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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,

DOCUMENT KJR  
FOLDER

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

Michael L. Swindler

cc: Certificate of Service (w/enclosure)

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

**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.<sup>1</sup>

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.<sup>2</sup> In the alternative and under

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<sup>1</sup>See Verizon Answer at 2.

<sup>2</sup>Although 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 Duguesne 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...."<sup>3</sup> 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.

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<sup>2</sup>(...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.

<sup>3</sup>Verizon Answer at 2.

7. Verizon further argues that the D&E carriers misstate the Duick standard in their PFR.<sup>4</sup> To the contrary, the Companies directly quote from the Commission's Duick decision.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup> 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

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<sup>4</sup>Verizon Answer at 3.

<sup>5</sup>See D&E PFR at 6.

<sup>6</sup>Verizon Answer at 3.

<sup>7</sup>PFR 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."<sup>8</sup> 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."<sup>9</sup> This testimony was simply overlooked in the July 11, 2007 Order justifying reconsideration under the Quick 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

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<sup>8</sup>Verizon Answer at 3.

<sup>9</sup>D&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 reductions<sup>10</sup> and there is "no mechanism" for additional USF funding.<sup>11</sup> 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.<sup>12</sup> The plan was ultimately approved in the Global Order subject to modifications.<sup>13</sup>

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<sup>10</sup>Verizon Answer at 9.

<sup>11</sup>Verizon Answer at 10.

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

<sup>13</sup>Id. 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**"<sup>14</sup> (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."<sup>15</sup> 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

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

<sup>15</sup>In 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."<sup>16</sup>

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."<sup>17</sup> 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,<sup>18</sup> adopted a Joint Procedural Stipulation sponsored by Verizon, the Rural Telephone Company Coalition and others, that continued the PaUSF beyond

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<sup>16</sup>See Global Order at 49.

<sup>17</sup>Global Order at 201.

<sup>18</sup>Access 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.<sup>19</sup> 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."<sup>20</sup> 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.<sup>21</sup>

### 3. D&E Carriers Amended Chapter 30 Plans

16. Following the implementation of Act 183,<sup>22</sup> 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.<sup>23</sup> 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

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<sup>19</sup>See Access Charge Order at Attachment A at 18.

<sup>20</sup>Id.

<sup>21</sup>In 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.

<sup>22</sup>66 Pa.C.S. §3011-3019.

<sup>23</sup>Petition 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**."<sup>24</sup> 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

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<sup>24</sup>Verizon 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."<sup>25</sup> 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:

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<sup>25</sup>Verizon 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.<sup>26</sup> 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."<sup>27</sup> 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.

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<sup>26</sup>Id. at 9-10.

<sup>27</sup>Id. 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



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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

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CERTIFICATE OF SERVICE

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I hereby certify that I have this 17<sup>th</sup> 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**

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---

Michael L. Swindler



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

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(717) 783-5048  
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IRWINA. POPOWSKY  
Consumer Advocate

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

August 23, 2007

2007 AUG 23 PM 4:03  
SECRETARY OF STATE

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

DOCKETED  
SEP 29 2007

In 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:

The Office of Consumer Advocate is in receipt of the August 8, 2007 Answer of Verizon Communications, Inc. that was filed in response to the Petition for Reconsideration filed by the D&E Companies on July 26, 2007 in the above-referenced proceeding. In light of the new matter raised by Verizon in their Answer, the OCA hereby files this letter in reply to Verizon's Answer pursuant to Section 5.63 of the Commission's regulations.

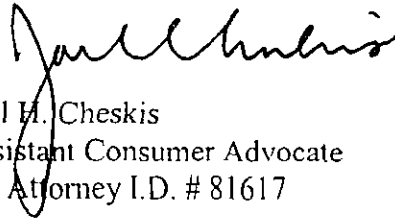
The OCA submits that the Commission should deny in its entirety Verizon's Answer dated August 8, 2007. The OCA fully supports the Reply to Verizon's Answer submitted by the D&E Companies dated August 17, 2007. Furthermore, the OCA continues to support its Answer to the D&E Companies' Petition for Reconsideration dated August 6, 2007.

DOCUMENT  
FOLDER

Page 2

Thank you for your attention to this matter. Please contact me if you have any questions or comments.

Sincerely,



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

Enclosures

cc: All parties of record  
Honorable Susan D. Colwell  
Cheryl Walker Davis/OSA

\*95328

CERTIFICATE OF SERVICE

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, the Office of Consumer Advocate's Letter, 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 23rd day of August, 2007.

SERVICE BY INTER-OFFICE MAIL

Robert V. Eckenrod, Esq.  
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Commonwealth Keystone Bldg.  
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Harrisburg, PA 17120


SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

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\*95036

COMMONWEALTH OF PENNSYLVANIA



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2007 DEC 27 PM 3: 16

PA PUC  
SECRETARY'S BUREAU

OFFICE OF SMALL BUSINESS ADVOCATE  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, Pennsylvania 17101

DOCUMENT  
FOLDER

William R. Lloyd, Jr.  
Small Business Advocate

December 27, 2007

(717) 783-2525  
(717) 783-2831 (FAX)

**HAND DELIVERED**

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

ORIGINAL

**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 & Telegraph Company  
Docket Nos. P-00981429F1000 and R-00061376**

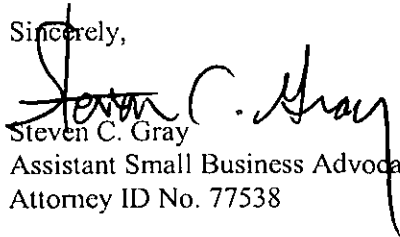
**2006 Annual Price Stability Index/Service Price Index Filing of  
Denver & Ephrata Telephone & Telegraph Company  
Docket Nos. P-00981430F1000 and R-00061377**

Dear Secretary McNulty:

Enclosed for filing are the original and three copies of the Answer of the Office of Small Business Advocate to the Office of Consumer Advocate's Petition for Reconsideration 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: Cheryl Walker Davis  
Office of Special Assistants

B1777  
L-1470

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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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

**OFFICE OF SMALL BUSINESS ADVOCATE'S  
ANSWER TO THE PETITION FOR RECONSIDERATION  
OF THE OFFICE OF CONSUMER ADVOCATE**

DOCUMENT  
FOLDER

Pursuant to 52 Pa. Code § 5.572(e), the Office of Small Business Advocate ("OSBA") submits this Answer to the Petition for Reconsideration of the Office of Consumer Advocate ("*Petition*") that was filed by the Office of Consumer Advocate ("OCA") with the Pennsylvania Public Utility Commission ("Commission") on December 17, 2007.

The OCA did not follow the requirements of 52 Pa. Code § 5.572(a), whereby petitions for reconsideration are to be pleaded in numbered paragraphs. Instead, the OCA essentially submitted its *Petition* in the form of a brief. Therefore, the OSBA's Answer is in a format comparable to the OCA's *Petition*.

**I. Statement of the Case**

In its December 7, 2007, Order in this proceeding ("*December Order*"), the Commission essentially decided that for rural incumbent local exchange carriers ("ILECs"), the residential local exchange service rate cap of \$18 applies only in the

context of rate rebalancing following a change in access charges. *See December Order*, at 30-32. Therefore, once the Commission determined that the rural ILEC had performed its annual price stability mechanism (“PSM”) calculations correctly, the Commission permitted the rural ILEC to allocate its increase in noncompetitive service revenue to the residential local exchange service, thereby taking the new rate above \$18. *December Order*, at 41-42, Ordering Paragraph 4. The Commission did hedge its determination by stating that “we hereby, to the extent necessary, grant such a waiver and permit [the rural ILEC] to increase its local rates beyond the current benchmark/rate caps.” *Id.*

The OCA *Petition* argued that the \$18 residential local exchange rate cap applies both when rates are being raised because of an access charge reduction and when rates are being raised because of an annual PSM filing. Furthermore, the OCA argued that the \$18 cap has been codified by the new Chapter 30 law, Act 183 of 2004 (66 Pa. C.S. §§ 3011-3019). Therefore, according to the OCA, the Commission can not pierce that rate cap without notice and a hearing. *Petition*, at 1-2.

## **II. Responses to the *Petition*’s Unnumbered Paragraphs**

### **A. The Rural Settlement**

In its *Petition*, the OCA argued that the basis for the \$18 cap on residential local exchange rates “was established by the Commission when approving the Rural Access Settlement.” *Petition*, at 4. In its *December Order*, the Commission summarized its view of the history of the \$18 cap as follows:

In January 2002, this Commission opened a proceeding to accommodate the access charge investigation required by the *Global Order*. *See* Docket No. M-00021596. This proceeding was conducted in the form of a collaborative proceeding. As noted in our July 11, 2007 Order, the proceeding required by the *Global Order* resulted in a

Commission-accepted stipulation/settlement, of rural carriers that, *inter alia*, increased the weighted average cap of those ILECs with a \$16.00 per month rate as of December 31, 2003, to \$18.00 per month for a minimum three year period, from January 1, 2004 through December 31, 2006. See Order entered July 15, 2003, at Docket No. M-00021596.

*December Order*, at 5.

In the stipulation/settlement to which the *December Order* referred, paragraph 5 under the section labeled “Conditions of Proposal” stated:

Increases to weighted average business rates on a dollar basis will be less than or equal to the increases to weighted average residential rates on a dollar basis.

*Access Charge Investigation per Global Order of September 30, 1999*, Docket No. M-00021596 (Order entered July 15, 2003), at 20.

Therefore, as long as the residential local exchange rate cap set forth in the Rural Access Settlement exists, so too does the business local exchange rate cap.

**B. The Nonrural Residential Rate Cap**

The new Chapter 30 law added a new protection for the residential customers of nonrural ILECs when rates are increased because of an annual PSM filing. Specifically, new Chapter 30 states:

Where annual rate adjustments made under a nonrural telecommunications carrier’s price stability mechanism are calculated using revenues from protected services, an average rate adjustment for protected residential customer local exchange telecommunications service lines shall be determined by dividing the total protected service revenues associated with such lines, as adjusted by the price stability formula, by the number of such lines, and the rate adjustment for any individual line shall not vary from this average rate adjustment by more than 20%.

66 Pa. C.S. § 3015(a)(3).

The statutory language of Section 3015(a)(3) is new; there was no comparable language in the old Chapter 30 imposing a cap on increases to residential local exchange rates when rates are being raised due to an annual PSM noncompetitive service revenue increase for a *nonrural* ILEC. Furthermore, new Chapter 30 does not include any comparable language imposing a cap on increases to residential local exchange rates due to an annual PSM increase for a *rural* ILEC.

Sections 3015(g) and 3019(h) of the Public Utility Code, 66 Pa. C.S. §§ 3015(g) and 3019(h), prohibit unjust, unreasonable, or discriminatory rates. Those protections are discussed in *Commonwealth Telephone Company PSI/SPI Filing for Year 2005*, Docket No. R-00050551 (Order entered August 31, 2005), wherein the Commission stated:

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.

*Commonwealth Telephone*, at 2. The Commission concluded:

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.

*Commonwealth Telephone*, at 7.

As set forth above, the legislature has chosen to place a cap on increases to residential local exchange rates due to an annual PSM increase for nonrural ILECs. If, however, the Commission were to rule that an \$18 cap does exist for increases to residential local exchange rates due to an annual PSM increase for rural ILECs, the Commission would be writing into new Chapter 30 a protection for rural residential rates

that the legislature explicitly provided for only nonrural residential rates.

Furthermore, if the Commission were to rule that there is a cap on increases to rural residential local exchange rates due to PSM increases, but that there is no similar cap on increases to rural business local exchange rates, the net effect would be to make rural business customers the “payor of last resort” for all annual PSM increases.

For example, consider a hypothetical rural ILEC, Acme Telephone. Acme submits its annual 2008 PSM Filing to the Commission, and demonstrates that it should be allowed to recover additional noncompetitive service revenue. From the *December Order*, Acme knows two things: it can not raise access charges to recover any of its noncompetitive service revenue increase; and it can not recover any increases to the residential local exchange rates above \$18 from the Universal Service Fund (“USF”).<sup>1</sup> If there is no rural residential rate cap of \$18.00, Acme may move its residential rates above \$18.00 to recover part of its overall noncompetitive service revenue increase. For purposes of this hypothetical, assume that Acme would have raised its residential local exchange rates to \$21.00. However, if the Commission rules that there *is* a rural residential rate cap of \$18.00, Acme can only increase the residential local exchange rates up to \$18.00. Acme will now have to find a way of recovering the remaining \$3.00 (*i.e.*, \$21.00 - \$18.00) of noncompetitive service revenue from a protected service *other than* residential rates – and Acme’s choices are limited. Essentially, Acme will be able to: bank the noncompetitive service increase; place the increase on other “boutique” noncompetitive services; or, the most likely scenario, further increase the business local exchange rates. For any rural ILEC facing this choice, the resulting steep annual local

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<sup>1</sup> See *December Order*, at 35. In its *Petition*, the OCA argued that the USF should be used “to support the goal of maintaining reasonable and affordable basic service rates for rural telephone customers.” *Petition*, at 2.

exchange rate increases for rural businesses would run afoul of the Chapter 30 policy declaration that customers should “pay only reasonable charges for protected services.” 66 Pa. C.S. § 3011(3). Furthermore, such discriminatory treatment of business customers would not result in just and reasonable rates.

**C. Access Charges**

In this proceeding, the Commission previously ruled that no part of the annual noncompetitive service revenue increases permitted under an ILEC’s Chapter 30 plan may be placed upon access charges. *See December Order*, at 7-8. However, in its *Petition*, the OCA correctly observed that “there is nothing in Act 183 that prohibits reasonable increases in access rates.” *Petition*, at 2.

Allowing the allocation of a part of the annual PSM increase to access charges is particularly important to the business customers of nonrural ILECs because of the residential rate cap imposed by Section 3015(a)(3). Specifically, Section 3015(a)(3) will limit the increases to residential local exchange rates when rates are being raised due to an annual PSM noncompetitive service revenue increase for a nonrural ILEC. If no part of the PSM revenue increase is allocated to access charges, the Section 3015(a)(3) rate cap will then operate to limit the amount of the annual PSM increase imposed on residential customers to less than the actual residential share of the PSM increase. In other words, the residential share of the PSM increase is calculated by applying the PSM inflation rate to the sum of the total residential local exchange revenue *and* the total residential access revenue. Section 3015(a)(3), however, operates to prevent residential local exchange rates from absorbing any increases due to the access charge portion of the base calculation. Because the nonrural ILECs are allowed to recover the revenue

increase caused by including access charge revenue in the base, they will have to recover this shortfall by assigning rate increases to other noncompetitive services, including business local exchange rates. As a result, nonrural ILEC business customers will become the “the payors of last resort” for all noncompetitive service rate increases, including those increases associated with access charges. That is not a fair, just, or reasonable result.

Business customers of rural ILECs will face the same unjust and discriminatory result (*i.e.*, becoming “the payors of last resort”) if the Commission finds: 1) that the \$18 cap on rural residential local exchange rates exists while the cap on rural business rates has expired; or 2) that the \$18 cap applies to PSM increases on residential customers but that no cap applies to PSM increases on business customers. Therefore, the Commission should order that the residential and business local exchange rate caps be treated in the same manner: either both apply to annual PSM increases, both are inapplicable to annual PSM increases, or both have expired. In addition, the Commission could diffuse the annual rate shock from the rural ILECs’ PSM increases by accepting the OCA’s argument that a portion of those increases may be placed upon access charges.

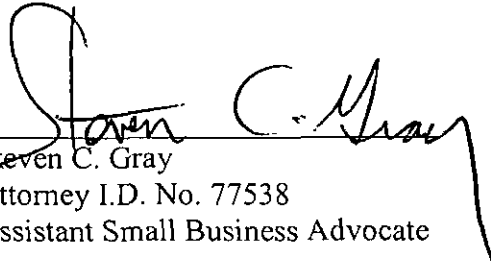
### III. Conclusion

Therefore, the Office of Small Business Advocate respectfully requests that:

1) If the Commission finds that the residential local exchange rate cap remains in effect, the Commission affirm that the business local exchange rate cap also remains in effect for the same period of time; or

2) If the Commission finds that the record before it is insufficiently developed, the Commission remand the issue of the residential and business local exchange rate caps to the Office of Administrative Law Judge for further proceedings.

Respectfully submitted,



Steven C. Gray  
Attorney I.D. No. 77538  
Assistant Small Business Advocate

For:

William R. Lloyd, Jr.  
Attorney I.D. No. 16452  
Small Business Advocate

Office of Small Business Advocate  
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(717) 783-2525  
(717) 783-2831

Dated: December 27, 2007

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S BUREAU

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

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies each of the Answer of the Office of Small Business Advocate to the Office of Consumer Advocate's Petition for Reconsideration, by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

Hon. Susan D. Colwell  
Administrative Law Judge  
Pa. Public Utility Commission  
P.O. Box 3265  
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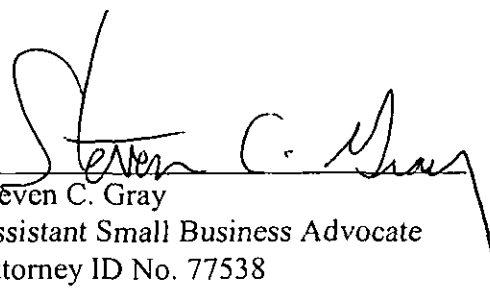
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**(First class mail only)**

Jeffrey A. Rackow, Esquire  
Verizon Communications, Inc.  
1515 N. Courthouse Road - #500  
Arlington, VA 22201  
**(First class mail only)**

Date: December 27, 2007

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

Suzan DeBusk Paiva  
Assistant General Counsel

Assistant General Counsel

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1717 Arch Street, Floor 10  
Philadelphia, PA 19103

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, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**RECEIVED**

DEC 31 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**

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

Via E-Mail and UPS Delivery

cc: The Honorable Susan Colwell  
Robert Marinko  
Cheryl Walker Davis  
Certificate of Service

L 1649

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

2006 Annual Price Stability Index/	:	
Service Price Index filing of Buffalo	:	P-00981428F1000
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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 companies<sup>1</sup> 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's<sup>2</sup> 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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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

<sup>1</sup> 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.

<sup>2</sup> 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).<sup>3</sup>

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.<sup>4</sup> 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.

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<sup>3</sup> 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).

<sup>4</sup> *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” 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 26).  
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.<sup>5</sup>

*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

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<sup>5</sup> 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 DEB 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.<sup>6</sup>

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

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<sup>6</sup> 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.<sup>7</sup>

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."<sup>8</sup> 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).<sup>9</sup> D&E could avoid the payment of interest by making the refunds now, without waiting for the Commission's disposition of OCA's PFR.

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<sup>7</sup> 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.

<sup>8</sup> 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).

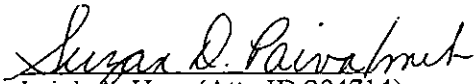
<sup>9</sup> Verizon does not waive the right to seek to compel D&E to provide the refund prior to disposition of OCA's PFR.

**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,



Leigh A. Hyer (Atty ID 204714)  
Suzan DeBusk Paiva (Atty ID 53853)  
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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 31<sup>st</sup> day of December, 2007.


**VIA E-MAIL AND UPS OVERNIGHT DELIVERY**

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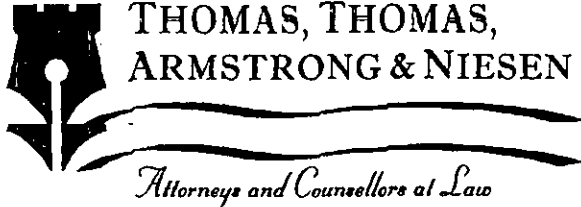
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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

# **EXHIBIT A**

**RECEIVED**

DEC 31 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU



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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. Paiva



**THOMAS, LONG,  
NIESEN & KENNARD**

*Attorneys and Counsellors at Law*

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PA P.U.C.  
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September 16, 2008

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

**DOCUMENT  
FOLDER**

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:

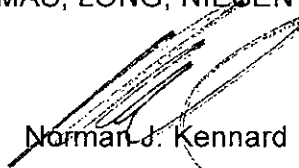
Enclosed please find an original and three (3) copies of the executed signature page  
of Appendix A (Affidavit of Leonard J. Beurer) to the Joint Petition to Rescind and/or Amend  
Prior Commission Orders, a scanned copy of which was attached to yesterday's filing.

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

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:



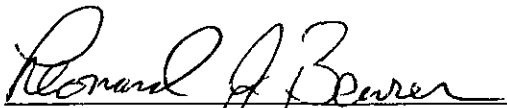
Norman J. Kennard

Enclosures

In short, the proposed resolution of this proceeding achieves a reasonable balance by providing the D&E Carriers with the opportunity to achieve much needed additional revenues necessary to offset the costs incurred in carrying out their accelerated Chapter 30 commitments, while maintaining a respite for local service customers who have incurred numerous increases in their rates. The proposal recognizes that, given the aggressive access rate reductions during this same time frame, a small step to bring local switching and tandem switching access rates up to levels at parity with interstate is just and reasonable.

Dated at 15, Pennsylvania this 15 day of September, \_\_ 2008.

Ephrata, Pa.

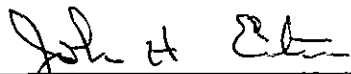
  
Leonard J. Beurer

Commonwealth of Pennsylvania  
County of LANCASTER

Leonard J Beurer

On this 15 day of September, \_\_ 2008, personally appeared \_\_\_\_\_, and made oath that the foregoing instrument, subscribed by him is true.

Before me,

  
Notary Public

My Commission Expires: \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
John H. Eitner, Notary Public  
Ephrata Boro, Lancaster County  
My Commission Expires June 28, 2011  
Member, Pennsylvania Association of Notaries

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 16<sup>th</sup> day of September, served a true and correct copy of the foregoing letter upon the persons and in the manner listed below:

**FIRST CLASS MAIL**

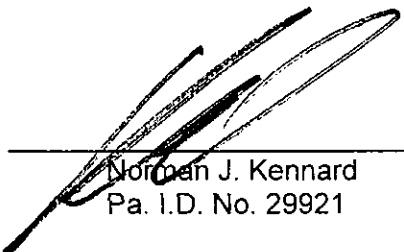
Robert V. Eckenrod, Esquire  
Office of Trial Staff  
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P.O. Box 3265  
Harrisburg, PA 17105-3265

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

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

Joel H. Cheskis, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

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



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Norman J. Kennard  
Pa. I.D. No. 29921

ORIGINAL

PAINTER LAW FIRM, PLLC  
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DOCUMENT  
FOLDER

MICHELLE PAINTER  
ATTORNEY AT LAW

703.201.8378  
FAX 703.968.5938  
E-mail: painterlawfirm@verizon.net

September 29, 2008

*Via Overnight Delivery*

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

RECEIVED

SEP 29 2008

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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 Mr. McNulty:

Please find enclosed an original and three (3) copies of the Petition to Intervene of AT&T in the  
above-referenced matters.

Please also find enclosed a proof of filing copy that I ask you to date stamp and return to me in  
the enclosed self-addressed postage pre-paid envelope.

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

Very truly yours,

  
Michelle Painter

cc: Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the Petition to Intervene of AT&T 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 Fairfax, Virginia, this 29th day of September 2008.

**VIA E-MAIL AND FIRST CLASS MAIL**

Norman J. Kennard, Esquire  
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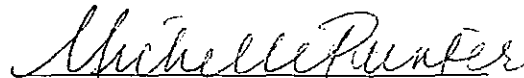
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(717) 783-2525  
[sgray@state.pa.us](mailto:sgray@state.pa.us)

**RECEIVED**

SEP 29 2008

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

  
Michelle Painter

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access	)	
Charges and IntraLATA Toll Rates of	)	Docket No. 1-00040105
Rural Carriers and the Pennsylvania	)	
Universal Service Fund	)	
	)	
2006 Annual Price Stability Index/	)	
Service Price Index Filing of	)	Docket Nos.: P-00981428F1000
Buffalo Valley Telephone Company	)	R-00061375
	)	
2006 Annual Price Stability Index/	)	
Service Price Index Filing of Conestoga	)	Docket Nos.: P-00981429F1000
Telephone & Telegraph Company	)	R-00061376
	)	
2006 Annual Price Stability Index/	)	
Service Price Index Filing of Denver &	)	Docket Nos.: P-00981430F1000
Ephrata Telephone & Telegraph Company	)	R-00061377

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**PETITION TO INTERVENE OF AT&T**

AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, Inc. and TCG New Jersey, Inc. (collectively "AT&T") hereby move to intervene in the above-captioned proceedings pursuant to 52 Pa. Code § 5.71 et seq.

AT&T and the TCG entities are interexchange carriers ("IXCs") and are large customers of the D&E carriers.<sup>1</sup> Specifically, AT&T pays access charges to the D&E companies whenever an AT&T long distance customer originates or terminates a call through a D&E company's local customer. Therefore, AT&T is directly impacted by the D&E/OCA Joint Petition and the D&E companies' attempts to require AT&T to fund the D&E companies' broadband deployment by

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<sup>1</sup> The D&E carriers consist of Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company and Denver and Ephrata Telephone and Telegraph Company.

increasing D&E's intrastate access rates, thereby reversing this Commission's prior orders.<sup>2</sup>

AT&T is also a competitor with D&E as the D&E companies and their affiliates provide IXC services to their customers.

For the reasons more fully stated in AT&T's Answer to the D&E/OCA Joint Petition, AT&T and its customers would be negatively impacted if the Commission were to grant the D&E/OCA Joint Petition. If the D&E/OCA Joint Petition were granted, AT&T would be harmed by being forced to subsidize the D&E companies' broadband deployment, by the Commission reversing its policy of the past ten years to reduce or eliminate implicit subsidies, and by the failure to adhere to the policy of the legislature and the letter of the law.

AT&T is already an active participant in the portion of the case involving rate caps and universal service funding at Docket No. I-00040105. However, to the extent AT&T needs to be a formal party of the remaining dockets, AT&T respectfully requests that the Commission grant this Petition to Intervene in those dockets. For all of the reasons stated herein and in AT&T's Answer to the D&E/OCA Joint Petition, AT&T has a direct and substantial interest in the subject matter of the D&E/OCA Joint Petition, and AT&T should therefore be permitted to intervene as an active party.

AT&T's counsel in this case is as follows:

Michelle Painter  
Painter Law Firm, PLLC  
13017 Dunhill Drive  
Fairfax, VA 22030  
Phone – (703) 201-8378  
Fax – (703) 968-5936  
E-mail – painterlawfirm@verizon.net

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<sup>2</sup> Although the D&E/OCA Joint Petition does not mention that it is requesting for this Commission to reverse its April 24, 2008 Order at Docket No. I-00040105, any Commission decision to increase access rates during a stay of the generic access investigation would result in a modification of the Commission's ruling that access rates will not

Mark A. Keffer  
AT&T  
3033 Chain Bridge Road  
Oakton, VA 22185  
Phone – (703) 691-6046  
E-mail – mkeffer@att.com

WHEREFORE, AT&T respectfully requests that the Commission grant AT&T's Petition to Intervene in this matter.

Respectfully submitted,



Michelle Painter, Esq  
PA Bar ID #91760  
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Fairfax, VA 22030  
Phone – (703) 201-8378  
Fax – (703) 968-5936  
E-mail – painterlawfirm@verizon.net

Counsel for AT&T

Date: September 29, 2008

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be increased absent a showing of extraordinary circumstances. See April 24, 2008 Order at Ordering Paragraph 10. AT&T is already an active party in the 1-00040105 docket.