COMMONWEALTH OF PENNSYLVANIA P-00981428
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
ISSUED: OCTOBER 13, 1999

IN REPLY PLEASE
REFER TO OUR FILE
P-00981425 ETAL.

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P-00981425 ET AL - Petition of the Armstrong Telephone Company-Pennsylvania ET AL. for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plans
C-00981623 - Irwin A. Popowsky, Consumer Advocate V. North Pittsburgh Telephone Co.
C-00981676 - Irwin A. Popowsky, Consumer Advocate V. Denver & Ephrata Telephone & Telegraph Co.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Recommended Decision of Robert A. Christianson, Chief Administrative Law Judge; Louis G. Cocheres, Administrative Law Judge; and Larry Gesoff, Administrative Law Judge.

An original and nine (9) copies of signed exceptions to the decision, if any, MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265; a copy in the hands of the Office of Special Assistants, Room 210; and a copy in the hands of each party of record no later than **October 29, 1999** by 4:30 P.M. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions or reply exceptions.

Replies to exceptions, if any, must be served on the Secretary of the Commission, in the manner described above, no later than **Novenber 10, 1999** by 4:30 P.M. as well as served upon the parties. A certificate of service shall be attached to the filed exceptions.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Any reference to specific sections of the Administrative Law Judge's Recommended Decision shall include the page number(s) of the cited section of the decision.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in Microsoft Word 6.0 format. If Word 6.0 is not available, either Wordperfect 5.1 or ASCII format is acceptable.

Very truly yours,

FG
Encls.
Certified Mail
Receipt Requested

James J. McNulty
Secretary

CC: ALJ CHRISTIANSON, COCHERES, GESOFF/OFFICE OF ALJ/OSA/BFUS-TARIFF/OTS/
OCA/LAW/BUFS/PIO/CEEP/AUDITS/OUR FILE/C&S/CHAIRMAN/COMMISSIONERS

See Attached Listing for Additional Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of The Armstrong Telephone Company - Pennsylvania	:	P-00981425
Petition of The Armstrong Telephone Company - North	:	P-00981426
Petition of The Bentleyville Telephone Company	:	P-00981427
Petition of The Buffalo Valley Telephone Company	:	P-00981428
Petition of The Conestoga Telephone and Telegraph Company	:	P-00981429
Petition of The Denver and Ephrata Telephone and Telegraph Company	:	P-00981430
Petition of The Hickory Telephone Company	:	P-00981431
Petition of The Lackawaxen Telephone Company	:	P-00981432
Petition of The Laurel Highland Telephone Company	:	P-00981433
Petition of The Marianna & Scenery Hill Telephone Company	:	P-00981434
Petition of The North-Eastern Pennsylvania Telephone Company	:	P-00981435
Petition of The North Penn Telephone Company	:	P-00981436
Petition of The North Pittsburgh Telephone Company	:	P-00981437
Petition of The Palmerton Telephone Company	:	P-00981438
Petition of The Pennsylvania Telephone Company	:	P-00981439
Petition of The Pymatuning Independent Telephone Company	:	P-00981440
Petition of The South Canaan Telephone Company	:	P-00981441
Petition of The Venus Telephone Corporation	:	P-00981442
Petition of The Yukon Waltz Telephone Company	:	P-00981443
	:	
For Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plans	:	
Consumer Advocate	:	
v.	:	C-00981623
North Pittsburgh Telephone Co.	:	
Irwin A. Popowsky	:	
v.	:	C-00981676
Denver & Ephrata Telephone and Telegraph Co.	:	

RECOMMENDED DECISION

Before

ROBERT A. CHRISTIANSON, Chief Administrative Law Judge

LOUIS G. COCHERES, Administrative Law Judge

LARRY GESOFF, Administrative Law Judge

October 12, 1999

TABLE OF CONTENTS

I. HISTORY OF THE PROCEEDING

On July 31, 1998, the Pennsylvania Telephone Association Small Company Group ("SmCo.", "SmCo. Group", "SCG" or "the Companies") filed a Petition[1] with the Pennsylvania Public Utility Commission (Commission) for approval of alternative and streamlined form of regulation and network modernization plans, pursuant to Chapter 30 of the Public Utility Code, 66 Pa. C.S. §3001 *et seq.* This Petition requested approval of the SmCo. Alternative And Streamlined Regulation Plan (the "Plan"), consisting of the following components: (1) Network Modernization Plans ("NMPs"), set forth in Appendix 2 of Small Co. Exhibit (Ex.) 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 SmCo. Group are: Armstrong Telephone Company - Pennsylvania (Armstrong - Pa.), Armstrong Telephone Company - North (Armstrong - North), The Bentleyville Telephone Company (Bentleyville), Buffalo Valley Telephone Company (Buffalo Valley or BVTC), 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 or NPTC), Palmerton Telephone Company (Palmerton), Pennsylvania Telephone Company (PaTC), Pymatuning Independent Telephone Company

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1 The Office of Trial Staff set forth an excellent history of the proceeding in its Main Brief which is set forth below with minor editing from the undersigned.

(Pymatuning), The South Canaan Telephone Company (South Canaan),Venus Telephone Corporation (Venus), and Yukon Waltz Telephone Company (Yukon). SmCo. Exhibit 1, Appendix 2.

The SmCo. Chapter 30 Petition and Plan was assigned to Administrative Law Judge George M. Kashi, and all dockets were consolidated for the purposes of hearing and a Recommended Decision, if the proceeding was not resolved through mediation. Parties to this proceeding , in addition, to the Companies, are 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 July 30, 1998, and June 30, 1998, the OCA filed formal complaints against the existing rates of D&E and North Pittsburgh respectively. Popowsky v. Denver & Ephrata Telephone and Telegraph Co., C-00981676; Popowsky v. North Pittsburgh Telephone Co., C-00981623. Both complaints were assigned to ALJ Kashi. ALJ Kashi, pursuant to motions to consolidate filed by OCA, consolidated the OCA's complaints with the D&E and North Pittsburgh's pending Chapter 30 filings at Docket Nos. P-00981430 and P-00981437, respectively. Tr. 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 SmCo. Plan were held on September 28, 1998, in Muncy, and South Canaan, on October 1, 1998, in Birdsboro, on October 6, 1998, in Meadville, and on October 7, 1998, in Cranberry Township and Yukon.

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 Companies, 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 Administrative Law Judge determined that ALJ Kashi had become unavailable to the Commission for health reasons and directed that this Recommended Decision be prepared by the undersigned. Public Utility Code, 66 Pa. C.S. §§304(d) and 334(a).

Finally, we note that any argument raised by the parties which is not resolved in this Recommended Decision is hereby denied.

II. PRICE STABILITY PLANS FOR NONCOMPETITIVE SERVICES

The SCG proposed two price stability plans for its members: Plan A and Plan B. 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 of the member companies, BVTC, Conestoga, D&E and NPTC, have requested that they be regulated by this plan. The remaining member companies have opted to be regulated by Plan B which has also been designated as the "Simplified Ratemaking Plan" (SRP). The SRP 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 at 32. Because we are recommending the adoption of Plan A (with modifications) for all of the SCG and the total rejection of Plan B, we will first dispose of the issues surrounding the SRP before focusing our attention on Plan A.

A. Plan B

The SCG described its Plan B as follows:

> The SRP represents a middle ground between a potentially more uncertain approach such as the PSM and the traditional rate-of-return, rate base form of rate regulation which should lead to reductions in regulatory delays and costs for the smaller LECs. In return for their network modernization commitment, the PTA Group LECs that opt for the Plan B SRP designed this plan to result in a more streamlined and less burdensome fashion than traditional ratemaking has applied to smaller LECs in Pennsylvania in the past. Many, but not all, of the current Chapter 13 requirements will continue to apply to the smaller LECs that opt for the SRP. Tariff proposals thereunder will be subject to the Alternative Dispute Resolution process if opposition arises to the proposed rate changes which should lead to

administrative cost savings for the LECs, the Commission and the public.

Id. The plan also included:

> (1) [S]implified procedures for rebalancing and restructuring rates on a revenue neutral basis; (2) the ability to introduce new services under more streamlined tariff filing procedures; and (3) the ability to pass on the impact of exogenous events without delay and additional costs.

SCG M.B. at 40.

The other parties opposed all or most of this proposed plan: The OCA was not opposed to the entire concept. However, it was concerned that the compressed litigation schedule was so limited as to impinge on the customers' due process rights and to make meaningful review impossible. The OCA proposed a series of modifications which it contended would add significant protection for the customers.

The OSBA opposed Plan B as nothing more than traditional rate base/rate of return ratemaking and violative of Section 3002 of the Public Utility Code. Accordingly, it advocated rejecting the plan.

AT&T did not put forth a position on the issue.

We find that the reasoning offered by the OTS best summarizes our recommendation. The OTS argued:

> As testified to by Mr. Keim, the SmCo."Simplified Ratemaking Plan" (Plan B) is a proposal to

continue traditional rate base/rate of return regulation in a Chapter 30 Plan for the smaller companies in the Group. These Companies would have the option to eventually elect Plan A. regulation, under the SmCo. proposal.

Mr. Keim explained that if the Companies' proposed Schedules A and B in the Simplified Ratemaking Plan (SRP) are compared to the traditional ratemaking formula, it can be seen that the SRP is a repetition of the traditional revenue requirement formula. OTS St. 2, pp. 25-26. OCA witness Thomas Catlin also generally agreed that the basic concept or formula under the SRP is the same as under traditional rate base/ rate of return ratemaking. Tr. 617.

As demonstrated previously in the "safety net" section of this Main Brief, Chapter 30 does not authorize the retention of traditional rate base/rate of return ratemaking in a Chapter 30 Plan. See, 66 Pa. C.S. §§3002, 3004(a), and 3006(c)(3). Therefore, the SmCo. SRP should be rejected, and all members of the SmCo.Group should be regulated under Plan A., with the deletion of the "safety net" previously described.

In rebuttal to Mr. Keim, SmCo. witness Watkins claimed that, in an Order entered August 25, 1995, at Docket No. M-00930483,[22] the Commission stated that streamlined-eligible LECs would not 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." SmCo. St. 2R, p. 22. However, Mr. Keim responded that the SRP does not just include elements of traditional rate base/rate of return ratemaking; it is traditional rate base/rate of return ratemaking. OTS St. 2SR, p. 9.

Also, as indicated by Mr. Keim, the SmCo. Plan A already includes elements of rate base/rate of return regulation, as contemplated in the Commission Order cited by Mr. Watkins. An example of this is recognition of exogenous changes in revenues and expenses. However, the Commission has never approved the complete retention of

rate base/rate of return ratemaking in a Chapter 30 Plan, as is sought herein. OTS St. 2SR, pp. 9-10.

For all the foregoing reasons, the SmCo. Plan B should be rejected and all member companies should be regulated under Plan A, as modified herein.

22 See, In Re: Implementation of Chapter 30 of the Public Utility Code, Streamlined Form of Regulations, Docket No. M-00930483, Order entered August 25, 1995, p. 9.

OTS M.B. at 50-52. We agree and adopt the OTS reasoning as our own.

B. Plan A

As noted above, Plan A was the more often seen price cap formula for alternative regulation. The other parties proposed a series of modifications which will be resolved below.

1. Inflation Offset

The SCG proposed that there should be no inflation offset applied to 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. We agree with the OSBA.

The SCG proposal is simply unacceptable. Most of the other small 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. This offset recognizes that undisputed fact that telephony in this country is a declining cost industry. The OSBA argued:

More specifically, the Commission in its Corrected Opinion and Order Re: Implementation of Chapter 30 of the Public Utility Code; Streamlined Form of Regulation (Chapter 30 Streamlined Regulation Guidelines), Docket No. M-00930483, entered August 25, 1995 at 10, stated:

> [W]e will consider presumptively valid any small LEC streamlined regulation petition that incorporates a price cap or PSM formula method that is based on the difference between the GDP-PI and an inflation offset, where the inflation offset value is **not less than 2.80%** (emphasis added).

While all of the Plan A Companies do not statutorily qualify for streamlined regulation--because some are over 50,000 access lines--the 2.8% offset value is nevertheless the minimum offset that the Commission has directed as a guide for small LECs. Id. The OSBA interprets the offset value of 2.8% as the default value for the productivity offset if the small companies do not have record evidence to support a lower value.

* * *

The record here simply does not support the proposed PSM which is devoid of an inflation or productivity offset. Furthermore, the OSBA posits that the proposed PSM is contrary to Commission precedent and contravenes Commission guidelines. Consequently, the OSBA recommends that approval of the proposed PSM not be granted. Furthermore, the OSBA suggests that the PSM be modified to include a productivity offset value of 2.8% as this is a default productivity offset that the Commission has found to be presumptively valid.

OSBA M.B. at 11-12. (Emphasis in the original). We agree and adopt the OSBA reasoning as our own. We hasten to add that we have chosen the OSBA position because

it was the lowest recommendation on record and because it fell within the same range (*i.e.* 2%-2.8%) as previous productivity offsets assigned to other similar sized, small LECs.

2. Time Line

a. Parties' Positions

i. SCG

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

ii. OTS

The OTS criticized and argued against this part of the plan, as follows:

> The SmCo. Plan A provides a "75-day procedure", which is described in Part 3.A.(A)10. of the Plan. This "75-day procedure" is proposed by the Plan A. Companies to be used for PSI tariff filings,[20] exogenous events, rate restructuring and rebalancing, and for new noncompetitive protected service offerings.
>
> Under the procedure, parties would be given fifteen days advance of the filing. However, all interventions/complaints are due within ten (10) days of such notice, which means that parties will not have seen the tariff filing before they are required to file complaints. Tr. 412.

The tariffs will be effective within 60 days of filing, with an extension of 15 days for hearings if requested by a party. In addition, if the proposed impact of the filing on local service rates for one-party residential service is an increase greater than $3.50 per month, then the additional allowance for hearing is 45 calendar days rather than fifteen. There is no provision for time extensions to allow for mediation or other settlement process. SmCo. Ex. 1 (Ex. A, pp. 12-13).

OTS witness David Keim presented the OTS modifications to the SmCo. "75-day procedure". As indicated by Mr. Keim, an extension of time to twenty (20) days for filing interventions/complaints is necessary to permit review of the tariffs by the parties. Also, Mr. Keim proposed that the $3.50 threshold for triggering the additional hearing time should be changed to "an increase greater than 20%", consistent with his consumer protection proposal.

In addition, Mr. Keim proposed that a Commission Order be entered within sixty days of filing (or such other time as may be provided in the Plan) or the nearest Public Meeting date, whichever is longer. This is necessary to accommodate the Commission's Public Meeting schedule. Also, Mr. Keim proposed that interrogatories responses be due within ten (10) days, to streamline the process. Finally, additional time must be allotted for ADR/mediation.[21] OTS St. 2, pp. 12-13; OTS St. 2SR, p. 6.

Mr. Keim's procedure is reasonable and should be adopted for all tariff filings wherein the Companies' "75-day procedure" is proposed to be used..

[20] As noted by Mr. Keim, the reference to a thirty-day effective date for PSI filings in Part 3.A.(A)9., should be changed to sixty days, to be consistent with Part 3A.(A)10. OTS St. 2, p. 11.

[21] The Commission has recently proposed to expand the availability of ADR, and has directed that its proposed policy statement on ADR be submitted for publication and comment. The proposed policy statement includes a requirement that if the party with the burden of proof consents to mediation, that

party must also agree to a sixty-day extension. See, Policy Statement Expanding Alternative Dispute Resolution (ADR), Docket No. M-00991221, Order entered February 17, 1999.

OTS M.B. at 43-45.

iii. OCA

The OCA criticized and argued against this part of the plan, as follows:

> The Plan A Companies propose a 75-day procedure applicable to all PSM, exogenous events, restructuring and rebalancing filings and the offering of new services. Plan at 10. The Plan A Companies propose a 15-day advance notice of the filing and 60 days for the Commission to enter an Order in the proceeding. The 75-day schedule also allows for an additional 15 days for hearings, if they are requested by a customer or a statutory party, and 45 days for hearing, if the proposed increase is greater than $3.50 per month per access line. Plan at 13.
>
> As with the procedural schedule proposed by the Plan B Companies, the OCA opposes the Plan A 75-day procedure because it does not provide adequate due process protections for complainants and intervenors. The 75-day procedure does not provide an adequate opportunity for the parties or the Commission to evaluate a Company's filing. OCA submits that 30 days of advance notice should continue to be provided, rather than the 15 days set forth in the Plan. The advance notice should provide details of the actual filing.
>
> A more important concern is the proposed limitation of filing complaints or interventions within 10 days of the advanced notice. Again, this would present the situation where a customer is expected to file a complaint opposing a filing which he or she has not seen since the complaint would be due 5 days before the actual filing of the

case. Currently, there is no limitation as to when complaints or interventions may be filed in a rate proceeding. This should continue to be the case.

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. at 26-27.

iv. AT&T

AT&T argued as follows:

In Part 3.A.(A)10 (at 12-13), the Companies describe the procedure to be followed with respect to the annual PSI and SPI Report and any tariff changes that must be

filed by the Companies on or before May 1 of each year.[94] It provides that there shall be a 15-day advance notice, which shall be served, inter alia, upon all Chapter 30 parties, who must then file any and all complaints or intervention notices within 10 days of receiving such notice, or 5 days before the filing is made. It is both silly and unfair to require a person to file a complaint or decide to intervene with respect to a filing before it has even been made.[95] AT&T therefore proposes an amendment to extend that requirement to 15 days after the Report is filed. The second sentence of Part 3.A.(A)(10) (at 12) should therefore be amended to read:

> Any and all interventions or complaints shall be due within fifteen (15), [ten (10)] days after the Report is filed [of such notice].

In addition, the penultimate sentence of this provision, which is referred to by the Companies as the "75 day procedure," provides additional time for hearings if requested by the governmental parties or a customer at the time it files a notice to intervene or a complaint.[96] There is no reason to limit the right of AT&T to request a hearing as a customer only and not as a competitor or potential competitor , a status in which AT&T appears in this case.[97] Accordingly, the last sentence of Part 3.A.(A)10 (at 13) should be amended to read:

> An additional fifteen (15) days shall be provided to allow time for hearings, if specifically requested by the OCA, the OTS, the OSBA or a customer, or any other party to the Chapter 30 proceeding, made at the time of complaint or intervention.

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94 Plan, Part 3.A.(A)8 (at 12).

95 AT&T St. No. 1 at 21-22. The Companies' witness Watkins did not address this concern.

96 Plan at 3.A.(A)10 (at 13).

97 AT&T St. No. 1 at 22; AT&T St. No. 1S at 30.

AT&T M.B. at 25-26.

b. Recommendation

We generally agree with all of the criticisms offered by the other parties. The customers and other potential parties to subsequent proceedings should be permitted to see the tariff proposals prior to making a decision on whether to file a complaint. We further agree with AT&T that the plan is too restrictive in its identification of future parties. Accordingly, we recommend the modifications offered by AT&T.

We hasten to add that the SCG proposal fails to recognize that there may not be a Public Meeting scheduled near the end of the time line. Therefore, we recommend that the language be modified to indicate the Time Line should be extended to the nearest Public Meeting date, whichever is longer.

3. Safety Net

a. Parties' Positions

i. SCG

The SCG described its provision as follows:

> The witnesses believe that this safety-net provision is contrary to alternative regulation and the best interest of the customers. I respectfully submit that the witnesses are mistaken. The truth of the matter is that the safety-net provision was included in Plan A 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. As discussed in my direct testimony (Small Co. Statement 2, pp. 28-29), 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 safety-net provision was, therefore, included in Plan A to provide the companies with the means to seek additional rate relief outside of the PSM procedure in order to assure that their Network Modernization Plans would not be curtailed due to inadequate cost recovery. The provision was not for the purpose of benefitting the companies' investors. In my opinion, the primary goal of Chapter 30 is 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 safety-net provision included in Plan A is for the purpose of achieving this goal, nothing more and nothing less. I also want to note that the original price cap plan approved for the largest LECs by the FCC had a safety-net provision whereby the LECs could increase their prices if their rates of return fell below a reasonable level.

SCG St. 2R at 15-16.

ii. OTS

The OTS argued as follows:

In Part 3.A.(A)15. of its Plan, the SmCo. Group proposed a "safety net" provision that is not contained in the Chapter 30 Plans of any other company. Tr. 475; OTS St. 2SR, p. 4. This "safety net" permits a Plan A. Company to file a traditional general rate case under Section 1308 of the Public Utility Code, 66 Pa. C.S. §1308, if the Company's most recent twelve months' earnings is allegedly insufficient

to permit the attraction of capital necessary to carry-out its NMP on an ongoing basis. OTS St. 2, p. 14.

The SmCo. Group has not even attempted to disguise its "safety net" as anything other than traditional rate base/rate of return ratemaking. In fact, the Plan itself contains the following acknowledgment, in Part 3.A.(A)3.:

> With the exception of the provision addressed in paragraph 15 [the "safety net"] herein, Plan A is a substitution of traditional rate base/rate of return regulation . . . .

OTS witness David Keim testified, under advice of counsel, that use of traditional rate base/rate of return regulation in an alternative or streamlined regulation plan is expressly prohibited by Chapter 30. OTS St. 2, pp. 14-15. Section 3006(c)(3) of the Code, 66 Pa. C.S. §3006(c)(3), requires that the Commission find compliance with all the provisions of Chapter 30 prior to approving a streamlined form of rate regulation. Section 3004(a) of the Code, 66 Pa.C.S.§3004(a), authorizes the Commission to approve an alternative form of regulation for determining just and reasonable rates.

Streamlined form of rate regulation is included within the definition of alternative form of rate regulation in Section 3002 of the Code, 66 Pa. C.S. §3002. The definition of both alternative and streamlined forms of rate regulation in Section 3002 expressly excludes traditional rate base/rate of return regulation from the forms of permissible rate regulation under Chapter 30.

Accordingly, the SmCo. Group's proposed "safety net" should be deleted from the Plan as being unauthorized for Chapter 30 Plans under the Public Utility Code. If a Group member finds that its earnings under alternative or streamlined regulation become insufficient to attract the capital necessary to meet its NMP, it can petition to modify its NMP schedule and/or request to be relieved from

alternative/streamlined regulation to file a traditional base rate case. OTS St. 2SR, p. 4.

Even if traditional rate base/rate of return ratemaking was permitted in a Chapter 30 Plan, the SmCo. proposal should not be approved. As noted by Mr. Keim, the SmCo. proposal is "one-sided" in favor of the Companies in that, while the "safety net" proposes an earnings floor, there is no corresponding earnings ceiling. OTS St. 2, p. 15. Dr. Levin also noted this asymmetry of the "safety net." OSBA St. 3, p. 4. OTS also notes that the NMP is to be funded only with noncompetitive service revenues, even though competitive services will use the modernized network. Tr. 475-476. As more and more services are declared competitive under Chapter 30, the Companies could have less and less noncompetitive revenues, which could result in large rate increases under the "safety net". Clearly, this "safety net" is unreasonable, in addition to being unauthorized under Chapter 30, and should be rejected.

OTS M.B. at 46-48.

iii. OCA

The OCA argued as follows:

The Plan A Companies have submitted as part of their proposed Chapter 30 Plan a "safety net" provision. Under this proposal, Plan A Companies would be able to request a general rate increase under the provisions of Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308, if their net operating income were deemed inadequate to support their NMP. Plan at 16. 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, Mr. Watkins made it clear that only noncompetitive revenues would be taken into account when the

Companies decide that they should come in for a rate increase to adequately fund the NMP. Tr. 482.

The OCA submits 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 Companies receive from their competitive services should be considered in the determination of whether the Companies' earnings are too low. OCA St. 2 at 26-27. This makes sense because the modernized network which the potential rate increase will help fund supports competitive as well as noncompetitive services. Since the modernized network will be used to provide competitive services and augment overall company revenues, then the calculation of revenues which will be part of the "safety net" rate filing should include revenues from competitive services.

Under cross examination by AT&T counsel, Mr. Watkins admitted that "some of the costs of the network will be associated with the competitive services." Tr. 476. The Companies should be compelled to choose between including or excluding both their competitive service costs and revenues for purposes of determining whether a rate increase is needed to fund the NMPs.

OCA M.B. at 48-49.

iv. OSBA

The OSBA argued as follows:

The companies propose a Plan A provision that acts as a contingency if a company's net operating income over the most recent year should prove to be insufficient to fund the approved NMP. This provision, sometimes referred to as the "safety net," permits a company to file a general rate increase applicable to noncompetitive services on a jurisdictional basis under Section 1308 of the Public Utility

Code, 66 Pa.C.S. §1308. This provision automatically imports Commission review of whether the company's NMP is in jeopardy at existing rates. If it is determined that the NMP is in jeopardy, the determination phase of the process to see if the proposed rates are just and reasonable consistent with the Section 1308 requirements is then commenced. Subsequently, the company's particular PSM is to be reset at the determined reasonable rates. See, PTA Petition and Plan at 16.

The Companies want a reasonable opportunity to recover the costs associated with building and operating the broadband networks. Small Co. Stmt. No. 2R at 6. The Companies assert that this provision is needed to minimize the risk they may experience financially in complying with their proposed schedules for modernizing their networks as required by Chapter 30. The Companies state that without this provision their earnings are in jeopardy as well as their ability to continue further investment commitment to network improvements. Id.

OSBA disagrees with the necessity for this provision. OTS and AT&T also oppose this provision.

The Companies' witness, Mr. Steven E. Watkins, acknowledges that this provision is not contained in any Commission approved Chapter 30 Plans. Tr. at 407. Moreover, Mr. Watkins agrees that the Companies can assert inadequate earnings to the Commission without the provision in place. Tr. at 457-58. Consequently, OSBA is at a loss to discern why the provision is to be included in the Companies' PSP.

Price regulation is employed "to provide incentives to the regulated companies to become more efficient so that they can, ... [as in this case], make ... investments as ... required under Chapter 30." OSBA Stmt. No. 3 at 4. If the Commission were to accept the safety net as proposed by the Companies to benefit the companies when earnings are low, then customers also deserve compensatory benefits, perhaps reduced rates, when achieved earnings by

the companies are in excess of those necessary to make Chapter 30 investments. Id. Such symmetry is absent from the Companies' proposal. As the proposal exists, the benefits are asymmetrical toward the Companies--customers do not even have the potential of being benefited by the so called "safety net." This is simply inequitable.

Furthermore, this provision encompassed within a price cap regulation plan eliminates many of the benefits of price cap regulation. If earnings are inadequate, companies may request a rate increase as is the current procedure. OSBA Stmt. No. 1 at 18. These Companies operating under price cap regulation, however, retain any higher earnings they might achieve. Id. The asymmetrical provision proposed by the companies reduces the incentive properties of price regulation that are intended to make the companies act more efficiently. More importantly, this asymmetrical provision saddles customers with only the upward rate risks of rate-of-return regulation. Id at 19. By some convoluted reasoning, however, the Companies' witness, Mr. Watkins, asserts that this safety net provision protects the customers. Small Co. Stmt. No. 2R at 16. In explaining this reasoning, however, he cites the companies' benefit of seeking additional rate relief outside of the PSM procedure. Id 16-17. This benefit is asserted as, "not for the purpose of benefitting [sic] the companies' investors." Id at 17. The OSBA finds this reasoning to be simply incomprehensible.

The OSBA finds that the safety net provision of Plan A is not necessary. Furthermore, the inclusion of the safety net provision only inures benefits to the Companies. The customers receive only a detriment from its inclusion. Therefore, the OSBA submits that the safety net provision be removed from the proposed Plan A of the PSP.

OSBA M.B. at 12-14.

v. AT&T

AT&T opposed this section of the plan and argued as follows:

> An additional proposed source of relief for the Companies is found at Part 3.A.(A)15 (at 16), allowing a Plan A Company to seek a rate increase if the Company's net operating income, as projected, annualized and adjusted will not be sufficient to attract the capital necessary to carry out the NMP on an ongoing basis.[91]
>
> Here too, Mr. Watkins stated the earnings in question should include noncompetitive services.[92] Since modernization costs would be associated with competitive services, earnings from competitive services should be considered by the Commission in any request for a rate increase. This could easily be reflected by amending the first sentence of this provision to read:
>
> > Should a Company's earnings (net operating income) from all sources, including competitive services, ...
>
> 91 This is commonly referred to as the safety net. Tr. at 475.
>
> 92 Tr. at 476.

AT&T M.B. at 24. (Emphasis in the original.)

b. Recommendation

We agree with the OTS and the OSBA. The safety net provision is an attempt to have the best of both worlds. The SCG is trying to have an alternative regulation plan with traditional rate base regulation as a fall back position. The safety net is asymmetrical in its application and saddles the customers with the ultimate risk of

failure in the market place. In addition, the proposal violates the prohibition set forth in Section 3002 of the Public Utility Code which excludes traditional rate base regulation from streamlined regulation plans. 66 Pa. C.S. §3002.

4. Banking

a. Parties' Positions

i. SCG

The SCG described its proposal and argued as follows:

> Included in the PSM is a banking proposal whereby increases/decreases in rates resulting from the PSI calculation and any exogenous events may be banked for a period not to exceed four consecutive years. SCG Ex. 1, Ex. A at 11.
>
> OTS witness Keim opposed the banking of rate decreases which result from exogenous events. Keim was concerned that the incentive for parties other than the companies to seek rate decreases resulting from exogenous events will be diminished if decreases can be deferred. Therefore, he recommended that the companies immediately pass through any rate decrease resulting from an exogenous event. OTS St. 2 at 10-11.
>
> The SCG members are not opposed to Keim's recommendation so long as they are permitted to offset rate decreases with rate increases, including banked rate increases. To accommodate witness Keim's concerns, the companies have revised their banking provision to read as follows:
>
> > 7. If the Company elects not to increase its rates by the full amount allowed under the terms of the Plan, including

exogenous events in a given year, the Company may increase its rates in future years to reflect the full amount of the allowable increases previously deferred. The Company may bank increases for a period not to exceed four (4) consecutive years. The Company may not bank decreases, but may offset increases with decreases for banking purposes. The Company will not, however, attempt to recover any revenues foregone as a result of deferring the increase in prices.

SCG M.B. at 38-39.

ii. OTS

The OTS agreed to the modified proposal. OTS M.B. at 49.

b. Recommendation

We find the resolution of the issue acceptable and recommend the proposed section be adopted as modified by SCG agreement.

5. New Services

a. Parties' Positions

i. SCG

The SCG argued as follows:

> The Plan addresses the introduction of new noncompetitive services in Section A.(C) on page 18. New protected services shall be introduced under the procedural time line identified above. Nonprotected services shall be effective on one day's notice. 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 year.

SCG M.B. at 39. The SCG continued in its Reply Brief:

> AT&T contends that the New Services provisions, Parts 3.A.(C)3 and 3.B.(D)3, need to be clarified to assure that they do not apply to "competitive" services. AT&T M.B. at 29. The PTA Small Company Group sees no necessity in making such a revision since the New Services provision is in "Part 3 - Price Stability Plans for Noncompetitive Services." (Emphasis added.) Accordingly, there is no ambiguity over whether the provision applies to competitive services as AT&T so alleges.

SCG R.B. at 28.

ii. AT&T

AT&T argued as follows:

> Parts 3.A.(C)3 and 3.B.(D)3 of the Plan (at 18 and 25, respectively) provide for the introduction of new services and state that any new service that is not a "protected" service shall become effective upon one day's notice. Since competitive services may not be protected services, AT&T opposed the one-day's notice proposal.[108] The Companies have clarified that the new services in question under this Part are intended to apply only to noncompetitive services.[109] However, since these provisions

on their face refer to "a new service," they create ambiguity.[110] These provisions should therefore both be amended to include a specific reference to noncompetitive services to eliminate any confusion. Indeed, Mr. Watkins agreed it would be helpful to make such a change with respect to these provisions. Accordingly, Parts 3.A.(C)3 (at 18) and 3.B.(D)(3) (at 25) should both be amended to read:

> 1. Any new noncompetitive service which is not a "protected" service shall become effective upon one (1) day's notice to the Commission.

108 AT&T St. No. 1 at 17-18; AT&T St. No. 1S at 16.

109 AT&T St. No. 1S at 16, n.14.

110 Mr. Watkins himself evidenced confusion when AT&T's counsel merely tried to elicit a clarification that this provision applies to noncompetitive services only. Tr. at 465-71.

AT&T M.B. at 29.

b. Recommendation

We agree with SCG. 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. No further modification is needed.

6. Just And Reasonable Rates

a. Parties' Positions

i. SCG

The SCG described its proposal and argued as follows:

> OTS witness Keim recommended that a provision be inserted in the Chapter 30 Plan providing that the companies' rates "must remain just and reasonable and subject to Commission oversight in any future proceeding." OTS St. 2 at 22. The SCG members have no objection to this recommendation so long as it is recognized that the justness and reasonableness of the rates will now be determined on the basis of the approved Chapter 30 Plan. See SCG St. 2R at 37.
>
> Witness Keim also recommended that Plan A, Paragraph A.(E) and Plan B, Paragraph B.(F) - Complaints - be modified to recognize that the Commission retains authority to institute proceedings on its own motion with the burden of proof on the Companies. OTS St. 2 at 22-23. The SCG has no objection to this revision and its final Plan in Appendix E at 21 reflects the change. Id.

SCG M.B. at 42-43.

ii. OTS

The OTS did not entirely agree with the modification offered by the SCG and argued as follows:

Mr. Keim also proposed to retain Commission oversight of individual service rate levels. His proposal--that rates under the Plan must remain just and reasonable and subject to Commission oversight in any future proceeding--is consistent with a recent Commission Order in the Citizens Telephone Company of Kecksburg (Kecksburg) Chapter 30 case. OTS St. 2, p. 22. In that proceeding, the Commission directed Kecksburg to file a revised Chapter 30 Plan, consistent with the following qualification:

> We [the Commission] shall assert that the rates subject to regulation under any Chapter 30 plan must remain just and reasonable and subject to Commission oversight in any future proceeding, notwithstanding the agreement of the parties.

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, p. 14.

In rebuttal, Mr. Watkins agreed to include Mr. Keim's provision in the SmCo. Group Plan. However, Mr. Watkins included an unreasonable qualification that the justness and reasonableness of the members' rates be determined on the basis of their Chapter 30 Plan and not on prior ratemaking standards. SmCo. St. 2R, p. 37. OTS has interpreted this qualification to mean that.if the proposed increase is $3.50 per month or less in a calendar year, and the SPI does not exceed the PSI, then the rates are just and reasonable.

The Commission has recently rejected any notion that it is limited to the "four corners" of a Chapter 30 Plan in determining whether resulting rates are just and reasonable. In Pa. P.U.C. v. Frontier Communications of Pa., Inc. , Docket No. R-00984411, Order entered February 11, 1999, at page 12, the Commission stated additional considerations which may be used, beyond the Chapter 30 Plan guidelines, as follows:

> In addition to the approved guidelines for rate increases in the Chapter 30 Plan, other considerations may be used to determine whether proposed rates are unreasonable, including the level of rates and resulting rate shock, comparison of proposed rates to similar services by other companies in the state, and quality of service complaints received from customers. We further observe that once Frontier's biennial network modernization plan update is filed, this Commission could also base approval or disapproval of rate increases on how well Frontier has met its commitment to network modernization.
>
> Accordingly, the SmCo. attempt to limit the interpretation of "just and reasonable" rates to the "four corners" of the Plan, should be rejected. Instead, Mr. Keim's consumer protection should be added to the Plan, without the SmCo.qualification.

OTS M.B. at 40-41.

iii. OCA

The OCA's arguments on this issue are best included with its position on rate rebalancing.

b. Recommendation

We agree with the OTS. We find that the attempt by the SCG to limit this Commission's power to review the justness and reasonableness of proposed rates to the "four corners" of the plan is unsupported by recent Commission decisions and chapters 13

and 30 of the Public Utility Code. We agree that the guidance in the Commission's recent Citizens and Frontier cases is controlling.

7. Small Business Customers

a. Parties' Positions

i. SCG

The SCG argued as follows:

> At page 31 of its Main Brief, the OSBA states:
>
> > Consequently, the OSBA advocates that the Commission redefines the small business customer class to ten (10) access lines or less. In the alternative, the OSBA requests that all business customers that obtain service under single-line tariff rates be protected (similar to the ALLTEL proposal).
>
> In response to this contention, we emphasize that a business with ten access lines in the service territories of these small telephone companies is certainly not a small customer. Mr. Watkins testified that the definition of a small business customer for these rural telephone companies would actually reflect fewer access lines than established for the Bell Atlantic service territory. See SCG St. 2R at 37-38.
>
> Notwithstanding the OSBA's request, the definition of a small business customer is not really relevant to this proceeding. The Consumer Protection provision in the Plan applies to "basic, local rates for both residential and small business customers (three (3) lines or less)." SCG Ex. 1, Ex. A at 19. However, the $3.50 monthly rate limitation will apply to the B-1 rate regardless of the number of access

lines that a business customer has. Therefore, all business customers with B-1 lines will receive the same protection identical to the ALLTEL PA Plan. See ALLTEL PA St. 3R at 18.

SCG R.B. at 47.

ii. OSBA

The OSBA argued as follows:

> The PTA Petition and Plan consistently defines the small business customer class as those business customers having three (3) access lines or less. This definition originated in the Opinion and Order in Docket No. P-00930715, Re: Bell Atlantic Pennsylvania, Inc.'s Petition and Plan for Alternative Form of Regulation under Chapter 30, (Bell Chapter 30), adopted June 23, 1994, where the Commission states, at p. 96:
>
> > We also observe that in accordance with the settlement between Bell and the OSBA, Bell agreed to treat local exchange service business customers with three or fewer access lines in the same manner as residential customers with protected local exchange service under the broad parameters of its PSM proposal.
>
> The OSBA acknowledges that this definition "would provide consistency with all of the previous Chapter 30 filings of ILECs...." OSBA Stmt. No. 1 at 6. However, the OSBA posits that such a definition is stale and does not do justice to the small business segment of the business customer class in 1999. The OSBA finds this definition no longer applicable since "the use of telecommunications by small businesses is increasing." Id. Moreover, "we are witnessing a rapid

> increase in the importance and use of telecommunications, and it is reasonable, therefore, that small businesses will use more telecommunications services today than in the past, while still remaining small businesses." OSBA Stmt. No. 3 at 6. Consequently, the number of access lines a small business needs at its disposable to function as a viable entity must necessarily have increased over this almost five year time period.

OSBA M.B. at 28-29. The OSBA continued:

> The Commission's primary policy it to protect the public interest. The OSBA asserts that to adequately protect the segment of the public that is the small business class, that customer segment must be defined properly. To reject this premise is to abandon the policy mandate, and abdicate the certainty of just and reasonable rates for that customer class. Such action would also be contrary to a specific policy declaration of Chapter 30 that ensures that customers pay only reasonable charge for local telecommunications services. 66 Pa.C.S. § 3001(2). Moreover, such action would result in unjust and unreasonable rates for small business customers, contrary to Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308. Consequently, the OSBA advocates that the Commission redefines the small business customer class to ten (10) access lines or less. In the alternative, the OSBA requests that all business customers that obtain service under single- line tariff rates be protected (similar to the ALLTEL proposal).

OSBA M.B. at 31.

b. Recommendation

We agree with the SCG. This Commission has uniformly defined small business's as those having three lines or less. The SCG has generally adhered to that

definition. The OSBA has not provided us with sufficient evidence to consider changing the policy.

8. Toll Imputation

a. Parties' Positions

i. SCG

The SCG argued in its Main Brief as follows:

> With respect to intraLATA toll rates, both Plan A and Plan B provide that "a participating Company shall not be required to pass any imputation test, unless all interexchange carriers operating in Pennsylvania agree or are required to comply with the exact imputation test as may be imposed on such company." SCG Ex. 1, Ex. A at 15 and 24. Witnesses Kubas and Nurse objected to this provision. OTS St. 3 at 19-22; AT&T St. 1 at 22-23. These witnesses fail to recognize that these rural LECS must now compete against large IXCs in the intraLATA toll market. These large toll providers, such as AT&T, can charge toll rates based upon their statewide averaged access rates. As such, toll rates charged by the IXCs can be much lower than the toll rates charged by the small LECs that are forced to cover both their specific service territory originating and terminating access charges. In other words, the IXCs' toll rates within the SCG members' service territories do not cover the service territory-specific access charges whereas the SCG members' toll rates do. The small LECs in this proceeding do not have the luxury of setting their toll rates on statewide averaged access rates. The purpose of the Plan's toll imputation prohibition is to avoid this inherent imbalance that would place small LECs at a competitive disadvantage. SCG St. 2R at 38-39.

> The Commission has not established at this point in time any toll imputation requirement on the SCG members. The Companies are, however, willing to abide by any imputation policy to be established by the Commission if it provides a level playing field. Accordingly, the imputation provisions in Plan A and Plan B have been revised in Appendix E, pages 16-17 and 26, to read 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.

SCG M.B. at 43-44. (Emphasis in the original.) In its Reply Brief, SCG argued as follows:

> The PTA Small Company Group members address the issue of toll imputation on pages 43-44 of their Main Brief. Nothing set forth in the OTS or AT&T Main Briefs have convinced the companies to alter their position.
>
> We do, however, take this opportunity to emphasize that the Commission suspended the imputation requirement for all LECs other than Bell Atlantic by Order entered September 9, 1996, at Docket No. M-00960799, In Re: Implementation of the Telecommunications Act of 1996. This suspension was again recently recognized by the Commission in its Opinion and Order entered March 4, 1999, Pa. P.U.C. v. Laurel Highland Telephone Co., Docket No. R-00984431. See Appendix A hereto.
>
> AT&T argues in support of an imputation test claiming that "most" of the SCG members "would be better off selling access to the IXCs than charging them toll rates

from a revenue viewpoint." AT&T M.B. at 27. Please recognize that this argument is being made by a competitor that is seeking to drive the LECs out of the intraLATA toll market in hopes of securing their toll customers and eventually packaging both toll and local services to such customers. Obviously, AT&T does not want a level playing field to be established between it and the SCG members in the intraLATA toll market and, therefore, seeks to have an unreasonable imputation requirement imposed in this proceeding.

SCG R.B. at 46-47.

ii. OTS

The OTS argued as follows:

In Part 3. A.(A)13. and Part 3. B.(A)6. of the Plan, the SmCo. Group proposes a sentence which exempts any member Company from being required to pass an imputation test unless all interexchange carriers (IXCs) operating in Pennsylvania agree or are required to comply with the exact imputation test as may be imposed on such Company. An imputation requirement is a competitive safeguard, also referenced in 66 Pa. C.S. §3005(e)(2), which requires that the price that 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, p. 20.

OTS witness Joseph Kubas presented testimony in opposition to the SmCo. imputation condition, explaining that, while IXCs are not currently required to pass an imputation test, an imputation requirement is necessary to prevent the Companies from selling toll service, the final product, to their own customers at a lower rate than they

charge IXCs for access, the essential input of toll.[8] Since access is primarily provided by incumbent local exchange companies (ILECs), such as the SmCo. Group members, it is only necessary to impose an imputation requirement on ILECs. OTS St. 3SR, p. 6. Mr. Kubas recommended that the imputation condition be removed from the Plan, and that the Companies agree to comply with future Commission imputation requirements. OTS St. 3, pp. 19-22.

In rebuttal, Mr. Watkins added a sentence to the imputation exemption provision, but retained the objectionable language which conditions compliance with imputation on compliance by IXCs and other toll carriers serving in the same area. SmCo. St. 2R, p. 39. While the added sentence is acceptable, the objectionable sentence should be deleted for the foregoing reasons. OTS St. 3SR, p. 6.

[8] The Commission considered imputation when addressing Pymatuning's intraLATA toll rates in Pa.P.U.C. v. Pymatuning Independent Telephone Company, Docket No. R-00974175, Order entered December 4, 1997, p. 2.

OTS M.B. at 19-20.

iii. AT&T

AT&T argued in its Main Brief as follows:

In Parts 3.A.(A)13 (at 15) and 3.B.(A)6 (at 24), the Companies propose that they should not be required to pass an imputation test unless all IXCs operating in Pennsylvania are required to comply with the same test.

As pointed out by Mr. Nurse and OTS witness Kubas,[98] this proposal must be rejected. Imputation is designed to protect consumers and competitors from a monopolist's price squeeze. As such, the test would not be

applicable to IXCs who have no local monopoly power. ILECs such as the Companies do have monopoly power in their territory and therefore must be subject to an imputation test. If not subject to an imputation test, the Companies could price their own end-user rates for a particular service below the "wholesale" rates they charge an IXC competitor for the same service. The purpose of this test has no applicability to an IXC, which cannot leverage a monopoly position over local services to obtain an advantage.

Accordingly, the last sentence of Parts 3.A.(A)13 (at 15) and 3.B.(A)6 (at 24) should be deleted. These read:

> [Further, (during the term of the SRP) a participating Company shall not be required to pass any imputation test, unless all interexchange carriers operating in Pennsylvania agree or are required to comply with the exact imputation test as may be imposed on such Company.]

The Companies attempted to defend their proposal by contending that IXCs such as AT&T can charge lower rates by utilizing an average statewide access rate, which is much lower than the rates the Companies would have to charge if forced to cover their specific service territory originating and terminating access charges.[99] That extraordinary argument is, in fact, an explicit admission that the Companies' access charges are too high and should be lowered. But the fact that their access rates are too high is not a reason to exempt them from an imputation test or to impose a frivolous imputation test on IXCs.[100]

In fact, what this means is that most of the Small Companies charge less for toll charges than their access charges.[101] Thus, the Companies would be better off selling access to the IXCs than charging their toll rates from a revenue viewpoint.[102] The Companies have failed to explain this irrational course of conduct,[103] except to say it is in

their business interest.[104] This, again, is no reason to exempt them from the imputation requirement.

98 OTS St. No. 3 at 19-21.
99 Small Company St. No. 2R at 38-39; Tr. at 501.
100 AT&T St. No. 1S at 29-30.
101 Tr. at 499-501.
102 Tr. at 501.
103 AT&T St. No. 1S at 30.
104 Tr. at 501.

AT&T M.B. at 26-27. AT&T argued in its Reply Brief as follows:

> The Companies continue to seek to be exempt from toll imputation unless competitors are subject to the same requirement.[92] This contention has been fully answered.[93]
>
> There are two additional points we would make in reply. First, the Companies' argument[94]— where they admit that the access charges they impose on IXCs are higher than the competitive toll rates obtainable by IXCs, which are based on statewide averaged access rates — is a clear admission that their access rates are too high and should be reduced. Second, the Companies' proposal violates 66 Pa. C.S. § 3008(b), which limits the Commission's regulatory authority over IXC rates except as specifically set forth in Chapter 30 — which does not include an imputation requirement on IXCs.

92 SCG M.B. at 43-44.
93 AT&T M.B. at 26-27.
94 SCG M.B. at 43.

AT&T R.B. at 22.

b. Recommendation

This issue was resolved by the Commission decision in Joint Petition of Nextlink Pennsylvania, Inc., et al and Joint Petition of Bell Atlantic-Pennsylvania, Inc., et

al, Opinion and Order, entered September 30, 1999, at Docket Nos. P-00991648 and P-00991649, respectively, (Slip Op.) (Global Decision). In at least two chapters of the Global Decision the Commission approved the "modified Small Company Plan," which was Appendix II to the 1649 Petition. *Id.* at 54-55 and 151 (the pages have been quoted, in pertinent part, in the Rate Rebalancing and Access Charges sections below). The modified Small Company Plan stated as follows:

> 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.

1649 Petition, Appendix II at 7. Accordingly, we recommend the language proposed by the SCG.

9. Exogenous Events

a. Parties' Positions

i. SCG

The SCG argued as follows:

> Plans A and B include provisions which allow the SCG companies to make special revenue adjustments to recognize "exogenous events." Examples qualifying as exogenous events are set forth in Paragraph 11 of Plan A on pages 13-14 and Paragraph B.(B).1 of Plan B on page 24. Annually, each

SCG member will calculate the new PSI, to which will be added the impact of exogenous events.

Virtually identical provisions permitting revenue adjustments for exogenous events were approved by the Commission in the Chapter 30 Plans of Commonwealth, Frontier, Citizens, TDS and Ironton. In this proceeding, the other parties recognize that it is appropriate to allow the companies to make revenue adjustments for exogenous events.

SCG M.B. at 44. In its Reply Brief, the SCG accepted one modification suggested by AT&T in the following manner:

OTS, OCA and AT&T propose several modifications to the Plan A and Plan B provisions relating to rate adjustments for "exogenous events." The modification proposed by AT&T in respect to the institution of a universal service type fund is acceptable to the SCG companies.[30] Only the net impact of the creation of the Universal Service Fund should be reflected as an exogenous event, which includes all contributions, receipts, and other rate changes associated therewith.

[30] AT&T's proposed modification is set forth at pages 24-25 of its Main Brief. The term "SCG member" should be substituted for "ALLTEL PA" in the proposed revised language.

SCG R.B. at 43.

ii. OTS

The OTS argued as follows:

> The SmCo. Group has proposed a description of "exogenous events" in Part 3.A.(A)11. of the Plan which, by the Companies' own admission, may be within the Companies' control. SmCo. St. 2R, p. 40; Tr. 414. In surrebuttal, OTS witness Keim had offered to accept the SmCo. exogenous events description, if the Plan was clarified to exclude all events within the Group members' control. OTS St. 2SR, p. 11. Since the SmCo.Group has refused to do this, OTS reverts to its original position.
>
> As testified to by Mr. Keim, reference to "accounting" changes and "modifications to current intercompany compensation agreements and/or arrangements" as "exogenous" should be deleted. The Companies have not justified their inclusion in the Plan and there is no proof that these events are truly "exogenous"; i.e., outside the Companies' control. OTS St. 2, pp. 13-14.

OTS M.B. at 42-43. The OTS disputed representations in the SCG Main Brief as follows:

> OTS witness Keim proposed that the reference to "accounting" changes and "modifications to current intercompany compensation agreements and/or arrangements" be deleted from the Companies' description of qualifying "exogenous events." See, SmCo. M.B., Appendix E, pp. 14-15, 27. As indicated by Mr. Keim, the Companies have not justified their inclusion in the Plan and there is no proof that these events are truly "exogenous"; i.e., outside the Companies' control. OTS St. 2, pp. 13-14. In fact, the Companies refused to include a clarifying provision, as was suggested by Mr. Keim, to exclude all events within the Companies' control. SmCo. St. 2R, pp. 40-41; Tr. 414.
>
> In their Reply Brief, the Companies imply that the Commission has previously approved provisions permitting revenue adjustments for exogenous events which are virtually identical to the SmCo. proposal. SmCo. M.B., pp. 44-45. This is not accurate. The Chapter 30 Plans of

Commonwealth, the Frontier Companies, Citizens of Kecksburg, the TDS Companies, and Ironton **do not** include "accounting" changes but simply include "subsequent regulatory and legislative changes" as listed exogenous events. Furthermore, the Chapter 30 Plans of Commonwealth, the Frontier Companies, and the TDS Companies do not include "modifications to intercompany compensation arrangements" as qualifying exogenous events.

OTS M.B. at 25-26. (Emphasis in the original.)

iii. OCA

The OCA summarized its position as follows:

In summary, the Commission must 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. at 45.

iv. AT&T

AT&T argued as follows:

> 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.[93] 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 ALLTEL PA is either a net contributor to or net recipient from such fund.
>
> 93 Tr. at 497.

AT&T M.B. at 24-25. (Emphasis in the original.) In its Reply Brief, AT&T corrected a portion of its Main Brief as follows:

> In its Main Brief, AT&T inadvertently used language borrowed from its Main Brief in the ALLTEL case in recommending a change to Part 3.A.(A)11, regarding exogenous event treatment of universal service.[120] The provision[121] should state:
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> > 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 a net recipient from such fund.

120 AT&T M.B. at 24-25.

121 Part 3.A.(A)11; SCG M.B., Ex. E at 15.

AT&T R.B. at 28-29. (Emphasis in the original.)

b. Recommendation

With some limitations we agree with the other parties, and not the SCG. With respect to the OTS, we agree that SCG has incorrectly characterized the exogenous relief portions of plans of Commonwealth, Frontier, Citizens, TDS and Ironton. None of those plans were as generous in their definitions of exogenous as that requested by SCG. We adopt all of the reasoning offered by the OTS in its Reply Brief, which is quoted above. With respect to the OCA, we agree (1) that converting from an average schedule settlement to a cost based methodology or other format should not qualify for exogenous treatment and (2) that revenue losses and costs incurred in extending EAS or OCP should not be recoverable as an exogenous event. The implementation of EAS plans or OCPs require costs to be incurred by the SCG. Those costs could be compared to the additional revenues and increased efficiencies which also result from these plans. If the comparison reveals a net loss, it means the SCG failed to properly design the rates for their plans. Their customer base should not be held responsible for the difference. We also accept the AT&T position. The customers should only be responsible for the net loss. Obviously, if the Companies are receiving more from the Universal Service Fund than they are contributing, there is no reason for the customers to hold the Companies harmless for their entire contribution.

10. Rate Rebalancing

a. Parties' Positions

i. SCG

The SCG argued as follows:

> 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. See SCG Ex. 1, Ex. A at 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 complied with Section A.(D) of the Plan (do not increase rates by more than $3.50 per month), the proposals would be approved.[32] The procedure proposed was the time line established for PSM filings.
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> * * *
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> OTS witness Keim proposed that the companies restate how often under Plan A a rebalancing filing can occur so that it is clear that only one rebalancing filing could be put into effect per year. OTS St. 2 at 17. The SCG does not oppose this proposal and has modified its Plan in Appendix E, page 18, accordingly. Keim 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 services' rates should be limited. OTS St. 2 at 19. The SCG has significant problems with this proposal. First, it immediately places all SCG members at a disadvantage vis-à-vis all other LECs that did not in the past and continue in the future not to face this same restriction. While all other LECs

are free to rebalance their rates within the same or similar conditions which the SCG members have proposed in their Plan, SCG companies would be suddenly restricted in both the manner and level in which they may rebalance rates depending on the declaration of another company's service competitive. If adopted, no SCG competitive service could ever be priced at or near cost, and therefore ever be truly "competitive" for the SCG members, because the service's rate would be frozen at its present level whenever another company declares its same or similar service competitive.[33] This is an absurd restriction that penalizes these companies that have not yet had their Chapter 30 Plan approved.

The proposal also introduces another dimension to any rebalancing filing by necessitating the introduction of evidence of noncompetitive services in the SCG's service territories and competitive services in other company's service territories, to determine whether the presumption should apply. It would also require the SCG members to intervene and actively participate in all future Chapter 30 rebalancing or competitive services filings made by other companies to assure that in fact those companies' proposals do not detrimentally impact future rebalancing and competitive service filings of the SCG members. The SCG submits that such demonstrations have no place in rebalancing proceedings or post-Chapter 30 alternative regulation, and would unduly complicate what is supposed to be simplified alternative regulation by inextricably intertwining every LEC's rebalancing filings with all competitive services filings and vice-versa, making distinctions in filings and among companies almost non-existent. The SCG members cannot agree to a restriction that would effectively have the acts of unrelated companies dictate the SCG companies' rebalancing efforts.

OCA witness Catlin offered the OCA position that rate rebalancing is "a vestige of rate base/rate of return regulation which is inconsistent with the notion of a price cap mechanism" and restated OCA's legal position that the concept of rate rebalancing is inconsistent with the intent of Chapter 30. OCA St. 1 at 30-31, 41-42. He then proposed to

subject rebalancing filings to an earnings review, which would entail all the trappings and evidentiary requirements of traditional rate of return ratemaking, or in the alternative, to establish arbitrary $1.00 annual limitations on rebalancing, with a lifetime $15.00 limitation.[34] OCA St. 1 at 31-32, 41-42. The incredulity with which Catlin's characterizations of rebalancing were received is best reflected in the rebuttal testimony filed by OSBA witness Levin.[35] The SCG members believe that Catlin's characterization of rebalancing is disingenuous on its face, and that his recommendations regarding earnings review and dollar caps are no more than OCA legal counsel's numbers created out of whole cloth and wholly without support. See, e.g., T. 657, 666-69, 681-90.

As stated by SCG witness Watkins, Chapter 30 provides distinct procedures applicable to competitive and noncompetitive services and the Commission, on several occasions, has recognized the need for and validity of rate rebalancing as the companies transition to a competitive market. SCG St. 2R at 9, 19; Streamlined Order at 24. Moreover, the OCA's unrelenting attempts to tie rebalancing to traditional earnings reviews have been repeatedly rebuffed by the Commission, and should be rebuffed here. See, e.g., Frontier Chapter 30 Order at 57-58; Commission Order entered February 11, 1999, Pennsylvania Public Utility Commission v. Frontier Communications of Pennsylvania, Inc. et al., Docket Nos. R-00984411, P-00951005 et al. (Order answering a material question in Frontier's rebalancing proceeding).

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[32] Other parts of the Plan, such as initiating rate reductions more than once per year and packaging services, were not opposed and are therefore not discussed further herein.

[33] OSBA witness Levin makes the point that "prices that depart from market-determined costs are not sustainable in a competitive market. Rate rebalancing achieves prices that are more related to cost and that are closer to market prices so that the incumbent carrier can continue to compete and to serve its remaining customers well. Of all of the incumbent company's customers, this type of rate rebalancing is most important to those customers who will have fewer competitive

choices, namely small business and residential customers. If the company is not allowed to rebalance rates, then competitors will find taking lucrative customers away from the incumbent easy and will leave loss-making customers to the incumbent. Nothing could be worse for these 'captive' customers." OSBA St. 2 at 2-3. This point, as does the entire point of revenue neutral rate rebalancing, seems to be lost on the OTS.

34 With respect to Plan B rebalancing filings, Catlin also advocated that they be limited to once per year, unless an SRP increase has been put in place, in which case no rebalancing should be allowed. OCA St. 1 at 42.

35 For example, Levin stated that "Mr. Catlin looks at rate rebalancing as a vestige of rate of return regulation in which the company is made whole for revenue reductions. I think this misses the true rationale for rate rebalancing and, as a result, affects his policy recommendations regarding rate rebalancing." OSBA St. 2 at 2. The SCG submits that Catlin does understand the rationale for rate rebalancing, but was reduced to making such incredible assertions in light of the OCA's counsel's positions he assumed.

SCG M.B. at 46-48. The SCG responded in its Reply Brief as follows:

Citing the Commission's decision in Pa. P.U.C. v. Commonwealth Telephone Co., Docket No. R-00974128, Final Opinion and Order entered December 4, 1997, the OCA asserts that for the purpose of rate rebalancings after Chapter 30 approval, the Commission retains its ability to review such filings on the basis of earnings under traditional rate base/rate of return regulation. OCA M.B. at 28-30. The SCG members respectfully disagree. As Mr. Watkins explained:

> [W]e emphasize that following the adoption of an alternative regulation plan, the justness and reasonableness of a PTA Small Company Group members' rates will be determined on the basis of their Chapter 30 Plan and not on the prior traditional ratemaking standard.

SCG St. 2R at 37.

The so-called traditional ratemaking standard defined just and reasonable rates as rates that provided a fair return on the value of the utility's property used and useful in the public service. As to the specific rates, such determination was generally left to the expertise of the Commission. See City of Pittsburgh v. Pa. P.U.C., 69 A.2d 844 (1949); U.S. Steel Corp. v. Pa. P.U.C., 390 A.2d 849 (Pa. Commw. 1978).

This traditional methodology is now being replaced with Chapter 30 regulation. Chapter 30 allows for an alternative and streamlined form of regulation which is different from the traditional rate of return ratemaking standard. Upon approval of the Chapter 30 Plan in this proceeding, the parameters contained therein will define just and reasonable rates for these small companies. As long as the SCG members comply with the Plan, the Commission should likewise honor the Plan for ratemaking purposes.

Contrary to the OCA's belief (OCA M.B. at 30), rate rebalancing filings should not be subject to an earnings review. Instead, the SCG members' rates for services will be subject to rebalancing pursuant to the parameters of the Plan. Rates at the commencement of the Chapter 30 Plan, excluding access, will be recognized as just and reasonable rates. Any future rate changes by the companies will be reviewed by the Commission to determine if they are in compliance with the parameters of the Plan. If they are in compliance and assuming there is no violation of the Plan or rate discrimination, the Commission must issue an order allowing the companies to implement those changes. Accordingly, the rates will remain just and reasonable through the Commission's regulation thereof via the parameters in the Plan, but not through application of the historic traditional ratemaking standard.

We urge Your Honor to adopt the SCG position on this issue. It appears that the OTS and OCA are

endeavoring to make PSI and rate rebalancing filings full scale rate litigation proceedings. A review of the Commonwealth and Frontier proceedings following the approval of their Chapter 30 Plans confirms our concern. The PTA Small Company Group members will not commit to a network modernization plan or move to an alternative/streamlined regulation plan if they will be subjected to extensive rate litigation each and every year under their Chapter 30 Plan.

SCG M. B. at 40-41. The SCG continued in its Reply Brief:

OTS witness Keim contended that when the Commission declares a service of another LEC competitive, then there should be a rebuttable presumption in any SCG members' rebalancing filing that its service is also competitive and rate rebalancing with respect thereto should be limited. OTS St. 2 at 19. The OTS claims that this limitation is necessary in order to "discourage this 'gaming' of the competitive declaration process." OTS M.B. at 15. Again, this is another novel Chapter 30 proposal by the OTS which has never been adopted by the Commission.

The erroneous contention is fully addressed in the SCG Main Brief at 46-47. The same contention was raised by OTS witness Gruber in addressing the ALLTEL PA Chapter 30 Plan. ALLTEL PA's witness Mennenga highlighted the fallacies in the OTS position testifying as follows:

> Mr. Gruber's proposal would have the effect of foreclosing ALLTEL's opportunity to redress rate imbalances. One of the primary purposes of rebalancing is to adjust rates closer to costs and thereby remove subsidies from those services which have historically allowed other services to be artificially priced, in many cases below cost. Mr. Gruber's proposal would not allow the Company, on a revenue neutral basis, to rebalance those rates which have been set

> artificially high as a direct result of regulatory policy. These are, however, the very rates which require rebalancing. Removing ALLTEL's ability to rebalance rates, particularly when no other company that has had a Chapter 30 plan approved faces such a restriction, would greatly reduce ALLTEL's ability to compete in a competitive marketplace or to commit to its network modernization plan. The rate structures and regulatory subsidies of the past, created to enhance universal service, must be addressed for all providers on an equal basis in order to provide a competitive marketplace for all carriers. Mr. Gruber's proposal, which has no basis in statute and which would unfairly restrict ALLTEL in a way in which Bell, Commonwealth, the Frontier companies, Citizens of Kecksburg, Ironton and the TDS companies are not, must be rejected.

ALLTEL PA St. 3R at 9.

We submit that the circumstances surrounding each SCG member's rates are unique to each company. From the standpoint of rate rebalancing, the rates for each SCG member must be established by this Commission based upon company-specific circumstances. The fact that another LEC declares one of its services competitive should in no way preclude or limit a SCG member's right and need to rebalance its rates for such service.

SCG R.B. at 42-43.

ii. OTS

The OTS criticized and argued against this part of the plan, as follows:

> SmCo.witness Steven Watkins acknowledged that the SmCo. PSP (Plan A) requires the Commission to automatically approve all proposed increases to basic local residential and small business rates, so long as the increases do not cause the overall SPI to exceed the PSI and the proposed increases do not exceed $3.50 per month in a calendar year. Tr. 408-409; SmCo. Ex. 1 (Ex. A, Part 3. A.(D)1.). If the $3.50 increase was proposed as part of a revenue neutral rebalancing, the SPI would not exceed the PSI, and the only limitation would then be the $3.50 level. Tr. 442-443. The SmCo. Group could propose an increase to these rates in excess of $3.50; however, the Commission would have discretion to reject this level of increase. Tr. 409. There is also no upper limit on the ultimate level of basic local residential and small business rates under the Plan. Tr. 412.
>
> The $3.50 annual increase could be obtained each year of the Plan so that, for example, in year 10, residential rates could be $35.00 higher than current rates. Tr. 442-443. This level of increase should be compared to the SmCo. Group rate increases in the last ten years under rate base/rate of return regulation. The difference is telling--prior to filing its Chapter 30 Plan, the SmCo. Group had only sporadically filed for rate increases over the past ten years. OTS St. 1, p. 12.

OTS M.B. at 37-38. The OTS advocated limiting increases to $2.50 per month or 20% whichever was less. OTS St. 2 at 22. The OTS concluded its argument with the following:

> In summary, the SmCo. Group has not established how its proposal to potentially increase basic local residential and small business rates by $3.50 per month every year, and to do so without provision for cost support and without providing for adequate Commission oversight of

individual service rate levels, complies with Chapter 30's requirements that rates remain just and reasonable and not unduly discriminatory or prejudicial. 66 Pa. C.S. §3004(d)(2) and (4). It has not established how these proposals are in the public interest. 66 Pa. C.S. §3004(d)(5). It also has not established how these proposals will ensure that rates remain affordable, as required by 66 Pa. C. S. §3004(d)(1). Furthermore, it has not established how its proposal would enable the Commission to comply with 66 Pa. C.S. §3009(b)(2), and ensure that LECs do not make or impose unjust preferences, discriminations or classifications for protected services and other noncompetitive services. Since the SmCo. Group has not met its burden of proof, its proposal should be rejected, in favor of the OTS proposal.

OTS M.B. at 41-42.

iii. OCA

This portion of the plan was the subject of one of the OCA's primary focus points. It argued:

The rate rebalancing provisions for both Plan A and Plan B companies are virtually identical. Part A.(D).1.b and Part B.(E)2 provide that all rate changes proposed pursuant to the PSM formula, including exogenous events, or rate rebalancing proposals **shall** be approved if the proposed changes, in combination, do not cause an increase to protected residential and small business basic local service rates of more than $3.50 per month.[14] Tr. 408-09. These increases can continue year after year without end and without PUC review. See OCA St. 1 at 30, 40; Tr. 442. The following example shows how the SCG proposal would work: Year 1, a Plan A company's R-1 rate = $10. Plan A company files for a $3.50 increase and the rate automatically increases to $13.50. One year later, Plan A company files for a $3.50 increase and the

rate automatically increases to $17. One year later, Plan A company files for a $3.50 increase and the rate automatically increases to $20.50. After 3 years, the rate has doubled without any PUC review. See Tr. at 442-445. The impact on rates could be even larger, given the Companies' ability to ask for more than $3.50 per year.

14 However, this does not preclude a Plan A company from seeking an increase larger than $3.50 per month in any year. Tr. 409-10. Plan B companies have no limit on the number of rate rebalancing filings that can be made in a calendar year. OCA St. 1 at 42.

OCA M.B. at 27-28. (Emphasis in the original.) The OCA continued by arguing that the proposals were legally deficient as follows:

Rate rebalancing is based upon the concept that a telephone company must be made whole for reductions in revenue which occur or become necessary for some rates while receiving rate increases for other rates.[15] Thus, rate rebalancing is a holdover from rate base/rate of return regulation because it is tied to the company's earnings levels and is a remedy to ensure that its earnings are protected.[16] See OCA St. 1S at 2. At a minimum, the PUC should require that any rate rebalancing filings after approval of a Chapter 30 plan are made pursuant to Chapter 13, including Section 1308 of the Public Utility Code. 66 Pa. C.S. §1301, et seq. See Pa. PUC et al. v. Commonwealth Telephone, Docket No. R-00974128 at 114 (Dec. 1997) ("Commonwealth II"). (The company will be subject to the appropriate sections of Chapter 13 of the Public Utility Code); see also Bell Plan at Part 1.C.1, approved at Bell PUC Order infra.

As a vestige of rate base/rate of return regulation, rate rebalancing is inconsistent with the notion of a price cap mechanism. Under price cap plans, revenue increases and the rates they produce have been decoupled from earnings inquiries. However, the theory behind excluding an earnings inquiry before changing rates pursuant to operation of the PSM

does not apply to rate changes which are not related to operation of the PSM. Rate rebalancing would allow the SCG to file for significant increases in basic local service rates irrespective of, and in addition to, the rate changes allowed by the PSM. If properly calculated and appropriately passed-through into new rates, rate changes made pursuant to the PSM are presumed to be just and reasonable. The OCA submits that it is the PSM which encompasses the heart of Plan A companies' alternative regulation plan, and it is this mechanism which effectively displaces any earnings inquiry previously necessitated by traditional regulation.

Importantly, however, the theory behind excluding an earnings inquiry before changing rates pursuant to operation of the PSM does **not** apply to rate changes which are not related to operation of the PSM. Rates proposed through rate rebalancing should not be deemed just and reasonable merely because they may comply with the filing requirements contained within a Plan. The OCA submits that the Commission's ability to determine the justness and reasonableness of the Companies' proposed rates continues to exist separate and apart from the specific criteria of the Plan.

15 Rate rebalancing filings are made under Section 1308 of the Public Utility Code.

16 For example, a company could experience competitive pressures for a certain service, such as toll rates. In response, the company could file a revenue neutral rate rebalancing to reduce toll rates and increase the R-1 basic rate. This allows the company to respond to competitive pressure while maintaining its earnings.

OCA M.B. at 28-29. (Emphasis in the original.) The OCA continued:

SCG's proposed Plan would have the PUC's power to independently review rate changes eviscerated of any real meaning or substance. Eliminating all inquiry into relevant factors during a rate rebalancing filing would completely alter the scope of such a review and entirely change the meaning of

this concept beyond that authorized by the General Assembly when it enacted Chapter 30. The OCA submits that the PUC must retain the discretion to review earnings, affordability and network investments as part of any rate rebalancing filing.

The OCA submits that the General Assembly's intention **not** to assign a new definition to the term "just and reasonable" in Chapter 30 is most clearly expressed in its reference to 66 Pa.C.S. § 1301 as it discusses the "just and reasonable" requirement. While the General Assembly expanded the method which may be used to determine just and reasonable rates to include other than traditional rate base/rate of return regulation,[17] it did not change the standard by which just and reasonable rates are measured.

The OCA recognizes that an appropriately crafted alternative ratemaking formula, such as an inflation offset mechanism, can meet the just and reasonable standard under Chapter 30 without applying rate base/rate of return regulation. However, no such ratemaking formula exists to govern rate rebalancing and these rates must remain linked with the "just and reasonable" rate requirement, including earnings, affordability, and capital investment determinations. In light of the retention of the "just and reasonable" standard is retained in the Chapter 30 requirements, it would be wrong to **prohibit** the Commission from reviewing evidence of relevant factors when a LEC proposes large-scale rate increases through rate rebalancing.

Basic local telephone service, as classified by Chapter 30, is first and foremost a "protected service" as defined by the General Assembly. See 66 Pa.C.S. § 3002. The Commission is charged with "ensur[ing] the continued affordability of protected telephone service." 66 Pa.C.S. §3004(d)(1). Allowing rate rebalancing rate increases to go into effect automatically if they are at or below a $3.50 increase limit cannot ensure the continued affordability of protected telephone service. The Commission must retain the power to oversee rates for protected services. Accordingly, although the Commission should be free to determine the appropriate weight it wishes to accord the evidence, the OCA submits that the

Commission should not be prevented from reviewing such evidence when rendering a just and reasonable determination in a rate rebalancing filing. In addition to earnings and affordability considerations, the OCA submits that the Commission should not prohibit its future discretionary review of information concerning the SCG's level of network investment when making a just and reasonable determination regarding rate increases outside operation of the Price Stability Mechanism. Network investment, as a capital expenditure, has traditionally been included within any just and reasonable determination.

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17 The PUC has discretion to strike a balance between the rates charged to the utility's customers and the returns conferred upon the utility's investors in examining existing rates as part of a Chapter 30 Plan. Popowsky et al. v. Pa. PUC, 669 A.2d 1029 (Pa. Commw. 1995), *aff'd on other grounds*, 550 Pa. 449, 706 A.2d 1197 (1997)(Bell Commonwealth Court Appeal).

OCA M.B. at 30-31. (Emphasis in the original.) The OCA presented the following recommendations:

First, the OCA proposes that increases in monthly basic local service rates due to rate rebalancing be limited to $1.00 per year only when the Company can demonstrate this is necessary for purposes other than the purpose of avoiding losses of market share or revenue due to competition.[18] OCA St. 1 at 31. Second, increases in monthly local service rates in excess of $1.00 due to rate rebalancing would only be permitted if the company can demonstrate that, in addition to the above test, the additional increase in local service rates is necessary to allow that company to maintain a reasonable rate of return and, thereby, be able to attract the capital necessary to carry out its Network Modernization Plan. Id.

Third, the OCA is also proposing an overall rate cap of $15 for rate rebalancing purposes as an upper limit on

the weighted average rate for residential single party local service (including Touch Tone). Unless the conditions described above are satisfied, no further rate rebalancing increases in basic local service rates for either residence or business customers would be allowed.

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18 The limit would apply to both residential and small business protected services and would be in addition to any proportional change in rates resulting from the application of the PSM formula. Id.

OCA M.B. at 32.

iv. OSBA

The OSBA argued as follows:

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).

Alternatively, as the PTA Small Co. Group has incorporated into its proposed Plan A, pricing flexibility could be limited. The Companies' Plan A proposed annual limits on the total increase that can be applied to protected local business services. The PSP should permit rate rebalancing to narrow the differential between same services for different

customer classes (i.e. residential and small business customers), in accordance with costs and market condition. Id at 22. Additionally, the PSP should prevent small business rates for protected local exchange services from being pushed above cost, or further above cost, in the absence of competition. Id.

The OSBA agrees with this proposed methodology of Plan A. The Plan will limit residential and small business local service price increases to a specific dollar amount, **rather than a specific percentage,**[7] consistent with the goal of narrowing the price differential between customer classes for the same type of services. This aspect of the PTA Small Co. Group Plan A should be preserved.

The OSBA asserts however, that the maximum annual dollar increase for small business local exchange service should be set lower than the maximum dollar increase for residential local exchange service. The difference in the ceiling for increases would facilitate the narrowing of the price differential between small business customers and residential customers for similar services. The OSBA recommends that the PTA Small Co. Group Plan A be amended in this area to limit the maximum annual dollar increase for business customers with ten access lines or less to $2.50 per month. Additionally, the OSBA submits that the OTS recommendation concerning a 20% alternative for the maximum annual rate increases for the Plan A Companies should be rejected.

The rationale for protections for residential customers is the same as that for small business customers. This rationale centers upon the lack of competition for certain services and consequently, the requisite need for protection of these customers. Id. OSBA requests that any protections extended to the residential customers beyond those included by the PTA Small Co. Group in its PSP should also be extended to small business customers. Furthermore, the OSBA submits that any additional protections should not impede the narrowing of the gap between residential and small business local exchange service prices. Id.

7 The OTS recommends a ceiling on the rate increases proposed by the Plan A provision of $2.50 **or 20%**. The OSBA opposes the percentage recommendation because it would maintain the differential in same service between residential and small business customers and not facilitate narrowing the gap between these two customer classes.

OSBA M.B. at 18-20. (Emphasis in the original.) The OSBA criticized the OCA position as follows:

> The OSBA posits that the recommendations of OCA only serve to impede the companies from obtaining rates that are closer to costs. The consequences of these OCA proposed recommendations would seem to be contrary to Section 3009(b)(2) of the Public Utility Code, 66 Pa.C.S. § 3009(b)(2) to ensure rates are not preferential for protected telephone service and noncompetitive services. Moreover, by impeding a company from obtaining rates closer to costs, the ILEC may be hampered to provide competitive services. This consequence would violate the policy mandate stated in Section 3001(8) of the Public Utility Code, 66 Pa.C.S. § 3001(8) (ensuring competitive supply of competitive services where demanded). Lastly, the OCA proposal violates Sections 3004(d)(2), (4) and (5) of the Public Utility Code. 66 Pa.C.S. § 3004(d)(2), (4) and (5)[10] . Such proposals would be poor policy, inconsistent with competition in the telecommunications markets and contrary to the interests of small business customers. OSBA Stmt. No. 2 at 5.
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> The OSBA asserts that these recommendations should be rejected. Alternatively, if the proposals of the OCA are approved, the OSBA suggests that the same protections granted to the residential class be provided to the small business customer class. Specifically, once the residential rates have reached a cap, the small business rates should be capped at the corresponding level. While this does not narrow the differential between the cost of residential and small business basic local service rates for similar service, it

also does not promote further the existing disparity in these rates.

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10 These sections concern prohibitions against discrimination in rates and customer classes and to promote the public interest.

OSBA M.B. at 21-22. The OSBA criticized the OTS proposal in its Reply Brief as follows:

> The OTS proposes a limitation on the basic local rate increase of $2.50 per month or 20% whichever is less. The OSBA finds this proposal problematic.
>
> No party has disputed the existing disparities in the rates paid by small business and residential customers for comparable basic local service. Nevertheless, given the opportunity in the context of a rebalancing/restructuring proposal to address these disparities and make meaningful progress toward parity, the adoption of the OTS proposal would, at best, only maintain existing differentials in the rates paid by these customers and could aggravate these inequities.

OSBA R.B. at 7. The OSBA continued:

> The OTS attempts to rebut this flaw in their proposal by expressing that its proposal does not preclude the Companies from "seeking to rebalance residential rates by a higher percentage than business rates, so long as the 20% threshold is not exceeded. Therefore, a narrowing of the gap can be accomplished through [their] proposal." OTS M.B. at 38.
>
> The OSBA does not see this as an adequate solution to the flaw at issue. It is irrelevant to argue that the Companies are able to take a lower increase for business rates than residential rates in the proposed OTS structure. There is

no reason for the Companies to take anything other than the maximum increase allowed.

These basic local service rates are offered as a noncompetitive service. The Companies will seek to maximize increases to offset decreases where services are more likely to become competitive; thus, offering an overall rate neutral package. Yes, the Companies, in their own discretion, under the OTS proposal could choose to apply a lower percentage to the small business customer class versus the residential class. While this is a possibility, it is highly unlikely because the underlying incentive is otherwise. Moreover, even where the percentage is lower to the small business customer class versus the residential class, the result still may be to aggravate the price differential between the two classes.[14] Why institute a proposal that does not adequately resolve the disparity? The claimed narrowing of the gap that the OTS says its proposal would accomplish would in all likelihood never be realized. See, OTS M.B. at 38.

The OSBA recommends a rate increase cap of a lesser dollar figure per month for small business customers. By instituting a dollar value instead of a percentage the worse case is that the disparity between the rates of business and residential customers is maintained. If the business increase is capped at a lesser dollar figure than that for residential basic local service rates, the plan would adequately address the inequity of the rates as it exists and would institute a methodology to reduce that rate differential.

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14 Sticking with the example mentioned for Laurel Highland, if the business class were given an 18% increase and the residential class given a 20% increase the result would be $10.68 for business and 7.08 for residential which is a 3.60 differential; still aggravating the disparity between the two rates.

OSBA R.B. at 8-9.

v. AT&T

AT&T argued as follows:

> Part 3.A(B)4 (at 17) of the Plan provides that only "OCA, OTS, OSB or a customer" may seek a hearing at the time of complaint or intervention with respect to restructuring and rebalancing filings.[105] It further provides that the "75 day procedure," which is contained in Part 3.A.(A)10[106] shall apply. That provision requires notice to all Chapter 30 parties, which would include AT&T. Part 3.A(B)4 should be clarified to assure that such notice is given to all the parties required by Part 3.A.(A)10, and the provision limiting requests for a hearing should be amended to conform with the amendment proposed above with respect to Part 3.A.(A) 10 9.[107] Thus, the first sentence of Part 3.A.(B)4 (at 17) should be amended to read as follows:
>
> > The "75 day procedure," including the parties specified therein who shall receive notice thereof, 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 or any other party to the Chapter 30 proceeding made at the time of complaint or intervention.

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105 Mr. Watkins confirmed that this provision was intended to include AT&T only as a customer (Small Co. St. No. 2R at 19) and to exclude AT&T's right to seek a hearing in its capacity as a competitor. Tr. at 494.

106 Plan at 13.

107 See Argument, II,D, supra; AT&T St. No. 1 at 22.

AT&T M.B. at 28. (Emphasis in the original.) In its Reply Brief, AT&T added access charges to the list of rebalanced rates which should be just and reasonable with the following:

> Both the OTS and OCA have objected to the Companies' rebalancing proposal because the ability in that proposal to raise rates without limit does not assure that those rates will be just and reasonable as required by 66 Pa. C.S. § 3004(d)(2). OTS emphasized basic local residential and small business rates,[124] but the same concerns exists with respect to intrastate access rates, which are also "protected" rates under Chapter 30.[125] In fact, notwithstanding the general understanding that access rates should be reduced, ALLTEL's witness Mennenga conceded that there is nothing to prevent ALLTEL (and, perforce, any of the Small Companies) from increasing those rates, even though he considered it an unlikely occurrence.[126]
>
> OCA also challenges the ability of the Companies to rebalance and raise rates without limitation.[127] But while OCA likewise focuses on basic local rates, its witness Catlin, who recommended certain modifications to the automatic and unlimited right to rebalance, also admitted that such increases could include access rates, although he thought it highly unlikely that such rates would be increased.[128]
>
> The bottom line is that since OTS and OCA have both made reasonable recommendations to limit the increases that may be imposed on certain protected services, whatever recommendation is adopted by the Commission should afford the same protection to intrastate access rates.
>
> While Messrs. Catlin and Mennenga claim that it is unlikely or impossible that there will be increases to access rates, there is clearly nothing to prevent the Company from raising these rates as part of a competitive strategy for intraLATA toll rates. Considering the Companies' efforts to avoid compliance with the competitive safeguards, this is not

far-fetched. Neither AT&T nor the Commission is in a position to predict what any Company will do, but the only certain way to prevent this from happening is to accord intrastate access the same protection as other "protected" services.

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124 OTS M.B. at 37-41.
125 66 Pa. C.S. § 3002: "Protected telephone service."
126 Tr. at 600.
127 OCA M.B. at 27-32.
128 Tr. at 627-28.

AT&T R.B. at 29-31.

b. Recommendation

Generally, we agree with the SCG and the OSBA. We acknowledge that the proposed $3.50 per monthly cap is similar to that granted to other small LECs in the Commonwealth. We find the Commission's prior acceptance of this number is sufficient to indicate the reasonableness of this cap. We note with approval that the Companies have agreed to limit their rebalancing requests to one per year and recommend approval of this modification. The OSBA is correct that there is a wide disparity between residential and small business rates. Using the fixed dollar cap affords a better opportunity for that gap to close and to reflect a movement toward cost-of-service. We emphasize that the Commission retains its authority to review the justness and reasonableness of any proposed rate. 66 Pa. C.S. §§1301 and 3004(a), (d)(2).

There is an important limitation on this issue which the parties did not brief. After the briefs were submitted, and most recently, this Commission promulgated its Global Decision. As part of the Global Decision the Commission provided a conditional cap as follows:

> We shall further permit those companies that have increased their one-party residential local exchange rate to an average of $10.83 per month but still have not decreased their intraLATA toll rate to a $0.09 average per minute, and/or have not recovered sufficient revenues resulting from the establishment of a $7.00 carrier charge, to increase their residential one-party local exchange charge to their end users to not more than $16.00 per month, after taking into account their specific ITORP savings as an additional offset to the local rate. To the extent practicable, and on the condition that there will not be an increase in basic local exchange rates and other protected services, we will permit the ILECs to restructure their existing tariffed services on a revenue neutral basis within the limitations of that cap.

Id. at 152. The Commission further explained the limits of that cap as follows:

> On consideration of the positions of the parties, and the evidence contained in this record, we conclude that as to all non BA-PA ILECs, a rate ceiling will be implemented which caps the one-party residential local rates of each such ILEC, including charges for dialtone, touchtone, and local usage, at $16.00 per month until December 31, 2003. As set forth below, if such ILEC's one-party residential rate is above $16.00 per month, and is found to be just and reasonable by the Commission, the revenue associated with the difference between the rate ceiling and the approved rate will be recovered from the Pennsylvania USF.
>
> Also, there shall be no increase to protected service rates for any ILEC for the purpose of offsetting or recovering reduction of switched access or toll rates charged by an ILEC prior to December 31, 2003 that have not been addressed by this Opinion and Order.
>
> * * *

> We further require that any prospective rate rebalancing on the part of the non-BA-PA ILECs be revenue neutral within the confines of the $16.00 cap. This naturally flows from the financial limitation imposed by the USF. The USF, as presently constructed, will operate to eventually reduce customer bills, but immediately hold harmless, those ILECs with rates that exceed the local rate cap of $16.00 per month. It must be remembered that the access charge reduction, in conjunction with the USF and the instant rate cap are intended to be transitional mechanisms to the [sic] allow the Commission and the FCC sufficient time to develop a permanent access charge reform and USF for the small ILECs.
>
> Additionally, we conclude that there shall be no SLC assessed on the bill of any ILEC to recover revenues associated with the reduction of either switched access rates or toll rates unless and until determined by the Commission in the context of the investigation described in Section II of the Opinion and Order.

Id. at 201-203. Accordingly, we will direct the SCG to modify their Chapter 30 plans to conform to the above quoted Commission directives.

11. Consumer Protections

a. Recommendation

To a large extent our decision to accept the $3.50 monthly cap in the previous issue makes a detailed review of this issue unnecessary. However, we shall briefly review the OTS and OCA positions because they had a decided impact on the SCG plan. The OTS proposed a monthly cap limited to the lower of $2.50 or 20% of current rates. The OCA proposed a monthly cap of $1.00 with a maximum charge for

residential customers at $15.00 monthly. Both the OTS and the OCA were concerned that without some limit on $3.50 cap rates would rise without limit. In response to this concern, the SCG offered the following proposal in its Reply Brief:

> Upon review of both the OTS and OCA Main Briefs, it is apparent to the PTA Small Company Group that these parties are very concerned that the Chapter 30 Plan does not provide for any ceiling on the level of the basic local service rates. The SCG members believe that the Commission will establish an affordable rate ceiling at the Universal Service docket. As ALLTEL PA's witness Darrell Mennenga explained on cross-examination:
>
> BY MS. MELILLO:
>
> Q. Am I correct that ALLTEL's plan does not include any ceiling on the ultimate level of basic local service rates over the life of the plan?
>
> * * *
>
> A. We did not submit a figure in that regard. However, certainly, we feel that competition is pending and that certain competition in the market will certainly help establish that there would be a reasonable level, whatever that reasonable level is at some point. And, if not, we're assuming, at some point, the Commission will determine some type of a level.

T. 543-44 (emphasis added).

> In response to the OTS and OCA Main Briefs and to alleviate the consumer protection concerns over the lack of a basic service rate ceiling, the SCG members would have no objection to a modification to their Plan to include

the following provision to the Consumer Protections limitations:

> The rates for those services which are established by the Commission as universal service will not exceed the level determined by the Commission to be affordable pursuant to the Universal Service Investigation and related dockets. In the event that the affordable rate is established subsequent to the effective date of this plan, the Companies commit to reduce any universal service rates that exceed the affordable rate to the affordable rate at their next PSM filing to the extent such rate reductions are recoverable from either the Universal Service Fund or through the exogenous event provision of the Companies' Chapter 30 Plan. In either case, the overall result is that the net effect of the combined changes is revenue neutral and the SPI will be revised to reflect these changes as necessary.

Accordingly, the inclusion of this provision should eliminate the OCA's demand for an arbitrary $15 R-1 price limitation.

SCG R.B. at 35-36. We note that the offer of this modification was contained in the Companies' Reply Brief which did not give the other parties the opportunity to respond. However, we find the modification to be unnecessary in view of the next preceding quotations from the Global Decision which resolved the issue. We expect the SCG to modify their Chapter 30 plans and implement the direction of the Global Decision as set forth above.

There is one final issue in this section which must be resolved. The OTS proposed that the SCG be required to provide cost data to substantiate their requests for

rate changes. OTS St. 2 at 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. at 49. We agree with the OTS which pointed out this Commission's guidance as follows:

> However, the Commission has previously decided that cost support is required for all rate changes under an alternative regulation plan. See, Petition of Commonwealth Telephone Company for an Alternative Regulation and Network Modernization Plan, Docket No. P-00961024, Order entered June 16, 1997, pp. 16-18. In that Order, the Commission stated as follows, on page 18:
>
> > If CTC [Commonwealth] fails to provide cost studies which substantiate its proposed changes in rates, it runs the risk of failing to meet its burden of proof as set forth in the Public Utility Code. In that event, the failure to substantiate changes in rates consistent with the Commonwealth Order may result in an adverse decision consistent with Chapter 13 of the Public Utility Code.

OTS R.B. at 27.

III. NETWORK MODERNIZATION PLANS

A. Introduction

Pursuant to Section 3003(b), each of the 19 SCG members presented a company-specific NMP. SCG St. 1 at 8-19. The SCG 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 Telephone Company, Docket No. P-00971182 (Ironton) and Citizens Telephone Company of Kecksburg, Docket No. P-00971229 (Citizens). SCG St. 6R at 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 SCG used four witnesses to support its NMPs. David E. Freet, SCG St. 1 at 8-19, addressed the NMPs of the fifteen smaller companies; Thomas C. Keim, SCG St. 4, testified to the NMPs of Conestoga and BVTC; Gregory C. Strunk, SCG St. 5A, described the Denver and Ephrata Telephone and Telegraph Company ("D&E") NMP; and Albert Weigand, SCG St. 6, was responsible for the North Pittsburgh Telephone Company ("NPTC") NMP. Mr. Weigand also assumed responsibility for the SCG as a

whole in responding to the contentions of OCA witness, Thomas H. Weiss. SCG Sts. 6R and 6RJ.

B. Issue Discussion

The SCG argue that their NMPs meet all applicable Chapter 30 "network modernization implementation plan" requirements and should therefore be approved. These requirements are set forth in Chapter 30, Section 3003(b). 66 Pa. C.S. §3003(b). It is important to note the portions of Chapter 30 of the Public Utility Code, 66 Pa. C.S. § 3003(b) which relate to a NMP.

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.

Chapter 30 Section 3003(b)(1) begins by directing the local exchange telecommunications company seeking to commit to universal broadband availability and 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 between 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-year intervals for deployment of its broadband network.

1. OCA Opposition to the NMPs

The SCG 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 Ironton and Citizens Chapter 30 proceedings. SCG St. 6R at 12. Nevertheless, the OCA stated that the Commission should reject all nineteen NMPs. T. 331. If the Commission does not reject the NMPs, the OCA further contends that the Commission should modify all the plans to provide for more extensive reporting of network details. T. 332-33.

a. "Business as Usual" Projects

To support its position for either blanket NMP rejection or substantial reporting modification, the OCA (through Weiss) makes two principal contentions. First, OCA asserts that what the companies identify as "network modernizations" in their NMPs reflect merely "business as usual" projects. In OCA witness Weiss' eyes, a company modernization project is "business as usual" if it would (eventually) be done regardless of Chapter 30. OCA St. 3 at 4, 17.

OCA witness Mr. Weiss explains that the SCG projected costs for building the "broadband network" represent nothing more than the same level of capital expenditures that they have already been investing. OCA St. 3 at 4. Mr. Weiss has explained: "The Small Companies do not plan to expend, nor will they expend capital in the future at any rate which is greater than that which they currently are spending routinely (i.e., on a business-as-usual basis) in order to modernize its network." OCA St. 3 at 4. Thus, argues OCA, the "high costs" that the SCG projects into the future represent nothing more than the average costs that these same companies have been investing in their networks since 1993 before any Chapter 30 network modernization requirements were put in place. See OCA St. 3 at 18. Such a "business as usual" plan for capital expenditures is impossible to reconcile with the SCG's argument in its Main Brief that the NMP represents a significant and increased level of expenditures. Thus, the large economic sacrifices that the SCG alleges that it will soon make simply do not exist.

The SCG counters that its plans do not represent a business as usual approach because the SCG has committed to meet broadband goals for each LEC by 2015 and certain 5 year commitments in the interim. SCG M.B. at 16. The OCA, however, unrelentingly argues, that one of the driving forces behind broadband network deployment is that the new technology capable of providing broadband services is cheaper to build than prior versions of the technology. OCA R.B. at 14. Building Carrier Serving Area facilities closer to the customer to provide a range of services - including broadband - is simply the least costly way to build a telephone system today.

The SCG contend that, even if the modernizations described in the NMPs eventually would be implemented, OCA's assertion that the modernizations are somehow pro forma, "routine" or "business as usual," falls wide of the mark. The assertion ignores that the NMPs will be undertaken to reach both five year incremental goals required by

Chapter 30 and to reach the absolute mandate of universal broadband availability by 2015. Were the network modernizations and their required expenditures merely "business as usual," they would be undertaken to meet each company's business needs as they arose rather than to meet a non-market driven timetable. As Mr. Weigand explained:

> The timing of the above-mentioned [NMP modernization] expenditures is significantly driven by the obligations set forth in the Chapter 30 [provisions] and most definitely does not represent "business as usual" for the members of the SCG. The normal business and economic situations of these companies would not dictate such a widespread deployment of broadband capabilities within such strictly defined time frames. The SCG NMPs represent a substantial investment of resources focused on meeting the specific statutory deadlines set forth in Chapter 30.

SCG St. 6R at 9-10 (emphasis added).

The OCA's arguments on this subject are circuitous. The use of new facilities on the way to the goal of modernization does not support its position. Whether the SCG Companies commit to building broadband capable networks by 2015 in 5 year increments or simply commit to building the least costly networks to provide the greatest range of services will get the SCG to the same place. The advance of technology has made the CSA network that is capable of providing broadband services the most rational and cost effective way to build a telephone network. This will occur regardless of the timing requirements of Chapter 30.

b. Engineering Detail

The second assertion which the OCA makes in favor of wholesale rejection or modification of the NMPs is that each NMP fails to provide for greater engineering

detail about the status of the company's existing network. According to OCA witness Weiss, more network engineering detail is needed because, unless you know your starting point, you cannot know how to get to your destination. OCA St. 3 at 13.

The SCG asserts that contained in this assertion is Weiss' highly speculative conclusion that each and every SCG member company now has an inadequate grasp of the details of its own network system and therefore will be unable to operationally plan for and meet the Chapter 30 requirement of universal broadband availability by December 31, 2015. Such a conclusion is flatly contradicted by the numerous network modernizations each NMP shows to have already been accomplished, including digital switch installation, ISDN enabilization, fiber interconnectivity and SS-7 implementation and, in some cases, even xDSL deployment. SCG Ex. 1, Ex. A, App. 2.

The SCG adds that Weiss arrived at his conclusion (that the companies do not know the necessary engineering details of their own networks) because in response to an OCA multi-part interrogatory, the companies allegedly failed to compile the full level of engineering detail necessary for Weiss' purposes. Instead, the companies informed OCA that making such a fully detailed, costly and time-consuming compilation in the diagrammatic format that Weiss requested was unduly "onerous and burdensome" for their staffs and not reasonably possible. Despite Weiss' testimony about his need for engineering details about each company's network configuration, he acknowledged on the stand that he had been invited to visit any and all of the companies in order to inspect their systems, have his questions answered, and obtain any details directly from central office and outside plant technical staff. T. 343, 358, 360. But, as he also admitted, he failed to avail himself of any of these invitations. T. 343, 358.

On rebuttal, SCG witness Weigand explained that the SCG NMPs fully met the criteria set out in Chapter 30 itself, which criteria is that an NMP state each LEC's present and future deployment of central office digital switches, fiber optic trunks between central offices, INS, ISDN, and broadband services including deployment timetables. SCG St. 6R at 11-12.

The SCG asserts that the OCA's arguments for the rejection or modification of SCG NMPs are without basis in statute or in evidence.

c. Previously Approved Network Modernization Plans Have Not Produced The Commission's Intended Results

On page 26 of its Reply Brief, the OCA notes that at page 16 of its Main Brief, the SCG compares its NMP with the NMPs approved by the Commission for other companies and asserts that the Commission should approve the network modernization plans and alternative form of regulation here as well. However, the OCA submits that the inadequacy of the broadband commitments previously made through the approved NMPs are becoming more apparent as time passes. As Mr. Catlin has explained, even though the Commission approved various NMPs in the past, it is becoming obvious as time goes by that the NMPs previously approved have produced little in the way of accelerated investment for various Chapter 30 companies. OCA St. 1 at 22. Mr. Catlin has explained that the net plant balance for Bell Atlantic - Pennsylvania, Inc. and the Frontier companies has actually declined over the last several years despite their Chapter 30 broadband network commitments: Id. Thus, these companies that were supposed to embark upon significant and increased network investments now have networks with a net book value less than when their Chapter 30 plans were approved. This fact cannot be ignored in the current proceeding and should encourage the Commission to not simply approve new NMPs like those approved previously.

The NMPs approved by the Commission for other companies were also coupled with alternative regulation plans that offered consumers greater levels of benefits than those proposed by the SCG. For example, the Bell and Commonwealth plans applied a price cap formula to their noncompetitive rates of GDP-PI minus 2.93% and 2.0% respectively. Re Bell Atlantic - Pennsylvania, Inc., 82 Pa. PUC 194, 232, aff'd in part, rev'd in part, Popowsky v. Pa. PUC, 669 A.2d 1029, aff'd on other grounds, 706 A.2d 1197 (Pa. Cmwlth 1997); Petition of Commonwealth Telephone Company for an Alternative Regulation and Network Modernization Plan, Docket No. P-00961024, slip op. at 40 (January 17, 1997). Here the pricing mechanisms proposed would either allow a simplified rate of return mechanism for the Plan B companies or a price cap formula of GDP-PI minus 0% for the Plan A companies. Whereas the NMPs proposed by other Chapter 30 companies arguably may have been consistent with the price cap mechanisms approved by the Commission, clearly that is not the case for the SCG.

Further, the Commission must recognize that many members of the SCG - particularly the Plan A companies - represent some of the most profitable LECs in Pennsylvania. Mr. Catlin has explained that Buffalo Valley, Conestoga, Denver & Ephrata and North Pittsburgh have total company returns on equity between 18.2% to 22.55% and intrastate returns on equity between 20.05% and 21.9%. OCA St. 1 at 17. The high common equity earnings achieved by these companies must be considered in evaluating what type of NMPs and alternative forms of regulation are appropriate.

d. SCG Failed to Produce Adequate Network Descriptions

SCG argues that it has no need to produce any detail about its networks and that the OCA alleges that "each and every SCG member company now has an inadequate grasp of the details of its own network system and therefore will be unable to

operationally plan for and meet the Chapter 30 requirement of universal broadband availability by December 31, 2015." SCG M.B. at 17. The OCA submits that the SCG is inaccurate in alleging that Mr. Weiss suggested that the SCG was not capable of disclosing information concerning its networks. While counsel for SCG has suggested that the smallest of the SCG members were unable to provide this information, that has not been the position of Mr. Weiss or the OCA. In fact, Mr. Weiss explained that even the smallest of the SCG members would be well informed concerning their networks and would be quite capable of providing this information. In response to questions from the SCG's counsel, Mr. Weiss explained that it would be relatively easy for a smaller telephone company to provide the information necessary to support their NMP. T. 357-358.

e. The SCG Companies Had An Obligation To File Network Information With Their Filing And The OCA Had No Obligation To Travel To The SCG Companies To Obtain That Information.

SCG also contends that Mr. Weiss was at fault for not pursuing his attempts to obtain network information from the SCG by not traveling to all of the Companies in order to obtain this information. SCG M.B. at 18. The OCA respectfully responds to the arguments of the SCG that neither the OCA nor Mr. Weiss has the burden to travel to each of the SCG companies to obtain the information that should have been filed with their Chapter 30 filings. Moreover, the extent of this obligation was completely clear in the Commission's earlier Order explaining that: "The plan shall inventory the LEC's present infrastructure including detailed information regarding the capability of the existing central office switching and transport facilities." Re: Implementation of Chapter 30 of the Public Utility Code, Docket No. M-930441, slip op. at 13 (August 26, 1993). Not only did the SCG not file this information in the NMP, but refused to provide it on discovery. Requiring the OCA's expert to travel to each of the nineteen SCG companies

in order to review the networks of each of the companies inappropriately shifts the burden of proof in the SCG Chapter 30.

We disagree with OCA's characterization that not only did the SCG not file this information in the NMPs, but refused to provide it on discovery. Granting the right to the OCA's expert to inspect certain network documentation does not, as alleged by OCA, inappropriately shift the burden of proof. Many experts have made such inspections at a company's quarters without ever claiming that it shifts the burden of proof. This applies here despite there being nineteen companies.

f. The Commission Should Not Postpone Ruling Upon The Information To Be Provided With The NMP Updates

The SCG argues that the Commission should reject all of the OCA's proposals concerning information to be concluded in the NMP updates. Instead, SCG argues that all parties should await the Commission's ruling in response to its Order of September 22, 1998 at Reporting Requirements for Biennial Updates of Network Modernization Plans Filed Pursuant to 66 Pa.C.S. § 3003(b)(6), Docket No. M-00930441, Slip op. (September 22, 1998) ["1998 Order Requesting Comments On NMP Update"]; SCG M.B. at 18-19. In the September 22, 1998 Order, the Commission solicited comments as to how it should update its Order of August 27, 1993 in that proceeding concerning what updates should be filed in response to the NMP. 1998 Order Requesting Comments On NMP Update, Slip op. at 2-3.

The OCA submits that the Commission in its September 22, 1998 Order did not mean to avoid the necessity to determine what updates should be required in any Chapter 30 NMP then being litigated. We disagree with the OCA interpretation.

The OCA submits that the Commission's review of its past Orders and current suggestions are entirely consistent with the testimony submitted by Mr. Weiss in this case. We disagree.

The OCA goes on to suggest that it is not entirely clear that the Commission will issue an order in the future that will address in a comprehensive manner the NMP updates that all Chapter 30 LECs should file or simply supplement the NMPs currently approved. However, the Commission's intent to supplement its earlier Order of August 27, 1993 concerning the information that LECs must file in their Chapter 30 proceedings will presumably resolve all issues concerning what NMP updates must be filed by all Chapter 30 LECs. No order in response to the comments has yet been issued. The OCA acknowledges that it is difficult to determine what issues such an order will or will not address and how the potential for such an order would change the scope of the determinations that must be made in this case. We believe it is best to await the Commission's action.

g. NMP Biennial Reporting Requirements

The OCA argues that there is a need for highly detailed NMP biennial reports. OCA St. 3 at 21-24.

SCG asserts that, in doing so, the OCA makes 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). It appears that the OCA seeks to use this Chapter 30 proceeding to pursue its proposed reporting

requirements which it is not confident in obtaining at M-00930441. The SCG companies believe that the Commission investigation should be allowed to resolve the reporting requirements issues.

The SCG argues 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 at 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 has been 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 at 32-33.

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

The OTS is satisfied with the modification in Appendix E to the SCG Main Brief. OTS R.B. at 17.

We agree with the SCG and the OTS. The Appendix E modification should eliminate any NMP reporting requirements issue in this proceeding.

h. Reports Showing Broadband Service Charges and Customer Broadband Purchases

The OCA proposes an additional reporting requirement which would make every SCG member file future reports which state the price the member charges for broadband service and "the extent to which broadband service is actually purchased by [the member's] Business and Residential customers." OCA M.B. at 56-57.

Mr. Weiss explained that a significant problem with broadband services is that these services are currently very expensive. The price for ISDN-PRI service, which offers bandwidth equal to 1.544 Mbps, can run as high as $1,000 per month. OCA St. 3 at 24. Because the General Assembly did not propose Chapter 30 in a vacuum or intend that it would only benefit those who could pay such high prices, the OCA submits that the Commission should keep track of the extent to which broadband service is actually purchased by Business and Residential customers.

OCA submits that, no matter how modern and up to date the broadband networks built by the SCG become, if few customers purchase such services, the broadband network will have yielded little in the way of real results. In order to track the extent to which consumers actually purchase these services, these reports should contain the following information:

> [E]ach small compan[y should] be required to regularly report to the Commission the prices (i.e., monthly rates and non-recurring charges) which it assesses to its customers for 1.544 Mbps access. Such report should show, separately for the business customer class and for the residence customer class, the number of customers that subscribe to 1.544 Mbps service at the basic monthly charge and under each discounted service arrangement, if any. This report should also advise the Commission of the number of both business and residence customers that abandoned 1.544 Mbps service since the close

> of the prior reporting period. With this information, the Commission can assess the real progress (market acceptance) of broadband access in the Commonwealth.

Id. at 24-25. This will allow the Commission to track, not only how the companies are progressing in constructing the modernization of their networks, but also how attractive the customers actually find these broadband services.

The issue as to what information Chapter 30 companies must file has previously been addressed by the Commission in evaluating the network modernization requirements in Re Bell Atlantic - Pennsylvania, Inc, 82 Pa. PUC 194 (1994) aff'd in part, rev'd in part, Popowsky v. Pa. PUC, 669 A.2d 1029 (Pa. Cmwlth. Ct. 1995), aff'd on other grounds, 706 A.2d 1197 (Pa. 1997) (Bell PUC Order) when the Commission determined the filings to be provided by Bell in its Chapter 30 proceeding. Bell PUC Order, *supra*. The Commission rejected the Bell Chapter 30 Network Modernization Plan as it lacked "sufficient detail." Id. at 267. The Commission explained the requirements of 66 Pa.C.S. § 3003(b)(1) and rejected Bell's reasons for not providing the required information as follows:

> The statute requires each LEC to identify its present and projected deployment of broadband and other modernized facilities. This requirement is greater than simply a general commitment to deployment and the provision of general guidelines explaining how Bell will schedule deployment, as Bell has proposed in this case. We are cognizant of the fact that there are rational reasons offered as to why it is not feasible to provide the level of detail contemplated by Section 3003(b)(1) for each year to 2015. However, it is not sufficient for Bell to fail to provide a shorter range deployment schedule to the Commission in the level of detail required by the statute, even if submitted under protective seal.

Bell PUC Order at 267-68. The Commission concluded that Bell's arguments that it met the requirements for the filing of a detailed NMP were without merit. Id. at 268. Thus, the Commission correctly concluded that Bell failed to file the required network deployment detail that the statute required. The Commission noted that, if it were to require Bell to file periodic deployment forecasts, the "Commission as well as the Company's customers will then be apprised of when they can expect broadband availability in their area to serve their hospitals, schools, and businesses and homes." Id. at 268.

The OCA submits that many of the same points raised by the OCA and Mr. Weiss in the present case follow closely the rulings made by the Commission in Bell PUC Order. Neither the statute nor the Commission's earlier Order concerning information to be filed in a Chapter 30 proceeding have changed since those decisions were rendered. As a result, the proposals made by the OCA in this case are entirely consistent with the Commission's rulings in the Bell proceeding cited above.

The SCG observes that the OCA cites neither a Chapter 30 provision nor a Commission Order requiring such reports and that none exists. Moreover, were such a reporting requirement to be bootstrapped into existence, it would fly in the face of one of the purposes of Chapter 30, which is to reduce regulatory and reporting requirements.

Notwithstanding the lack of legal foundation for this proposed reporting requirement, the OCA also fails to adequately explain what regulatory use could be made of such reports. It must be noted that whether or not customers buy a company's broadband services is irrelevant to Chapter 30's mandate that universal broadband availability be achieved no later than December 31, 2015.

Should the Commission at Docket No. M-00930441 mandate the reporting of information concerning the extent to which broadband service has been purchased by a LEC's customers, the SCG members will, of course, comply. Otherwise, the members oppose this reporting requirement as unjustified.

We agree with SCG.

2. 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, Mr. Watkins 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." SCG St. 2R at 4-5; T. 422-23.

The OTS and AT&T challenge this contingency in their Main Briefs. OTS M.B. at 11; AT&T M.B. at 21-22. The OTS states it is unaware of any Chapter 30 provision that authorizes this provision. Whereas, AT&T alternatively suggests additional language permitting a company to petition the Commission for NMP relief should its earnings and revenues become insufficient.

The SCG has no objection to AT&T's proposed modification to provide for the filing of a petition together with a rate increase filing if earnings or revenues jeopardize the continuation of an NMP. See AT&T M.B. at 22. However, the companies oppose the removal of the earnings contingency from the NMPs since this contingency reflects reality. If a small LEC does not have sufficient earnings to carry out its NMP, its

level of annual network expenditures will be adversely impacted. No modification can change this fact.

The SCG Chapter 30 Plan, at Part 4, Section B.7, also limits the continuation of the NMPs should CLECs be permitted to enter their rural service territories at interconnection rates not providing full cost recovery. SCG Ex. 1, Ex. A at 29. Witnesses for the OTS and AT&T raised objection to this provision. OTS St. 3 at 63 and AT&T St. 1 at 23-24. The SCG members refuse to delete this provision for the reasons explained by Watkins in SCG St. 2R at 6-7:

> The witnesses fail to recognize that the NMPs represent a major financial commitment going-forward to these small companies. These companies intend to provide, at affordable rates, the broadband and other facilities necessary to meet the needs of their customers and service territories. These Chapter 30 networks cannot be built unless the companies can expect a reasonable opportunity to recover the costs associated with building and operating these networks. If and when CLECs are permitted to utilize these networks, such competitors must pay compensatory rates for the interconnection services and facilities provided. By compensatory rates, I mean rates providing full recovery of both operating and capital costs, as well as a reasonable return on the network investment. Contrary to Mr. Kubas' advice of counsel, this issue is very relevant to this proceeding. Contrary to Mr. Nurse, there is nothing ambiguous about this request and no blackmail intended. Instead, these Small Companies are simply being forthright in informing the Commission that if they are to be expected to provide the Chapter 30 facilities and services, these companies must be compensated for the use of their network facilities and services at rates in a competitive local exchange service environment that will allow these companies to recover the costs of the networks in which they have invested for Chapter 30 modernization purposes. Otherwise, the Small Companies' earnings will be jeopardized as well as their ability to continue further investment commitment to network

improvements. For these reasons, the Small Company Group members remain firmly of the position that this provision must remain in their Chapter 30 Plan.

Once again, we agree with SCG.

C. Recommendation

Although they face competition from large companies such as AT&T, the SCG Companies must meet a network modernization commitment exceeding $414 million. OCA and the OTS dispute whether or not these capital deployment outlays would occur in the absence of a Chapter 30 alternative regulation petition and plan. For the reasons stated above, these public advocates do not make a convincing case that the SCG NMPs are much closer to a business as usual scenario than an accelerated deployment schedule as contemplated under Sections 3003 and 3004 of Chapter 30.

There is no question that alternative forms of regulation are designed to provide incentives not only for efficient operations but for accelerated deployment of a modern broadband telecommunications network. In exchange for the SCG acceptance of an accelerated deployment, we have provided above that the SCG Companies will be permitted to implement a price stability mechanism with a 2.8% inflation offset. We believe that a more accelerated deployment schedule is necessary, not only to justify the Plan as a whole, but also to provide the necessary incentives to the SCG Companies in conjunction with the 2.8% inflation offset. Accordingly, we find that the schedules for network deployment set forth by the SCG Companies are appropriate.

We take these actions recognizing that as the Commission proceeds to implement Chapter 30 and the Telecommunications Act of 1996, we must make sure that

concerted efforts are undertaken to update the networks so that the technology is in place to provide the services demanded by the public. Chapter 30 recognizes the importance of a state of the art broadband network.

Even if the modernizations described in the NMP might eventually be implemented, Weiss' claim that the SCG NMPs modernizations are just "business as usual" is incorrect. His claim ignores the fact that, as the SCG testimony makes clear, the NMPs will be undertaken to reach the five year incremental goals required by Chapter 30 and to reach the absolute mandate of universal broadband availability by December 31, 2015. Were the network modernization and accompanying expenditures merely "business as usual," then they would be undertaken to meet the SCG Companies' business needs as they arise rather than to meet a non-demand driven timetable. We repeat what SCG witness Weigand stated in his rebuttal testimony:

> The timing of the above-mentioned [NMP modernization] expenditures is significantly driven by the obligations set forth in the Chapter 30 [provisions] and most definitely does not represent "business as usual" for the members of the SCG. The normal business and economic situations of these companies would not dictate such a widespread deployment of broadband capabilities within such strictly defined time frames. The SCG NMPs represent a substantial investment of resources focused on meeting the specific statutory deadlines set forth in Chapter 30.

SCG.St. 6R at 9-10 (emphasis added).

It is clear from Mr. Weigand's testimony, that not only does Chapter 30 force the timing of SCG modernizations to conform to deadlines not determined by business goals, but also it requires the Companies to undertake modernization projects it would not implement if pure business judgement were its guide.

IV. 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 at 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. See, e.g., Chapter 30 Plans of Frontier, Commonwealth and Ironton. The only service declared competitive at this time is Directory Advertising. Small Company Exhibit No. 1, Exhibit A at 5. The CSDP notes 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 asserts 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 at 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 will petition the Commission for permission to do so pursuant to Section 3005(a).

1. Tariff And Price Lists For Competitive Services

Part 2, Section A.4 of the original CSDP provided that tariffs or price lists for competitive services may be filed by the companies but "shall not be required by the Commission." Id. Witnesses Kubas and Nurse recommend that the language be changed so that the Commission "may require" the filing of tariffs or price lists for competitive services. While the SCG recognizes that §3009(f) grants this right to the Commission, the Commission may, as it did in Commonwealth's Chapter 30 Plan, waive this right. The plan approved by the Commission for Commonwealth states, "Tariffs shall not be required by the Commission for competitive services." Commonwealth Plan at 14.

In the transition to a competitive environment, all previously approved Chapter 30 Plans have recognized the Commission's ongoing role in regulating competitive services on a quality-of-service basis only. With competitive safeguards in place, and the Commission's regulatory role so limited, there is no reason to contradict the Legislature's intention that alternative regulation reduce regulatory costs by eliminating unnecessary filings. The elimination of the need to file tariffs or price lists for competitive services is consistent with this intent.

Further, the CSDP does not foreclose the possibility that the Companies will file tariffs or price lists. However, to mandate such filings in the absence of regulatory parity among all providers of competitive services within a common service territory is unjustified. As witness Watkins explained on rebuttal:

> [I]f the Commission reserves the right to require such filings under Section 3009(f) and if such right is exercised, it should be done with regulatory parity requiring all providers of the services to file tariffs or price lists. Therefore, the companies can agree to language that the Commission "may" require tariffs or price lists so long as all providers are held to the same requirement.

SCG St. 2R at 7.

Notwithstanding, the SCG members submit that the intervenors have advanced nothing warranting this Commission to deviate from that which it has already approved on this issue in the fully litigated Commonwealth Chapter 30 proceeding. Accordingly, Part 2, Section A.4, as originally proposed, should be adopted. However, the filing requirements rulemaking proceeding at Docket No. L-00940095 may be the Commission's final resolution of this issue.

AT&T and OTS recommend rejection of SCG's provision at Part 2.A.4 regarding tariffs and price lists. AT&T argues that the companies "have proposed to usurp the Commission's role" through the suggested language that tariffs and price lists shall not be required by the Commission. AT&T M.B. at 14. The OTS claims that "there is no power granted to the Commission to revise substantive sections of the Public Utility Code." OTS M.B. at 18.

Both arguments ignore the fact that the SCG has done nothing more than request the adoption of a provision regarding tariffs and price lists for competitive services already accepted by this Commission in the Commonwealth Chapter 30 proceeding. SCG M.B. at 20; Commonwealth Plan at 14, Part 2.A.4.

Rejection of the SCG's proposed language in Part 2.A.4 would be contrary not only to this Commission's holding in P-00961024 (Commonwealth Chapter 30) but also to the legislative mandate of Chapter 30 to reduce regulatory delays and costs under alternative and streamlined regulation. See Sections 3004(d)(8) and 3006(c)(1). The AT&T and OTS objections are also contrary to the application of regulatory parity.

As AT&T has noted, the SCG Plan including Section 2.A.4, may ultimately be impacted by the outcome of the Filing Requirement Investigation at Docket

No. L-00940095. See SCG M.B., Appendix E at 4-5. Consequently, this conflict between the parties over the filing of tariffs and price lists for competitive services will be resolved at Docket No. L-00940095.

SCG maintains that, in the interim, its CSDPs should be approved as proposed. In this interim period, the Commission will also have the *right to obtain* the prices of any competitive service pursuant to Part 4.C.2 of the Chapter 30 Plan. See SCG M.B., Appendix E at 33.

Having reviewed the parties' positions, we agree with the OTS and AT&T. The Public Utility Code gives the Commission the discretion to require the filing of tariffs and price lists. 66 Pa.C.S. §3009(f). The proposed regulations in the Global Decision retain that discretion. See, Global Decision, Appendix D. We regard the Global Decision as the most recent and comprehensive statement of Commission policy. As such, the guidance in the Global Decision should be applied in this case.

2. Services Found Competitive For Other LECs and 60-Day Notice Procedure

Chapter 30 requires an ILEC to petition the Commission for a determination that a service shall be deemed competitive, which requires the Commission to consider evidence and to make specified findings which are both ILEC-based and service-based. The ILEC has the burden of proving that the service should be competitive. 66 Pa. C.S. §§3005(a), (a)(1) and (a)(2).

Part 2, Section A.6 of the CSDP provides that, "Where a member Company requests that new or existing services be classified as competitive, a sixty (60) day notice procedure shall be followed." SCG Ex. 1, Ex. A at 6. Section A.5, however, initially

proposed that a one-day procedure would apply in those circumstances in which the Commission has previously declared the service to be competitive for another Chapter 30 LEC. Id. OTS witness Kubas and AT&T witness Nurse expressed concern over the latter provision claiming that the one-day procedure was inappropriate and claiming that there should be a rebuttable presumption provision applicable thereto. OTS St. 3 at 7-8; AT&T St. 1 at 14.

Recognizing their concerns, SCG witness Watkins agreed to modify Part 2, Section A.5 of the CSDP as follows:

> 5. The member Companies may request that additional services be classified as competitive. In the event that the Commission declares a service to be competitive in another company's Chapter 30 proceeding or subsequent filing, such declaration shall then also be applied as a rebuttable presumption in any proceeding filed by a member Company requesting that the same or similar service be declared competitive under Chapter 30, so long as the markets are substantially similar.

SCG St. 2R at 8.

Further, at the request of AT&T, the SCG is willing to additionally modify Section A.5 to highlight that the 60-day procedure set forth in Section A.6 will equally apply thereto. SCG maintains that these modifications are included in the SCG's modified Plan set forth in Appendix E. SCG M.B. at 21. In its Reply Brief, however, AT&T maintains that the Companies' proposed language does not incorporate the provisions of Section A.6, as agreed, but a different 60-day procedure. AT&T R.B. at 5.

To clear up this matter, the Companies should amend Part 2.A.5 of its CSDP as follows:

> The member Companies may request that additional services be classified as competitive. In the event that the Commission declares a service to be competitive in another company's Chapter 30 proceeding or subsequent filing, such declaration shall then also be applied as a rebuttable presumption in any proceeding filed by a member Company pursuant to Part 2.A.6 hereof, requesting that the same or similar service be declared competitive under Chapter 30, so long as the markets are substantially similar.

AT&T M.B. at 16-17.

AT&T argues that that Part 2.A.6 should be amended to specify that notice that new or existing services are to be classified as competitive be provided to "all interexchange telecommunications carriers who request such notice." AT&T M.B. at 17. At page 9 of its Reply Brief, SCG argues that this addition is not necessary.

We agree. The language in the SCG Plan is adequate because it states that requests shall be served on "any other party as directed by the Commission Secretary." SCG M.B., Appendix E at 7. This language is consistent with the prefiling requirement language mandated by the Commission at Re: Implementation of Chapter 30 of the Public Utility Code, Docket No. M-930441, (Order entered August 27, 1993), which states that, "notice shall be served on all interested parties, as identified by the Commission Secretary." Slip op. at 5. Under the provision as set forth in the SCG Modified Plan, interexchange telecommunications carriers and other interested parties desiring notice will be served by the LEC upon confirmation of those interested parties by the Commission Secretary. We see no reason to adopt AT&T's modification and single

out interexchange carriers as compared to any other interested parties because the residual term "any other party" already proposed by the SCG is simple and all encompassing.

3. 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 Ex. 1, Ex. A at 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 to 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, and we agree, 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 Ex. 1, Ex. A at 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 witness Nurse criticizes the CSDP claiming that the BSFs "used for Directory Advertising" were not identified by the member companies. AT&T St. 1 at 16. This criticism overlooks the fact that no network elements are devoted to Directory

Advertising. SCG St. 2R at 10. Nurse also wanted to debate what cost studies should be utilized in pricing the BSFs and advocated that only "forward-looking" cost studies are appropriate. AT&T St. 1 at 20-21. SCG witness Watkins, on rebuttal, discussed at length why AT&T's position regarding forward-looking economic cost studies is flawed. SCG St. 2R at 11-13. Furthermore, the SCG does not believe this issue is relevant now because it is not seeking prices for BSFs. When any SCG member seeks to declare a service to be competitive which utilizes BSFs, the cost methodology for pricing such network elements should be determined at that time. The Commission should not be compelled to prejudge the appropriate pricing methodology for BSFs applicable to services not yet declared competitive.

The SCG members are willing to modify Section B.5 relative to the use of cost studies of larger or other telephone companies. As shown in Appendix E, page 8, the companies have inserted the word "comparable" in this provision. The SCG, however, opposes Nurse's recommendation that would require the cost studies to have been presented to or accepted by the Commission and to have been prepared for the same purpose. AT&T St. 1S at 26. There is no legitimate purpose to adopt such limitations. The fact that a cost study may not have been prepared for the same specific purpose, or presented and approved by the Commission, does not discredit its application. Apparently, AT&T overlooks the purpose of alternative and streamlined regulation which is to reduce regulatory costs. If comparable studies are available, these small companies should have the opportunity to rely thereon without any unnecessary limitations. Moreover, AT&T maintains the ability to challenge the cost study relied upon by the Company in the course of a competitive declaration proceeding.

4. Reporting of Financial Information

a. Financial Information Associated With Competitive Services

OTS witnesses Kubas and AT&T witness Nurse argued that the CSDP should be modified to require the reporting of financial information associated with competitive services. OTS St. 3 at 11; AT&T St. 1 at 4. Kubas contended that the Companies should supply with their annual financial reports "a statement of revenues, rate base, and income associated with all competitive services." This witness claimed that such annual reporting is needed to determine if competitive services are being subsidized by noncompetitive services as prohibited by §3005(g)(2).

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 Kubas is unnecessary. Further, 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. SCG St. 2R at 9-10. Finally, should a problem arise, the Commission retains the authority to request review of competitive service financial information. See Part 4, Section C.2 of the Chapter 30 Plan. Accordingly, there is no demonstrated need for this filing that outweighs the regulatory and anti-competitive burdens it would impose.

AT&T argues that the unbundling safeguard is necessary to prevent a "price squeeze." AT&T M.B. at 6. The SCG members do not disagree with the purpose of this safeguard and believe that their CSDP at Part 2.B.1 satisfies the BSF unbundling requirements of Sections 3005(e)(1) and (2).

AT&T, however, argues that Part 2.B.1 of the SCG Plan regarding unbundling requires more detail than provided in the CSDP. AT&T claims that the unbundling safeguard "clearly requires the Companies to provide supporting workpapers" and proposes additional language to Part 2.B.1 which would, in addition to providing assurance that a company will comply with the requirements of Chapter 30 with respect to services deemed competitive, require each member company to furnish tariffs, workpapers and supporting financial data to evidence such compliance. AT&T M.B. at 7.

AT&T's proposed language is not necessary. When a service is declared competitive, an SCG member company must, pursuant to Section 3005(e)(1), unbundle and tariff the applicable BSFs and the prices thereof. Consistent therewith, the respective company will file the appropriate tariff and supporting information pursuant to the Commission's tariff regulations.

AT&T further contends that this safeguard "requires that the BSFs be unbundled accurately," AT&T M.B. at 6, and that a BSF priced "unreasonably high" will be a source for cross-subsidy.[2] These contentions are totally superfluous to the purpose of satisfying this Chapter 30 requirement. The SCG members have already confirmed that their CSDP will meet the requirements of Section 3005(g)(2). Further, language proposed in Part 2.B.3 of the SCG Plan is identical[3] to that found in the previously approved Chapter 30 Plans of Frontier (Plan at 16, Part 2.B.3), TDS (Plan at 13, Part

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2 AT&T M.B. at 6, fn. 21, provides an erroneous cite.

3 The provision in the SCG Plan is identical to the same provision in the previously-approved Chapter 30 Plans except to be set out in one sentence rather than two.

II.B.3), Ironton (Plan at 16, Part 2.B.3), Citizens (Plan at 18, Part 2.B.3), Commonwealth (Plan at 15, Part 2.B.2). AT&T's modification (AT&T M.B. at 9) is not necessary.

AT&T also argues that after unbundling, provisions still must be imposed to prevent cross-subsidization of the competitive service. AT&T M.B. at 7-8. AT&T and OTS contend that Part 2.A.3 of the CSDP should be modified to require annual statements of revenues, expenses, rate base and income associated with all competitive services at the time of filing an annual report. AT&T M.B. at 8; OTS M.B. at 16. The SCG's opposition to this proposal is set forth in its Main Brief at pages 23-24. It is incongruous to set forth as AT&T proposes — in the same provision, yet — that competitive services will not be regulated as to various rate base/rate of return criteria but nevertheless that revenues, expenses, rate base, and net income associated with competitive services should be identified and reported. AT&T M.B. at 8. SCG maintains that it is not difficult to uncover the motive of a competitor such as AT&T to obtain such highly proprietary, business sensitive, competitive information under the guise of Chapter 30 compliance. SCG R.B. at 8.

We believe that AT&T's proposal is 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. SCG St. 2R at 9; §3004(d)(8) and §3006(c)(1). Also, a review of the Commonwealth Plan reveals that there is no such requirement for competitive services therein. Part 4.C.2 of the modified CSDP does provide the Commission with access to appropriate information should the circumstances arise. See SCG M.B., Appendix E.[4]

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[4] AT&T proposes additional language to Part 2.B.3 which references its modifications proposed for part 2.B.1 and 2.A.3. AT&T M.B. at 9. This modification likewise is not necessary.

b. Chapter 71 Financial Reports

The SCG proposed certain limited reporting requirements in their Chapter 30 Plan. SCG Ex. 1, Ex. A at 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 at 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. at 56. In its Reply Brief, however, the OTS stated its acceptance of the SCG recognition in Part 4.C.2 that the Commission may require additional reports other than those set forth in the Plan. OTS R.B. at 31.

The OCA observes that the revised list of reporting requirements is preferable to the original Plan provisions, but that the Companies should be required to file the same annual financial reports and Class A or Class B Telephone Annual Reports which they currently file with the Commission.

SCG acknowledges that Section 3006(d) requires the submission of an annual financial report by LECs serving less than 50,000 access lines and that the Commission in its recent Chapter 30 orders has required LECs to submit the traditional annual reports and Chapter 71 earnings reports as part of Chapter 30 regulation. It maintains, however, that these requirements should not be imposed in this Chapter 30 Plan. To recognize some of the OTS and OCA concerns, the SCG members, in Appendix E of their Main Brief, revised their initial reporting requirements proposals. The Companies propose to file annual balance sheets and income statements together with statements of plant accounts as part of their Chapter 30 reporting requirements. The

Companies' expanded and revised Part 4, Section C, Reporting Requirements are set forth on page 32 of Appendix E.

The SCG asserts that its revised proposal is consistent with an alternative and streamlined form of rate regulation. It includes 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.

SCG states 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 OTS witness Kubas, 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." OTS St. 3 at 18.

SCG acknowledges that its proposed reporting requirements are less than what the Commission has required in other Chapter 30 proceedings, but believes its proposal is consistent with Chapter 30 regulation.

Also, SCG has modified Part 4, Section C.2 of its Plan to read as follows:

> 2. Should the Commission request any additional report or audit, the Companies retain the right to oppose such submission on the grounds that the benefit of the report or audit will not exceed the attendant expense or administrative time requirements associated therewith.

SCG M.B., App. E at 32. SCG believes that this safeguard provides the Commission with the right to require additional reports including earnings reports, if the circumstances warrant. It argues that with this provision in the Plan, there should be no necessity to expand the proposed filing requirements thereby increasing the companies regulatory costs. SCG M.B. at 54.

The OCA disagrees with SCG and asserts that the Commission must retain the ability to monitor the financial condition of these Companies, and that it can only do so if the reporting requirements the OCA proposes are maintained. OCA M.B. at 49-50.

The Commission has addressed the issue of reporting requirements in proceedings involving a large LEC (BA-PA) and small LECs with less than 50,000 access lines. In the BA-PA Chapter 30 proceeding, BA-PA requested that the Commission allow it to not file earnings reports. In its Order the Commission rejected BA-PA's recommendation that these important reporting requirements be terminated. Bell PUC Order at 251.

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 continued 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).

According to OCA, these Commission pronouncements make it clear that, although Chapter 30 provides for a reduction of reporting and auditing requirements for small LECs, the filing of financial and annual reports continue to be an important monitoring prerequisite. OCA argues that is imperative that these requirements continue to be imposed on the SCG members in this proceeding. OCA M.B. at 50.

In its Reply Brief, SCG states that it is aware of the Commission's decision in Frontier compelling the Frontier Companies to continue filing annual and earnings reports even after their Chapter 30 approval. Despite this, the Companies believe that this decision should not be controlling of their circumstances.

SCG argues that the OCA seeks to expand the existing filing requirements for these small telephone companies. The PTA Small Company Group members submit that the time is now ripe to reduce filing requirements for the SCG members as they transition into a competitive marketplace. SCG R.B. at 52.

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 Commissions believes are still important. We recommend that the SCG proposal to be exempt from Chapter 71 reporting requirements be denied.

5. Resale And Sharing Restrictions

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 Ex. 1, Ex. A at 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 at 13. As set forth in SCG St. 2R at 13, the SCG is agreeable to modify the provision so that it applies to all appropriate regulatory authorities. See Appendix E at 8. AT&T witness Nurse contended the provision should only apply to restrictions imposed after TCA-96. AT&T St. 1 at 18. We see no purpose in imposing this limitation since there were restrictions already in place prior to TCA-96.

AT&T argues that the SCG's resale provision at Part 2.B.6 (modified Plan Part 2.B.5) should be modified. AT&T M.B. at 17. As noted, this provision has been modified, and the OTS has accepted the modification and deemed it "resolved" (OTS M.B. at 21). Neither OCA nor OSBA have contested the modification. AT&T's proposed language cannot be found in any previously approved Chapter 30 plan, and we see no purpose to limiting the provision only to restrictions imposed after the Telecommunications Act of 1996. See SCG St. 2R at 13-14.

6. Cost Studies of Other LEC's

AT&T objects 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. We do not agree with AT&T's proposal.

The proposal would potentially "tie the hands" of most SCG member companies by requiring that only "similarly situated" small companies could be deemed "comparable." Implementing of AT&T's language would force a SCG member company to prepare a cost study that it can not afford because no similarly situated small company will have expended the resources to perform such a study for the same reasons. In addition to forcing these small companies to expend valuable resources to conduct their own studies, AT&T's proposal could lead to unnecessary and expensive litigation over the ambiguities of the term "similarly situated." Then, after expending resources to complete such studies, the results would be of questionable value. As witness Watkins explained:

> There is unfortunately no non-arbitrary, objective way to arrive at a quantitative answer for perfect prices according to costs. The "cost" of specific services, whether they are competitive or not, is not a value that can be objectively determined through the use of studies of [forward-looking economic cost].

SCG St. 2R at 11.

For similar reasons, we do not agree with the further restrictive additions proposed by AT&T regarding the prior acceptance, form and purpose of the study in question. See SCG St. 2R at 12-13.

Lastly, the language proposed by AT&T is present in no other previously approved Chapter 30 plan, but the SCG proposed language in Part 2.B.5 is similar to that found in all previously approved Chapter 30 plans. With the addition of "comparable" to

its modified provision (SCG M.B., Appendix E at 8), the SCG language appears to be more restrictive than any other approved plan.

7. Revenues From Directory Advertising

The OCA does not oppose the designation of Directory Advertising as competitive, but argues that revenues from Directory Advertising should be reported "above the line" and proposes that "the revenues flowing from the provision of this service be included in the Companies' reports to the Commission[.]" OCA M.B. at 47. As authority for its position, the OCA cites Bell Atlantic-Pennsylvania, Inc.'s Chapter 30 proceeding before the Commission. Re Bell Atlantic-Pennsylvania, Inc., 82 Pa. P.U.C. 194 (1994) ("Bell Atlantic"). OCA M.B. at 47, fn. 27. The Commission's ruling in Bell Atlantic, however, does not support the OCA's claim. In OCA's footnote 27 is the true holding of the Commission regarding Bell's Directory Advertising revenues — that only the revenues and expenses associated with a BSF of the service shall continue to be accounted for as an "above the line" item in the company's accounts and in accordance with Chapter 30. Bell Atlantic at 246. It is not appropriate to find that any BSFs exist in the provision of Directory Advertising by those SCG members that provide the service. As witness Watkins stated, the SCG "does not understand" how the service of Directory Advertising could have BSFs. T. 465. Should the Commission determine that such BSFs do exist, however, it is only the revenue and expenses associated with those BSFs and not the totality of Directory Advertising revenues and expenses that should be accounted for "above the line." Id.

V. ADDITIONAL COMMITMENTS AND OTHER ITEMS

A. Extended Area Service

In the initial Chapter 30 Plan, the SCG requested that the EAS regulations no longer be applicable to the member companies. SCG Ex. 1, Ex. A at 28. At the recommendation of witnesses Kubas and Catlin, and to be consistent with the Report of the Monitoring/Subscription Subcommittee on EAS dated September 30, 1998, witness Watkins agreed to the following modification to Part 4, Section B.4 of the Chapter 30 Plan:

> 4. 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 at 43.

This modification appears to have concluded the EAS controversy with one exception. Mr. Watkins also recommended 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.

Mr. Kubas 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. T. 849. The problems with one-way EAS or route specific OCPs is fully addressed in the rebuttal testimony of SCG witness Watkins. SCG St. 2R at 44-47.

We agree with the OTS. The final sentence offered by the SCG must be eliminated. The proposed sentence is inconsistent with Mr. Watkins' testimony that the Companies will comply with modifications to the existing EAS regulations. Indeed, the last sentence reverts almost completely to original SCG position. The SCG has not justified its position.

B. Affiliated Interest Agreements

The PTA Small Company Group Chapter 30 Plan eliminates the necessity for the SCG members to comply with the Chapter 21 affiliated interest provisions in the Public Utility Code. SCG Ex. 1, Ex. A at 28. The OCA opposes this request whereas the OTS seeks to require the filing of affiliated interest agreements pertaining to noncompetitive services for notice purposes only. OCA St. 1 at 13 and OTS St. 3 at 15.

The SCG members recognize that no other Chapter 30 company has requested relief from Chapter 21. They maintain that upon approval of Plan A and Plan B, there will no longer be any justification for the filing of affiliated interest agreements as a matter of course. Watkins explained:

> With respect to the Plan A companies, there should no longer be any necessity for the filing of such agreements since their rates will no longer be subject to traditional rate base/rate of return regulation. The Commission, however, will retain the

> right to review any affiliated arrangement at any time should the need arise. Accordingly, the Plan A companies should be relieved of the necessity of having to formally file such agreements. As to the Plan B companies, these companies will now be subject to a streamlined form of regulation and should likewise not be compelled to file such agreements. However, the costs of affiliated transactions will be subject to Commission review at the time these Plan B companies seek increased rates under the SRP procedure. Accordingly, such affiliated transactions will be subject to review at that time.

SCG St. 2R at 49. Consistent therewith, the SCG members request to be relieved of the Chapter 21 filing requirements consistent with alternative/streamlined regulation. SCG M.B. at 52-53.

The OCA opposes this request. OCA M.B. at 51. It notes that the SCG proposed that Chapter 21 requirements should likewise be abandoned for Plan B Companies even though these LECs will have the opportunity to seek rate increases by filing a case which will be quite similar to traditional rate cases. SCG St. 2R at 29. The SCG argue that the Commission can look at their affiliated interest transactions once the Companies have come in for a rate increase, but not before. Id. The OCA continued as follows:

> The proposed exemption from Chapter 21 requirements should be rejected. Chapter 21 is an important tool for the Commission to protect the public against improper transactions between Companies and their affiliates which could result in increased cost for consumers of utility service. The Code provides for the protection of the public from self-dealing between affiliates by requiring the submission in writing of all contracts. The PUC is then required to give approval only after it has been 'established upon investigation that [the contract or arrangement] is reasonable and consistent with the public interest.'

UGI Utilities v. Pa. Public Utility Commission, 684 A.2d 225, 231 (Pa. Cmwlth. Ct. 1996). The Companies are calling for the Commission to reverse a long standing practice of subjecting affiliated interest agreements to a heightened scrutiny standard. See, Berner v. Pa. Public Utility Commission, 107 A.2d 882 (Pa. Super. Ct. 1954). This is unacceptable because the Commission would lose the power to protect the public by disallowing arrangements which are found to be contrary to the public interest. The Companies have offered no satisfactory explanation to justify their recommendation that Chapter 21 requirements should be discarded. Certainly, the assumed need for the reduction of regulatory delays and costs does not override the Commission's obligation to protect the public from the type of self-dealing and improper relationships that Chapter 21 was designed to curb. The Commission should reject the proposal that Chapter 21 be rendered inapplicable to SCG members.

OTS witness Joseph Kubas presented the OTS position in opposition to abrogation of affiliated interest requirements. As stated by Mr. Kubas, the Commission has not yet permitted any LEC to be exempt from Chapter 21 and for good reason. OTS St. 3, pp. 14-16. Several sections of Chapter 30 require the provision of affiliate information to the Commission.

First, affiliated interest information is essential for the Commission to monitor anticompetitive behavior, as provided for in 66 Pa. C.S. §3005(b). OTS St. 3, p. 16. Also, affiliate information is needed for the Commission to enforce 66 Pa. C.S. §3005(e)(1), which requires that LECs unbundle each BSF on which a competitive service depends, and provide these BSFs under nondiscriminatory terms that are identical to those used by LECs and their affiliates in providing the competitive service. It is also necessary for the Commission to audit the accounting and reporting systems of LECs and

their transactions with affiliates to provide a proper allocation of investments, costs or expenses for all telecommunications services, as provided for in 66 Pa. C.S. §3009(b)(1).

In addition, the SCG request to be exempt from Chapter 21 is not within the Commission's power to grant. As a creature of the Legislature, the Commission only has such powers expressly granted to it or granted by necessary implication. Rogoff v. Buncher Co., 395 Pa. 477, 151 A.2d 83 (1959). There is no power granted to the Commission to abrogate substantive sections of the Public Utility Code, such as affiliated interest obligations, with respect to SCG.

Finally, even if the Commission was authorized to abrogate substantive sections of the Code with respect to the SCG, the Companies have not demonstrated that such abrogation would be in the public interest, as is required by Chapter 30 for Plan approval. 66 Pa. C.S. §3004(d)(5).

The SCG proposal to be exempt from Chapter 21 of the Code should be rejected. Instead, Mr. Kubas' recommendation should be adopted, and the Companies should be required to continue to file affiliated interest agreements as a matter of course, unless the agreements involve services previously determined to be competitive in accordance with Chapter 30. OTS St. 3, p. 15.

We believe that the position of the OCA on this issue is reasonable and should be accepted. The SCG should not be permitted to exempt competitive services from the requirements of Chapter 21 of the Code as it pertains to affiliated interest filings. Only in this way can the Commission fulfill its duty of protecting the public from the possibility of self-dealing among affiliates.

VI. INTRASTATE RATES

A. Access Charges

AT&T and the SCG litigated the question of whether access charge reform should occur as part of this case. AT&T wanted access reform within this case. The SCG wanted to wait until this Commission completed its generic investigation of the subject. Due to the somewhat prolonged preparation time for this Decision, the Commission resolved the issue in time to be included within the context of this case. In Joint Petition of Nextlink Pennsylvania, Inc., et al and Joint Petition of Bell Atlantic-Pennsylvania, Inc., et al, Opinion and Order, entered September 30, 1999, at Docket Nos. P-00991648 and P-00991649, respectively, (Slip Op.) (Global Decision), this Commission determined:

> No party to this Global proceeding specifically challenged the Rural Coalition's proposed intrastate access, toll and local rates. The only party that makes any specific attack on the access charge reforms contained in the Small Universal Service Plan is AT&T. However, AT&T essentially acknowledges that its testimony opposing the Small Company Plan was outdated and stale, based upon the original plan filed on November 10, 1997, rather than the plan as modified and presented in Appendix II of the 1649 Petition. Upon more careful review and reflection, AT&T admits that the Small Company Plan included in the 1649 Petition is much improved. (AT&T M.B. p. 31). Therefore, we shall permit the members of the RTCC to convert their CCLC to a carrier charge consistent with their proposal contained in Appendix II of the petition filed at Docket No. P-00991649. In addition, as will be discussed in greater detail in the Universal Service Fund/Carrier Charge Pool and Rate Cap/Ceiling Sections of this Order we shall also permit the members of the RTCC to revise their toll rates and local rates in conformance with Small Company Universal Service Fund

Settlement as attached to Appendix II to the 1649 Petition at Docket No. P-00991649.

Id. at 54-55. Accordingly, we regard the Commission's decision as having resolved the issue to the satisfaction of both AT&T and the SCG all of which were most certainly parties to the other proceeding.[5]

B. North Pittsburgh And D&E Rates

On July 30, 1998, and June 30, 1998, the OCA filed formal complaints against the existing rates of D&E and North Pittsburgh respectively. Popowsky v. Denver & Ephrata Telephone and Telegraph Co., Docket No. C-00981676; Popowsky v. North Pittsburgh Telephone Co., Docket No. C-00981623. Pursuant to motions to consolidate filed by OCA, the OCA complaints were consolidated with D&E and North Pittsburgh's pending Chapter 30 filings at Docket Nos. P-00981430 and P-00981437 respectively. Tr. 5.

OCA asserts that both Companies are overearning. OCA M.B. at 46. Based on the Companies' actual 1997 returns (and noting that these returns have either stayed steady over a five year period or increased by nearly two times), the OCA recommends that such overearnings serve as an additional basis to reject D&E and North Pittsburgh's proposed plans and to adopt the OCA's proposals. The proposed plans would only exacerbate the overearnings being experienced by these companies. In the alternative, OCA states that the Commission should not allow any rate increases, through the PSM, until the overearnings are dissipated.

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5 We note in passing that the SCG has already agreed to structure its Universal Service Fund participation in accordance with the Commission's directions in the Global Decision. *See*, OTS St. 2 at 8-9, OTS St. 2SR at 11 and SCG St. 2R at 4.

Mr. Catlin calculated the actual 1997 earnings for the regulated operations of D&E and North Pittsburgh. As shown on Table 2 of OCA St. 1 at 17, the 1997 returns for D&E and North Pittsburgh are as follows:

Summary of Actual 1997 Earnings – Regulated Operations					
	Total Company		Intrastate		
	Overall Return	Return on Equity	Overall Return	Return on Equity	Equity Ratio
D&E	15.29%	22.55%	14.96%	21.90%	49.97%
North Pittsburgh	15.90%	19.61%	17.17%	21.39%	71.48%

The percentages are based on per book results. Intrastate figures reflect the effect of interest synchronization and average schedule settlements. OCA St. 1 at 17.

The OCA submits that the returns calculated by Mr. Catlin establish that D&E and North Pittsburgh are overearning based on existing rates.

Mr. Catlin also reviewed the Companies' earnings over the period 1993-1997. He found that each company's overall returns had increased over the last several years. OCA St. 1 at 18. D&E's return increased from 9.6% to 15.3% over the 1993-1997 period. North Pittsburgh's return increased from 17.8% to 17.9% over that same period. Id. Mr. Catlin noted that these increases occurred even though the compensation which the companies received from average schedule settlements was reduced during the period 1993 through 1997. Id.

Based on Mr. Catlin's analysis, the OCA asserts that it has established that D&E and North Pittsburgh are overearning. The OCA submits that an appropriate remedy is to delay the operation of the PSM for each company until 2002. OCA M.B. at 46.

SCG responds by noting that OCA is raising this issue for the first time in its Main Brief, and that Mr. Catlin did not make this recommendation in his testimony, OCA St 1. SCG R.B. at 48.

In its Main Brief, at pages 56-58, SCG notes that in this proceeding, the OCA placed no recommendation on the record seeking any change in the level of rates currently tariffed by these two small LECs. In fact, the OCA entered a settlement petition with D&E in a rate rebalancing investigation at Docket No. R-00984315 stipulating that it would not "seek to reduce or modify D&E's existing jurisdictional rates" in this Chapter 30 proceeding. The settlement was approved by Commission Order entered December 18, 1998. Pa. P.U.C. v. Denver and Ephrata Telephone and Telegraph Company, Docket No. R-00984315. In light thereof, NPTC and D&E are proceeding under the assumption that the OCA is not seeking any reduction in their rates in this Chapter 30 proceeding.

Furthermore, the OCA has not supported any relief whatsoever on the basis of its complaints. Being a complainant challenging existing rates, the OCA has the burden of proof to support any relief claimed in connection therewith. Duquesne Interruptible Complainants v. Duquesne Light Co., 78 Pa. P.U.C. 310, 329 (1993). Burden of proof is the duty to establish a fact by a preponderance of the evidence. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

Mr. Catlin presented the only evidence OCA placed in the record concerning the earnings of NPTC and D&E. At page 17 of OCA Statement No. 1, Catlin showed on a per book basis at December 31, 1997, the two companies' "Total Company" and "Instate" overall and equity returns. In fact, this information was put forth by the

intervenors not to argue that NPTC and D&E rates are unjust or unreasonable but rather to support the alleged need for a productivity offset. The estimated intrastate returns on equity for both companies, as calculated by Catlin, were in the neighborhood of 20%. SCG submits that these returns do not justify any relief in this proceeding.

The intrastate return figures shown by witness Catlin were based upon some type of "residual" calculation. Under such calculation, interstate revenues and earnings impact the residual intrastate returns. SCG St. 2R at 15. Witness Catlin, in an effort to justify this type of calculation, set forth legal arguments stating some jurisdictions in the past have adopted residual ratemaking for average schedule companies similar to NPTC and D&E. OCA St. 1S at 5-7.

NPTC and D&E do not see the need, in this proceeding, to entertain a discussion on whether residual ratemaking was or was not an appropriate ratemaking methodology in the past. With the enactment of TCA-96 on February 8, 1996, they are now transitioning into a competitive telecommunications market. As NPTC and D&E move into a competitive market under an alternative form of regulation, their intrastate rates must begin transitioning closer to cost. This was even recognized by Catlin on cross-examination:

> Q. Would you agree with me that as we transition to a fully competitive marketplace, that the Public Utility Commission should work with the local exchange carriers and endeavor to bring rates closer to their specific costs?
>
> A. I guess I'd have to know a lot more than what you've told me. I think - -I think, first of all, you have to define what costs are. And I think you have to define a number of other factors. But, in general, I would say independent of whether - - under alternative regulation, I think that over time, the prices of services will move toward cost or will need to move toward cost.

Tr. 655.

The SCG submit that any methodology whereby interstate revenues and earnings are used to develop intrastate rate levels is directly contrary to this principle. Certainly, now is not the time to pass any judgment as to the reasonableness of the intrastate rates of NPTC and D&E based upon any formula that includes interstate revenues and earnings.

Other than the residual ratemaking issue, SCG finds several other problems in justifying relief against NPTC and D&E based upon the return figures set forth in the Catlin testimony. The Catlin returns do not reflect the two Companies' returns for ratemaking purposes since they do not reflect their annualized intrastate levels of return on a going-forward basis. Instead, they were return levels at a spot moment in time. In contrast thereto, the projected December 31, 1999, annualized level of intrastate returns on original cost measures of value, for these two small LECs, were placed in the record by Mr. Watkins. The returns were as follows: NPTC's return was 4.86%, and D&E's return was 1.77%. SCG St. 2R at 15.

In light of these return levels and in light of the already low level of the existing basic exchange rates of these two small LECs, SCG asserts that there is no justification for granting any relief on the OCA's Complaints at Docket Nos. C-00981623 and C-00981676 based upon the evidence in this proceeding.

We agree with SCG that the OCA position is flawed for two reasons. SCG R.B. at 48.

First, the OCA recognizes that under a residual ratemaking calculation for average schedule companies, such as NPTC and D&E, interstate earnings will be used in setting intrastate rates. OCA M.B. at 40. This Commission has adopted the residual methodology for financial reporting for average schedule companies. 52 Pa. Code §69.501. Section 69.501(c), however, specifically states that such a reporting policy cannot be used to set intrastate rates without notice and the opportunity to be heard:

> (c) Policy. For average schedule telephone companies, the Commission's current ratemaking policy and practice for financial reporting purposes will be based upon use of the residual ratemaking method. Whether or not this method will be used to set intrastate rates for any individual average schedule telephone company will be determined only after notice and opportunity to be heard in accordance with law.

The OCA's reliance on residual ratemaking for the first time in this proceeding in its Main Brief in an attempt to postpone NPTC and D&E using the PSM does not constitute reasonable notice to them and does not give them the opportunity to be heard.

The OCA made a similar residual ratemaking argument in the Commonwealth proceeding to try to prolong Commonwealth Telephone's change-over to a price-cap plan. The Commission rejected the argument owing primarily to notice deficiencies. See Petition of Commonwealth Telephone Company for an Alternative Regulation and Network Modernization Plan, Docket No. P-00961024 (Opinion and Order entered January 17, 1997, at 79-80).

Second, the Commonwealth Order indicates that the parties submitted detailed rate of return studies and cost studies to support their earnings contentions. In this proceeding, the OCA is seeking to rely solely on historic book returns in lieu of the NPTC and D&E annualized intrastate return levels on a going-forward basis. See SCG

M.B. at 58. If the earnings of NPTC and D&E are to be declared excessive from a ratemaking standpoint, the complainant must support such claims through the normal ratemaking process.

We do not believe that these two small LECs, in exchange for their network modernization commitments, should be precluded from adopting the PSM formula until the year 2002. It appears that their local rates are already low. North Pittsburgh's first applicable band local service rates, inclusive of touchtone are $7.60 and $13.40. D&E's weighted average R-1 rates, inclusive of touchtone are $9.97 and $19.59. SCG Ex. 1, Ex. A. App. 2. Also, based on the Companies' projected original cost measures of value at December 31, 1999, North Pittsburgh's projected December 31, 1999 annualized intrastate return is only 4.86%, and D&E's is only 1.77%. SCG St. 2R at 15.

Based on this record, we do not believe there is any justification to delay the operation of the PSM for North Pittsburgh and D&E.

VII. MISCELLANEOUS ISSUES

A. The Plan And The Code

1. *Parties' Positions*

a. OTS

The OTS argued as follows:

> In Part 3.A(A).3. of its Plan, the SmCo. Group has included the following sentence:
>
> > 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.
>
> This language is modeled after Section 3006(e) of the Code, 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.
>
> However, Section 3006 and its provisions are only applicable to a streamlined form of rate regulation.

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 . . . .

Three of the SmCo.Group members (D&E, Conestoga, and North Pittsburgh) do not qualify for streamlined regulation, as they each have in excess of 50,000 access lines. SmCo. Ex. 1, Appendix 2. There is no comparable provision to Section 3006(e) in the Chapter 30 provisions that apply to LECs with 50,000 access lines or more. The three non-streamlined LECs cannot avail themselves of the statutory provisions applicable only to streamlined companies. Accordingly, the above-mentioned sentence should be deleted from the SmCo. Plan as being inconsistent with Chapter 30. See also, OTS St. 2, p. 10.

OTS M.B. at 45-46.

b. SCG

The SCG responded as follows:

The OTS objects to the following passage appearing in Part 3.A.(A)3 of the SCG Chapter 30 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.

SCG Ex. 1, Ex. A at 10.

> The OTS recognizes that Section 3006(e) specifically provides that the approval of a streamlined Chapter 30 plan will "supersede any conflicting provisions" of the Public Utility Code. The OTS, however, argues that since three members of the SCG exceed 50,000 access lines this provision cannot remain in the Plan. This argument overlooks the fact that the above-quoted Part 3 is the ratemaking portion of the Chapter 30 Plan. Section 3004 of Chapter 30 provides:
>
> > (a) **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.
>
> Consistent therewith, 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.

SCG M.B. at 52-53.

2. Recommendation

We agree with the OTS. Our reading of the Public Utility Code confirms that this Commission was given more freedom to design streamlined forms of rate regulation than alternative forms of rate regulation. Consequently, all LECs in the SCG

which now serve more than 50,000 access lines cannot enjoy the broadly drafted exemptions in the current wording of the plans. Accordingly, the language of the plans must be modified to exclude those LECs which serve more than the 50,000 access lines.

B. IntraLATA Presubscription Costs

1. Parties' Positions

a. AT&T

AT&T argued in its Main Brief as follows:

> The Companies propose that any changes in the recovery of costs of intraLATA presubscription that differ from the Commission's Order of December 14, 1995[116] shall be treated as an exogenous event the costs of which may be recovered in the rates of noncompetitive services.[117] In other words, if any of those incremental costs are imposed on the Companies, they propose to recover them from customers as exogenous event costs. Companies' witness Watkins admitted that such costs could be recovered from IXC customers by increases to intrastate access rates.[118]
>
> Such an action would violate the FCC's Second Report and Order,[119] which provides that intraLATA presubscription implementation costs must be paid in a competitively neutral manner by all intraLATA toll carries, including ILECs. Allowing the Companies to pass those costs through to IXCs through increases to access charges would fly in the face of the FCC Order. Thus, if the Companies are to be permitted to recover these incremental costs, the last clause of the penultimate sentence of Part 3.A(A)13 (at 15) 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.

116 Docket No. I-00940034.
117 Plan, Part 3.A.(A)13 (at 15).
118 Tr. at 474.
119 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), pg. 92-95. That the Order was reinstated by AT&T Corporation, et al., Petitioners v. Iowa Utilities Board et al., 1999 U.S. LEXIS 903 (Jan. 25, 1999).

AT&T M.B. at 31. (Emphasis in the original.)

b. SCG

The SCG responded as follows:

The PTA Small Company Group Plan includes the following provision:

> 13. In connection with the implementation of IntraLATA presubscription, each member Company shall be permitted to recover related incremental costs as defined in and in the manner finally established by the Commission at Docket No. I-00940034. Any revenues received therefrom shall not be included in the calculation of PSI or SPI. However, if the Commission rules that such

costs shall be recovered in a different manner than set forth in its December 14, 1995 Opinion and Order at such docket, 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.***

See SCG M.B., Appendix E at 16.

An almost identical provision was included in the TDS, Citizens and Ironton Chapter 30 Plans.

AT&T seeks to have the provision amended to provide, "except that none of these costs may be recovered from intrastate access charges." AT&T M.B. at 32. The SCG submits that Your Honor should not prejudge this issue. The Commission will direct how these costs should be recovered at Docket No. I-00940034 and the companies will abide with the Commission's ruling. Please also note that AT&T also stipulated to both the Citizens and Ironton Plans without this amendment.

SCG R.B. at 57-58.

2. Recommendation

This issue was resolved by the Global Decision. In at least two chapters of the Global Decision the Commission approved the "modified Small Company Plan," which was Appendix II to the 1649 petition. *Id.* at 54-55 and 151 (the pages have been quoted, in pertinent part, above). The modified Small Company Plan stated as follows:

d) The Small ILECs and BA-PA shall be entitled to recover intraLATA presubscription costs from the

> interexchange carriers pursuant to the Commission's Order at I-00940034, entered on December 14, 1995. The direct, incremental costs associated with implementing presubscription shall be recovered, subject to an annual true up/down, from the interexchange carriers operating in Pennsylvania over a three year period based upon each interexchange carrier's share of total originating and terminating intrastate toll minutes of use.

1649 Petition, Appendix II at 7. Accordingly, we find that the Commission has ruled in favor of the SCG and that AT&T acquiesced in the decision. Global Decision at 54.

VIII. ORDER

NOW THEREFORE, IT IS RECOMMENDED:

1. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, then and in such event, Armstrong Telephone Company-Pennsylvania shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in the Recommended Decision, 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 the Commission Order in this matter.

4. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

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 the Recommended Decision.

8. That should 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 the Recommended Decision, and continue to be regulated under its existing form of regulation, then and in such event, Bentleyville Telephone Company shall so notify the Commission and the parties of record of such election within thirty (30) days of the date of entry of the Commission Order in this matter.

9. That should Bentleyville Telephone Company, elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by the Recommended Decision, then and in such event, Bentleyville Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in the Recommended Decision, 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 the Commission Order in this matter.

10. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

13. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

16. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

19. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

22. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

25. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

28. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

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 the Recommended Decision.

32. That should 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 the Recommended Decision, and continue to be regulated under its existing form of regulation, then and in such event, North-Eastern Pennsylvania Telephone Company shall so notify the Commission and the parties of record of such election within thirty (30) days of the date of entry of the Commission Order in this matter.

33. That should North-Eastern Pennsylvania Telephone Company, elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by the Recommended Decision, then and in such event, 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 the Recommended Decision, 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 the Commission Order in this matter.

34. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

37. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

39. That should North Pittsburgh Telephone Company, elect to proceed with the Alternative Form of Regulation Plan and Network Modernization Plan as modified by the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

40. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

43. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

46. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

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 the Recommended Decision.

50. That should 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 the Recommended Decision, and continue to be regulated under its existing form of regulation, then and in such event, South Canaan Telephone Company shall so notify the Commission and the parties of record of such election within thirty (30) days of the date of entry of the Commission Order in this matter.

51. That should South Canaan Telephone Company, elect to proceed with the Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan as modified by the Recommended Decision, then and in such event, South Canaan Telephone Company shall file a Streamlined Form of Regulation Plan and Network Modernization Plan, containing the modifications and revisions set forth in the Recommended Decision, 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 the Commission Order in this matter.

52. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

55. That the Petition of The 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 the Recommended Decision.

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 the Recommended Decision, 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 thirty (30) days of the date of entry of the Commission Order in this matter.

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 the Recommended Decision, 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 the Recommended Decision, 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 the Commission Order in this matter.

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 Consumer Advocate v. North Pittsbugh Telephone Company at Docket No. C-00981623 is hereby dismissed, and the record marked closed.

Robert A. Christianson
Chief Administrative Law Judge

Larry Geoff
Administrative Law Judge

Louis G. Cocheres
Administrative Law Judge

DATE: November 15, 1999

SUBJECT: P-00981425 ET AL

P-00991428

DOCKETED
NOV 15 1999

DOCUMENT FOLDER

TO: Chery W. Davis, Diector
Office of Special Assistants

FROM: James McNulty
Secretary
nvl

P-00981425 ET AL - Petition of the Armstrong Telephone Company-Pennsylvania ET AL. for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plans
C-00981623 - Irwin A. Popowsky, Consumer Advocate V. North Pittsburgh Telephone Co.
C-00981676 - Irwin A. Popowsky, Consumer Advocate V. Denver & Ephrata Telephone & Telegraph Co.

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

Office of Consumer Advocate
Office of Trial Staff
Office of Small Business Advocate
Telephone Assoc Small Company Group
AT&T Communication of PA

Reply Exceptions have been received from:
Office of Trial Staff
Office of Small Business Advocate
Office of Consumer Advocate
Telephone Assoc Small Company Group
AT&T Communication of Pa

cc: Annette Shelley