its intention regarding appealing the Commission's Final Order and possibly seeking a stay thereof before any action regarding the provision of refunds to Verizon is taken.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

Michael L. Swindler

c: Leonard Beurer
 Janet Tuzinski, FUS

071009 S. Pair*

Suzan DeBusk Paiva
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ORIGINAL

January 5, 2007

VIA UPS OVERNIGHT DELIVERY

James J. McNulty, Secretary
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RECEIVED

JAN 05 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: 2006 Annual Price Stability Index/ Service Price Index filing
of Buffalo Valley Telephone Company
P-00981428F1000 and R-00061375

2006 Annual Price Stability Index/Service Price Index filing
of Conestoga Telephone & Telegraph Company
P-00981429F1000 and R-00061376

2006 Annual Price Stability Index/Service Price Index filing
of Denver & Ephrata Telephone & Telegraph Company
P-00981430F1000 and R-00061377

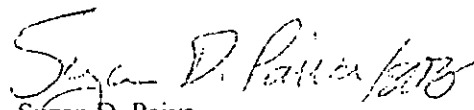
DOCUMENT
FOLDER

Dear Mr. McNulty:

Enclosed please find the original and three copies of the following Motions being filed by the Verizon Companies in the above-referenced matter: (1) Motion for Admission *Pro Hac Vice* of Leigh A. Hyer, and (2) Motion for Admission *Pro Hac Vice* of Jeffrey A. Rackow.

Do not hesitate to contact me If you have any questions.

Respectfully,


Suzan D. Paiva

VIA E-Mail and UPS Delivery
cc: The Honorable Susan Colwell
Certificate of Service

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CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Verizon Companies' Motion for Admission *Pro Hac Vice* of Leigh A. Hyer, and Motion for Admission *Pro Hac Vice* of Jeffrey A. Rackow, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 5th of January, 2007.

VIA E-MAIL AND UPS DELIVERY

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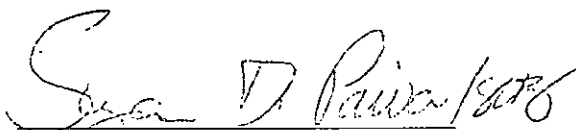
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JAN 05 2007

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**



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RECEIVED

JAN 05 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

2006 Annual Price Stability Index/ :
Service Price Index filing of Buffalo : P-00981428F1000
Valley Telephone Company : R-00061375

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2006 Annual Price Stability Index/ :
Service Price Index filing of Conestoga : P-00981429F1000
Telephone & Telegraph Company : R-00061376

2006 Annual Price Stability Index/ :
Service Price Index filing of Denver & : P-00981430F1000
Ephrata Telephone & Telegraph Company : R-00061377

**MOTION FOR ADMISSION PRO HAC VICE
OF LEIGH A. HYER, ESQUIRE**

Pursuant to Rule 301 of the Pennsylvania Rules of Admission and 52 Pa. Code § 1.22(b), I, Suzan DeBusk Paiva, Esquire ("movant"), a member in good standing of the bar of this Commonwealth (Attorney No. 53853), respectfully move for the admission pro hac vice of Leigh A. Hyer, Esquire for the purpose of representing Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon"), in the above-referenced matter. In support hereof, movant states as follows:

1. Ms. Hyer is a member in good standing of the Bars of the State of New York and the District of Columbia.
2. Ms. Hyer is Vice President and General Counsel of Verizon's Mid-Atlantic North Region, which includes the Commonwealth of Pennsylvania, and has an address

East Pratt Street, 8th Floor, Baltimore, Maryland 21202.

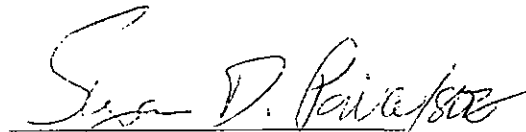
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OCT 25 2007

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3. Ms. Hyer has represented Verizon in matters before the Pennsylvania Public Utility Commission.
4. Ms. Hyer has not been subject to any disciplinary action.
5. Ms. Hyer is of good character.

Wherefore, movant respectfully requests this Commission to admit Leigh A. Hyer, Esquire, as counsel for Verizon in the above-captioned action.

Respectfully submitted,



Suzan DeBusk Paiva (53853)
1717-Arch Street, 10W
Philadelphia, PA 19103
Phone: (215) 466-4755
Fax: (215) 563-2658
E-mail: suzan.d.paiva@verizon.com

Counsel for
Verizon Pennsylvania Inc., Verizon North Inc.,
Verizon Select Services Inc., Bell Atlantic
Communications, Inc. d/b/a Verizon Long Distance,
Verizon Global Networks, Inc., MCI metro Access
Transmission Services, LLC d/b/a Verizon Access
Transmission Services, and MCI Communications
Services Inc.

Date: January 5, 2007

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

2006 Annual Price Stability Index/	:	
Service Price Index filing of Buffalo	:	P-00981428F1000
Valley Telephone Company	:	R-00061375
2006 Annual Price Stability Index/	:	
Service Price Index filing of Conestoga	:	P-00981429F1000
Telephone & Telegraph Company	:	R-00061376
2006 Annual Price Stability Index/	:	
Service Price Index filing of Denver &	:	P-00981430F1000
Ephrata Telephone & Telegraph Company	:	R-00061377

**ORDER GRANTING MOTION FOR ADMISSION
PRO HAC VICE OF LEIGH A. HYER, ESQUIRE**

Upon consideration of Motion for Admission Pro Hac Vice of Leigh A. Hyer, Esquire, it is this _____ day of January, 2007,

ORDERED that the Motion is hereby GRANTED; and it is further

ORDERED that Leigh A. Hyer, Esquire is admitted pro hac vice for the purposes of representing Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively "Verizon") in the above-captioned action.

Administrative Law Judge

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JAN 05 2007

PA PUBLIC UTILITY COMMISSION
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JAN 05 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
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2006 Annual Price Stability Index/ :
Service Price Index filing of Buffalo : P-00981428F1000
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2006 Annual Price Stability Index/ :
Service Price Index filing of Denver & : P-00981430F1000
Ephrata Telephone & Telegraph Company : R-00061377

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MOTION FOR ADMISSION PRO HAC VICE
OF JEFFREY A. RACKOW, ESQUIRE

DOCKETED
OCT 25 2007

Pursuant to Rule 301 of the Pennsylvania Rules of Admission and 52 Pa. Code § 1.22(b),

I, Suzan DeBusk Paiva, Esquire ("movant"), a member in good standing of the bar of this Commonwealth (Attorney No. 53853), respectfully move for the admission pro hac vice of Jeffrey A. Rackow, Esquire for the purpose of representing Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively "Verizon"), in the above-referenced matter. In support hereof, movant states as follows:

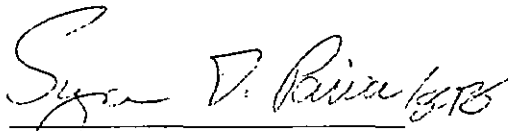
1. Mr. Rackow is a member in good standing of the Bars of the State of New York, the Commonwealth of Virginia, and the District of Columbia.
2. Mr. Rackow is an attorney with Verizon Communications Inc., and has an address at 1515 N. Courthouse Rd., Suite 500, Arlington, VA 22201.
3. Mr. Rackow has represented some of the Verizon and Verizon-affiliated entities

in matters in various tribunals throughout the nation.

4. Mr. Rackow has not been subject to any disciplinary action.
5. Mr. Rackow is of good character.

Wherefore, movant respectfully requests this Commission to admit Jeffrey A. Rackow, Esquire, as counsel for Verizon in the above-captioned action.

Respectfully submitted,



Suzan DeBusk Paiva (53853)
1717 Arch Street, 10W
Philadelphia, PA 19103
Phone: (215) 466-4755
Fax: (215) 563-2658
E-mail: suzan.d.paiva@verizon.com

Counsel for
Verizon Pennsylvania Inc., Verizon North Inc.,
Verizon Select Services Inc., Bell Atlantic
Communications, Inc. d/b/a Verizon Long Distance,
Verizon Global Networks, Inc., MCI metro Access
Transmission Services LLC d/b/a Verizon Access
Transmission Services, and MCI Communications
Services, Inc. d/b/a Verizon Business Services

Date: January 5, 2007

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

2006 Annual Price Stability Index/ Service Price Index filing of Buffalo Valley Telephone Company	: : :	P-00981428F1000 R-00061375
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2006 Annual Price Stability Index/ Service Price Index filing of Denver & Ephrata Telephone & Telegraph Company	: : :	P-00981430F1000 R-00061377

**ORDER GRANTING MOTION FOR ADMISSION
PRO HAC VICE OF JEFFREY A. RACKOW, ESQUIRE**

Upon consideration of Motion for Admission Pro Hac Vice of Jeffrey A. Rackow,
Esquire, it is this _____ day of January, 2007,

ORDERED that the Motion is hereby GRANTED; and it is further

ORDERED that Jeffrey A. Rackow, Esquire is admitted pro hac vice for the purposes of representing Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively "Verizon") in the above-captioned action.

Administrative Law Judge

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JAN 05 2007

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**



**THOMAS, THOMAS,
ARMSTRONG & NIESEN**

Attorneys and Counsellors at Law

JENNIFER M. SULTZBERGER
Direct Dial: 717.255.7236
jms@ttanlaw.com

January 19, 2007

**DOCUMENT
FOLDER**

VIA HAND DELIVERY

Honorable Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

RECEIVED

JAN 23 2007

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

In re: 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company
Docket Nos. P-00981428F1000 and R-00061375

2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone and Telegraph Company
Docket Nos. P-00981429F1000 and R-00061376

2006 Annual Price Stability Index/Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company
Docket Nos. P-00981430F1000 and R-00061377

Dear Judge Colwell:

Enclosed please find copies of the D&E's carriers' Statements, including their attached Exhibits, for your personal reference. Per your directive at the evidentiary hearing on Wednesday, we have prepared public versions of the Direct Testimony and Rebuttal Testimony in order to have copies that exclude attached proprietary exhibits. Copies of D&E Statement Nos. 1 and 1-R as originally submitted have simply been marked on the cover page as the "proprietary versions." Two copies of each version have been mailed to the court reporter. The parties to this proceeding have already been supplied with what is now marked on the cover page as the proprietary versions of each D&E Statement with the correlating Exhibits. D&E Statement No. 1-SR (surrebuttal) remains as entered into the record at the hearing and is not included herein.

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JAN 22 2007

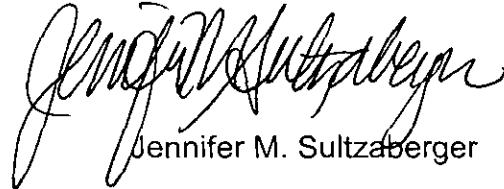
Honorable Susan D. Colwell
January 19, 2007
Page 2

Please advise if any additional information is needed. Thank you.

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

A handwritten signature in black ink, appearing to read "Jennifer M. Sultzberger". The signature is fluid and cursive, with a large initial "J" and "M".

Jennifer M. Sultzberger

Encls.

cc: Certificate of Service

Judith A. Valencik, Court Reporter (w/encls.)

070119 ALJ Colwell.wpd

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index/Service Price : Docket Nos. P-00981428F1000
Index Filing of Buffalo Valley Telephone Company : and R-00061375
:
2006 Annual Price Stability Index/Service Price :
Index Filing of Conestoga Telephone and : Docket Nos. P-00981429F1000
Telegraph Company : and R-00061376
:
2006 Annual Price Stability Index/Service Price :
Index Filing of Denver and Ephrata Telephone and : Docket Nos. P-00981430F1000
Telegraph Company : and R-00061377

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of January, 2007, served a true and correct copy of the foregoing letter on behalf of Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company and Denver and Ephrata Telephone and Telegraph Company, upon the persons and in the manner set forth below:

VIA FIRST CLASS MAIL

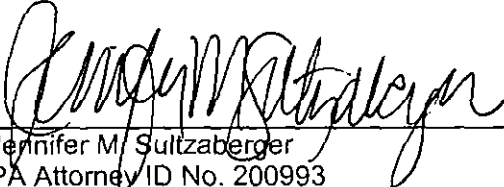
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Dr. Robert Loube
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Jennifer M. Sultzberger
PA Attorney ID No. 200993



**THOMAS, THOMAS,
ARMSTRONG & NIESEN**

Attorneys and Counsellors at Law

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Direct Dial: 717.255.7609
mswindler@ttanlaw.com

January 22, 2007

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JAN 22 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P. O. Box 3265
Harrisburg, PA 17105-3265

**DOCUMENT
FOLDER**

In re: 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company
Docket Nos. P-00981428F1000 and R-00061375

2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone and Telegraph Company
Docket Nos. P-00981429F1000 and R-00061376

2006 Annual Price Stability Index/Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company
Docket Nos. P-00981430F1000 and R-00061377

Dear Secretary McNulty:

Pursuant to 52 Pa. Code §5.253(b)(2), Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company and Denver and Ephrata Telephone and Telegraph Company, parties in the above-captioned matter, respectfully request that the following corrections be made to the Transcript of the evidentiary hearing held in Harrisburg, Pennsylvania, on January 17, 2007, before Administrative Law Judge Susan D. Colwell:

TRANSCRIPT PAGE/LINE	READS	SHOULD READ
T. 40/5	Proprietary	Proprietary
T. 65/2	IXEs	IXCs
T. 65/3	ILEcs	ILECs
T. 148/23	MR. SWINDLER	MR. RACKOW

James J. McNulty, Secretary
January 22, 2007
Page 2

Should you have any questions, please do not hesitate to contact me.

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

A handwritten signature in black ink, appearing to read "M Swindler", written in a cursive style.

Michael L. Swindler

cc: Certificate of Service
Honorable Susan D. Colwell (email and hand delivery)
Leonard J. Beurer

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index/Service Price : Docket Nos. P-00981428F1000
Index Filing of Buffalo Valley Telephone Company : and R-00061375
:
2006 Annual Price Stability Index/Service Price :
Index Filing of Conestoga Telephone and : Docket Nos. P-00981429F1000
Telegraph Company : and R-00061376
:
2006 Annual Price Stability Index/Service Price :
Index Filing of Denver and Ephrata Telephone and : Docket Nos. P-00981430F1000
Telegraph Company : and R-00061377

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of January, 2007, served a true and correct copy of the foregoing letter on behalf of Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company and Denver and Ephrata Telephone and Telegraph Company, upon the persons and in the manner set forth below:

VIA EMAIL AND FIRST CLASS MAIL

Joel H. Cheskis
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Suzan D. Paiva
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Michael L. Swindler
PA Attorney ID No. 43319



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

ORIGINAL

January 26, 2007

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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Re: 2006 Annual Price Stability Index/Service
Price Index Filing of Denver & Ephrata
Telephone and Telegraph Company
Docket No. P-00981430F1000; R-00061377

2006 Annual Price Stability Index/Service
Price Index Filing of Buffalo Valley
Telephone Company
Docket No. P-00981428F1000; R-00061375

2006 Annual Price Stability Index/Service
Price Index Filing of Conestoga Telephone &
Telegraph Company
Docket No. P-00981429F1000; R-00061376

Dear Secretary McNulty:

Enclosed please find for filing an original and nine (9) copies of the Office of
Consumer Advocate's Main Brief in the above-captioned proceeding.

Page 2

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel H. Cheskis". The signature is written in a cursive style with a large, looping initial "J".

Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney I.D. #81617

Enclosures

cc: All parties of record
Hon. Susan D. Colwell, ALJ

*91609

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index/Service
Price Index Filing of Denver & Ephrata
Telephone and Telegraph Company

Docket No. P-981430F1000;
R-00061377

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Telephone Company

Docket No. P-981428F1000;
R-00061375

2006 Annual Price Stability Index/Service
Price Index Filing of Conestoga Telephone
& Telegraph Company

Docket No. P-981429F1000;
R-00061376

DOCKETED
JAN 30 2007

MAIN BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

ORIGINAL

Philip F. McClelland
Senior Assistant Consumer Advocate
PA Attorney ID# 23165
Joel H. Cheskis
Assistant Consumer Advocate
PA Attorney ID# 81617

For:

Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
DATED: January 26, 2007
*92414

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. SUMMARY2

III. ARGUMENT3

A. Verizon’s Argument That The D&E Companies’ Local Rates Are Subsidized By Its Access Rates Is Without Merit And Should Be Rejected.....3

B. Verizon’s Request To Require The D&E Companies’ Intrastate Access Rates And Carrier Charge To Equal Verizon’s Access Rates Is Unreasonable And Should Be Rejected6

C. Verizon’s Argument That The D&E Companies’ Intrastate Access Rate Increases Are Harmful To Local and Long Distance Competition Is Without Merit And Should Be Rejected 10

D. Verizon’s Argument That The D&E Companies’ Additional PSI Revenue Should Be Spread Evenly Over Basic Local Service Rates Should Be Rejected.....13

E. The Positions Advocated By Verizon In This Proceeding Will Put An Unnecessary Strain On The Pennsylvania Universal Service Fund 15

IV. CONCLUSION16

TABLE OF CITATIONS

ADMINISTRATIVE DECISIONS

<u>Access Charge Investigation Per Global Order of September 20, 1999</u> , Docket Nos. M-00021596, <i>et al.</i> , Opinion and Order (entered July 15, 2003)	15
<u>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u> , First Report and Order, 11 FCC Rcd 15499 (rel. August 8, 1996).....	5
<u>In the Matter of Access Charge Reform</u> , First Report and Order, 12 FCC Rcd 15982 (rel. May 16, 1997).....	9
<u>In the Matter of Access Charge Reform</u> , Sixth Report and Order, 15 FCC Rcd 12962 (rel. May 31, 2000).....	7, 8
<u>In the Matter of the Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers</u> , Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (rel. Nov. 8, 2001)	5
<u>In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</u> , Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (rel. Aug. 21, 2003)	11
<u>Pa. P.U.C., et al v. Bell Atlantic – Pennsylvania, Inc.</u> , Opinion and Order, 1996 Pa. PUC Lexis 184 (December 16, 1996).....	5
<u>Re Nextlink Pennsylvania, Inc.</u> , 93 PaPUC 172, 196 P.U.R.4 th 172, (1999)	5,6
STATUTES	
66 Pa. C.S. § 703(g).....	1
66 Pa. C.S. § 3011, <i>et seq</i>	1

MISCELLANEOUS

Alexander Belinfante, Telephone Subscribership in the United States (Data through March 2006), Industry Analysis and Technology Division, FCC (rel. October 2006)14

PA PUC Missoula Plan Workshop, Docket No. M-00061972, Sept. 11, 2006, Tr. 12011

I. INTRODUCTION

On June 23, 2006, the Pennsylvania Public Utility Commission (“Commission”) entered an Order regarding the 2006 Annual Price Stability Index/Service Price Index (“PSI”) filings of Denver & Ephrata Telephone & Telegraph Company, Conestoga Company Telephone & Telegraph Company and Buffalo Valley Telephone Company (collectively referred to as “the Companies”). The Companies’ 2006 PSI filings were made pursuant to their respective alternative regulatory plans established under Chapter 30 of the Public Utility Code. 66 Pa.C.S. § 3011, *et seq.* Among other things, in the June 23rd Order, the Commission allowed the Companies the option to raise intrastate access charges as a result of their 2006 PSI filings. Access charges are the rates paid by one telephone company to another to originate or terminate a call on the other company’s network.

On November 15, 2006, the Commission issued an Order referring the proceedings back to the Office of Administrative Law Judge so that it could reconsider its Order of June 23, 2006 pursuant to Section 703(g) of the Public Utility Code. 66 Pa. C.S. § 703(g). The Commission specifically stated that it was reconsidering the June 23rd Order because it allowed the Companies to raise their intrastate access charges. June 23 Order at 14. The Commission directed that further hearings should be held under Section 703(g) “so as to afford the parties due process, and to enable us to reconsider our earlier order in this matter and to determine, based on the record, whether any rescission or amendment would be warranted by the evidence, consistent with our access charge reform and universal service policies and lawful under the companies’ Chapter 30 plans” Id. at 14-15.

On November 17, 2006, the Office of Consumer Advocate (“OCA”) filed a Notice of Intervention and Public Statement. The Office of Small Business Advocates (“OSBA”) filed a

Notice of Intervention on November 20, 2006. Verizon Communications ("Verizon") filed a Petition to Intervene on November 27, 2006.

By Notice dated November 14, 2006, the Commission established a Prehearing Conference for November 28, 2006 before Administrative Law Judge Susan Colwell. During that Prehearing Conference, ALJ Colwell granted Verizon's Petition to Intervene and established a procedural schedule for the reconsideration proceeding. Pursuant to that procedural schedule, the Companies and Verizon filed Direct Testimony on December 18, 2006; the Companies, Verizon, OCA and OSBA filed Rebuttal Testimony on January 5, 2007; and the Companies and Verizon filed Surrebuttal Testimony on January 12, 2007. One day of hearings was held in Harrisburg on January 17, 2007 for the purpose of admitting testimony and exhibits into the record and for cross examination of witnesses.

Pursuant to the procedural schedule, the OCA now files this Main Brief to further articulate its positions on the issues in this proceeding.

II. SUMMARY

The OCA submits that none of the additional evidence submitted in this case should cause the Commission to reverse its prior approval in the June 23rd Order of the D&E Companies' access rate changes. These prior approved access rate changes help to maintain the affordability of local service. The D&E Companies also did not violate Chapter 30 or any Commission Order when allocating their allowed revenue increase as part of their 2006 PSI filings.

In particular, Verizon, the sole party to this proceeding that opposes the D&E Companies' allocations, has failed to demonstrate that the D&E Companies' allocation should be reversed. As discussed further below, there is no reason to conclude that the D&E Companies'

revenue allocation represents a subsidy of local service rates. Nor is there any reason to conclude that the D&E Companies' traffic sensitive access rates or common line charge must be consistent with Verizon's rates, as Verizon has argued in this proceeding. Finally, Verizon's arguments that the D&E Companies' revenue allocation will negatively impact local and long distance competition are without merit and must be rejected, particularly in light of affordability concerns as evidenced by the declining telephone penetration rate in Pennsylvania. As a result, Verizon's arguments in this proceeding are without merit and should be rejected.

The OCA is aware of the Commission's efforts over the past decade to reduce intrastate access rates. Access charge reductions may be worthwhile if the benefits realized were clearly apparent. However, in this proceeding, increases to intrastate access rates are offered in lieu of further increases to basic local service rates. The actions of the D&E Companies comply with the law and should be allowed to remain as part of this reconsidered proceeding.

III. ARGUMENT

A. Verizon's Argument That The D&E Companies' Local Rates Are Subsidized By Its Access Rates Is Without Merit And Should Be Rejected.

Verizon argued in this proceeding that the D&E Companies' intrastate access charge rates subsidize the D&E Companies' local rates. Verizon St. 1.0 at 16. Verizon further argues that the Commission has sought to facilitate access charge reductions to remove implicit and explicit subsidies for local rates by establishing separate mechanisms for the various Pennsylvania telephone companies designed to remove such alleged subsidies. *Id.* at 11. Verizon claims that such subsidies distort competition because "the competitor without a subsidy cannot compete with a subsidized priced and has no incentive to enter [the market] or, if already in, remain in the market." *Id.* at 13. Therefore, Verizon argues that the D&E Companies' access charge increases instituted after the Commission's June 23rd Order must be reversed.

However, Verizon's argument is without merit and should be rejected. OCA witness Dr. Robert Loube¹ provided numerous reasons in his testimony in this proceeding why the D&E Companies' local rates are not being subsidized by its access rates. Dr. Loube testified that the generally accepted definition of a subsidy is that "a service is subsidized if its price is less than the incremental cost and the service pays a subsidy if its price is above the standalone cost of service." OCA St. 1-R at 5. Dr. Loube further noted that "an implicit subsidy is a subsidy that is embedded in rates charged, but not disclosed as such" and that "the revenue generated by the above cost rate is used to maintain rates below incremental cost for a second group of services." Id. As a result, the incremental cost of service must be defined. Id. at 6.

Dr. Loube testified that the formal definition of the incremental cost of a service is "the difference between the total cost of providing all of the services and the standalone cost of providing the services other than the service under investigation." Id. This is the definition used by Verizon except that Verizon uses the term Total Service Long Run Incremental Cost, or TSLRIC, rather than incremental cost. Id. The components of TSLRIC for basic local exchange service include the switching and interoffice facilities plus the customer operations and marketing cost associated with basic local exchange service. Id. The loop is not a part of the incremental cost of basic service because it is a shared cost of the many services that use the loop. Id. at 7.

Dr. Loube explained that the loop is used to provide both interstate and intrastate services, as well as other services such as video. Id. Dr. Loube testified: "even if local service

¹ Dr. Robert Loube is the Director of Economic Research at Rhoads and Sinon, LLC. His consulting practice centers on providing expert advice to state agencies involved in telecommunications regulation. Prior to joining Rhoads and Sinon, Dr. Loube worked at the FCC, the Public Service Commission for the District of Columbia and the Indiana Utility Regulatory Commission on issues associated with incremental cost, rate design, competition, universal service and separations. Dr. Loube received his Ph.D in Economics from Michigan State University in 1983. *See*, OCA Exh. RL-1.

were no longer provided, the carrier would still have to provide the loop in order to provide the other services. Thus, the local loop and port are not incremental to the provision of local service.” Id. This Commission has recognized in a prior Verizon rate rebalancing case that 100 percent of the loop costs should not be assigned to basic service. Id. at 8-9; *citing*, Pa. P.U.C., et al v. Bell Atlantic – Pennsylvania, Inc., Opinion and Order, 1996 Pa. PUC Lexis 184 (December 16, 1996) at *20. The Federal Communications Commission (“FCC”) has also acknowledged this relationship when it created total element long run incremental costs to determine the forward-looking cost of unbundled network elements. Id. at 7-8; *citing*, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (rel. August 8, 1996), ¶ 678.

Furthermore, both the FCC and this Commission have addressed the issue of joint loop costs specifically with regard to access charges. In the Global Order, the Commission stated that “in providing switched access for the completion of a toll call, a LEC will incur both non-traffic sensitive (NTS) costs [*i.e.*, loop costs] and traffic-sensitive costs.” Re Nextlink Pennsylvania, Inc., 93 PaPUC 172, 189, 196 P.U.R.4th 172, 186 (1999) (“Global Order”). Dr. Loube noted that regulators make allocations of these costs and then proceed to determine a method to recover the allocated costs. OCA St. 1-R at 9; *citing*, Id., n6.

Additionally, the FCC has indicated that “non-traffic sensitive costs [*i.e.*, loop costs] – costs that do not vary with the amount of traffic carried over facilities – should be recovered through fixed flat charges, and traffic sensitive costs should be recovered through per minute charges.” In the Matter of the Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (rel.

Nov. 8, 2001) ¶ 17. This Commission reached a similar conclusion in the Global Order. Global Order, 93 PaPUC at 190.

Finally, Dr. Loube testified that Verizon's argument that the D&E Companies' local rates are subsidized by its intrastate access rates is without merit because the D&E Companies impose a per-line carrier charge on interexchange carriers. OCA St. 1-R at 10. Therefore, "because these rates are per-line rates, no subsidy is generated by high-volume users to support costs associated with low-volume users." Id. Additionally, it is not possible to assert the existence of a subsidy in this proceeding because no party to this case filed an incremental cost study. Id. at 10-11. As a result, "it is not possible to determine if local service is receiving a subsidy from other services whenever it is not possible to state that the price is below the incremental cost of service." Id. at 11. Any assertion by Verizon that the D&E Companies' access rates provide a subsidy of local service cannot be supported by the record in this proceeding. If the issue of whether a subsidy exists is not present in this proceeding, then Verizon's argument that access rates should not be increased should be rejected because that argument is based on the assumption that access rates subsidize local service rates.

Verizon's argument that the D&E Companies' local rates are subsidized by the D&E Companies' intrastate access rates is without merit and should be rejected.

B. Verizon's Request To Require The D&E Companies' Intrastate Access Rates And Carrier Charge To Equal Verizon's Access Rates Is Unreasonable And Should Be Rejected.

The ultimate recommendation of Verizon witness Price in this proceeding is that "the [D&E Companies] should rebalance their local rates in order both to bring their access rates into line with the reasonable rates charged by Verizon and to reduce the cost imposed on customers of other carriers who bear the cost of funding the [Pennsylvania Universal Service Fund]."

Verizon St. 1.0 at 17. Mr. Price therefore concludes that permitting the D&E Companies to increase their access rates in this proceeding would be a “step in the wrong direction.” Id. Mr. Price further argues that the D&E Companies’ access rate increases “contravene the Commission’s policy of removing implicit subsidies from access rates and serve to further widen the disparity between the D&E Companies’ access rates and the drastically reduced access rates charged by Verizon.” Id. However, Verizon’s recommendations are without merit and should be rejected. There is no record evidence, nor any valid reason, why the D&E Companies’ intrastate access rates must be brought into line with Verizon’s.

With regard to intrastate traffic sensitive access rates, Verizon bases its assertion that Verizon’s intrastate traffic sensitive access rates are reasonable on the fact that such rates are equal to its interstate access rates. *See*, OCA St. 1-R at 12. This argument should be rejected. There is no reason why the D&E Companies’ intrastate rates should match Verizon’s interstate rates.

Verizon’s interstate traffic sensitive access rates were developed as a result of the FCC’s CALLS proceeding. In the Matter of Access Charge Reform, Sixth Report and Order, 15 FCC Rcd 12962 (rel. May 31, 2000)(“CALLS”). As a result of the CALLS proceeding, Verizon’s traffic sensitive access rates were reduced, its Subscriber Line Charge (“SLC”) rates were increased, the FCC price-cap mechanism was altered and a new universal service fund mechanism was established to support high-cost price-cap regulated carriers. Id. at ¶ 30. The CALLS average traffic sensitive rates were not based on a cost analysis; but, rather, were presented to the Commission as part of a consensus proposal. OCA St. 1-R at 13.

Dr. Loube noted that the CALLS proceeding did not require all carriers to have the same interstate average traffic sensitive rates but, instead, established three rates based on the size of

the carrier. Id. at 13-14. Dr. Loube added that Verizon's current interstate average traffic sensitive rate does not equal the rate set for Verizon in the CALLS proceeding and that Verizon has applied for and received access rate increases since CALLS was adopted. Id. at 14. Furthermore, Verizon receives additional funding from an Interstate Access Support Mechanism that is not reflected in the traffic sensitive interstate rate. Id. at 14-15. In response, Verizon argues that Dr. Loube miscalculated Verizon's interstate rates and the CALLS targets. Verizon St. 1.2 at 16. However, Verizon does not refute Dr. Loube's substantive point that it is not reasonable to compare Verizon's interstate access rates to D&E's interstate access rates.

Significantly, to further support this point, Dr. Loube explained that the D&E Companies' interstate access rates were established as a result of their participation in the National Exchange Carrier Association ("NECA") pool. OCA St. 1-R at 15. The NECA rates allow pool participants to recover their costs and an 11.25 percent return on capital. Id. Still, Dr. Loube noted that the D&E Companies are average schedule companies and, therefore, do not submit cost information. Id. Instead, NECA develops a proxy cost for the D&E Companies based on a sample of the cost for carriers that file cost studies. Id. at 15-16. The NECA pooled rates are not set equal to the costs or proxy costs of any individual carrier. Instead, the rates reflect the average of the costs and proxy costs of similarly situated carriers. The result of this process for the D&E Companies is that the gross settlement received from NECA (*i.e.*, the sum of traffic sensitive rates times traffic sensitive minutes for all traffic sensitive rate elements) on a per-minute basis is below their proxy cost of service. Id. at 16.

As such, Verizon's contention that the D&E Companies' intrastate access rates should be "in line" with Verizon's intrastate access rates is unfounded. Verizon's access rates are based on rates agreed to by the CALLS coalition, and adopted by the FCC, years ago. Id. at 11. On the

other hand, the D&E Companies' rates are based on a proxy cost method. Id. As Dr. Loubé testified, "there is no reason to expect that the two diverse methods of determining rates would reach the same answer" such that one rate should be "in line" with the other. Id. Furthermore, Dr. Loubé added that the Commission has not attempted to apply a single ratemaking goal to this large group of companies that have very different size and cost characteristics. Id. at 16.

With regard to the carrier charge, Verizon witness Price noted that Denver and Ephrata and Buffalo Valley increased their common line rates and argued that these increases "contravene the Commission's policy of removing implicit subsidies from access rates and serve to further widen the disparity between the D&E Companies' access rates and the drastically reduced access rates charged by Verizon." Verizon St. 1.0 at 17. In response to this argument, Dr. Loubé testified that the carrier charge is an efficient method to recover the shared cost of the loop from the interexchange carriers. OCA St. 1-R at 17. Dr. Loubé testified that the FCC has recognized the efficiency of these flat rated charges. Id. at 17-18; *quoting*, In the Matter of Access Charge Reform, First Report and Order, 12 FCC Rcd 15982 (rel. May 16, 1997) at ¶ 6.

Dr. Loubé testified that, similar to the reasons why there is no justification for the D&E Companies' intrastate traffic sensitive access rates to be the same, there is no reason to expect that the D&E Companies' carrier charge be the same as Verizon's carrier charge. Id. at 18. Dr. Loubé testified that "each carrier recovers its revenue from its customers based on the ability of the carrier to obtain revenue from a variety of sources, including the rate for local service, and their own cost characteristics." Id. In fact, if the Commission were to require Denver and Ephrata to adopt Verizon's proposed basic local rate increases as a result of this proceeding, then the Denver and Ephrata rates would be higher than Verizon's basic local rates. Id. at 18-19.

Verizon's argument that the D&E Companies' carrier charges should be identical to Verizon's carrier charge is without merit and should be rejected. It is not possible to determine whether the D&E Companies' common line costs are higher than Verizon's common line costs. Id. at 19. Dr. Loube again reiterated that the D&E Companies do not file cost studies because they are average schedule carriers under the NECA system. Id. However, the D&E Companies' proxy costs are greater than Verizon's costs and, therefore, the cost differential could contribute to the fact that the D&E Companies have a higher common line rate. Id.

Therefore, Verizon's argument that the D&E Companies' intrastate traffic sensitive access rates and carrier charge should be "in line" with Verizon's intrastate access rates is without merit and should be rejected.

C. Verizon's Argument That The D&E Companies' Intrastate Access Rate Increases Are Harmful To Local and Long Distance Competition Is Without Merit And Should Be Rejected.

Verizon argues in this proceeding that the D&E Companies' intrastate access charge increases should be rejected because high access charges discourage entry of competitors into local and long distance markets. Verizon argues: "If subsidies are used by a carrier to keep basic local service rates artificially low, that discourages would-be competitors." Verizon St. 1.0 at 13. Verizon has also argued that the Companies' intrastate access charge increases should be rejected because they would reduce long distance competition because "increasing the disparity between urban and rural access rates will discourage [long distance companies'] entry into rural markets." Id. at 16.

Verizon fails to recognize that local competitors charge access rates as well. Dr. Loube testified that the profit a competitor could earn in a particular market is dependent on *all* the revenues that the competitor would receive from serving a customer. OCA St. 1-R at 20. The

FCC has also recognized that the ability to enter a market is dependent on the entire revenue that the competitor can earn. The FCC explained: “We consider *all* the revenue opportunities that a competitor can reasonably expect to gain over the facilities, from providing all possible services that an entrant could reasonably expect to sell...” In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (rel. Aug. 21, 2003) ¶100 (emphasis in original). This includes access charge revenue.

Revenue from access charges is one of many revenue opportunities for a local competitor. And, since the competitor can charge the same access rates that the D&E Companies charge under the Commission rules, there is no advantage to the D&E Companies, or potential competitors, in raising intrastate access charges. OCA St. 1-R at 20. Likewise, Dr. Loube added that “simply as a matter of competitive entry, even if local rates were too low, it would not affect local competition because the carrier entering the market could also establish a low local service rate and charge the hypothetically subsidizing access rate.” Id. at 21.

Verizon’s argument is also inconsistent with other arguments that Verizon had made on this issue in other proceedings. Dr. Loube noted that Verizon has advocated in other proceedings that across-the-board rate increases in order to reduce access charges no longer makes sense for local exchange carriers. Id. Dr. Loube testified that in the recent Pennsylvania Missoula workshop Verizon’s witness Dennis Weller explained that the “the window is closing on us to a large degree on the extent to which we can continue to re-engineer these plans on the basis of across-the-board rate increases whether you call them SLCs or anything else.” Id. at 21-22; quoting, PA PUC Missoula Plan Workshop, Docket No. M-00061972, Sept. 11, 2006, Tr. 120. Mr. Weller added that such action was an antiquated approach that may have made sense six

years ago but is no longer a legitimate course of action. Id. at 22. In response to this position, Mr. Price noted that Mr. Weller attempted to distinguish Verizon from small and rural companies on this issue. Verizon St. 1.2 at 7-9. Nonetheless, Mr. Price should likewise recognize that access rate rebalancing is no longer an appropriate mechanism to achieve such regulatory goals for all carriers.

With regard to long distance competition, Verizon's arguments are also without merit because, as Dr. Loube testified, Verizon has not presented any evidence that confirms that long distance carriers are leaving rural markets and serving only urban markets as a result of intrastate access increases. Id. at 23. Therefore, there is no evidence that the increases will harm long distance competition. Id. Dr. Loube added that, because the D&E Companies generate only 2.4 percent of the Pennsylvania interstate access minutes, their access rates would not govern the business strategies of long distance carriers. Id. at 23-24. Additionally, Dr. Loube testified that Verizon's argument should be rejected because long distance carriers can, as AT&T does, charge different long distance rates to customers of independent local exchange carriers to recover any differential access charges that the independent carriers may charge. Id.; *citing*, Exhibit RL-2.

Dr. Loube testified that competition in the long distance market has already been reduced, and long distance rates have already increased, as a result of the elimination of the former long distance titans AT&T and MCI, not as a result of an increase in access charges. Id. at 24-27. In the federal regulatory proceedings involving the acquisition of AT&T and MCI by SBC Communications and Verizon, respectively, AT&T and MCI stated several reasons for their decreased competitive ability and thus support for the acquisitions, including competition from intermodal carriers and the elimination of the unbundled network element – platform (“UNE-P”) service. Id. (citations omitted). However, neither carrier mentioned high intrastate access

charges as a fundamental concern in their decision to leave the market. Id. at 27. Dr. Loube testified that “now that the major carriers that pay those access charges have left the consumer market, and have in fact been acquired by the major incumbent LECs, much of the reason for reducing the access charges has also been removed.” Id. It therefore makes no sense to increase basic local service rates to respond to an argument that is no longer relevant.

Finally, Dr. Loube testified that Verizon’s argument that long distance competition will somehow be harmed by the D&E Companies’ intrastate access charge rate increases is without merit because long distance companies generally set their rates based on national considerations and not the specific factors in any one area. Id. at 23.

Ultimately, access rate rebalancing based upon the hope of greater competition is insufficient to support higher local rates and reduced access charges. It does not make sense, and would be no benefit to consumers, to raise a rate by 20%, for example, just so that a competitor can be encouraged to enter a market and offer a 10% reduction in rates. Competition should not be encouraged merely for the sake of competition but, rather, to provide real benefits to consumers.

As such, Verizon’s argument that the D&E Companies’ intrastate access rate increases will harm local and long distance competition is without merit and should be rejected. Verizon has failed to provide any evidence that supports those arguments.

D. Verizon’s Argument That The D&E Companies’ Additional PSI Revenue Should Be Spread Evenly Over Basic Local Service Rates Should Be Rejected.

Verizon argues in this proceeding that, in lieu of raising its intrastate access rates, the D&E Companies should have allocated the increase in revenue to basic rates spread evenly across the companies’ access lines. Verizon St. 1.0 at 4-8. Verizon continues this argument by claiming that the D&E Companies “could have allocated some of the revenue to other

noncompetitive services besides basic rates to lessen the per-line increase or allocated more to one category of basic rates and less to another.” Id. at 6. Verizon then provides the approximate monthly increase per line for each D&E Company if such an approach were taken. Verizon also argues that the D&E Companies could have allocated some of the revenue to other noncompetitive services beside basic rates to lessen this per line increase, or allocated more to one category of basic rates and less to another. *See e.g., Id.* at 5. Presumably, Verizon’s argument is that the revenue could have been allocated to other noncompetitive services, *other than intrastate access rates* as currently is the case. Therefore, Verizon argues that the increased revenue should be collected from rates other than those rates that Verizon pays: access rates.

Verizon’s argument is without merit and should be rejected because, among other things, Verizon fails to recognize the impact on consumers of allocating the increased revenue to basic rates. As Dr. Loube noted, the telephone penetration rate in Pennsylvania has declined from as high as 98.0 percent in 2002 to 94.8 percent in March, 2006. OCA St. 1-R at 27-28; *citing, Alexander Belinfante, Telephone Subscribership in the United States (Data through March 2006)*, Industry Analysis and Technology Division, FCC (rel. October 2006). Dr. Loube testified that “one factor that may be contributing to the decrease is the fact that the rate for local service has been increasing.” Id. at 28. Dr. Loube added: “To prevent further declines in telephone penetration it may be necessary to limit future basic service rate increases.” Id. Therefore, access rates increases can increase the affordability of local service. Id.

Additionally, when asked during examination by ALJ Colwell, Verizon witness Price could not identify an allocation of the revenue that he thought would result in rates that are just and reasonable as an alternative to what the D&E Companies implemented in response to the June 23rd Order. Tr. 132-141. Instead, Mr. Price testified that “the only way I can honestly

address that is almost by negative implication.” Tr. 132. This is clearly contrary to his testimony which advocates for the increased revenue to be allocated to the basic local rate. *See e.g., Verizon St. 1.0* at 6. The D&E Companies have rightfully determined not to make such allocation because of their views concerning competitive pressures on the basic local rates.

Therefore, Verizon’s argument that the D&E Companies’ additional revenues should be spread evenly over basic local service rates is without merit and should be rejected. Verizon’s argument seeks to have the D&E Companies’ additional revenue allowed under their 2006 PSI filings allocated over rates other than the rate that Verizon itself pays: access rates. This argument should be rejected.

E. The Positions Advocated By Verizon In This Proceeding Will Put An Unnecessary Strain On The Pennsylvania Universal Service Fund.

The impact on affordability of the D&E Companies’ increase in intrastate access rates must also be viewed in light of the current \$18 cap on average rates that can be charged by the D&E Companies to residential customers for local service. As discussed above, Verizon advocates that, in lieu of the D&E Companies allocating their PSI revenues to intrastate access charges, such additional revenues should be spread evenly over the basic local rate in the form of an increase to the monthly charge. Verizon’s argument, however, fails to recognize the unnecessary strain such actions would put on the Pennsylvania Universal Service Fund (“PA USF”) and should be rejected.

. This Commission has established the \$18 benchmark as an average rate over which Pennsylvania telephone companies cannot charge their customers. Access Charge Investigation Per Global Order of September 20, 1999, Docket Nos. M-00021596, *et al.*, Opinion and Order (entered July 15, 2003). To the extent a local exchange company’s rates exceed that benchmark, the Company may only charge the end user the \$18 average rate and must draw the additional

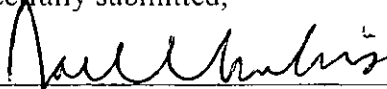
funds from the PA USF. In light of Verizon's argument in this proceeding that the D&E Companies' additional revenue should be spread evenly over basic local rates, some of the D&E Companies' basic local rates would exceed that \$18 benchmark. Such additional funding would then be drawn from the PA USF, not from local ratepayers and reduce the size of the PA USF. Such actions could jeopardize universal service for other Pennsylvania telecommunications users.

Therefore, the Commission must recognize that Verizon's argument with regard to the allocation of the additional revenues would affect not only the rate paid by the D&E Companies' consumers, but withdrawals from the PA USF as well.

IV. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that the Commission should not reverse the D&E Companies' intrastate access rate increases that were implemented following the Commission's Order entered June 23rd. Verizon has failed to submit sufficient evidence to compel the Commission to reverse its June 23rd Order. There is no record evidence in this proceeding that would support reversing the Commission's June 23rd Order.

Respectfully submitted,



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Dated: January 26, 2007
92302

CERTIFICATE OF SERVICE

Re: 2006 Annual Price Stability Index/Service Price Index Filing of Denver & Ephrata
Telephone and Telegraph Company
Docket No. P-00981430F1000; R-00061377
2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley
Telephone Company
Docket No. P-00981428F1000; R-00061375
2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone &
Telegraph Company
Docket No. P-00981429F1000; R-00061376

I hereby certify that I have this day served a true copy of the foregoing document,
Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in
accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in
the manner and upon the persons listed below:

Dated this 26th day of January, 2007.

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**Re: 2006 Annual Price Stability Index/Service Price Index Filing of
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Docket Nos. P-00981428F1000 and R-00061375**

**2006 Annual Price Stability Index/Service Price Index Filing of
Conestoga Telephone & Telegraph Company
Docket Nos. P-00981429F1000 and R-00061376**

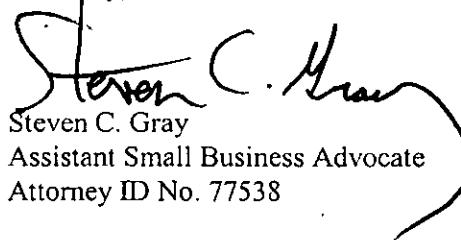
**2006 Annual Price Stability Index/Service Price Index Filing of
Denver & Ephrata Telephone & Telegraph Company
Docket Nos. P-00981430F1000 and R-00061377**

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Main Brief on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Parties of Record

Allen G. Buckalew

32

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index/ : Docket Nos. P-00981428F1000
Service Price Index filing of Buffalo : R-00061375
Valley Telephone Company :

2006 Annual Price Stability Index/ : Docket Nos. P-00981429F1000
Service Price Index filing of Conestoga : R-00061376
Telephone & Telegraph Company :

2006 Annual Price Stability Index/ : Docket Nos. P-00981430F1000
Service Price Index filing of Denver & : R-00061377
Ephrata Telephone & Telegraph :
Company :

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MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. SCOPE OF THE PROCEEDING 6

III. NEW CHAPTER 30 AND THE D&E COMPANIES’
AMENDED NMPS.....10

IV. CHANGE NEEDED IN THE ACCESS CHARGE GENERAL
PUBLIC POLICY RULE13

V. CONCLUSION.....18

TABLE OF AUTHORITIES

Cases

2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company
Docket No. R-00061375
(Order entered June 23, 2006).....1, 2, 3

2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone and Telegraph Company
Docket No. R-00061376
(Order entered June 23, 2006) 2, 4

2006 Annual Price Stability Index/Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company
Docket No. R-00061377
(Order entered June 23, 2006).....1, 4, 6, 8, 9

Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund
Docket No. I-00040105
(Order entered November 15, 2006).....3, 4, 6, 7, 8, 12, 13

Re Nextlink Pennsylvania, Inc.
Docket Nos. P-00991648; P-00991649, 93 Pa. PUC 172 (Order entered September 30, 1999); 196 P.U.R. 4th 172, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000), *alloc. Granted*.....13

Statutes

66 Pa. C.S. §§ 3011-3019 1

66 Pa. C.S. § 3011.....11

66 Pa. C.S. § 3011(3).....17

66 Pa. C.S. § 3012.....10, 11

66 Pa. C.S. § 3014(b).....11

66 Pa. C.S. § 3015(a)(1).....11

66 Pa. C.S. § 3017.....10, 16

66 Pa. C.S. § 703(g)..... 7, 8

I. Introduction

On May 3, 2006, the Denver and Ephrata Telephone and Telegraph Company (“Denver and Ephrata”) submitted its 2006 Price Stability Index/Service Price Index (“PSI/SPI”) filing pursuant to the requirements set forth in 66 Pa. C.S. §§ 3011 – 3019 (“New Chapter 30”) and Denver and Ephrata’s Amended Network Modernization Plan (“Amended NMP”).

On May 3, 2006, the Buffalo Valley Telephone Company (“Buffalo Valley”) submitted its 2006 PSI/SPI filing pursuant to New Chapter 30 and Buffalo Valley’s Amended NMP.

On May 3, 2006, the Conestoga Telephone and Telegraph Company (“Conestoga”) submitted its 2006 PSI/SPI filing pursuant to New Chapter 30 and Conestoga’s Amended NMP.

On June 23, 2006, the Pennsylvania Public Utility Commission (“Commission”) entered an Order allowing the Denver and Ephrata 2006 PSI/SPI filing to go into effect, subject to the use of “actual 2005 annual year-end revenue for the calculation of revenue increase.” *2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company*, Docket No. R-00061377 (Order entered June 23, 2006), at 14, Ordering Paragraph 2 [Compendium at I-12].

On June 23, 2006, the Commission entered an Order allowing the Buffalo Valley 2006 PSI/SPI filing to go into effect, subject to the use of “actual 2005 annual year-end revenue for the calculation of revenue increase.” *2006 Annual Price Stability Index / Service Price Index Filing of Buffalo Valley Telephone Company*, Docket No. R-

00061375 (Order entered June 23, 2006), at 14, Ordering Paragraph 2 [Compendium at G-12].

On June 23, 2006, the Commission entered an Order allowing the Conestoga 2006 PSI/SPI filing to go into effect, also subject to the use of “actual 2005 annual year-end revenue for the calculation of revenue increase.” *2006 Annual Price Stability Index / Service Price Index Filing of Conestoga Telephone & Telegraph Company*, Docket No. R-00061376 (Order entered June 23, 2006), at 14, Ordering Paragraph 2 [Compendium at H-12].

On July 10, 2006, Denver and Ephrata, Buffalo Valley, and Conestoga (collectively, the “D&E Companies”) filed Petitions for Reconsideration of the Commission’s three June 23, 2006, Orders.

On July 21, 2006, the Commission granted the three Petitions for Reconsideration pending consideration on the merits.

On July 24, 2006, Verizon Pennsylvania Inc., Verizon North Inc., MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, MCI Communications Services Inc., and Verizon Select Services Inc. (“Verizon”) filed “Verizon’s Response as *Amicus Curiae* to Petition for Reconsideration.”

On July 31, 2006, Denver and Ephrata filed a “Motion to Strike or Dismiss *Amicus Curiae* Response of Verizon.”

On August 10, 2006, Verizon submitted a “letter in lieu of a more formal response” to the Denver and Ephrata Motion to Strike or Dismiss *Amicus Curiae* Response of Verizon.

On November 15, 2006, the Commission entered an order in *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. 1-00040105 (Order entered November 15, 2006) (“*Rural Access Order*”) [Compendium at M-1]. In addition to continuing a stay of the underlying investigation at that docket, the *Rural Access Order* required the Office of Administrative Law Judge to “conduct expedited hearings pursuant to 66 Pa.C.S. §703(g) reconsidering our orders of June 23, 2006, which had allowed Denver & Ephrata Telephone & Telegraph Company, Conestoga Telephone Company and Buffalo Valley Telephone Company to raise intrastate access charges.” *Rural Access Order*, at 18, Ordering Paragraph 6 [Compendium at M-19].

On November 20, 2006, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention in the Denver and Ephrata, Buffalo Valley, and Conestoga 2006 PSI/SPI filing dockets.

On November 28, 2006, and pursuant to the *Rural Access Order*, a prehearing conference was held before Administrative Law Judge (“ALJ”) Susan D. Colwell.

On November 28, 2006, ALJ Colwell issued her Scheduling Order.

On December 7, 2006, the Commission entered an Order that denied the Buffalo Valley Petition for Reconsideration on the merits. *See 2006 Annual Price Stability Index / Service Price Index Filing of Buffalo Valley Telephone Company*, Docket No. R-00061375 (Order entered December 7, 2006), at 16-17 [Compendium at N-14 to N-15]. The Commission ordered that “this matter be marked closed upon entry of the final Order resulting from the limited and expedited rural access charge proceeding initiated by

Commission Order entered November 15, 2006, at Docket No. I-00040105, *et al.*” *Id.*, at 17, Ordering Paragraph 3 [Compendium at N-15].

On December 7, 2006, the Commission entered an Order that denied the Conestoga Petition for Reconsideration on the merits. *See 2006 Annual Price Stability Index / Service Price Index Filing of Conestoga Telephone & Telegraph Company*, Docket No. R-00061376 (Order entered December 7, 2006), at 15-16 [Compendium at O-12 to O-13]. The Commission ordered that “this matter be marked closed upon entry of the final Order resulting from the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006, at Docket No. I-00040105, *et al.*” *Id.*, at 16, Ordering Paragraph 3 [Compendium at O-13].

On December 8, 2006, the Commission entered an Order that denied the Denver and Ephrata Petition for Reconsideration on the merits. *See 2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company*, Docket No. R-00061377 (Order entered December 8, 2006), at 17-19 [Compendium at P-15 to P-16]. The Commission ordered that “this matter be marked closed upon entry of the final Order resulting from the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006, at Docket No. I-00040105, *et al.*” *Id.*, at 19, Ordering Paragraph 4 [Compendium at P-16].

On December 18, 2006, the D&E Companies served written direct testimony. On that same date, Verizon also served written direct testimony.

On January 5, 2007, the OSBA served written rebuttal testimony. On that same date, the Office of Consumer Advocate (“OCA”), the D&E Companies, and Verizon also served written rebuttal testimony.

On January 12, 2007, the D&E Companies served written surrebuttal testimony.

On that same date, Verizon also served written surrebuttal testimony.

On January 17, 2007, an evidentiary hearing was held before ALJ Colwell.

The OSBA submits this main brief in compliance with ALJ Colwell's Scheduling Order.

II. Scope of the Proceeding

On May 3, 2006, the D&E Companies submitted their respective 2006 PSI/SPI filings pursuant to both New Chapter 30 and their various Amended NMPs. The PSI/SPI filings set forth the D&E Companies' Price Stability Mechanisms ("PSMs") which allowed the D&E Companies to increase their noncompetitive service revenue based upon recent changes to the Gross Domestic Product Price Index. D&E Statement No. 1, at 5. To recover the calculated increases in noncompetitive service revenue, the D&E Companies elected to allocate the rate increases to "various non-basic local service rates," "basic local services" (for Conestoga alone), and "switched intrastate access services charges." *Id.*, at 5-6.

The Commission, in the original June Orders addressing the D&E Companies' PSI/SPI filings, gave the D&E Companies three options regarding how to collect the increased noncompetitive service revenue calculated in their 2006 PSI/SPI filings. *See, e.g., 2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company*, Docket No. R-00061377 (Order entered June 23, 2006), at 14, Ordering Paragraphs 4 and 6 [Compendium at I-12]. One of those options was to permit the proposed access charges "to go into effect as filed subject to any final determinations on access reform, including the pending intrastate access reform proceeding in Docket No. I-0004015 as it now exists or changes made by the Commission or at the federal level." *Id.* [Compendium at I-12]. The D&E Companies chose this third option, and the Commission allowed their compliance tariffs (with the access charge rate increases in place) to go into effect on July 1, 2006.

Shortly thereafter, the D&E Companies filed Petitions for Reconsideration of the Commission's three June 23, 2006, Orders. On July 24, 2006, Verizon filed a response to the Petitions for Reconsideration, complaining about the access charge rate increases that were imposed as a result of the D&E Companies' PSI/SPI filings.

At a different docket, the Commission has initiated a generic investigation regarding whether to change the level of rural incumbent local exchange ("ILEC") access charges. See generally *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 [Compendium at D-1]. In its November *Rural Access Order*, the Commission (while deciding to further stay the investigation) was apparently convinced by some of Verizon's arguments, and on its own motion decided to look again at whether the D&E Companies should have been allowed to raise their access charges as part of their 2006 PSI/SPI filings. See *Rural Access Order*, at 14-15 [Compendium M-15 to M-16].

The OSBA observes that access charges have a detailed, complicated, and extensive history in the Commonwealth. Consequently, care must be taken to make certain that only the issues properly before the ALJ and the Commission in this proceeding are addressed. Specifically, the Commission ordered:

That the Office of Administrative Law Judge will conduct expedited hearings pursuant to 66 Pa.C.S. §703(g) reconsidering our orders of June 23, 2006, which had allowed Denver & Ephrata Telephone & Telegraph Company, Conestoga Telephone Company and Buffalo Valley Telephone Company to raise intrastate access charges.

Rural Access Order, at 18, Ordering Paragraph 6 [Compendium at M-19]. The Commission provided additional guidance in the body of the *Rural Access Order*:

Therefore, pursuant to express statutory authority at 66 Pa.C.S. § 703(g), we are hereby reconsidering our orders of June 23, 2006, which allowed Denver & Ephrata Telephone & Telegraph Company, Conestoga Telephone Company and Buffalo Valley Telephone Company to raise intrastate access charges. In light of our concerns, ***we shall hold further hearings*** under Section 703(g) so as to afford the parties due process, and ***to enable us to reconsider our earlier order in this matter and to determine, based on the record, whether any rescission or amendment would be warranted by the evidence, consistent with our access charge reform and universal service policies, and lawful under the companies' Chapter 30 plans.***

Rural Access Order, at 14-15 (emphasis added) [Compendium M-15 to M-16].

It is significant that in the three June 23, 2006, Orders, the Commission concluded that the access charge increases in the D&E Companies' 2006 PSI/SPI filings did not violate New Chapter 30; did not violate the D&E Companies' respective Amended NMPs; and did not violate any Commission order which prohibited access charge rate increases. In fact, the Commission addressed this last point as follows:

Even though our Orders did not explicitly impose a ban on proposing increases to access charges, as previously discussed, the Commission's *Global Order* strongly expressed a policy and schedules for further access charge reductions. Furthermore, this matter is being addressed in our Access Charge Investigation for rural ILECs [Incumbent Local Exchange Carriers] at Docket No. I-00040105.

2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company, Docket No. R-00061377 (Order entered December 8, 2006), at 9-10 (emphasis added) [Compendium at P-8].

Therefore, increasing access charges is not prohibited by New Chapter 30, by the Amended NMPs of the D&E Companies, or by any Commission Order. However, the Commission has “expressed a policy . . . for further access charge reductions.” Consequently, the sole issue before the ALJ and the Commission is whether the D&E Companies’ lawful increase in access charges should be set aside because of an “access charge policy that has been in place for over twenty years since the first access charge tariffs were approved in 1984.” *Id.*, at 8 [Compendium at P-7].

III. New Chapter 30 and the D&E Companies' Amended NMPs

There is no statutory basis for any claim that the D&E Companies' raising of access charges violated new Chapter 30. Section 3017 of the Public Utility Code, 66 Pa. C.S. § 3017, prohibits the Commission from requiring "a local exchange telecommunications company to *reduce* access rates except on a revenue-neutral basis." (emphasis added) However, nowhere in new Chapter 30 are access charge *increases* prohibited.

Furthermore, under the current D&E Companies' Amended NMPs, only noncompetitive service revenue is to be included in the historic year revenue total used in their PSM calculations. See Denver and Ephrata Amended NMP, at 8-16; Buffalo Valley Amended NMP, at 8-15; Conestoga Amended NMP, at 8-15.

New Chapter 30 includes this definition:

'Protected Service.' The following telecommunications services provided by a local exchange telecommunications company *unless the commission has determined the service to be competitive*:

- (1) Service provided to residential consumers or business consumers that is necessary to complete a local exchange call.
- (2) Touch-tone service.
- (3) Switched access service.
- (4) Special access service.
- (5) Ordering, installation, restoration and disconnection of these services.

66 Pa. C.S. § 3012 (emphasis added). The Commission has not determined that switched access service is competitive. Therefore, by definition, access charges are a noncompetitive service, and the revenue obtained by the D&E Companies from access charges is properly included in their PSM noncompetitive revenue total.

New Chapter 30 was enacted on November 30, 2004. The legislature was clear with regard to access charges. First, as set forth above, access charges were deemed a “protected service” under Section 3012, and thus were determined to be a noncompetitive service. Second, the legislature explicitly stated that:

a local exchange telecommunications company with an alternative form of regulation containing a price stability mechanism that files an amended network modernization plan under section 3014(b)(1), (2) or (3) (relating to network modernization plans) shall be subject to a modified inflation offset in its *price stability mechanism in adjusting its rates for noncompetitive services*.

66 Pa. C.S. Section 3015(a)(1) (emphasis added).

In addition, the legislature emphasized in Section 3011 of the Public Utility Code, 66 Pa. C.S. § 3011, its commitment to the “accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas.”

As explained by OSBA witness Buckalew:

A primary reason for enacting the new Chapter 30 was to accelerate broadband development in Pennsylvania. The Legislature did not carve out access as a service that was excluded from new Chapter 30 increases; in fact, access was included as a protected service that is part of the new Chapter 30 revenue stream. Clearly the Legislature included access in its broadband development plan under new Chapter 30 and expected access service to contribute to the development of the broadband network, not get a free ride.

OSBA Statement No. 1, at 5.

Therefore, the legislature’s stated goal of accelerating broadband deployment and the clear language of New Chapter 30 regarding access should take precedence over “reducing intrastate access charges in the rural ILEC territories to gradually mirror

interstate access charges in order to bring about greater competition in those areas.”

Rural Access Order, at 14 [Compendium at M-15].

IV. Change Needed in the Access Charge General Public Policy Rule

The Commission has held onto its general policy of reducing access charges for over twenty years in an effort to “spur competition.”¹ However, one need only turn on television to take judicial notice of the plethora of Voice over Internet Protocol (“VOIP”) telephone providers, the popularity of cellular telephones of all types, stunning new wireless offerings from such non-traditional entities as Apple Inc., and attractive “triple play” (i.e., high-speed internet service, telephone service, and digital cable television service) offers from cable providers such as Comcast. In short, the telecommunications world has changed immeasurably since 1984, and has even changed radically since the Commission’s 1999 *Global Order*.² Therefore, the OSBA respectfully submits that the Commission’s access charge policy has been overtaken by events.

OSBA witness Buckalew explained how times have changed:

[T]he economic environment has changed. The economic rationale for access reductions was that toll services were paying more than their fair share of the cost of the local network. This was claimed to hinder the development of competitive toll services and local exchange services, but this is no longer true. The competitive market, at least for toll, has sorted itself out. Toll carriers have been merged into local exchange companies. Indeed, Verizon acquired MCI and SBC acquired AT&T (and then retained the AT&T corporate name for all of its operations).

OSBA Statement No. 1, at 9. Mr. Buckalew continued:

¹ The Commission has characterized its movement toward lower access charges as a “general public policy rule.” *Rural Access Order*, at 14 [Compendium at M-15]. However, that rule has been only a “general” one. In addition to the June 23, 2006, Orders allowing the D&E Companies to increase their access rates, the Commission has deviated from that rule on numerous other occasions. *See, e.g.*, OSBA Statement No. 1, at 13, and D&E Companies Statement No. 1, Exhibit 1.

² *Re Nextlink Pennsylvania, Inc.*, Docket Nos. P-00991648; P-00991649, 93 PaPUC 172 (Order entered September 30, 1999) (“*Global Order*”); 196 P.U.R. 4th 172, *aff’d sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlth. 2000), *alloc. granted*.

The two biggest competitive threats to telephone companies are over different networks: wireless carriers over their own networks, and VOIP over broadband networks. In the FCC's February 5, 2006, Remand Order of the Triennial Review Order (commonly called the 'TRRO'), the FCC made it clear that markets were open and moving toward competition: 'we recognized the marketplace realities of robust broadband competition and increasing competition from intermodal sources, and thus eliminated most unbundling requirements for broadband architectures serving the mass market.' (Page 2 of the TRRO.) Telephone companies, like these Companies, need the ability to set their rates with these new 'marketplace realities' in mind.

OSBA Statement No. 1, at 10 (citation in original) (footnotes omitted).

Thus, the "new marketplace realities" are a compelling reason to abandon the general public policy rule favoring access charge reductions. The competition that the Commission so steadfastly sought through access charge reform has manifested itself in the form of a dynamic, intermodal marketplace wherein the old MCI WorldCom and AT&T have gone the way of the dinosaurs.

The irony is that further Commission action to lower access charges is simply not needed as a practical matter. As Mr. Buckalew explained, access charge reductions to date have had a significant impact:

Commissions, including this one, have historically moved access rates lower in an attempt to spur toll competition. Some would argue that toll was recovering too much of the cost of access. I have always disagreed with that claim based on the fact that the cost of the loop was directly impacted by the provision of toll service. In any case, the price of access has gone down substantially in recent years under the philosophy that toll was recovering too much.

OSBA Statement No. 1, at 10. Consequently, a broad, industry-wide push by the Commission to drive down access charges is simply not needed. Mr. Buckalew concluded:

[T]he shift of most of the loop cost to local exchange service has been accomplished; access rates do not need to be decreased any further. One need only look at [D&E Companies' witness] Mr. Beurer's Exhibit 1 to see the massive changes in access that have already taken place.

OSBA Statement No. 1, at 12.

Furthermore, the Commission policy of access charge "reform" faces a difficult hurdle in light of the enactment of New Chapter 30. OSBA witness Buckalew explained:

Finally, it is time to step back and examine the policies that the legislature created in the new Chapter 30. The legislature did not exclude access from increases, did not treat access as something special outside of the protected category, and did not say that access and toll users are exempt from contributing to the broadband network it hoped to create. New Chapter 30 eliminated most, if not all, of the productivity offset even though the telecommunications industry continues to have declining per unit costs. Therefore, the annual PCO [Price Change Opportunity] revenue increase is not cost-based in the traditional regulatory sense.

OSBA Statement No. 1, at 12. The legislature, as evidenced by the enactment of New Chapter 30, wants all citizens of the Commonwealth to have broadband access. In order to accelerate that process, the legislature provided ILECs, such as the D&E Companies, with the option of eliminating the productivity offset from the ILECs' PSM in exchange for accelerating broadband deployment. In essence, the legislature provided additional noncompetitive service revenue, on an annual basis, so that the ILECs could fund this accelerated deployment.

Moreover, the ILECs can collect that additional noncompetitive service revenue from only one source: noncompetitive services. Unfortunately, the list of noncompetitive services that can be the source of this additional revenue is limited, and includes local exchange rates and access charges.

Mr. Buckalew explained the ramifications if a source of that revenue, access charges, is removed by Commission policy:

Because all protected services benefit from the development of broadband, all protected services should bear part of the cost of developing broadband. By including access as a protected service for purposes of calculating the PCO revenue increase and not excluding access from the resulting rate increase, the legislature recognized that access should help pay for the development of broadband.

The only way for toll to contribute to the development of broadband in Pennsylvania is through access rates. If access is excluded, then toll users get a free ride over the new broadband system.

OSBA Statement No. 1, at 17-18. That “free ride” will not promote the primary goal of New Chapter 30 as enacted by the legislature: accelerate broadband deployment across the Commonwealth. Instead, that free ride will reduce certain costs for toll carriers, making them incrementally more profitable, and will cause ILECs to increase local exchange rates higher than would otherwise be the case.

On the one hand, the Commission has a general public policy rule favoring access charge reductions, and under Section 3017, access charge reductions mean local exchange rate increases. On the other hand, the legislature has made it clear that broadband deployment is to be accelerated but that rates for noncompetitive services

(including local exchange) are not to become excessive. Specifically, New Chapter 30's Declaration of Policy states as follows"

. . . it is the policy of this Commonwealth to:

* * *

(3) Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis.

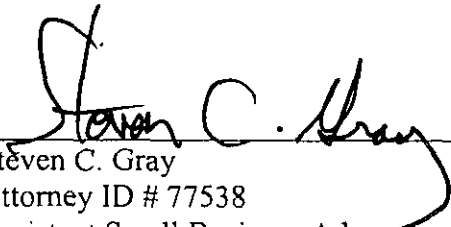
66 Pa. C.S. § 3011(3).

Consequently, the Commission's general public policy rule regarding access charges appears to be at cross purposes with the legislature's decision to accelerate the deployment of broadband throughout the Commonwealth without unreasonably increasing local exchange rates. Consistent with New Chapter 30, it is time for the Commission to change that general public policy rule.

V. Conclusion

Therefore, the OSBA respectfully requests that the ALJ and the Commission uphold the June 23, 2006, Denver and Ephrata, Buffalo Valley, and Conestoga Orders, whereby the Commission permitted the D&E Companies to raise their access charges.

Respectfully submitted,


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Dated: January 26, 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index/Service Price :
Index Filing of Buffalo Valley Telephone : Docket Nos. P-00981428F1000,
Company : R-00061375

2006 Annual Price Stability Index/Service Price :
Index Filing of Conestoga Telephone and : Docket Nos. P-00981429F1000,
Telegraph Company : R-00061376

2006 Annual Price Stability Index/Service Price :
Index Filing of Denver & Ephrata Telephone and : Docket Nos. P-00981430F1000,
Telegraph Company : R-00061377

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I certify that I am serving two copies each of the Main Brief, on behalf of the Office of Small Business Advocate, by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

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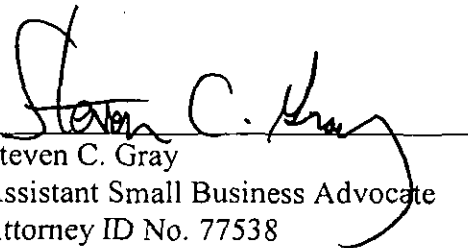
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2006 Annual Price Stability Index/	:	
Service Price Index filing of Buffalo	:	P-00981428F1000
Valley Telephone Company	:	R-00061375
2006 Annual Price Stability Index/	:	
Service Price Index filing of Conestoga	:	P-00981429F1000
Telephone & Telegraph Company	:	R-00061376
2006 Annual Price Stability Index/	:	
Service Price Index filing of Denver &	:	P-00981430F1000
Ephrata Telephone & Telegraph Company	:	R-00061377

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SECRETARY'S BUREAU

**MAIN BRIEF OF
THE VERIZON COMPANIES**

ORIGINAL

Date: January 26, 2007

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EXPURGATED VERSION

TABLE OF CONTENTS

TABLE OF CITATIONS	iii
INTRODUCTION	1
STATEMENT OF THE CASE.....	3
ARGUMENT.....	8
A. The Commission Has The Legal Authority To Rescind These Access Rate Increases.....	8
1. The Commission Has Authority To Find The Increases To Be Unjust And Unreasonable Under 66 Pa. C.S. § 1301	9
2. The Commission Has Authority To Rebalance Revenue From Access Rates To Retail Rates Under 66 Pa. C.S. § 3017(a).....	13
B. There Is Ample Basis In The Record To Rescind These Access Rate Increases.....	14
1. The D&E Companies Have The Burden Of Proving That These Access Rate Increases Are Just And Reasonable	14
2. Increasing Access Rates Is Contrary To The Commission’s Established Ratemaking Policy To Reduce Carriers’ Dependence On Access Revenues.....	14
3. It Is Unjust And Unreasonable To Disturb The <i>Status Quo</i> By Raising The Very Access Rates That Are The Subject Of The Stayed Investigation.....	23
4. The D&E Companies Have Not Demonstrated That Their Previous Access Rates Were Inadequate Or That There Is Any Need To Increase Their Reliance On Revenues From Other Carriers	25
5. The D&E Access Charges Are Inflated In Comparison To Other Carriers And In Comparison To Their Own Interstate Rates	29
6. The D&E Companies Could Have Implemented Their PSI Filings Without Raising Access Rates.....	34
7. The D&E Companies Have Not Demonstrated That Their Previous Access Rates Were Priced Below “Cost”	37

C. In the Alternative, If The Commission Allows These Access Rate
Increases To Stand, It Should Make Corresponding Decreases To The
D&E Companies' Draw From The Pa USF..... 39

CONCLUSION..... 41

TABLE OF CITATIONS

CASES

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- Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc., (Opinion and Order entered July 15, 2003) (Compendium B-1)
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Denver and Ephrata Telephone and Telegraph Company Supplement No. 251 to Tariff PA PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16, Docket No. R-00061377; 2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company, Docket No. P-00981430F1000 (Opinion and Order entered December 8, 2006) (Compendium P-1).....

Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund, Docket No. I-00040105 (Opinion and Order entered December 20, 2004) (Compendium D-1).....

Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund, Docket No. I-00040105; Denver and Ephrata Telephone and Telegraph Company Supplement No. 251 to Tariff PA PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16, Docket No. R-00061377; 2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company, Docket No. P-00981430F1000, etc., (Opinion and Order entered November 15, 2006) (Compendium M-1).....

In the matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 00-256; CC Docket No. 96-45; CC Docket No. 98-77; CC Docket No. 98-166, 16 FCC Rcd 19613 (Rel. November 8, 2001) (“MAG Order”)

In the Matter of Developing a Unified Inter-carrier Compensation Regime, CC Docket 01-92, Order released March 3, 2005 (FCC 05-33)

Joint Petition of Nextlink Pennsylvania, Inc., Docket Nos. P-00991648; P-00991649, 196 P.U.R.4th 172 (Opinion and Order entered September 30, 1999) (“Global Order”).....

PUC v. Denver and Ephrata Telephone and Telegraph Co., Docket No. R-00016682 (Opinion and Order entered November 30, 2001) (VZ Main Br. Att. 1)

STATUTES

66 Pa. C.S. § 315

66 Pa. C.S. § 703(g)

66 Pa. C.S. § 1301

66 Pa. C.S. § 3015

66 Pa. C.S. § 3017(a)

66 Pa. C.S. § 3019(h)

INTRODUCTION

The D&E companies¹ have openly defied this Commission's well-established policy to reduce carriers' dependence on revenue obtained from other carriers through access charges. Reversing course on access rate reform, these companies on July 1, 2006 substantially *increased* their already quite high intrastate switched access rates to obtain over \$2 million per year in additional revenue from other carriers. These increases will leave the companies with extremely high carrier charges, ranging from \$4.44 to \$5.17 per line, per month, and effective intrastate switched access rates ranging from 4 to 6 cents per-minute-of-use. In 2001, this Commission found that Denver & Ephrata had only just begun "the process of eliminating the subsidization of local exchange service rates that have been provide[d] by [its] inflated access rates" – access rates that the Commission concluded had been set "above cost," to maintain local service rates that were "well below cost."² The D&E companies have not demonstrated any reason to allow them to reverse that process now and reinstate some of the subsidies from other carriers that have been reduced in accordance with the Commission's orders and policies.

Compounding the inequity, shortly after they increased their access rates the D&E companies secured a stay of the Commission's broader access rate investigation, which would require the submission of cost studies and consider the degree to which access rates for all small ILECs should be further *reduced* to continue the "process of eliminating subsidies" on which the Commission embarked in 2001. If this Commission-

¹ This case involves the switched access rates of Denver & Ephrata Telephone & Telegraph Company ("Denver & Ephrata"), Buffalo Valley Telephone Company ("Buffalo Valley") and Conestoga Telephone & Telegraph Company ("Conestoga") (collectively the "D&E companies" or "D&E carriers").

² *PUC v. Denver and Ephrata Telephone and Telegraph Co.*, Docket No. R-00016682 (Opinion and Order entered November 30, 2001) at 7 (Attachment 1 to VZ Main Brief).

granted stay is to remain in place, then the D&E companies should not be permitted to disrupt the *status quo* during the stay period by increasing the very access rates that are the subject of the investigation, effectively insulating these rates from substantive review. Indeed, it was precisely because the Commission extended the stay of that investigation—postponing by at least 12 months its intended substantive review of the D&E carriers’ access rates – that the Commission convened this expedited proceeding to consider under 66 Pa. C.S. § 703(g) whether it should rescind its orders allowing the access increases to go into effect.

The Verizon companies are significant switched access customers of the D&E companies.³ These rate increases will require Verizon to divert hundreds of thousands of new dollars each year from operating its own businesses and serving its own customers, in order to subsidize the D&E companies. This new subsidy is on top of Verizon’s already substantial access payments to the D&E companies under their previous access rates, as well as its large annual contribution to the Pennsylvania state universal service fund (“PaUSF”), established in 1999 to support access rate reductions for small carriers including the D&E companies.

Given the Commission’s thoroughly-explained policies to reduce dependence on implicit subsidies from other carriers by reducing intrastate switched access rates, and given that the D&E companies have utterly failed to put forth any reasonable basis to allow them to increase access rates in violation of that policy – particularly during the pendency of the stay they obtained of the investigation into reduction of their access rates

³ The Verizon companies include Verizon Pennsylvania Inc., Verizon North Inc., Verizon Select Services Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, Verizon Global Networks, Inc., MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc. d/b/a Verizon Business Services.

-- the Commission should rescind these rate increases. The Commission has both the legal authority and the record support to do so, either under 66 Pa. C.S. § 1301, which authorizes it to disallow rate increases that are not “just and reasonable” and are not “in conformity with regulations or orders of the commission,” or under 66 Pa. C.S. § 3017(a), which authorizes it to rebalance revenue away from access rates to other regulated noncompetitive rates.

STATEMENT OF THE CASE

The D&E Companies are three independent incumbent local exchange carriers (“ILECs”) that operate in southeastern Pennsylvania⁴ and together serve approximately 135,000 regulated local access lines.⁵ These three ILECs are commonly owned by D&E Communications, Inc.,⁶ a company whose website indicates that it is “one of the nation’s 20 largest independent telephone companies.”⁷

On May 3, 2006, the three D&E companies made their 2006 Annual Price Stability Index/Service Price Index (“PSI”) filings, which were the first such filings made by these companies after their Chapter 30 plans had been amended in conformance with the new statutory requirements of Act 183. Due to Act 183’s elimination of the companies’ former 2% inflation offset, the 2006 PSI filings marked the first time that the D&E companies’ PSI formulas allowed a substantial increase to noncompetitive

⁴ See VZ Cr. Ex. No. 2 (map from D&E website depicting the location of the three D&E ILECs in relation to Philadelphia, Harrisburg and Reading); Tr. at 56-57 (D&E witness identifies each ILEC’s territory on map).

⁵ VZ St. 1.0 (Price Direct) at 5-7 (identifying line counts by individual companies).

⁶ D&E Communications describes itself as “a leading provider of integrated communications services in central and eastern Pennsylvania.” D&E Communications offers “high-speed data, Internet access, local and long distance telephone, data networking, network management and security, and video services.” VZ St. 1.0 (Price Direct) at 3-4.

⁷ VZ Cr. Ex. 1 (“Combined Company Information” from D&E website).

revenue.⁸ These companies proposed to implement their PSIs by allocating the vast majority of the revenue increases to intrastate switched access rates, “represent[ing] a departure from the current practice of recovering PSI revenue increases from local rate increases or banking these revenues for future recovery.”⁹

The Commission reviewed these PSI filings in three separate orders entered June 23, 2006. The Commission noted that the proposal to substantially raise access rates “appears to contradict long-standing access service reform in Pennsylvania” and to “contradict Pennsylvania’s long-standing attempt to reduce local carriers’ dependence on switched access service revenues.”¹⁰ The Commission also observed that these proposals “unfairly target[] access services by subjecting them to an overwhelming majority of the rate increases,” that increasing access rates at this time “may also contravene the Commission’s grant of a recent request of the ILECs, including D&E, to suspend the investigation of further reductions in access services rates” in the Rural Access Reform Proceeding, and that raising access rates at this point may “contravene [the companies’]

⁸ Tr. at 63.

⁹ *Denver and Ephrata Telephone and Telegraph Company Supplement No. 251 to Tariff PA PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16, Docket No. R-00061377; 2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company, Docket No. P-00981430F1000 (Opinion and Order entered June 23, 2006) (“D&E 6-23-06 Order”) (Compendium I-10).*

¹⁰ *D&E 6-23-06 Order (Compendium I-3 to I-4). See also Buffalo Valley Telephone Company Supplement No. 54 to Tariff Pa. PUC No. 7 And Supplement No. 8 to Tariff Pa. PUC No. 8, Docket No. R-00061375; 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, Docket No. P-00981428F1000 (Opinion and Order entered June 23, 2006) (Compendium G); Conestoga Telephone and Telegraph Company Supplement No. 206 to Tariff PA PUC No. 10, Supplement No. 7 to Tariff PA PUC No. 11, Docket No. R-00061376; 2006 Annual Price Stability Index / Service Price Index Filing of Conestoga Telephone and Telegraph Company, Docket No. P-00981429F1000 (Opinion and Order entered June 23, 2006) (Compendium H).*

earlier agreement to reduce switched access services” through a stipulation accepted by the Commission on July 15, 2003.¹¹

Rather than flatly disallowing the access rate increases, however, the Commission gave each company the choice of reallocating these increases to basic service rates or banking the increases.¹² If the companies refused to accept either of those choices, then the orders allowed their access rate increases to go into effect, but only on the express condition that the substance of these increased rates would be subject to immediate further investigation in the pending Rural Access Reform Investigation at Docket No. I-00040105. In those June 23 Orders, the Commission therefore determined to expand the investigation at Docket No. I-0004015 to examine among other issues whether the D&E companies’ access rate increases are “consistent with the regulations and policies governing the Pennsylvania Universal Service Fund, the Company’s previously granted request for suspension of further intrastate access reform in Docket No. I-00040105, the Company’s previously approved Amended Chapter 30 Plan set forth in Docket P-00981430F1000, and the continuing statutory obligations set forth in Sections 3011(1)-(13), 3019(h) and Chapter 13 of the Public Utility Code.”¹³ At that time, the stay of the rural ILEC access investigation was set to expire on August 30, 2006.

The D&E companies did not choose the other alternatives provided by the Commission, but rather, despite the Commission’s clear disapproval, proceeded to increase their switched access rates effective July 1, 2006 according to their original

¹¹ D&E 6-23-06 Order (Compendium I-5 to I-10); Conestoga 6-23-06 Order (Compendium H-5 to H-10); Buffalo Valley 6-23-06 Order (Compendium G-5 to G-10).

¹² *See id.*

¹³ *See, e.g.,* D&E 6-23-06 Order, Ordering ¶ 7 (Compendium I-12).

proposal. The amounts of the increases were revised slightly as a result of other holdings in the June 23 Orders, and were as follows:

- Denver & Ephrata increased its noncompetitive revenue by **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** and elected to allocate 96% of that increase, or **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**, to increasing intrastate switched access rates. The bulk of its projected revenue increase, or **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**, was to come from a \$1.13 increase in its carrier charge, from \$4.04 to \$5.17. Denver and Ephrata also increased its Tandem Switching rate to capture an additional **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** and its Local Switching rate to capture an additional **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**. As of December 31, 2005, Denver & Ephrata served approximately 57,581 access lines, and accordingly instead of raising access rates it could have allocated the PSI increase evenly to basic rates for a monthly increase would have been approximately **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per line.¹⁴
- Conestoga increased its noncompetitive revenue by **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** and elected to allocate 99% of that increase, or **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**, to increasing intrastate switched access rates. Conestoga decreased its carrier charge by \$0.39, from \$4.83 to \$4.44, but more than offset the revenue impact of that decrease by substantially increasing its Local Switching rate, an increase that was projected to net **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** in new revenue. Conestoga also increased its Tandem Switching rate to gain **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** in new revenue. As of December 31, 2005, Conestoga served approximately 56,278 access lines and accordingly instead of raising access rates it could have allocated the PSI increase evenly to basic rates for a monthly increase of approximately **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per line.¹⁵
- Buffalo Valley increased its noncompetitive revenue by **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** and elected to allocate 76% of that increase, or **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**, to increasing intrastate switched access rates. Buffalo Valley increased its carrier charge by \$0.91, from \$4.20 to \$5.11. The bulk of the projected revenue, or **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** is to come from this increase to the carrier charge. Buffalo Valley also increased its Local Switching rate to gain **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** in additional revenue.

¹⁴ VZ St. 1.0 (Price Direct) at 4-5.

¹⁵ *Id.* at 5-6.

As of December 31, 2005, Buffalo Valley served approximately 20,839 access lines and accordingly instead of raising access rates it could have allocated the PSI increase evenly to basic rates for a monthly increase of approximately [BEGIN PROPRIETARY] [BEGIN PROPRIETARY] per line.¹⁶

After the Commission entered these June 23 orders and after the access rate increases took effect, on August 29, 2006 a group of rural ILECs, including the D&E companies, moved to extend the expiring stay of the investigation at Docket No. I-00040105. Certain of the Verizon companies that were parties to the investigation at that time opposed the motion to extend the stay, in part because the D&E companies' actions to increase their access rates during the previous stay period were inconsistent with the request for an extension of the stay, and that an extension would delay resolution of the important issues relating to the D&E companies' access rates that this Commission had deferred to the investigation proceeding. Alternatively, Verizon argued that if the stay were extended then the Commission should bifurcate the question of whether the D&E companies' increased access rates are just and reasonable and whether those companies should continue to receive subsidies from the USF, and investigate those issues immediately.

By Order entered November 15, 2006, the Commission granted the request of the D&E companies and others to extend the stay of the small carriers' access investigation for an additional 12 months, or until the FCC issues a ruling in its intercarrier compensation proceeding, whichever occurs earlier.¹⁷ The Commission also convened

¹⁶ *Id.* at 7-8.

¹⁷ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105; *Denver and Ephrata Telephone and Telegraph Company Supplement No. 251 to Tariff PA PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16*, Docket No. R-00061377; *2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company*, Docket No. P-00981430F1000, etc., (Opinion and Order entered November 15, 2006) (Compendium M).

the present expedited proceeding to reconsider its June 23 orders pursuant to 66 Pa. C.S.

§ 703(g):

to determine, based on the record, whether any rescission or amendment would be warranted by the evidence, consistent with our access charge reform and universal service policies, and lawful under the companies' Chapter 30 plans. Moreover, revenues from increases in access charges collected from the date of this order may be subject to refund depending upon the outcome of these further hearings.¹⁸

The Commission directed that "a recommended decision shall be made on or before February 28, 2007."¹⁹

ARGUMENT

A. The Commission Has The Legal Authority To Rescind These Access Rate Increases

The D&E companies implemented these access rate increases as part of their proposal to increase overall revenue from noncompetitive services based on the results of the price stability mechanism formula contained in their plans for an alternative form of regulation under Chapter 30 of the Public Utility Code. *See* 66 Pa. C.S. § 3015. This statute clearly defines how inflation-based changes to regulated noncompetitive rates are to be implemented and provides the carrier the "statutory right . . . to seek and obtain an automatic revenue and rate increase,"²⁰ subject only to specific review powers that are retained for this Commission. As a threshold matter, then, the Commission must understand the circumstances under which it may step in and disallow a noncompetitive rate increase proposed as part of an annual Chapter 30 filing.

¹⁸ *Id.* at 15 (Compendium M-15 to M-16).

¹⁹ *Id.* Ordering ¶ 6 (Compendium M-19).

²⁰ *Commonwealth Telephone Company PSI/SPI Filing for Year 2005*, No. R-00050551 (Opinion and Order entered August 31, 2005) at 2 (Attachment 2 to VZ Main Brief).

Verizon is not advocating that the Commission should step in as a routine matter and attempt to redesign otherwise reasonable Chapter 30 rate increases. Assuming the resulting rates are just, reasonable and nondiscriminatory and do not violate Commission orders, a Chapter 30 company has the right to allocate rate increases among its noncompetitive rates as it sees fit. But this is not a routine case where the proposed increases are otherwise reasonable and in keeping with Commission orders. By increasing their already unreasonably high access rates in direct contradiction to this Commission's established policy to reduce dependence on access revenues, while at the same time asking this Commission to stay its long overdue investigation of the reduction of rural carrier access rates and thus insulating their rates from meaningful review, the D&E companies themselves have placed the Commission in the position of having to take action now to rescind the unwarranted access increases and prevent the D&E companies from further exacerbating access rate disparities and subsidies.

Under the circumstances, the Commission has the legal authority to address this unique situation and to disallow these access rate increases. For the reasons discussed below, the record here supports: (1) a finding that the rate increases are unjust and unreasonable under 66 Pa. C.S. § 1301, and/or (2) a finding that D&E's access revenue should be rebalanced to other noncompetitive rates under 66 Pa. C.S. § 3017(a).

1. The Commission Has Authority To Find The Increases To Be Unjust And Unreasonable Under 66 Pa. C.S. § 1301

The Commission has the authority to disallow these increases as part of its Chapter 30 review of the PSI filing. Under 66 Pa. C.S. § 3019(h), an alternative regulation plan supersedes all conflicting laws relating to rates and ratemaking *except*, among others, "section[] 1301 (relating to rates to be just and reasonable)." Thus, the

Commission has recognized that in reviewing annual PSI filings “the Commission still has the statutory mandate, authority and responsibility under 66 Pa. C.S. § 3019(h) to adjudicate whether the proposed rate changes are just and reasonable and non-discriminatory respectively under sections 1301 and 1304 of the Public Utility Code, 66 Pa. C.S. § 1301 and 1304.”²¹ Under 66 Pa. C.S. § 1301, “[e]very rate demanded, or received by any public utility . . . shall be just and reasonable and in conformity with regulations or orders of the commission.”

The “just and reasonable” standard of review requires the Commission to make the precise same policy judgments, such as what portion of a utility’s costs should be borne by other carriers and their customers versus D&E’s own retail customers, that the Commission has *already* made in formulating its policy to reduce access rates and remove implicit subsidies. As the Pennsylvania Supreme Court has observed, “the term ‘just and reasonable’ is not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and return on capital to utility investors.”²² In evaluating whether a proposed rate increase is “just and reasonable” under Section 1301, this Commission “has discretion to determine the proper balance between the interests of ratepayers and utilities.”²³ It must “protect” ratepayers from “unreasonable rates” while

²¹ *Commonwealth Telephone Company PSI/SPI Filing for Year 2005*, No. R-00050551 (Opinion and Order entered August 31, 2005) at 7 (Attachment 2 to VZ Main Brief).

²² *PUC v. Pennsylvania Gas and Water Co.*, 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980), *cert denied*, 454 U.S. 824 (1981).

²³ *Popowsky v. PUC*, 542 Pa. 99, 107, 665 A.2d 808, 812 (1995).

at the same time “ensuring that utility companies “are permitted to charge rates sufficient to cover their costs and provide a reasonable rate of return.”²⁴

In the case of access rates, both this Commission and the appellate courts have already determined that the just and reasonable course is *not* to increase revenues from access rates as the D&E companies have done here, but rather reduce access rates that have historically been set above cost and to shift cost recovery to retail rates. The Commonwealth Court has already approved this Commission’s decision to strike this balance by gradually *reducing* access rates and rebalancing this revenue to basic exchange rates. In reviewing the *Global Order* the Commonwealth Court acknowledged that “[t]he record and the law support the PUC’s decision to reduce the above-cost access charges in phases, to a degree now, and then further, pursuant to a future proceeding.”²⁵ As the Commonwealth Court observed, “[o]ne of the lessons of this proceeding is that the cost of excessively priced elements must be reduced to a point nearer to actual incremental cost.”²⁶ The just and reasonable standard of review specifically authorizes this Commission to balance the relative interests of access ratepayers and the utilities and to consider its own access pricing policies to find that it would not be just and reasonable for D&E to increase access rates charged to other carriers in the face of longstanding policy that such subsidies should be declining and that instead, increases in the D&E companies’ noncompetitive revenue should be borne by other noncompetitive rates. While it may not be inconceivable (in theory) for a company to demonstrate that an

²⁴ *PUC v. Philadelphia Electric Co.*, 522 Pa. 338, 333, 561 A.2d 1224, 1226 (1989).

²⁵ *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440, 480 (Pa. Commw. 2000) (“Initiating a gradual transition in improving the placement of cost burdens is a valid approach in establishing rate structure.”), *vacated in part on other grounds, MCI WorldCom Inc. v. PUC*, 577 Pa. 294, 844 A.2d 1239 (2004).

²⁶ *Id.*

access rate increase is just and reasonable under specific circumstances – for example if it showed that its access rates were priced below economic cost – D&E has not even attempted such a showing in this case.²⁷

Rather, the record here requires the Commission to find these increases unjust and unreasonable. Specifically, the Commission should find that allowing the D&E companies to increase their access rates would not strike the “proper balance between the interests of” the various relevant classes of ratepayers and the utilities.²⁸ Allowing the D&E companies to increase their access rates would not “protect” from “unreasonable rates” other carriers that have no choice but to pay the D&E companies’ tariffed rates for switched access service for calls originated from or terminated to D&E end users.²⁹ Any of the following findings (all of which are discussed in more detail later in this brief) would support a Commission holding that these access increases are not “just and reasonable” as that standard has been interpreted by the courts:

- Increasing the D&E carriers’ access rates is contrary to the Commission’s established ratemaking policy to reduce carriers’ dependence on access revenues and shift recovery of operating costs to retail rates.
- It would be inequitable to allow the D&E carriers to benefit from the stay of the rural carriers’ access investigation by insulating their access rates from review and delaying their obligation to submit cost studies, and yet also to disrupt the

²⁷ The Commission’s November 15, 2006 Order therefore does not conclude that it would be unjust and unreasonable *per se* for a company to increase its access rates during the stay period, but leaves open the opportunity that any “other rural ILECs contemplating the submission of PSI filings should be prepared to fully support the justness and reasonableness of any proposed increase to intrastate access charges during the stay of this proceeding both in regard to Chapter 30 and the policies that underlie the Pennsylvania Universal Service Fund.” 11/15/06 Order (Compendium M-16). Presumably this is the same showing that the Commission expected the D&E companies to make if they wished to justify the access increases that are the subject of this proceeding, but they have not even attempted such a showing.

²⁸ *Pennsylvania Gas and Water Co.*, 492 Pa. at 337, 424 A.2d at 1219; *Popowsky*, 542 Pa. at 107, 665 A.2d at 812.

²⁹ *Philadelphia Electric*, 522 Pa. 338, 561 A.2d 1224.

status quo during the stay period by raising the very access rates that are the subject of the stayed investigation.

- The D&E access charges are much higher than those charged by other carriers and higher than the D&E companies' own interstate access rates.
- The D&E companies had other alternatives and could have implemented their PSI filings without raising access rates.
- The D&E carriers have not shown that their switched access rates in effect from 2003 to July 1, 2006 are inadequate or are failing to recover their cost of providing access service, as required by the access reform plan that these carriers proposed and this Commission accepted in its July 15, 2003 Order.
- The D&E companies provided no valid reason for raising their access rates instead of allocating this revenue to other noncompetitive rates.

2. The Commission Has Authority To Rebalance Revenue From Access Rates To Retail Rates Under 66 Pa. C.S. § 3017(a)

Because this case involves an increase to access rates, Chapter 30 provides another independent basis for the Commission to revoke these rate increases. The new portions of Chapter 30 enacted in 2004 through Act 183 support the Commission's policy goals to reduce dependence on revenue from other carriers through access rates and rebalance those revenues to retail rates so that end users will bear more of the companies' costs. Access rates are different from other noncompetitive rates in this respect, because Act 183 provided this Commission with specific authority to rebalance revenue by reducing access rates and making revenue neutral increases to other noncompetitive rates. Under 66 Pa. C.S. § 3017(a), "[t]he Commission may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis." This statutory provision provides the Commission with authority to further its access reform policies by reducing the D&E companies' access rates to pre-July 1, 2006 levels (i.e., to maintain the *status quo*), without finding that the increases were "unjust and unreasonable," so long as the reduction is done on a revenue-neutral basis. The findings

that demonstrate that these rate increases are not just and reasonable would also support a decision by this Commission to rebalance the D&E companies' access rates under Section 3017(a) and reduce them to pre-increase levels.

B There Is Ample Basis In The Record To Rescind These Access Rate Increases

1. The D&E Companies Have The Burden Of Proving That These Access Rate Increases Are Just And Reasonable

As D&E's counsel admitted during the hearings, the D&E companies have the burden of proof.³⁰ Under 66 Pa. C.S. § 315, “[i]n 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.” Under this provision, the D&E companies have the burden of proving that their access rate increases are just and reasonable. Section 315 places this burden on D&E, as the utility, both because the Commission is reconsidering the original “proposed increase in rates” and because this expedited proceeding was convened “upon the motion of the commission.”³¹ For the reasons discussed below, the D&E companies have failed to meet this burden.

2. Increasing Access Rates Is Contrary To The Commission's Established Ratemaking Policy To Reduce Carriers' Dependence On Access Revenues

The just and reasonable analysis requires the Commission to balance relevant factors to determine if it is reasonable to require certain ratepayers to bear additional costs as opposed to other ratepayers. The primary factor the Commission should consider

³⁰ Tr. at 49.

³¹ See 11-15-06 Order (Compendium M).

in this case is that increasing the D&E companies' access rates is flatly inconsistent with this Commission's previous orders and policy on access pricing – both generally and specifically as it relates to the D&E companies. The Commission's direction to the D&E companies has been to work toward reducing access rates to move them closer to cost, and the D&E carriers themselves have conceded that their access rates should be going down – not up.³² These access increases fly in the face of everything the Commission has said and done with the D&E companies' access rates over the past seven years.

Beginning with the *Global Order*, the Commission stated its goal to reduce access charges to “take the necessary steps to strive to replace the system of implicit subsidies with ‘explicit and sufficient’ support mechanisms to attain the goal of universal service in a competitive environment.”³³ For the small carriers, including the D&E companies, the Commission adopted the Small Company Universal Service Fund Settlement as a “means to reduce access and toll rates for the benefit of the end-user customer.”³⁴ The small carriers' witness in the Global proceeding acknowledged that this was only “an interim measure to allow the Commission to begin to address these issues while providing additional time to develop a permanent plan.”³⁵ This document – proposed by a number of parties including the D&E companies -- acknowledged that “Pennsylvania can and should take steps toward implementing access and toll rate reform and begin addressing subsidy levels now.”³⁶ The settlement document required the small carriers, including

³² See, e.g., *PUC v. Denver and Ephrata Telephone and Telegraph Co.*, Docket No. R-00016682 (Opinion and Order entered November 30, 2001) at 3 (Attachment 1 to VZ Main Brief).

³³ *Joint Petition of Nextlink Pennsylvania, Inc.*, Docket Nos. P-00991648; P-00991649, 196 P.U.R.4th 172 (Opinion and Order entered September 30, 1999) (“Global Order”), slip op at 25.

³⁴ VZ St. 1.1 (Price Rebuttal), Exhibit 1 at 2.

³⁵ *Global Order* at 50 (quoting RTCC witness Laffey).

³⁶ VZ St. 1.1 (Price Rebuttal), Exhibit 1 at 2.

the D&E companies, to reduce their per-minute carrier common line revenue to the equivalent of approximately \$7.00 per line, per month, and then convert recovery to a per-line carrier charge. Exhibit 3, Sheet 1, to the Direct Testimony of D&E's witness Mr. Beurer shows that each of the companies took this step effective April 1, 2000, leaving Buffalo Valley and Conestoga with \$7 carrier charges and D&E with a \$6.11 carrier charge. The *Global Order* also called for an investigation to be initiated "on or about January 2, 2001, to further refine a solution to the question of how the Carrier Charge (CC) pool can be reduced," and directed that at the conclusion of this investigation "the pool will be reduced."³⁷

Rather than commencing the investigation in January of 2001, the Commission noted that the small companies, including the D&E companies, "were given some time to put together a settlement proposal in an effort to save time and costs involved with litigation and to narrow the issues."³⁸ It was clear that this "settlement proposal" should be a proposal to further reduce their access rates. In the meantime, in September of 2001, Denver & Ephrata filed for a revenue-neutral rebalancing to reduce its access rates and increase basic local rates, as a result of which it reduced its carrier charge from \$6.11 to \$5.61 effective December 1, 2001.³⁹ The Commission noted that "[t]he reasons for D&E's revenue neutral rate rebalancing filing" (presumably reasons that D&E provided to the Commission in support of the request) include "to move access charges closer to the cost to provide access services," "to reduce subsidies from [a]ccess [c]harges and

³⁷ *Global Order* at 56.

³⁸ *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc., (Opinion and Order entered May 5, 2003).

³⁹ This rebalancing is depicted in the second column, 12/1/2001, of Exhibit 3, Sheet 1 (D&E) to Mr Beurer's Direct Testimony.

bring rates closer to the cost of providing the service,” “to provide comparable services to rural customers,” and “to prepare D&E to meet the challenges of competitive entry of other telecommunications providers into its service territory.”⁴⁰ The Commission found in that 2001 Order that D&E’s “access rates have been above cost,” that “[i]n the new competitive marketplace there is a need for companies to move their rates closer to the cost of providing service,” and that “D&E’s filing begins the process of eliminating the subsidization of local exchange service rates that have been provide[d] by inflated access rates.”⁴¹ The Commission further concluded – based on a review of cost studies – that, even after that rebalancing, D&E’s “local service rates will remain well below cost” and that D&E had taken a “reasonable step in the gradual process” of reducing access rates and increasing retail rates.⁴²

Despite making broad statements in his testimony that “no Commission Order or regulation . . . has been violated” by increasing D&E’s access rates,⁴³ D&E’s witness Mr. Beurer admitted that he was completely unaware of this 2001 Order and of the arguments D&E made to the Commission in support of being allowed to reduce its access rates when he prepared his testimony.⁴⁴

In January of 2002, the Commission “opened a docket at M-00021596 . . . to accommodate the access charge investigation required by the *Global Order* in the form of

⁴⁰ *PUC v. Denver and Ephrata Telephone and Telegraph Co.*, Docket No. R-00016682 (Opinion and Order entered November 30, 2001) at 3 (Attachment 1 to VZ Main Brief).

⁴¹ *Id.* at 7 (emphasis added).

⁴² *Id.* Mr. Beurer’s Exhibit 3 shows that Buffalo Valley and Conestoga also rebalanced rates and slightly reduced their carrier charges during this time.

⁴³ D&E St. 1-R (Beurer Rebuttal) at 10.

⁴⁴ Tr. at 60-61.

a collaborative proceeding.”⁴⁵ On December 16, 2002, a group of small carriers including the D&E companies filed a Joint Proposal for Access Charge Reductions. The companies renewed that proposal, with further support from previously opposing parties, under a Joint Procedural Stipulation on June 5, 2003. That proposal, which is included in the record as Exhibit 2 to Verizon Statement 1.1 (Price Rebuttal), proposed to rebalance the small companies’ rates in defined steps by increasing end user rates and decreasing access rates. The Commission explained that the small carriers, including the D&E companies, “have been reluctant to advocate a flash cut reduction in access charges to achieve full access reform on an intrastate basis. The RTCC/Sprint Proposal is offered as the next transitional step in access charge reform in Pennsylvania in an attempt to avoid a rate shock to Pennsylvania local telephone consumers.”⁴⁶ The Commission recognized that for all the small companies in total “the Joint Proposal mandates certain filings that in turn will assure access charge reductions of approximately \$25 million within the next eleven months.”⁴⁷ The Commission further explained why its policy to gradually reduce small carrier access rates is essential to furthering the Commission’s goal of bringing opportunities for competition in the territories of rural ILECs:

the proposed access charge reductions are in the public’s interest and in accordance with the Commission’s objective to reduce implicit subsidy charges such as access charges that impede competition in the telecommunications market. As implicit charges become explicit charges, competitors are better able to compete for local and long distance customers in an ILEC’s service territory because IXCs are not hindered by paying ILECs excessive access charges in providing competitive toll services and CLECs are better able to compete with ILEC local service

⁴⁵ *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc., (Opinion and Order entered May 5, 2003) (Compendium A-3).

⁴⁶ *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc., (Opinion and Order entered July 15, 2003) (Compendium B-9).

⁴⁷ *Id.* at B-10 (footnote omitted).

rates that have been kept artificially low as a result of the access charge subsidies. Thus, although our approval of the Joint Proposal will allow the rural ILECs and Sprint/United to raise their local residential monthly service rates up to a cap of \$18.00 per month, (\$2.00 more than the current \$16.00 cap), this increase is incremental so as to avoid customer rate shock, and, at the same time, encourages the IXCs, CLECs and wireless telecommunications carriers to compete on a more level playing field with the ILECs.⁴⁸

Importantly, the Commission relied on the fact that the Joint Proposal would continue the process of reducing access charges to relieve the small companies, including the D&E companies, from having to produce cost studies at that time, noting that: “Given that this is a compromise proposal that merely seeks to extend and continue additional access reform as initially begun in the *Global Order*, we will not require the ILECs to incur the expense of producing detailed cost studies.”⁴⁹ The Commission further explained in its December 8, 2006 Order on reconsideration in the present case that “a condition” upon which the Commission accepted the Joint Proposal, and thus deferred its *opportunity to review cost studies and substantively evaluate the small carriers’ access rates*, was a provision that the Commission interprets as prohibiting access rate increases with the companies’ annual PSI filings “unless the ILECs can prove that” a particular access rate element does not “recover its costs based upon the development of a cost study.”⁵⁰

⁴⁸ *Id.* at B-10 to B-11. Mr. Price explained in the record here that excessive access rates like those of the D&E carriers hinder competitive entry in rural territories. As he noted, if subsidies are used by a carrier to keep basic local service rates artificially low, that discourages entry by would-be competitors. Two equally efficient competitors serving a market should, all else being equal, exhibit roughly equivalent per unit costs. However, if a subsidy is received by one competitor, it can charge a rate less than its per unit cost and still be profitable. The competitor without a subsidy cannot compete with a subsidized price and has no incentive to enter or, if already in, remain in the market. VZ St. 1.0 (Price Direct) at 13.

⁴⁹ 7-15-03 Order (Compendium B-12).

⁵⁰ D&E 12-8-06 reconsideration order (Compendium P-9).

In accepting the Joint Proposal on July 15, 2003, the Commission also cautioned the small carriers that it expected their access rates to continue to decrease, stating “we do not intend to declare the access rates established by this Order as the final word on access reform. Rather, this is the next step in implementing continued access reform in Pennsylvania in an efficient and productive manner.”⁵¹ Based on the proposal that the Commission adopted, the D&E carriers reduced access rates so that by November of 2003 Buffalo Valley had a \$4.20 carrier charge and by July of 2003 Conestoga had a \$4.83 carrier charge and D&E had a \$4.04 carrier charge.⁵² These were the rates that had remained in effect for approximately three years, until the D&E companies increased their access rates in July of 2006.

By order entered December 20, 2004, the Commission opened a new investigation “to consider whether intrastate access charges and intraLATA toll rates in rural ILECs’ territories *should be decreased* and to consider any and all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund are reduced and/or eliminated.”⁵³ By order entered August 30, 2005, at the request of the small carriers including the D&E companies, that investigation was stayed for a period not to exceed twelve months to await developments at the FCC regarding intercarrier compensation.

It was during the period of this first stay that the D&E companies raised their access rates. In its June 23, 2006 Orders reviewing the companies’ PSI filings, the

⁵¹ 7-15-03 Order (Compendium B-12).

⁵² See D&E St. 1 (Beurer Direct) Exhibit 3, Sheet 1.

⁵³ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Opinion and Order entered December 20, 2004), Ordering ¶ 1 (emphasis added) (Compendium D-6).

Commission encouraged the companies to reallocate the revenue to other noncompetitive rates rather than increasing access rates, and noted that the proposal “appears to contradict long-standing access service reform in Pennsylvania” and to “contradict Pennsylvania’s long-standing attempt to reduce local carriers’ dependence on switched access service revenues,” that increasing access rates at this time “may also contravene the Commission’s grant of a recent request of the ILECs, including D&E, to suspend the investigation of further reductions in access services rates” in the Rural Access Reform Proceeding, and that raising access rates at this point may “contravene [the companies’] earlier agreement to reduce switched access services” through a stipulation accepted by the Commission on July 15, 2003.⁵⁴ The Commission cautioned that if the companies chose to increase access rates anyway, the substance of their rates would be included in the broader investigation.

In its November 15, 2006 Order, which further stayed the broader investigation but convened this expedited proceeding to consider rescinding the access increases, the Commission cautioned the D&E carriers that “[t]he fact that we never expressly stated that increases to access charges were precluded until the next investigation was held does not mean the Commission intended to carve out an exception to our general public policy rule of lowering intrastate access charges and allow for intermittent increases to intrastate access charges with rural ILEC PSI filings.”⁵⁵ In its December 8, 2006 Order on reconsideration the Commission went on to observe that “[e]ven though our Orders did not explicitly impose a ban on proposing increases to access charges . . . the

⁵⁴ D&E 6-23-06 Order (Compendium I-5 to I-10); Conestoga 6-23-06 Order (Compendium H-5 to H-10); Buffalo Valley 6-23-06 Order (Compendium G-5 to G-10).

⁵⁵ 11-15-06 Order (Compendium M-15).

Commission's *Global Order* strongly expressed a policy and schedules for further access reductions."⁵⁶

In light of all of this clear direction from the Commission, it simply does not make sense for the D&E companies to argue that they are free to increase their access rates.⁵⁷ Similarly baseless is D&E's argument that that it has "voluntarily" reduced its access rates over the years since the *Global Order* and is free at any time to reverse those decreases. As discussed above, the D&E companies have reduced their rates over the years in direct response to the Commission's directives that those rates must go down. Because the D&E carriers' actions in increasing their access rates are directly contrary to the Commission's stated policy in this area, the Commission can rely on its own extensive discussion and findings that small carrier access rates should be going down, not up, to find that increasing such rates now is not just and reasonable. In fact, these policy judgments are precisely the type of factors that the courts have directed the Commission to consider, because they show why increasing the D&E companies' access rates would not strike the "proper balance between the interests of" access ratepayers versus the D&E companies and their retail end users,⁵⁸ and why disallowing these

⁵⁶ 12-8-06 D&E Order (Compendium P-8).

⁵⁷ See, e.g., D&E St. 1 (Beurer Direct at 10); OSBA St. 1 (Buckalew Rebuttal) at 5. It is particularly unreasonable for the D&E companies to assert that the Commission's 1999 \$7.00 carrier charge target permits them to increase their carrier charges now, so long as they do not exceed that level. Even if the Commission believed that \$7.00 was a reasonable carrier charge for ILECs like the D&E companies under the circumstances that existed in 1999, that does not mean that the Commission still views \$7.00 as a reasonable carrier charge today, seven years later after further reductions to the access charges have been made. The \$7.00 carrier charge target was part of a plan that was designed to *reduce* access rates from even higher levels, not as a target for access rate *increases* today. In the *Global Order* the Commission was careful to caution the small ILECs that "[t]hose Companies with a CC below \$7.00 **are not authorized by this Order to automatically increase their CC to \$7.00.**" *Global Order* at 51, n. 29 (emphasis added). See VZ St. 1.1 (Price Rebuttal) at 6.

⁵⁸ *Pennsylvania Gas and Water Co.*, 492 Pa. at 337, 424 A.2d at 1219; *Popowsky*, 542 Pa. at 107, 665 A.2d at 812.

increases is necessary for the Commission to “protect” access ratepayers from “unreasonable rates.”⁵⁹

While the Commission did give them the opportunity to come forward with evidence of some unique circumstance that the Commission might have overlooked that could have made access increases just and reasonable in this particular case, the D&E carriers have not made such a showing.

3. It Is Unjust And Unreasonable To Disturb The *Status Quo* By Raising The Very Access Rates That Are The Subject Of The Stayed Investigation

Another factor the Commission should consider in its just and reasonable analysis is the inequity of allowing the D&E carriers to raise the very same rates that they have successfully insulated from substantive review by securing a second 12-month stay of the Commission’s comprehensive investigation into their access pricing – an investigation the Commission specifically stated was for the purpose of considering whether D&E’s access rates “should be decreased.”⁶⁰ Because of all of the delays and “settlement” proposals to take steps to reduce rates over the years, the Commission has never examined on a substantive basis the facts underlying the small carriers’ access charges, including but not limited to their costs of providing local service and access service, the extent to which local rates are below cost and require a subsidy, etc. The Commission refrained from such an investigation as a result of its July 15, 2003 Order accepting the small carriers’ proposal to further rebalance their rates by increasing local service rates and reducing access rates in lieu of submitting cost studies.⁶¹ The Commission again

⁵⁹ *Philadelphia Electric*, 522 Pa. 338, 561 A.2d 1224.

⁶⁰ 12-20-04 Order, Ordering ¶ 1 (Compendium D-6).

⁶¹ See VZ St. 1.1 (Price Rebuttal) at 9-10.

refrained from such an investigation when, on August 30, 2005 and on November 15, 2006, it stayed the small carriers' access investigation pending action by the FCC on intercarrier compensation issues. Meanwhile, from July 1, 2003 (November 1, 2003 in one instance) through July 1, 2006, the D&E carriers had been content to charge the access rates that resulted from the reductions required by the July 15, 2003 Order.⁶² Without proving that the access rates in effect from 2003 to 2006 were in any way inadequate, the D&E companies now seek to increase substantially their revenue from access rates in direct contradiction to the Commission's policy on access pricing. It is not just and reasonable to allow these increases to stand if the substantive investigation is to be stayed. Instead the D&E companies should be required to maintain the *status quo* pending the stay of their access investigation.

Verizon is simply asking the Commission to conclude that it is not just or reasonable to allow D&E to increase its access rates at this time and disrupt the *status quo* during the stay of the small carriers' access investigation. D&E has not justified its increased access rates with evidence demonstrating that its previous rates are inadequate. The question of where ultimately to draw the line in setting reasonable access rates for the D&E companies is one that must be answered in the small carrier access investigation and/or in the FCC intercarrier compensation proceeding that was the reason this Commission stayed its own case.⁶³

⁶² See VZ St. 1.2 (Price Surrebuttal) at 3. Based on Exhibit 3 to Mr. Beurer's direct testimony, from July 1, 2003 to July 1, 2006, D&E had maintained a carrier charge of \$4.04 and a composite TS rate of \$0.02388; Conestoga had maintained a carrier charge of \$4.83 and a composite TS rate of \$0.016796; and Buffalo Valley had maintained a composite TS rate of \$0.016130. Buffalo Valley's carrier charge was reduced to \$4.79 on July 1, 2003 and again reduced to \$4.20 on November 1, 2003.

⁶³ VZ St. 1.2 (Price Surrebuttal) at 6.

If it is indeed true, as Mr. Beurer's testimony implies, that the D&E companies cannot remain financially viable unless they receive more subsidies from other carriers by increasing already high access rates – a factual assertion for which he offers no support -- then the remedy is to restart the investigation of rural LEC access rates immediately, not to allow the D&E companies (and others who might follow a similar course if D&E is permitted to do so) to increase their access rates unilaterally while insulating those rates from substantive review.

4. The D&E Companies Have Not Demonstrated That Their Previous Access Rates Were Inadequate Or That There Is Any Need To Increase Their Reliance On Revenues From Other Carriers

Another factor the Commission should consider in its just and reasonable analysis is the public policy implications of requiring other carriers to increase their subsidies to the D&E carriers at a time when those carriers face their own competitive pressures and when the Commission and the Legislature expect those other carriers to fulfill their own broadband commitments.

The result of the D&E companies' access rate increases is to substantially increase their reliance on revenues provided by other carriers – directly contrary to the Commission's policy described above to reduce that reliance. The record shows that with these increases the D&E companies will secure an additional **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** in revenue from intrastate access rates, for a total of **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** in annual revenue from intrastate access.⁶⁴ The Verizon companies are substantial access customers of the D&E companies and will be paying a hefty

⁶⁴ VZ St. 1.1 (Price Rebuttal) at 13.

portion of these access rates.⁶⁵ Based on the D&E companies' estimates provided in discovery, the Verizon companies will be required to subsidize the business operations of the D&E companies by more than an additional **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per year in additional access charges as a result of this increase – and Verizon's total annual access payments to the D&E companies will be increased to almost **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**.⁶⁶ Other ILECs, CLECs and IXCs will also be forced to increase their subsidy of the D&E companies to pay the remainder of the rate increase.

The D&E companies simply have not shown that it is just or reasonable to require Verizon to divert another **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per year from serving its own customers and instead use it to subsidize the earnings of the D&E carriers. Moreover, if D&E is allowed to increase its access rates without justification, then other carriers will be emboldened to try the same thing, and the impact on the Verizon companies and other carriers that pay these access rates could be even more substantial.

D&E's theory that the Commission should force Verizon and other carriers to increase the implicit subsidy they pay to D&E to help it face competition makes no sense. Verizon faces pressure from intermodal competition at least to the same, if not a greater, degree. It would be economically inefficient and bad policy to place Verizon at the mercy of D&E's unilateral attempts to claim additional subsidies from Verizon through access rate increases. Verizon must also meet competitive pressures from intermodal

⁶⁵ The record shows that the Verizon companies provide between **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** of the D&E carriers' intrastate access revenue. VZ St. 1.0 (Price Direct) at 9.

⁶⁶ VZ St. 1.0 (Price Direct) at 10; VZ St. 1.1 (Price Reb.) at 1314.

carriers while the Verizon ILECs fulfill their own broadband commitments. The FCC explained that one of its primary goals in its ongoing intercarrier compensation proceeding is to ensure that intercarrier compensation promotes efficiency -- to “encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition.”⁶⁷ Here, the D&E companies seek the opposite result by suggesting that the only means by which they can respond to competition is to have other carriers’ customers pay for their efforts.

Similarly, to the extent the D&E companies are claiming that they need this additional revenue to fund their broadband deployment,⁶⁸ they have not demonstrated that it would be just or reasonable to foist their own costs of broadband deployment upon the customers of other carriers rather than obtaining the additional revenue from their own retail end users – for whom broadband capability is being built. The record shows that when they made these broadband commitments the companies were well aware of the risks of assuming entitlement to continued subsidies from intrastate switched access revenue.⁶⁹ Moreover, the companies have not demonstrated that additional revenue from other carriers is needed or that the prospect of receiving it was relied upon to fund broadband commitments.⁷⁰ According to D&E’s statements to the SEC, over a year ago

⁶⁷ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, Order released March 3, 2005 (FCC 05-33), at para. 31.

⁶⁸ See D&E St. 1 (Beurer Direct) at 41; OSBA St. 1 (Buckalew Rebuttal) at 12.

⁶⁹ See Verizon St. 1.1 (Price Rebuttal) at 14-15 and Exhibit 3 (D&E Communications, Inc. Form 10-K for the fiscal year ended December 31, 2005) at 21 (recognizing that this Commission has instituted an investigation “designed to move these network access charges, over time, to lower rate levels,” that it “will reduce access charges and could shift recovery to end-user customers,” and that access revenues “will likely decrease.”)

⁷⁰ If the Commission accepts this argument and believes that there has been some material and unexpected change in D&E’s circumstances, then it has the discretion to allow the D&E companies to amend their plans to choose a different timeframe for meeting their broadband deployment goals. VZ St. 1.1 (Price Rebuttal) at 16.

and well before these access increases were implemented – “[w]e currently are capable of providing broadband services as defined by the new law to 98% of our customers. We feel we are well positioned to meet the required 100% threshold by December 31, 2008 and are of the opinion that the benefits of Act 183 outweigh any costs in committing to an earlier 100% threshold.”⁷¹ And of course raising access rates was not the only available source for D&E to raise new revenue, because their Chapter 30 plans allow them to raise any noncompetitive rates to implement PSI revenue increases. If D&E were instead to raise retail rates, then D&E’s end user customers would be providing the funds used to improve services intended for their use.

This implicit subsidization of D&E’s broadband build-out by other carriers, including those with which D&E affiliates compete, is neither economically efficient nor competitively neutral. Verizon PA and Verizon North have their own network modernization plans under Chapter 30 under which they also committed to provide 100% broadband availability to their entire service territory as defined by the statute. As allowed by the statute, Verizon opted to commit to a 2015 deadline, but as a result of that commitment the statute also imposes on Verizon a .5% inflation off-set that reduces its allowable rate increases. Moreover, Verizon has a much larger territory to cover with its broadband commitments, including rural areas much more extensive than those served by the D&E companies. It is disingenuous for D&E to suggest that Verizon does not need to fund its own broadband commitments, including those in its own rural areas, and so can spare the money to pay for D&E’s own broadband deployment.⁷²

⁷¹ *Id.* at 15-16.

⁷² VZ St. 1.1 (Price Rebuttal) at 22.

5. The D&E Access Charges Are Inflated In Comparison To Other Carriers And In Comparison To Their Own Interstate Rates

Another factor that the Commission should consider when performing a just and reasonable analysis of these rate increases is how these rates compare to the rates other carriers charge for the same services, or to the D&E companies' own interstate rates for access service. To the extent the D&E carriers are arguing that their access rates are not inflated, that they have been "front runners" in access reform and that the increases were necessary simply to "mirror" interstate rates, none of these arguments survives scrutiny.

First, it is simply inequitable to allow the D&E carriers to raise the access rates that they charge to Verizon when those rates are already significantly higher than the intrastate access rates that the Commission permits the Verizon ILECs to charge to D&E and other carriers. The Verizon ILECs have a carrier charge of \$0.58 per access line or trunk per month, roughly one-eighth the size of the \$4.44 to \$5.17 carrier charges of the D&E companies. The Verizon ILECs' combined ARPM for switching and carrier charge is approximately 1.5 cents per minute – roughly one third of the D&E companies' switching and carrier charge averages.⁷³ Moreover, while D&E claims that what it calculates as its own cumulative \$30 million in access decreases since the *Global Order* compares favorably to Verizon's decreases over the same time period,⁷⁴ this claim is based on a misleading comparison that understates Verizon's decreases. D&E's witness admitted on cross examination that Verizon's cumulative decreases over the same time period were \$634 million, as opposed to the \$140 million he used in his testimony.⁷⁵ In

⁷³ VZ St 1.0 (Price Direct) at 8.

⁷⁴ D&E St. 1-SR (Beurer Surrebuttal) at 8-9.

⁷⁵ Tr. at 68. The Commission performed a similar analysis for the value of Verizon PA's cumulative decreases in its comments to the FCC on the Missoula Plan, but it did not include the additional \$50

addition to significantly understating Verizon's decreases, D&E's witness did not use the line count figures that Verizon had produced in discovery when he converted the reductions to a per-line figure.⁷⁶ In short, this comparison of the decreases is misleading and there is simply no way for D&E to evade the fact that its access rates are substantially higher than Verizon's.

Second, while the D&E carriers attempt to depict themselves as "frontrunners" in access reform among the rural ILECs, evidence that their own witness attached to his testimony shows that, at best, the D&E carriers are in the middle of the pack.⁷⁷ In fact, there are four rural ILECs in Pennsylvania that have *no carrier charge at all* and a fifth that has a carrier charge of only 17 cents – in contrast to the D&E carriers' charge of approximately \$5 per line, per month.⁷⁸ It simply does not make sense that some rural carriers can operate with very low access rates, while the D&E companies and other ILECs claim that they cannot do without additional substantial subsidies from carriers

million in decreases for Verizon North for 2005 and 2006 and used a slightly different time period. See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, FCC Docket No. 01-92 (Pa PUC Comments filed October 25, 2006) Exhibit 2 (showing Verizon PA, only, cumulative decreases of \$605,930,865 from 1997-2005) (available at http://www.puc.state.pa.us/telecom/Missoula_Plan.aspx).

⁷⁶ Tr. at 69. Mr. Beurer further argued on redirect that \$634 million in access reductions for Verizon was not enough, and Verizon should have reduced rates by \$1.2 billion to be comparable to D&E's decrease. Tr. at 74. Of course the fallacy of this argument is that it assumes that all of Verizon's access lines started out with switched access rates as high as D&E's – which they plainly did not. Under D&E's view Verizon should have reduced another \$566 million over the 6 year period since the *Global Order* (see Tr. at 68), which would be an annual amount of \$94.3 million. Using D&E's (inflated) line counts (Beurer Surrebuttal at 9, line 1), this would translate to \$15.48 per line, per year – or \$1.29 per line, per month. But Verizon's entire carrier charge is only \$0.58 per month, so D&E is apparently arguing that Verizon should have negative access rates. By contrast, even after its highly touted decreases, the D&E companies are charging carrier charges in the neighborhood of \$5 per line per month.

⁷⁷ VZ St1.1 (Price Rebuttal at 8.

⁷⁸ See VZ St. 1.1 (Price Rebuttal) at 8-9. A review of the tariffs of these Frontier companies indicates that each of these companies has residential end user rates at or close to the \$18 level, which was the benchmark set in this Commission's July 15, 2003 Order in Docket No. M-00021596. *Id.* See also D&E St 1 (Beurer Dir.) Ex. 1.

like Verizon in the form of large carrier access charges. These are among the questions that must be addressed in the rural carrier access investigation.⁷⁹

Third, the D&E companies misleadingly suggest that they had to increase their access rates in order to “mirror” their interstate access rates, but the record shows that the D&E carriers have *not* mirrored their interstate access rates at all, and have simply increased their overall access revenue. As Mr. Price demonstrated in Exhibit 6 to his Rebuttal Testimony, each of the D&E carriers’ intrastate access rates are substantially higher than its interstate rates. For example, the total composite rate per minute-of-use for Denver & Ephrata’s intrastate rates is \$0.0595147, while comparable its interstate composite rate is barely a third of that, at \$0.0217870. Similarly, Buffalo Valley’s composite rate per minute-of-use for intrastate rates is \$0.0449996, while its interstate composite rate is less than a third, at \$0.0146520. Conestoga’s composite intrastate rate per minute-of-use is \$0.0509993, while its interstate composite rate is less than half, at \$0.0217870.⁸⁰ The intrastate rates are substantially higher, first, because of the hefty intrastate carrier charges; there is no carrier charge at all in the interstate rates. For that reason alone it is misleading, at best, for the companies to claim that they have “mirrored” interstate rates. This claim is particularly egregious because two of the three companies actually increased their intrastate carrier charges. They certainly could not have done so for the purpose of “mirroring” a rate that is set at \$0 in the companies’ interstate tariffs.

⁷⁹ Instead of somehow suggesting front runner status, D&E Exhibit 1 demonstrates the grave inequities that currently exist in the small ILECs’ exorbitant access rates. The fact that some small ILECs are imposing carrier charges exceeding \$15 per line per month – or over \$180 per line per year – shows there is a huge disparity and a fundamental problem that must be addressed, including whether these subsidies are justified at all. See VZ St. 1.1 (Price Rebuttal) at 8.

⁸⁰ VZ St. 1.1 (Price Rebuttal) Exhibit 6.

Even the claim that they have “mirrored” only the traffic sensitive portion of their access rates is not true. As Mr. Price demonstrated, the D&E companies have not mirrored even the traffic sensitive portion of their interstate rates. Rather, the D&E companies *selectively* mirrored interstate rates effective July 2005, but only when that mirroring resulted in an increase in specific rate elements, such as local switching and tandem switching. Where existing D&E intrastate rates were already *higher* than interstate, such as Tandem Switched Transport Facility and Termination rates or where an interstate rate had been eliminated altogether, as with the Transport Interconnection charge (TIC), they did not lower the corresponding intrastate rate.⁸¹ As a result of this selective “mirroring,” even if one looked only at the traffic-sensitive portion of the rates and ignored the carrier charge, the total composite intrastate rates per minute-of-use for the D&E companies remain higher than their comparable interstate rates.⁸² In short, Mr. Beurer’s testimony in this area simply does not support the switched access rate increases the D&E companies have implemented.

Even if the D&E companies had achieved a true mirroring of their interstate and intrastate traffic sensitive rates – which they did not for the reasons discussed above –if such “mirroring” required the companies to raise their overall revenue from traffic

⁸¹ See VZ St 1.1 (Price Rebuttal) at 25. In addition to other discrepancies, the companies have retained in their intrastate rates a traffic sensitive rate element that has no interstate counterpart: the Transport Interconnection Rate or “TIC.” That rate element comprises roughly 20% of the D&E companies’ intrastate traffic sensitive composite rate (more than 25% in the case of Buffalo Valley). In its 2001 “MAG Order,” the FCC eliminated the TIC as an interstate rate element, recognizing that “it is not a cost-based rate element,” and “was never intended as a permanent measure.” *In the matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 00-256; CC Docket No. 96-45; CC Docket No. 98-77; CC Docket No. 98-166, 16 FCC Rcd 19613 ¶¶ 99 (Rel. November 8, 2001).

⁸² VZ St. 1.1 (Price Rebuttal) at 25.

sensitive intrastate rates, they should have made corresponding revenue neutral decreases to their carrier charges. The concept of “mirroring” interstate rates is most logically viewed in the context of the Commission’s overall access policies as a means to decrease overall access revenues and to decrease -- or at least not increase -- the effective rate per minute of use. It does not make sense to use the “mirroring” argument as a means to increase overall access revenues and the overall effective rate per minute of use, as the D&E companies have done here. In fact, the Small Company Universal Service Settlement adopted by the Commission in the *Global Order* specifically stated with respect to mirroring that: “each company will mirror their interstate traffic sensitive (“TS”) rates and structure (including local transport restructure) which were effective as of July 1, 1998 for intrastate purposes. If this causes an increase in rates, ***then the CCL revenue amount from the previous step shall be reduced accordingly.***”⁸³

The inequity of the D&E companies’ version of mirroring is evident from the actions of Conestoga, which actually made a slight reduction in its carrier charge but substantially increased its local switching rate to net over a million dollars per year in additional access revenue. Conestoga appears to have mirrored its interstate rate for the local switching rate element, but if it desired to do so it should have reduced its carrier charge, its TIC, or both, to eliminate one million dollars in access revenue, in accordance with the above definition of mirroring approved in the *Global Order*. It did not do so, and therefore ends up with a substantial increase in intrastate access revenue and an increase in its composite rate per minute-of-use.

⁸³ Global Order Appendix II, Small Company Universal Service Fund Settlement, Appendix A at II.C.4 (Exhibit 1 to VZ St. 1.1) (emphasis added).

6. The D&E Companies Could Have Implemented Their PSI Filings Without Raising Access Rates

Another factor the Commission should consider in determining that this access increase was not just and reasonable is the fact that it was not D&E's only alternative, and that it could have collected the same revenue from end user increases under the terms of its Chapter 30 plans. D&E has not supported its vague assertions that it could not raise its basic rates further or that its rates would not be "affordable" or set at "competitive levels" if they were increased.⁸⁴

The D&E companies' Chapter 30 plans give them fairly wide discretion in designing rate increases. D&E admits that the only limitation under its plan is that it may not increase basic local rates for residential and small business customers by more than \$3.50 per month.⁸⁵ The D&E companies could have recovered the revenue that they allocated to access rates instead through basic exchange rate increases far lower than \$3.50 per month. *Even if one assumed that all of the revenue presently allocated to access increases would instead be allocated to basic rate increases, D&E's rates would increase by \$1.35, Conestoga's by \$1.28, and Buffalo Valleys by \$0.96.*⁸⁶ And of course the companies are free to reconfigure the increases in a different way among noncompetitive rates to reduce the residential increases. Mr. Beurer is incorrect in stating that "the D&E carriers would be forced to increase local service rates to a level in excess of the rate cap (\$18) currently in place."⁸⁷ As Mr. Price demonstrated in the following

⁸⁴ D&E St. 1 (Beurer Dir.) at 17.

⁸⁵ *Id.* at 35.

⁸⁶ VZ St. 1.0 (Price Direct) at 5-7.

⁸⁷ D&E St. 1 (Beurer Direct) at 54.

chart copied from his testimony, two of the companies could allocate all of the increase to basic rates and still be well below the \$18 benchmark:⁸⁸

	Current Average Residential Rate	Increase	New Average Residential Rate
Buffalo Valley	\$14.50	\$0.96	\$15.46
Conestoga	\$14.28	\$1.28	\$15.56
D&E	\$17.51	\$1.35	\$18.86

Accordingly, there is no justification for Conestoga and Buffalo Valley not allocating these increases to end-user rates, as their average residential rates would still remain well below the affordability level. Even though D&E would raise its residential rates by \$0.86 more than the \$18 affordability benchmark if it allocated the increases evenly among all basic service rates, it has not demonstrated that it could not allocate more of the increase to services other than residential exchange or to the lower priced end of its range of residential services (see Beurer Direct at 47) to meet the \$18 level. Moreover, this \$18 affordability level was set by agreement of the parties in July of 2003 – three and one-half years ago – and D&E has not explored whether the Commission would consider raising it to reflect increases in the cost of living and in household income.

Not only does the record show that the companies could raise their retail rates consistent with their plans and this Commission’s affordability benchmark, the companies simply have not backed their bare claim with any facts showing that competitive pressures would prevent them from making these rate increases. As demonstrated by D&E’s response to Verizon I-18 (Exhibit 10 to VZ St. 1.0, Price Direct), D&E’s vague assertion that it could not raise end user rates resulted not from any study

⁸⁸ VZ St. 1.1 (Price Rebuttal) at 17; *see also* D&E Responses to Verizon I-21, I-22 and I-23, calculating the companies’ average weighted residential rates (attached as Exhibit 4 to VZ St. 1.1).

or expert analysis, but simply from “oral conversations” among Mr. Beurer, D&E’s Vice President of Marketing and D&E’s Vice President of Customer Service. It was the “opinion” of these individuals that “since the long distance providers had received substantial benefits in voluntary access reductions since the Global Order while residential customers have had substantial increases in their rates since the Global Order, that some of the previous access reductions should be reversed.” This “opinion” is a far cry from any sort of analysis showing that, due to competitive pressures, the D&E companies could not sustain limited increases to end user rates. Moreover, in response to Verizon I-20, which asked D&E to produce all documents discussing causes other than rate increases that were expected to lead to line losses, D&E produced data that actually refutes Mr. Beurer’s claim that D&E’s line losses have been due largely to competitive pressure from intermodal carriers. In particular, D&E’s own data, which provides an explanation for why its customers disconnected their lines, demonstrates that, of the lines allegedly lost to competition (what D&E terms “direct” losses), nearly half went to other D&E services. For “indirect losses,” (i.e., losses for reasons other than competition), less than 3% were due to customers’ desire to economize by eliminating services, whereas more than one third were due to customers moving out of the companies’ territories.⁸⁹ There is no objective support for the D&E companies’ claim that basic rate increases would “forc[e] more customers from the network” (Beurer Direct at 54). Their own discovery responses flatly contradict any such assertion.

⁸⁹ VZ St. 1.1 (Price Rebuttal) at 22; D&E Response to Verizon I-20 (Exhibit 6 o VZ St. 1.1).

7. The D&E Companies Have Not Demonstrated That Their Previous Access Rates Were Priced Below “Cost”

Another factor that the Commission should consider in its just and reasonable analysis is that the carriers have failed to demonstrate that their existing access rates were below cost. As this Commission held in its December 7 and 8, 2006 orders on reconsideration, the Joint Procedural Stipulation that the Commission approved on July 15, 2003 as a means for the small ILECs to further reduce their access rates without submitting cost studies contained a provision that precludes the small carriers from raising access rates unless they demonstrate that a particular rate element is below cost.⁹⁰ The D&E companies, however, have provided no study of their costs of providing intrastate switched access service, and therefore cannot support a claim that increases are needed to bring those rates above cost. Indeed, they claimed that no such cost data exists.

While the D&E companies have failed to produce any current data on their access costs, the Commission already found in the *Global Order* that “[t]he record accumulated in this proceeding demonstrates that current ILEC access charges are priced substantially above cost.”⁹¹ The Commission reiterated in its December 2001 Order specifically with respect to Denver & Ephrata that its “access rates have been above cost.”⁹² The D&E companies have not refuted these findings with respect to their own access rates and accordingly the Commission can only conclude that their access rates remain substantially above their cost of providing access service.

⁹⁰ D&E 12-8-06 Order (Compendium P-9).

⁹¹ *Global Order* at 18.

⁹² *PUC v. Denver and Ephrata Telephone and Telegraph Co.*, Docket No. R-00016682 (Opinion and Order entered November 30, 2001) at 7 (Attachment 1 to VZ Main Brief).

In an attempt to confuse this issue, the D&E companies concoct an argument that the disbursements that the companies receive via the NECA average schedule process are somehow reflective of the “costs” that intrastate access rates must cover. But this NECA information is irrelevant to the issue of whether D&E’s intrastate access rates are covering their costs of providing access service. First, the NECA process does not purport to be a measure of the D&E companies’ costs, but rather is a “simulation” intended to allocate disbursements.⁹³ Moreover, to the extent the NECA disbursements are based on any data regarding overall operating costs, they are based on average data from a large number of companies and “may be higher than any measure of the costs of the D&E companies.”⁹⁴ Finally, the D&E companies’ share of the NECA settlements is not determinative of what portion of operating costs it would be reasonable to collect from other carriers through access rates. The NECA common line settlement, for example, which Mr. Beurer attempts to rely upon as a check of the reasonableness of its carrier charge, is not funded by implicit subsidies paid by other carriers. Rather, there are several explicit funding sources for the interstate settlements. A primary source is the subscriber line charge (SLC), which is paid by end-users, not other carriers. In addition, the D&E companies receive other funding through various pool mechanisms via the federal Universal Service Fund administered by Universal Service Administrative Company -- an explicit subsidy mechanism -- into which all telecommunications providers pay on a monthly basis. Unlike the intrastate carrier charge, the interstate Carrier Common Line rate element charged to other carriers was phased out years ago and replaced by other explicit mechanisms, including the SLC and High Cost Support

⁹³ VZ St. 1.1 (Price Rebuttal) at 28.

⁹⁴ *Id.* at 30.

Fund. Accordingly, the fact that the D&E companies may receive money from these sources is completely irrelevant to the question of whether their intrastate carrier charges are reasonable.⁹⁵

C. In the Alternative, If The Commission Allows These Access Rate Increases To Stand, It Should Make Corresponding Decreases To The D&E Companies' Draw From The Pa USF

Verizon has requested that -- in the alternative -- if these access increases are allowed to stand the Commission should reduce the D&E carrier's receipts from the PA USF. If the Commission disallows the access increases and maintains the *status quo* regarding D&E's access rates while the rural carrier investigation is stayed -- which is the preferable course of action -- then the Commission need not alter their receipts from the Pa USF. It could also maintain the *status quo* regarding the D&E companies' participation in the PaUSF during the period of the stay. If, however, the Commission allows that *status quo* to be disrupted by allowing D&E to raise its access rates while the substantive examination of the continuing validity and form of the PaUSF is stayed, fairness requires the Commission to reduce the D&E companies' share of the PaUSF.

The PaUSF was created in the *Global Order* to enable the small carriers to reduce their access rates by providing another source of subsidy if the decreases could not be supported by end user rate increases at that time. According to the settlement that created the PaUSF, "[a]ll revenues received from the Fund, after the deduction therefrom of any contribution made by a Fund Recipient to the Fund, shall be used to rebalance, on a revenue neutral basis, the rates/revenues derived from access and/or other services

⁹⁵ *Id.* at 29.

according to the rules set forth herein.”⁹⁶ D&E’s witness acknowledged that the PaUSF is only a “pass-through mechanism” to flow revenue between telephone companies – e.g., from Verizon to D&E.⁹⁷ Through the PaUSF, the D&E companies’ prior switched access reductions are partly funded on a continuing basis by other carriers, including Verizon.⁹⁸

According to information provided by the companies in discovery, the three D&E companies collectively receive [BEGIN PROPRIETARY] [END PROPRIETARY] per year from the Pa USF – which is a bit more than the [BEGIN PROPRIETARY] [END PROPRIETARY] in additional annual revenue they project to receive through the access rate increases that are the subject of this proceeding. By contrast, they pay only [BEGIN PROPRIETARY] [END PROPRIETARY] into the fund. The three companies also receive more than \$7 million in federal universal service funding.⁹⁹

By increasing switched access rates, thereby reversing a portion of the rate reductions previously approved by the Commission for which the D&E companies were already compensated through PaUSF payments, the D&E companies’ actions upset the balance and linkage between the mechanisms established in the *Global Order*. By now increasing intrastate access rates after having already offset prior access decreases with revenue-neutral local service rate increases and PaUSF receipts, the D&E companies are not just reversing direction from prior efforts by the Commission to reduce rural carrier

⁹⁶ Global Order Appendix II, Small Company Universal Service Fund Settlement, Appendix A at II.B (Exhibit 1 to VZ St. 1.1).

⁹⁷ D&E St. 1 (Beurer Direct) at 15.

⁹⁸ Because Verizon PA and Verizon North were not permitted to draw from the USF, no such explicit intercarrier subsidy flow was used to replace the Verizon ILECs’ previous access reductions. VZ St. 1.0 (Price Direct) at 16, n. 14.

⁹⁹ VZ St. 1.0 (Price Direct) at 12, n. 9.

access charges; they are also effectively double-dipping on supposedly lost revenue for which they have already been compensated. In other words, they will effectively be compensated twice for the same rate reduction. Accordingly, if the Commission does not rescind the access increases, it should reduce the companies' receipts from the Pa USF by a corresponding amount.¹⁰⁰

CONCLUSION

For the foregoing reasons, the Commission should rescind and amend its three orders of June 23, 2006 to disallow all of the increases to the D&E companies' switched access rates, and allow the D&E companies to recover the revenue in any other manner that is consistent with their plans. The Commission should further direct that revenues from increases to access charges collected from November 15, 2006 should be refunded as contemplated by the Commission's November 15, 2006 Order, but that the D&E carriers may recover these revenues from other noncompetitive rates consistent with their plans.

¹⁰⁰ If an individual company's Pa USF receipts are less than the new access revenue, then the receipts should simply be reduced to zero, and the company should continue to contribute to the PaUSF, thereby becoming a net contributor.

Date: January 26, 2007



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ATTACHMENT 1

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265

Public Meeting held November 30, 2001

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr., Statement attached
Terrance J. Fitzpatrick

Pennsylvania Public Utility Commission

v.

Denver and Ephrata Telephone & Telegraph Company

Docket Number:

R-00016682

Edward J. Coles	R-00016682C0001
Glen M. Martin	R-00016682C0002
Galen E. Kunkle	R-00016682C0003
Todd Christopher	R-00016682C0004
Susan M. Eshelman	R-00016682C0005
AnnaBell Hartranft	R-00016682C0006
Connie S. Jackson	R-00016682C0007
Barry Christ	R-00016682C0008
George V. Sala, Sr.	R-00016682C0009
John J. Dobosh	R-00016682C0010
Donald Froehlich	R-00016682F0011
James Axmacher	R-00016682C0012
Veronica Myer	R-00016682C0013
Mary Strauser	R-00016682C0014
Dawn & Mark L. Trimble	R-00016682C0015
Thomas Herr	R-00016682C0016
Atle Bjanes	R-00016682C0017
Donna J. Martin	R-00016682C0018
Barbara A. Scheck	R-00016682C0019
Rufus F. Haldeman	R-00016682C0020
Joan R. Keith	R-00016682C0021
Morris M. Sapovits	R-00016682C0022
Nelson R. Glatfelter	R-00016682C0023
Larry Ray Roth	R-00016682C0024
Charles E. Parmer	R-00016682C0025
Phyllis J. Sweigart	R-00016682C0027
Mr. Gary L. Bredbenner	R-00016682C0028

Raymond J. Brobst	R-00016682C0029
Betty Firestine	R-00016682C0030
Timothy S. Blevins	R-00016682C0031
Michael Parmer	R-00016682C0032
Charles Yeager III	R-00016682C0033
Linda M. McInturff	R-00016682C0034
Mary Groff	R-00016682C0035
Joseph H. North	R-00016682C0036
Lori Ludwig	R-00016682C0037
Charles & Erika Ahrens	R-00016682C0038
Central Atlantic Payphone Association	R-00016682C0039
Bobbi Marvel	R-00016682C0040
James E. Davis	R-00016682C0042

v.

D&E Telephone & Telegraph Company

ORDER

BY THE COMMISSION:

On September 28, 2001, Denver and Ephrata Telephone & Telegraph Company ("D&E" or "Company") filed Supplement No. 226 to Local Tariff Telephone PA. P.U.C. No. 15 and Supplement No. 3 to Access Tariff Telephone PA. P.U.C. No. 16, to become effective December 1, 2001, as part of the Company's revenue neutral rate rebalancing filing, pursuant to Chapter 30 of the Pennsylvania Public Utility Code, 66 Pa. c.s. §3001, *et seq.*, and the Company's Alternative Form of Regulation and Network Modernization Plan ("Chapter 30 Plan") that was adopted by the Commission at Docket No. P-00981430 entered January 20, 2000¹.

¹ Petition of Armstrong Telephone Company of Pennsylvania, et al., For Approval of an Alternative and Streamline Form of Regulation Plan and Network Modernization Plan, Docket Nos. P-00981425, et al., Order entered January 20, 2000 ("D&E Ch. 30 Order"), Order on Reconsideration entered on March 30, 2000 ("D&E" Ch. 30 Reconsideration Order"), Order on Compliance entered December 20, 2000 ("D&E Ch. 30 Compliance Filing Order").

The revenue neutral rate rebalancing filing proposes to increase basic local exchange rates \$1.00 for business customers and \$2.50 for residential customers. These local service rate increases will be offset by reducing the per month per line Intrastate Carrier Common Line Charge² from \$6.11 to \$5.61 and to decreasing various elements of its intrastate access charges, which will result in no change to the Company's annual revenues.

The reasons for D&E's revenue neutral rate rebalancing filing are:

- (1) to move access charges closer to the cost to provide access services;
- (2) to reduce subsidies from Access Charges and bring rates closer to the cost of providing the service;
- (3) to provide comparable services to rural customers; and
- (4) to prepare D&E to meet the challenges of competitive entry of other telecommunications providers into its service territory.

D&E mailed the original Customer Notice in July and August 2001, which reflected the increase in local rates to be \$3.50, as allowed in the Chapter 30 Plan. The notification indicated that the Company intended to request that monthly residential and business local service rates be increased by \$3.50 and \$1.00, respectively.

Pursuant to an agreement with the Office of Consumer Advocate ("OCA") on October 9, 2001, D&E modified its initial proposal to file for a \$3.50 per month increase for residential basic local service to an increase of \$2.50 per month. In return for reducing the proposed monthly residential rate increase to \$2.50, the OCA will give notice that its Complaint against D&E's directory assistance rates pending at Docket No.P-00981397 is satisfied as to D&E. Resolution of the OCA's Complaint against D&E in Docket No.

² The Carrier Common Line Charge compensates the Company for the use of its local loops by

P-00981397C0001 will have no effect upon other responding parties in that proceeding.

On October 2, 2001, the Office of Trial Staff ("OTS") filed Comments in which it indicated that it does not oppose the filing at the requested level of residential and business rate increase. (OTS Comments, p 2).

Fifty-one (51) complaints were filed against the proceeding, of which one (1) complainant was not a customer. The Company contacted the individual Complainants to inform them of their obligations and procedures to follow in order to go forward with their complaints. As a result of these contacts, eleven (11) complaints were withdrawn, nine (9) of these complaints were withdrawn prior to being docketed and, as such, were never assigned a docket number. The following docketed Complainants withdrew their Complaints: R-00016682C0026 and R-00016682C0041.

The Central Atlantic Payphone Association ("CAPA") also filed a complaint, docketed at R-00016682C0039, on behalf of its member payphone service providers ("PSPs"), which alleges two concerns. First, CAPA avers that the existing rates of D&E, Supplement No. 190 to Pa P.U.C. Tariff No. 15 are not in compliance with our March 14, 1997 Order in *Petition of the PTA Regarding Payphone Compliance Filing*, Docket No. P-00971166. See Formal Complaint p. 5. CAPA alleges that such rates are infirm as D&E did not submit any cost data to the Commission, or any forward-looking cost data required by the FCC, which could have enabled the Commission to meet its obligation under federal and state law to determine whether D&E's rates were compliant with FCC requirements. (Compliant at p. 6).

Interexchange carriers in the origination and termination of long distance calls.

Second, CAPA references the D&E September 28, 2001 rate rebalancing filing which proposes an increase in its pay telephone service rates by \$1.00 per line per month. (Complaint at 3). the basis of the complaint against the September 28, 2001 filing is CAPA's allegation that the existing rates are "already out of compliance with the FCC's cost-based rates requirements and are not just and reasonable." *Id.*

On consideration of the Formal Complaint of CAPA, we shall dismiss it, Pursuant to Section 703(b) of the Public Utility Code, 66 Pa. C.S. §703(b), the Commission may, "dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest." For many of the reason set forth in D&E's Answer to the Formal Complaint, filed November 9, 2001, we conclude that the existing rates of D&E have been determined by this Commission to be in compliance with the FCC directives set out in *In the Matter of Implementation of the Pay Telecommunications Act of 1996*, CC Docket No. 96-128, et al, *Order and Reconsideration*, para. 163, November 8, 1996. The existing rates of D&E have been determined to be in compliance with and consistent with the discretion afforded the state commissions consistent with FCC requirements. Also, to the extent CAPA's Formal Complaint challenges the existing rates, the *PTA Order* entered March 14, 1997, further approved rates for Pay Telephone Line Services. CAPA sought reconsideration and modification of this Order without any challenge to or allegations that said rates were unjust and unreasonable.

Based on the foregoing, CAPA's Formal Complaint shall be dismissed. We find that our review of the filing of D&E demonstrates that its local exchange service rates are cost based rates.

In its Motion to Dismiss the Formal Complaint, D&E raises defenses of issue preclusion and claim preclusion to bar CAPA from attempting to raise matters on which there has been a final determination on the merits. D&E further

seeks dismissal based on insufficiency as to form and substance, and insufficiency based on the requirements for a complaint against rate-rebalancing that is consistent with its Chapter 30 Plan. In addition to CAPA having to bear the burden of proof concerning a challenge to D&E's existing rates." such challenge should be consistent with the approved Chapter 30 Plan for D&E.

With regard to D&E's challenge that the instant Formal Complaint is insufficient as a complaint against existing rates or against D&E's rate rebalancing proposal, we would agree. CAPA's aggrievement is based on rates which have been approved by this Commission and which have been accepted as the necessary "platform" rates on which D&E's streamlined plan of rate regulation has been approved. 66 Pa. C.S. §3006. To this extent, for CAPA's Formal Complaint to proceed against the proposed September 28, 2001, change would depend on its position that the prior rate under Supplement No. 190 are unjust and unreasonable. Such is not the case as the rate contained in Supplement No. 190 have been determined to be in compliance with federal and state directives concerning paystations. Further, the necessity for expensive cost studies was considered and addressed in the *Global Order*.

We have reviewed the filing for reasonableness and find the proposal to be reasonable and in accord with D&E's Chapter 30 Plan. As further evidence of the reasonableness of the increase, we note the Company's settlement with the OCA that reduced the originally proposed rate increase from \$3.50 to \$2.50 for local service.

We are of the opinion that the Complainants may misunderstand the concept of revenue neutral rate rebalancing. The purpose of revenue neutral rate rebalancing is to bring rates into line with costs. In the past, the Company's access rates have been above cost, and the local rates have been below cost. In the new competitive market place there is a need for companies to move their rates closer

to the cost of providing service, which is the purpose of this filing. D&E's filing begins the process of eliminating the subsidization of local exchange service rates that have been provide by inflated access rates.

D&E's studies demonstrate that their local service rates will remain well below cost, but a \$2.50 increase is a reasonable step in the gradual process that the Company must take to move all of its rates closer to the cost of providing service.

D&E is taking steps under its Network Modernization Plan to enhance its network and to provide advanced services to its customers. Part of the quid pro quo under Chapter 30 in exchange for this network modernization commitment is the ability to adjust its rates in the manner proposed in this filing. Adjustments such as these are necessary to ensure that D&E can maintain the financial viability to continue with network modernization while also facing competitive entry. This filing balances these dual goals of Chapter 30, consistent with the public interest.

CONCLUSION

Upon review, the proposed tariff supplements do not appear to be unlawful, unjust, unreasonable, or contrary to the public interest. However, this does not constitute a determination that the tariff revisions are just, lawful, and reasonable; rather this is a determination that suspension or further investigation does not appear warranted at this time; **THEREFORE,**

IT IS ORDERED:

1. That Supplement No. 226 to Denver and Ephrata Telephone & Telegraph Company's Local Tariff-Telephone PA. P.U.C. No. 15, and Supplement No.3 to Access Tariff-Telephone PA. P.U.C. No. 16 are permitted to

become effective December 1, 2001 in compliance with the Company's Alternative Form of Regulation and Network Modernization Plan.

2. That the Complaints filed by Edward J. Coles at Docket No. R-00016682C0001; Glen M. Martin at Docket No. R-00016682C0002; Galen E. Kunkle at Docket No. R-00016682C0003; Todd Christopher at Docket No. R-00016682C0004; Susan M. Eshelman at Docket No. R-00016682C0005; AnnaBelle Hartranft at Docket No. R-00016682C0006; Connie S. Jackson at Docket No. R-00016682C0007; Barry Christ at Docket No. R-00016682C0008; George V. Sala, Sr. at Docket No. R-0016682C0009; John J. Dobash at Docket No. R-00016682C0010; Donald Froehlich at Docket No. R-00016682C0011; James Axmacher at Docket No. R-00016682C0012; Veronica Myer at Docket No. R-00016682C0013; Mary Strauser at Docket No. R-0016682C00014; Dawn & Mark L. Trimble at Docket No. R-00016682C0015; Thomas Herr at Docket No. R-00016682C0016; Atle Bjanes at Docket No. R-00016682C0017; Donna J. Martin at Docket No. R-00016682C0018; Barbara A. Scheck at Docket No. R-00016682C0019; Rufus F. Haldeman at Docket No. R-00016682C0020; Joan R. Keith at Docket No. R-00016682C0021; Morris M. Sapovits at Docket No. R-00016682C0022; Nelson R. Glafelter at Docket No. R-00016682C0023; Larry Ray Roth at Docket No. R-00016682C0024; Charles E. Parmer at Docket No. R-00016682C0025; Phyllis J. Sweigart at Docket No. R-00016682C0027; Gary L. Bredbenner at Docket No. R-00016682C0028; Raymond J. Brobst at Docket No. R-00016682C0029; Betty Firestine at Docket No. R-00016682C0030; Timothy S. Blevins at Docket No. R-00016682C0031; Michael Parmer at Docket No. R-00016682C0032; Charles Yeager III at Docket No. R-00016682C0033; Linda M McIntuff at Docket No. R-00016682C0034; Mary Groff at Docket No. R-00016682C0035; Joseph H North at Docket No. R-00016682C0036; Lori Ludwig at Docket No. R-00016682C0037; Charles & Erika Ahrens at Docket No. R-00016682C0038; Central Atlantic Payphone Association at Docket No. R-00016682C0039; Bobbi Marvel at Docket No. R-00016682C0040; and James E. Davis at Docket No. R-00016682C0042 are dismissed.

3. That the Secretary's Bureau mark this case closed.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 30, 2001

ORDER ENTERED: November 30, 2001

ATTACHMENT 2

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 25, 2005

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane, Concurring and Dissenting in part
Kim Pizzingrilli
Terrance J. Fitzpatrick, Dissenting

Commonwealth Telephone Company R-00050551
PSI/SPI Filing for Year 2005
Supplement No. 94 to Tariff Telephone Pa. PUC No. 24
Supplement No. 87 to Tariff Telephone PA. PUC No. 23

Petition for Amended Alternative Regulation and P-00961024F1000
Network Modernization Plan of
Commonwealth Telephone Company

Petition for Alternative Regulation and P-00961024
Network Modernization Plan of
Commonwealth Telephone Company

Delegation of Certain Routine, Ministerial M-00970915
And Nonpolicymaking Public Meeting Agenda Items

ORDER

BY THE COMMISSION:

I. BACKGROUND

Before us for disposition are the Commonwealth Telephone Company (CTCo or the Company) annual 2005 Price Stability Index and Service Price Index (PSI/SPI) filing and the associated revenue and proposed tariff rate increases. CTCo's annual 2005 PSI/SPI filing was made under the provisions of the new Chapter 30 law, Act 183 of 2004, P.L. 1398 (66 Pa. C.S. §§3011-3019) (Act 183) and pursuant to the

Company's Alternative Regulation and Network Modernization Plan (Chapter 30 Plan) that this Commission approved at Docket No. P-00961024F1000.¹

CTCo possesses the statutory right under 66 Pa. C.S. §3105(a)(1)(iii) and its approved Chapter 30 Plan to seek and obtain an automatic revenue and rate increase as contemplated by the new Chapter 30 law. Under the Company's Price Stability Plan (PSP), the PSI/SPI calculates the allowable change (increase or decrease) in rates for noncompetitive services based on the annual change in the Gross Domestic Product Price Index (GDP-PI). The PSP also addresses revenue neutral rate rebalancing/restructuring. The PSP set forth in CTCo's Chapter 30 Plan is a complete substitution of the rate base/rate of return regulation. Further, CTCo's Chapter 30 Plan acknowledges that nothing in its Plan shall be construed to limit the requirement under 66 Pa. C.S. §1301 that rates shall be just and reasonable.

Pursuant to a previous Settlement Agreement,² CTCo is prohibited from any increase in its SPI until its banked decreases from prior PSI/SPI filings are retired. In accordance with CTCo's Chapter 30 Plan, banked amounts, including principal and interest, shall be assumed to be retired in 12 equal monthly increments in the future PSI period and interest will accrue on such increments through the end of the month in which the increment is retired.

II. COMPANY FILING AND RATE PROPOSAL

On February 1, 2005, CTCo filed its annual PSI/SPI Price Stability Index (PSI) Report using the change in 2003 and 2004 third quarter GDP-PI that produced a 2.25% increase allowable for noncompetitive rates. On May 3, 2005, CTCo served advance notice of the forthcoming filing upon the Commission, the Office of Small

¹ *Petition for Amended Alternative Regulation and Network Modernization Plan of Commonwealth Telephone Co.*, Docket No. P-00961024F1000 (Order entered March 3, 2005).

² Commission Order adopting the Recommended Decision of Administrative Judge Smolen at P-00032020, P-00961024F0002, P-00961024, and R-00027695, dated July 21, 2003.

Business Advocate, the Office of Consumer Advocate, and the Office of Trial Staff. Notice requirements for end-users were met via billing notices. Fifteen days later, the Company filed proposed tariff supplements seeking to consolidate the Company's existing rate groups from 12 to six and to increase monthly rates for basic dial-tone and nonpublished telephone number service with an effective date of September 1, 2005. No complaints were filed and no hearings were held.

According to CTCO, the retirement of the former banked amount combined with the 2005 PSI/SPI rate changes would result in an annualized revenue increase of \$3.2 million and a new banked amount of \$98,723.

CTCO submitted two tariff supplements affecting specific elements of noncompetitive local service:

- Supplement 87 to Tariff Telephone PA. PUC No. 23 increases the monthly rate for nonpublished telephone number service from \$1.50 to \$2.25 and affects 45,700 end-users.
- Supplement 94 to Telephone Tariff PA. PUC No. 24 consolidates existing local service rate groups from 12 to six and increases the monthly rates, thereby affecting all residential access lines, business access lines and Private Branch Exchange (PBX) trunks.

III. DISCUSSION

A. Procedural Disposition

Chapter 30 annual PSI/SPI filings by incumbent local exchange carriers (ILECs) have previously been disposed of through the issuance of Secretarial Letters. However, due to concerns outlined below, PSI/SPI filings will now be accomplished through Commission action at the Public Meeting.

1. The new Chapter 30 law virtually provides *automatic* revenue and rate *increases* for those ILECs with price stability mechanism (PSM) plans and price cap formulas, where the statutorily mandated inflation offset values have been reduced to 0% or 0.5% depending on the amended network modernization plan option that these ILECs have selected. The *past* practice of issuing Secretarial Letters for annual Chapter 30 ILEC PSI/SPI filings largely addressed revenue and rate *decreases* that were caused by the higher values of the inflation offsets established by the Commission in the respective ILEC PSM and price cap formulas.
2. Automatic revenue and rate increases under the new Chapter 30 law annual ILEC PSI/SPI filings have concrete revenue and rate impacts on end-user consumers. The Commission should disclose these effects in a transparent and adequately documented fashion. The issuance of Secretarial Letters does not accomplish these purposes. Since these filings impact end-user consumers in a substantial fashion, the Commission will publicly rule on these filings at Public Meeting.
3. Although these filings may be uncontested, the allocation of the related revenue increases among the ILECs' categories of services may and will present issues that will be decided by this Commission at a Public Meeting.
4. The new Chapter 30 law annual ILEC PSI/SPI filings will not be separated from other proceedings that are pending before this Commission or the Federal Communications Commission, e.g., intercarrier compensation, intrastate and interstate access charge reform, intrastate and interstate

universal service fund (USF) support, etc.³ The interaction of such policy issues with the ILECs' PSI/SPI filings are better decided at Public Meeting.

5. The disposition of the new Chapter 30 law ILEC PSI/SPI filings will involve issues that link the ILECs' non-competitive services with the services that have been classified as competitive under 66 Pa. C.S. §3016(b), and ILEC "service bundles" that consist of protected, non-competitive, and competitive services that are offered and flexibly priced under 66 Pa. C.S. §3016(e). Such issues are better decided at Public Meeting.

The issuance of Secretarial Letters for the disposition of matters pending before the Commission is inextricably linked with the authority delegation that this Commission has provided to its Staff Bureaus and Offices to dispose of such matters. A review of this Commission's delegation of authority to its Staff Bureaus and Office Directors discloses that the substantial revenue and rate increases that are being implemented through the new Chapter 30 law annual ILEC PSI/SPI filings should be handled through Public Meetings and the issuance of Commission Orders rather than through the issuance of Secretarial Letters.

The original intent of the Commission's delegation of authority to its Staff Bureaus and Office Directors was the reduction of the Public Meeting agenda. The Staff Bureaus and Offices would deal with certain ministerial items not requiring the formal vote of the Commission.⁴ Subsequent actions of the Commission delegating additional authority to the Staff Bureaus and Office Directors specifically focused on routine matters or actions that would not have had negative rate effects on end-user

³ See generally *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105; *In re Developing a Unified Intercarrier Compensation Regime*, (FCC Rel.: March 3, 2005), CC Docket No. 01-92 (Further Notice of Proposed Rulemaking, FCC 05-33).

⁴ *Delegation of Certain Routine, Ministerial and Nonpolicymaking Public Meeting Agenda Items*, Docket No. M-00970915, adopted March 13, 1997, 27 Pa.B. 2220 (May 3, 1997).

consumers of public utility services within the Commonwealth, or constituted uncontested compliance filings in matters previously approved by the Commission after *full evidentiary* adjudications. For example, the related Commission action on July 9, 1998, permitted the Bureau of Fixed Utility Services to dispose of matters pertaining to:

2. Uncontested compliance tariff filings made in response to §1308(d) general rate increases approved by the Commission.

* * *

4. Uncontested local exchange telephone company extended area service filings which have *no rate effect* for the company's intrastate regulated services and *no rate effect* for the end-users of the company's intrastate regulated services.

5. Uncontested local exchange telephone company extended area service filings resulting in rate changes for the company's end-user customers *into preexisting rate structure elements and or bands*, and where the total overall revenue effect is either *neutral* or *decreases* the company's intrastate regulated operations [revenues].

6. Uncontested additions of routes to preexisting and preapproved optional calling plans which have *no* or *de minimis rate and revenue effects*.

Delegation of Additional Routine, Ministerial and Nonpolicymaking Public Meeting Agenda Items, Docket No. M-00970915, adopted July 9, 1998, 28 Pa.B. 3566 (July 25, 1998) (emphasis added).

The new Chapter 30 law annual ILEC PSI/SPI filings do not constitute "compliance filings" and are not encompassed within "pre-existing" authority delegation parameters which may have not been established in the first place for two key reasons.

First, the ILECs' PSI/SPI filings cannot be "compliance filings" since their compatibility with the ILECs' respective new Chapter 30 law Amended Chapter 30 Plans must be adjudicated anew by this Commission each time these filings are made. Furthermore, the Commission still has the statutory mandate, authority, and

responsibility under 66 Pa. C.S. §3019(h) to adjudicate whether the proposed rate changes are just and reasonable and non-discriminatory respectively under sections 1301 and 1304 of the Public Utility Code, 66 Pa. C.S. §§1301 and 1304. This mandate and responsibility is not compatible with the nature of “ministerial acts” that this Commission can easily delegate to one of its Staff Bureaus or Offices.

Second, a “compliance filing” also presupposes a previous evidentiary adjudication of a matter before the Commission that has specified the basic parameters of the “compliance filing.” Naturally, such an adjudication cannot take place in advance for the new Chapter 30 law annual ILEC PSI/SPI filings since neither the changes in the annual GDP-PI index are known in advance, nor have the ILECs themselves decided on how to implement their respective proposed revenue and rate increases until they make these filings with the Commission, i.e., what services will absorb these proposed revenue and rate increases. Thus, these matters are not of a “routine ministerial” nature that can be disposed of through delegation of authority to a Staff Bureau or Office and the issuance of summary Secretarial Letters.

The Commission conducts full evidentiary adjudications and decides via Public Meeting votes on the rate increase requests by water and wastewater utilities amounting to a few thousand dollars. Accordingly, ILEC requests under the new Chapter 30 law for multimillion dollar revenue and rate increases should be processed with the same degree of transparency.

B. SUBSTANTIVE COMPLIANCE

1. Banked Revenues

The new Chapter 30 law annual ILEC PSI/SPI submissions must conform to their corresponding Commission-approved Amended Chapter 30 Plans. The instant Commonwealth PSI/SPI filing contains the disposition of past PSM accumulated revenue decreases that have been “banked” by the Company. CTC’s 2003 and 2004 “banked” revenue decreases were carried forward and are being retired through the

present PSI/SPI filing. The retirement of these “banked” decreases is carried out in the Company’s present PSI/SPI filing purportedly in compliance with a related settlement that this Commission approved at Docket No. P-00032020, *et al.*⁵

Based on our review, some confusion exists relating to the Company’s presentation of the retirement of the banked principal and interest from 2003 and 2004. While the Company’s calculation appears to be correct, the presentation in the instant filing was unclear, because the banked amount from the years 2003-2004 to be carried forward to the 2005 filing was not clearly identified. CTCo is directed to work with Bureau of Fixed Utility Services to clarify and re-file its Exhibit 3 (from its original filing) to resolve this confusion.

2. Rate Group Restructuring

The present Commonwealth PSI/SPI submission does not simply implement a PSM revenue and rate increase; it also includes the restructuring of basic local exchange service rates. The Company in its current filing is consolidating its 12 basic local exchange service dial-tone line groups to six. According to the Company’s Amended Chapter 30 Plan, in the event that the Company proceeds with a “rate rebalancing and restructuring,” the “Company shall provide cost studies of each service for which a rate change is proposed at the time of the filing where such rate change is proposed.” CTCo, Chapter 30 Plan, Part B.3. Although the proposed rate increases may be compatible with other provisions of the Company’s Amended Chapter 30 Plan relating to rate increase limitations (Amended Chapter 30 Plan, Part B.1 (a)), the submission of the cost studies as specified in the Amended NMP has not been made.

3. Nonpublished Telephone Number Service

⁵ *Petition of Commonwealth Telephone Company For Recognition of an Exogenous Event Under Its Alternative Regulation Plan, et al.*, Docket Nos. P-00032020, P-00961024F0002, P-00961024, R-00027695 (Order entered July 21, 2003).

The Company is proposing a 50% rate increase in the rate element for non-published directory numbers of residential and business customers from \$1.50 per month to \$2.25 per month. The use of nonpublished directory numbers is often linked with such issues as the protection of personal privacy, domestic abuse situations, public safety agency interests and operations, etc. Under the new Chapter 30 law, the Commission retains jurisdiction over “quality of service standards” that address the “privacy of telecommunications services.” 66 Pa. C.S. §3019(b)(2). There has not been an adequate justification presented on whether a 50% proposed rate increase for nonpublished directory numbers is in the public interest and whether it will negatively affect the ability of those CTCo residential and business customers to protect their privacy for legitimate reasons. Furthermore, since the Company did not submit any cost studies with its filing, the Commission cannot ascertain whether this particular rate element will now be providing a higher residual profit to the Company’s operations at its new monthly level. For this reason, this proposed increase for the nonpublished directory numbers is not adequately supported and is contrary to the above-referenced public interest considerations; **THEREFORE,**

IT IS ORDERED:

1. That the new Chapter 30 law annual ILEC PSI/SPI filings with revenue and rate increases that are made under the provisions of 66 Pa. C.S. §3015, be presented to the Commission for disposition at the Commission’s Public Meeting.
2. That the proposed revenue and rate increase proposed by Commonwealth Telephone Company through the consolidation of its 12 basic local exchange service dial-tone line groups to six be permitted to go into effect as filed.
3. That the Company submit a revised Exhibit 3 (from its original filing) within 30 days of the entry date of this Order.

4. That the Company's failure to file any cost studies associated with its rate rebalancing and restructuring proposals is not in compliance with its Amended Chapter 30 Plan.

5. That the Company's 2005 PSI/PSM filing is in partial compliance with its Commission-approved Amended Chapter 30 Plan.

6. That the Company be given the alternative to either "bank" the proposed revenue increase associated with the nonpublished telephone number service or, alternatively, allocate the proposed revenue increase amount associated with the nonpublished telephone number service to the basic local exchange services and rate elements that are the subject of Moving Paragraph No. 2 in accordance with the applicable provisions of the Company's Amended Chapter 30 Plan, and that the Company provide the appropriate notification to the Commission within ten (10) days after the date of entry of the Commission's Order disposing of this matter. In the event that the Company does not accept either alternative, the proposed revenue and rate increase for nonpublished telephone number service will be suspended and investigated for a period not to exceed six months on whether it is just and reasonable under 66 Pa. C.S. §1301, whether it negatively impacts the privacy protection interests of the Company's end-users, and whether it complies with the Company's Commission-approved Amended Chapter 30 Plan.

7. That the Company file the appropriate modified tariff supplements to become effective on one day's notice in accordance with the above-referenced ordering paragraphs.

8. That the Commission Order in this matter be published in the *Pennsylvania Bulletin*.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 25, 2005

ORDER ENTERED: August 31, 2005