PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

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Public Meeting held November 18, 1999

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Petition of the following Companies For Approval of an
Alternative and Streamlined Form of Regulation
Plan and Network Modernization Plan:

Armstrong Telephone Company-Pennsylvania	P-00981425
Armstrong Telephone Company-North	P-00981426
The Bentleyville Telephone Company	P-00981427
Buffalo Valley Telephone Company	P-00981428
Conestoga Telephone and Telegraph Company	P-00981429
Denver and Ephrata Telephone and Telegraph Company	P-00981430
Hickory Telephone Company	P-00981431
Lackawaxen Telephone Company	P-00981432
Laurel Highland Telephone Company	P-00981433
Marianna & Scenery Hill Telephone Company	P-00981434
The North-Eastern Pennsylvania Telephone Company	P-00981435
North Penn Telephone Company	P-00981436
North Pittsburgh Telephone Company	P-00981437
Palmerton Telephone Company	P-00981438
Pennsylvania Telephone Company	P-00981439
Pymatuning Independent Telephone Company	P-00981440
South Canaan Telephone Company	P-00981441
Venus Telephone Corporation	P-00981442
Yukon Waltz Telephone Company	P-00981443

Office of Consumer Advocate C-00981623
v. North Pittsburgh Telephone Company

Office of Consumer Advocate C-00981676
v. Denver & Ephrata Telephone & Telegraph Company

OPINION AND ORDER

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BY THE COMMISSION:

Before the Commission for consideration is the Recommended Decision of Chief Administrative Law Judge Robert A. Christianson (Chief ALJ) and Administrative Law Judges (ALJs) Louis G. Cocheres and Larry Gesoff, which was issued on October 13, 1999, and the Exceptions and Reply Exceptions filed by the Parties thereto.

I. History of the Proceeding

On July 31, 1998, the Pennsylvania Telephone Association Small Company Group (SCG) filed a Petition for Approval of Alternative and Streamlined Form of Regulation and Network Modernization Plans (Petition), pursuant to Chapter 30 of the Public Utility Code (Code), 66 Pa. C.S. §§3001, *et seq.* This Petition requested approval of the SCG Alternative and Streamlined Regulation Plan (Plan), consisting of the following components: (1) Network Modernization Plans (NMPs), set forth in Appendix 2 of SCG Exhibit (Exh.) 1; (2) a Competitive Services Deregulation Plan (CSP); a Price Stability Plan (PSP) for noncompetitive services, consisting of Plan A and Plan B; (4) Additional Commitments and Other Terms, including ongoing regulatory and reporting requirements; and (5) a Glossary of Terms.

The members of the SCG are: Armstrong Telephone Company - Pennsylvania (Armstrong - Pa.), Armstrong Telephone Company - North (Armstrong - North), The Bentleyville Telephone Company (Bentleyville), Buffalo Valley Telephone Company (Buffalo Valley), Conestoga Telephone and Telegraph Company (Conestoga), Denver & Ephrata Telephone and Telegraph Company (D&E), Hickory Telephone Company (Hickory), Lackawaxen Telephone Company (Lackawaxen), Laurel Highland Telephone Company (Laurel Highland), Marianna & Scenery Hill Telephone Company (Marianna), The North-Eastern Pennsylvania Telephone Company (North-Eastern), North

Penn Telephone Company (North Penn), North Pittsburgh Telephone Company (North Pittsburgh), Palmerton Telephone Company (Palmerton), Pennsylvania Telephone Company (PaTC), Pymatuning Independent Telephone Company (Pymatuning), The South Canaan Telephone Company (South Canaan),Venus Telephone Corporation (Venus), and Yukon Waltz Telephone Company (Yukon). (SCG Exh. 1, App. 2).

The SCG Chapter 30 Petition and Plan was assigned to ALJ George M. Kashi, and all dockets were consolidated for the purpose of hearing and a Recommended Decision, if the proceeding was not resolved through mediation. Parties to this proceeding, in addition to the SCG, were the Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and AT&T Communications of Pa., Inc. (AT&T).

On June 30, 1998, and July 30, 1998, the OCA filed Formal Complaints against the existing rates of North Pittsburgh and D&E, respectively. (*Popowsky v. Denver & Ephrata Telephone and Telegraph Co.*, Docket No. C-00981676; *Popowsky v. North Pittsburgh Telephone Co.*, Docket No. C-00981623). Both Complaints were assigned to ALJ Kashi who consolidated the OCA's complaints with the North Pittsburgh and the D&E pending Chapter 30 filings. (Tr. p. 5).

A Prehearing Conference was held on August 14, 1998, after which time the matter was referred to Mediator Herbert R. Nurick for commencement of the mediation process. Public Input Hearings with respect to the SCG Plan were held in Muncy and South Canaan on September 28, 1998, in Birdsboro on October 1, 1998, in Meadville on October 6, 1998, and in Cranberry Township and Yukon on October 7, 1998.

Mediation sessions were held in this matter before Mediator Nurick in Harrisburg on October 15 and 27, and on November 9, 10, 18 and 19, 1998. These sessions

provided a useful forum for the discussion of issues but did not result in a full and complete settlement or formal stipulations. Accordingly, this proceeding was returned to ALJ Kashi for hearings.

After the filing of testimony by intervenors, and rebuttal testimony by the SCG, hearings were held before ALJ Kashi on February 8 through February 12, 1999. The record closed on February 12, 1999. Main Briefs were filed on or before March 12, 1999. Reply Briefs were filed on or before March 30, 1999.

In late-September, 1999, the Chief ALJ determined that ALJ Kashi was unavailable to the Commission for health reasons and directed that this Recommended Decision be prepared by ALJs Cocheres and Gesoff pursuant to Sections 304(d) and 334(a) of the Code, 66 Pa. C.S. §§304(d) and 334(a).

On October 13, 1999, the ALJs issued the Recommended Decision wherein they recommended that the Petition be approved as modified. Exceptions and Reply Exceptions were filed by SCG, OCA, OTS, OSBA, and AT&T.

II. Description of the Companies

The SCG members are incumbent local exchange telecommunications companies (ILECs) operating in the Commonwealth of Pennsylvania. Individually, none of the SCG members is large; rather, they are small rural incumbent local exchange telephone companies. However, as a group, they play a significant role in achieving the state Legislature's objective for the accelerated deployment of a universal broadband network throughout Pennsylvania. The SCG members collectively provide local telecommunications services in 31 of Pennsylvania's 67 counties and represents one-half of the incumbent local exchange carriers operating in Pennsylvania. Together, the SCG members provide service to approximately 245,000 access lines through 54 exchanges in rural service territories comprising approximately 2,850 square miles and employ approximately 1,000 employees.

Each of the SCG members is a "rural telephone company" as defined by the Telecommunications Act of 1996. 47 U.S.C. §153)47); *See also, In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799. The individual members of the SCG are quite small, ranging in size from eight (8) square miles for Yukon-Waltz Telephone Company to 466 square miles for North-Eastern Pa. Telephone Company. Furthermore, with the exception of Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company and North Pittsburgh Telephone Company, the remaining 16 SCG members have an access line density less than the statewide average of 162 access lines per square mile. A summary of the number of square miles, access lines served, and the average access lines per square mile for each of the SCG members is summarized below"

ILEC Name	Sq. Miles	Access Lines	Avg. A.L. Per Sq. Mi.
Armstrong Tel. Co.-North	21	505	24

Armstrong Tel. Co.-Pa.	140	1,607	11
Bentleyville Tel. Co.	40	3,358	84
Buffalo Valley Tel. Co.	275	20,124	73
Conestoga Tel. And Tel. Co.	300	50,897	170
Denver & Ephrata Tel. & Tel. Co.	227	53,927	238
Hickory Tel. Co.	32	1,341	42
Lackawaxen Tel. Co.	66	3,377	51
Laurel Highland Tel. Co.	400	5,770	14
Marianna & Scenery Hill Tel. Co.	90	2,729	30
North Penn Tel. Co.	300	4,872	16
North Pittsburgh Tel. Co.	280	66,124	236
North-Eastern Pa. Tel. Co.	466	11,299	24
Palmerton Tel. Co.	99	11,621	117
Pennsylvania Tel. Co.	24	1,274	53
Pymatuning Tel. Co.	28	2,334	83
South Canaan Tel. Co.	71	2,711	38
Venus Tel. Corp.	86	1,276	15
Yukon-Waltz Tel. Co.	8	1,051	131
Total	2,953	246,197	83

III. Burden of Proof

We note that Section 3004 of the Code, 66 Pa. C.S. §3004, places the burden of proof regarding compliance with Chapter 30 on ALLTEL as the local exchange carrier (LEC) requesting an alternative form of regulation. We also note that, while the burden of going forward with the evidence may shift, the burden of proof remains with the SCG members.[1]

Additionally, we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. (*U. of Pa. v. Pa PUC*, 86 Pa. 410, 485 A.2d 1217, 1222 (1984)). Any Exception or argument that has not been specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Furthermore, this Opinion and Order will discuss those issues to which Exceptions have been taken by the Parties to the proceeding. In all other respects, we will adopt the recommendation of the ALJs to the extent consistent with the Opinion and Order.

[1] *Bener v. Pa. P.U.C.*, 382 Pa. 622, 631, 116 A.2d 738

IV. Price Stability Plans For Noncompetitive Services

As noted, the SCG proposed two (2) PSPs for its members. Plan A is the generally familiar price cap methodology, which allows for changes in noncompetitive rates based on the Gross Domestic Product Price Index. Four (4) of the member companies, Buffalo Valley, Conestoga, D&E, and North Pittsburgh, have requested that they be regulated by this Plan.

The remaining companies have opted to be regulated by Plan B which has also been designated as the "Simplified Ratemaking Plan" (SRP). This Plan was described as "a plan to result in a more streamlined and less burdensome fashion than traditional ratemaking as applied to smaller LECs in Pennsylvania in the past." (SCG St. 2, p. 32).

The ALJs recommended the total rejection of Plan B and the adoption, with modifications, of Plan A. Consequently, we will discuss Plan B first.

A. Plan B

1. Recommended Decision

The ALJs recommend total rejection of the SRP on the basis that it is nothing more than traditional rate base/rate of return regulation. (R.D., pp. 4-7). In reaching their determination, the ALJs adopted the OTS reasoning that the basic concept or formula under the SRP is the same as under traditional rate base/rate of return regulation and that Chapter 30, specifically, 66 Pa. C.S. §§ 3002, 3004(a), and 3006(c)(3), does not authorize the retention of traditional rate base/rate of return regulation in a Chapter 30 Plan.

2. Exceptions

The SCG excepted to the ALJs' rejection of the SRP because it would deny them an opportunity to recover their capital costs until such time that they are in a position to move to traditional rate cap regulation. (SCG Exc., pp. 15-19). The SCG maintains that the SRP is a plan that has been designed for the fifteen (15) smaller companies that are very apprehensive about moving to a price cap form of regulation due to many risks that small companies face in a Chapter 30 commitment. (SCG Exc. pp. 5-12; 15).

The SCG argues that the OTS position is without merit. The SCG states that a full review of Chapter 30 reveals that the Legislature intended this Commission to have significant flexibility in designing streamlined plans as an incentive to induce the smallest Incumbent Local Exchange Company (ILEC) to make broadband commitments. As such, the SCG contends that the SRP should not be rejected simply because it is a new approach to streamlined regulation.

3. Disposition

We disagree with the ALJs' recommendation and shall authorize the fifteen (15) smaller companies to utilize the SRP as a "stepping stone" until such time that they are in a position to move to Plan A. We adopt the specific procedure of the SRP as set forth in Exhibit A.

We believe that the SRP represents a middle ground between the PSM and the traditional rate base/rate of return regulation and should lead to reductions in regulatory delays and costs for the smaller local exchange companies which serve the most rural, least densely populated, and highest cost areas of the Commonwealth.

We also believe that this action is consistent with our reasoning in our *Streamlined Order*, in which we stated that small ILECs are not to be precluded "from seeking streamlined regulation on the basis of regulatory flexibility that may even encompass elements of traditional rate base and rate of return regulation."[2]

B. Plan A

The four (4) larger companies (Buffalo Valley, Conestoga, D&E, and North Pittsburgh) will be regulated under a modified Price Stability Plan which is similar to the more traditional price cap form of regulation which we have previously approved for other Chapter 30 Companies.

The ALJs observed that Plan A was a price cap formula for alternative regulation. Several of the Parties to this proceeding proposed modifications to the proposed Plan A. We will now consider these proposals.

1. Inflation Offset

The SCG proposed that there should be *no* inflation offset applied to the Gross Domestic Product Price Index in its price cap formula. The other Parties disagreed. The OTS advocated a 4% inflation offset. The OCA advocated a 3% inflation offset. AT&T adopted the OCA and OTS positions on the issue. The OSBA advocated a 2.8% inflation offset.

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[2] *Re: Implementation of Chapter 30 of the Public Utility Code: Streamlined Form of Regulation*, Corrected Opinion and Order entered August 25, 1995, Docket No. M-00930483, p. 9.

a. Recommended Decision

The ALJs adopted the position of the OSBA. The ALJs opined that the SCG proposal, which contains a "zero inflation offset," is unacceptable because most of the other small Local Exchange Companies (LECs) which have completed the Chapter 30 process have an inflationary offset in the range of 2% to 2.8% in their price cap formula. As such, the ALJs recommended an inflation offset of 2.8% because it was the lowest recommendation on record and because it fell within the same range (*i.e.*, 2.0% to 2.8%) as previous productivity offsets assigned to other similar-sized, small LECs. (R.D., pp. 7-9).

b. Exceptions

The SCG's excepts to the ALJs' refusal to entertain its position because of the precedent established in prior plans that did include inflation offsets for all companies filing Chapter 30 Plans. The SCG believes that the ALJs erred by imposing a 2.8% offset only because it was the lowest of the numbers presented by the intervening Parties. The SCG is of the opinion that the record does not contain an analysis of the derivation of those numbers and does little to comport with Commission precedent that established inflation offsets on record evidence. Furthermore, the SCG asserted that the proffered offsets are meaningless numbers that bear no relationship to SCG members, advocated simply for their effects on rates (SCG Exc., p. 23). In addition, an offset is unnecessary "given the statutory quid pro quo for alternative regulation that exists in Pennsylvania, which mandates a network modernization commitment irrespective of customer demand or need, or financial return to the company[.]" (SCG Exc., p. 20).

The OTS argued that the ALJs erred in failing to address and recommend for consideration of its inflation offset proposal of 4.0%. However, the OTS does agree

with the ALJs' conclusion that the SCG had not met its burden of proof with respect to its proposed zero offset. (OTS Exc., pp. 4-10). The OTS noted that, contrary to the statement in the Recommended Decision, all (not most) of the other small LECs with Chapter 30 Plans have positive inflation offsets, and the range is 2.0% to 2.8%. The OTS contended that the zero offset "simply ignores the reality of declining telecommunications industry costs and the positive inflation offsets established for other LECs." (OTS Exc., p. 4). The OTS believes that its proposal of a 4.0% inflation offset contains three (3) components (a 0.9% productivity differential; a 2.6% input price differential; and a 0.5% stretch factor) that are essential to protect ratepayers from excessive aggregate price increases under the SCG Plan A PSM and to provide appropriate and adequate efficiency incentives under the alternative regulation.

c. Reply Exceptions

The SCG disagreed with the OTS' argument that the SCG had not met its burden of proof with respect to its proposed zero inflation offset. The SCG argued that it did meet its burden of proof by not presenting evidence that demonstrated that an offset of zero was appropriate. (SCG R. Exc., pp. 10-12). The SCG went on to state that the premise that the sum of some parts equals zero was never posited nor relied upon by the SCG; rather, the SCG argued that it maintained and proved that there is no evidence to support the imposition of a meaningful, appropriate, relevant or applicable offset upon a company of the size and rural nature of the SCG members, nor was one necessary under the Plan. (SCG R. Exc., p. 8).

The OCA submitted that the 2.8% productivity offset adopted by the ALJs is a reasonable, if not conservatively low, determination of the inflation offset appropriate for the SCG. The OCA argued that differences between input prices in the telephone industry and input prices in the economy, as a whole, are an integral component of industry productivity. Furthermore, the OCA noted that it is widely recognized that the

telecommunications industry is a declining cost industry and the SCG has failed to put forth any evidence to rebut this essential premise. The OCA argued that, based on its study of price increases and rate of return for the Plan A LECs, the data shows that, with the exception of Buffalo Valley, each Company's overall return had increased over the last several years, even while the compensation each received from average schedule settlements was reduced, and even while each had virtually no price increases (OCA St. 1, p.18; OCA St. 2, p. 15; OCA M.B., p. 10). As such, the OCA maintained that the continued profitability of the Plan A LECs in the face of general economy-wide inflation of about 2.3% over this period, despite reductions in compensation and virtually no price increases, clearly indicates that these companies have experienced substantial productivity gains, more than offsetting the effects of economy-wide inflation. (OCA R. Exc., p. 13).

The OSBA asserted that the burden of proof falls on the proponent requesting a streamlined form of regulation (66 Pa. C.S. §3004(e)) and that the SCG offered no evidence to sufficiently justify different treatment of their Chapter 30 PSMs versus those of similarly situated companies with less than 50,000 access lines. As such, the OSBA believes that the 2.8% productivity offset is appropriate in the absence of other persuasive evidence to the contrary. (OSBA R. Exc., p. 8).

The OTS agreed with the ALJs that the SCG had not met its burden of proof with respect to its zero offset proposal. The OTS asserted that the SCG's witness presented no studies whatsoever to support the SCG's position, but simply provided criticisms of other studies.

d. Disposition

Based on our review of the record, we are of the opinion that the SCG did not meet its burden of proof with regard to its inflation offset proposal. We are not swayed by the SCG's argument that it met its burden of proof by not presenting evidence that demonstrated that an offset of zero was appropriate. We agree with the various Parties that assert that a zero offset or no offset fails to reflect the reality of declining telecommunications industry costs and the positive inflation offsets established for other LECs. As such, we are of the opinion that the SCG's PSI must contain an inflation offset factor. While the ALJs relied upon our *Streamlined Order* in establishing a 2.8% inflation offset, we are of the opinion that a smaller inflation offset would be more appropriate in this proceeding which will ultimately include a majority of the smallest rural LECs in Pennsylvania.

We note that in the past we have approved the following inflation offsets for the following Chapter 30 Companies:

Chapter 30 Company	Approved Inflation Offset
Bell Atlantic-Pa., Inc.	2.93%[3]
Citizens Tel. Co of Kecksburg	2.00%[4]
Commonwealth Telephone Company	2.00%[5]
Frontier Companies	2.80%[6]

[3] *See, Bell Atlantic-Pennsylvania Inc.'s Petition and Plan for An Alternative Form of Regulation under Chapter 30*, Docket No. P-00930715 (Order entered June 28, 1994).

[4] *See, Petition for Streamlined Form of Regulation and Network Modernization Plan of Citizens Telephone Company of Kecksburg*, Docket No. P-00971229 (Order entered May 1, 1998)

[5] *See, Petition of Commonwealth Telephone Company For An Alternative Form of Regulation and Network Modernization Plan*, Docket No. P-00961024 (Order entered January 17, 1997).

Ironton Telephone Company	2.00%[7]
TDS Companies	2.00%[8]
United Tel. Co. of PA	2.00%[9]

We note that the OTS proposed a 4.0% inflation offset which is comprised of the following three components: (1) a 0.9% productivity differential;[10] (2) a 2.6% input price differential;[11] and (3) a 0.5% stretch factor.[12] We also note that, in the Commonwealth Telephone Company Chapter 30 Order, we rejected the input price differential adjustments presented by the OCA and the OTS in that proceeding[13] because we were not persuaded that the differential between prices in inputs in the telecommunications industry and those in the U.S. economy should be other than zero for economic and statistical purposes. We adopt this same reasoning in this proceeding. As

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[6] *See, Joint Petition of Frontier Companies for a Streamlined Form of Regulation and Plan For Network Modernization*, Docket No. P-00950015 (Order entered December 6, 1996).

[7] *See, Petition For Streamlined Form of Regulation and Network Modernization Plan of Ironton Telephone Company*, Docket No. P-00971182 (Order entered December 18, 1997).

[8] *See, TDS TELECOM/Mahanoy and Mahantango Telephone Company - TDS TELECOM/Sugar Valley Telephone Company; Joint Chapter 30 Petition and Plan*, Docket Nos. P-00961115 and P-00961116 (Order entered January 29, 1998).

[9] *See, Petition of United Telephone Company of Pennsylvania for Approval Under Chapter 30 of the Public Utility Code of an Alternative Regulation and Network Modernization Plan*, Docket No. P-00981410 (Order entered July 16, 1999).

[10] The Productivity Differential component of the inflation offset accounts for declining LEC costs due to productivity gains in excess of those achieved by the U.S. economy. (OTS St. 1, p. 7).

[11] The Input Price Differential component of the inflation offset accounts for the slower rate of input price increases for the telephone industry as compared to the U.S. economy as a whole. (OTS St. 1, p.8).

[12] The Stretch Factor (also referred to as a consumer productivity dividend) is the portion of the inflation offset that will account for the increase in LEC productivity resulting from the change from rate base/rate of return regulation to price cap regulation. (OTS, St. 1, p. 10).

[13] *See, Petition of Commonwealth Telephone Company For An Alternative Regulation and Network Modernization Plan*, Docket No. P-00961024, p. 37 (Order entered January 17, 1997).

such, we note that, as the SCG accurately points out in its Exceptions, the resulting OTS inflation offset excluding the 2.6% input price differential would then be 1.4% (*i.e.* a productivity differential of 0.9% + a stretch factor of 0.5%). We also point out that the OTS noted that experts believe an appropriate stretch factor range is from 0.5% to 2.0% (OTS St. 1, p. 11). This would mean that a reasonable range for the inflation offset, using the information provided by the OTS in the evidentiary record in this proceeding, would be in the range of 1.4% to 2.9%.

In light of the fact that we have, as noted above, established an inflation offset factor of 2.0% for the majority of the approved Chapter 30 companies and the record in this proceeding supports a 2.0% inflation offset, we believe, based on our informed judgment, that an inflation offset of 2.0% is proper.

2. Time Line

The SCG proposed a seventy-five (75) day time line (date of notice to entry of Commission Order) for PSM rate changes. The Plan permitted two (2) further variations: the first allowed a fifteen (15) day extension (ninety (90) day total) if hearings were requested. The second allowed a forty-five (45) day extension (120 day total) if the requested increase exceeded the $3.50 cap on monthly increases.

The OTS argued against part of the SCG proposal. The OTS proposed that an extension of time to twenty (20) days for filing interventions/complaints is necessary to permit review of the tariffs by the Parties. Also, the OTS proposed that the $3.50 threshold for triggering the additional hearing time should be changed to "an increase greater than 20%," consistent with its consumer protection proposal.

In addition, the OTS proposed that a Commission Order be entered within sixty (60) days of filing (or such other time as may be provided in the Plan) or the nearest Public Meeting date, whichever is longer. This, according to the OTS, is necessary to accommodate the Commission's Public Meeting schedule. In addition, the OTS proposed that interrogatory responses be due within ten (10) days to streamline the process. Finally, the OTS proposed that additional time be allotted for ADR mediation. (OTS St. 2, pp. 12-13; OTS St. 2SR, p. 6).

The OCA opposed the seventy-five (75) day procedure, alleging that it did not provide adequate due process protections for all complainants and intervenors. The OCA proposed the following time frame:

> Given the limited time before the Commission must issue its order, responses to discovery should be due within 5 days, rather than 15 days as proposed by the Plan A Companies. Also, the discovery period should begin on the date of notice of the filing. Comments and reply comments should be due within 45 days and 55 days of the actual filing. The commission order should issue by the 75th day with 15 additional days, if specifically requested by any party at the time of the intervention.
>
> In this regard, it is important to note that the Commission rejected a similar 75-day procedure proposed by Commonwealth Telephone Company in its Chapter 30 Petition and Plan. Citing the impact of an abbreviated procedural schedule on due process elements, such as notice and the opportunity to be heard, the Commission replaced Commonwealth's 75-day procedure with a 120-day procedure which provided for hearings and an evidentiary process. Commonwealth I at 132-134. The Plan A Companies' 75-day procedure should also be rejected and substituted by a longer procedure which will safeguard the due process rights of interested parties.

(OCA M.B., pp. 26-27).

AT&T argued that an additional fifteen (15) days should be provided to allow time for hearings if specifically requested by the OTS, the OCA, the OSBA, a customer, or any party to the Chapter 30 proceeding. (AT&T M.B., pp. 25-26).

a. Recommended Decision

The ALJs recommended that the seventy-five (75) day procedure time line at Part 3.A.(A)(10) be modified to address the concerns raised by AT&T, the OCA and the OTS. (R.D., pp. 9-14). Further, the ALJs concluded that the SCG proposal fails to recognize that there may not be a Commission Public Meeting scheduled near the end of the time line. Therefore, the ALJs recommended that the language be modified to indicate the Time Line should be extended to the nearest Public Meeting date, whichever is longer.

b. Exceptions

Although the SCG excepts to the ALJ's recommended changes to the seventy-five (75) day procedure time line, in the spirit of compromise, the SCG states that it would be willing to modify its seventy-five (75) day procedure time line, consistent with the two (2) modifications recommended by the ALJs. (SCG Exc., p. 25).

The SCG believes that the OTS' suggestion that a Commission Order be entered within sixty (60) days of filing "or the nearest Public Meeting date, whichever is longer" in order to accommodate the possibility that no Public Meeting is scheduled near the end of the time line, is inappropriate and should be rejected "because the time line would not be a time line at all if it were to incorporate such a vague and irregular variable." (SCG Exc., p. 25). The SCG conceded that, although there may be times

where an extension would be necessary to meet a Public Meeting date, it would be willing to grant a specific extension of time. However, incorporating such language in the Plan is not warranted. (SCG Exc., p. 26).

The OCA excepted to the ALJs' recommendation because they did not adopt its 120-day procedural schedule that was adopted for Commonwealth Telephone Company's Chapter 30 Plan. (OCA Exc., p. 7). The OCA believes it is unclear from the Recommended Decision whether the ALJs intended to adopt the OCA's proposed 120-day procedural schedule and whether the modifications set forth by the ALJs would apply to all the filings referenced in the SCG Chapter 30 Plan (*i.e.*, PSM filings, exogenous events, rate rebalancing and the offering of new services). In addition, the OCA believes that a thirty (30) day advance notice period is a more appropriate time frame in which to examine the SCG members' filings and prepare for the potential filing of an intervention or complaint. (OCA Exc., p. 8). The OCA also argued that, consistent with 52 Pa. Code §5.21, there should be no limitation on when complaints or interventions may be filed by a Chapter 30 party. (OCA Exc., p. 9).

The OCA also requested a clarification that the time line should apply to all PSMs, exogenous events, restructurings and rebalancings, and new noncompetitive protected services filings. (OCA Exc., p. 8).

The OTS argued that the ALJs' time line recommendation for PSM rate changes must be clarified and modified to be consistent with the *Global Order*.[14] (OTS Exc., pp. 10-14). The OTS noted that, subsequent to the submission of briefs herein, the *Global Order* was entered by the Commission and addressed tariff filing procedures with respect to ILECs' existing noncompetitive services. The OTS believes that the new

procedures contained in the interim guidelines in Appendix A of the *Global Order* supersede, in part, the SCG "75-day procedure" and certain OTS modifications with respect to proposed rate increases adopted by the ALJs. As such, the OTS suggested that the SCG be directed to file a time line for PSM filings in compliance with the *Global Order*.

The OTS also noted that the *Global Order* does not address the pre-filing notice, deadline for filing of complaints/interventions, or interrogatory response time. With regard to the interrogatory response time, the OTS noted that it is unclear which interrogatory response time was adopted by the Recommended Decision because, while the OTS proposed ten (10) days, the OCA proposed five (5) days

The OTS also requested a clarification that the time line should apply to all PSMs, exogenous events, restructurings and rebalancings and new, noncompetitive protected services filings. (OTS Exc., p. 13).

c. Reply Exceptions

The SCG argued that, based on the changes that it is willing to make to the time line, the OCA's due process concerns should be rejected because the SCG's procedure adequately satisfies due process. With regard to the OTS' request for clarification that the time line apply to all PSMs, exogenous events, restructurings and rebalancings, and new noncompetitive protected services filings, the SCG noted that its proposal at Parts 3A.(B)4 and 3A.(C)2 already incorporates such language, and, thus, no clarification is necessary. (SCG R. Exc., p. 12).

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[14] *Joint Petition of Nextlink Pennsylvania, Inc. et al. and Joint Petition of Bell Atlantic-Pennsylvania, Inc. et al.*, Docket Nos. P-00991648 and P-00991649 (Opinion

With regard to the OTS' argument that the time line for PSM filings must be modified consistent with the *Global Order*, the SCG asserted that the *Global Order* offers guidance on this issue, specifically addressing tariff filing procedures of an ILEC's existing noncompetitive services. The SCG noted that the proposed Section 53.59(e) of the interim guidelines in the *Global Order* results in a shorter time period than that proposed in the SCG Chapter 30 filing and, thus, discredits the extended procedure originally advocated by OTS and still advocated by the OCA. Since the OTS argued that the new procedure in the *Global Order* supersedes, in part, the SCG's seventy-five (75) day procedure, the SCG believes that its seventy-five (75) day procedure is more than adequate. (OTS R. Ex., p. 13).

The OCA argued that the SCG's refusal to accept the ALJs' recommendation that a Commission Order on an SCG member filing be entered within sixty (60) days of filing "or the nearest Public Meeting date, whichever is longer" in order to accommodate the possibility that no Public Meeting is scheduled near the end of the schedule initially proposed by the SCG, is unreasonable and should be denied. The OCA also maintained its argument that its proposed 120-day procedural schedule is more appropriate and is necessary to ensure the due process rights of the Parties in future proceedings.

AT&T contended that, since the SCG agreed to modify its time line consistent with AT&T's two (2) modifications, the SCG's Exception that the ALJs erred in adopting AT&T's modifications to the time line is moot. In addition, AT&T believes that further clarification of the Plan is needed to designate that a party should not have to file a complaint or a petition to intervene until after the SPI or PSI report is filed.

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and Order, entered September 30, 1999) (*Global Order*).

d. Disposition

We are of the opinion that the time frame proposed by the SCG should be modified so as to permit time for the ADR mediation process, consistent with our long standing policy of encouraging settlements of contested issues. We shall also direct that, consistent with our previously approved Chapter 30 Plans, the triggering mechanism for additional hearing time should remain at the $3.50 threshold.

With regard to the OCA's concerns that we adopt the same time line that was adopted in Commonwealth Telephone Company's Chapter 30 Plan, we note that the companies in the SCG are subject to the streamlined form of rate regulation at 66 Pa. C.S. §3006, which discourages regulatory delays for the smaller LECs. As such, we shall not adopt the OCA's proposed 120-day procedure.

In addition, we do not believe it is necessary to require the SCG to incorporate the OTS' suggested language in the Plan that would require that a Commission Order be entered within sixty (60) days of filing "or the nearest Public Meeting date, whichever is longer" in order to accommodate the possibility that no Public Meeting is scheduled near the end of the time line. We note that LECs have been very accommodating in the past in extending the consideration period for Commission entry of orders, and we will accept the SCG's offer in this proceeding to grant specific extensions of time when necessary in the future.

With regard to the OTS' and the OCA's concerns that the time line be clarified and modified to be consistent with the interim filing requirements contained in the *Global Order*, we note that, while the *Global Order* sets the foundation upon which all LECs must abide, deviation from the requirements of the *Global Order* is appropriate in certain circumstances and upon the consideration of relevant facts and circumstances.

In the instant proceeding, we shall relieve the SCG members from adhering to the interim filing requirements in the *Global Order* and adopt the time line, as modified herein, for the filing of existing and new noncompetitive services, competitive services, PSM filings, exogenous events and restructuring/rebalancing filings.

3. Safety Net

The SCG argued that the safety net was included for the sole purpose of protecting the customers in order to assure that the customers will receive the broadband and advanced telecommunications services intended under Chapter 30. The SCG argued that there is no absolute certainty that the indexed plan under Plan A will result in sufficient revenues to support the costs and ongoing capital commitments associated with the Network Modernization Plans. The SCG maintains that the safety net provision was, therefore, included in Plan A to provide the companies with the means to seek additional rate relief outside the PSM procedure in order to assure that their NMPs would not be curtailed due to inadequate cost recovery.

The SCG argued that the safety net provision was not for the purpose of benefiting the companies' investors but to "maintain universal telecommunications service at affordable rates while encouraging the accelerated deployment of a universally available, state-of-the-art, interactive, public-switched broadband telecommunications network in rural, suburban and urban areas. . . ."

The SCG pointed out that that the original price cap plan approved for the largest LECs by the Federal Communications Commission (FCC) had a safety net provision whereby the LECs could increase their prices if their rates of return fell below a reasonable level.

The OTS opposed the safety net provision. The OTS argued that the safety net provision is not contained in the Chapter 30 Plans of any other LEC. The OTS continued that the safety net provision would permit a company subscribing to Plan A to file a traditional general rate case under 66 Pa. C.S. §1308, if the company's most recent twelve (12) months' earnings is allegedly insufficient to permit the attraction of capital necessary to carry out its NMP on an ongoing basis. The OTS categorized the SCG proposal as traditional rate of return/rate base regulation. (OTS M.B., pp. 46-48).

The OCA observed that the Plan does not provide much detail as to how the Plan A Companies would determine that their earnings are insufficient to continue with their modernization commitments. However, the OCA observed that the SCG witness stated that only noncompetitive revenues would be taken into account when the Plan A Companies decide that they should come in for a rate increase to adequately fund the NMP.

The OCA argued that, if the Plan A Companies will be able to seek an increase when there are insufficient revenues to support the NMP, then the revenues that the Plan A Companies receive from their competitive services should be considered in the determination of whether the Plan A Companies' earnings are too low. (OCA St. 2 pp. 26-27).

The OSBA argued that the SCG witness conceded that this safety net provision is not contained in any Commission-approved Chapter 30 programs. Further, the OSBA argued that the SCG witness also conceded that the small companies could assert inadequate earnings to the Commission without the proposed provision in place.

AT&T argued that, if a safety net provision was permitted, earnings from competitive services should be considered in any request for a rate increase.

a. Recommended Decision

The ALJs recommended against the safety net provision of the SCG Chapter 30 Plan because they believe that the SCG is trying to have the best of both worlds by proposing an alternative regulation plan with traditional rate base regulation as a fallback position. The ALJs are of the opinion that the safety net is asymmetrical in its application and saddles the customers with the ultimate risk for failure in the marketplace. In addition, the ALJs believed that the proposal violates the prohibition set forth in 66 Pa. C.S. §3002 which excludes traditional rate base regulation from streamlined regulation plans. 66 Pa. C.S. §3002.

b. Exceptions

The SCG excepted to the ALJs' recommendation and argued that the safety net provision is not for the purpose of protecting SCG members to the detriment of their customers, but to protect the continuation of the NMPs for the benefit of all customers. (SCG Exc., pp. 26-27). The SCG argued that the provision would provide a company with the opportunity to adjust its rates for noncompetitive services should its earnings drop so low under its PSM that it could not raise the outside capital necessary to continue its NMP.

The SCG also argued that the ALJs failed to recognize that the safety net provision is not a methodology for the ongoing regulation of rates, but a limited provision whereby the SCG members may seek a one-time increase in rates to the extent needed to assure the continuation of their network modernization plans. As such, the SCG does not believe it is in violation of Chapter 30. Furthermore, the SCG argued that the ALJs failed to recognize that the opportunity to establish rates that are sufficient to

maintain the members credit and attract investment capital to carry out their public duties must never be denied as long as their rates are subject to regulation.[15]

c. Reply Exceptions

The OSBA believes that the ALJs' rejection of the PSM safety net proposal is appropriate because the benefits derived from the safety net when earnings are low does not provide an equitable balance when achieved earnings by the SCG Companies are in excess of those necessary for Chapter 30 investments. (OSBA R. Exc., pp. 9-10).

The OTS agreed with the ALJs' recommendation that the safety net be rejected because 66 Pa. C.S. §3002 totally eliminates traditional rate base/rate of return regulation from the forms of permissible regulation in Chapter 30 Plans. The OTS disagrees with the SCG's assertion that the Section 3002 preclusion does not apply to their proposal because the rate base/rate of return-derived increase would be a one-time event to purportedly save the NMP.

d. Disposition

We agree with the ALJs that the SCG cannot "have the best of both worlds." The safety net provision is nothing more than an insurance policy for investors and has not been permitted for any previously approved Chapter 30 Plan. However, we note that, should one (1) of the SCG Companies experience a loss of revenue so that its commitment for its NMP is jeopardized, that company can petition the Commission for appropriate and timely relief at that time.

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[15] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

4. New Services

The SCG's Plan A addresses the introduction of new noncompetitive services. The SCG proposed that new protected services shall be introduced under the procedural time line outlined in Section A(C) of Plan A and that nonprotected services shall be effective on one (1) day's notice. The SCG also proposed that revenues from new services shall be included in the calculation of the PSI/SPI beginning with the first annual PSM filing after the new service has been effective for one (1) year.

AT&T opposed the one (1) day notice proposal for the nonprotected services. AT&T proposed that these provisions be amended to include a specific reference to noncompetitive services to eliminate any confusion.

a. Recommended Decision

The ALJs recommended that the SCG's proposal with regard to the introduction of new noncompetitive services in Parts 3.A.(C)3 of the Plan is adequate and that the placement of the section within the Noncompetitive Services portion of the Plan is sufficient protection to limit the application to that part of the Plan only. As such, the ALJs recommended that no further modification is necessary. (R.D., p. 25).

b. Exceptions

AT&T argued that clarification is necessary for Part 3.A.(C)3 of the Plan relating to new noncompetitive services to indicate that it does not apply to competitive services.

c. Reply Exceptions

The SCG disagreed with AT&T's Exceptions and argues that there is no ambiguity over the provision's applicability to competitive services. As such, the SCG sees no necessity in making such a trivial revision since the New Services provision is in "Part 3 - Price Stability Plans for Noncompetitive Services."

d. Disposition

We agree with the SCG and shall adopt the ALJs' recommendation. There is no ambiguity over the provision's applicability to competitive services. Since the section only applies to noncompetitive services, the AT&T modification is unnecessary.

5. Just And Reasonable Rates

The SCG noted that the OTS recommended that a provision be inserted into the Chapter 30 Plan providing that the Companies' rates must remain just and reasonable and subject to Commission oversight in any future proceeding. The SCG did not object to the OTS' proposal, so long as it was to be recognized that the justness and reasonableness of the rates now would be determined on the basis of the approved Chapter 30 Plan.

The OTS offered another modification to Plan A to recognize that the Commission retains the authority to institute proceedings on its own motion with the burden of proof on the Companies. This proposal was not opposed by the SCG.

The OTS disagreed with part of the modification proposed by the SCG. Specifically, the OTS cited the *Frontier* Chapter 30 Order for the proposition that the

Commission is not limited to the "four corners" of a Chapter 30 Plan in determining whether resulting rates are just and reasonable.

a. Recommended Decision

The ALJs recommended that the SCG's proposal to limit the Commission's power to review the justness and reasonableness of proposed rates to the "four corners" of the Plan be rejected. The ALJs found that the SCG proposal is unsupported by recent Commission decisions and Chapters 13 and 30 of the Public Utility Code, as well as the Commission's recent action taken in both the *Citizens* and *Frontier* Chapter 30 cases.

b. Exceptions

The SCG excepted to the ALJ's conclusion that the Commission will retain the authority to establish the Plan A Companies' rates for protected services outside the "four corners" of the Plan even following the approval of the Chapter 30 Plan. (SCG Exc., pp. 29-29). The SCG believes that the ALJs' recommendation is unacceptable because its Chapter 30 Plan already provides appropriate customer protections from the standpoint of its local exchange rates. Specifically, the Chapter 30 Plan contains a consumer protection clause that limits changes in residential and business monthly rates to increases no greater than $3.50 per month annually. Furthermore, the SCG argued that the maximum level of residential single-line rates would be subject to the affordability level to be established when a permanent Universal Service Fund is established.

The SCG asserted that, with basic local exchange rates subject to these limitations, the Plan A Companies should not be expected to face the additional risk of committing to a Chapter 30 Plan which gives the Commission unlimited discretion to change their basic local exchange rates outside the terms of the Plan, based upon a just

and reasonable regulatory parameter which arose under rate of return regulation. Finally, the SCG contended that to permit the Commission the additional authority to establish rates on some undefined just and reasonable standard outside the terms of the price-cap plan would defeat the whole purpose of alternative regulation.

c. Reply Exceptions

The OCA disagreed with the SCG Exceptions and averred that the ALJs properly followed the precedent of the Commission where the Commission has always held the authority to generally consider whether rates would be "just and reasonable" outside the determination specifically set forth within the approved Plan. (OCA R. Exc., pp. 16-18).

The OCA also strongly opposed the SCG's proposal to raise its most noncompetitive rates in order to lower rates for its more competitive services and argues that such rate rebalancing cannot be considered to be an aspect of true competition in any sense. The OCA is of the opinion that, in a competitive market, a competitor cannot be guaranteed the opportunity to make up every rate decrease driven by competitive pressures from other rates that have little or no competition. (OCA R. Exc., pp. 17-18).

The OCA also supported the ALJs' recommendation that the SCG's right to rebalance is properly circumscribed by the terms of the *Global Order* (R.D., pp. 64-66) but also asserted that its ability to raise its residential local, protected rates by as much as $3.50 per month each year should be allowed to stand as is. This issue will be addressed further in the Rate Rebalancing section of this Opinion and Order. (OCA R. Exc., p. 16).

The OSBA objected to the SCG's Exceptions and, citing 66 Pa. C.S. §§ 3009(b)(2) and (b)(3),[16] emphasized that Chapter 30 statutorily provides the authority that the ALJs recommended and, to do otherwise, would compromise the public interest. (OSBA R. Exc., pp. 15-16).

The OTS disagreed with the SCG's Exception to the ALJs' determination that the Plan must be subject to the Commission's continuing oversight, beyond the "four corners of the plan" to determine whether individual rates remain "just and reasonable." Furthermore, the OTS agreed with the ALJs' recommendation that the SCG insert specific language in its Plan to ensure that Commission rate oversight is preserved. (OTS R. Exc., pp. 15-17).

AT&T believes that the SCG's position must be categorically rejected because the "just and reasonable" standard that the Commission has utilized over the years is contained in 66 Pa. C.S. §1301. (AT&T R. Exc., pp. 12-14).

d. Disposition

We would be remiss if we did not continue to assert our right to prohibit certain types of rate rebalancing that the SCG may attempt to apply. While it would be proper in a truly competitive environment to suspend our authority to review the "just

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[16] These Sections state that:

> Nothing in this chapter shall limit the authority of the commission to ensure that local exchange telecommunications companies do not make or impose unjust preferences, discriminations or classification for protected telephone service or other noncompetitive services.
>
> The commission shall establish such additional requirements and regulations as it determines to be necessary to ensure the protection of consumers.

and reasonable" nature of rates in accordance with 66 Pa. C.S. §3004(d)(2), we point out that the telecommunications industry is currently only in the transition period toward the goal of true competition. It is imperative that Chapter 30 rates remain just and reasonable and subject to this Commission's ongoing jurisdiction. Furthermore, we note that we can, on our own motion, always institute an investigation of rates.

Therefore, we shall deny the SCG's exception and continue to assert our right to consider, generally, the just and reasonable nature of future proposed rate increases by the SCG. This is consistent with our previous rulings in various orders concerning Chapter 30 matters.[17]

6. Small Business Customers

The SCG proposed to define small business customers as those having three (3) access lines or less. The SCG pointed out that a $3.50 monthly rate limitation would apply to the B-1 rate regardless of the number of access lines that a business customer has. The SCG claimed that all business customers with B-1 lines would receive the same protection as the ALLTEL-Pa. plan. (SCG R.B., p. 47).

The OSBA argued that small business customers should be designated as those with ten (10) or fewer access lines.

a. Recommended Decision

The ALJs agreed with the SCG and defined small business customers as those having three (3) access lines or less. (R.D., pp. 29-32).

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[17] *See, Frontier, Citizens* and *Commonwealth's* Chapter 30 Orders.

b. Exceptions

The OSBA excepted to the ALJs' recommended definition of small business customer and advocated that it be defined as those business customers having ten (10) access lines or less. (OSBA Exc., pp. 4-6). The OSBA argued that, while it acknowledges that the Commission originally recognized a definition centered on the use of three (3) access lines or less in the Bell Atlantic-Pennsylvania Chapter 30 case, the use of telecommunications by small businesses has increased since June, 1994. The OSBA argued that, as recently as September 10, 1999, the Commission, in its Opinion and Order in *Petition of GTE North, Inc. For Alternative Regulation and Plan for Network Modernization*, adopted the Recommended Decision of ALJ Meehan concerning a definition of small business customers "as those business customers using 5-10 access lines."[18] Consequently, the OSBA contended, it is erroneous to state that the Commission has uniformly defined the small business class as those having three (3) access lines or less since the *GTE North* Opinion and Order served as precedent for the definition of the small business customer. The OSBA noted that the record supports a changed definition of the small business customer because businesses are more frequently utilizing access lines for data services and for the Internet and not exclusively dependent upon voice services. (OSBA Exc.,
p. 5).

c. Reply Exceptions

The SCG disagreed with the OSBA's Exception that small business customers should be defined as those customers having ten (10) access lines or less. The SCG pointed out that the OSBA misrepresented the status of the definition of small

business customers in prior Chapter 30 Plans, accusing the ALJs of failing to consider a precedent established in a more recent and comparable Opinion and Order of a similarly situated ILEC. (SCG R. Exc., p. 2). The SCG notes that the "comparable" order relied upon by the OSBA, is the GTE North Chapter 30 Order in which the Commission rejected the Company's Plan and directed GTE to refile in six (6) months.

The SCG also argued that the OSBA leaves unexplained how GTE, the state's second largest ILEC, is even remotely comparable to the SCG members. Furthermore, the SCG observed that the Commission, in the GTE Chapter 30 Order, did not rule specifically on the OSBA's issue and opted not to require GTE to use any particular format, including the definition of a small business customer for its next filing. Since the Commission rejected GTE's Plan in total, the SCG asserted that the GTE Chapter 30 Order does not stand as precedent compelling the Commission to redefine "small business" in this proceeding. (SCG R. Exc., p. 19).

d. Disposition

We agree with the SCG position. As such, we shall deny the OSBA Exception. Up to this time, we have uniformly defined small business customers as those having three (3) access lines or less, and there is no record evidence to support a deviation from that definition.

7. Toll Imputation

The SCG proposed that a participating Company shall not be required to pass any imputation test unless all interexchange carriers operating in Pennsylvania

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[18] *See, Petition of GTE North, Inc., For Alternative Regulation and Plan for Network Modernization*, Docket No. P-00981449 (Order entered September 10, 1999)

agree, or are required to comply, with the exact imputation test as may be imposed on such Company. The SCG indicated a willingness to abide by any imputation policy to be established by the Commission if it provides a level playing field.

The OTS argued that an imputation requirement is a competitive safeguard, referenced in 66 Pa. C.S. §3005(e)(2). The OTS argued that Section 3005(e)(2) requires that the price a company charges to a competitor for an essential input to a final product not exceed the price the company charges to end users for that same final product. (OTS St. 3, pp. 19-22).

AT&T argued that imputation is designed to protect consumers and customers from a monopolist's price squeeze. AT&T argued that, as proposed by the SCG, the test would not be applicable to interexchange carriers (IXCs) who have no local monopoly power. AT&T continued that ILECs like the SCG have monopoly power in their territory and, therefore, must be subject to an imputation test.

a. Recommended Decision

The ALJs concluded that the issue of toll imputation has been resolved by the *Global Order* and recommended approval of the SCG language contained in their Plan. Specifically, the ALJs noted that the Commission approved the "modified Small Company Plan," which is stated below in pertinent part:

> e) During the term of this Agreement, the Small ILECs shall not be required to pass any imputation test, unless all interexchange carriers operating in Pennsylvania agree or are lawfully required to comply with the same exact imputation test as may be imposed on the local exchange carriers.

(Slip Op. at 4).

(See *Global Order*, pp. 54-55 and 151).

b. Exceptions

The OTS excepted, for purposes of clarification, to the ALJs' conclusion that the *Global Order* resolves the intraLATA toll imputation issue raised by AT&T and OTS. (OTS Exc., pp. 14-15). The OTS stated that it is its understanding that the Commission currently has a pending rulemaking at Docket Nos. L-00990141 and M-00960799[19] on the precise issue of toll imputation and it is unclear whether that rulemaking docket has now been resolved by the *Global Order* since the first docket number of the pending rulemaking proceeding (*i.e.*, Docket No. L-00990141) was not one of the dockets listed in the *Global Order* as being resolved in that Order. (*See Global Order*, Ordering Paragraph 21, pp. 281-282). If the toll imputation issue has not been resolved by the *Global Order*, then OTS requests that the restrictive language be removed from the Plan, consistent with the OTS' position.

AT&T argued that the ALJs incorrectly concluded that the SCG's imputation proposal in the *Global* proceeding had been accepted and erred in recommending adoption of the SCG's effort to abrogate the imputation test. (AT&T Exc., pp. 25-27). AT&T argued that the ALJs erroneously concluded that this issue was resolved by the *Global Order*. AT&T is of the opinion that the Commission approved only portions of the "modified-Small Company Plan" relating to access and Universal Service Fund but did not approve the entire plan, especially the provision relating to

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[19] *See, Advance Notice of Proposed Rulemaking Regarding Competitive Safeguards Under 66 Pa. C.S. §§3005(b) and 3005(g)(2); Implementation of the Telecommunications Act of 1996: Imputation requirements for the delivery of intraLATA services by local exchange carriers*, Docket Nos. L-00990141 and M-00960799 (Order entered March 23, 1999), pp. 4-5.

imputation. In light of this argument, AT&T requested that the last sentence of Part 3.A.(A)13 be deleted.

c. Reply Exceptions

The SCG disputed AT&T's argument that the *Global Order* did not approve the provision relating to imputation. The SCG noted that the Small Company USF Plan was approved with modifications, which approval included the imputation prohibition in the *Global* proceeding.

In addition, with regard to OTS' question as to whether the rulemaking docket has been resolved by the *Global Order*, the SCG noted that, at the November 4, 1999, Public Meeting, the Commission postponed the Law Bureau recommendation at those dockets to adopt a proposed rulemaking on competitive safeguards directed at ILECs which would forebear imposing further imputation requirements on ILECs other than Bell Atlantic-Pennsylvania, Inc. The SCG pointed out that, should the Commission, at some point in the future, lift the imputation limitation, the imputation provisions in Plan A and Plan B, as set forth in Appendix A to the SCG Exceptions, give recognition thereto as follows:

> The member companies will also abide with any Commission policy established regarding toll imputation in the design of their intraLATA toll rates. However, a participating Company shall not be required to pass any imputation test, unless all toll carriers operating in the same serving area agree or are required to comply with the exact imputation test for that serving area as may be imposed on such company.

(Appendix A Plan at Parts 3.A.(A)13 and 3.B.(A)6).

d. Disposition

We agree with the ALJs' conclusion that this issue has been resolved in the *Global Order*. We deny AT&T's Exceptions. With regard to the OTS' concern, we agree with the SCG position. Therefore, we shall adopt the proposed language by the SCG.

8. Exogenous Events

The SCG proposed the inclusion of special events which allow the recognition of special revenue adjustments to recognize "exogenous events." The SCG cited several Chapter 30 Plans including *Frontier*, *supra*, which, it asserts, have identical provisions.

The OTS opposed the provision. The OTS argued that the SCG did not prove that the events described within the Plans were truly exogenous.

The OCA urged the Commission to take the following action:

> . . . [T]o strictly limit the availability of the exogenous change filing to events that are outside of the company's control, are not captured in the GDP-PI factor, and are of sufficient magnitude (more than 5% of revenues). In addition, the Commission must review earnings as part of any exogenous events filing. The Commission should not allow the recovery of revenues due to a reduction in average schedule compensation or the required shift to separations, except to the extent necessary to allow a company to maintain a reasonable rate of return. Finally EAS/OCP revenue losses or expenses should not qualify as an exogenous event.

(OCA M.B., p. 45).

AT&T presented the following argument:

> Part 3.A.(A)11 (at 14), in addressing exogenous events, provides that "any" requirement that a member Company participate as a "contributor" to a universal service fund in Pennsylvania shall constitute an exogenous event. Of course, a Company could be both a contributor to and recipient from such a fund and only a net expense or benefit should be considered an exogenous event, as Mr. Watkins admitted. The broad language of the first sentence of the final paragraph of Part 3.A.(A)11 (at 14) should thus be amended to read:
>
> > The institution of a universal service type fund in Pennsylvania and any requirement that a member Company participate as a contributor and/or a recipient shall be qualifying exogenous events to the extent the member Company is either a net contributor to or net recipient from such fund. (Footnote omitted).

(AT&T R.B., pp. 28-29).

a. Recommended Decision

The ALJs adopted all of the OTS' reasoning that all events within the SCG members' control shall be excluded as exogenous events and also recommended that the following should not qualify as exogenous events: (1) converting from an average schedule settlement to a cost-based methodology or other format; and (2) revenue losses and costs incurred in extending EAS or OCPs. The ALJs also accepted AT&T's proposed language that the net loss experienced by SCG Companies in the implementation of a universal service-type fund should be considered an exogenous event. (R.D., pp. 38-43).

b. Exceptions

The SCG believes that the OTS' recommendation that "modifications to current intercompany compensation agreements and/or arrangements" be excluded from the definition of exogenous events inaccurately assumes that accounting changes have never before been recognized as exogenous events. (SCG Exc., p. 30). The SCG noted that, as stated in its Main Brief at page 45, changes in Generally Accepted Accounting Procedures (GAAP) that are reflected as changes in regulatory accounting requirements (for cost determination and ratemaking purposes), for which cost changes are likely to result, are routinely recognized as exogenous events in larger LEC price cap plans. The SCG also noted that changes in GAAP rules also have frequently been the subject of single item revenue adjustment filings made by utilities and approved by the Commission.[20] (SCG Exc., pp. 30-31). As such, the SCG stated that it is requesting no more than that which the Commission has already allowed and the fact that no preceding Chapter 30-seeking ILEC has thought or sought to specifically include such a change within its definition of exogenous events is insufficient reason to disallow it in the SCG Plan.

The SCG also argued that, modification to current intercompany compensation agreements have been approved as exogenous events in both the *Citizens* and *Ironton* Chapter 30 Plans. The SCG noted that the traditional connecting carrier and compensation arrangements among and between carriers are under review on several fronts (*e.g.*, intraLATA toll, EAS arrangements, etc.) and that changes in any of these mechanisms or arrangements could cause one-time disruptive changes in costs, revenues, and demand for service which are outside the normal economic changes reflected in the

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[20] *See, Popowsky v. Pa PUC*, 683 A.2d 958 (Pa. Commw. 1996) (affirming, over the OCA's objection to the Commission's allowance of a gas utility's single line item recovery of incremental costs associated with complying with changes in GAAP standards).

SCG's Plan A or B. Since the Commission approved virtually identical provisions in previous Chapter 30 proceedings, the SCG is of the opinion that the SCG proposal is reasonable and appropriate and should be adopted. (SCG Exc., p. 31).

With regard to the ALJs' rejection of the Companies' inclusion of conversion from average schedule settlement to cost-based or other methodologies as an exogenous event, the SCG is of the opinion that this recommendation contradicts the Chapter 30 Plans approved in the Commonwealth, Citizens and Ironton Chapter 30 Plans, each of which recognized a conversion from average schedules as an exogenous event with no earnings review requirement. As such, the SCG requested that the ALJs' recommendation be rejected because it lacks rationale or support. (SCG Exc., pp. 31-32).

The SCG also objected to the ALJs' recommended rejection of the Companies' proposal to include cost of implementing Commission-mandated EAS/OCP routes and argued that the basis for the ALJs' decision is faulty and appears to be based on a misunderstanding of EAS/OCP design, leading to the mistaken belief that the Companies have it within their control to design EAS/OCP rates that are fully compensatory. The SCG noted that the exogenous events would only be triggered if costs exceeded revenues, and any recovery would be net of any revenue recovered through rate band changes. (SCG Exc., p. 32). The SCG noted that, approval of the EAS cost recovery mechanism as an exogenous event is not new and novel since it was approved in the Ironton Chapter 30 Plan following settlement reached among the Parties, including the OCA. (SCG Exc., p. 33).

Finally, the SCG noted that, although the ALJs also accepted AT&T's recommendation regarding universal service obligations, the SCG had accepted AT&T's proposal in the briefing process. The modification is contained in Appendix A attached to SCG's Exceptions.

c. Reply Exceptions

The OCA is of the opinion that, contrary to the SCG's assertions, the ALJs' recommendations are justified and reasonable. The OCA believes that the exogenous events clause of the proposed Chapter 30 Plan should be strictly limited to those events beyond the Company's control which are not captured in the GDP-PI and should be of sufficient magnitude to warrant such rate adjustments.

With regard to the SCG's reasoning that faults the ALJs' adoption of the OCA's recommendation to exclude the conversion from average schedule to cost-based rates from the definition of exogenous events because the Commission has approved this provision in two (2) settled cases and one (1) litigated case, the OCA submitted that the ALJs' recommendation is not bound by these previous determinations given the multitude of changes that have occurred since the Commission Order in the *Commonwealth* Chapter 30 proceeding. Furthermore, the OCA argued that the other two (2) cases were settled and, therefore, were not subject to a litigated determination.

Finally, the OCA objected to the SCG's allegation that the ALJs were misguided because they adopted the OCA's position on the EAS/OCP exogenous cost recovery issue. The OCA contended that the SCG normally receive additional revenues from EAS in the change of rate bands and the resulting increase in rates which occurs as a result of the additional access lines in the customers' local calling area. The OCA argues that the SCG is not foregoing this increase in revenues as part of the proposed Chapter 30 Plan and, thus, there is no need for an exogenous event and the ALJs' recommendation is appropriate.

The OTS disagreed with the SCG's Exceptions to the ALJs' acceptance of the two (2) OTS modifications which delete accounting changes and modifications to current intercompany compensation agreements and/or arrangements as qualifying exogenous events. The OTS contended that the SCG has not met its burden of proof that these two (2) events are truly "exogenous." (OTS R. Exc., p. 17).

d. Disposition

We shall adopt the ALJs' recommendation that excluded all events within the SCG members' control as qualifying exogenous events; however, we shall not adopt the ALJs' recommendation which excludes the following as exogenous events: (1) converting from an average schedule settlement to a cost-based methodology or other format; and (2) revenue losses and costs incurred in extending EAS or OCPs. This action is consistent with our past actions taken in the *Citizens*, *Ironton* and *Commonwealth* Chapter 30 Plans, and there is no record in this proceeding that supports any deviation from the definition of exogenous events set forth in our previously-approved Chapter 30 Plans. With regard to GAAP changes, we agree with the SCG position. As such, we shall recognize as exogenous events any changes to GAAP that are reflected as changes in regulatory accounting requirements for cost determination and ratemaking purposes that will result in cost changes.

We shall also adopt the ALJs recommendation concerning AT&T's suggested language regarding universal service obligations, which the SCG had accepted.

9. Rate Rebalancing

Plans A and B address the ability of the SCG Companies to file tariffs proposing to rebalance and/or restructure rates for noncompetitive services on a revenue

neutral basis. (SCG Exc. 1, Ex. A, pp. 16-18 (Plan A) and 21-22 (Plan B)). Plan A proposes that in addition to any PSM filing, once a year the Companies can file to rebalance residential and small business rates. If the proposals do not increase rates by more than $3.50 per month, the proposals would be approved. The procedure proposed was the time line established for PSM filings.

The OTS proposed that the companies restate how often, under Plan A, a rebalancing filing can occur so that it is clear that only one (1) rebalancing filing could be put into effect per year. (OTS St. 2, p. 17). The SCG does not oppose this proposal and has modified its Plan in Appendix E, page 18, accordingly.

The OTS also expressed the position that, if the Commission declares the service of another company competitive, then there shall be a rebuttal presumption in any SCG rebalancing filing that the same or similar SCG service is also competitive, and rebalancing with noncompetitive service rates should be limited. (OTS St. 2, p. 19)

The OCA opposed the rate rebalancing plan, asserting that it is a "vestige of rate of return/rate base regulation." The OCA argued that it is inconsistent with the intent of Chapter 30.

The OSBA proposed the following:

> The OSBA is concerned about the cost justification for small business local service rates. OSBA Stmt No. 4, Appendix B at page 1 shows that single-line small business local service rate at the lowest rate band, is anywhere from 40% higher to almost double the comparable residential service rate. OSBA asserts that some of these rates are above cost. OSBA Stmt. No. 1 at 21.
>
> To remedy this problem for business customers, any rates that are now above cost should be reduced. OSBA proposes that

such reductions should apply to small businesses that purchase ten or fewer lines, and a mechanism for these reductions should be incorporated into Plan A (and, if approved, Plan B).

(OSBA M.B., pp. 18-20).

Finally, AT&T argued that the provision should be amended to assure that notice of restructuring or rebalancing filings is served upon all Parties required by Part 3.A.(A)10.

a. Recommended Decision

The ALJs recommended approval of the rate rebalancing provisions in the Plan but directed the SCG to modify their Chapter 30 Plan to conform with the *Global Order*. (R.D., pp. 44-66).

Specifically, the ALJs recommended that the proposed $3.50 per month per year cap should be approved because it is similar to other small LECs and the Commission's prior acceptance of this number is sufficient to indicate the reasonableness of this cap. In addition, the ALJs recommended approval of the SCG agreement to limit their rebalancing requests to one (1) per year. Also, in light of the fact that the Commission promulgated its *Global Order* after the briefs were submitted, the ALJ noted that, as part of the *Global Order*, the Commission provided a conditional cap for all non-Bell Atlantic-Pennsylvania, Inc. ILECs. (R.D., pp. 64-65).[21] As such, the ALJs recommended that the SCG members be directed to modify their Chapter 30 Plans to conform to the Commission directives.

[21] The cap referenced by the ALJs is contained on pages 152 and 201-203 of the *Global Order*.

b. Exceptions

The SCG excepted to the ALJs' recommendation that their member companies be directed to modify their Chapter 30 Plans to conform with the *Global Order*. The SCG is concerned that various portions of the *Global Order* appear to preclude, to some extent, revenue neutral rate rebalancing through December 31, 2003. The SCG argued that it cannot be expected to move to Chapter 30 alternative/streamlined regulation if it is precluded, over the next four (4) years, from rebalancing its rates. Furthermore, the SCG noted that it had filed a Petition for Reconsideration seeking clarification and modification of the *Global Order* and requesting the right to continue to pursue revenue neutral rate rebalancing through December 31, 2003, and, to the extent such rate changes exceed the $16.00 residential and corresponding business rate ceilings, it should be permitted to recover such difference from the Pennsylvania Universal Service Fund. (SCG Exc., pp. 33-34).

The OCA filed Exceptions to the ALJs' recommendation stating that the ALJs erred to the extent that they adopted the SCG's rate rebalancing proposal. However, as long as the ALJs' recommendations are consistent with the *Global Order's* rate rebalancing provisions, the OCA does not except. If, however, the ALJs are recommending some combination of the SCG proposal of a $3.50 monthly cap and the *Global Order*, then the OCA excepts to the retention of the $3.50 monthly cap because the *Global Order* controls rate rebalancing through December 31, 2003. As such, the OCA requested that the Commission declare that the *Global Order* prevails over the SCG's rate rebalancing proposal.

The OSBA objected to the ALJs' recommendation only because it does not go far enough in correcting an inequitable situation that exists between the rates of small business customers and residential customers in light of the fact that small business

customers have been treated on par with residential customers regarding the rate rebalancing limitations. As such, the OSBA suggested, as it argued in its Main Brief at page 18, that the Price Stability Plan permits rate rebalancing to narrow the differential between the same services for different customer classes in accordance with costs and market conditions. The OSBA, therefore, requests that the Commission correct this flaw by applying a lesser dollar cap to any increases to small business rates proposed in rate rebalancing filings. (OSBA Exc., pp. 6-7).

The OTS believes that the ALJs erred in rejecting its proposed limitation on the level of annual protected service increases. The OTS is of the opinion that its proposal, which limits annual rate increases to protected, basic local service rates for residential and small business customers to $2.50 per month or 20%, whichever is less, provides for a more reasonable and gradual increase and should be adopted by the Commission. (OTS Exc., pp. 21-24)

AT&T excepted to the ALJs' recommendation because it believes the ALJs erred in not modifying the procedure regarding restructuring and rebalancing. (AT&T Exc., pp. 30-31; 33). Specifically, AT&T requests that Part 3.A.(B)4 (p. 19) be amended to read as follows:

> The "75 day procedure," <u>including the parties specified therein who shall receive notice thereof,</u> shall apply to all PSM, exogenous events and restructuring and rebalancing filings, with the allowance of an additional 15 calendar days to allow time for hearings, if specifically requested by the OTS, OCA, OSBA or a customer <u>or any other party to the Chapter 30 proceeding</u> made at the time of complaint or intervention.

AT&T also excepts to the ALJs' recommendation because it does not limit the SCG Companies' right to rebalance intrastate access rates which are "protected" rates under Chapter 30. (66 Pa. C.S. §3002). (AT&T Exc., p. 33).

AT&T also requested that the Commission make it clear that the reform of the Companies' above-cost access charges is a matter for resolution in the context of their Chapter 30 Plans because the *Global Order* is not a determination that the Companies' access rates are just, reasonable and nondiscriminatory for the purpose of Chapter 30. (AT&T Exc., pp. 4-5). In addition, AT&T excepted to the ALJs' recommendation which concludes that the *Global Order* resolved the access issue to the satisfaction of both AT&T and the SCG, whereas, in AT&T's opinion, the *Global Order* did not address and, thus, did not resolve, whether the Companies' access rates are compliant with the requirements applicable to a Chapter 30 Plan, particularly Section 3004(d)(4)'s requirement that the SCG's access rates not unduly or unreasonably prejudice or disadvantage AT&T and other access customers as a customer class. (AT&T Exc., p. 5).

c. Reply Exceptions

The SCG submits that the $3.50 price cap recommended by the ALJs is consistent with the price caps previously approved by this Commission for other Chapter 30 ILECs and that the proposal by OTS which argues for $2.50 or 20%, whichever is less, is too restrictive and cannot be justified. The SCG believes that, if the intent of alternative regulation is to afford the small companies some freedom and pricing flexibility in a competitively transitional market, there is no justification whatsoever to mandate such onerous price restrictions as suggested by the OTS.

The SCG noted that AT&T raises, for the first time, a limitation on intrastate access rate charges. The SCG argued that the limitation is not defined and that

this novel contention is not only untimely but also meaningless since AT&T provides no definition to its proposal. (SCG Exc., p. 17).

Finally, the SCG disagreed with AT&T's contention that the *Global Order* is not a determination that the Companies' access rates are just, reasonable and nondiscriminatory and that the SCG Chapter 30 Plans "cannot be legally approved." The SCG also believes that AT&T is very mistaken in its allegation that the *Global Order* did not address, and thus did not resolve, whether the Companies' access rates are compliant with the requirements applicable to a Chapter 30 Plan. The SCG pointed out that the *Global Order* did adopt the Small Company Universal Service Fund with modifications, establishing access charge reform together with universal service funding for all smaller ILECs in Pennsylvania. The Small Company Universal Service Fund Plan, as adopted, specifically provided as follows:

> With respect to the Small ILECs which have Chapter 30 Plans pending before the Commission at the date of this Settlement Agreement, the intrastate access charges to be established pursuant to the approval of this Settlement Agreement shall be considered just and reasonable rates for the purpose of resolving such Plans.

(Joint Petition, Docket No. P-00991649, Appendix II, Small Company Universal Service Fund Settlement, Appendix A, p. 8).

In light of the Commission's approval of this provision, and the fact that AT&T took no exception to it, the SCG asserts that there is no basis to AT&T's Exception claiming that the access rates established in the *Global Order* do not constitute just and reasonable rates for the purpose of this Chapter 30 proceeding.

The OCA submitted in its Reply Exceptions that any objections SCG has to the *Global Order* are not properly before the Commission as part of this proceeding and

that the *Global Order* does not preclude the SCG from rate rebalancing, as long as it is consistent with the requirements set forth in that Order. (OCA R. Exc., pp. 19-21).

The OSBA agreed with the ALJs' rejection of the OTS and OCA rate caps because they do not narrow the price differential between customer classes for the same type of services. (OSBA R. Exc., pp. 12-15).

The OTS is of the opinion that the SCG's ninth Exception to the ALJs' recommendation that the Companies' rate rebalancing provisions in the Plan be modified to be in compliance with the *Global Order* is a disguised request for reconsideration of the *Global Order* and must be addressed in that Order.

d. Disposition

We note that the issue involving rate rebalancing has been resolved by the *Global Order*. As such, we shall adopt the ALJs' recommendation, which requires the Companies to modify their Chapter 30 Plans consistent with the terms of the *Global Order*.

We also agree with the SCG's arguments that (1) AT&T's Exceptions concerning limitations in intrastate access rate charges are untimely and (2) that the *Global Order* declared that the intrastate access charges to be established pursuant to the approval of this Settlement Agreement shall be considered just and reasonable rates for the purpose of resolving the Companies' Chapter 30 Plans. Therefore, we shall adopt the positions of the SCG and deny AT&T's Exceptions.

10. Cost Data Requirements

The OTS proposed that the SCG be required to provide cost data to substantiate its requests for rate changes. (OTS St. 2, pp. 21-22). The SCG opposed this position and argued that the requirement of cost data would diminish the benefits of alternative regulation. (SCG M.B., p. 49).

a. Recommended Decision

The ALJs recommended adoption of the OTS position that requires that cost data be submitted to support all rate changes under Chapter 30. The ALJs reached this determination because this issue had already been determined in the *Commonwealth* Chapter 30 Order. (R.D., pp. 68-69).

b. Exceptions

The SCG argued that the ALJs' recommendation that cost data be required for all rate changes must be rejected because it would make absolutely no sense to compel companies the size of Hickory or Yukon-Waltz to incur the time and expense to prepare cost studies to support each and every rate change under their Chapter 30 Plans. (SCG Exc., pp. 34-35). In recognition of the fact that the Commission did require some limited cost data in its most recently-approved streamlined Chapter 30 Plans (*e.g.*, *Ironton* and *Citizens*), the SCG, in the spirit of compromise, is agreeable to adopting a similar costing requirement with minor modifications.

c. Reply Exceptions

The OTS is of the opinion that the ALJs' recommendation that cost support be required for all rate changes should be adopted consistent with the *Global Order* and that the SCG's late-filed compromise proposal should be rejected. (OTS R. Exc., pp. 19-21).

d. Disposition

We disagree with the ALJs' recommended adoption of the OTS' position which requires cost data to substantiate any request for rate changes under Plans A or B.

For those four (4) companies under Plan A, cost data shall be required. This conclusion is consistent with our determination in the Commonwealth Chapter 30 Plan. However, for the smaller fifteen (15) companies, we conclude that, to require cost data would be economically burdensome. Furthermore, we note that such cost data is not currently required in all cases and creating additional requirements flies in the face of "streamlined regulation."

Finally, as a matter of clarification, we shall not adopt the SCG's late-filed compromise proposal.

V. Network Modernization Plan

Pursuant to Section 3003(b), each of the nineteen (19) SCG members presented a Company-specific NMP. (SCG St. 1, pp. 8-19). The NMPs are nearly identical in format and degree of detail to the NMPs evaluated and ultimately approved by the Commission in, for example, the recent Chapter 30 proceedings involving *Ironton* and *Citizens*. (SCG St. 6R, p. 12). Each NMP expresses the respective Company's commitment to convert 100% of its interoffice and distribution telecommunications network to broadband capability by December 31, 2015 (and contains interim target dates for meeting that commitment). Each NMP also identifies present and projected installation of digital central office switches, fiber optic trunk line capability between central offices, Intelligent Network Signaling (INS) capability and Integrated Services Digital Network (ISDN) availability in central offices, and targets public schools, industrial parks and health care facilities in the service territory for initial broadband availability. The NMPs are set forth in SCG Ex. 1, Ex. A, App. 2.

The Companies argue that their NMPs meet all applicable Chapter 30 "network modernization implementation plan" requirements and, therefore, should be approved. These requirements are set forth in 66 Pa. C.S. §3003(b).

66 Pa. C.S. §3003(b) requires that any Pennsylvania LEC that submits an alternative regulation plan must also submit a NMP for the Commission's consideration. Section 3003(b)(1) through 3003(b)(6) set forth the general considerations governing such a network modernization plan.

Section 3003(b)(1) begins by directing the local exchange telecommunications company seeking to commit to universal broadband availability to

commit to converting 100% of its interoffice and distribution telecommunications network to broadband capability by December 31, 2015.

Section 3003(b)(2) directs that the company shall reasonably balance deployment of its broadband network among rural, urban and suburban areas within its service territory.

Section 3003(b)(3) requires that the NMP include deployment of broadband facilities in, or adjacent to, public rights-of-way abutting public schools, industrial parks and health care facilities.

Section 3003(b)(4) directs that the company NMP identify and describe in detail the company's implementation plan for complying with subparagraphs 3003(b)(1), (2) and (3). Specifically, the company is directed to specify interim target dates at not-more-than five (5) year intervals for deployment of its broadband network.

It is the position of the OCA that the Commission should reject all nineteen (19) NMPs. The OCA posits that, if the Commission does not reject the NMPs, the Commission should modify all the Plans to provide for more extensive reporting of network details.

Specifically, the OCA made several specific arguments to support its position that the proposed NMPs be rejected in their entirety. We will address each argument to the extent that Exceptions were filed. In all other respects, we adopt the ALJs recommendation.

A. OCA Opposition to the NMPs

1. NMP Biennial Reporting Requirements

The OCA argued that there is a need for highly detailed NMP biennial reports.

The SCG responded that, in doing so, the OCA made a transparent attempt to circumvent the Commission's pending investigation instituted by Opinion and Order entered September 22, 1998, at Docket No. M-00930441, which seeks to develop reporting requirements for NMP updates, *Reporting Requirements for Biennial Updates of Network Modernization Plans Filed Pursuant to 66 Pa. C.S. §3003(b)(6)*. The Companies argued that the Commission investigation should be allowed to resolve the reporting requirements issues. The SCG argued that it makes little sense in this Chapter 30 proceeding to argue over what should, or should not, be the appropriate NMP reporting requirements. That issue will be resolved in Docket No. M-00930441.

As stipulated on the record, the SCG members will comply with the NMP reporting requirements established by the Commission investigation. Accordingly, the SCG Plan was revised in Appendix E to include the following reporting requirement:

> a. Biennial summary updates and five year detailed reports to the member companies' Network Modernization Implementation Plans in compliance with 66 Pa. C.S. §3003(b)(6) and any applicable reporting requirements established by the Commission at Docket No. M-00930441.

(SCG M.B., Appendix E, pp. 32-33).

The SCG argued that this modification, which clarifies the earlier modification set forth in SCG St. 2R, page 5, should eliminate any reporting requirement issue.

a. Recommended Decision

The ALJs recommended that the SCG members comply with the NMP reporting requirements to be established at Docket No. M-00930441 and continue to file Chapter 71 earnings reports. (R.D., pp. 85; 103).

b. Exceptions

The SCG noted that it originally stipulated that it would comply with the NMP reporting requirements ultimately established by the Commission in Docket No. M-00930441. The Commission ultimately released its Order at this docket on May 17, 1999. (*May 17 Reporting Requirements Order*). The SCG contended that the *May 17 Reporting Requirements Order* went far beyond the scope of that proceeding and addressed the filing of reports other than biennial NMP reports, essentially holding all companies responsible for complying with all pre-Chapter 30 reporting requirements plus additional and onerous NMP reporting requirements. The SCG asserted that it is not satisfied with such onerous reporting requirements under alternative regulation and contests the mandates of the *May 17 Reporting Requirements Order*. The SCGs stated that they reserve their rights, following review of the final approved Plan, to reject such Plan if it mandates the onerous reporting requirements identified in the *May 17 Reporting Requirements Order*. In addition, the SCG suggested that if the NMP reporting requirements are now cast in stone, the Chapter 30 Plans should at least provide the Companies with some form of relief from the existing annual financial reporting requirements. The Companies, therefore, requested that they only be compelled to file an

annual balance sheet, income statement and statement of plan accounts in lieu of an Annual Report and Chapter 71 earnings reports. (SCG Exc., pp. 36-37).

AT&T claimed that, by rejecting the OCA's position and completely ignoring its position, the ALJs allowed the SCG's confusing proposal (Plan at 4.C.1.a) to remain in effect. AT&T asserted that, in order to be consistent with Chapter 30 and to ensure that the ALJs' recommendation would not allow less than what Chapter 30 requires, the reporting requirement provision at 4.C.1.a should be modified as follows:

> Biennial ~~summary~~ updates, in compliance with 66 Pa. C.S. §3003(b)(6), and five year detailed reports ~~to~~ of the member Companies' Network Modernization Implementation Plans ~~in compliance with 66 Pa. C.S. §3003(b)(6)~~ and any additional reporting requirements established by the Commission at Docket No. M-00930441.

c. Disposition

Each Company has filed its respective Plan with associated reporting requirements. The ALJs directed that those reporting requirements established at Docket No. M-00930441, as well as the Chapter 71 earnings report, be imposed. We agree. The Chapter 30 Plans are governed by existing regulations and rulemaking. Any objection to proposed reporting requirements should be voiced in the appropriate forum. This proceeding is not the appropriate forum. We deny the OCA and AT&T Exceptions and adopt the Recommended Decision.

2. Reports Showing Broadband Service Charges and Customer Broadband Purchases

a. Recommended Decision

The ALJs recommended that the SCG members comply with the mandates established at Docket No. M-00930441, concerning the reporting of information on broadband service charges and customer purchases by the LECs' customers. (R.D., pp. 84-85).

b. Exceptions

The OCA objected to the ALJs' conclusion that, for the purpose of NMP reporting, monitoring the number and type of customers who purchase broadband from their local company is irrelevant to Chapter 30 network modernization requirements. The OCA noted that the *May 17 Reporting Requirements Order* requires Chapter 30 LECs such as the SCG members, to report information concerning how many consumers are purchasing broadband service and other information. (OCA Exc., p. 11).

c. Reply Exceptions

The SCG, in responding to the OCA's Exception, stated that the information required in the NMP updates has now been established by the Commission's *May 17, 1999 Reporting Requirements Order*, thus rendering the OCA Exception moot. (SCG R. Exc., p. 4).

d. Disposition

We agree with the ALJs' recommendation that the service reporting requirements at Docket No. M-00930441 should be followed. In determining our resolution to this matter, we rely on the directive in our *May 17, 1999 Reporting Requirements Order* in which we stated the following:

> As we already stated in our September 22, 1998 Order in this docket, "the true measure of any local exchange carrier's compliance with its Network Modernization Plan is the provision of actual 'broadband' services to customers." September 22, 1998 Order at 3. A network modernization plan offering broadband services with few, if any, subscribers may not benefit Pennsylvania or its citizens as we move into the 21st century.
>
> It is critical, therefore, that we be provided accurate information in the biennial reports showing how many customers are buying broadband services and what broadband services are being purchased by customers. Without this information regarding the actual use of an advanced telecommunications network by Pennsylvania consumers, we cannot effectively exercise oversight responsibilities given to the Commission by Chapter 30 to "ensure the efficient delivery of technological advances and new services throughout the Comonwealth in order to improve the quality of life *for all Pennsylvanians*." 66 Pa. C.S. §3001(5) (emphasis added).

Again, as we discussed in the previous section on "NMP Biennial Reporting Requirements," this Chapter 30 proceeding is not the forum to object to the proposed reporting requirements at Docket No. M-00930441. As such, the OCA's Exceptions are denied.

B. Contingencies Placed on NMP Compliance

Initially, the SCG's NMPs (Paragraph F) made the continuation of the plans contingent on the maintenance of "historic" annual earnings levels. On rebuttal, the SCG's witness agreed to revise the provision to read: "regardless of the accuracy of this total, the level of annual expenditures for network modernization will be dependent upon the maintenance of adequate annual earnings levels through the year 2015, which is now an uncertainty."

The OTS and AT&T challenged this contingency. The OTS stated that it is unaware of any Chapter 30 provision that authorizes this provision. Whereas, AT&T alternatively suggested that additional language permitting a company to petition the Commission for NMP relief should its earnings and revenues become insufficient.

The SCG did not oppose the proposed modification of AT&T. The SCG, however, opposed the removal of the earnings contingency from the NMPs, arguing that the contingency represents reality.

1. Recommended Decision

The ALJs recommended adoption of the SCG's proposal to revise the last paragraph in Section F in each of the NMPs as follows:

> Regardless of the accuracy of ~~the projected~~ this total, the ~~Company's future~~ level of annual expenditures for network modernization will be dependent upon the maintenance of ~~the company's historic~~ adequate annual earnings levels through the year 2015, ~~something that has become a tangible~~ which is now an uncertainty.

In addition, the ALJs recommended maintaining the language in Part 4, Section B.7 that limits the continuation of the NMPs should CLECs be permitted to enter their rural service territories at interconnection rates not providing full cost recovery. (R.D., pp. 85-88).

2. Exceptions

The OTS excepted to the ALJs' recommendation that the SCG members' NMPs be permitted to include a contingency that annual NMP expenditures (and, therefore, NMP compliance) will be dependent upon maintenance of adequate annual earnings through 2015. The OTS argued that Chapter 30 does not guarantee a LEC any level of earnings in return for compliance with a NMP, nor does it guarantee compensatory cost recovery. Instead, Chapter 30 provides freedom from traditional earnings caps through alternative regulation to provide incentive for greater earnings and that some of those earnings are to be invested in network modernization. (OTS Exc., p. 24)

As an alternative to deletion of the NMP earnings contingency, OTS noted that it had proposed that the Plans provide for the filing of a Petition, with service on all Chapter 30 Parties, in the event a Company intends to invoke the contingency.[22] OTS also noted that the Companies appeared to agree that they would file a Petition with the Commission, with the opportunity for all Chapter 30 Parties to respond,[23] but the Recommended Decision does not specifically require this.

Therefore, OTS requested that its Exceptions be granted and the SCG members be required to delete the earnings contingency from their respective NMPs or,

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22 OTS M.B., pp. 12-13.

23 Tr. 424-425, 479-481).

in the alternative, they should be required to specifically provide for the filing of a Petition with the Commission, with service on all Chapter 30 Parties, if the contingency is intended to be invoked. (OTS Exc., p. 25).

With regard to the embedded cost recovery contingency, the OTS excepted to the ALJs' recommendation that the SCG member NMPs be permitted to include a limitation on continuation of the NMPs should competitors be permitted to enter their service territories at interconnection rates which do not fully provide for fully compensatory recovery, including embedded cost recovery.

The OTS requested that the Commission grant its Exception and remove this provision from the Plan because OTS is unaware of any approved Chapter 30 Plan which contains this limitation, and it is not sanctioned under Chapter 30 as a NMP contingency. Furthermore, OTS agreed with AT&T's argument that the Companies' proposal would constitute a barrier to entry, in violation of Section 253(a) of the Telecommunications Act of 1996, 47 U.S.C. §253(a).

AT&T argued that the ALJs erred in not striking the provisions allowing the SCG members to avoid their modernization commitments under certain circumstances. (AT&T Exc., p. 19). AT&T believes it would be reasonable to delete the earnings contingency language from the NMPs and add the following addition to each NMP:

> <u>If the Company does not believe that its earnings and revenues are sufficient to maintain its network modernization commitment, it may petition the commission for relief under the 75-day procedure.</u>

AT&T also pointed out that the "adequate earnings" to be considered in weighing the modernization commitment were the earnings from the Companies' local

noncompetitive services only[24] and that this would exclude consideration of earnings from competitive services, interstate services and services of any holding company, even though all of those services might profitably utilize the modernized facilities.[25]

In addition, AT&T argues that Part 4.B.7 of the Plan (p. 32) must be deleted. This section pertains to the embedded cost recovery contingency and provides that, if the Commission authorizes competition in any of the Companies' territories under the interconnection agreements or using unbundled elements "that do not provide fully compensatory cost recovery, including embedded cost levels," the Companies will have the option to alter provisions in their Plans. Furthermore, AT&T is of the opinion that approval of this contingency would also constitute a barrier to entry under TA-96[26] by inducing the Commission to decline to allow any new entrant into the Companies' service areas to acquire bundled or unbundled elements, or interconnection at prices fixed by TA-96 under the threat that they would walk away from the Plan. (AT&T Exc., p. 22-23).

Therefore, AT&T concluded that the earnings language proposed by the Companies should be deleted and that AT&T's proposal to require each company to file a petition with the Commission, if there is an earnings or revenue deficiency, should be adopted.

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[24] Tr. 482-83.

[25] Tr. 47: "Certainly some of the costs of the network would be associated with the competitive services too."

[26] 47 U.S.C. §253(a): "No State or local statute or regulation, or other State or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

3. Disposition

OTS and AT&T have argued that the deployment schedule represented "business as usual" and that there were unauthorized contingencies on compliance. We disagree. There are no contingencies whereby a Company can simply walk away from its Chapter 30 commitment. If a Company finds it is unable to meet its Chapter 30 obligations, it must petition the Commission, who, after comments from interested parties, will determine any appropriate relief. We shall adopt the ALJs' recommendation which maintains the modified earnings language proposed by the Companies and, in order to reinforce our previous statement, we shall require the Companies to include the language proposed by AT&T which would require each Company to petition the Commission under the 75-day procedure if the Company does not believe that its earnings and revenues are sufficient to maintain its network modernization commitment.

VI. Competitive Services Deregulation Plan

A. Issue Discussion

Part 2 of the SCG Chapter 30 Plan is the Competitive Services Deregulation Plan (CSDP), (SCG Ex. 1, Ex. A, pp. 5-8), the purpose of which is to set forth terms and conditions for deregulation of services found by the Commission to be competitive. In most respects, the SCG CSDP is identical to the deregulation plans previously approved by this Commission. The only service declared competitive at this time is Directory Advertising. (SCG Exh. No. 1, Exh A, p. 5). The CSDP indicates that the following services have been deregulated: Interstate Billing & Collection, Customer Premise Equipment, Inside Wire and Voice Mail. This declaration only applies to those companies providing directory advertising services. (Tr. 463). SCG asserted that, since these services were deregulated before Chapter 30, they are no longer public utility services subject to a competitive declaration and the revenues therefrom should not be reflected in any ratemaking plan for noncompetitive services. (SCG St. 2, p. 23).

The SCG Companies are not requesting any other service be classified as competitive in this Chapter 30 proceeding. Accordingly, all currently-regulated services will continue to be classified as noncompetitive. Should any of the SCG Companies determine that an existing or new service should be classified as competitive, it must petition the Commission for permission to do so pursuant to Section 3005(a).

1. Competitive Safeguards

The CSDP, at Section B.1, declares that, "Each PTA Small Company Group member shall meet the requirements of Chapter 30 with respect to services deemed competitive, i.e., 66 Pa. C.S. §3005(e)(1) and (2)." (SCG Exh. 1, Ex. A, p. 7).

Sections 3005(e)(1) and (2) are the safeguard provisions intended to protect competitors if, and when, a service is declared competitive by requiring that the basic service functions for each competitive service be unbundled and the price which a LEC charges end users for a competitive service not be less than the rates charged to competitors for the basic service functions used by the LEC to provide the competitive service. The SCG members submit that the Section B.1 proposal in the CSDP is adequate and no other competitive safeguard is necessary. Section B.4 of the initial CSDP provided that the price for a competitive service shall cover its long run incremental cost. (SCG Exh. 1, Ex. A, p. 7). The SCG members no longer believe this provision is necessary since §3005(e)(2) mandates that the price for a competitive service must cover the rates charged to others for the basic service functions (BSFs) necessary to provide the service. Once the prices for the BSFs are determined by the Commission and tariffed, there is no necessity for any long-run incremental cost floor. Therefore, SCG removed Section B.4 from the modified Plan in Appendix E.

AT&T stated that the BSFs used for Directory Advertising were not identified by the member Companies. AT&T also advocated the use of only "forward looking cost studies."

a. Recommended Decision

The ALJs recommended adoption of the SCG's proposal which contains a competitive safeguard provision which declares that "Each PTA Small Company Group member shall meet the requirements of Chapter 30 with respect to services deemed competitive, i.e. 66 Pa. C.S. §3005(e)(1) and (2)," and that specific pricing methodology be deferred until an SCG member seeks to declare a service to be competitive. (R.D., pp.95-96). The ALJs also recommended adoption of the SCG proposal which removes Section B.4 from its Plan because §3005(e)(2) mandates that the price for a competitive

service must cover the rates charged to others for the BSFs necessary to provide the service.

b. Exceptions

AT&T argued that the SCG does little more than pay lip service to the Chapter 30 requirements at 66 Pa. C.S. §3005(e)(1) and (2) because, although each member states it is willing to meet the unbundling requirements, the Plan is silent as to the documentation it will provide to show that it is in fact satisfying those mandatory safeguards. (AT&T Exc., pp. 7-8). AT&T requested that the Commission adopt its suggested language for inclusion in Part 2.B.1 (p. 7) which would assure that "[e]ach member Company shall furnish the tariff and such workpapers and supporting financial data as may be necessary to evidence compliance with these sections and with §3005(g)(2) at the time it unbundles any basic service function (BSF) on which a competitive service depends. (AT&T Exc., p. 9).

AT&T excepted to the ALJs' recommendation which would allow the removal of Part 2.B.4 of the proposed Plan, and argues that its suggested language which would require the Companies to use "appropriate forward-looking cost as established in an approved cost study" should be added to the original proposal in lieu of "long run incremental costs (LRIC)" to determine whether compliance with the cross-subsidy prohibition of §3005(g)(2) is being met. (AT&T Exc., pp. 12-13).

The OTS also argued that financial reporting requirements should apply to competitive services. (OTS Exc., pp. 26-27).

c. Reply Exceptions

The SCG argued against AT&T's exceptions that the SCG members should be compelled to provide workpapers with their tariffs when BSFs are unbundled, file annual reports of revenues, expenses, rate base and net income associated with competitive services and serve those reports on AT&T. The SCG asserted that the ALJs fully reviewed each parties' contentions, and rightfully concluded that AT&T's and OTS' requests place unnecessary regulatory and anti-competitive burdens on the companies and yielded little benefit. Furthermore, the SCG argued that the prior settled cases that AT&T relies on are irrelevant and, as the ALJs noted, the CSP provides the Commission access to information when necessary. (SCG R. Exc., p. 5).

d. Disposition

We agree with the ALJs' recommendation that Section B.1 of the SCG proposal is adequate and that the Commission should not be compelled to prejudge the appropriate pricing methodology for BSFs applicable to services not yet declared competitive. In addition, we agree with the ALJs' recommendation, which removes Part 2.B.4 of the originally filed plan. We note that the ALJ correctly rejected AT&T's recommendations as "having no legitimate purpose." As such, we shall deny AT&T's exceptions.

2. Reporting of Financial Information

a. Financial Information Associated With Competitive Services

The OTS and AT&T argued that the CSDP should be modified to require the reporting of financial information associated with competitive services. The OTS

contended that the Companies should supply with their annual financial reports "a statement of revenues, rate base, and income associated with all competitive services." The OTS continued that such annual reporting is needed to determine if competitive services are being subsidized by noncompetitive services as prohibited by 66 Pa. C.S. 3005(g)(2).

The SCG argued that if competitive services are priced at or above the tariffed BSFs as required by the CSDP, there can and will be no subsidization. Therefore, this annual filing requirement for the purpose identified by the OTS is unnecessary. Further, the SCG argued that this requirement flies in the face of streamlined regulation by creating yet another filing hurdle and would be anti-competitive to the extent competitors who are not required to divulge similar proprietary information would have access to the SCG member's financial information. The SCG concluded that, should a problem arise, the Commission retains the authority to request review of competitive service financial information.

i. Recommended Decision

The ALJs recommended against adopting the OTS and AT&T proposed financial reporting requirements for competitive services, noting that their proposals were unfair, anti-competitive, contrary to the goal of regulatory parity, and contrary to the concept of alternative regulation, including the desired reduction of regulatory delays and costs. (R.D., p. 99).

ii. Exceptions

The OTS excepted and argued that the ALJs' reasons to reject OTS' and AT&T's proposals are without merit because their proposals would enforce the "no subsidization" requirement in §3005(g)(2) of Chapter 30. (OTS Exc., pp. 26-27). In

addition, the OTS argued that the Commission already deemed similar reporting requirements for the services declared competitive in the Chapter 30 Plans for *Frontier*, *Ironton*, *TDS*, and *Citizens*.

AT&T argued that OTS' and AT&T's proposals have been accepted in other cases and should be added to Part 2.A.3 of the SCG's Chapter 30 plan. AT&T asserted that the ALJs misunderstood the necessity for such information and misread the desire for regulatory parity to suggest that competitors should provide similar information. AT&T argued that the information sought would not provide a competitive advantage to AT&T but would prevent anticompetitive cross-subsidization and support by the Companies. AT&T also stated that the ALJs ignored the fact that there is such a provision in the *Frontier* Plan, the *Ironton* Plan, the *TDS* Plan and *Citizens* Plan. (AT&T Exc., pp. 10-12).

iii. Reply Exceptions

The SCG argued against the OTS' and AT&T's exceptions stating that the ALJs fully reviewed each party's contentions and rightfully concluded that the OTS' and AT&T's requests place unnecessary regulatory and anti-competitive burdens on the Companies and yielded little benefit. Furthermore, the SCG argued that the prior settled cases AT&T relies on are irrelevant. (SCG R. Exc., pp. 5-6).

iv. Disposition

We shall reject the ALJs' recommendation and grant the OTS' and AT&T's exceptions on this issue to the extent they are consistent with the language that we shall require as stated below. We note that we have previously required similar reporting requirements for services declared competitive in the Chapter 30 Plan for *Frontier*,

Ironton, *TDS*, and *Citizens*. Therefore, we shall require the SCG companies to modify Part 2.A.3. of their Plan by adding the following language:

> The Companies shall identify, at the time of the filing of an Annual Report with the Commission, the revenues, expenses, rate base and net income associated with all services deemed competitive under Chapter 30. Five (5) years after approval of the Plan, the Companies may request thereafter that this reporting requirement be discontinued.

b. Chapter 71 Financial Reports

The SCG proposed certain limited reporting requirements in its Chapter 30 Plan. (SCG Exh. 1, Ex. A, pp. 29-30). Since the filing of the Plan, the Companies proposed some changes to this part of the Plan to address concerns expressed by OTS. (SCG St. 2R, p. 51). The OTS had objected to the Companies being relieved from filing the annual financial reports and earnings reports required by 52 Pa. Code §71. (OTS M.B., p. 56).

The SCG asserted that its revised proposal is consistent with an alternative and streamlined form of rate regulation. It included an annual financial report as required by Section 3006(d), and, consistent with the stated purpose of Chapter 30 regulation, the proposal decreases existing filing requirements and reduces regulatory costs to be incurred by these small companies. The Chapter 71 earnings reports would be eliminated in their entirety and the Companies would be relieved from filing the traditional Class A or Class B Annual Report.

The SCG stated that the balance sheet, income statement and statement of plant accounts which the Companies will submit under their revised proposal will

provide the Commission with the information deemed essential by the OTS, *i.e.* a summary of their financial position with sufficient data for the Commission "to evaluate the financial ability of each PTA Group Member to meet their NMP, and to monitor the financial effects of competition on each PTA Group Member." (SCG St. 3, p. 18).

According to the OCA, the Commission reaffirmed its decision to continue to require the filing of Chapter 71 financial reports in *Re: Implementation of Chapter 30 of the Public Utility Code-Streamlined Form of Regulation*, Docket No. M-00930483 (Opinion and Order entered April 28, 1995) at 6. In that Order, the Commission reiterated the statutory requirement in 66 Pa. C.S. § 3006(d) that streamlined companies continue to file financial reports. The requirement that certain financial and annual reports should continue to be filed by streamlined companies was again asserted by the Commission in a subsequent proceeding. *See generally, In re Petition for Declaratory Order of the Smaller Local Exchange Telephone Carriers of the Pennsylvania Telephone Association Regarding Interpretation of 66 Pa. C.S. §3006(d)*, Docket No. P-00940771 (Opinion and Order entered April 28, 1995).

i. Recommended Decision

The ALJs found as follows:

> Despite the SCG arguments and despite the OTS acceptance of the SCG Plan modifications, we cannot overlook the Commission's rulings requiring streamlined companies to submit Chapter 71 reports. SCG failed to offer any compelling reasons why they should be relieved of the reporting requirements the Commission believes are still important. We recommend that the SCG proposal to be exempt from Chapter 71 reporting requirements be denied.

(R.D., p. 103).

ii. Exceptions

The SCG argues that although it had originally agreed to be bound by the reporting requirements established at Docket No. M-00930441, the entered *May 17 Reporting Requirements Order* was a complete surprise and shock to the SCG member because it far exceeded the reporting requirements envisioned by the Companies at that time. Although the SCG is not satisfied with such onerous reporting requirements under alternative regulation, it has agreed to comply with the NMP reporting requirements consistent with the *May 17 Reporting Requirements Order* and has modified its Plan accordingly in Appendix A of its Exceptions.

The SCG, however, goes on to argue that it makes no sense to move to a transitional alternative form of regulation and be saddled with greater reporting requirements than existed traditional rate of return regulation. Accordingly, the SCG members want to reserve their rights, following review of the final approved Plan, to reject such Plan if it mandates the onerous reporting requirements identified in the want to reserve their rights, following review of the final approved Plan, to reject such Plan if it mandates the onerous reporting requirements identified in the *May 17, Reporting Requirements Order.* The SCG believes that if the NMP reporting requirements are now cast in stone, the Chapter 30 Plan should at least provide the Companies some relief from the existing annual financial reporting requirements and suggests that they only be compelled to file an annual balance sheet, income statement and statement of accounts in lieu of an Annual Report and Chapter 71 Earnings Reports.

The OTS excepts to the failure of the ALJs to require the SCG to include an annual financial report for either a Class A or Class B telephone company, and notes that the Class A and Class B annual financial reports are required pursuant to a Commission directive at Docket No. M-00940553, dated May 4, 1994. (OTS Exc., p. 29).

The OTS also notes that there appeared to be some misunderstanding in the R.D. about the OTS position concerning the Chapter 71 reports in that it seems that the ALJs believe that the OTS had accepted certain SCG modification concerning this issue. The OTS asserts that is not the case and states that the Plan modification that were accepted by the OTS, and included in the revised SCG Plan attached to the SCG Main Brief, concern Part 4.C.2 of the Plan and not Part 4.C.1. Part 4.C.2 contains an acknowledgment that the Commission may request additional reports or audits other than those specifically set fort in Part 4.C.1 of the Plan, and provides an opportunity for the companies to oppose that request. The reports in Part 4.C.1 are those which the Companies must supply without question, and the OTS argues that it never agreed to compromise language concerning the inclusion of annual financial reports and earnings information in the specific list of reports which must be filed under Part 4.C.1 of the Plan.

iii. Reply Exceptions

The SCG state that its position on this issue was fully discussed in its Exceptions.

iv. Disposition

Consistent with our previous discussion concerning "NMP Biennial Reporting Requirements", it is appropriate that the SCG's proposal to be exempt from the Chapter 71 reporting requirements be denied.

3. Resale and Sharing Provisions

Section B.6 of the CSDP provides that the Companies will not maintain any resale or sharing restrictions except those restrictions already imposed or to be imposed. (SCG Exh. 1, Ex. A, p. 8). The purpose of this provision is to address existing restrictions such as the FCC's restriction on resale from one class of service to another. (SCG St. 2R, p. 13). The SCG is agreeable to modifying the provision so that it applies to all appropriate regulatory authorities. (SCG St. 2R, page 13). AT&T contended the provision should only apply to restrictions imposed after TA-96. AT&T argued that the SCG's resale provision at Part 2.B.6 (modified Plan Part 2.B.5) should be modified. (AT&T M.B., p. 17). As noted, this provision has been modified, and the OTS has accepted the modification and deemed it "resolved" (OTS M.B., p. 21). Neither OCA nor OSBA have contested the modification.

a. Recommended Decision

The ALJ rejected AT&T's proposal that the proposed modification should only apply to restrictions imposed after TA-96. The ALJs noted that there would be no purpose in imposing this limitation since there were restrictions in place prior to TA-96 and AT&T's proposed language cannot be found in any previously-approved Chapter 30 Plan. (R.D., pp. 104-106).

b. Exceptions

AT&T took exception to the ALJs' recommendation and argues that the ALJs' reasoning is in error because any resale restrictions in effect prior to TA-96 were nullified by Chapter 30, which was enacted in 1993.

c. Reply Exceptions

The SCG argued against AT&T's Exceptions and stated that there is no reason to accept AT&T's restrictive language because TA-96 allows restrictions, and it is only those restrictions the Companies seek to maintain. As such, the SCG argues that its modifiaction is entirely consonant with TA-96 and Chapter 30. (SCG R. Exc., p. 7).

d. Disposition

We shall adopt the ALJs' recommendation that permits the modification to Section B.6 to become effective. This modification contains language which states that restrictions should include those imposed prior to, and after, but not inconsistent with, TA-96. Since there is no record support for the AT&T position, we shall deny its Exceptions.

4. Cost Studies of Other LECs

AT&T objected to the proposed use of cost studies of other LECs as set forth in Part 2.B.4 in the modified Plan "unless it could be shown that there is some relationship between the company that prepared the cost study and the Small Company proposing to use the study and that there is a reasonable basis to accord probative value to the study." (AT&T M.B. at 11).

a. Recommended Decision

The ALJs rejected AT&T's restrictive language that would permit the SCG Companies to use the cost studies of other LECs "unless it could be shown that there is some relationship between the company that prepared the cost study and the Small

Company proposing to use the study and that there is a reasonable basis to accord probative value to the study." (R.D., pp. 104-105).

b. Exceptions

AT&T believes that the ALJs erred in not adopting its proposed language. AT&T contends that the SCG Companies may not necessarily experience a reduction in costs if the studies have not been previously approved or accepted by the Commission because they will be required to undertake expensive discovery and have their experts replicate the studies. AT&T also objected to the SCG's addition of the word "comparable" in the first sentence of Part 2.B.5 because it is not the cost studies that must be "comparable" but the companies that must be comparable. AT&T also argues that, under the SCG's proposal, the studies could have been rejected or not acted upon by the Commission, and yet, they would be permitted to be used. AT&T contends that, in adopting the SCG's proposed language, the ALJs failed to recognize that cost studies may be submitted for various purposes. Finally, AT&T objects to the ALJs' recommendation because it did not specify which type of forward-looking study should be used. (AT&T Exc., pp. 13-16).

c. Reply Exceptions

The SCG argued against AT&T's Exceptions and states that AT&T fails to support its allegation that its proposal is appropriate. The SCG contended that the AT&T proposed limitations would place an absurd and unrealistic burden on the small Companies, and would, without justification, make the proposal the most restrictive of all Chapter 30 Plans. (SCG R. Exc., p. 6).

d. Disposition

We agree with the SCG that AT&T failed to support its allegation that its proposal is appropriate for the SCG Companies. Therefore, we shall deny AT&T's Exceptions and adopt the ALJs' recommendation and analysis.

VII. Additional Commitments And Other Items

A. Extended Area Service

In the initial Chapter 30 Plan, the SCG requested that the Extended Area Service (EAS) regulations no longer be applicable to the member Companies. At the recommendation of the OTS and the OCA, and to be consistent with the Report of the Monitoring/Subscription Subcommittee on EAS dated September 30, 1998, the SCG agreed to the following modification to Part 4, Section B.4 of the Chapter 30 Plan:

> The Extended Area Service regulations established by the Commission at 52 Pa. Code §63.71 et seq., shall continue to be applicable to the PTA Small Company Group with the exception of conducting the biennial traffic usage studies. The requirement to prepare such studies shall be suspended until the Commission issues regulations or guidelines as to how to conduct more accurate traffic usage studies. The Companies' current traffic usage studies from 1997 shall continue to be utilized. The Commission may, on a case-by-case basis, direct that a more current traffic usage study be conducted if, in a formal complaint proceeding, it is determined that a strong community of interest has been demonstrated. The Companies will comply with any modifications to the existing EAS regulations as ordered from time to time by the Commission.

(SCG St. 2R, p. 43).

The ALJs observed that this modification appears to have concluded the EAS controversy with one (1) exception. The SCG also proposed that the following provision be inserted at the end of the aforesaid modification, which provision was also in the initial Plan:

In addition, the Companies will not be compelled to implement further one-way EAS routes or route specific OCPs.

The OTS witness objected to this provision remaining in the Plan. However, he did recognize, on cross-examination, the problems arising with the provision of one-way EAS and the possible loss of access revenues resulting therefrom.

1. Recommended Decision

The ALJs recommended that the SCG modification be adopted and rejected the SCG's request to insert language that "the Companies will not be compelled to implement further one-way EAS routes or route specific OCPs."

2. Exceptions

The SCG excepted to the ALJs' recommendation in that it did not approve the SCG's requested relief from being ordered to implement one-way EAS routes in light of the fact that the continuation of one-way EAS implementation is not in the public interest as fully justified on the record by the Small Company Group. (SCG Exc., pp. 37-38).

The SCG noted that, notwithstanding their serious concern over one-way EAS, and, in their ongoing effort to obtain a final Chapter 30 Plan, they agree to remove the provision from their Plan that "the Companies will not be compelled to implement further one-way EAS routes or route specific OCPs," in the hopes that the Commission will address this concern in a generic EAS investigation.

AT&T excepted to the ALJs' recommendation because it failed to address its proposal that any modification of existing EAS requirements should be nondiscriminatory and apply to all competitors in the Companies territories. As such, AT&T argued that the SCG's modified proposal which the ALJs adopted should not be accepted because a competitor in an SCG member's territory could be subjected to more onerous EAS requirements than is the SCG member. In order for there to be a level playing field, AT&T suggests that an alternative modification to the second sentence in Part 4.B.4 (p. 31) be added to read:

> The requirement to prepare such studies shall be suspended <u>for all companies providing local service in any of the member Companies' territories</u> until the Commission issues regulations or guidelines as to how to conduct more accurate traffic usage studies.

(AT&T Exc., pp. 32-32).

3. Reply Exceptions

The SCG objected to AT&T's repeated attempts to insist that its own EAS regulatory burdens should be addressed in this proceeding. The SCG stated that the ALJs rightly rejected AT&T's attempts to carve a regulatory niche for itself within the context of the SCG Chapter 30 proceeding and that AT&T's defiant disregard for the ALJ's ruling must be rejected. (SCG R. Exc., p. 20).

The OCA, in responding to the SCG's Exceptions, requested that the Commission affirm the ALJs' decision to require the SCG to continue offering one-way EAS service in the future, where the Commission so orders. (OCA R. Exc., p. 23).

The OTS is opined that the SCG compromise to remove the language to exempt the SCG Companies from implementing further one-way EAS routes should be

accepted and also argued that the SCG Companies should continue to be required to implement further one-way EAS routes if the regulatory standards are satisfied.

AT&T noted that it is difficult to comprehend the SCG's Exceptions in light of the fact that the SCG had agreed to remove the provision that it be exempted from implementing further one-way EAS routes or route-specific OCPs. AT&T reiterated its position that any EAS modification that is accepted by the Commission should also be applicable to any CLEC in the Companies' territories. (AT&T R. Exc., pp. 17-18).

4. Disposition

We shall adopt the ALJs' recommendation and require the SCG members to continue offering EAS consistent with the modification to Part 4, Section B.4 of their Chapter 30 Plans.

We note that the SCG expresses a desire for the Commission to address EAS issues in a generic investigation, and we agree with the SCG that, in light of the importance of EAS, it would be prudent to institute an EAS investigation as soon as practicable.

With regard to AT&T's suggested language, we note that the Report of the Monitoring/Subscription Subcommittee, adequately discusses AT&T's concern. There is no reason to incorporate the suggested language in the SCG's Chapter 30 Plan. As such, AT&T's Exceptions are denied.

B. Affiliated Interest Agreements

The SCG argued that their member's Chapter 30 Plan eliminates the necessity for the SCG members to comply with the affiliated interest provisions in Chapter 21 of the Code, 66 Pa. C.S. §§2101-2107.

The OCA opposed this request. The OTS seeks to require the filing of affiliated interest agreements pertaining to noncompetitive services for notice purposes only.

1. Recommended Decision

The ALJs recommended rejection of the SCG's proposal because affiliated interest agreements are still essential to monitor anticompetitive behavior, BSFs and accounting transactions, and the Commission has no authority to exempt the Companies from Chapter 21 requirements. (R.D., pp. 108-111). The ALJs further recommended adoption of the OCA position that the SCG should not be permitted to exempt competitive services from the requirements of Chapter 21 as it pertains to affiliated interest agreements because this is the only way in which the Commission can fulfill its duty of protecting the public from the possibility of self-dealing among affiliates. (R.D., p. 111).

2. Exceptions

The SCG took exception to the ALJs' reasoning as to why affiliated interest agreements are necessary and should be continued. The SCG believes that the rationale relied on by the ALJs is no longer applicable in today's competitive telecommunications environment and that the SCG proposal is entirely consistent with the objectives of

alternative regulation to promote and encourage competition while reducing regulatory delays and costs. (SCG Exc., pp. 38-39).

However, in an effort to craft a compromise, the SCG stated that it is willing to continue to file Chapter 21 affiliated interest agreements for informational purposes only and has included this modification in Appendix A attached to its Exceptions. The SCG is of the opinion that this compromise fully comports with the ALJs' concerns and with Section 3009(b)(1) allowing for the "auditing" of affiliated interest transactions, and no longer requiring their "approval" under Chapter 21. The SCG noted however, that it is willing to concede this issue only as part of the entire package contained in Appendix A and should the proposed Appendix A Plan either not be accepted or be modified, the Companies renew their Exception to the ALJs' recommendation as unreasonable and unsupported. (SCG Exc., p. 39).

3. Reply Exceptions

AT&T asserted that the SCG's alternative proposal to file affiliated interest agreements "for information purposes only" should be rejected. (AT&T R. Exc., p. 18). AT&T argued that the new clause is ambiguous and would seem to preclude the Commission from using any information coming to its attention from such an agreement to take appropriate action in the public interest. AT&T referenced the following OCA argument in responding to the same attempt by ALLTEL in its Chapter 30 case at Docket No. P-00981423:[27]

> If the Commission is unable to enforce its authority under Chapter 21, an agreement by the Company to file affiliated interest contracts with the Commission is practically

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[27] *See Petition of ALLTEL Pennsylvania, Inc. for Approval of an Alternate Form of Regulation and Network Modernization Plan*, Docket No. P-00981423 (OCA R. Exc., pp. 16-17)

> meaningless. The ... compromise proposal is, in effect, the same request for an exception [sic] from Chapter 21 in the guise of a concession on the part of the Company.

In light of the above, AT&T argued that there is simply no justification to excuse the Companies from this requirement under the Public Utility Code. (AT&T R. Exc., pp. 18-19).

4. Disposition

We shall adopt the ALJs' recommendation which rejects the SCG's proposal that Chapter 21 affiliated interest agreements should no longer be required. The Commission finds that AT&T's position is persuasive. Finally, we note that this action is consistent with our previous actions in prior Chapter 30 Plans.

VIII. Intrastate Rates

A. North Pittsburgh and D&E Rates

As previously noted, the OCA filed Formal Complaints against the existing rates of North Pittsburgh and D&E, respectively, and those Complaints were consolidated with the pending Chapter 30 filings.

The OCA asserted that both D&E and North Pittsburgh are overearning. Based on the D&E's and North Pittsburgh's actual 1997 returns (and noting that these returns have either stayed steady over a five (5) year period or increased by nearly two (2) times), the OCA recommends that such overearnings serve as an additional basis to reject D&E's and North Pittsburgh's proposed plans and adopt the OCA's proposals.

The OCA argued that the proposed plans would only exacerbate the overearnings being experienced by D&E and North Pittsburgh. In the alternative, OCA urged the Commission not to allow any rate increases, through the PSM, until the overearnings are dissipated.

1. Recommended Decision

The ALJs recommended that the OCA's Complaints against North Pittsburgh's and D&E's rates be dismissed. (R.D., pp. 113-119). The ALJs agreed with the SCG that the OCA position is flawed for two (2) reasons: (1) the OCA's reliance on residual ratemaking for the first time in this proceeding in its Main Brief in an attempt to postpone North Pittsburgh and D&E from using the PSM does not constitute reasonable notice to them and does not give them the opportunity to be heard (R.D., p. 118); and (2), in this proceeding, the OCA relies solely on historic book returns in lieu of North

Pittsburgh's and D&E's annualized intrastate return levels on a going-forward basis. Furthermore, the ALJs do not recommend that North Pittsburgh and D&E should be precluded from adopting the PSM formula until the year 2002 because it appears that their rates are low already. (R.D., p. 119).

2. Exceptions

The OCA alleged that the ALJs improperly dismissed its Complaints because they do not discuss the OCA's primary proposal that the overearnings of both Companies serve as an additional basis to reject their proposed plans and to adopt the OCA's proposals. (OCA Exc., pp. 5-7).

The OCA argued against the ALJs' first reason (*i.e.*, lack of notice and opportunity to be heard) to dismiss the OCA's Complaints because the OCA notes that its Formal Complaints have alleged that both D&E and North Pittsburgh have excessive rates of return, explained the rates of return then existing and specifically stated that "Again, to arrive at this figure, Mr. Catlin used a residual rate of return to recognize that [North Pittsburgh or D&E] is an 'average schedule' Company for interstate separations and settlement purposes." In addition, the OCA notes that in the D&E rate rebalancing settlement, at Docket No. R-00984315, the OCA agreed not to seek to reduce or modify existing rates. However, in the instant proceeding, the OCA recommendation is forward looking and pertains to future rate increases by D&E. (OCA Exc., pp. 5-6).

Concerning the ALJ's second reason for rejecting the OCA's overearnings argument (*i.e.*, the OCA didn't present its claims through a normal ratemaking process), the OCA noted that the Commission has consistently stated that it will not conduct a rate base/rate of return case during a Chapter 30 proceeding. The OCA submits that the testimony of its witness establishes that both D&E and North Pittsburgh are overearning

and that these overearnings should be considered before either of those Companies is allowed to raise rates under any rate plan that may be approved in this case. (OCA Exc., pp. 6-7)

3. Reply Exceptions

The SCG disagreed with the OCA's Exceptions which challenged the ALJs' recommendation that the two OCA Formal Complaints be dismissed. The SCG argued that the ALJs were correct in their determination because the OCA did not address the two complaints on the evidentiary transcript in this proceeding. The SCG further noted that the first time that the OCA expressed a position on its complaints was in its Main Brief, where the OCA for the first time argued that an appropriate remedy would be to delay the operation of each Company's PSM until 2002.

The SCG argued that the ALJs correctly concluded that the OCA's claimed relief did not constitute reasonable notice and that this Commission has not adopted a residual methodology for ratemaking purposes. The SCG noted that the OCA made a similar residual ratemaking argument in the Commonwealth Chapter 30 proceeding and the argument was rejected by the Commission due primarily to notice deficiencies.

Finally, the SCG asserted that, in contrast to the OCA, North Pittsburgh and D&E did introduce evidence on the record addressing their rate levels and earnings for Chapter 30 purposes and that, based thereon, the ALJs correctly concluded that no relief is warranted on the OCA's earnings complaints.

4. Disposition

We agree with the ALJs' recommendation that the Formal Complaints filed by the OCA against North Pittsburgh and D&E should be dismissed. In adopting this recommendation, we agree with the position of the SCG. The Exception of the OCA is denied.

IX. Miscellaneous Issues

A. The Plan and the Code

The OTS objected to the inclusion of the following sentence into Part 3.A(A).3 of the Plan:

> All other provisions of the Code, other laws of the Commonwealth, or regulations in conflict with this Plan are hereby superseded with respect to the PTA Small Company Group members.

The OTS argued that this language is after 66 Pa. C.S. §3006(e), which states as follows:

> Upon [C]ommission approval of a streamlined form of rate regulation, the streamlined form of regulation shall be implemented and shall govern the regulation of the local exchange telecommunications company and shall, consistent with the provisions of this chapter, supersede any conflicting provisions of this title or other laws of this Commonwealth.

(Emphasis added by the OTS).

The OTS continued that Section 3006 and its provisions are only applicable to a streamlined form of rate regulation. According to the OTS, Chapter 30 defines "streamlined form of rate regulation" in 66 Pa. C.S. §3002 as:

> A simplified method of rate regulation of small local exchange telecommunications companies serving less than 50,000 access lines. . . .

(Emphasis supplied by the OTS)

The OTS argued that three (3) of the SCG Companies, D&E, North Pittsburgh, and Conestoga do not qualify for streamlined regulation because each has in excess of 50,000 access lines.

According to the SCG, 66 Pa. C.S. §3004(a) provides as follows:

> **Authorization**--In determining just and reasonable rates in accordance with section 1301 (relating to rates to be just and reasonable), the commission may authorize a local exchange telecommunications company to set rates based on an alternative form of regulation pursuant to a plan approved by the commission under this chapter.

According to the SCG, it was clearly the intent of the Legislature to have a Commission-approved Chapter 30 ratemaking plan supersede any conflicting statutory provision in Chapter 13 of the Public Utility Code. Accordingly, the above-quoted provision appearing in Part 3.A.(A)3 is definitely consistent with Chapter 30 and should remain in the Plan for all the companies, even those in excess of 50,000 access lines.

1. Recommended Decision

The ALJs concluded that all LECs in the SCG that serve more than 50,000 access lines (*i.e.*, Conestoga, D&E and North Pittsburgh) cannot enjoy the broadly drafted exemptions in the current wording of the Plans in Part 3.A.(A)3 which provides that "[a]ll other provisions of the Code, other laws of the Commonwealth, or regulations in conflict with this Plan are hereby superseded with respect to the PTA Small Company Group members." Therefore, the ALJs recommended that the language of the Plans must be modified to exclude those LECs, which serve more than 50,000 access lines. (R.D., pp. 122-123).

2. Exceptions

The SCG excepted to the ALJs' recommendation and argued that the ALJs' interpretation of 66 Pa. C.S. §3006(e) has no merit because it is restrictive and the most limited interpretation of the Chapter 30 statutory provisions. The SCG argued that the ALJs' argument overlooked 66 Pa. C.S. §3004(a) which would give the Commission authority to apply the same language to small ILECs with more than 50,000 access lines. (SCG Exc., pp. 39-40).

3. Reply Exceptions

The OTS, in responding to the SCG's Exceptions, asserted that the SCG's argument that the Legislature intended for all Chapter 30 Plans to supersede conflicting law and regulations because Section 3004(a) allows the Commission to authorize a LEC to set rates based upon an alternative form of regulation makes absolutely no sense.

The OTS noted that the only provision in Chapter 30 which allows a Plan to supersede conflicting laws is contained in Section 3006(e). In addition, the OTS reasons that since an "alternative form of regulation," which is the language contained in Section 3004(a), is not included in the "streamlined form of rate regulation" in 66 Pa. C.S. §3002, the approval of an alternative regulation plan under Section 3004(a) does not mean that all provisions applicable to streamlined-eligible companies are applicable to non-streamlined companies. As such, the OTS stated that the ALJs are correct and the contested Plan language must be modified to exclude companies with 50,000 or more access lines.

4. Disposition

As noted earlier, we will permit Plan B for the fifteen(15) smaller companies of the SCG that have less than 50,000 access lines because the SRP represents a middle ground between the PSM and the traditional rate base/rate of return regulation and should lead to reductions in regulatory delays and costs for the smaller local exchange companies, which serve the most rural, least densely populated, and highest cost areas of the Commonwealth. We also noted that this action is consistent with our reasoning in our *Streamlined Order* in which we stated that small ILECs are not to be precluded "from seeking streamlined regulation on the basis of regulatory flexibility that may even encompass elements of traditional rate base and rate of return regulation."

We agree with the ALJs' recommendation that Section 3006(e) of the Code is only applicable to a streamlined form of regulation and that the contested language in the plans must, therefore, be modified to exclude those LECs which serve more than 50,000 access lines. We note, however, that Buffalo Valley, which serves less than 50,000 access lines opted to be regulated under Plan A, along with the three (3) LECs (D&E, Conestoga and North Pittsburgh) of the SCG that serve more than 50,000 access lines. As such, we shall permit the fifteen (15) companies under Plan B, as well as Buffalo Valley, to enjoy the broadly drafted exemptions contained in the contested language of the Plans.

Therefore, we shall deny the SCG exceptions and direct the SCG to modify the language in Plans A and B accordingly. Inasmuch that we are approving these Plans based on the *Global Order*, we note that this language will not serve to relieve those LECs with less than 50,000 access lines from complying with the directives contained in the *Global Order.*

B. IntraLATA Presubscription Costs

1. Recommended Decision

The ALJs concluded that this issue was resolved by the *Global Order,* that the Commission has ruled in favor of the SCG and that AT&T has acquiesced in that decision. (R.D., pp. 123-126). Accordingly, the ALJs recommended that the SCG be entitled to recover intraLATA presubscription costs only from interexchange carriers (IXCs) pursuant to the Commission's Order entered December 14, 1995, at Docket No. I-00940034, and that the direct incremental costs associated with implementing presubscription shall be recovered, subject to an annual true-up/down, from the IXCs operating in Pennsylvania over a three (3) year period based upon each interexchange carrier's share of total originating and terminating intrastate toll minutes of use.

2. Exceptions

AT&T excepted to the ALJs' recommendation that the SCG's proposal regarding recovery of intraLATA presubscription costs had been adopted by the *Global Order.* (AT&T Exc., p. 27). AT&T asserted that the ALJs erroneously concluded that the Commission had resolved this issue in the *Global Order* because it approved the "modified Small Company Plan," which contained a provision allowing the ILECs to recover those costs from the IXCs.[28] (AT&T Exc., p. 28). In fact, AT&T noted that the Commission rejected the modified Small Company Plan's position on this issue in the *Global Order* when it stated the following:[29]

> The 1649 Petitioners specifically addressed this issue in their Petition when they requested that the modified Small

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28 R.D., p. 125-26.

29 *Global Order,* pp. 274-76 (emphasis supplied and footnote omitted).

Company Universal Service Plan attached to the Joint Petition at Docket No. P-00991649 as Appendix II be accepted, approved and adopted....

As noted above, the 1649 Petitioners argue that the LECs should be authorized to recover all presubscription costs from IXCs in accordance with the Commission's prior determination on this issue at Docket No. I-00940034. AT&T, however, has proposed that these costs should be recovered from among all carriers, including the LECs, and, further, that because the FCC's rule regarding this issue in the Second Report and Order, released August 8, 1996, allocating the costs to all carriers, has now been sustained by the U.S. Supreme Court, that the Commission is bound to follow that precedent. (AT&T M.B., p. 33).

Given the recent U.S. Supreme Court decision in Iowa Utilities Board that reinstates the FCC's rules regarding the allocation of presubscription costs among all carriers, we shall accept the FCC approach to presubscription costs recovery and require the LECs share in the cost recovery as well. Accordingly, this provision of the modified Small Company Universal Service Plan must be amended.

* * *

In conclusion, we shall adopt the proposal for intraLATA toll presubscription contained in the 1649 Petition as modified by this Order and we shall specifically require all LECs to share in the recovery of their costs associated with implementation of intraLATA presubscription.

AT&T then went on to discuss the exogenous cost issue associated with intraLATA presubscription cost recovery. Given that the *Global Order* requires the SCG members to share in the recovery of the costs of intraLATA presubscription, AT&T raised the following questions: (1) whether the SCG Companies can consider and pass through that cost as an exogenous event, and, if so, (2) whether the SCG Companies can collect any of that cost from IXCs as part of access. (AT&T Exc., p. 29).

AT&T remained neutral on the first question, but insisted, as it had argued in the *Global Order,* that the second question should be answered in the negative because the SCG members can only collect those costs from other toll providers in accordance with the FCC's *Second Report and Order.* (AT&T Exc., p. 29).

Therefore, AT&T suggested that, if the Commission determines to permit the Companies to consider these incremental costs as an exogenous event, the last clause of the third sentence of Part 3.A(A)13 (at 16) should be amended to read:

> any requirement that a Company be allocated or otherwise incur a portion of the related incremental costs shall be treated as a qualifying exogenous event and recovered pursuant to the terms specified above in paragraph 11, except that none of these costs may be recovered from intrastate access charges.

3. Reply Exceptions

In response to AT&T's Exceptions, the SCG submitted that the ALJs correctly determined that the *Global Order* resolved this issue, albeit not as the ALJs understood, since all LECs are indeed required to share in the intraLATA presubscription cost recovery. (SCG R. Exc., p. 24). Regardless, the SCG is of the opinion that this is not the appropriate forum in which to address the SCG Companies' access charges, since that issue was also resolved in the *Global Order.*

The SCG is of the opinion that AT&T is really seeking an untimely reconsideration of the Commission's *Global Order*, which should not be pursued through modification of the Companies' Chapter 30 Plan. The SCG further argues that, although its witness responded to AT&T that it would be unlikely that the SCG Companies would recover these costs through access charges, his response did not attempt to interpret the

legal ramifications of so doing. Nevertheless, the SCG asserted that whether the Companies may recover these costs through an increase to access rates is not an issue ripe for adjudication in this proceeding. As such, the SCG believes that AT&T's requested modification is unnecessary, prejudges an issue prematurely, and thus should be rejected. (SCG R. Exc., p. 24).

4. Disposition

We note that, although the ALJs correctly noted that the issue of intraLATA presubscription was resolved by the *Global Order*, the ALJs erred in making a determination that we have ruled in favor of the SCG. It appears that the ALJs referred to a portion of a discussion in the *Global Order* that was irrelevant to the disposition of the intraLATA presubscription cost recovery issue. The correct reference in the *Global Order* which resolves the cost recovery issue is contained on pages 270-276. As such, we agree with AT&T's Exception that allowing the SCG Companies to recover intraLATA presubscription costs solely from IXCs, as recommended by the ALJs, is in violation of the FCC's *Second Report and Order*,[30] which provides that intraLATA presubscription implementation costs must be paid in a competitively neutral manner by all intraLATA toll carriers, including ILECs. (*See Global Order*, pp. 274-276).

With regard to the question as to whether the SCG members could consider and pass through intraLATA presubscription cost recovery as an exogenous event and if so, whether they can collect any of the cost from IXCs as part of access, we shall deny AT&T's Exception. We are of the opinion that this proceeding is not the place or time to determine specific exogenous costs and the manner in which they should be recovered.

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[30] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al.*, Second Report & Order, CC Docket No. 96-98, 1996 FCC LEXIS 4311 (August 8, 1996) at 92-95. That Order was reinstated in *AT&T Corp. v. Iowa Utilities Bd., supra.*

Therefore, we shall defer the determination of this issue until such time that an SCG Company files such a proposal with the Commission.

Therefore, we shall grant AT&T's Exceptions in part, and deny them in part, consistent with the foregoing discussion on this issue.

C. Terms of the SCG Chapter 30 Plan

The SCG members are of the opinion that they cannot accept the "fatally-flawed" Chapter 30 Plan contained in the Recommended Decision and would be unwilling to move to Chapter 30 if they are ordered to adopt a productivity offset higher or equal to the productivity offset adopted for Sprint-United at Docket No. P-00981410. In addition, the SCG members state that they are unwilling to move to a Chapter 30 form of regulation if they are not assured the ability to change or rebalance their local rates over the next four years and if the fifteen smallest Companies are subjected to a price-cap form of regulation at this time. As such, the SCG members presented modifications to their Chapter 30 Plans, which contain terms that would be acceptable to them.

1. Recommended Decision

The ALJs did not address this issue in their Recommended Decision.

2. Exceptions

The SCG submitted that its Plan, as modified in Appendix A of its Exceptions, is offered as a total integrated package and incorporates certain provisions to reflect the impact of the *Global Order*. (SCG Exc., p. 13). Furthermore, the SCG submits that, if the terms of the Chapter 30 Plan are unilaterally changed by the Commission, such as by the *Global Order*, the members should have the option to withdraw from or modify their Chapter 30 commitment. (SCG Exc., p. 14).

The SCG is particularly concerned because the *Global Order* may preclude companies with approved Chapter 30 Plans from exercising the rate rebalancing rights contained therein until December 31, 2003. Furthermore, the SCG is concerned that the Commission's *May 17 Reporting Requirements Order* recently changed and specifically expanded the Chapter 30 reporting requirement for these companies. As such, the SCG asserts that the Commission must be estopped from asserting positions now that are inconsistent with positions previously approved, and upon which ILECs justifiably relied to their detriment.[31]

3. Reply Exceptions

The OCA objected to the SCG's argument that the Commission must be prohibited from making any changes to the SCG Plan. The OCA also objected to the section in the SCG's proposed Plan in Appendix A of their Exceptions that would determine that the SCG Chapter 30 Plan is a "binding commitment" which contains terms that cannot later be "unilaterally altered" by the Commission or SCG.

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[31] *See, Chemical Bank v. Dippolito*, 897 F. Supp. 221 (E.D. Pa. 1997).

The OCA maintained that the Commission should not and cannot divest itself of its regulatory authority so that it would remain powerless to regulate the SCG members during the life of their Chapter 30 Plan. (OCA R. Exc., p. 6).

The OTS argued that the SCG's Exception is actually not an exception to the Recommended Decision because the proposal upon which it is based was never submitted of record prior to the Recommended Decision for the ALJs' or the other Parties' consideration. Instead, the OTS contended that it constitutes an improper request for reconsideration in this proceeding of a Commission determination in the *Global Order*. (OTS R. Exc., p. 4).

The OTS argued that the Commission may amend the duration and terms of its previous Orders (including prior Orders approving Chapter 30 Plans) upon notice and an opportunity to be heard[32] and refers to the *Global Order* at page 8, in which the Commission characterized BA-PA's contention that certain relief could not be granted because it exceeded the scope of BA-PA's Chapter 30 Plan as "an unreasonably restrictive view of the Commission's authority." (OTS R. Exc., p. 5).

Finally, the OTS objected to the SCG's cite to *Chemical Bank* in support of their position that the Commission can and must be estopped from changing previously-approved Chapter 30 Plans. The OTS argued that the *Chemical Bank* case involved a motion for summary judgment on a mortgage foreclosure action between two (2) private parties and has nothing to do with the matter at issue, which concerns the scope of the Commission's statutory authority to regulate beyond the strict language of a regulated entity's Chapter 30 Plan. (OTS R. Exc., p. 5).

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[32] 66 Pa. C.S. §703(g).

AT&T objected to the SCG's Exception and is of the opinion that the SCG excepts to the *Global Order*, rather than the Recommended Decision. AT&T noted that the Commission has very recently addressed this issue in the *Global* proceeding where certain of the issues raised in the Petition at Docket No. P-00991648 were challenged by Bell Atlantic-Pennsylvania, Inc. (BA-PA) on the ground that, in view of the Commission's prior approval of its Chapter 30 Plan, the Commission had no authority to address the substantive issues presented by those petitioners. (AT&T R. Exc., p. 6).

AT&T referenced the *Global Order* which discussed ALJ Chestnut's May 27, 1999 Order denying BA-PA's Motion to Dismiss which clearly stated that the Commission has continuing oversight authority and responsibility provided by various sections of Chapter 30 and its "continuing authority over the rates charged and all services rendered by jurisdictional utilities pursuant to other provisions of the Public Utility Code."[33] As such, AT&T noted that the Commission clearly and correctly held that the Commission may amend the duration and terms of previous orders upon notice and opportunity to be heard. (AT&T R. Exc., p. 7).

AT&T also noted that 66 Pa. C.S. §1309 specifically authorizes the Commission, upon finding that "the existing rates of any public utility for any service are unjust, unreasonable, or in any way in violation of any provision of law . . . ," to "determine the just and reasonable rates . . . to be thereafter observed and enforced, and [to] fix the same by order served upon the public utility . . . ." AT&T also argued that the Commission has a duty to set cost-based and competition-enabling rates pursuant to its authority under Chapter 30. Finally, AT&T argued that, in exercising its overriding authority and responsibility to ensure that all rates charged by a utility are just and reasonable, the Commission has the authority and ability "at any time, after notice and after opportunity to be heard as provided in this chapter, [to] rescind or amend any order

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[33] *Global Order* at 8, referring to Chapter 13 and 66 Pa. C.S. §1501.

made by it." 66 Pa. C.S. §703(g). This would clearly include the provisions of any Chapter 30 Plan. (AT&T R. Exc., pp. 7-8).

Accordingly, AT&T stated that the Companies' attempt to estop the Commission's future actions must be denied, their attempt to insert a binding commitment provision in their new Plan[34] must be repudiated, their asserted "option to withdraw from or modify their Chapter 30 commitment" must be rejected and their improper Exception must be denied.

4. Disposition

Inasmuch as the *Global Order*, which was entered before consideration of the SCG's Chapter 30 Plan, clearly addresses our continuing oversight and authority over the rates, charges and all services rendered by jurisdictional utilities, this issue is not relevant to this proceeding. We shall deny the SCG's Exceptions. The *Global Order* speaks for itself. Thus, no further discussion is warranted.

D. Inter-Carrier Compensation Costs for Internet Service Provider (ISP) Calls

This issue concerns inter-carrier compensation for ISP traffic that had arisen as of result of the Commission's *Global Order,* and the SCG members' suggested changes to its PSM to account for such compensation.

1. Recommended Decision

The ALJs did not address this issue.

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[34] SCG Exc., Appendix A, Part 4.B.10 (at 32).

2. Exceptions

The SCG took exception to the ALJs' failure to address the issue of intercarrier compensation for Internet Service Provider (ISP) traffic under the *Global Order*. Furthermore, the SCG sought to amend the PSM formula to accommodate intercarrier compensation for ISP calls. (SCG Exc., p. 24).

The SCG argued that, in the event that SCG members adopt Chapter 30 regulation and are compelled to treat future ISP traffic as local for ILEC-CLEC compensation purposes, and their ability to prospectively negotiate that issue is abridged, the Chapter 30 Plan must provide a means for recovering this expense through their PSM. As such, the SCG proposed a modification to its PSM, in Appendix A of its Exceptions, which it claims will allow Commission approval of Plan A and the *Global Order* to co-exist. (SCG Exc., p. 25).

3. Reply Exceptions

The OCA claimed that the SCG had no reason to complain that the PSM does not address intercarrier compensation for ISP traffic because if the SCG believed that revenues and expenses related to ISP-related intercarrier compensation was such a substantial issue that it required modification to the price cap formula, such adjustment should have been proposed long before the filing of Exceptions. The OCA also noted that the SCG explained that it is already exchanging ISP-related traffic with CLECs at the present time and had been long aware of this issue.[35] Thus, the OCA requested that the Commission reject the SCG's ISP-related price cap adjustment as untimely and unsupported.

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[35] SCG Exc. At 24 fn. 54.

The OTS objected to the SCG's Exception to modify its PSM formula because, for the first time in this proceeding, the SCG has proposed an entirely new PSM formula to accommodate its concerns about ISP traffic costs stemming from the *Global Order*.[36] However, the OTS argued that there was no opportunity for any opposing party to conduct discovery or present any evidence in this proceeding in response to these contentions because the matter was raised for the first time in Exceptions. (OTS R. Exc., p. 12).

Furthermore, the OTS believes that the SCG has not justified its failure to raise this issue on the record because it knew that the compensation issue was pending in the *Global* proceedings, which were instituted by the Commission Order entered April 2, 1999, more than six (6) months before the instant Recommended Decision was issued. The OTS asserted that the SCG could have sought to reopen the record of this proceeding so that the Parties would have had an opportunity to discover the underpinnings of the SCG's cost concerns and to address these matters on the record. (OTS R. Exc., p. 13).

The OTS also believes that the SCG Companies had ample opportunity to anticipate the ISP cost issue and to make proposals of record because the issue of whether ISP calls are local (and, therefore, subject to reciprocal compensation) has actually been pending before the Commission in a generic investigation since September 2, 1998.[37] (OTS R. Exc., p. 13)

Finally, the OTS noted that an ISP reciprocal compensation cost pass-thorough mechanism, as proposed by the SCG, has never been approved or even

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[36] *See*, SCG Exc. Appendix A, p 11.

[37] *See, Investigation of Issuance of Local Telephone Numbers to Internet Service Providers by Competitive Local Exchange Carriers*, Docket Nos. P-00981404 and P-00971256, Order entered September 2, 1998.

proposed as part of any Chapter 30 Plan and that such an unprecedented proposal like this should have been presented to the Parties on the record in order to provide sufficient due process. As such, the OTS requests that the SCG's exception be denied and its new ISP cost pass-through be rejected. (OTS R. Exc., p. 13).

AT&T objected to the SCG's Exception because it is not a proper exception in this case and should not be considered by the Commission. AT&T asserted that there is nothing in the record to support the SCG's contention on this issue and the SCG's attempt to introduce extra-record evidence from the *Global* proceeding through its Exceptions is totally improper. (AT&T R. Exc., pp. 8-9).

Furthermore, AT&T stated that the SCG is clearly wrong in its assertion that the Commission's determination in the *Global Order* constitutes a "subsequent regulatory change"[38] because the Commission did not adopt a new ISP policy in the *Global Order*, but merely reaffirmed and continued the same policy that has been in effect since the Commission considered and ruled on the issue in 1998.

AT&T concluded that it is crystal clear that this is not a new change and thus, the SCG's Exception and belated attempt to modify the X-factor in its PSM is clearly wrong and has no place in this matter.

4. Disposition

We shall deny the SCG's Exception and reject its proposed PSM because there is not sufficient record evidence to make such a determination. Furthermore, this issue has been previously resolved by the issuance of our *Global Order*[39] and

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38 SCG Exc. At 24.

39 *See, Global Order*, pp. 204-213.

supplemented by our *Global Clarification Order,* which speak for themselves. Thus, no further discussion is warranted.

E. Competitive Procedures

This matter involves a change to the SCG's Competitive Declaration Procedure, which the SCG members agreed upon during the litigation, but the ALJs failed to address in their Recommended Decision.

1. Recommended Decision

The ALJs did not address this issue.

2. Exceptions

The OTS claimed that the ALJs failed to specifically require modification of the SCG Plan to include a change in the "Competitive Declaration Procedure" agreed to by the SCG Companies. (OTS Exc., p. 27). This modification would allow a twenty-five (25) day response time for competitive declaration requests so long as the Plan provided for in-hand service on Chapter 30 Parties on the day that the competitive declaration request is filed with the Commission. The SCG Plan currently states that complaints or comments in support of or, in opposition to, a proposed competitive declaration are to be filed with the Commission within twenty (20) days of the filing of the competitive declaration petition. (OTS Exc., p. 28).

3. Reply Exceptions

The SCG agreed with the OTS' Exception and noted that this modification was inadvertently omitted from the SCG's earlier modified Plan but has been incorporated into the Appendix A Plan attached to the SCG Exceptions. (SCG R. Exc., p. 7).

4. Disposition

The proposed modification, which has been agreed to by the SCG, appears to be reasonable. We shall grant the OTS' Exception and direct the SCG to modify Part 2.A.6 of its Plan to allow twenty-five (25) days for the filing of complaints/comments in response to a competitive declaration filing, with in-hand service on the Chapter 30 Parties on the day the competitive declaration request is filed with the Commission.

F. New Plan v. Modified Plan in Appendix A to the SCG's Exceptions

In an effort to resolve various Chapter 30 issues so that they are consistent with the *Global Order*, the SCG members submitted a modified plan to Appendix A of their Exceptions that contain resolutions acceptable to them. Opposing parties argued against the modified plan because they believe it would constitute a new plan as well as an improper request for reconsideration of the *Global Order*.

1. Recommended Decision

The ALJs did not address this issue.

2. Exceptions

The SCG attached Appendix A to its Exceptions which contained revisions to its originally-filed Chapter 30 Plan based on its interpretation of the directives in the *Global Order* and to recognize recommendations made in the Recommended Decision. (SCG Exc, pp. 13-14, Appendix A). The SCG claimed that Appendix A contains compromises, which the SCG Companies are willing to make as a good faith effort to resolve this Chapter 30 litigation. (SCG Exc., p. 13).

3. Reply Exceptions

The OSBA argued that it is problematic to treat the Appendix A Plan as something other than new because the Parties were unaware prior to the filing of the SCG Exceptions that the terms contained therein were at issue. The OSBA argued that the Parties may not have sufficient evidence to rebut these terms because they were not part of the record nor was sufficient notice given to query about the specifics and details that may be entailed to implement such terms while sufficiently protecting the public interest. Furthermore, other public interests, specifically those of ISPs, have now become issues that were not apparent in the initially filed Chapter 30 Plans. (OSBA R. Exc., pp. 4-5).

4. Disposition

This issue is more appropriately reviewed in the context of the SCG Chapter 30 compliance filing. At that time, parties will have the opportunity to examine the SCG's overlay of our directives contained in the *Global Order*.

X. Conclusion

Based on our review of the evidentiary record in this proceeding, as well as the Exceptions and Reply Exceptions submitted by the Parties, we shall adopt the ALJ's Recommended Decision in part, and deny it in part, consistent with the body of this Opinion and Order, and require the SCG members to file a modified plan in accordance with the directives discussed herein. Furthermore, we shall dismiss the Formal Complaints filed by the OCA against D&E and North Pittsburgh, respectively; **THEREFORE,**

IT IS ORDERED:

1. That the Petition of Armstrong Telephone Company-Pennsylvania, at Docket No. P-00981425, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved, as modified by this Opinion and Order

2. That, should Armstrong Telephone Company-Pennsylvania, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan, as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Armstrong Telephone Company-Pennsylvania shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

3. That, should Armstrong Telephone Company-Pennsylvania elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event,

Armstrong Telephone Company-Pennsylvania shall file with the Commission within thirty (30) days of the date of entry of this Opinion and Order, for review and final approval, a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with copies to all Parties in the proceeding.

4. That the Petition of Armstrong Telephone Company-North, at Docket No. P-00981426, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

5. That, should Armstrong Telephone Company-North, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan, as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Armstrong Telephone Company-North shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

6. That, should Armstrong Telephone Company-North elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Armstrong Telephone Company-North shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

7. That the Petition of The Bentleyville Telephone Company, at Docket No. P-00981427, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

8. That, should The Bentleyville Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, The Bentleyville Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

9. That, should The Bentleyville Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, The Bentleyville Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

10. That the Petition of Buffalo Valley Telephone Company, at Docket No. P-00981428, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

11. That, should Buffalo Valley Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network

Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Buffalo Valley Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

12. That, should Buffalo Valley Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Buffalo Valley Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

13. That the Petition of Conestoga Telephone and Telegraph Company, at Docket No. P-00981429, for Approval of an Alternative Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

14. That, should Conestoga Telephone and Telegraph Company, at its option, elect to withdraw from the Alternative Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Conestoga Telephone and Telegraph Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

15. That, should Conestoga Telephone and Telegraph Company elect to proceed with the Alternative Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Conestoga Telephone and

Telegraph Company shall file an Alternative Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

16. That the Petition of Denver and Ephrata Telephone and Telegraph Company, at Docket No. P-00981430, for Approval of an Alternative Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

17. That, should Denver and Ephrata Telephone and Telegraph Company, at its option, elect to withdraw from the Alternative Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Denver and Ephrata Telephone and Telegraph Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

18. That, should Denver and Ephrata Telephone and Telegraph Company elect to proceed with the Alternative Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Denver and Ephrata Telephone and Telegraph Company shall file an Alternative Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

19. That the Petition of Hickory Telephone Company, at Docket No. P-00981431, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

20. That, should Hickory Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Hickory Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

21. That, should Hickory Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Hickory Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

22. That the Petition of Lackawaxen Telephone Company, at Docket No. P-00981432, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

23. That, should Lackawaxen Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated

under its existing form of regulation, then and in such event, Lackawaxen Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

24. That, should Lackawaxen Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Lackawaxen Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

25. That the Petition of Laurel Highland Telephone Company, at Docket No. P-00981433, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

26. That, should Laurel Highland Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Laurel Highland Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

27. That, should Laurel Highland Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event,

Laurel Highland Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

28. That the Petition of Marianna & Scenery Hill Telephone Company, at Docket No. P-00981434, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

29. That, should Marianna & Scenery Hill Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Marianna & Scenery Hill Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

30. That, should Marianna & Scenery Hill Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Marianna & Scenery Hill Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

31. That the Petition of The North-Eastern Pennsylvania Telephone Company, at Docket No. P-00981435, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

32. That, should The North-Eastern Pennsylvania Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, The North-Eastern Pennsylvania Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

33. That, should The North-Eastern Pennsylvania Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, The North-Eastern Pennsylvania Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

34. That the Petition of North Penn Telephone Company, at Docket No. P-00981436, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

35. That, should North Penn Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, North Penn Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

36. That, should North Penn Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, North Penn Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

37. That the Petition of North Pittsburgh Telephone Company, at Docket No. P-00981437, for Approval of an Alternative Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

38. That, should North Pittsburgh Telephone Company, at its option, elect to withdraw from the Alternative Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, North Pittsburgh Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

39. That, should North Pittsburgh Telephone Company elect to proceed with the Alternative Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, North Pittsburgh Telephone Company shall file an Alternative Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

40. That the Petition of Palmerton Telephone Company, at Docket No. P-00981438, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

41. That, should Palmerton Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Palmerton Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

42. That, should Palmerton Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Palmerton Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

43. That the Petition of Pennsylvania Telephone Company, at Docket No. P-00981439, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

44. That, should Pennsylvania Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Pennsylvania Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

45. That, should Pennsylvania Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Pennsylvania Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

46. That the Petition of Pymatuning Independent Telephone Company, at Docket No. P-00981440, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

47. That, should Pymatuning Independent Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Pymatuning Independent Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

48. That, should Pymatuning Independent Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Pymatuning Independent Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

49. That the Petition of The South Canaan Telephone Company, at Docket No. P-00981441, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

50. That, should The South Canaan Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, The South Canaan Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

51. That, should The South Canaan Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, The South Canaan Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

52. That the Petition of Venus Telephone Corporation, at Docket No. P-00981442, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

53. That, should Venus Telephone Corporation, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Venus Telephone Corporation shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

54. That, should Venus Telephone Corporation elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Venus Telephone Corporation shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all

Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

55. That the Petition of Yukon Waltz Telephone Company, at Docket No. P-00981443, for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan is hereby approved as modified by this Opinion and Order.

56. That, should Yukon Waltz Telephone Company, at its option, elect to withdraw from the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, and continue to be regulated under its existing form of regulation, then and in such event, Yukon Waltz Telephone Company shall so notify the Commission and the Parties of record of such election within sixty (60) days of the date of entry of this Opinion and Order.

57. That, should Yukon Waltz Telephone Company elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by this Opinion and Order, then and in such event, Yukon Waltz Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in this Opinion and Order, with the Commission for its review and final approval, with copies to all Parties in the proceeding, within thirty (30) days of the date of entry of this Opinion and Order.

58. That the Complaint of Irwin A. Popowsky v. Denver & Ephrata Telephone and Telegraph Company, at Docket No. C-00981676, is hereby dismissed, and the record marked closed.

59. That the Complaint of the Office of Consumer Advocate v. North Pittsburgh Telephone Company, at Docket No. C-00981623, is hereby dismissed, and the record marked closed.

60. That the Exceptions of the Small Company Group, the Office of Consumer Advocate, the Office of Trial Staff, and the Office of Small Business Advocate are granted in part, and denied in part, consistent with this Opinion and Order.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 18, 1999

ORDER ENTERED: JAN 2 0 2000