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January 26, 2007

VIA HAND DELIVERY

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

DOCUMENT FOLDER

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

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

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

Dear Secretary McNulty:

Enclosed for filing are an original and nine (9) copies of the Main Brief of Denver and Ephrata Telephone and Telegraph Company, Conestoga Telephone and Telegraph Company and Buffalo Valley Telephone Company in the above-captioned matter. Also enclosed are an original and nine (9) copies of the Compendium of Common Orders as requested by Administrative Law Judge Colwell. Copies of the Main Brief are being served upon the persons and in the manner set forth on the Certificate of Service.

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

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

Michael L. Swindler

cc: Certificate of Service
Leonard J. Beurer

070126 McNulty (Main Brief).wpd

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Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

OF

DENVER AND EPHRATA TELEPHONE AND TELEGRAPH COMPANY

CONESTOGA TELEPHONE AND TELEGRAPH COMPANY

BUFFALO VALLEY TELEPHONE COMPANY

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Dated: January 26, 2007

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I. STATEMENT OF THE CASE

This proceeding addresses the annual Chapter 30 2006 Price Stability Index/ Service Price Index filings ("2006 PSI/SPI filings") of Denver and Ephrata Telephone and Telegraph Company ("D&E Telephone") - Docket No. P-00981430F1000, Conestoga Telephone and Telegraph Company ("Conestoga") - Docket No. P-00981429F1000, and Buffalo Valley Telephone Company ("Buffalo Valley") - Docket No. P-00981428F1000. D&E Telephone, Conestoga, and Buffalo Valley (hereinafter collectively "D&E carriers" or "Companies") are wholly-owned subsidiaries of D&E Communications, Inc. The D&E carriers are rural telephone companies and the filings were made under the provisions of the new Chapter 30 law, Act 183 of 2004, P.L. 1398, 66 Pa.C.S. §§3011-3019 ("Act 183"), and the Companies' Amended Chapter 30 Plans filed pursuant thereto.

The D&E carriers issued advanced notice of the 2006 PSI/SPI filings on March 14, 2006, and notified all customers, including access customers, of the filings. On May 3, 2006, the D&E carriers filed their annual 2006 PSI/SPI filings using the change in the 2004 and 2005 third quarter Gross Domestic Product - Price Index of 4.016% which produced an overall 3.70% increase in annual noncompetitive service revenues. The Companies proposed the following tariff changes to produce the following additional revenues:

> D&E Telephone's rate changes included increases in (i) switched access service charges through a $1.20 increase in the Carrier Common Line charge and increases of $.000939 per Minute of Use ("MOU") for Tandem Switching and $0.00636 MOU for Local Switching to mirror its interstate traffic sensitive switched access charges and (ii) non-basic local service rates for Return Check Charge, Foreign Exchange Mileage charges, and charges for Business Private Line Services for non-mileage related services.
>
> Conestoga's rate changes included increases in (i) switched access service charges through a $0.33 decrease in the Carrier Common Line charge and increases of $.000962 per MOU for Tandem Switching and $0.007644 MOU for Local Switching to mirror its interstate traffic sensitive switched access charges and (ii) non-basic local service rates for Return Check Charge, Foreign Exchange Mileage charges, and charges for Business Private Line Services for non-mileage related services.

> Buffalo Valley's rate changes included increases in (i) switched access service charges through a $0.97 increase in the Carrier Common Line charge and increases of $0.002402 per MOU for Tandem Switching and $0.000247 MOU for Local Switching, to mirror its interstate traffic sensitive switched access charges, (ii) basic local service rates through a per line increase of $.30 and PBX and Pay Telephone rates, and (iii) non-basic local service rates for Return Check Charge, Foreign Exchange Mileage charges, and charges for Business Private Line Services for non-mileage related services.

See D&E Statement No. 1 at 5-6.

Switched access charges are the rates charged by the D&E carriers to interexchange carriers ("IXCs") and other entities in providing switched access facilities in originating and terminating long distance calls to and on behalf of the Companies' customers. Access services are "protected services" pursuant to the definition of "Switched Access Service" as a protected service under Section 3012 of Act 183.[1] The Carrier Charge ("CC") is the only switched access rate designed to recover nontraffic- sensitive costs.[2]

Although notice of the filings was provided to all access customers including Verizon, no access customer or any other customer filed opposition to the proposed rate changes.

By Opinions and Orders entered June 23, 2006 ("June 23 Orders"),[3] the Commission permitted the proposed rate changes to be implemented if adjusted for a

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[1]66 Pa.C.S. §3012.

[2]See Re Nextlink Pennsylvania, Inc., 196 PUR 4th 172, 187 (1999) ("Global Order").

[3]Denver & Ephrata Telephone & Telegraph Company Supplement No. 251 to Tariff PA-PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16, Docket No. R-00061377 and 2006 Annual Price Stability Index/Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company, Docket No. P-00981430F1000; Conestoga Telephone & Telegraph Company Supplement No. 206 to Tariff PA PUC No. 10 and Supplement No. 7 to Tariff PA PUC No. 11, Docket No. R-00061376 and 2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone & Telegraph Company, Docket No. P-00981429F1000; and Buffalo Valley Telephone Company Supplement No. 54 to Tariff PA PUC No. 7 and Supplement No. 8 to Tariff PA PUC No. 8, Docket No. R-00061375 and 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, Docket No. P-000981428F1000, Order entered June 23, 2006 (Order Compendium, G-1, H-1, I-1).

change in the Companies' PSI/SPI procedure used for calculating the annual revenue allowances. Specifically, the Commission directed that the D&E carriers change the manner in which they calculated their base revenues for determining their annual revenue entitlements. The Commission also raised concerns regarding the increases in intrastate access charges and directed that if the D&E carriers elected to implement the access charge increases, as modified for the aforesaid revenue procedure change, in lieu of banking or further increasing basic exchange rates, the lawfulness thereof would be addressed in the Commission's pending intercarrier compensation and universal service fund investigation at Docket No. I-00040105.[4]

The D&E carriers on June 28, 2006, filed rate changes pursuant to the June 23 Orders ("June 28 Compliance Filings"). The said rate changes included the increases in intrastate access charges as proposed in the 2006 PSI/SPI filings but modified to reflect the impact of the aforesaid procedural change for calculating the annual revenue entitlements. The compliance tariffs were permitted to become effective on July 1, 2006.

In the June 28 Compliance Filings (i) D&E Telephone reduced its annual Chapter 30 increase revenue entitlement sought in its 2006 PSI/SPI filing by $46,575 from $1,022,608 to $976,033. D&E Telephone also reduced its proposed CC increase from $1.20 per line to $1.13 per line and retained the mirroring of its interstate traffic-sensitive switched access rates and the non-basic service rate increases originally proposed; (ii) Conestoga reduced its annual increase revenue entitlement by $40,738 from $917,330 to $876,592. Conestoga raised its proposed CC decrease from $0.33 per line to $0.39 per line and retained the mirroring of its interstate traffic-sensitive switched access rates and the non-basic service rate increases as originally proposed; and (iii) Buffalo Valley reduced its annual increase revenue entitlement by $14,925 from $328,482 to $313,557. Buffalo

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

Valley reduced its proposed CC increase from $0.97 per line to $0.91 per line and retained the mirroring of its interstate traffic-sensitive switched access rates and the basic and non-basic service rate increases as originally proposed.[5]

Subsequently, on July 10, 2006, the D&E carriers each filed a Petition for Reconsideration challenging the procedural change in their PSI/SPI revenue calculation procedure and the Commission concerns expressed in the June 23 Orders regarding the lawfulness of the increases in their intrastate access charges. Although not a party, Verizon, on July 20, 2006, filed a Response as *Amicus Curiae* to the Petitions seeking reconsideration to which the D&E carriers on July 31, 2006, filed a Motion seeking to strike or dismiss the Response. Verizon filed a letter on August 10, 2006, objecting to D&E's Motion.

By Order entered November 15, 2006 ("November 15 Order"),[6] the Commission bifurcated the issues regarding the D&E carriers' June 28 Compliance Filings from Docket No. I-00040105 and assigned the matter to the Office of Administrative Law Judge for recommended decision on an expedited basis.[7] The November 15 Order at 15 directed that the goal is to determine, "based on the record, whether any recision or amendment would

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[5]D&E Statement No. 1 at 7-8.

[6]Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, Docket No. I-00040105; 2006 Annual Price Stability Index/Service Price Index Filing of Denver & Ephrata Telephone and Telegraph Company, Docket Nos. P-00981430F1000 and R-00061377; 2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone & Telegraph Company, Docket Nos. P-00981429F1000 and R-00061376; and 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, Docket Nos. P-00981428F1000 and R-00061375, Order entered November 15, 2006 (Order Compendium, M-1).

[7]By Order entered December 8, 2006, the Commission denied D&E's Petition for Reconsideration with regard to certain issues stemming from the June 23 Orders, and also denied D&E's Motion to Strike Verizon's *Amicus Curiae* response. The Commission further ordered that the response of Verizon as *Amicus Curiae* was accepted, and directed that the concerns contained therein would be addressed in the limited and expedited rural access charge proceeding initiated at Docket No. I-00040105 (Order Compendium, P-1).

be warranted by the evidence, consistent with our access charge reform and universal service policies, and lawful under the Companies' Chapter 30 plans."[8]

A prehearing conference was conducted by Administrative Law Judge Colwell on November 28, 2006. The Office of Trial Staff ("OTS"), Office of Consumer Advocate ("OCA"), and Office of Small Business Advocate ("OSBA"), having filed notices of intervention or appearance, participated in the prehearing together with Verizon. Verizon filed for intervention, which intervention was granted by Judge Colwell at the prehearing over the D&E carriers' objection.[9] At the prehearing, Judge Colwell established an expedited schedule for the conduct of the proceeding. The schedule was affirmed in her Scheduling Order dated November 28, 2006.

An evidentiary hearing was held on January 17, 2007, during which the D&E carriers, Verizon, OCA, and OSBA all presented witnesses and/or statements of testimony. The statements of testimony and exhibits were prefiled.[10]

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[8]See Order Compendium , M-1.

[9]See Order Granting Petition to Intervene of the Verizon Companies, Docket No. P-00981428F1000, et al., Order dated December 19, 2006.

[10]All D&E exhibits were prefiled except for D&E Exhibit 1-RJ.

II. THE D&E CARRIERS

D&E Telephone, Conestoga, and Buffalo Valley, as previously stated, are wholly-owned subsidiaries of D&E Communications, Inc. ("D&E"). D&E's witness, Leonard J. Beurer, Vice President - Regulatory Relations and External Affairs, described D&E as follows:

> D&E is a member of good standing in the central Pennsylvania corporate community. Its rural ILECs and other subsidiaries endeavor to provide our customers with advanced communications services. D&E is proud to consider itself as a provider of quality integrated communications services to residential and business customers. D&E Telephone was the first ILEC in Pennsylvania to deploy a 100% digitally switched network. D&E employs approximately 550 people most of which are Pennsylvania residents and all are dedicated to meeting the communications needs of our customers. D&E takes its service responsibilities seriously and its regulatory decisions are made in good faith and with the objective of assuring that its subsidiaries, including its rural ILECs, retain the fiscal and technological wherewithal to satisfy customer needs. The D&E carriers have committed under Act 183 to bring 100% broadband availability to their service territories by December 31, 2008.

D&E Statement No. 1 at 3.

D&E Telephone is a rural incumbent local exchange carrier ("ILEC") serving approximately 56,000 access lines of which 68% are residential customers. Its service territory includes portions of Berks, Lancaster, and Lebanon Counties. Conestoga is a rural ILEC serving approximately 53,500 access lines of which 75% are residential customers. Its service territory includes portions of Berks, Chester, Lancaster, Lehigh, and Montgomery Counties. Buffalo Valley is a rural ILEC serving approximately 20,000 access lines of which 70% are residential customers. Its service territory includes portions of Union and Northumberland Counties.[11]

All three carriers have approved Amended Chapter 30 Plans governing changes in their service rates. The amended plans were filed pursuant to Act 183. All three plans

[11]D&E Statement No. 1 at 4.

commit to provide 100% broadband availability to their rural service territories by December 31, 2008.[12]

The D&E carriers utilize the Chapter 30 process to meet their need for additional annual revenues to satisfy not only their expedited Chapter 30 network commitments, but also other public service obligations. Mr. Beurer explained:

> [T]he D&E carriers are fast at work to bring universal broadband availability to their rural service territories by December 31, 2008. The D&E carriers, in good faith, sought to utilize their effective Chapter 30 Plans to provide additional annual revenues to assist in providing funds necessary to provide service to new developments within our certificated service areas in accordance with our carrier of last resort obligations, to provide improvements in our networks to meet the service quality requirements our customers expect and that are required of us by PaPUC regulations and to assist in carrying out this network modernization to bring universal broadband availability to our rural customers by December 31, 2008.

D&E Statement No. 1 at 10.

[12] Id. at 40-41.

III. STATEMENT OF QUESTIONS INVOLVED

Q. Whether the rate changes in the June 28 Compliance Filings are contrary to Act 183 or the D&E carriers' Amended Chapter 30 Plans?

Answer: No.

Q. Whether the Commission entered any order prior to the effective date of Act 183 approving any limitations in the D&E carriers' Amended Chapter 30 Plans to increase intrastate access charges?

Answer: No.

Q. Whether the D&E carriers' June 28 Compliance Filings are contrary to the Commission's universal service funding regulations?

Answer: No.

Q. Whether the D&E carriers are in violation of the Commission's access service reform policies?

Answer: No.

Q. Whether the intrastate access charges in the D&E carriers' June 28 Compliance Filings are unjust and unreasonable?

Answer: No.

Q. Whether justification has been shown to overturn the discretion of D&E management in their 2006 PSI/SPI filings to increase intrastate access charges in lieu of imposing further local exchange rate increases or banking in order to recover the allowable revenue entitlements?

Answer: No.

IV. SUMMARY OF ARGUMENT

This case addresses a challenge to the D&E carriers' discretion under the Chapter 30 process to increase their intrastate access charges in lieu of further increasing basic exchange rates. Both the OCA and OSBA have presented witnesses supporting the Companies' ratemaking decision not to further increase local rates but instead to place most of the increase on access rates.

Under the Companies' Amended Chapter 30 Plans filed pursuant to Act 183, it is a matter of company discretion as to which rates should be increased, decreased, or modified. This management discretion should not be disturbed unless there is shown to be an abuse with the result shown to be contrary to the public interest.

The evidence in this proceeding clearly supports the justness and reasonableness of the D&E carriers' Chapter 30 rates. Moreover, the evidence shows that the rate changes are in compliance with Act 183, the Companies' Amended Chapter 30 Plans, the Global Order and subsequent orders related thereto, and the Commission's universal service fund regulations. The evidence also shows that the access charge increases do not create any further universal service funding needs nor constitutes double recovery as alleged by Verizon. The evidence shows that rural ILEC access charges were not frozen in the Commission's pending access and universal service fund investigation involving rural ILECs or its orders granting a stay in the investigation. The evidence shows that the access rates in question do not exceed the CC rates established in Global or as modified through the provisions agreed to in the 2003 Joint Stipulation Order, and the traffic-sensitive switched access rates mirror interstate rates consistent with the Global Order and the 2003 Joint Stipulation Order.

The evidence shows that the D&E carriers have been frontrunners in carrying out access reform. Their access rates are below the levels required under the Commission's access charge reform orders and the rates of most other rural ILECs. In addition, the

evidence shows that the local ratepayers, through significantly higher rates, have borne the brunt of this access charge reform. Finally, the evidence shows that the Companies are facing significant intermodal competition that required the D&E carriers to seek alternative rate changes in their 2006 PSI/SPI filings in order to prevent greater access line losses.

Under Act 183, an ILEC's rates must be shown just and reasonable. The D&E carriers have clearly satisfied this burden in the current proceeding. The arguments of the only party challenging the said rates, Verizon, have been shown to be without merit.

V. ARGUMENT

The issues before the ALJ in this bifurcated proceeding include whether the rate changes in the D&E carriers' June 28 Compliance Filings are consistent with the Commission's access service reform policy enunciated in the Global Order and orders related thereto, the regulations and policies governing the Pennsylvania USF, the staying of the pending intercarrier compensation proceeding at Docket No. I-00040105, and Chapter 30 and the D&E carriers' Amended Chapter 30 Plans.[13] Judge Colwell in her Scheduling Order at 2 concisely summarized these issues as follows:

> The [November 15] Order directs that the goal is to determine, "based on the record, whether any rescission or amendment [in the June 28 Compliance Filings] would be warranted by the evidence, consistent with our access charge reform and universal service policies, and lawful under the Companies' Chapter 30 plans."

For the purposes of this Main Brief, we will address these issues beginning with a discussion of Chapter 30 and the D&E carriers' Amended Chapter 30 plans.

A. The June 28 Compliance Filings Are Consistent with Chapter 30 and the D&E Carriers' Approved Amended Chapter 30 Plans

1. *D&E Carriers' Initial Chapter 30 Plans*

From a ratemaking standpoint, the D&E carriers' rates are governed under the terms of their Chapter 30 plans. The Pennsylvania Legislature on July 6, 1993, enacted Chapter 30 of the Public Utility Code.[14] As the Pennsylvania Supreme Court in Popowsky v. Pennsylvania Public Utility Commission,[15] recognized, the primary purpose of Chapter

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[13]See Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, Docket No. I-00040105; 2006 Annual Price Stability Index/Service Price Index Filing of Denver & Ephrata Telephone and Telegraph Company, Docket Nos. P-00981430F1000 and R-00061377; 2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone & Telegraph Company, Docket Nos. P-00981429F1000 and R-00061376; and 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, Docket Nos. P-00981428F1000 and R-00061375, Order entered November 15, 2006 (Order Compendium, M-1).

[14]66 Pa.C.S. §3001 et seq.

[15]Popowsky v. Pennsylvania Public Utility Commission, 706 A.2d 1197; 550 Pa. 449 (1977).

30 was to encourage the provision of universal broadband telecommunications service at affordable rates. The Court further recognized that the quid pro quo for an incumbent local exchange carrier's commitment to provide universal broadband availability to all customers is alternative regulation. Chief Justice Flaherty stated:

> Its purpose was to encourage the accelerated deployment of a state-of-the-art broadband communications network which would be affordable and universally available. To induce local phone companies to commit to the considerable investment necessary to achieve such extensive modernization in the telecommunications infrastructure, the law permits the PUC to approve an alternative form of regulation other than the traditional rate base-rate of return regulation.

706 A.2d at 1199 (footnote omitted).

Chapter 30's stated policy goals were also to maintain universal service by ensuring that consumers pay reasonable, non-discriminatory rates; that rates for noncompetitive services do not subsidize competitive ventures; that carriers provide diversified services; that there is efficient delivery of technological advances and new services; that products and services that enhance the quality of life of people with disabilities are provided; that competitive services will be provided by a variety of suppliers on equal terms; that competitive services will be supplied in any region where there is a market demand; and that joint ventures will be encouraged in order to accelerate network modernization.[16]

In order to promote these policy goals, Chapter 30 permitted ILECs to petition for an "alternative form of regulation."[17] Chapter 30 defined this as a "form of regulation of telecommunications services other than the traditional rate base/rate of return regulation, to be determined by the commission."[18] The Supreme Court in Popowsky further recognized that under an alternative form of regulation plan, the ultimate rates for

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[16]See 66 Pa.C.S. §3001.

[17]66 Pa.C.S. §3003(a).

[18]66 Pa.C.S. §3002.

noncompetitive services under the statute must be "just, reasonable and not unduly discriminatory."[19]

Pursuant thereto, the D&E carriers elected to be regulated under alternative regulation as enacted in the original Chapter 30 law. The initial Chapter 30 Plans of the D&E carriers were approved by Commission Order entered on July 30, 2001.[20] Under the Plans, the D&E carriers committed to provide universal broadband availability within their service territories by December 31, 2015.[21] The Plans also included a Price Stability Mechanism ("PSM") governing changes in the carriers' rates for "non-competitive services." As witness Beurer testified:

> Under the PSM formula, the D&E carriers' use the annual PSI to reflect the annual change in the GDPPI, including the additional impact of exogenous events. Initially, a 2% offset to the PSI formula was applied in determining the allowable annual change in intrastate noncompetitive service revenues. Once an allowed revenue change is determined, that revenue increase is allocated at the carriers' discretion among noncompetitive rates.

D&E Statement No. 1 at 31-32. The GDPPI (Gross Domestic Product-Price Index) is basically an inflationary index.

As defined in Chapter 30, noncompetitive services include protected services which includes both switched access services and services provided to residential consumers or business consumers that are necessary to complete a local exchange call.[22] The

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[19]Popowsky, 706 A.2d at 1199.

[20]Petition of the following Companies for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan: Armstrong Telephone Company-Pennsylvania, Armstrong Telephone Company-North, The Bentleyville Telephone Company, Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company, Hickory Telephone Company, Lackawaxen Telephone Company, Laurel Highland Telephone Company, Marianna & Scenery Hill Telephone Company, The North-Eastern Pennsylvania Telephone Company, North Pittsburgh Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Venus Telephone Corporation, Yukon-Waltz Telephone Company, Docket Nos. P-00981425, et al., Order entered July 30, 2001.

[21]D&E Statement No. 1 at 36.

[22]Id. See also 66 Pa.C.S. §3012.

"Consumer Protections" provisions in the Plans, limited on an annual basis increases in local rates for both residential and small business customers to no more than $3.50 per month. The Plans provided no limitations on increases to intrastate access charges.[23]

2. Act 183 and the D&E Carriers' Amended Chapter 30 Plans

On November 30, 2004, Governor Rendell signed into law Act 183,[24] which replaced the original Chapter 30 legislation. The primary purpose of Act 183 legislation was to accelerate the ILECs' broadband commitments without jeopardizing the provision of universal service at affordable rates. Section 3011 provides:

> (2) Maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas, including deployment of broadband facilities in or adjacent to public rights-of-way abutting public schools, including the administrative offices supporting public schools, industrial parks and health care facilities.
>
> * * *
>
> (12) Promote and encourage the provision of advanced services and broadband deployment in the service territories of local exchange telecommunications companies without jeopardizing the provision of universal service.

66 Pa.C.S. §§3011(2) and (12).

Another important policy provision in the Act was to reduce the regulatory obligations imposed on ILECs to provide them with an opportunity to meet the competitive forces in today's telecommunications market. Section 3011(13) provides:

> (13) Recognize that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers.

66 Pa.C.S. §3011(13).

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[23] Id. at 35.

[24] 66 Pa.C.S. §§3011-3019.

Section 3019(h) of Act 183 makes it clear that an approved Chapter 30 plan filed in compliance therewith governs an ILECs ratemaking changes:

> (h) Implementation.–The terms of a local exchange telecommunications company's alternative form of regulation and network modernization plans shall govern the regulation of the local exchange telecommunications company and, consistent with the provisions of this chapter, shall supersede any conflicting provisions of this title or other laws of this Commonwealth and shall specifically supersede all provisions of Chapter 13 (relating to rates and rate making) other than sections 1301 (relating to rates to be just and reasonable), 1302 (relating to tariffs; filing and inspection), 1303 (relating to adherence to tariffs), 1304 (relating to discrimination in rates), 1305 (relating to advance payment of rates; interest on deposits), 1309 (relating to rates fixed on complaint; investigation of costs of production) and 1312 (relating to refunds).

66 Pa.C.S. §3019(h).

Consistent with the original Chapter 30 legislation, Act 183 maintained the definition of "Protected Service" as including "switched access service."[25]

Pursuant to Act 183, the D&E carriers filed Amended Chapter 30 Plans expediting their universal broadband commitments from December 31, 2015 to December 31, 2008.[26] The Amended Plans, with the exception of the elimination of the 2% inflation offset from the PSI formula, did not change the PSM mechanism. The D&E carriers retained their discretion and right to adjust their noncompetitive service rates, including rates for intrastate switched access services, on an annual basis to reflect changes in the GDPPI. Mr. Beurer explained the D&E carriers' decision to file the Amended Chapter 30 Plans committing to 100% broadband by December 31, 2008, as follows:

> The D&E carriers chose the Section 3014(b)(1) option, what is commonly referred to as the 100%/2008 option. The D&E carriers chose this option based upon their commitments to bring 100% broadband deployment to their rural service territories as quickly as possible and based upon their belief that the elimination of the 2% inflation offset from their PSI/SPI formula for raising noncompetitive services rates and revenues would provide them with the additional annual revenues to carryout their 100% network commitment by December 31, 2008. Full elimination of the 2%

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[25] See 66 Pa.C.S. §3012.

[26] D&E Statement No. 1 at 40-41.

> offset was a critical consideration factoring into our choice as it provided us the greatest opportunity to realize the revenues and cash flow necessary for offsetting the costs associated with 100% deployment by December 31, 2008. Compared to the D&E carriers' original deployment obligations of 50% by 2008 and 100% by 2015, this accelerated commitment was substantial, and could only be achieved if the D&E carriers were afforded the full opportunity to achieve the revenue levels envisioned under Section 3015(a) of Act 183.
>
> The accelerated network commitments were also made with the understanding and belief that the D&E carriers retained the right under their Amended Chapter 30 Plans to increase rates for protected services under the PSI/SPI, which as earlier explained included the right to increase intrastate access charges as a protected service. If we had been informed that there was some implied prohibition that our intrastate access rates had been frozen by the PaPUC, the D&E carriers may not have been able to make the 100% accelerated broadband commitments to their rural service territories by December 31, 2008.

D&E Statement No. 1 at 40-41.

Following review of the Amended Plans, the Commission approved the Plans. Witness Beurer testified:

> [B]y Order entered June 3, 2005, the PaPUC ordered "that the Petition for an Amended Alternative Regulation and Network Modernization Plan for the Denver and Ephrata Telephone and Telegraph Company (Docket Number P-00981430F1000) is hereby approved, as in compliance with Act 183 of 2004, P.L. 1398 (66 Pa.C.S. §§3011-3019), consistent with this Order." By Order entered June 3, 2005, the PaPUC ordered "that the Petition for an Amended Alternative Regulation and Network Modernization Plan for the Conestoga Telephone and Telegraph Company (Docket Number P-00981429F1000) is hereby approved, as in compliance with Act 183 of 2004, P.L. 1398 (66 Pa.C.S. §§3011-3019), consistent with this Order." By Order entered June 3, 2005, the PaPUC ordered "that the Petition for an Amended Alternative Regulation and Network Modernization Plan for the Buffalo Valley Telephone Company (Docket Number P-00981428F1000) is hereby approved, as in compliance with Act 183 of 2004, P.L. 1398 (66 Pa.C.S. §§3011-3019), consistent with this Order."

D&E Statement No. 1 at 43.

Although the Companies' Amended Chapter 30 Plans, through the Consumer Protections, place no limitation on the Companies' right to increase access charges,

Section 3017(a) of Act 183 does limit the Commission's right to order reductions therein by requiring reductions be imposed on a revenue-neutral basis.[27]

No party to this proceeding has contended that the June 28 Compliance Filings and the access charge increases therein are in violation of the provisions of the Companies' Amended Chapter 30 Plans. In fact, Verizon's witness Don Price testified that the June 28 Compliance Filings do not violate the provisions of the Companies' Amended Chapter 30 Plans:

> **Q. IS IT YOUR TESTIMONY THAT THE D&E COMPANIES' INCREASES UNDER THEIR CHAPTER 30 PLANS ARE IMPERMISSIBLE?**
>
> A. No.

Verizon Statement No. 1.0 at 16. However, the Verizon witness challenged the D&E carriers' discretion in increasing their intrastate access charges in the June 28 Compliance Filings and sought Commission review thereof.[28]

B. The June 28 Compliance Filings Are Consistent with Prior Commission Orders

With there being no challenge to whether increases in intrastate access services are permitted under the D&E carriers' approved Amended Chapter 30 Plans, the next question becomes whether they are expressly prohibited by any Commission order. We must again direct our attention to Act 183 before addressing this question.

With the D&E carriers' Amended Chapter 30 Plans having been approved by the Commission, the Commission cannot now unilaterally change the provisions of the plans without the Companies' approval. In other words, since it is clear that increases in intrastate access services are permitted under the Amended Chapter 30 Plans, any

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[27]66 Pa.C.S. §3017(a).

[28]Verizon Statement No. 1.0 at 17-18.

Commission action to now prohibit such increases would be a unilateral change to the provisions of the plans. Section 3013(b) of Act 183 specifically provides:

> **(b) Limitation on changes to plans.**–Except for changes to existing alternative form of regulation and network modernization plans as authorized by this chapter, no change to any alternative form of regulation or network modernization plan may be made without the express agreement of both the commission and the local exchange telecommunications company. *(Emphasis added)*

66 Pa.C.S. §3013(b).

There are two exceptions to this Section 3013(b) limitation. The first is the just and reasonable standard, which we address in Section V.D herein. The second exception is a Commission order issued prior to the approval of the Amended Chapter 30 Plans limiting rate changes thereunder. Section 3015(g) of Act 183 reads:

> **(g) Rate change limitations.**–Nothing in this chapter shall be construed to limit the requirement of section 1301 (relating to rates to be just and reasonable) that rates shall be just and reasonable. The annual rate change limitations set forth in a local exchange telecommunications company's effective commission-approved alternative form of regulation plan or any other commission-approved annual rate change limitation shall remain applicable and shall be deemed just and reasonable under section 1301.

66 Pa.C.S §3015(g) (emphasis added).

Consequently, we must determine whether at the time of Commission approval of the D&E carriers' Amended Chapter 30 Plans there were any Commission orders expressly prohibiting the Companies from increasing or modifying their intrastate access rates under the approved Chapter 30 alternative regulation plans. To answer this question, a review of the Commission's orders and regulations applicable to intrastate access charge reform and universal service funding is necessary.

1. Global Order and Pennsylvania Universal Service Fund Regulations

The Global proceeding was the landmark proceeding in Pennsylvania to address the ramifications of the Telecommunications Act of 1996. From the standpoint of the rural ILECs, the proceeding addressed revenue-neutral rate reform together with universal

service funding. Following hearings and briefing, the Commission entered its Global Order on September 30, 1999,[29] resolving the proceeding. The Global Order permitted the rural ILECs to lower their toll rates, increase their local rates, and modify their intrastate access rates to reflect a monthly per line CC not to exceed $7.00 per month. The Global Order also permitted the rural ILECs to increase or decrease their traffic-sensitive switched access rates to mirror or match their interstate rates. To the extent the rate changes resulted in a revenue shortfall, the Commission established a universal service fund to offset the difference to assure revenue neutrality. For the purpose of universal service funding, the Commission established a R-1 monthly rate cap of $16.00. In other words, if a rural ILEC's average R-1 rate exceeded $16.00, it would credit the residential end user for the difference and recover the revenue difference through the universal service funding mechanism.[30] The Global Order also directed that universal service funding would be subject to further review in 2001.[31]

The Global Order adopted the concept of mirroring interstate access rates.[32] This ratemaking concept means to bring intrastate traffic-sensitive switched access rates into parity with interstate rates.[33] The Commission in the Global Order did not rely on cost studies in adopting its rate change reform and universal service funding associated therewith.[34] However, as Mr. Beurer testified, the mirroring of interstate access rates resulted in cost recognition:

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[29]Re Nextlink Pennsylvania, Inc., 196 PUR 4th 172, 93 Pa. P.U.C. 172 (1999).

[30]196 PUR 4th at 200-203 and 236-241; A detailed summary of the Global Order is also set forth in D&E Statement No. 1 at 11-16.

[31]Id. at 205.

[32]Id. at 202.

[33]D&E Statement No. 1 at 12.

[34]Id. at 17.

> [S]ince the D&E carriers' interstate access rates are designed by NECA and approved by the FCC based on costs in accordance with FCC rules and regulations, it ensures that the intrastate access rates are compensatory rates.

D&E Statement No. 1 at 16. Consistent therewith, the Commission in its June 23 Orders in this proceeding noted "that mirroring interstate rates is a step towards attaining cost-based intrastate access service charges while avoiding arbitrage and promoting competition."[35]

The Commission in the Global Order likewise recognized that the mirroring of interstate rates was necessary to avoid jurisdictional arbitrage.[36] Jurisdictional arbitrage is the misidentification of traffic by jurisdiction on the part of IXCs in order to be billed at the lowest access charges possible.[37]

Following the entry of the Global Order, the Commission conducted a rulemaking proceeding resulting in regulations at 52 Pa. Code §63.161 et seq., establishing the Pennsylvania Universal Service Fund ("PaUSF"). Pursuant to the said PaUSF regulations, D&E Telephone received no funding support for reductions in access rates. As Mr. Beurer testified:

> D&E Exhibit 2 identifies the amount of PaUSF receipts and estimated amount of PaUSF assessment included in the receipts. This exhibit shows that the amount of support D&E Telephone was to receive as a result of the Global proceeding calculations was only an amount equal to what was estimated that D&E Telephone would be required to pay into the PaUSF. In other words, D&E Telephone received no support dollars for changes in intrastate rates as a result of the Global proceeding. While the amount due D&E Telephone has not changed over time, the assessment amount owed by D&E Telephone to the PaUSF has increased, making D&E Telephone a net payer into the fund today.

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[35]See e.g. June 23 Order (Order Compendium, I-1 at I-7).

[36]196 PUR 4th at 202.

[37]D&E Statement No. 1 at 16.

D&E Statement No. 1 at 17. On the other hand, D&E Exhibit 2 (which is marked proprietary) does reveal that Conestoga and Buffalo Valley do receive PaUSF funding support.

It is extremely important to note that nowhere in the Global Order or the PaUSF regulations did the Commission order that the rural ILECs, including the D&E carriers, were precluded from increasing, decreasing or modifying their intrastate access charges in subsequent Chapter 30 rate filings.[38]

2. 2003 Joint Stipulation Order

In June 2002, the Commission, pursuant to the Global Order, did open an investigation at Docket No. M-00021596 revisiting access charge and universal service funding. Following extensive negotiations, the Rural Telephone Company Coalition ("RTCC"), Sprint, OCA, OTS, and OSBA filed a Joint Procedural Stipulation which Verizon did not oppose.[39] The Joint Stipulation was approved by Commission Order entered July 15, 2003, at Docket No. M-00021596, et al., Access Charge Investigation per Global Order of September 30, 1999 ("2003 Joint Stipulation Order").[40]

The 2003 Joint Stipulation Order again approved revenue neutral rate reform for the rural ILECs. The Order permitted rural ILECs to lower their intrastate traffic-sensitive rates to move closer to or mirror their interstate rates and increase their CC by a corresponding revenue-neutral amount in 2003 and 2004. Also, for 2003 only, each rural ILEC was required to increase its R-1 rates but not to a monthly average rate greater than $18.00.[41]

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[38]D&E Statement No. 1 at 18.

[39]D&E Statement No. 1 at 18-21.

[40]See Access Charge Investigation per Global Order of September 30, 1999, Docket No. M-00021596, et al., Order entered July 15, 2003 (Order Compendium at B-1).

[41]This $18.00 cap replaced the $16.00 cap established in the Global Order. See D&E Statement No. 1-SR at 10.

If, however, the average R-1 rate exceeded $18.00 in order to achieve revenue neutrality, the revenue associated therewith was to be recovered from the PaUSF.[42]

The 2003 Joint Stipulation Order did not mandate that rural ILECs mirror their traffic-sensitive interstate access rates but fully supported mirroring stating, as follows:

> While the Joint Proposal does not require a rural ILEC or Sprint/United to mirror interstate access charges, the fact that this is a step towards making the charges closer to cost and closer to the interstate access charges will help to avoid arbitrage and will help competition enter the ILEC's territories.

2003 Joint Stipulation Order at 11.

Likewise, consistent with the Global Order, the 2003 Joint Stipulation Order provided no limitation whatsoever on the right of a rural ILEC to subsequently modify or increase its CC or intrastate traffic-sensitive access rates in any way in a subsequent Chapter 30 filing. As Mr. Beurer testified:

> [T]here was no express provision in the Order stating that access rates were frozen. Based thereon, the D&E carriers retained the right under their Chapter 30 Plans to adjust their intrastate access charges as long as they remained consistent with the Global Order and consistent with their plans. More specifically, it was our understanding that we retained the right and flexibility in accordance with our Chapter 30 Plans to change all noncompetitive rates, subject to the terms of our PSI/SPI. This allowed us to increase our CC rates as long as we remained below the rates established in the Global Order and allowed us to continue prior PaPUC approved orders that provided for mirroring of our interstate rates to avoid arbitrage.

D&E Statement No. 1 at 22.

Moreover, consistent with the Global proceeding, the Commission did not rely on cost studies when adopting the rate changes in the 2003 Joint Stipulation Order.[43]

Pursuant to the Order, many rural ILECs increased their CC far in excess of the $7.00 per line benchmark rate established in the Global Order and mirrored their traffic-

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[42]The Order also permitted smaller ILECs with less than 20,000 access lines to receive an additional $2.00/month/line from PaUSF funds if they reduced their access charges to offset such amount. See D&E Statement No. 1 at 19.

[43]D&E Statement No. 1 at 21-22.

sensitive interstate rates.[44] Since the D&E carriers' intrastate traffic-sensitive switched access rates were already below their interstate rates, the Companies had no necessity to modify such rates. Also, since D&E Telephone and Conestoga had voluntarily rebalanced their rates through increases in local rates and decreases in their CC in their 2003 PSI/SPI filings, they had no necessity to further adjust their rates pursuant to the 2003 Joint Stipulation Order. Buffalo Valley, however, to fully reflect the ramifications of the Order did increase its local rates and decrease its CC.[45] It is important to note that none of the D&E carriers received any further PaUSF support as a result of the 2003 Joint Stipulation Order.[46]

3. Current Access Charge Investigation Orders

By Order entered December 20, 2004, Docket No. I-00040105 ("December 20 Order"), the Commission issued a further statewide investigation of access and toll rates and the PaUSF.[47] The scope of the investigation was enunciated as follows:

> Whether there should be further intrastate access charge reductions and intrastate toll rate reductions in the service territories of rural ILECs and all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund are reduced.

December 20 Order at 1. This December 20 Order did not restrict or prohibit access charge changes under the Chapter 30 process during the pendency of the investigation.

Since the Federal Communications Commission ("FCC") initiated a Unified Intercarrier Compensation proceeding which could materially impact intrastate access charges, the RTCC, OCA, and OTS requested that the Commission intercarrier

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[44] Id.

[45] D&E Statement No. 1 at 20-21.

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

[47] See Id. (Order Compendium, D-1).

compensation and universal service funding investigation at Docket No. I-00040105 be deferred. By Order entered August 30, 2005 ("August 30 Order"),[48] the Commission stayed the investigation for a period of 12-months. At the end of the stay, the Commission directed that the resumed investigation:

> ... should include and provide record evidence addressing the legal., ratemaking, and regulatory accounting linkages between: (1) the FCC's ruling in its Unified Intercarrier Compensation proceeding; (2) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§ 3015 and 3017; (3) the Pa. USF; and (4) the potential rate effects on the basic local exchange services of the rural ILECs.

August 30, 2005 Order at 18. Again, the Commission did not prohibit the rural ILECs from changing (including increasing) their intrastate access charges under Chapter 30 during the stay. As Mr. Beurer testified:

> While the PaPUC's Order stayed the investigation, there was no express provision in the Order stating that access rates were frozen during the pendency of the stay. Based thereon, the D&E carriers retained the right under their Amended Chapter 30 Plans to adjust their intrastate access charges as long as they remained consistent with the Global Order and consistent with their plans. More specifically, it was our understanding that we retained the right and flexibility in accordance with our Chapter 30 Plans to change all noncompetitive rates, subject to the terms of our PSI/SPI. This allowed us to increase our CC rates as long as we continued to remain below the rates established in the Global Order and allowed us to continue prior PaPUC approved orders that provided for mirroring of our interstate rates to avoid arbitrage.

Following the filing of the Missoula Plan before the FCC, the RTCC, OCA, OTS, and Embarq requested a further stay in the I-00040105 investigation. The further stay was granted by Commission Order entered November 15, 2006 ("November 15 Order").[49]

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[48] See Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund, Docket No. I-00040105, Order entered August 30, 2005 (Order Compendium, F-1).

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

Again, the Commission did not prohibit changes in intrastate access charges during the pendency of the stay. Also, at no time did the Commission during the pendency of the stayed I-00040105 investigation order that any rural ILEC's amended Chapter 30 plan was to be in anyway limited to prohibit access charge changes during the pendency of the I-00040105 investigation.[50]

4. Summary

As earlier stated, Section 3015(g) of Act 183 specifically provides that the "annual rate change limitations set forth in a local exchange telecommunications company's *effective commission-approved [Chapter 30] alternative form of regulation plan or any other* commission-approved annual rate change limitation shall remain applicable and shall be deemed just and reasonable under Section 1301." It has been shown that the D&E carriers' Commission-approved Amended Chapter 30 Plans permit the Companies to modify and increase rates for intrastate access services under the annual PSI/SPI rate change formula in the plans. Also, it has been shown that there was no Commission order entered prior to the effective date of Act 183, i.e. November 30, 2004, expressly limiting the D&E carriers' right to modify (including to increase) their intrastate access rates under their annual PSI/SPI rate change formula. Neither the Global Order nor the 2003 Joint Stipulation Order precluded further access charge rate changes including increases therein. Further, it has been shown that the Commission's orders opening and staying the pending access charge and universal service funding investigation at Docket No. I-00040105 did not expressly limit the application of approved Chapter 30 plans. Section 3013(b) of Act 183 prohibits changes to Chapter 30 plans "without the express agreement of both the commission and the local exchange telecommunications company."[51] In this case, the D&E carriers clearly did not agree to any change to their plans to prohibit access charge modifications. Under

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[50] See D&E Statement No. 1 at 26.

[51] 66 Pa.C.S. §3013(b).

these circumstances and under the provisions of Act 183, the D&E carriers clearly had the right to implement the access charge changes reflected in their June 28 Compliance Filings.

C. The June 28 Compliance Filings' Access Rates Comply with Commission Access Charge Reform Policy

The D&E carriers respectfully submit that their June 28 Compliance Filings' access charges are also in compliance with the access rate reform policy of this Commission. In fact, the evidence shows that even after the increases in the June 28 Compliance Filings, the Companies have been frontrunners in achieving access charge reform.

Let us examine the progress the Companies have achieved in the way of access charge reform. Using the Global proceeding as the starting point, the evidence as summarized in the chart below shows that the D&E carriers through the Chapter 30 process have voluntarily reduced their intrastate access charges significantly:

	$ 04/01/00 Global	$ 06/26/01	$ 07/01/02	$ 07/01/03	$ 11/03/03	$ Current
D&E Telephone						
Carrier Charge	6.11	5.61	5.11	4.04	4.04	5.17
Composite Traffic Sensitive	.035366	.027804	.023888	.023888	.023888	.024524
Conestoga						
Carrier Charge	7.00	6.50	6.00	4.83	4.83	4.44
Composite Traffic Sensitive	.025429	.019523	.016796	.016796	.016796	.024440
Buffalo Valley						
Carrier Charge	7.00	6.50	6.00	4.79	4.20	5.11
Composite Traffic Sensitive	.027521	.019955	.016130	.016130	.016130	.016377

As can be seen, even after the June 28 Compliance Filings, the D&E carriers' CC rates remain significantly below the $7.00 Global benchmark rate. In addition, the D&E carriers' traffic-sensitive switched access rates on a composite basis remain far below the Global levels. Further, directly consistent with the Global Order, the said intrastate traffic-sensitive rates again mirror interstate rates. As the Commission directed in the Global Order:

> It is critical, from the perspective of Pennsylvania's rural ILECs, that the Commission mirror these access reforms at the state level. Since there is no functional difference between access provided on an interstate or intrastate basis, any pricing differential that may exist will give an incentive to IXCs, upon whom ILECs rely to identify the volume of terminating interstate and intrastate traffic, to report lesser usage in the higher cost venue. In sum, "in order to avoid tariff arbitrage, it is extremely important that intrastate access charges *mirror* their federal counterpart." Id. at 8 (emphasis added).

196 PUR 4th at 202. Without question, the D&E carriers' current intrastate access rates, even after the June 28 Compliance Filings, remain directly consistent with the Commission's stated goal of intrastate access charge reform as initiated with the Global proceeding.

D&E Exhibit 1 reveals, from a CC standpoint, that the D&E carriers are far ahead of most of the other rural ILECs in Pennsylvania. In fact, the exhibit shows many rural ILECs have CCs now above $10.00. The truth of the matter is that many of these other rural ILECs have only adjusted their access rates in compliance with the Global Order and 2003 Joint Stipulation Order and not pursued reform under Chapter 30. Whereas, the D&E carriers have voluntarily lowered both their CCs and traffic-sensitive rates through the Chapter 30 process.[52] Mr. Beurer, in D&E Exhibit 1-RJ, demonstrated that if the D&E carriers had only adjusted access charges in compliance with the Commission's access charge reform orders, i.e. Global Order and 2003 Joint Stipulation Order, their access rates

[52]D&E Statement No. 1 at 20-21.

would today be significantly higher than the June 28 Compliance Filings rates, as shown in D&E Exhibit 1-RJ; T.50-51.

Obviously, even after the June 28 Compliance Filings' rates are reflected, the D&E carriers have gone to great lengths to comply with the Commission's endeavor to achieve access charge reform. Mr. Beurer calculated that the cumulative savings to the access customers from these reductions have exceeded $30 million.[53] Furthermore, the Companies' rate changes since Global have had no impact on the PaUSF or the Companies' draws therefrom.[54] Thus, there is no way that the June 28 Compliance Filings can be construed to be in conflict with this Commission's universal service fund regulations or orders.

The local ratepayers, however, have borne the consequences of this access charge reform. As Mr. Beurer testified:

> Since the Global Order, carriers such as Verizon have enjoyed the benefit of significant access charge savings due to D&E's aggressive rate rebalancing. Had the D&E carriers elected not to do any voluntary access reductions, their access rates would be much higher than they are today yet still be in accordance with all PaPUC orders. In contrast, the D&E carriers' local exchange ratepayers have been forced to bear the consequences of its access charge rate reform efforts by paying substantially higher basic exchange rates. In today's competitive markets, further increases in basic exchange rates just does not make sense.

D&E Statement No. 1 at 46. This impact on the D&E carriers' local exchange ratepayers, as shown below, cannot be overlooked or ignored:

D&E Telephone

R-1 Rate:	Pre-Global	$ 7.37 to 10.47
	Current	$15.69 to 17.85
B-1 Rate:	Pre-Global	$14.38 to 20.43
	Current	$21.05 to 25.10

[53]D&E Statement No. 1.1 at 23-24.

[54]D&E Statement No. 1 at 48.

	Conestoga	
R-1 Rate:	Pre-Global	$ 5.83 to 8.41
	Current	$12.46 to 15.18
B-1 Rate:	Pre-Global	$11.67 to 16.83
	Current	$15.55 to 20.71
	Buffalo Valley	
R-1 Rate:	Pre-Global	$ 7.00
	Current	$14.50
B-1 Rate:	Pre-Global	$14.00
	Current	$18.10

D&E Statement No. 1 at 47. See also D&E Exhibit 4, Sheets 2 and 3.

Under these circumstances, there can be no question that the D&E carriers are in compliance with the access charge reform policies of this Commission. The Companies' management decision not to again increase local rates in their 2006 PSI/SPI filings, with the exception of the Buffalo Valley $0.30 increase, is justified. It should be further emphasized that the Commission upon its approval of the D&E carriers' initial Chapter 30 Plans in 2000 specifically found that their rates, including access rates, were "just, reasonable, nondiscriminatory and otherwise fully in compliance with all Pennsylvania laws."[55] The June 28 Compliance Filings' access rates are significantly below those rates found just and reasonable.

D. The June 28 Compliance Filings' Access Rates Are Just, Reasonable, and Nondiscriminatory

Section 3015(g) of Act 183 continues the requirement that all rates established under a Chapter 30 plan must comply with Section 1301[56] requiring rates to be just, reasonable, and nondiscriminatory.[57] The just and reasonable ratemaking standard was

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[55]D&E Statement No. 1 at 31.

[56]66 Pa.C.S. §1301.

[57]See also Popowsky, 706 A.2d at 1199, 550 Pa. 449 (Pa. 1977).

retained from the rate base/rate of return ratemaking methodology. Our appellate courts have long held that a utility's rate is "just and reasonable" if the rate will give the utility a fair return.[58] With Chapter 30 having replaced the rate base/rate of return methodology, the just and reasonable standard must now be construed to grant the Commission authority to review an ILEC's managerial decision to change its charges for service to result in rates that are in the public interest based upon the evidence and the surrounding circumstances.

It must be recognized that in determining whether a rate change is just and reasonable, the Commission must not interfere with managerial decisions of the utility, absent abuse of discretion. As the Supreme Court stated in Pennsylvania Public Utility Commission v. Philadelphia Electric Co.:[59]

> Although the Commission is a watchdog for the public and against unreasonable rates, the Commission must not interfere with managerial decisions of a utility absent an abuse of discretion. Commonwealth Court has aptly characterized the interplay between the Commission, the utility and the public as follows:
>
> > It is also fundamental that the Commission has an ongoing duty to protect the public from unreasonable rates while insuring that utility companies are permitted to charge rates sufficient to cover their costs and provide a reasonable rate of return. Commonwealth v. Duquesne Light Co., 469 Pa. 415, 366 A.2d 242 (1976). Recognizing the Commission's duty to the public and a utility's right of self-management, our courts adopted the further proposition that it is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown. Lower Chichester Township v. Pennsylvania Public Utility Commission, 180 Pa.Super. 503, 511, 119 A.2d 674 (1956); Pittsburgh v. Pennsylvania Public Utility Commission, 173 Pa.Super. 87, 92, 95 A.2d 555, 558 (1953); see Pennsylvania R.R. v. Pennsylvania Public Utility Commission, 17 Pa.Cmwlth. 333, 339-40, 331 A.2d 572, 575 (1975). An obvious corollary of the above proposition is that if there has been an abuse of managerial discretion, and the public interest has been adversely affected thereby, then the Commission is empowered to intervene.

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[58]Pennsylvania Petroleum Ass'n v. Pennsylvania Power & Light Co., 412 A.2d 522, 488 Pa. 308 (1980).

[59]Pennsylvania Public Utility Commission v. Philadelphia Electric Co., 561 A.2d 1224, 522 Pa. 338 (1989).

> 62 Pa.Commw. at 467, 437 A.2d at 80. Lastly, in determining whether management has abused its discretion in operating a utility, the Commission cannot fall prey to judging management action by hindsight. Instead, management's actions must be judged on what it knew or should have known at the time in question. Pittsburgh v. Pennsylvania Public Utility Commission. 370 Pa. 305, 88 A.2d 59 (1952) and National Fuel Gas Distribution Corp. v. Pennsylvania PUC, 76 Pa.Commw. 102, 464 A.2d 546 (1983).

561 A.2d at 344.

The overwhelming weight of the evidence in this proceeding clearly demonstrates there was no abuse of discretion on the part of D&E's management in designing the rate changes in the June 28 Compliance Filings. Not only are the intrastate access rates therein supported by the D&E carriers, the access rates are also supported by the OCA and OSBA.

1. D&E's Justification of the Rate Changes

The evidence shows that upon thorough review of its prior local rate changes and with an understanding of current competitive marketplace forces within its rural service territories, D&E's management exercised its discretion as to which rates to change to produce its annual Chapter 30 revenue entitlements. Indeed, management elected a multitude of rate changes. It elected to increase Buffalo Valley's basic local exchange, PBX and pay station rates, increase all three companies' non-basic local service rates, decrease Conestoga's CC, increase the D&E Telephone and Buffalo Valley CCs, and mirror all three companies' interstate traffic-sensitive switched access charges through increases in intrastate access charges.[60] Certainly, the public interest has not been adversely impacted by this exercise of managerial discretion.

The D&E carriers' local exchange ratepayers have experienced continuous increases in rates since the Global proceeding in the Companies' access charge reform efforts. Over the past several years, D&E carriers' access charge rate reform efforts have

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[60]See D&E Statement No. 1 at 43-55.

forced local ratepayers to bear the consequences of this reform by paying substantially higher basic exchange rates.[61] In carrying out this access charge rate reform, D&E carriers have already transferred a significant revenue burden to their local exchange rates through R-1 and B-1 local exchange rate increases.[62] D&E carriers' end users have experienced increases from over 60% to over 100% since Global.[63]

Additionally, the local rate increases occurring nearly every year since Global have made the rates of D&E Telephone residential end users to be among the highest in the state.[64] The D&E carriers' prior filings have resulted in increase after increase to local rates to the point that management determined with their 2006 PSI/SPI filings that it was neither prudent nor in the interest of their end user customers to insist, with the exception of the Buffalo Valley increase, that local rates be increased yet again.[65]

Another compelling reason for the D&E carriers' decision not to implement further increases in local rates in their 2006 PSI/SPI filings arises from intermodal competition which realistically precludes the D&E carriers from enacting ongoing annual increases to local service rates. The D&E carriers are incurring significant costs in carrying out the expedited broadband deployment, while at the same time they are losing access lines and facing growing competition from wireless carriers and non-facilities based VoIP providers who continue to operate on a far less regulated basis.[66]

This intermodal competition for telephone service is rapidly becoming a major competitive factor because broadband is now reaching the home of every resident of

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[61] Id. at 46.

[62] Id. at 47.

[63] D&E Statement No. 1-R at 24.

[64] Id.

[65] Id. at 6.

[66] D&E Statement No. 1 at 49.

Pennsylvania.[67] In addition, multiple providers offer cell phones and high speed internet services which allow mobility and provide additional services such as email, instant messaging and VoIP services that broaden consumers' telecommunication options. Moreover, businesses are combining voice and data communication onto a single (IP-based) platform and providers are beginning to extend options like these into the residential realm. In order to realize savings, customers are switching each month from their incumbent local exchange service to intermodal competitors. As a result of this intermodal competition and other factors, the D&E carriers have suffered a loss of 10,550 access lines over the last three years and all revenues associated with these lines.[68]

This intense competition from intermodal competitors causes line loss and inversely increases rural ILECs' reliance on universal service, which directly contradicts the intent of Chapter 30 for the incumbents to fund ubiquitous advanced services. In the June 23 Orders, the Commission recognized that:

> [I]ncreases in local rates that produce the kind of access services line losses the company wants to avoid could contravene the PaPUC's legal obligation to preserve universal service in PA and unnecessarily increase funding demands on PaUSF in advance of any national intercarrier compensation reform."

Also, see D&E Statement No. 1 at 51.

Chapter 30 required that the D&E carriers expedite broadband deployment and caused D&E to incur related expenses. Contemporaneously, intermodal competition is curbing rates the D&E carriers can charge for local telephone service and has caused D&E carriers to lose lines.

Under the circumstances, increasing local rates yet again in their 2006 PSI/SPI filings was simply not a viable option for the D&E carriers in today's competitive business

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[67]D&E Statement No. 1 at 49-50.

[68]Id. at 49-51. Forecasters, in recognizing this intermodal competition, project that ILECs could lose over 70% of their access lines by 2013. Id. at 50.

environment. In contrast, the D&E carriers have been frontrunners in pursuing intrastate access charge reform. At the time of the 2006 PSI/SPI filings, their CCs were significantly below the $7.00 benchmark rate established in the Global proceeding and its intrastate traffic-sensitive switched access rates were significantly below their Global levels.[69] The CC and switched access rates were also well below the rates that would have been in effect if the D&E carriers had not made voluntary reductions and complied only with Global and 2003 Joint Stipulation Order.[70] In addition, such traffic-sensitive rates were no longer at or above their cost-based interstate rates. Accordingly, in the discretion of D&E management, the Companies decided it was in their best interest and the best interest of their customers and rural service territories to increase the D&E Telephone and Buffalo Valley CCs but to levels still remaining well below the levels stated above and to increase all three companies' traffic-sensitive switched access rates in order to again mirror their corresponding interstate rates.

Overall, the alternative of reallocating the proposed revenue increases to basic local exchange services, rather than access charges, generated other less than desirable outcomes to D&E management.[71] From a public interest standpoint, there are negative consequences emanating beyond the periphery of D&E's company concerns, much of which involve the PaUSF. If D&E carriers were not permitted to increase access rates, D&E carriers would be forced to increase local service rates to a level for D&E Telephone in excess of the $18.00 rate cap set by the 2003 Joint Stipulation Order.[72] By allocating the entire 2006 PSI increase to local rates, the average R-1 rates for D&E Telephone would have exceeded the rate cap and required the amounts in excess of the $18.00 billed to end

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[69]See D&E Exhibit 2.

[70]See D&E Exhibit 1-RJ.

[71]D&E Statement No. 1 at 53.

[72]Id. at 54-55.

users to be recovered from PaUSF funding, which in turn would have increased the assessment amount charged to all carriers funding the PaUSF.[73]

After reviewing existing rates and the history of its PSI/SPI filings and other rate changes over the past several years, and after analyzing the potential impact to ratepayers and to the PaUSF, D&E's management exercised its discretion within the parameters of the Amended Chapter 30 Plans, and made a sound and justified business decision to increase intrastate access rates.

2. Position of OCA and OSBA

The OCA and OSBA both recognized that over the past several years the D&E carriers have significantly increased local rates. As such, both OCA and OSBA agree with the D&E carriers that in their 2006 PSI/SPI filings it was not prudent for the Companies to continue increasing basic local exchange rates, and that increases in intrastate access charges are justified.

In the rebuttal testimony of OCA witness Dr. Robert Loube, the witness recognized that D&E carriers' residential basic local services rates are, on average, higher than Verizon's residential rates. He also recognizes that if the Commission were to force D&E management to adopt Verizon's recommendations, then the Companies' local rates would be higher than all of the Verizon rates. Dr. Loube further acknowledged that if local service rates were to increase, the average rates would be above the $18.00 creating a PaUSF funding obligation.[74]

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[73]D&E Statement No. 1-R at 7.

[74]OCA Statement No. 1-R at 18-19.

Dr. Loube further testified that Verizon fails to recognize the impact on consumers of increases in basic local service rates. Dr. Loube expressed concern about the decline in the telephone penetration rate in Pennsylvania. He averred that one factor contributing to this decrease may be that the rate for local service is on the rise. The witness reiterated the D&E witness Mr. Beurer's calculations showing that the D&E carriers' local rates have significantly increased since the adoption of the Global Order. In order to prevent further declines in telephone penetration, Dr. Loube suggests that it may be necessary to limit future basic service rate increases, which supports the D&E carriers' decisions made in their 2006 PSI/SPI filings.[75] Finally, Dr. Loube addressed the fact that access rate increases can actually increase the affordability of local service and if the Commission were to require an ILEC to increase only its local service rates during rate reviews under Chapter 30, then the Commission would be requiring local service to recover revenues associated with access service.[76]

In addition to the OCA, the OSBA supports the decision of the D&E carriers to increase access rates in lieu of yet again imposing further increases on basic local exchange rates. OSBA witness Allen G. Buckalew testified "proposals to reduce access charges or hold them constant, or to shift these costs to local subscribers are wrong from an economic standpoint and in a new Chapter 30 environment."[77] Mr. Buckalew advanced this position by recognizing that the D&E carriers have increased their local exchange rates

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[75]OCA Statement No. 1-R at 28.

[76]Id. at 28.

[77]OSBA Statement No. 1 at 13.

by as much as 126% since 2000, and if local exchange rates continue to increase, the impact on the D&E carriers will be "counterproductive and negative" in that they will lose customers as a result. [78]

In light of this evidence and with the evidence showing the magnitude of increases borne by the local ratepayers in recent years, there certainly was no abuse of management discretion in its decision to apply the Chapter 30 increase to access rates. This is particularly so when the CCs remain below the levels established in Global, and as calculated pursuant to the 2003 Joint Stipulation Order, and the traffic-sensitive switched access rates mirror the interstate rates consistent with both the Global Order and the provisions of the 2003 Joint Stipulation Order.

Further, the fact the D&E carriers elected to place the majority of the increase on access rates in lieu of again forcing local ratepayers to bear the brunt of this increase is not an abuse of discretion. The mere difference in rate increases between classes of service does not establish unreasonable discrimination.[79]

E. Verizon's Arguments in Opposition to the June 28 Compliance Filings Are Without Merit

Verizon makes numerous efforts through the testimony of its witness, Mr. Price to discredit the D&E carriers' decision to increase access rates. Verizon provided examples of how the D&E carriers "could" have allocated its PSI revenue entitlement other than to access rates.[80] It argued that access rate increases would sharpen the historical

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[78] Id. at 14.

[79] See Sharon Steel Corporation v. Pa. P.U.C., 468 A.2d 860, 78 Pa. Commw. 447 (1983).

[80] Verizon Statement No. 1.0 at 4-8.

rural/urban disparity in rates.[81] It argued that interexchange carriers would be harmed.[82] It suggested that this Commission may no longer view $7.00 as a reasonable CC today.[83] It compared Verizon's post-Global access charge reductions to those of the D&E carriers.[84] It compared current access charges of Verizon and of other carriers to those of the D&E carriers.[85] Presumably, Verizon endeavored to show that such increases were contrary to "long-standing Commission policy."[86] D&E responded to each claim as summarized herein and, in the end, it was Verizon that was discredited.

In his surrebuttal testimony, witness Price chastises D&E and the other parties claiming that the "majority of arguments in the parties' rebuttal testimonies relates to issues – such as D&E's costs ... – that are beyond the limited scope of this proceeding..."[87] The Verizon witness ignores the fact that it was he who initially raised these issues. In the end, however, Mr. Price argued that the primary issue before the Commission is whether access rate increases should be permitted during the stay of the I-00040105 investigation or whether the status quo should be maintained.[88] According to witness Price, "it would be unjust and unreasonable to disturb the status quo by allowing D&E to raise the very rates that are the subject of the small carrier access investigation [I-00040105] that D&E and other carriers successfully urged the Commission to stay."[89] With regard to his prior

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[81] Id. at 13.

[82] Id. at 15.

[83] Verizon Statement No. 1.1 at 6.

[84] Id. at 7.

[85] Id. at 8.

[86] Verizon Statement No. 1.0 at 10.

[87] Verizon Statement No. 1.2 at 2.

[88] T.89.

[89] Verizon Statement No. 1.2 at 4.

comparison to Verizon's rates, Mr, Price backtracks, "[I]t is true that, at least in this proceeding, the Commission is not being asked to reduce the D&E companies' access rates to match Verizon's lower rates.[90]

The D&E carriers' responses to Verizon's claims – even the ones its witness now claims irrelevant — sufficiently rebuff Verizon's position that the access rate increases in question should be rescinded.

1. Discretion

Although at numerous places in his testimony Verizon witness Price testified that the D&E carriers "could" have allocated the PSI revenue to rates other than access rates, he never testified that the D&E carriers were so required or that its management abused its managerial discretion in increasing access rates. To the contrary, Mr. Price admitted on cross-examination that the D&E carriers had the discretion to implement increases among its noncompetitive rates. Mr. Price responded on cross-examination:

MR. SWINDLER:

> Q. Let me refer you to your rebuttal at page 2. Do you in fact state that as a general matter you agree that Chapter 30 allows PSI revenue increases to be "allocated at the carriers' discretion among non-competitive rates"?
>
> A. And I stand by my testimony there, sir.

T.106.

Witness Price later continued:

> THE WITNESS: Well, I think part of the problem is Verizon would concede that it doesn't want other carriers or this Commission getting into the business of directing what its filings should look like; in other words, that is in large part a matter that should be at the discretion of the company.

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[90] Id. at 15.

T.138. Witness Price further admitted, as previously stated, that the D&E carriers' Chapter 30 Plans do not prohibit increases to access charges.[91] For Verizon to cast criticism on D&E's election to increase access rates, it is not enough for Verizon to merely identify that other options were available. It must demonstrate that there was an abuse of discretion.[92] Verizon has not made such a demonstration. D&E witness Beurer methodically testified as to not only the justification for D&E's election, but also for its rejection of those other options.[93] D&E showed that by exercising its discretion, not only were its access charge increases just and reasonable, but it proved that banking and further local rate increases were not. The record shows that the D&E carriers made a prudent business decision that was well within their discretion, they did not abuse that discretion, and the decision was just, reasonable, and in the public interest.

2. Rural/Urban Rate Disparity

Verizon failed in its attempt to discredit the justness and reasonableness of the D&E carriers' access charge increases by claiming a disparity between urban and rural rates. Mr. Price suggests that increasing access rates "has the undeniable effect of undermining the Commission's prior efforts to eliminate or lessen these historical subsidy flows."[94] Mr. Beurer responded:

> Mr. Price's claim that the increase in access rates of the D&E carriers will "sharpen the historical rural/urban disparity in rates" has no relevance to the issues to be addressed in this proceeding. Nevertheless, as Verizon itself has stated before this Commission in Verizon Main Brief in AT&T complaint, IXCs are setting their rates on a national level using flat rates **that have no relationship with the access rates of any specific ILEC**. With national pricing strategies, any isolated change in Pennsylvania intrastate rates would, at best, be spread over the entire country with minimal to no impact

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[91]Verizon Statement No. 1.0 at 16.

[92]See Pennsylvania Public Utility Commission v. Philadelphia Electric Co., supra.

[93]D&E Statement No. 1 at 48-51.

[94]Verizon Statement No. 1.0 at 14.

on Pennsylvania end users. Further, Mr. Price's recommendation to instead increase local rates will only sharpen the disparity between rural and urban local rates.

D&E Statement No. 1-R at 19-20.

3. Harm to Interexchange Carriers

Verizon failed in its attempt to discredit the justness and reasonableness of the D&E carriers' access charge increases by claiming harm to interexchange carriers.[95] In refuting Mr. Price's testimony, Mr. Beurer stated:

> Mr. Price has failed to mention the benefits long distance carriers, including Verizon, have realized as a result of the voluntary access reduction efforts made by the D&E carriers since the Global proceeding. D&E Exhibit 5-R demonstrates that over the last six years, the D&E carriers have reduced access revenues by voluntarily reducing access rates **after** the Global proceeding by more than $30 million dollars. Of this amount, the Verizon long distance carriers have enjoyed a reduction of over $8 million dollars. Had D&E elected not to make voluntary reductions after the Global proceeding as many other rural carriers chose to do, long distance carriers including the Verizon companies would have paid a great deal more in access charges.

D&E Statement No. 1-R at 23-24.

4. The Carrier Charge

Verizon failed in its attempt to discredit the justness and reasonableness of the D&E carriers' access charge increases by suggesting that the Commission may no longer view $7.00 as a reasonable CC benchmark.[96] Verizon presented nothing to support its hollow assertion. Instead, Mr. Beurer testified:

> [T]he Commission initiated this remand proceeding to consider whether the intrastate access charge increases filed by the D&E carriers on June 28, 2006, are consistent with the Commission's access service reform policy as enunciated in the Global Order entered September 30, 1999, at Docket Nos. P-00991648 and P-00991649. Whether the Commission views $7.00 or $10.00 or $50.00 as a reasonable CC today is not at issue in this

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[95] Id. at 15.

[96] Verizon Statement No. 1.1 at 6.

> proceeding. The only relevant issue is that the D&E carriers have not exceeded the CC benchmark that was established in the Global Order and that the NECA interstate cost data supports the rate increases.

D&E Statement No. 1-SR at 7.

As previously stated, the CC filed by the D&E carriers is well below both the benchmark established in Global and what the CC would have been had the D&E carriers only implemented changes in accordance with the provisions of the Global Order and the 2003 Joint Stipulation Order. Verizon makes many claims that the rates provide "implicit subsidies" that make them unjust or unreasonable but provides no factual information to support their claims.

5. Verizon Access Charge Reductions

Verizon's witness failed in his attempt to discredit the justness and reasonableness of the D&E carriers' access charge increases by comparing the D&E carriers' access reductions to those of Verizon.[97] Mr. Beurer testified:

> Verizon claims they have made significant reductions in access. Taking their $140 million amount and dividing by working lines of 6,092,636 per a report from the Universal Service Administration Company (USAC) which is attached as D&E Exhibit 1-SR yields a reduction of $22.98 per line over this seven-year time period by the Verizon ILECs. Taking the $30 million reduction of the D&E carriers and dividing by 139,226 lines pulled from the same USAC report yields a reduction per line of $215.48 over this same seven-year time period. To compare Verizon's $22.98 per line reduction to D&E's $215.48 per line reduction is embarrassing. But this proceeding is not about comparing the D&E carriers' rates or revenues or efforts since Global to that of the Verizon companies.

D&E Statement No. 1-SR at 8-9.

Even Verizon's attempt to discredit Mr. Beurer's testimony on cross-examination failed. As Mr. Beurer explained, even Verizon's revised cumulative access reduction savings was only one half that of the D&E carriers on a per line basis:

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[97]Verizon Statement No. 1.1 at 6.

A. If you look at the access line numbers which I used per the USAC reports, the Verizon companies have roughly 43 times as many lines as what the D&E companies have, so if you would take the roughly 43 times number and multiply it times the amount per line that we calculated, the $634 million number should actually be more like $1.2 billion if you compare that to the actual impact per line that the D&E carriers took using her numbers. And the math on that is simply taking their lines divided by our lines and multiplying that times the $30 million that we took as a reduction to get what they should have as a reduction, if they would take the same impact on a per line cumulative basis, as what the D&E carriers have taken.

T.73-74.

6. Verizon Rates

Verizon failed in its attempt to discredit the justness and reasonableness of the D&E carriers' access charge increases by attempting to compare the D&E carriers' access rates to those of Verizon.[98] Despite a later claim that he had not made such an argument,[99] Verizon witness Price contrasted the access charges of the Verizon ILECs as being substantially lower than the D&E carriers' rates.[100] This claim was refuted in its entirety by Mr. Beurer who testified:

> Verizon's implication that every other carrier's access charges should be the same as Verizon's access rates, and if they are not they are somehow discriminatory, is erroneous. Mr. Price cites no authority that establishes that all carriers should have or are expected to have the same access rates. As I have stated previously, the Global Order and FCC regulations establish different access rates for individual carriers. Billing all IXCs the same rate by an individual ILEC is not and has never been deemed discriminatory. The evidence I have provided shows that the costs of Verizon as the largest carrier in Pennsylvania are far lower than the costs of the rural D&E carriers. Furthermore, access rates are a cost of long distance service, not local exchange service. Each ILEC has its own local service rates and its own access rates. Claims have been made that local service rates in rural areas should be increased due to higher costs in rural areas as opposed to urban areas, to levels far greater than what Verizon itself charges its local service customers in its rural areas. Mr. Price also fails to state that Verizon itself has different local service rates for urban rate bands versus rural rate bands. For Verizon to now argue that the D&E carriers are somehow

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[98]Verizon Statement No. 1.1 at 8.

[99]Verizon Statement No. 1.2 at 4.

[100]Verizon Statement No. 1.0 at 8-9.

distorting their local exchange service marketplace through a reversal of a prior reduction in access rates is completely unsupported and should be rejected.

D&E Statement No. 1-R at 17-18.

7. Verizon's Access Charges Paid to the D&E Carriers

Verizon failed in an attempt to discredit the justness and reasonableness of the D&E carriers' access charge increases with a discussion of the amount of its access payments to the D&E carriers.

Here, Verizon's involvement in this proceeding is due to its status as an access customer of the D&E carriers.[101] Naturally, from the perspective of an access customer, access charges should not increase. Verizon laments that the Verizon companies are "substantial access customers" of the D&E carriers.[102] In his testimony, Mr. Price calculated the estimated annual intrastate access revenues paid by Verizon to each of the D&E carriers. Verizon's contribution is not charity. As Mr. Price conceded on cross-examination:

> ... would you agree that the amount Verizon pays in access charges is directly related to the amount of Verizon IXC or long-distance traffic originated and terminated?
>
> A. Yes, we're talking about usage-based rates, and obviously the share, if you will, of revenues would be a function of the volume of usage.

T.101. In fact, the amount that Verizon pays in access charges to the D&E carriers is directly related to the amount of Verizon long distance traffic originated and terminated by the D&E carriers on their network. Thus, the overall impact to Verizon is driven primarily by the amount of long distance usage and revenues that Verizon generates from its

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[101]Verizon Amicus Response at 2; Verizon Statement No. 1.0 at 9.

[102]Verizon Statement No. 1.0 at 9.

customers and thus the change in access rates has no bearing on whether the increases to those rates are just and reasonable.

8. Cost-based Rates

a. D&E's Cost Data Supports the June 28 Compliance Filing Rates

i. D&E Carriers' Cost Support Evidence

The Commission in its initial orders in this matter was somewhat critical of D&E for not submitting cost studies. As the Commission stated in the June 23 Orders – "since the company did not submit any cost studies with its filing establishing that the current rates are below cost, we cannot ascertain whether or not access service rate elements are priced below cost or unfairly above cost level."[103] In contrast thereto, Verizon's witness Price on cross-examination opined that cost should not be an issue in this proceeding although he had earlier raised criticisms of the Companies' cost analysis:

> Q. Mr. Price, moving on, is it your opinion that access rates should move to cost?
>
> A. That's certainly not the opinion that I've expressed as part of my testimony in this proceeding, no.
>
> Q. Mr. Price, does that mean in your opinion access rates should not move to cost?
>
> A. No. I'm simply saying that that's not part of what's at issue in this proceeding, so there's not anything in my testimony that says exactly what rates should be set at, only that the increases should not be allowed during the pendency of the Commission stay of the rural ILEC access investigation.

T.127.

It should be recognized that the Companies' Amended Chapter 30 Plans do not compel the presentation of cost studies. The Plans only require "cost data for existing

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[103] See June 23 Order (Order Compendium, I-1, at I-10).

noncompetitive rate changes."[104] The joint access proposal adopted in the 2003 Joint Stipulation Order did provide for the submission of "substantive cost data 'to prove that ... access charges are below costs and need to be increased.'" Mr. Beurer, however, testified that this requirement is not applicable to an increase in access rates pursuant to the annual PSI/SPI filing procedure:

> *Specifically, paragraph 3 provided that, "Each ILEC reserves the right,* subject to Chapter 30 Plan requirements, to change its access rates to ensure that each access rate element at least **recovers its costs and the ILEC's service price index continues to be equal to or less than the ILEC's price stability index, in the event the ILEC's access rates are determined to be below cost based upon the development of a cost study**." (emphasis added) This provision was not intended to preclude the rural ILECs from increasing their access rates pursuant to the provisions of their Chapter 30 Plans when cost recovery is not at issue. Instead, it was intended to ensure that the rural ILECs retained the right to adjust their access charges when necessary to assure they recovered their cost. The facts in the 2006 Filings reveal that the D&E carriers' intrastate access charges were below their cost based interstate rates.

D&E Statement No. 1 at 58-59.

The issue as to whether cost data is required to support increases in access charges under the Chapter 30 PSI/SPI process is now a moot issue. The D&E carriers have submitted cost data verifying that their June 28 Compliance Filings access rates do not exceed their cost.

The D&E carriers are average schedule companies pursuant to FCC rules. The National Exchange Carrier Association ("NECA") develops interstate costs for average schedule companies based on formulas and algorithms using the financial regulated costs of the average schedule companies and cost characteristics of similar sized cost companies.[105] Since the D&E carriers are classified as average schedule companies, they

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[104]D&E Statement No. 1 at 55.

[105]D&E Statement No. 1 at 56.

rely on the calculations performed and filed by NECA for determining interstate costs and settlements.

As average schedule companies, the D&E carriers participate in NECA's tariff and settlement process. NECA, pursuant to 47CFR FCC Part 61.38, calculates interstate access rates and distributes interstate access revenues among the participants. The NECA filings are reviewed by the FCC and permitted to either become effective or are suspended for further investigation. The D&E carriers' interstate traffic-sensitive switched access rates utilized for their 2006 PSI/SPI filings were the rates the FCC allowed NECA to become effective in July 2005. Since these rates are based on costs in accordance with FCC rules and because the network is no different when making an interstate call than when making an intrastate call, the use of interstate access rates for intrastate purposes de facto makes the intrastate rates cost based.[106] This Commission accepted this premise when it adopted the mirroring of interstate access rates in the Global Order[107] and permitted the mirroring to continue in the 2003 Joint Stipulation Order.

Notwithstanding the fact that mirroring of interstate rates in and of itself results in cost-based intrastate access rates, the D&E carriers in this proceeding identified their specific interstate access costs. The evidence shows that NECA in its monthly settlement process calculates the specific traffic-sensitive switched access and common line interstate cost settlements together with actual data reported by the specific D&E carriers. This generates the Companies' specific interstate traffic-sensitive switched access and common line cost settlements. Mr. Beurer divided these actual cost settlements by the actual demand units of minutes and lines to produce each of the D&E carriers' actual average

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[106] Id. at 56-57.

[107] 196 PUR 4th at 202.

interstate cost settlement amount per unit for traffic-sensitive switched access and common line.[108] The results are shown in D&E Exhibits 5 and 6, marked proprietary.

The results shown in D&E Exhibit 6 demonstrates that the D&E carriers' CCs and intrastate composite traffic-sensitive switched access charges do not exceed their costs! Without question, the D&E carriers' access rates from a cost standpoint are in compliance with the Global Order, 2003 Joint Stipulation Order, and the Companies' Amended Chapter 30 Plans.

ii. Verizon's Criticisms of D&E's Costs

Verizon's witness Price argued that the D&E carriers' intrastate access rates are not cost based and that witness Beurer's analysis confuses "the disbursements that the companies received via the average schedule process with the 'costs' they incur."[109] Although from a review of the Verizon surrebuttal testimony it appears that Mr. Price is no longer pursuing this argument. D&E took the this opportunity to refute Verizon's claim.

Witness Beurer in response to the Verizon criticisms responded leaving no question that Mr. Price's opinion was without merit:

> The FCC's rules and regulations totally disagree with Mr. Price and the actions taken by the Commission in the Global and 2003 Joint Stipulation proceedings also refute his statements. I do agree with Mr. Price that the FCC rules establish a simplified process for average schedule companies by requiring NECA to do all of the work to develop calculations that will determine the cost recovery amounts that are to come from interstate rates for average schedule companies. However, to state that these settlement amounts do not represent costs incurred is absolutely incorrect. The calculations made by NECA and filed with the FCC annually utilize the actual *financial data of cost companies and average schedule companies.* The traffic usage factors and investment and expense categorization factors are taken from similar sized cost companies to develop cost recovery formulas for average schedule companies. NECA's 2005 average schedule filing is a very detailed and exhaustive process and contains an extensive amount of cost information and analysis. To state that NECA's calculations do not generate an interstate cost amount specific to each average schedule

[108]D&E Statement No. 1 at 57.

[109]Verizon Statement No. 1.1 at 28.

company based on each company's access lines, minutes of use, toll trunks, circuit miles, number of exchanges, etc. is completely wrong.

D&E Statement No. 1-SR at 26.

Mr. Beurer went on to explain that under FCC rules the settlement amounts of average schedule companies are used to develop interstate rates in the very same manner as cost companies using their cost separations studies.[110]

In conclusion, Verizon witness Price's opinion that NECA's calculations do not generate interstate costs specific to an average schedule company based upon its access lines, minutes of use, toll trunks, circuit miles, number of exchanges, etc., is erroneous.

9. Corresponding Universal Service Fund Reduction

In his testimony, Verizon witness Price argues that if the D&E carriers are allowed to keep their access charge increases, then the D&E carriers should be required to take a comparable reduction in PaUSF support.[111]

According to Verizon witness Price, "it is simply logical that if D&E is allowed to extract from Verizon additional revenue through these access rate increases, then the flow of funds by way of the PaUSF should be decreased dollar for dollar."[112] Mr. Price suggests that otherwise, "the D&E companies' actions upset the balance and linkage between the mechanisms established in the Global Order"[113] and result in "effectively double-dipping on supposedly lost revenue for which they have already been compensated."[114]

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[110]See D&E Statement No. 1-SR at 26-27.

[111]Verizon Statement No. 1.1 at 32; Verizon Statement No. 1.2 at 19.

[112]Verizon Statement No. 1.1 at 32.

[113]Verizon Statement No. 1.0 at 12.

[114]Id. at 13.

Verizon's argument is a red herring. As Mr. Beurer testified, the D&E carriers' post Global rate filings had absolutely no impact on their PaUSF support levels.[115] Mr. Beurer continued:

> While the 2003 Joint Stipulation Order did effect the distribution of PaUSF, it only involved rural carriers under 20,000 access lines and Sprint (now Embarq). It did not affect the PaUSF amounts the D&E carriers received. D&E Exhibit 4-R reflects the access rate levels the D&E carriers enjoyed pre-Global, the reduced access rate levels the D&E carriers accepted in lieu of receiving PaUSF support and the access rates in our 2006 PSI Filings. As an example, the exhibit shows for Buffalo Valley that the pre-Global composite rate for the CC was $10.25 and for the TS was $0.023089 with a zero PaUSF. The Global Order resulted in a CC of $7.00 and a TS of $0.028557 with a PaUSF receipt amount of $578,541. Reductions made after the Global Order but before the 2006 PSI Filing brought the CC to $4.20 and the TS to $0.016130 with no corresponding change to the PaUSF. The 2006 PSI Filing took the CC to $5.11 (below the Global rate of $7.00) and the TS to $0.016377 (below the Global rate of $0.028557) with no corresponding change to the PaUSF. As this exhibit demonstrates, the voluntary reductions in access rates **after** the Global proceeding had no impact on the PaUSF receipts of the D&E carriers and likewise, the offsetting increase has no affect on the PaUSF receipts of the D&E carriers.

D&E Statement No. 1-R at 12-13.

Mr. Beurer further stated that for Verizon to insinuate that their increase will now "upset the balance of linkage between mechanisms established in the Global Order" is emphatically wrong.[116] There is no "double-dipping" as Verizon claims, because the access charge increases implemented in the June 28 Compliance Filings trigger no additional PaUSF support.

In fact, D&E Telephone does not receive any net PaUSF support after assessments and that is unchanged with the rate increases filed in its 2006 PSI/SPI Filing. The D&E carriers have carefully crafted their access rates such that they remain below the CC benchmark and local R-1 rate cap set in the Global proceeding thus having no impact on PaUSF, once again attesting to the justness and reasonableness of these increases.

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[115]D&E Statement No. 1 at 48; D&E Statement No. 1-R at 12.

[116]D&E Statement No. 1-R at 13.

10. Maintenance of Status Quo Versus Just and Reasonable Rates

Verizon's primary argument in opposition to the June 28 Compliance Filings is that "it is not just and reasonable to allow D&E to further increase its already high access rates and to disrupt the status quo during the stay of the rural carrier access investigation."[117] On surrebuttal, Verizon witness Price clarified Verizon's position, as follows:

> Verizon's position in this proceeding is that the Commission should rescind and amend its June 23, 2006 Orders that allowed the access rate increases to go into effect on July 1, 2006, on the grounds that it would be unjust and unreasonable to disturb the *status quo* by allowing D&E to raise the very rates that are the subject of the small carrier access investigation that D&E and other carriers successfully urged the Commission to stay.

Verizon Statement No. 1.2 at 4. In other words, it is Verizon's argument that an increase in intrastate access rates must be construed unjust and unreasonable pending the statewide access and PaUSF investigation opened pursuant to the December 20 Order at Docket No. I-00040105 and stayed pursuant to the subsequent August 30 and November 18 Orders.

Verizon's argument is flawed in numerous respects. First, Verizon incorrectly characterizes the increases as "further increases." Second, it ignores the fact that the Commission's August 30 Order initiating the pending access investigation at I-00040105 and subsequent orders staying the investigation did not freeze ILEC access rates. Third, it erroneously concludes that any increase in access rates would, in and of itself, be unjust and unreasonable during the stay of access investigation at Docket No. I-00040105.

With regard to Verizon's further increase claim, Mr. Beurer testified:

> No I do not agree with his statement or with his characterization of the D&E carriers' access rates. First, by stating "further increase", Mr. Price is implying that the D&E carriers have made prior increases and that the 2006 PSI Filings are a "further increase" in access rates. Nothing could be farther from the truth. As I have identified in my direct and rebuttal testimony, the D&E carriers have made nothing but access **reductions** since the Global

[117]Verizon Statement No. 1.1 at 4.

> Order and the long distance carriers, including Verizon affiliates, have enjoyed reductions in excess of $30 million dollars.

D&E Statement No. 1-SR at 4.

Mr. Price admitted on cross-examination that the Commission's August 30 Order instituting the pending access investigation and its orders staying the proceeding did not freeze rural ILEC access rates.[118] Certainly, the stay maintaining the status quo of the access charge investigation from a regulatory standpoint does not prohibit access charge changes when the investigation itself did not order access rates to be frozen.

Verizon witness' claim that any access charge increase would, in and of itself, be unjust and unreasonable, is not only erroneous, it contradicts his own testimony:

> The Commission's November 15, 2006 Order states that any "other rural ILECs contemplating the submission of PSI filings should be prepared to fully support the justness and reasonableness of any proposed increase to intrastate access charges during the stay of this proceeding both in regard to Chapter 30 and the policies that underlie the Pennsylvania Universal Service Fund." (p. 15). Presumably this is the same showing that the Commission expects the D&E companies to make if they wish to justify the access increases that are the subject of this proceeding.

Verizon Statement No. 1.1 at 12 (emphasis added). Obviously, Mr. Price admits that, contrary to his own assertion, the D&E carriers' access charge increases should not be found, in and of themselves, unjust and unreasonable. Rather, if the increases are found to be just and reasonable, which the D&E carriers contend they are, then such increases should be permitted during the stay of the access reform proceeding. In sum, where the justness and reasonableness of any access charge increase is supported, the increase will be deemed justified and shall be implemented even during the stay of the I-00040105 investigation.

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[118] T.89-92.

Judge Colwell's examination of Verizon witness Price on his just and reasonable rate argument clearly demonstrates that the witness could not define what was just and reasonable under the circumstances:

> JUDGE COLWELL: I'm still having trouble coming to grips with the fact that you're telling me that this isn't the right way to do it, but you haven't given me an alternative. What should the D&E companies be doing that would give me a just and reasonable result if not what they have already done?
>
> THE WITNESS: Well, I think part of the problem is Verizon would concede that it doesn't want other carriers or this Commission getting into the business of directing what its filings should look like; in other words, that is in large part a matter that should be at the discretion of the company. When the result is looked at, then the question is, you know, what is the effect of that result? And the problem that we have is with these increases, and then some other carriers' increases, what is the combined effect of that while the Commission has said, "We know that we need to look at these rates, but we're not going to look at them now"? Well, if we're not going to look at them, it's very -- I know I'm not answering your question, and I apologize, but it's quite a conundrum because we don't want to be the ones that tell the D&E companies exactly what to do. We know that -- and I believe I was asked on cross questions about are there pending investigations or what if there were pending investigations into local rates? Well, that's a very different question. There is, to my knowledge, there is no such pending investigation into local rates in Pennsylvania, there is a pending investigation into access rates.
>
> JUDGE COLWELL: But what you're asking the Commission to do here is say: D&E, what you've done isn't just and reasonable, try again, but we don't want to get into the business of telling you how to do it. Do you see what I'm saying?
>
> THE WITNESS: Yes, I do.
>
> JUDGE COLWELL: Do you see the problem?
>
> THE WITNESS: Yes, I do.

T.138-139.

There is no question that the Verizon arguments in opposition to the June 28 Compliance Filings are without merit and should be rejected. The D&E carriers have shown, based upon a thorough understanding of its service territories, past rate changes

and customers, that the rate changes in the filings were a prudent course of action and do not constitute unjust or unreasonable rates or an abuse of managerial discretion. The Companies have shown that the rate changes do not violate Act 183 or their Amended Chapter 30 Plans. The Companies have shown that the rate changes do not violate the Global Order, PaUSF regulations, and subsequent orders related thereto. The Companies have shown the CCs to be below the levels established in Global and as calculated pursuant to the 2003 Joint Stipulation Order and the traffic-sensitive switched access rates mirror the interstate rates consistent with both the Global Order and the provisions of the 2003 Joint Stipulation Order. The Companies have shown that the rate changes do not result in any additional PaUSF funding requirement. The Companies have shown that they have been frontrunners in complying with the Commission's access charge reform policies and the rates do not conflict with such policies. The Companies have shown that its local exchange ratepayers in recent years have been subjected to sizeable increases in rates while the D&E carriers' achieved access charge reform. The Companies have shown that competitive forces in the marketplace precluded further local rate increases in the D&E carriers' 2006 PSI/SPI filing. The Companies have shown that they have prudently exercised their managerial discretion and the June 28 Compliance Filings' rates are just, reasonable, and nondiscriminatory under the current circumstances. The Companies have shown that Verizon's opposing arguments are in error and must be rejected.

VI. CONCLUSION

The Commission instituted this limited and expedited remand proceeding in order to reconsider those portions of its June 23 Orders that permitted the D&E carriers to implement increases to their intrastate access charges. In so doing, the Commission sought to confirm that its June 23 Orders did not fall contrary to its access charge reform and universal service policies or the Companies' Amended Chapter 30 Plans. The evidence of record clearly shows that this Commission acted properly when it permitted the D&E carriers to implement the rate changes set forth in their June 28 Compliance Filings. The D&E carriers have demonstrated that their access charge increases are consistent with the Global Order, the 2003 Joint Stipulation Order, and Act 183 as well as in compliance with the Companies' Amended Chapter 30 Plans as a proper exercise of their managerial discretion. Moreover, the D&E carriers have evidenced the justness and reasonableness of their Chapter 30 rates through a careful weighing and consideration of the overall impact of the filings on its dial-tone customers, access customers, and the Pennsylvania Universal Service Fund. With the support of the Office of Consumer Advocate and the Office of Small Business Advocate, the record reveals that the Companies' decision to forego major local rate increases at this time was prudent and in the public interest. Conversely, Verizon, the sole party challenging the discretionary action taken by the D&E carriers pursuant to their Chapter 30 Plans, criticizes the filings based "only" on its weighing and consideration of the overall impact to Verizon as an access customer. Other than this argument, Verizon failed to offer any persuasive evidence that would undermine a finding in favor of the D&E carriers. Clearly, the D&E carriers have considered and addressed the remanded issues on a much broader and more comprehensive scope than Verizon. Accordingly, the D&E

carriers submit that no rescission or amendment of this Commission's June 23 Orders is warranted.

Respectfully submitted,

THOMAS, THOMAS, ARMSTRONG & NIESEN

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PA Attorney ID No. 43319
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Attorneys for Denver and Ephrata Telephone and Telegraph Company, Conestoga Telephone and Telegraph Company, and Buffalo Valley *Telephone Company*

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Dated: January 26, 2007

PROPOSED FINDINGS OF FACT

1. D&E Telephone is a rural incumbent local exchange carrier ("ILEC") serving approximately 56,000 access lines of which 68% are residential customers. Its service territory includes portions of Berks, Lancaster, and Lebanon Counties. Conestoga is a rural ILEC serving approximately 53,500 access lines of which 75% are residential customers. Its service territory includes portions of Berks, Chester, Lancaster, Lehigh, and Montgomery Counties. Buffalo Valley is a rural ILEC serving approximately 20,000 access lines of which 70% are residential customers. Its service territory includes portions of Union and Northumberland Counties. All three carriers have approved Amended Chapter 30 Plans governing changes in their service rates.

2. In its initial 2006 PSI/SPI filing, D&E Telephone's rate changes included increases in (i) switched access service charges through a $1.20 increase in the Carrier Common Line charge and increases of $.000939 per Minute of Use ("MOU") for Tandem Switching and $0.00636 MOU for Local Switching to mirror its interstate traffic sensitive switched access charges and (ii) non-basic local service rates for Return Check Charge, Foreign Exchange Mileage charges, and charges for Business Private Line Services for non-mileage related services.

3. In its initial 2006 PSI/SPI filing, Conestoga's rate changes included increases in (i) switched access service charges through a $0.33 decrease in the Carrier Common Line charge and increases of $.000962 per MOU for Tandem Switching and $0.007644 MOU for Local Switching to mirror its interstate traffic sensitive switched access charges and (ii) non-basic local service rates for Return Check Charge, Foreign Exchange Mileage charges, and charges for Business Private Line Services for non-mileage related services.

4. In its initial 2006 PSI/SPI filing, Buffalo Valley's rate changes included increases in (i) switched access service charges through a $0.97 increase in the Carrier Common Line charge and increases of $0.002402 per MOU for Tandem Switching and $0.000247 MOU for Local Switching, to mirror its interstate traffic sensitive switched access charges, (ii) basic local service rates through a per line increase of $.30 and PBX and Pay Telephone rates, and (iii) non-basic local service rates for Return Check Charge, Foreign Exchange Mileage charges, and charges for Business Private Line Services for non-mileage related services. See D&E Statement No. 1 at 5-6.

5. Switched access charges are the rates charged by the D&E carriers to interexchange carriers ("IXCs") and other entities in providing switched access facilities in originating and terminating long distance calls to and on behalf of the Companies' customers.

6. In the June 28 Compliance Filings (i) D&E Telephone reduced its annual Chapter 30 increase revenue entitlement sought in its 2006 PSI/SPI filing by $46,575 from $1,022,608 to $976,033. D&E Telephone also reduced its proposed CC increase from $1.20 per line to $1.13 per line and retained the mirroring of its interstate traffic-sensitive switched access rates and the non-basic service rate increases

originally proposed; (ii) Conestoga reduced its annual increase revenue entitlement by $40,738 from $917,330 to $876,592. Conestoga raised its proposed CC decrease from $0.33 per line to $0.39 per line and retained the mirroring of its *interstate traffic-sensitive switched access rates and the non-basic service rate* increases as originally proposed; and (iii) Buffalo Valley reduced its annual increase revenue entitlement by $14,925 from $328,482 to $313,557. Buffalo Valley reduced its proposed CC increase from $0.97 per line to $0.91 per line and retained the mirroring of its interstate traffic-sensitive switched access rates and the basic and non-basic service rate increases as originally proposed.

7. The D&E carriers' rates are governed under the terms of their Chapter 30 plans.

8. As defined in Chapter 30, noncompetitive services include protected services which include both switched access services and services provided to residential consumers or business consumers that are necessary to complete a local exchange call.

9. Consistent with the original Chapter 30 legislation, Act 183 maintained the definition of "Protected Service" as including "switched access service."

10. Pursuant to Act 183, the D&E carriers filed Amended Chapter 30 Plans expediting their universal broadband commitments from December 31, 2015 to December 31, 2008.

PROPOSED CONCLUSIONS OF LAW

1. The rate changes in the June 28 Compliance Filings are not contrary to Act 183 or the D&E carriers' Amended Chapter 30 Plans.

2. The Commission did not enter any order prior to the effective date of Act 183 approving any limitations in the D&E carriers' Amended Chapter 30 Plans to increase. intrastate access charge increases.

3. The Commission did not enter any order subsequent to the effective date of Act 183 approving any limitations in the D&E carriers' Amended Chapter 30 Plans to increase intrastate access charges.

4. The D&E carriers' June 28 Compliance Filings are not contrary to the Commission's universal service funding regulations.

5. The D&E carriers are not in violation of the Commission's access service reform policies.

6. The intrastate access charges in the D&E carriers' June 28 Compliance Filings are just and reasonable.

7. Justification has not been shown to overturn the discretion of D&E management in their 2006 PSI/SPI filings to increase intrastate access charges in lieu of imposing further local exchange rate increases or banking in order to recover the allowable revenue entitlements.

PROPOSED ORDERING PARAGRAPHS

1. That no rescission or amendment of this Commission's Orders of June 23, 2006, in the above dockets allowing the D&E carriers to raise intrastate access charges is warranted.

2. That the record at Docket Nos. P-00981428F1000 and R-00061375, P-00981429F1000 and R-00061376, and P-00981430F1000 and R-00061377 be marked closed.

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of January, 2007, served a true and correct copy of the Main Brief of Denver and Ephrata Telephone and Telegraph Company, Conestoga Telephone and Telegraph Company and Buffalo Valley Telephone Company in the above-captioned matter, upon the persons and in the manner set forth below:

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D&E Remand Proceeding at Docket Nos. P-00981428F1000, et al.
Compendium of Common Orders
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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 1, 2003

Commissioners Present:
Glen R. Thomas, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr.
Terrance J. Fitzpatrick
Kim Pizzingrilli

Access Charge Investigation per Global Order of September 30, 1999	:	Docket Nos. M-00021596 P-00991648 P-00991649
In re the Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger	:	Docket Nos. A-310200F0002 A-311350F0002 A-310222F0002
AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc.	:	Docket No. C-20027195
Verizon Pennsylvania's 2003 Price Change Opportunity	:	Docket No. M-00031694
AT&T Communications of Pennsylvania, Inc., v. Verizon Pennsylvania Inc. Re: Verizon Pennsylvania Inc.'s 2003 PCO	:	Docket Nos. M-00031694C0001 P-00930715

ORDER

BY THE COMMISSION:

Presently before this Commission for consideration are two separate joint petitions for reductions in our generic access charge investigation at M-00021596, et al. On December 16, 2002, the Rural Telephone Company Coalition (RTCC), The United Telephone Company of Pennsylvania (Sprint/United), Office of Trial Staff (OTS), Office of Consumer Advocate (OCA)

and Office of Small Business Advocate (OSBA) filed a Joint Proposal for Access Charge Reductions (RTCC/Sprint Proposal) for the rural telephone companies and Sprint/United pursuant to the generic access charge investigation at M-00021596. The proposal was published January 4, 2003 at 33 Pa.B. 97, and comments and replies have been received by the Commission.

On December 30, 2002, Verizon Pennsylvania Inc. (Verizon-Pa.) and Verizon North, Inc. (Verizon-North) filed a separate Joint Petition (Verizon Joint Petition) regarding the further reduction of their access charges pursuant to the BellAtlantic-Pa.-GTE Merger Order,[1] the Global Order of 1999[2], and the generic access charge investigation at M-00021596. This joint proposal was published January 18, 2003 at 33 Pa.B. 502, and comments and replies have been received.

Procedural History

The Global Order of September 30, 1999 reduced access charges of all local incumbent exchange carriers operating in Pennsylvania. That Order directed a Pennsylvania Universal Service Fund (PaUSF) be established to enable the rural incumbent local exchange carriers (ILECs) and Sprint/United to reduce access charges and intraLATA toll rates while at the same time not raising residential basic service prices over a $16.00/month cap. The Global Order also called for an investigation to be initiated in January 2001 to further refine a solution to the question of how the carrier charge (CC) pool can be reduced and to consider the appropriateness of a toll line charge to recover any resulting reductions.

The mandated access charge investigation was delayed because of Verizon's Section 271 hearings in January and February of 2001. Also, at that time, the RTCC and Sprint/United were given some time to put together a settlement proposal in an effort to save time and costs involved

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[1] *Re Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger,* Docket Nos. A-310200F0002, A-311350F0002, and A-310222F0002, (November 4, 1999)(Merger Order).

[2] *Re Nextlink Pennsylvania, Inc.,* Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999)(Global Order); 196 P.U.R. 4th 172, *aff'd sub* nom. *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission,* 763 A.2d 440 (Pa.Cmwlth. 2000), *alloc. granted.*

with litigation and to narrow the issues. It was expected that the settlement proposal would take notice of the recent FCC's MAG[3] and CALLS[4] Orders which had further reduced interstate access charges for rural and non-rural companies, respectively. Ultimately, we opened a docket at M-00021596 in January 2002 to accommodate the access charge investigation required by the Global Order in the form of a collaborative proceeding.

On March 21, 2002, AT&T filed a formal complaint against Verizon-North seeking to have Verizon-North's access charges reduced to Verizon-Pa.'s levels pursuant to the requirements in our Merger Order at A-310200F0002.[5] The complaint was docketed at C-20027195. Thereafter, the complaint was initially dismissed by Chief Administrative Law Judge Robert Christianson, but later reinstated by Commission Order entered December 24, 2002. That order also bifurcated the access charge investigation so that all Verizon matters, including the complaint, were to be litigated at the C-20027195 docket.

On November 26, 2002, Verizon-Pa. submitted its annual Price Change Opportunity (PCO) filing requesting authority to use its $17.7 million negative PCO money for 2003 to fund its contributions to the PaUSF. That filing was docketed at M-00031694 and P-00930715 (Verizon's Chapter 30 Plan docket). On January 31, 2003, AT&T filed a complaint at M-00031694C0001 challenging Verizon-Pa.'s proposal to use its negative PCO money to support Verizon's 2003 contribution to the PaUSF. On February 27, 2003, Verizon-Pa. filed an answer and motion to dismiss the complaint.

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[3] *In re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al., Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 98-77 and 98-166*, FCC 01-304, November 8, 2001.

[4] *In Re: Access Charge Reform, et al., Sixth Report and Order in CC Docket Nos. 96-262 and 94-1 Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45*, May 31, 2000.

[5] *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket No. A-310200F0002, etc.(Opinion and Order entered November 4, 1999)(Merger Order).

On December 16, 2002, RTCC, Sprint/United, OCA, OTS and OSBA filed a Joint Proposal seeking revenue-neutral access charge reductions. AT&T and MCI WorldCom filed comments opposing the proposal. Specifically, AT&T and MCI WorldCom call for more detail about the resulting access rates. AT&T and MCI WorldCom emphasize the need to move switched access rates to cost-based levels.

On December 30, 2002, the Verizon Joint Petition was filed. Qwest, OCA, OTS, OSBA, AT&T and MCI WorldCom filed comments in opposition to the Verizon Joint Petition. AT&T and MCI WorldCom emphasize the need to move switched access rates to costs. Qwest emphasizes a need to mirror interstate access charges. AT&T, MCI WorldCom, OCA and OSBA are not in favor of revenue-neutral reductions. OTS opposes the petition because no cost studies were filed to support the petition and other rates besides residential could be increased or Verizon could adjust the Price Stability Mechanism to remain revenue-neutral.

On April 2, 2003, Verizon-Pa. filed a letter with the Commission stating that it did not oppose the RTCC/Sprint Joint Proposal at M-00021596. On the same date, Sprint/United and the RTCC filed letters in support of Verizon-Pa. being able to use its negative PCO money to pay its 2003 contribution to the PaUSF.

Discussion

We appreciate the RTCC and Sprint/United's efforts in agreeing to one proposed access charge reduction plan, and we appreciate the OCA, OTS and OSBA's agreement with the proposal. However, AT&T and MCI WorldCom oppose the plan and request more detail about the resulting access rates. AT&T and MCI WorldCom emphasize the need to move switched access rates to cost-based levels. Furthermore, AT&T objects to the continuing need for a reliance on the PaUSF for access charge reductions. AT&T also argues that the current regulations do not require wireless carriers to contribute to the PaUSF and that this is unfair to those carriers that do contribute.

Accordingly, while the joint proposal has the consensus of the RTCC, Sprint/United, OCA, OTS, OSBA and Verizon, it does not have the consensus of either AT&T or MCI WorldCom, which pay millions of dollars in access charges each year. And while the RTCC and Sprint/United have offered cost data to support their petition, there has been no evidentiary hearing and no cost studies have been offered to support the data. Given that this is a non-unanimous joint proposal, we hesitate to rule on the RTCC/Sprint Joint Proposal prior to a formal evidentiary hearing where opposing parties would have an opportunity to cross-examine the factual evidence. Since there appear to be contested material factual issues regarding, for example, the cost justification of traffic-sensitive rates and how low the intrastate access charges should be, we believe the RTCC/Sprint Joint Proposal should be referred to the Office of Administrative Law Judge for an evidentiary hearing and recommended decision at our Access Charge Investigation docket. We recognize that the parties to the proceeding have raised factual and non-factual/policy issues. The Commission is committed to developing a full record while ensuring judicial efficiency. To that end, the presiding ALJ has the discretion to classify the issues as either factual or non-factual/policy and to permit the parties to brief those issues that do not warrant an evidentiary hearing.

We will also consolidate with the RTCC/Sprint Joint Proposal the Verizon-Pa. 2003 PCO filing at M-00031694 and AT&T's PCO complaint at M-00031694C0001 because the issue of whether Verizon-Pa. has the authority to use its negative PCO money to pay its contributions owed the PaUSF is intricately related to issues expressed in the RTCC/Sprint Joint Proposal.

In addition, there remains uncertainty amongst contributing carriers to the PaUSF as to whether or not the PaUSF will continue beyond 2003. Although our Global Order calls for the Fund to expire December 31, 2003, the subsequent regulations codified at 52 Pa.Code §§ 63.161-63.171 do not have a sunset provision. To address this concern, we will require the Administrative Law Judge to issue a recommended decision in time for us to approve a final Order before December 31, 2003.

Turning our attention to the Verizon Joint Petition, we appreciate Verizon-Pa. and Verizon-North agreeing to one proposed access charge reduction plan. However, Qwest, OCA, OTS, OSBA's, AT&T and MCI WorldCom all have objections to the current proposal. AT&T and MCI WorldCom emphasize the need to move switched access rates to cost. Qwest emphasizes a need to mirror interstate access charges. AT&T, MCI WorldCom, OCA, and OSBA are not in favor of revenue-neutral reductions. OTS requests this Commission deny Verizon's Joint Proposal because Verizon is subject to a rate freeze through December 31, 2003, no cost studies were filed to support the proposal, and other rates besides residential could be increased, including business rates and optional services, or Verizon could adjust the Price Stability Mechanism to get to revenue neutral. OTS requests the Commission reject Verizon's proposed elimination of the carrier charge.

Since there appear to be contested material factual issues, just as in the RTCC/Sprint Joint Proposal, regarding, for example, what the cost of traffic sensitive rates are and how low the intrastate access charges should be, we believe the Verizon Joint Petition should also be referred to the Office of Administrative Law Judge for evidentiary hearings and a recommended decision. We recognize that the parties to the proceeding have raised factual and non-factual/policy issues. The Commission is committed to developing a full record while ensuring judicial efficiency. To that end, the presiding ALJ has the discretion to classify the issues as either factual or non-factual/policy and to permit the parties to brief those issues that do not warrant an evidentiary hearing. Recognizing that we have previously bifurcated our generic access charge investigation at M-00021596 so as to separate the Verizon and the RTCC/Sprint access charge investigations, the two joint petitions shall be kept on separate tracks but with the same six month deadline from the date of entry of this order. The Verizon Joint Petition is consolidated with the *AT&T v. Verizon North* Complaint at C-20027195 regarding Verizon-North's access charges pursuant to our Order of December 24, 2002, and therefore should proceed under that docket number. The assigned ALJ will also address, at this docket, Verizon's compliance with the Merger Order directive that Verizon-North and Verizon-Pa. have access charges which are at parity with each other. **THEREFORE,**

IT IS ORDERED

1. That the RTCC/Sprint/United/OCA/OSBA/and OTS Joint Petition at M-00021596, et al. be consolidated with *Verizon Pennsylvania Inc.'s 2003 PCO* at M-00031694 and *AT&T Communications of Pennsylvania, Inc. v. Verizon Pennsylvania Inc. Re: Verizon Pennsylvania Inc.'s 2003 PCO* at M-00031694C0001. The dockets shall be consolidated to M-00021596 and shall be assigned to the Office of Administrative Law Judge for an evidentiary hearing, briefing, and recommended decision within six months from the date of entry of this order.

2. That Verizon's Joint Petition for Access Charge Reductions, which is consolidated with *In re the Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger* at Docket Nos. A-310200F0002, A-311350F0002, and A-310222F0002, as well as with *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.* at C-20027195 regarding Verizon-North's access charges shall be assigned to the Office of Administrative Law
Judge for an evidentiary hearing and recommended decision within six months from the date of entry of this Order. These dockets shall be consolidated to C-20027195.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL):

ORDER ADOPTED: May 1, 2003

ORDER ENTERED: May 5, 2003

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Public Meeting held July 10, 2003

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Aaron Wilson, Jr.
Glen R. Thomas
Kim Pizzingrilli

Access Charge Investigation per Global Order of September 30, 1999	:	Docket Nos. M-00021596
	:	P-00991648
	:	P-00991649
Verizon Pennsylvania Inc.'s 2003 Price Change Opportunity	:	Docket No. M-00031694
AT&T Communications of Pennsylvania, Inc.,	:	
v.	:	Docket Nos. M-00031694C0001
Verizon Pennsylvania Inc. Re:Verizon Pennsylvania Inc.'s 2003 PCO	:	P-00930715

ORDER

BY THE COMMISSION:

Presently before this Commission for consideration is the Joint Procedural Stipulation filed on June 5, 2003, by the Rural Telephone Company Coalition (RTCC), The United Telephone Company of Pennsylvania (Sprint/United), Office of Trial Staff (OTS), Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), AT&T Communications of Pennsylvania, Inc. LLC (AT&T), Verizon Pennsylvania Inc., Verizon North Inc. (Verizon), and MCI WorldCom Network Services, Inc. (MCI). The Joint Procedural Stipulation concerns the RTCC/Sprint United Joint Proposal for Access Charge Reductions (Joint Proposal) for the rural telephone companies that had been filed on December 16, 2002, pursuant to the generic access charge investigation at M-00021596.

Procedural History

The *Global Order*[6] of September 30, 1999 reduced access charges of all local incumbent exchange carriers operating in Pennsylvania. That Order directed a Pennsylvania Universal Service Fund (PaUSF) be established to enable the rural incumbent local exchange carriers (ILECs) and Sprint/United to reduce access charges and intraLATA toll rates while at the same time, ensuring that residential basic local service rates do not exceed the designated price cap of $16.00 per month. The *Global Order* also called for an investigation to be initiated in January 2001 to further refine a solution to the question of how the carrier charge (CC) pool can be reduced and to consider the appropriateness of a toll line charge to recover any resulting reductions.

By Secretarial Letter dated October 24, 2001, the Commission postponed the formal statewide access charge investigation and initiated a collaborative to determine whether the parties could reach an agreement. Also at that time, the RTCC and Sprint/United were given some time to put together an access charge settlement proposal in an effort to save time and costs involved with litigation and to narrow the issues. It was expected that the settlement proposal would take notice of the recent Federal Communications Commission's (FCC) *MAG*[7] and *CALLS*[8] orders, which had further reduced interstate access charges for rural and non-rural companies, respectively. Ultimately, we opened a docket at M-00021596 in January 2002 to accommodate the access charge investigation required by the *Global Order*.

In a related matter, on March 21, 2002, AT&T filed a formal complaint against Verizon-North Inc. (Verizon-North) seeking to have Verizon-North's access charges reduced to Verizon Pennsylvania Inc.'s (Verizon-Pa.) levels pursuant to the requirements in our *Merger Order* at A-

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[6] *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999)(*Global Order*); 196 P.U.R. 4th 172, *aff'd sub* nom. *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlth. 2000), *alloc. granted.*

[7] *In re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al., Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 98-77 and 98-166*, FCC 01-304, November 8, 2001.

[8] *In Re: Coalition for Affordable Local and Long Distance Service (CALLS) Access Charge Reform, et al., Sixth Report and Order in CC Docket Nos. 96-262 and 94-1 Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45*, May 31, 2000.

310200F0002.[9] The complaint was docketed at C-20027195. Thereafter, the complaint was initially dismissed by Chief Administrative Law Judge Robert Christianson, but later reinstated by Commission Order entered December 24, 2002. That order also bifurcated the access charge investigation at M-00021596 so that all Verizon matters (*i.e.*, those pertinent access charge matters pertaining to Verizon-Pa. and Verizon-North, including the complaint, were to be litigated at the C-20027195 docket).

On November 26, 2002, Verizon-Pa. submitted its annual Price Change Opportunity (PCO) filing requesting authority to use its $17.7 million negative PCO money for 2003 to fund its contributions to the PaUSF. That filing was docketed at M-00031694 and P-00930715 (Verizon-Pa.'s Chapter 30 Plan docket). On January 31, 2003, AT&T filed a complaint at M-00031694C0001 challenging Verizon-Pa.'s proposal to use its negative PCO money to support Verizon's 2003 contribution to the PaUSF. On February 27, 2003, Verizon-Pa. filed an answer and motion to dismiss the complaint.

On December 16, 2002, RTCC, Sprint/United, OCA, OTS and OSBA filed a Joint Proposal seeking revenue-neutral access charge reductions. This Joint Proposal was published January 4, 2003, at 33 Pa.B. 97. Comments and replies were received by the Commission. AT&T and MCI WorldCom filed comments opposing the proposal. Specifically, AT&T and MCI WorldCom called for more detail about the resulting access rates. AT&T and MCI WorldCom emphasize the need to move switched access rates to cost-based levels. Verizon filed comments that placed conditions on their acceptance of the proposal. Verizon wanted to also reduce its access charges in a revenue-neutral method and it wanted approval to use its PCO monies to fund any future contributions owed the PaUSF as a result of the Joint Proposal.

On April 2, 2003, Verizon-Pa. filed a letter with the Commission stating that it did not oppose the RTCC/Sprint Joint Proposal at M-00021596. On the same date, Sprint/United and the RTCC filed letters in support of Verizon-Pa. being able to use its negative PCO money to pay its 2003 contribution to the PaUSF.

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[9] *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger.* Docket No. A-310200F0002, etc.(Opinion and Order entered November 4, 1999)(*Merger Order*).

On May 5, 2003, the Commission, acknowledging that there was opposition at that time to the Joint Proposal by the comments filed by AT&T and MCI WorldCom, ordered the Joint Proposal be assigned to an Administrative Law Judge for evidentiary hearings and a recommended decision regarding an appropriate level of access charges for Sprint and the rural incumbent local exchange carriers operating in Pennsylvania, and whether the PaUSF should be continued beyond the *Global Order's* expiration date of December 31, 2003, the expiration date specified in the *Global Order*. Further, the Commission expected the ALJ to issue a recommended decision regarding whether Verizon-Pa. could properly use its negative 2003 Price Change Opportunity (PCO) monies to fund its PaUSF contributions.

On May 15, 2003, the RTCC and Sprint/United provided MCI and AT&T with further data reports. On May 20, 2003, pursuant to 52 Pa. Code §5.572, the RTCC and Sprint/United filed a Petition for Reconsideration concerning portions of our May 5, 2003 Order. A prehearing conference was held on June 4, 2003 before ALJ Michael Schneirle, at which time all of the parties that had filed comments to the Joint Petition came to an agreement. Subsequently, on June 5, 2003, a Joint Procedural Stipulation signed by OCA, RTCC, Sprint/United, OTS, OSBA, AT&T, Verizon, and MCI was filed with the Commission.

Background of Global Order

We established the PaUSF through our *Global Order* wherein we stated:

> The USF is a means to reduce access and toll rates for the ultimate benefit of the end-user and to encourage greater toll competition, while enabling carriers to continue to preserve the affordability of local service rates. Although it is referred to as a fund, it is actually a pass-through mechanism to facilitate the transition from a monopoly environment to a competitive environment – an exchange of revenue between telephone companies which attempts to equalize the revenue deficits occasioned by mandated decreases in their toll and access charges.

Global Order, page 142.

The establishment of the PaUSF was carried out on a revenue-neutral basis and included the rebalancing of intrastate access charges, toll rates, and local rates by the rural local exchange carriers. The PaUSF was a modified version of a settlement plan submitted by the RTCC and Bell Atlantic-Pennsylvania, Inc. (Bell now Verizon-Pa.).

The components of the PaUSF, from the standpoint of the RTCC members, are briefly summarized below:

1. All small incumbent local exchange carriers, which included all ILECs other than Bell and GTE North (GTE North is now Verizon-North), were directed to be recipients of the PaUSF. The PaUSF was established for the purpose of the rate rebalancing needs of the rural local exchange carriers including reductions in their intrastate access and toll rates. All Pennsylvanian telecommunications service providers (excluding wireless carriers) were directed to contribute to the PaUSF based upon their intrastate end-user revenues.

2. The RTCC members were permitted to restructure, modify and reduce their access, toll and local rates, as follows:

a) Intrastate traffic sensitive switched access rates and structure (including local transport restructure) were converted to interstate switched access rates and structure in effect on July 1, 1998.

b) The Common Carrier Line Charge ("CCLC") was restructured as a flat-rate Carrier Charge ("CC") and reduced to an intrastate rate not exceeding $7.00 per line and allocated to intrastate toll providers based on their relative minutes of use.

c) The RTCC members were given the opportunity to reduce their intrastate toll rates to an average rate not lower than $.09 per minute.

d) The RTCC members with low local exchange rates were permitted to increase their residential one-party basic, local rates to an average monthly charge of at least $10.83, to the extent necessary to offset the reduced toll rates.

e) Those RTCC members with an average monthly R-1 rate above $16.00 (inclusive of touch-tone) were directed to provide their customers with a Universal Service credit to effectively reduce the rate to $16.00 with the difference coming out of the PaUSF.

See Global Order at pp. 151-152. Sprint was not an original participant in the RTCC plan in the Global proceeding, but after pleading its inclusion in the USF at the *Global Order* hearings, the Commission ordered that it be included as a recipient carrier and in exchange for access charge reductions, it be allowed to draw $9,000,000 from the PaUSF annually.

We also stated in our *Global Order*:

> [W]e shall initiate an investigation on or about January 2, 2001, to further refine a solution to the question of how the Carrier Charge (CC) pool can be reduced. At its conclusion, but no later than December 31, 2001, the pool will be reduced. In addition, we shall consider the appropriateness of a Toll Line Charge (TLC)[or an intrastate Subscriber Line Charge] to recover any resulting reductions.

Global Order at 60. By Secretarial Letter dated October 24, 2001, the Commission postponed the formal statewide access charge investigation and initiated a collaborative to determine whether the parties could reach an agreement.

Further Intrastate Rate Rebalancing

In addition to the Commission's competitive undertakings on the intrastate side, the FCC instituted numerous proceedings aimed at further addressing an orderly transition from monopoly to a more competitive environment.

Pursuant to TA-96, the FCC undertook reform of both interstate access charges and federal universal service support mechanisms. Beginning in 1997, the FCC adopted several measures to move interstate access charges for price cap carriers toward lower, cost-based levels by revising the recovery of loop and other non-traffic sensitive costs from per-minute charges to flat rate per line charges thereby aligning rates more closely with the way the costs are incurred. For example, in order to phase out Carrier Common Line ("CCL") charges, the per-minute charges assessed on interexchange ("IXC") carriers through which ILECs recover their residual interstate loop costs that are not recovered through their capped federal SLCs, the FCC created the presubscribed interexchange carrier charge ("PICC"), a flat, per line monthly charge imposed on IXCs. The FCC also shifted the non-traffic sensitive costs of the line ports from per-minute local switching charges to the common line category and established a mechanism to phase out the per-minute transport interconnection charge (TIC). The FCC held that more rate structure modifications would be required to create a system that accurately reflects the true cost of service in all respects. The FCC believes the market-based approach, in which competitive forces primarily drive access charges down to cost-based levels, would serve the public interest better than regulatory-prescribed rates.

In the *Interstate Access Support Order*[10] the FCC adopted in large part the CALLS plan, continuing the process of access charge and universal service reform for price cap carriers. This order prescribed a more straightforward, and purportedly economical rational, common line rate structure by increasing the caps on the federal SLC, a flat monthly charge assessed directly on end-users to recover interstate loop costs, and phasing out the PICC, which the FCC viewed as economically inefficient due to the indirect flow of loop costs to end-users through IXCs. The FCC also revisited the controversial "X-factor," changing its function from a productivity offset to a tool for reducing per-minute access charges to target levels proposed by the CALLS members.

The FCC also established a new interstate access support mechanism, capped at $650 million annually, to replace what the FCC deemed implicit support included in the interstate access charges of price cap carriers, finding $650 million to be a reasonable amount that would provide sufficient, but not excessive, support. In this regard, it observed that a range of funding levels might be deemed "sufficient" for purposes of TA-96, and that "identifying an amount of implicit support in our interstate access charge system to make explicit is an imprecise exercise."[11]

In recognition of the need for a more comprehensive and distinctly different review of the issues of access charge and universal service reform for the remaining 1300 or so rural carriers serving less than 2% of the nation's access lines, the FCC placed such reforms for the non-price cap carriers on a separate track. As documented in a series of white papers prepared by the Rural Task Force, which was constituted by the FCC to study the differences between the provision of telecommunications services in rural and non-rural areas, rural carriers generally have higher operating and facilities costs due to lower subscriber density, smaller exchanges and limited economies of scale. [12] Significantly, rural carriers rely more heavily on revenues from access

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[10] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges,* CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, May 31, 2000, (*Access Charge Reform Order)* at 15998 Par. 35.

[11] *Interstate Access Support Order* at 13046 par. 201.

[12] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9164-65 (1977) (*Universal Service First Report and Order)* at 8917 par. 253 (subsequent history omitted); *Rural Task Force Order.*

charges and universal service support in order to provide ubiquitous and affordable local service. On May 23, 2001, the FCC released its *Fourteenth Report and Order and Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC RCD 11244 (released May 23, 2001) ("*Rural Task Force Order*").

The *Rural Task Force Order* compelled several changes to the manner in which rural interstate universal service support is currently calculated and applied. Among other things, the *Rural Task Force Order* endorsed use of a modified embedded cost mechanism for rural carriers, as opposed to a forward-looking cost mechanism required for price cap carriers, to determine rural carrier support, and included implementation of a rural growth factor (the sum of annual line growth and a general inflation factor) and a safety net additive and safety valve to provide support for new investment and growth above stated thresholds. While created as an interim plan, the FCC also made clear its intention to develop "a long-term plan that better targets support to carriers serving high-cost areas, while at the same time recognizing the significant differences among rural carriers, and between rural and non-rural carriers."[13]

Having taken major steps in beginning to reform interstate high-cost support, interstate access charges and universal service support systems for non-rural carriers through a series of Reports and Orders in the matter of *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 and the *Interstate Access Support Order*, and the interstate high-cost support for rural carriers through the *Rural Task Force Order*, the FCC has now begun to address the matter of interstate access charge and universal service support reforms for the rural carriers. On November 8, 2001, the FCC issued its *Second Report and Order* at CC Docket Nos. 01-304, 00-256 (MAG Plan), 96-45 (USF), 98-77 (Access Charge Reform) and 98-166 (Authorized ROR), in what is referred to as the MAG Order. In the *MAG Order*, the FCC states its intent to align the interstate access rate structure with a lower, more cost-based level, remove what the FCC deemed to be implicit support for universal service and replace it with explicit, portable and competitively neutral support. Specifically, the *MAG Order* lowers interstate access charges from approximately $0.046 per minute to possibly as low as $0.022 per minute; increases the

[13] *Id.* at 11249 par. 8.

interstate SLC over a period of time; and phases out the CCL by July 1, 2003, and replaces it with a portable Interstate Common Line Support ("ICLS") universal service mechanism. In addition, SLC caps were increased effective January 1, 2002, raising monthly per line rates from $3.50 to $5.00 for residence and single line business, and from $6.00 and $6.50, respectively. These interstate changes have resulted in significant increases to most Pennsylvania consumers which are in addition to the interstate increases in local service rates under Chapter 30 rate rebalancings.

Discussion

The Joint Procedural Stipulation is threefold. First, the parties request Commission approval and implementation of the Joint Proposal as filed on December 16, 2002, as it is no longer opposed by any of the parties that filed comments against it. Second, the parties agree that the existing PaUSF contained in the Commission's regulations at 52 Pa.Code §63.161-63.171 shall remain in full force and effect until further Commission rulemaking. The parties agree to the initiation of a rulemaking proceeding prior to December 31, 2004, to address any needed modifications to the PaUSF regulations and the simultaneous initiation of a rate proceeding to determine whether any rate changes should be made in the future in the event that disbursements from the PaUSF are reduced. Third, the parties agree that AT&T's complaint against Verizon-Pa.'s PCO filing should be resolved separately from the Joint Proposal on cross-motions for summary judgment without the need for a hearing on the issue as the Complaint raises only a legal issue and no genuine issues as to any material facts. In other words, the PCO Complaint does not aver that the amount of the PCO money ($17.7 million) is in dispute, only the use of the money, which is a legal issue, not a factual one.

Joint Proposal

In view of the many changes that have taken place and the increases customers have experienced in their interstate and intrastate rates for access to basic local service over the last few years, the RTCC members have been reluctant to advocate a flash cut reduction in access charges to achieve full access reform on an intrastate basis. The RTCC/Sprint Proposal is offered as the next transitional step in access charge reform in Pennsylvania in an attempt to avoid a rate shock to Pennsylvania local telephone consumers. The Joint Proposal advocates a continuation of the current PaUSF under the existing regulations codified at 52 Pa.Code

§§63.161-63.171, until a future rulemaking determines otherwise. The Joint Proposal requests further access charge reductions in a revenue-neutral method that are recovered not through an increase in the size of the PaUSF, but rather through gradual increases to local residential and business rates.

The Joint Proposal essentially provides for each RTCC company to do what is permitted under their respective Chapter 30 Plans, that is, restructure rates on a revenue-neutral basis in a manner that does not increase local rates by more than $3.50 per month. The Joint Proposal is a means of effectuating further access reform while also mitigating the administrative costs involved in pursuing 31 company-specific Chapter 30 filings. Further, while the decision to pursue a Chapter 30 rate rebalancing is at the companies' sole discretion, the Joint Proposal mandates certain filings that in turn will assure access charge reductions of approximately $25 million[14] within the next eleven months. The access reductions resulting from the Joint Proposal exceed by almost 20% the combined toll and access reductions order in the *Global Order.*

We commend the parties' united efforts in agreeing to one proposed access charge reduction plan at this time. The RTCC and Sprint/United have offered cost data to support their petition. The Commission has reviewed the cost data from the rural ILECs and Sprint/United and we are satisfied that the Joint Proposal, if implemented, will be revenue-neutral. At this juncture, the Commission is persuaded that the proposed access charge reductions are in the public's interest and in accordance with the Commission's objective to reduce implicit subsidy charges such as access charges that impede competition in the telecommunications market. As implicit charges become explicit charges, competitors are better able to compete for local and long distance customers in an ILEC's service territory because IXCs are not hindered by paying ILECs excessive access charges in providing competitive toll services and CLECs are better able to compete with ILEC local service rates that have been kept artificially low as a result of the access charge subsidies. Thus, although our approval of the Joint Proposal will allow the rural ILECs and Sprint/United to raise their local residential monthly service rates up to a cap of $18.00 per month, ($2.00 more than the current $16.00 cap), this increase is incremental so as to

[14] There will also be an additional $2.2 million reduction in access charges for the smaller ILECs in January 2004.

avoid customer rate shock, and, at the same time, encourages the IXCs, CLECs and wireless telecommunications carriers to compete on a more level playing field with the ILECs.

Furthermore, there has been some demonstrated savings to IXC customers in their long distance calls since April 2000 when the PaUSF was initiated and the initial access charge reductions took effect. In our *Global Order*, IXCs were required to file annual reports reflecting price reductions and flow through expense savings resulting from the access charge reductions in April, 2000. On June 6, 2000, and November 2, 2000, MCI WorldCom filed reports showing what its savings were from recent access reductions and how they have been flowed through to the Pennsylvania residential and business toll consumers. On May 4, 2000, AT&T filed a tariff showing the flow-through of Verizon-Pa.'s access charge reduction to AT&T's business and residential customers. As a condition of approving the Joint Petition and ordering further access charge reductions, the Commission directs that all of the IXCs that benefit from these reductions, demonstrate through the filing of annual reports due on March 31 of each year how the additional reductions in access charges will reduce the IXCs' average revenue per minute proportionately on a dollar for dollar basis to residential and business customers in Pennsylvania. Global Order at pp. 41-42. Failure on the part of IXCs operating in Pennsylvania to file annual reports will result in enforcement action by the Commission.

We further look to the Federal Communications Commission's (FCC) recent decisions in the *CALLS* and *MAG* orders for precedence in ordering implicit charges to become explicit, through either an increase in basic local telephone service rates, or through service line charges on customer bills. This enables other carriers to compete due to reduced subsidies. While the Joint Proposal does not require a rural ILEC or Sprint/United to mirror interstate access charges, the fact that this is a step towards making the charges closer to cost and closer to the interstate access charges will help to avoid arbitrage and will help competition enter the ILECs territories.

This is a unanimous Joint Proposal. Thus, even though no evidentiary hearing has been held, we believe due process is being afforded the parties in ruling to approve the Joint Proposal since the Joint Proposal was published, and all parties that filed comments to the Joint Proposal are in agreement with the Proposal. Accordingly, since we find the Joint Proposal to be in the public interest, we shall order that the Joint Proposal, included as "Attachment A" to this Order

is granted. The PaUSF will continue beyond December 31, 2003, until amended through a rulemaking proceeding which will commence before December 31, 2004. We shall direct the recipient carriers to file their calculations required to implement paragraph No. 7 of the Joint Proposal by October 1, 2003, in order to allow Commission Staff and the National Exchange Carrier Association (NECA) enough time within which to make a recommendation to the Commission regarding changes to the disbursements of the PaUSF for the next calendar year, and in time for the Commission to issue its annual order adjusting the contribution factors and setting the next calendar year's Fund size, contributions, disbursements and budget.

Given that this is a compromise proposal that merely seeks to extend and continue additional access reform as initially begun in the *Global Order*, we will not require the ILECs to incur the expense of producing detailed cost studies. However, we do not intend to declare the access rates established by this Order as the final word on access reform. Rather, this is the next step in implementing continued access reform in Pennsylvania in an efficient and productive manner. Thus, for all of the aforementioned reasons, the Commission finds that the Joint Proposal is in the public's interest and shall be granted.

Pennsylvania Universal Service Fund

Our Global Order calls for the PaUSF to expire December 31, 2003, subject to the provisions of an access charge investigation.[15] However, the PaUSF regulations codified at 52 Pa.Code §§ 63.161-63.171 do not have a sunset provision. The Joint Proposal calls for a continuation of the PaUSF beyond December 31, 2003, until a further Commission Rulemaking determines otherwise. The Commission stated in its *Final Rulemaking Order* entered November 29, 2000, at L-00000148 that, "if the Commission wants to rescind this [Universal Service Fund] regulation at some point, it should do so by promulgating another regulation."

The Commission agrees to open a rulemaking proceeding to be initiated no later than December 31, 2004, to address what if any modifications should be made to the PaUSF regulations and we agree to the simultaneous institution of an appropriate proceeding for consideration of any and all rate issues and rate changes which should or would result in the

[15] *Global Order at 151.*

event that disbursements from the PaUSF are reduced. The proceedings may be combined as one proceeding.

Verizon's PCO Proposal

As stated previously, on January 31, 2003, AT&T filed a formal complaint at M-00031694, M-00031694C0001 and P-00930715 challenging Verizon-PA's proposal to use its negative PCO money to fund Verizon's 2003 contribution to the PaUSF. In the May 5, 2003 Order, the Commission consolidated Verizon's PCO filing and AT&T's formal complaint regarding the same with the RTCC/Sprint/Public Parties Joint Access Proposal. The matters were consolidated because "the issue of whether Verizon-Pa. has authority to use its negative PCO . . . is intricately related to issues expressed in the RTCC/Sprint Joint Proposal." Order at 6. Although Verizon initially agreed with this statement in its Prehearing Memorandum, the Joint Procedural Stipulation provides that AT&T's complaint against Verizon's PCO filing shall be resolved separately on cross-motions for summary judgment without hearings. AT&T, MCI and Verizon have filed motions for summary judgment. Briefs were due by July 3, 2003. The parties request that the Commission resolve the PCO dispute separately from the Joint Proposal by August 29, 2003. The Commission respects the requests of the parties, and given the time constraints, directs that Commission staff prepare a draft Order for the Commission's consideration regarding the cross-motions for summary judgment to be decided before August 29, 2003. **THEREFORE, IT IS ORDERED:**

1. That the Joint Procedural Stipulation is granted in its entirety.

2. That the RTCC/Sprint/OCA/OTS/OSBA Joint Proposal as filed on December 16, 2002, and attached hereto as "Attachment A" is granted.

3. That recipient carriers to the Pennsylvania Universal Service Fund are directed to file their calculations required to implement paragraph No. 7 of the RTCC/Sprint/OCA/OTS/OSBA Joint Proposal by October 1, 2003.

4. That upon receipt of the recipient carriers' calculations and Commission staff approval thereof, the National Exchange Carrier Association (NECA) as the

Administrator of the Pennsylvania Universal Service Fund shall recalculate contributions and disbursements owed for the calendar year 2004.

5. That the Pennsylvania Universal Service Fund shall continue under the existing regulations codified at 52 Pa.Code §§ 63.161-63.171 *until* a further Commission rulemaking determines otherwise.

6. That Staff is directed to issue another Request For Proposals to hire an Administrator of the Fund for a contractual period from January 1, 2004 through December 31, 2006.

7. That the cross-motions for Summary Judgment filed on or about June 20, 2003, shall be assigned to the Law Bureau for a recommended draft Order to be decided on or before August 29, 2003.

8. That all IXCs shall file annually, by March 31 of each year a report showing how the additional reductions in access charges will reduce the IXCs' average revenue per minute proportionately on a dollar for dollar basis to residential and business customers in Pennsylvania. Failure on the part of IXCs operating in Pennsylvania to file annual reports will result in enforcement action by the Commission.

9. That a copy of this Order be delivered to all telecommunications carriers operating in Pennsylvania and the National Exchange Carrier Association.

10. That a copy of this Order be delivered for publication to the *Pennsylvania Bulletin.*

BY THE COMMISSION:

James J. McNulty

Secretary

(SEAL)

ORDER ADOPTED: July 10, 2003

ORDER ENTERED: July 15, 2003

ATTACHMENT A
RTCC/SPRINT/OCA/OTS/OSBA
JOINT ACCESS PROPOSAL
IN RESPONSE TO THE COMMISSION'S
ACCESS CHARGE INVESTIGATION - PHASE II

Defined Terms

As employed herein, the following terms shall have these specified meanings:

- "ILEC" means an RTCC member or The United Telephone Company of Pennsylvania d/b/a Sprint ("Sprint").

- "RTCC" means Rural Telephone Company Coalition. The RTCC members are ALLTEL Pennsylvania, Inc. ("ALLTEL"), Armstrong Telephone Company - PA, Armstrong Telephone Company- North, Bentleyville Communications Corporation, d/b/a The Bentleyville Telephone Company, Buffalo Valley Telephone Company ("Buffalo Valley"), Citizens Telephone Company of Kecksburg, Citizens Telecommunications Company of New York,[16] Commonwealth Telephone Company ("Commonwealth"), Conestoga Telephone and Telegraph Company ("Conestoga"), Denver and Ephrata Telephone and Telegraph Company ("D&E"), Deposit Telephone Company, Frontier Communications of Breezewood, Inc., Frontier Communications of Canton, Inc., Frontier Communications of Lakewood, Inc., Frontier Communications of Oswayo River, Inc., Frontier Communications of Pennsylvania, Inc. ("Frontier PA"), The Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Inc., Laurel Highland Telephone Company, Mahanoy & Mahantango Telephone Co., Marianna & Scenery Hill Telephone Company, The North-Eastern PA Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company ("NPTC"), Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Sugar Valley Telephone Company, Venus Telephone Corporation, and Yukon-Waltz Telephone Company.

- "Larger ILEC," for purposes of this Proposal only,[17] means ALLTEL, Buffalo Valley, Commonwealth, Conestoga, D&E, Frontier PA, NPTC, and Sprint.

- "Smaller ILEC," for purposes of this Proposal only, means any RTCC member that is not a Larger ILEC.

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[16] Because Citizens Telecommunications Company of New York has and continues to operate under New York access tariffs, it is not to be deemed a party to this proposal. Likewise, West Side Telephone Company was not included in the Global proceeding and is excluded here.

[17] The designation of larger and smaller ILEC was based upon the factor of 20,000 access lines and was for purposes of this Proposal only, for the purpose of redirecting monies out of the existing USF that were previously allocated to Sprint.

Elements of Proposal

1) If an ILEC's intrastate traffic sensitive (TS) rates exceed its interstate TS rates, the ILEC may, at its sole discretion, lower its intrastate TS rates to match or move closer to its interstate TS rates, and simultaneously increase its Carrier Charge (CC) by a corresponding revenue neutral amount using the 12 months ended August 31, 2002, or the most current 12 month period, thereby creating a revised CC. An ILEC may, at its sole discretion, lower its intrastate TS rates to match or move closer to its interstate TS rates, and simultaneously increase its Carrier Charge (CC) by a corresponding revenue-neutral amount, again in 2004, using a recent 12 month period, thereby creating a further revised CC. All references to CC herein shall be to the then current revised CC if the ILEC has chosen to implement this element of the proposal.

2) Pursuant to an Order entered adopting this access proposal without modification, and after notice through bill insert, bill message or separately mailed notice to all customers at least 30 days prior to the date of any rate change, each ILEC will increase local rates, based upon one-day tariff compliance filing, to be effective on a date between January 1, 2003 and December 31, 2003 (as to be determined at the sole discretion of the individual ILEC) as follows:

   (a) Each ILEC with a weighted average R-1 rate below $10.83 as of December 31, 2002, will increase its R-1 rates in a manner to achieve a weighted average R-1 rate of $11. If the increase results in R- 1 rates greater than 150% of the current rate, then the increase shall be implemented in two steps, the second of which shall become effective no later than December 31, 2003. This increase shall be subject to the Company's Chapter 30 Plan rate rebalancing limitation with respect to the limitation on calendar year per line increases, i.e. not more than $3.50 per line per month in rate increases in any one year, but shall not be subject to any other Chapter 30 process or requirements. To the extent that any ILEC shall not be able to complete the required rate increase within any year, such rate increase may be deferred to the following year subject to the Company's Chapter 30 Plan rate rebalancing limitations. Any rate rebalancing in excess of that specifically referenced in Paragraph 2 shall be subject to the Chapter 30 Plan rate rebalancing process and requirements.

   (b) Each ILEC with a weighted average R-1 rate between $10.83 - $12 as of December 31, 2002, will increase its R-1 rates in a manner to achieve a weighted average R-1 rate of $13.50.

   (c) Each ILEC with a weighted average R-l rate between $12.01 - $14 as of December 31, 2002, will increase its R-1 rates in a manner to achieve a weighted average R-1 rate of $15.

   (d) Each ILEC with a weighted average R-l rate between $14.0l-$16 as of December 31, 2002, will increase its R-l rates in a manner to achieve a weighted average R-l rate of $16.

(e) Each ILEC may, at its sole option, increase its weighted average Business line rate by up to the same amount that its weighted average R-1 rate is increased, but in no event may the B-1 rate be less than the R-1 rate.

3) Pursuant to an Order entered adopting *this access proposal without* modification, and after notice through bill insert, bill message or separately mailed notice to all customers at least 30 days prior to the date of any rate change, each ILEC may increase local rates, based upon a one-day tariff compliance filing, to be effective on a date between January 1, 2004 and December 31, 2004 (as to be determined at the sole discretion of the individual ILEC) as follows:

(a) Each ILEC with a weighted average R-1 rate of $11 (or less) as of December 31, 2003 (as described and calculated in Step 2 above) may increase its R-1 rates in a manner to achieve a weighted average R-l rate of $13.50.

(b) Each ILEC with a weighted average R-l rate of $13.50 as of December 31, 2003 (*as described* and calculated in Step 2 above) may increase its R-l rates in a manner to achieve a weighted average R 1 rate of $15.

(c) Each ILEC with a weighted average R-l rate of $15 as of December 31, 2003 (as described and calculated in Step 2 above) may increase its R-1 rates in a manner to achieve a weighted average R-l rate of $17.

(d) Each ILEC with a weighted average R-1 rate of $16 as of December 31, 2003 (as described and calculated in Step 2 above) may increase its R-1 rates in a manner to achieve a maximum weighted average R- 1 rate of $18.

(e) Each ILEC may, at its sole option, increase its weighted average Business line rate by up to the same amount that its weighted average R-1 rate is increased, but in no event may the B-1 rate be less than the R-1 rate.

Any rate rebalancing in excess of that specifically referenced in Paragraphs 2 and 3 shall be subject to the Chapter 30 Plan rate rebalancing process and requirements.

4) The monthly $16.00 cap on R-l average rates established in the Global Order and any ILEC-specific weighted average rate cap which may have been established in any individual ILEC's Chapter 30 Plan will be increased for all ILECs to the weighted average $18.00 cap for a minimum three (3) year period January 1, 2004 through December 31, 2006. As to any ILEC which as of July 1, 2002 has hit the $16.00 cap and takes a credit from the USF, the ILEC shall continue to receive and apply the credit but would be limited to

recovering from its customers future R-1 increases of $2.00 under the foregoing $18.00 cap reflecting the USF credit in effect as of July 1, 2002. Any approved future increases in rates above the $18.00 rate cap for any ILEC shall also be recoverable from the USF under the exact same terms and conditions as approved in the Global Order. For example, if ILEC A's R-1 rates are currently $17.25, then their customer is billed $17.25 but receives a credit of $1.25 from USF, receiving a net bill of $16.00. ILEC A could, as of December 31, 2004, implement the provisions of Paragraph 3 hereof, increase its rates, if justified, by $2.00 to $19.25, charge its customers $19.25, reflect a credit of $1.25 to its customers, receive $1.25 from the USF, and then send a net bill to its customers of $18.00. If ILEC A justified an R-1 rate of $20.25, then it would be entitled to $2.25 from the USF and will send a net bill to its customers of $18.00.

5) Pursuant to an Order entered adopting this access proposal without modification, each ILEC shall have the right, in whole or in part, in lieu of raising local service rates as provided in Paragraphs 2 and 3 hereof to raise rates on other services by an equivalent amount, based on a one-day tariff compliance filing.

6) To offset the increase to local rates described above in Paragraphs 2 and 3, each ILEC (except Sprint) will file a compliance tariff(s) to reduce its CC or TS rates, or any combination thereof, by a revenue-neutral amount (depending upon changes undertaken in Paragraph 1, above), effective on dates consistent with the increases in Paragraphs 2 and 3.

7) In addition to any rate modifications undertaken pursuant to Paragraphs 2 and 3, each Smaller ILEC that increases its rates consistent with Paragraph 2, above, or is at the $16.00 capped rates on December 31, 2003, will additionally reduce its CC or TS rates, or any combination thereof, by the equivalent of $2 per line per month effective January 1, 2004 and shall receive an equal (a revenue-neutral) amount of support from the PA USF (annual total for all Smaller ILECs ranging from an estimated $1.8 million to $2.2 million), as provided in Paragraph 8.b. For ease of administration, the amount of additional USF received by the Smaller ILECs under this proposal will be determined as of December 31, 2003, and will be applied effective January 1, 2004 and each year thereafter for the duration of the Pa. USF (as addressed in Paragraph 1 of the Conditions of Proposal.) Beginning in 2005, any growth in access lines shall be accounted for in accordance with the annual USF calculation in 52 Pa. Code §63.165 and the Smaller ILECs' total receipt from the Pa. USF, including the amount provided for herein, shall be included in the Smaller ILECs' prior year funding.

8) (a) To offset the increase to Sprint's local rates described above in Paragraph 2, above, Sprint will file compliance tariff(s) to reduce its CC or TS rates, or any combination_thereof, by a revenue-neutral

amount (depending upon changes undertaken in Paragraph 1, above) effective on dates consistent with the increases in Paragraph 2.

(b) Beginning on or after January 1, 2004, Sprint will reduce its receipt from the current PA USF equal to the $2 per line per month reduction to the CC or TS, from Smaller ILECs as expressed in Paragraph 7. These dollars (annual total ranging from an estimated $1.8 million to $2.2 million) will be directly paid to the Smaller ILECs, as described in Paragraph 7, from the PA USF to offset the Smaller ILECs' reduction in access charges on a revenue neutral basis.

9) On/or after January 1 of each year beginning in 2005 each ILEC may request such rate changes or rate rebalancing as are permitted by any Chapter 30 Plans and/or applicable statutory and regulatory provisions.

Conditions of Proposal

1) The only change to the existing universal service fund in PA is that Sprint will be shifting a portion (estimated to be $1.8 m - $2.2m) of its current fund receipt ($9 million) to Smaller ILECs as noted in Paragraphs 7 and 8 above. This Proposal is dependent upon all other aspects of the PA universal service program and the USF regulations remaining intact, including the recovery of rates above the rate cap into the future, specifically beyond December 31, 2003. The existing universal service fund, including the recovery of monies under Paragraph 4 of Elements of Proposal above, and regulations promulgated thereunder shall, as provided in the regulations, continue in place until modified by further Commission rulemaking.

2) Each ILEC reserves the right, subject to Chapter 30 Plan requirements, to change its access rates to ensure that each access rate element at least recovers its cost and the ILEC's service price index continues to be equal to or less than the ILEC's price stability index, in the event the ILEC's access rates are determined to be below cost based upon the development of a cost study.

3) This proposal is made in its entirety and no part hereof is valid or binding unless all components are accepted by all parties. Should any part be specifically modified or otherwise adversely impacted at any later date as to any ILEC or party, the ILEC or party shall have full unilateral rights to withdraw from the plan or revisit the plan in its sole discretion. This potential agreement is proposed by the parties to settle the instant controversy and is made without any admission against or use that is intended to prejudice any positions which any party might adopt during subsequent litigation, including further litigation in related proceedings. This agreement is conditioned upon the Commission's approval of all terms and conditions contained herein, except for the terms of this paragraph. If the Commission should fail to grant such approval or should modify the terms

and conditions herein, this agreement may be withdrawn upon written notice to the Commission and all parties within five business days by any of the parties and, in such event, shall be of no force and effect. In the event that the Commission does not approve the Settlement or any party elects to withdraw as provided above and any proceeding continues, the parties reserve their respective rights to submit testimony or other pleadings and briefs in this or a related proceeding.

4) Elements of this Proposal shall constitute rate rebalancings or rate filings as defined and allowed under each ILEC's Chapter 30 Plan only to the extent of determining the maximum amount of an increase allowed per year, but shall not preclude the filing of one additional rate restructuring/rebalancing filing in the calendar year so long as the total rate rebalancing rate increases do not exceed the maximum annual increase allowed and comply with other Chapter 30 Plan limitations and requirements. That is, implementation of proposed Paragraphs 2, 3 and 5 under Elements of Proposal are not considered rate rebalancings under the Chapter 30 Plans except in determining the maximum limitation on per year line rate increases to monthly dial tone rates. All parties retain all other rights under the approved Chapter 30 Plan to implement or oppose all rate rebalancings and other rate filings permitted under its Chapter 30 Plan. All parties reserve all rights in any proceedings relative to Chapter 30.

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

6) This access proposal will be revenue neutral relative to each ILEC implementing a rate change. Absolutely no changes shall be required which are not revenue-neutral. Other access reductions that are not revenue neutral are permissible at the ILEC's sole option, but not required.

7) When notice is sent to each company's customers as provided in Paragraphs 2 and 3 under elements of Proposal, it will also be served upon all parties to this Proposal.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held July 23, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli
Wendell F. Holland

AT&T Communications of Pennsylvania, LLC C-20027195

v.

Verizon North Inc. and Verizon Pennsylvania Inc.

Petition of Verizon Pennsylvania Inc., Verizon North Inc., Office of Small Business Advocate and Office of Consumer Advocate For Resolution of Litigation

Verizon Pennsylvania Inc.'s 2003 Price Change Opportunity P-00930715

Verizon Pennsylvania Inc.'s 2004 Price Change Opportunity

Verizon North Inc.'s 2004 Price Change Opportunity P-00001854

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition are the Exceptions filed on December 8, 2003, by AT&T Communications of Pennsylvania, LLC (AT&T), MCI WorldCom Network Services, Inc. (MCI), the Office of Small Business Advocate (OSBA) and Qwest Communications Corporation (Qwest) to the Recommended Decision of Administrative Law Judge (ALJ) Cynthia Williams Fordham,

issued on November 18, 2003, in the above-captioned proceeding. Reply Exceptions were filed by the Office of Consumer Advocate (OCA), OSBA, the Office of Trial Staff (OTS) and jointly by Verizon Pennsylvania Inc. (Verizon PA) and Verizon North Inc. (Verizon North) (jointly referenced as "Verizon"). Also before the Commission for consideration is a Petition for Resolution of Litigation (Petition for Resolution) filed February 26, 2004, by Verizon, OSBA and OCA at Docket No. C-20027195, and Verizon PA's and Verizon North's 2004 Price Change Opportunity filings. Answers to the Petition for Resolution were filed by AT&T, MCI and Qwest.[18]

History of the Proceeding

The September 30, 1999 *Global Order, inter alia*, established a schedule for which access charges of all local incumbent exchange carriers operating in Pennsylvania were reduced. The *Global Order* further directed that a subsequent access charge proceeding be commenced in January 2001 for the purpose of determining additional access charge reductions, and possible elimination of the Carrier Charge pool, with a deadline to complete the case and effect additional access charge reductions by December 31, 2001.[19]

By Order entered November 4, 1999, at Docket Nos. A-310200F0002, *et. al*,[20] the Commission approved the Bell Atlantic/GTE merger and specifically required

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[18] It is noted that, as referenced on page 2 of the Petition for Resolution, the OSBA has agreed to withdraw its Exceptions to the Recommended Decision in return for its support of the Petition for Resolution.

[19] *See Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999) (*Global Order*); 196 P.U.R. 4th 172, *aff'd sub* nom. *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlth. 2000), *vacated for lack of jurisdiction, MCI WorldCom, Inc. v. Pa.PUC* 844 A2d 1239 (Pa. 2004).

[20] *See, Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket Nos. A-310200F0002; A-310222F0002; A-310291F0003; A-311350F0002, 1999 Pa. PUC LEXIX 86 (Opinion and Order entered November

that "[w]ithin thirty months after merger closing, GTE-North and BA-PA will commence a proceeding for the purpose of determining statewide rates for access charges based upon consolidated cost studies."[21]

By Secretarial Letter dated October 24, 2001, the Commission postponed the *Global Order's* formal statewide access charge investigation, and initiated a collaborative to determine whether the Parties could reach an agreement. The Commission initiated a generic access charge investigation at Docket No. M-00021596 in January 2002 to accommodate the access charge investigation required by the *Global Order.*

On March 21, 2002, AT&T filed a Formal Complaint at Docket No. C-20027195 against Verizon North seeking to have Verizon North's access charges reduced to Verizon PA's levels pursuant to the requirements in the Commission's *Merger Order.* On April 10, 2002, the OCA intervened in this proceeding. AT&T's Formal Complaint was initially dismissed by Chief Administrative Law Judge Robert Christianson, but was subsequently reinstated by Commission Order entered December 24, 2002. That Order also bifurcated the access charge investigation so that all Verizon matters (*i.e.*, those pertinent access charge matters pertaining to Verizon PA and Verizon North, including AT&T's Formal Complaint) and all matters relating to access charge parity between Verizon North Inc. and Verizon Pennsylvania Inc. resulting from the *Merger Order* at Docket No. A-310200F002, would be litigated at Docket No. C-20027195 (the subject of this Opinion and Order).

In a separate, but related matter to this instant proceeding, on November 26, 2002, Verizon PA submitted its annual Price Change Opportunity ("PCO") filing requesting authority to use its $17.7 million negative PCO money for 2003 to fund its

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4, 1999) (hereinafter *Merger Order).* Verizon PA is the company formerly know as Bell Atlantic-Pennsylvania, Inc., and Verizon North is the company formerly known as GTE –North, Inc.

[21] Given the merger consummation date of June 30, 2000, the deadline date to commence a consolidated cost study proceeding to determine statewide access charges for the Verizon companies was December 30, 2002.

contributions to the Pennsylvania Universal Service Fund ("PaUSF"). That filing was docketed at Docket Nos. M-00031694 and P-00930715.[22]

On December 30, 2002, Verizon PA and Verizon North filed a Joint Petition (Verizon Joint Petition) regarding the further reduction of their access charges pursuant to the *Merger Order*, the *Global Order* and the *Generic Access Charge Investigation* at Docket No. M-00021596.[23] The Commission published Verizon's Joint Petition in the *Pennsylvania Bulletin* on January 18, 2003 at 33 Pa. B. 502. Comments were filed by AT&T Communications of Pennsylvania, Inc. ("AT&T"), jointly by the Rural Telephone Company Coalition ("RTCC"), Sprint Communications Company and The United Telephone Company of Pennsylvania ("Sprint/United"), the OCA, OSBA and Qwest.

AT&T, MCI, OCA, OSBA, OTS and Qwest objected to the Verizon Joint Petition. Given that there were contested, material factual issues, (i.e., what the cost of traffic sensitive rates are and how low the intrastate access charges should be), the Commission, in an Order entered May 5, 2003 at Docket Nos. M-00021596, *et al.*, referred Verizon's Joint Petition to the Office of Administrative Law Judge for evidentiary hearings and the issuance of a recommended decision. The May 5, 2003 Order consolidated the Verizon Joint Petition with AT&T's Formal Complaint at Docket No. C-20027195 regarding Verizon North's access charges pursuant to the Commission Order of December 24, 2002. The May 5, 2003 Order further directed that the Verizon

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[22] On January 31, 2003, AT&T filed a Formal Complaint at Docket No. M-00031694C0001 challenging Verizon PA's proposal to use its negative PCO money to support Verizon's 2003 contribution to the PaUSF. By Summary Judgment Order entered September 9, 2003, the Commission, *inter alia*, granted a Motion for Summary Judgment filed by Verizon PA regarding the use of its 2003 PCO. In that Order, the Commission authorized Verizon PA to use $17,474,483 from its 2003 PCO money to fund its required contributions to the Pennsylvania Universal Service Fund for the year 2003 and ordered that the remaining balance of $243,517 of Verizon PA's 2003 PCO may be addressed by the Administrative Law Judge presiding over C-20027195, or, in the alternative, carried over and addressed with Verizon PA's 2004 PCO filing.

[23] Verizon's Joint Petition presented a proposal to merge the rates and rate structures of Verizon PA and Verizon North in Pennsylvania through a three-step process. The terms of each step are included in "ATTACHMENT A" of Verizon's Joint Petition. Generally, the Plan is aimed toward eventually mirroring interstate access rates, while allowing for revenue neutral local rate increases with specific caps on R-1 rates in Steps 2 and 3 of the proposal.

Joint Petition, which was made in compliance with the *Merger Order* directive that Verizon North and Verizon PA achieve access charge parity, should also be consolidated with and addressed in the proceeding at Docket No. C-20027195.

The matter was assigned to ALJ Cynthia Williams Fordham who held a prehearing conference on May 29, 2003. Counsel for Verizon, AT&T, OCA, OTS, OSBA, Qwest, RTCC, Sprint, and MCI participated. Verizon, AT&T, OCA, OTS, OSBA, Qwest and MCI filed direct, rebuttal and/or surrebuttal testimony in accordance with the procedural schedule established during the prehearing.

It is noted that during the course of the instant proceeding, Verizon and OCA presented a Joint Proposal, which was included in Verizon PA's Statement No. 1.1, the Surrebuttal testimony of Debra M. Berry and Michael J. Wirl. The terms of the Joint Proposal were specifically set forth in Exhibit DMB-1 attached thereto. On August 8, 2003, the OSBA filed a Motion to Strike A Portion of Verizon Statement 1.1 or in the Alternative Judgment on the Pleadings (OSBA Motion) because it believed that, pursuant to 52 Pa. Code §§5.103(a), (b), and 5.412(c): (1) the testimony was overly vague and ambiguous concerning proposed increases to business customers; and (2) the portions at issue relate to a proposal of Verizon and OCA that was inappropriately included in the testimony of a Verizon witness. In the alternative, the OSBA moved for Judgment on the Pleadings pursuant to 52 Pa. Code §5.102(a) on the basis that Verizon failed to specify the rate increase as it relates to business customers (OSBA Motion at 6). On August 18, 2003, Verizon PA and Verizon North filed a joint response containing its argument against the OSBA Motion. The OCA also filed its response objecting to the OSBA Motion on August 18, 2003. By electronic mail on August 22, 2003, the presiding officer informed the parties that the OSBA's Motion to Strike and the Motion for Judgment on the pleadings were denied. It was noted that a written Order would follow.[24]

[24] By Order No. 4, dated August 28, 2003, ALJ Fordham ruled that the OSBA Motion to Strike a Portion of Verizon Statement 1.1 and the Motion for Judgment on the Pleadings were denied.

Hearings were held before ALJ Fordham in Harrisburg on August 25 and 26, 2003. Witnesses for Verizon, AT&T, MCI, Qwest, OTS, OCA and OSBA were cross-examined. Written testimony and exhibits were entered into the record.

In a separate but related matter, on September 9, 2003, the Commission entered a Summary Judgment Order at Docket Nos. M-00031694 and P-00930715.[25] In the Summary Judgment Order, the Commission denied AT&T's Motion for Summary Judgment, granted Verizon Pennsylvania Inc.'s Motion for Summary Judgment regarding the 2003 PCO, approved Verizon's November 26, 2002 PCO filing, authorized Verizon to use $17,474,483 from its 2003 PCO money to fund its required contributions to the Pennsylvania Universal Service Fund for the year 2003 and ordered that the remaining balance of $243,517 of Verizon Pa.'s 2003 PCO may either be addressed by the Administrative Law Judge presiding over C-20027195, or, in the alternative, carried over and addressed with Verizon Pa.'s 2004 PCO filing which shall occur in November 2003.

Main and reply briefs in the instant proceeding were filed by Verizon, AT&T, OCA, OSBA, OTS, MCI and Qwest on September 18, 2003 and September 29, 2003, respectively. The record consists of 480 transcript pages, various statements and exhibits, seven main briefs and seven reply briefs.

As noted, ALJ Fordham's Recommended Decision was issued on November 18, 2003, and Exceptions and Reply Exceptions were filed. Also, as previously noted, on February 26, 2004, a Petition for Resolution of Litigation was filed by Verizon PA, Verizon North, OSBA and OCA. Answers to the Petition for Resolution of Litigation were filed by AT&T, MCI and Qwest. Consistent with the terms contained in the Petition for Resolution, Verizon PA and Verizon North also filed their 2004 PCO filings. The disposition of these matters will be addressed in this Opinion and Order.

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[25] *See Verizon Pennsylvania Inc.'s 2003 Price Change Opportunity* at Docket No. M-00031694 and *AT&T Communications of Pennsylvania, Inc. v. Verizon Pennsylvania, Inc. Re: Verizon Pennsylvania Inc.'s 2003 Price Change Opportunity* at Docket No. M-00031694C0001, P-00930715; Order entered September 9, 2003.

Discussion

Before we discuss the merits of the Exceptions to the Recommended Decision, it is beneficial to provide the reader with a summary of the ALJ's Recommended Decision and the proposed Petition for Resolution of Litigation.

1. The Recommended Decision

As a background to this case, the ALJ explained that this proceeding is to: (1) establish "statewide access rates" for Verizon PA and Verizon North pursuant to the requirements of the November 4, 1999 *Merger Order* and (2) to also address AT&T's Complaint, filed March 21, 2002, at Docket No. C-20027195, seeking to reduce Verizon North's higher access rates to those of Verizon PA's. (R.D. at 7).

The ALJ noted that on December 30, 2002, Verizon PA and Verizon North filed its original proposal (the Verizon Joint Petition) to respond to those two issues. That proposal included a range of options of varying degrees of access reductions which would be offset through increases to basic end-user rate increases. However, the OCA, OTS, OSBA, AT&T MCI and Qwest objected to Verizon's original December 30, 2002 proposal and, as previously noted, the Commission, in its May 5, 2003 Order at Docket Nos. M-00021596, *et al.* consolidated the Verizon Joint Petition with AT&T's Formal Complaint at Docket No. C-2007195 for an evidentiary hearing and the issuance of a recommended decision. (R.D. at 8).

The ALJ also noted, however, that prior to the August 2003 hearings in this matter, Verizon and the OCA in a collaborative effort subsequently agreed upon a specific plan for implementing access charge reduction that would fall in the middle of the range of options presented under the original Verizon proposals (hereinafter Verizon/OCA Joint Proposal). Verizon and the OCA jointly requested that their Joint Proposal be adopted to resolve this proceeding. As noted, it is the Verizon/OCA Joint

Proposal that the ALJ is recommending that the Commission adopt in this proceeding.[26]

The ALJ recommended that the Commission deny the Verizon Joint Petition that was filed on December 30, 2002. In addition, after considering the Verizon/OCA Joint Proposal (discussed in the Surrebuttal Testimony of Debra M. Berry (DMB) and Michael J. Wirl in Verizon St. 1.1 with specific terms set forth in DMB Exhibit 1),[27] the associated reduction in the proposed rates, the achievement of parity between Verizon PA's and Verizon North's access charges, and the limited increases in residential and business rates that would result, the ALJ recommended that the Commission approve the Verizon/OCA Joint Proposal. (Ordering Paragraph Nos. 1, 2 and 3 at 60).

In support of her recommendation, the ALJ stated the following:

> It is clear from the parties' litigation positions and their briefs that they have different positions on most of the issues. Thus, the fact that OCA, Verizon and OTS agree on this proposal is significant. Furthermore, AT&T, MCI and Qwest view the proposal as an important first step in the process of reducing access charges. Consequently, six of the seven parties who presented witnesses or filed briefs agree with portions of the proposal.
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> In view of the two original proposals, the Verizon/OCA proposal is a reasonable compromise. The parties realize that transferring the reduction in access charges to the end users at one time by increasing the residential and/or business rates would result in rate shock. Since there is no agreement on Verizon's costs or the Commission's position on allocation of the costs, it is reasonable to accept the proposal.
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[26] The Verizon/OCA Proposal is discussed in Verizon Statement 1.1 as well as the Surrebuttal Testimony of Debra M. Berry and Michael J. Wirl. The terms of that proposal are set forth in DMB Exhibit 1, which the ALJ attached to her Recommended Decision as Attachment A.

[27] The ALJ included a copy of DMB Exhibit 1 as Attachment A to her Recommended Decision.

> After considering the OCA/Verizon Proposal, including the reduction in the proposed rates, the achievement of parity, and the limited increase in residential and business rates, its is my opinion that the settlement is fair, just, reasonable and in the public interest. Accordingly, it is recommended that the OCA/Verizon Joint Proposal be approved.

The Verizon/OCA Joint Proposal will result in a total annual access charge revenue reduction of approximately $55.6 million, which will be recovered on a revenue-neutral basis by increasing residential and business local service rates. Specifically, Ordering Paragraph No. 3 of ALJ Fordham's Recommended Decision summarizes the access charge reductions that would result if the Commission were to adopt her recommendation. Ordering Paragraph 3 states:

> 3. That Verizon PA, Inc. shall reduce its traffic sensitive access charge (per minute) from **[BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY].** That Verizon North, Inc. shall change its traffic sensitive access charge (per minute) from **[BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY].** That Verizon PA, Inc.'s carrier charge (per line, per month) shall remain at **[BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY].**[28] That Verizon North, Inc. shall reduce its carrier charge (per line, per month) from **[BEGIN VERIZON PROPRIETARY [END VERIZON PROPRIETARY].** The effective rate per minute for the carrier charge will be **[BEGIN VERIZON PROPRIETARY [END VERIZON PROPRIETARY]** for both Companies. That Verizon PA, Inc.'s combined rate (per minute) shall be reduced from **[BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY].** That Verizon North, Inc.'s combined rate (per minute) shall

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[28] We note that Verizon PA's carrier charge was reduced from $0.63 to $0.61 in November 2003, and further reduced from $0.61 to $0.58 in April 2004, after the record in this case was closed. (See Verizon PA Switched Access Tariff-Telephone Pa. P.U.C. No. 302; 11th Revised Sheet 247; Effective April 1, 2004). It is the intent of Verizon and the OCA that the carrier charge for Verizon North should be the same as whatever the existing carrier charge rate established for Verizon PA would be when and if the Commission adopted the Verizon/OCA Joint Proposal. *See* Footnote 1 of the Verizon/OCA Joint Proposal.

be reduced from **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY].**

In addition to the above, the Verizon/OCA Joint Proposal provides that:

- Verizon will also implement changes in rate structure to align with the interstate structure, which changes will not affect the amount of the access reduction noted above;

- All rate changes will be made on a revenue neutral basis. No more than $40 million would come from Residential basic local service rate increases on a combined Verizon PA and Verizon North basis, and such increases would be less than $1.00 per residential line based on recovery across the combined companies' customer base. The residential increases would apply to dial tone line rates for all customers subscribing to that service on a non-package basis. The remaining can be recovered from Business line rate increases on a combined Verizon PA and Verizon North basis; and,

- No basic rate increases would occur before January 1, 2004.

- That the remaining balance of $243,517 of Verizon PA's 2004 PCO will be addressed during the proceeding associated with Verizon PA's 2004 PCO filing.

The ALJ noted that the OSBA did not agree to the Verizon/OCA Joint Proposal in part because the record has little information on the amount of the proposed increase in business rates. The ALJ reasoned that while OSBA has raised a valid concern, the Verizon/OCA Joint Proposal is reasonable because the record contains information about the total amount to be transferred to the residential and business customers and the maximum amount that will be borne by the residential customer. The ALJ contended that although this is not the most favorable position, the Verizon/OCA Joint Proposal is a reasonable compromise in light of the litigation positions of the Parties. (R.D. at 58-59).

The ALJ also recommended that the proceeding in this matter be marked closed and that the Commission review the impact of the current reductions and reduce costs in subsequent proceedings if necessary. (RD at 59).

2. Exceptions

Before addressing the Exceptions in this proceeding, we note that any issue or Exception that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well established that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. Ct. 1993); also *see, generally, University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. Ct. 1984).

a. OSBA Exceptions

The OSBA also filed Exceptions to the ALJ's Recommended Decision, However, as was noted previously, the OSBA agreed to withdraw its Exceptions to the Recommended Decision if the Commission approved the Petition for Resolution that was filed by Verizon PA, Verizon North, the OCA and the OSBA on February 26, 2004. In light of the fact that we shall adopt Petition for Resolution, the OSBA's Exceptions are deemed moot.

b. Deferred Access Charge Reform

In their Exceptions, the IXCs generally are of the opinion that the ALJ's recommendation to approve the Verizon/OCA Joint Proposal is a significant step in the right direction. However, they object to the ALJ's recommendation that the Commission close the instant proceeding and defer further access reform until a future proceeding.

AT&T submits that although it agrees with the ALJ's recommendation that the Commission should adopt the terms of the Verizon/OCA Joint Proposal as a first step, it does not believe the Joint Proposal goes far enough to relieve the "existing bloat" in Verizon PA's intrastate access rates. AT&T encourages the Commission to work toward further restructuring and lowering Verizon's access charges because Verizon's remaining access levels will remain substantially above their actual costs even after the terms of the Verizon/OCA Joint Proposal are implemented. (AT&T Exc. at 4). Thus, AT&T urges the Commission to commit itself now to specific access reductions and offsetting rate increases over a two-year period, to attain the goal where Verizon's intrastate access rates would mirror its current interstate rates. AT&T projects that these two steps would further reduce access revenue by **[BEGIN PROPRIETARY] [END PROPRIETARY]** beyond the reductions that would result from the Verizon/OCA Joint Proposal, and that the two end-user rate increases of about $0.80 per month would be required beyond the increases recommended by the ALJ.[29] (AT&T Exc. at 5-6).

Like AT&T, MCI and Qwest also object to the ALJ's recommendation that the case be closed after approval of the OCA/Verizon proposal. However, MCI is of the opinion that this Commission should implement either an immediate or phased-down reduction in access rates to a level that is equal to Verizon's forward looking costs. If, however, the Commission is not willing to reduce access rates to cost, MCI submits that, at a minimum, the Commission should either reduce access rates immediately to interstate levels, which would include the elimination of the Carrier Charge, since there is no Carrier Charge at the interstate level, or else order further reductions to interstate levels by a date certain (such as no later than the end of 2004) and reductions to cost by a date certain (such as no later than the end of 2005). (MCI Exc. at 6-9). Qwest asserts in its Exceptions that the ALJ's recommendation to defer additional reductions to Verizon's intrastate access rates misconstrues the record as an excuse to prolong the implicit subsidies in Verizon intrastate access charges in Pennsylvania. Qwest is concerned that further delaying further access reductions to a future proceeding will expose Pennsylvania consumers to a more significant rate increase at a subsequent time,

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[29] *See* AT&T Cr. Exhs. 5-7.

especially in light of the fact that the FCC appears to be moving in a direction that continues to significantly reduce interstate switched access rates. (Qwest Exc. at 4-7).

In their Replies, the OCA, OSBA and OTS object to the IXC's arguments that the ALJ should have established a specific schedule to bring access to cost. (OCA R.Exc. at 10; OSBA R.Exc. at 5-6; OTS R.Exc at 6-8). The OCA opposes any commitment to further reduce access charges and increase basic rates at this time and is of the opinion that the Verizon/OCA Joint Proposal as recommended by the ALJ sufficiently satisfies the goals and objectives of this proceeding as articulated in the *Global Order* and the *Merger Order.* (OCA R.Exc. at 10).

Verizon rejoins that the ALJ was correct in recommending that the Commission not commit itself in advance to precise access reductions and end-user rate increases. Verizon advocates approval of the ALJ's recommendation with the same understanding expressed in the Sprint/RTCC Settlement Approval Order, that this proceeding may not be the "final word on access reform."[30] Verizon suspects that AT&T's proposal to reduce access revenue by **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** over two years would not achieve "final access reform" because it is of the opinion that the IXCs will continue to demand reductions even after AT&T's two phases are implemented because the IXCs contend that even interstate rates exceed actual costs. Verizon contends that the Commission does not have to determine in this proceeding the appropriate end point, or whether access rates should ultimately set at cost in view of the Commonwealth Court's previous determination that it would be reasonable and within this Commission's discretion to end up with access rates priced above cost while requiring the IXCs to continue to share in some portion of the network costs.[31] Verizon also believes it would be best to first implement the access reductions contained in the Verizon/OCA Joint Proposal, and then evaluate the state of the market only after those reductions have been implemented. (VZ R.Exc. at 14-15).

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30 *See, Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, *et al.*, at 12. (Opinion and Order entered July 15, 2003) (*Sprint/RTCC Settlement Approval Order*).

31 763 A.2d at 480.

We agree with the ALJ and all of the Parties in this proceeding who contend that the Verizon/OCA Joint Petition is a significant step in the right direction in that it accomplishes the goal of attaining parity between Verizon PA and Verizon North, while limiting offsetting local service rate increases. Those same Parties, with the addition of the OSBA, also agree that the Joint Petition for Resolution, which modifies the Verizon/OCA Joint Petition, is also a significant step in the right direction. As will be addressed later, in light of the fact that the Joint Petition for Resolution improves upon the Verizon/OCA Joint Petition recommended by the ALJ, we shall adopt the Petition for Resolution instead of the recommended Verizon/OCA Joint Petition. The Petition for Resolution, *inter alia*, contains the same level of rate reductions that were proposed in the Verizon/OCA Joint Petition.

Nevertheless, we also agree, to some extent, with those IXCs who argue that the ALJ's Recommended Decision did not go far enough because it failed to establish "next steps" to further reduce access rates in the near future. We note that the ALJ's recommendation mainly focused on the issue of attaining access rate parity as required by the *Merger Order*, but failed to address some of the more significant policy issues raised by the Parties. In particular, a major aspect of the *Global Order* involving the possible elimination of the Carrier Charge and removal of all implicit subsidies from access charges were not resolved in this proceeding by the ALJ.[32]

Although the ALJ explained in detail each of the various Parties' positions, she opted to refrain from offering specific recommendations to numerous outstanding issues raised by the Parties in favor of recommending approval of the Verizon/OCA Joint Proposal. In light of the significant resources that have already been expended by the IXCs and the other Parties in this proceeding, we are of the opinion that it is not prudent to mark this proceeding closed without the benefit of a recommended decision on these outstanding issues. Furthermore, we note that this proceeding, in part, had its genesis in the *Global Order*, which ordered that an investigation be commenced

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32 *See Global Order* at 59-60.

on January 2, 2001, with an original deadline to complete the case, and reduce rates, by December 31, 2001.[33] In addition, this proceeding also addresses Verizon's filing in compliance with the *Merger Order's* directive that establishes statewide access rates for the Verizon companies on a consolidated cost study basis. That filing was made on December 30, 2002.

Due to the length of time already involved in this proceeding, it is not prudent to delay further access charge reform at this time. Therefore, we shall allow the access charge reductions and offsetting local rate increases as contained in the Joint Petition for Resolution to become effective in accordance with the Ordering Paragraphs of this Opinion and Order. However, rather than marking the instant proceeding closed, as recommended by the ALJ and suggested by Verizon, we shall remand this case back to the ALJ for the further development of the record and the issuance of a recommended decision concerning those policy issues and other access charge concerns that were raised by the IXCs in their Exceptions but which were not specifically resolved by a recommendation in this instant proceeding. These issues include, but are not limited to, AT&T's two-step access charge reduction proposal, the removal of all implicit subsidies from access charges, the reduction and possible elimination of the Carrier Charge, as well as the outstanding issues delineated in the Exceptions that follow:[34]

c. Implicit Subsidies in Existing Access Charges

The IXCs generally take exception to the Recommended Decision because it failed to address the need to reduce access charges to cost by removing implicit subsidies in Verizon's intrastate access charges. The IXCs contend that vigorous local and long distance competition will not take place until the implicit subsidies in Verizon's intrastate access charges are made explicit. (Qwest Exc. at 3-4; AT&T Exc. at 10).

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[33] *Global Order* at 60.

[34] In the instance that some or all of the Parties agree to another Joint Settlement, we direct the presiding ALJ to require those Parties to address each of the unresolved issues in the proposed Settlement as well.

AT&T argues that the record shows that the access rates charged by both Verizon companies currently exceed the cost of providing carrier access services and will continue to do so under the ALJ's recommendation to adopt the Verizon/OCA Joint Proposal.[35] (ATT Exc. at 6). MCI asserts that there are numerous arguments on the record that give this Commission ample reason to reduce access rates closer to cost but that the ALJ did not even discuss the evidence showing that the telecommunications industry is moving towards making implicit subsidies explicit to permit a level playing field. (MCI Exc. at 12-13).

Verizon responds that while the Commission has stated the goal of *reducing* implicit subsidies in access rates, the Commission has stopped short of declaring that access should be priced at "cost" and that IXCs should be absolved of any contribution to local service. Verizon asserts that the Commonwealth Court approved the Commission's decision in the *Global Order* to continue to price access above its cost as a sound exercise of the Commission's specialized expertise in this area.[36] (VZ R.Exc. at 15). Verizon is of the opinion that the Commission does not need to determine the appropriate end point, or decide whether access rates should be set at cost, if it simply approves the ALJ's recommendation. (VZ R.Exc. at 14). Verizon further argues that while AT&T and MCI demand that Verizon be required to reduce its access rates to cost, the record shows that they do not price their own intrastate access rates according to the extremely low standard they seek to impose upon Verizon.[37]

AT&T and MCI argue that Verizon's above-cost access rates are having an adverse effect on toll competition because IXCs are required to pay above-cost access charges on all of the intrastate toll calls they provide to Verizon's local exchange customers whereas wireless must only pay TELRIC-based reciprocal compensation rates that are much lower than Verizon's switched access charges.[38] (AT&T Exc. at 7; MCI

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35 *See* AT&T St. 1.0 at 4-5, AT&T St. 2.0 at 10 and OAO Rebuttal Exhibit 4.

36 763 A.2d at 480.

37 Tr. 358; VZ Cr. Ex.9.

38 AT&T St. 1.0 at 11-18.

Exc. at 1). MCI argues that, from a network perspective, the termination of local calls and long distance calls is identical and there is no valid reason for rates to be different for the exact same services.[39] MCI asserts that the Commission should minimize the regulatory disparity between the treatment of wireline and wireless calls by reducing intrastate switched access charges to cost. (MCI Exc. at 13).

Verizon responds that the IXC's argument, that reducing intrastate access rates will place the IXC on the same footing as wireless, is flawed because the record shows that the customers of wireless carriers are not dependent on the local telephone network to originate calls, and thus wireless carries avoid originating access costs. Verizon also argues that while it may be true that more customers are using wireless phones, there are many complex reasons for the growth and maturity of the wireless market and its use as a substitute for traditional landline phones, and it is illogical to conclude that intrastate rates play a significant role.[40] (VZ R.Exc. at 18).

We note that, consistent with the Telecommunications Act of 1996, as well as our *Global Order*[41], it has been this Commission's policy to work toward the elimination of implicit subsidies that may exist in access charge rates. We shall, therefore, direct that the ALJ consider the merits of each of the Parties' positions on this matter and make a recommendation based on the record evidence in the next phase of the investigation.

d. Elimination of the Carrier Charge

MCI and Qwest object to the fact that the Verizon/OCA Proposal maintains a Carrier Charge and that the ALJ failed to address this important issue in evaluating the reasonableness of the Verizon/OCA proposal. MCI contends that

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39 MCI notes that the testimony of its witness, Dr. Pelcovits, demonstrates that access rates are anywhere from 123.6% to 1,500% higher than the current UNE rates and per minute switching rates are over 540% higher than unbundled switching rates. *See* MCI St. 1.0 (Pelcovits Rebuttl) at 37.

40 VZ St. 3.0 (Taylor Surrebuttal) at 43.

41 *See, Global Order* at 26.

Verizon's initial testimony contained a proposal to eliminate the Carrier Charge,[42] but that Verizon subsequently proposed the Verizon/OCA Joint Proposal, which maintained the Carrier Charge, albeit at a significantly lower rate for Verizon North and no change for Verizon PA. MCI submits that the Carrier Charge exists solely to provide a contribution to the cost of the loop and the ALJ should have addressed the elimination of the Carrier Charge. (MCI Exc. at 4-5). Given the fact that Verizon, itself, admits that access rates should not be used to provide a contribution to the loop, MCI argues that the Commission should immediately eliminate the Carrier Charge because it is not reflective of cost. (MCI Exc. at 6). Qwest submits that the Carrier Charge must be eliminated in conjunction with reducing intrastate access rates to interstate rates in order to remove the implicit subsidies in Verizon's access charges. (Qwest Exc. at 3)

In its Reply Exceptions, the OSBA contends that all three public advocate offices found it reasonable to allocate some charge to toll carriers for the local loop.[43] In addition, each public advocate office independently concluded that a Carrier Charge at a rate of $1.20 per line per month is reasonable for the recovery of non-traffic sensitive access costs.[44] (OSBA R.Exc. at 3). The OCA replies that the IXCs should be required to pay for the facilities they use because the cost of access includes some portion of the joint and common loop costs that the IXCs use to carry their traffic.[45] (OCA R.Exc. at 5).

In our *Global Order* we stated, "the sooner that we resolve the reduction and possible elimination of the carrier pool, the better it would be for the competitive environment in Pennsylvania." (Global Order at 59). We realize that reducing or eliminating the Carrier Charge is a balancing act that could lead to possible significant increases to local rates. Nevertheless, based on our previous goal in the *Global Order* that we may eventually dissolve the Carrier Charge, we believe it is in the best interest of

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42 Verizon St. 1.0 (Berry/Wirl) at 15).

43 *See* OCA St. No. 1 at 31, 1.25-32, 10; OTS St. No. 1 (Revised) at 7, 1.3-8, 1.13; Revised OSBA St. No. 1 at 7, 1.8-13; Tr. At 455, 1.19-457, 1.22.

44 *See* OCA St. No. 1 at 5, point (3) and 12, 1.26-13, 1.9; OTS St. No. 1 (Revised) at 18; Tr. At 389 1.2-11; Revised OSBA St. No. 1 at 16, 1.22 -17, 1.7.

45 *See,* OCA M.B. at 14-23, OCA R.B. at 4-8.

the public for the ALJ to address and recommend a plan that addresses further reductions or even a complete elimination or phase-out of the Carrier Charge in the next phase of the investigation.

e. Revenue Neutral Filings

In its Exceptions, MCI argues that the ALJ erred by assuming reductions in access rates would necessarily lead to increases in residential and/or business rates. MCI asserts that the ALJ did not even discuss MCI's argument that Verizon is not entitled to automatic revenue neutrality. MCI is of the opinion that there is nothing in the law, *Merger Order*, or Verizon's Chapter 30 Plans that requires revenue neutrality. MCI states that the language in Verizon's Chapter 30 Plan states that Verizon "*may* file tariffs proposing to rebalance and/or restructure its rates for noncompetitive services, either an increase or decrease.[46] Similarly, MCI notes that 66 Pa. C.S. § 3007, which deals specifically with access charges, states only that revenue neutral rate changes *may* be proposed, but such changes are subject to Commission approval. MCI also asserts that although the Commission permitted Verizon to file revenue neutral filings in the *Global Order*, the Commission never required such recovery in the future. MCI submits that when the Commission did permit revenue neutral recovery of access charges in the *Global Order*, the Verizon PA revenue did not come from increases to residential or business rates, but from Verizon's PCO filings. (MCI Exc. at 10-11). Qwest on the other hand supports revenue neutral filings. (Qwest Exc. at 8).

Verizon disagrees with MCI's opposition to revenue neutral filings because it would leave Verizon unable to recover its costs of the loop and would jeopardize universal service and Verizon's financial stability. Verizon argues that the Commission contemplated that any access decreases made as a result of the *Merger Order* would be

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[46] *See,* Verizon Main Brief at 28, citing to Verizon North Chapter 30 Plan, Part 3.B.1 (emphasis added by MCI).

revenue neutral.[47] (VZ R.Exc. at 20). Verizon cites various instances in which the Commission has consistently allowed rate rebalancing filings on a revenue neutral basis on pp. 21-23 of its Exceptions. Furthermore, Verizon argues that MCI's argument that access rates do not subsidize local rates is directly contrary to the finding in the *Global Order*, which recognized that access charges provide a significant source of ILEC earnings and contain implicit and explicit subsidies for local rates which have helped keep basic local exchange service rates in Pennsylvania at an affordable level over the years.[48] Verizon cites AT&T's arguments that support a proper rebalancing of access charges and local rates on a revenue neutral basis so that the inefficiencies and anti-competitive effects of above-cost access charges are eliminated by bringing local exchange rates in Verizon's territory more in line with the underlying cost of that service.[49] Verizon also asserts that this reasoning is consistent with ALJ Schnierle's prior Recommended Decision in 1998 when he advised the Commission that it is necessary to eliminate subsidies and to raise basic service rates closer to their cost in order for all customers to experience significant local competition.[50] Verizon notes that MCI made the exact same argument to Judge Schnierle in the 1998 generic access case, and he found it to be "extreme," without merit and a violation of Verizon's Chapter 30 Plan.

Furthermore, Verizon submits that the Verizon Chapter 30 plans also require any rate restructurings to be revenue neutral and cites to other Chapter 30 rate rebalancing filing where basic rate increases offset access reductions. As such, Verizon claims that it would be contrary to Chapter 30 and devastating to Verizon if the Commission did not permit a revenue neutral rate rebalancing for reductions to Verizon's access charges. (VZ R.Exc. at 20-24).

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47 *Merger Approval Order* at 36 (noting that Verizon was not precluded "from arguing in this combined proceeding that any additional reduction that the Commission order should be implemented **on a revenue neutral basis**") (emphasis added); MOU at Paragraph 4 (specifically allowing Verizon to propose "that any additional reductions which the PUC orders as a result of this new proceeding should be implemented **on a revenue neutral basis**") (emphasis added).

48 *Global Order* at 11, 13, n. 9.

49 *See*, AT&T St. 1 (Kirchberger/Nurse Rebuttal) at 33-34).

50 *See Generic Investigation Into Intrastate Access Charge Reform;* Docket No. I-00960066; Recommended Decision at 68.

We agree with the arguments raised by Verizon PA that the ALJ did not err in requiring revenue neutrality for Verizon's access charge reform. Verizon accurately cites to Judge Schnierle's recommendation when he made the following statement with which we agree:

> If the Commission were to order [Verizon PA] (or any other Chapter 30 companies, for that matter) to lower some rates without permitting revenue neutral increases in others, it would frustrate a major purpose of Chapter 30. While such action might be justifiable in an extreme situation, I find no reason to recommend such action as part of an effort to reform access charges.

1998 Access Recommended Decision at 73.

In addition, we noted in our *Merger Order* at 36, that Verizon was not precluded "from arguing in this combined proceeding that any additional reductions that the Commission orders should be implemented on a revenue neutral basis." This language is consistent with Paragraph No. 4 of the Pennsylvania Attorney General's Memorandum of Understanding that specifically allows Verizon to propose "that any additional reductions which the PUC orders as a result of this new proceeding should be implemented on a revenue neutral basis."

We realize that there are various schemes available to offset access rate reductions on a revenue neutral basis that we have used for ILECs in the past (e.g., through local rate increases, through money available under negative PCOs, or through disbursement from the Universal Service Fund). In addition, there are others which we have not yet used such as the creation of an intrastate Subscriber Line Charge.

In light of the above, we conclude that although access charge reductions may not necessarily lead to direct residential and/or business rate increases, the ALJ did not err in her reasoning that Verizon's access charge reductions should be made on a

revenue neutral basis. As such, we shall deny MCI's Exceptions on this issue consistent with the discussion, above.

f. Mirroring of Interstate Access Charges

In its Exceptions, Qwest submits that the ALJ erred in her Recommended Decision when she dismissed the need to reduce intrastate access charges to the level of interstate rates. Qwest claims that when properly reviewed in its entirety, the record clearly supports reducing Verizon's intrastate access charges to the level of its interstate rates. Qwest states that if the Commission closes the jurisdictional gap between interstate switched access rates and switched access rates in Pennsylvania, the Commission will have taken an important step toward a more sensible, pro-competitive intercarrier compensation scheme as the FCC moves further toward its broader intercarrier compensation goals. Qwest further contends that switched access is included as part of the FCC's pending intercarrier compensation docket and will continue to receive attention in anticipation of the 2005 expiration of the *CALLS* and *MAG* plans. Since the FCC is considering a bill-and-keep regime for the exchange of most, if not all, intercarrier traffic, including switched access, Qwest urges the Commission to follow the FCC's lead so that Pennsylvania will not lag behind progress because a significant step toward more rational economic pricing for intercarrier compensation will be accomplished. (Qwest Exc. at 8-10). AT&T agrees with Qwest that Verizon's intrastate rates should be reduced to interstate access rate levels within the next several years. (AT&T Exc. at 3).

The OCA replies that it opposes mirroring the interstate access rates set by the FCC in light of the fact that the FCC is likely to further revise the interstate access rates in the near future. Due to the uncertainty at the federal level, the OCA believes it is best for the Commission to consider further access charge reductions at a future time until it is clear what ramification further access reductions will have upon consumers. (OCA R.Exc. at 11).

In its reply, Verizon claims that Qwest and AT&T have not adequately demonstrated that, based on record evidence or Commission precedent, that access charges should be reduced to interstate levels. Verizon argues that in light of the fact that interstate access rates will continue to fall, there is no reason to assume two years from now that the rates that result from AT&T's proposal will actually mirror the interstate rates in effect at that time. Verizon opines that this means that the IXCs will probably seek additional access charge reductions at that time. Finally, Verizon notes that Qwest, which owns the Regional Bell Operating Company formerly known as U.S. West, admitted that it has not mirrored interstate rates in all of the states in which it operates.[51] (VZ R.Exc. at 19-20).

We note that our granting of the Joint Petition for Resolution will require the Verizon companies to implement changes in their rate structure to align with the interstate structure. However, nothing in the Joint Petition for Resolution indicates whether the Verizon companies should continue to mirror the interstate rates in the future. Therefore, we shall direct that the ALJ consider the merits of each of the Parties' positions in this regard and make a recommendation based on the record evidence in the next phase of the investigation.

3. The Proposed Petition for Resolution

As was previously noted, the OSBA opposed the original Verizon/OCA Joint Proposal primarily because the rate increase for small business customers was indeterminate. In order to garner the OSBA's support of an amended Verizon/OCA Joint Proposal, as well as to resolve OCA's concerns about the specific use of Verizon 2004 PCO, which also was not addressed in the Verizon/OCA Joint Proposal, the Parties (*i.e.*, Verizon, OCA and OSBA) held subsequent discussions that led to the filing of the proposed Petition for Resolution on February 26, 2004. (Pet. for Res. ¶ 8 at 5).

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[51] Tr. 382.

The following background is useful in understanding the OCA's concerns about the use of Verizon's 2004 PCO. On October 30, 2003 Verizon filed a letter requesting that we delay its 2004 PCO filing pending resolution and the issuance of a final order in the instant proceeding, in order to avoid any customer confusion that could arise from having multiple rate changes. On November 12, 2003, the OCA filed a letter opposing Verizon's request to postpone its 2004 PCO. The OCA was concerned that Verizon had not identified the amount of the PCO rate decreases in its request for a delay. Verizon subsequently responded to the OCA's letter. In its response, Verizon stated that the 2004 PCO would result in approximately $13 million in rate reductions for Verizon PA and approximately $1 million for Verizon North. Verizon also responded that although it had not decided on how to use the PCO reductions, it was considering using those reductions to fund access charge reductions that could result from this instant proceeding, or else to fund its Lifeline obligations.

On February 26, 2004, Verizon PA and Verizon North filed their 2004 PCO filings at Docket No. P-00930715 and P-00001854. The PCO filings were filed concurrently with the Petition for Resolution that was filed jointly by the Verizon PA, Verizon North, OCA and OSBA. In its 2004 PCO filing, Verizon requests that it be permitted to use Verizon PA's and Verizon North' PCO amounts of $13,480,000 and $1,415,000, respectively, in addition to the $234,517 carryover from Verizon PA's 2003 PCO (a total of $15,138,517) to partially offset the switched access rate reductions to maintain the level of access reductions adopted in ALJ Fordham's Recommended Decision, and to limit the offsetting basic rate increases to residential and business customers consistent with the terms of the Petition for Resolution.[52]

The Petitioners of the Petition for Resolution submit that the access charge reductions contained in their Petition for Resolution are consistent with the Verizon/OCA Joint Proposal which ALJ Fordham recommended be approved. As noted, the OSBA has

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[52] Verizon stated that it did not file tariffs with it PCO filing but that it will make the necessary tariff changes associated with its PCOs in compliance with the Commission's final order in this instant access charge proceeding.

agreed to withdraw its Exceptions to the Recommended Decision if the proposed Petition for Resolution is granted by the Commission. (Pet. for Res. at 1).

The terms of the Petition for Resolutions as contained in the revised DMB Exhibit 1 are as follows:

- The existing Traffic Sensitive Access Charges will be changed to establish parity between the Verizon companies and will be reduced from **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** to **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per minute for Verizon PA and increased from **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** to **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per minute for Verizon North.

- The effective Carrier Charge rate per minute will be changed to establish parity between the Verizon companies and will decrease from **[BEGIN PROPRIETARY** **[END PROPRIETARY]**to **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**for Verizon PA and decrease from **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**to **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**for Verizon North. As a result, the Carrier Charge on a per line, per month basis will remain at the current level of $0.58 for Verizon PA and will be reduced from **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** to **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** for Verizon North.[53]

- A weighted average of the combined Traffic Sensitive Access Charge and the Carrier Charge on a per minute of use basis for the two Verizon companies will be reduced from **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per minute to **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per minute, which will result in an access charge revenue reduction of **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**.

[53] As we noted in our discussion of the Verizon/OCA Joint Proposal, Verizon PA's carrier charge was reduced from $0.63 to $0.61 in November 2003, and further reduced from $0.61 to $0.58 in April 2004. (See Verizon PA Switched Access Tariff-Telephone Pa. P.U.C. No. 302; 11th Revised Sheet 247; Effective April 1, 2004). Since the Joint Petition for Resolution was filed on February 26, 2004, prior to when Verizon further reduced its carrier charge in April 2004, it reflects the old carrier charge of $0.61. However, it is the intent of the Petitioning Parties that the actual carrier charge for Verizon North should be the same as whatever the existing carrier charge rate established for Verizon PA would be when and if the Commission adopts the Joint Petition for Resolution.

- Verizon will implement changes in rate structure to align with the interstate structure, which changes will not affect the amount of the access reduction noted above.

- All rate changes will be made on a revenue neutral basis. No more than $40 million would come from Residential basic local service rate increases on a combined Verizon PA and Verizon North basis, and such increases would be less than $1.00 per residential line based on recovery across the combined companies' customer base. The residential increases would apply to dial tone line rates for all customers subscribing to that service on a non-package basis.

- The remaining offsetting rate changes would be applied to business basic local rate increases on a combined Verizon PA and Verizon North basis. Such increases will be less than $1.00 per business line based on recovery across the combined companies' customer base, but in no event shall the average increase imposed on business local exchange lines be greater than the average increase imposed on residential lines. The business increases would apply to dial tone line rates for all customers subscribing to that service on a non-package basis.

- Verizon shall use some or all its remaining $243,517 from its 2003 PCO to offset the access rate reductions and to ensure that the rate changes will be revenue neutral to Verizon.

- Verizon PA and Verizon North shall use monies from their 2004 PCOs to offset the access reductions resulting from this proceeding and to ensure that increases for business local exchange customers would be no greater than the increases for residential local exchange customers.

- No basic rate increases would occur before January 1, 2004.

- The one-time financial benefit accrued to Verizon PA and Verizon North due to the delay in implementation of the PCO filings beyond the normal implementation dates (*i.e.*, January 1, 2004 for Verizon PA and March 1, 2004 for Verizon North) will be used to help fund the Verizon Companies' support of their Lifeline programs. The quantity of the lump-sum will be quantified after the actual implementation date of the PCO is determined.

The Petitioners of the Petition for Resolution are of the opinion that the granting of their Petition is in the public interest because it would result in the same access rate consolidation and reductions as contained in the Verizon/OCA Joint Proposal that was adopted by the ALJ and at the same time, substantially mitigate the potential rate increases on residential and business local exchange customers that would result from the

access rate reductions. (Pet. for Resolution ¶10 at 6). The Petitioners, therefore, request that the Commission adopt the following proposal in accordance with the following:

a. First the Commission should adopt the RD, modified to limit the rate increases for business local exchange customers, as set forth in the attached Revised Exhibit DMB-1. This proposal would maintain the same level of access reductions as authorized in the RD, but would limit the average offsetting rate increases on business local exchange lines to be the same as the increase imposed on residential local exchange lines.[3]

b. Second, the Commission should adopt Verizon's proposal to use the full amount of the 2004 PCOs to offset the local exchange increases that would otherwise be required by the access charge decreased. The proposal would permit the 2004 PCO amounts to be used as a funding source for the access charge reductions, to minimize the level of offsetting local exchange increases for both residential and business customers. As set forth in Verizon's PCO filing, filed concurrently with this Petition, the total amount of the 2004 PCO is a $13,480,000 rate reduction for Verizon PA and a $1,415,000 rate reduction for Verizon North.[4] Verizon estimates that if the full amount is used to offset the access charge reductions recommended in the RD, the local exchange increases will be less than 85 cents per residential and business dial tone line. Verizon will make a compliance filing after Commission approval of this proposal that contains a final calculation of the amount of the rate changes, based on updated volumes.

c. Finally, the Commission should adopt Verizon's proposal to use that portion of the 2004 PCO that accrue from January 1, 2004 until such date as any new rates become effective (the "PCO lag") to be used to fund Verizon's Lifeline programs. At the time of compliance filing, Verizon will quantify the dollar amount of the PCO lag.

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[3] As set forth in Revised Exhibit DMB-1, attached hereto, these increases would be applied to dial tone line rates for all customers subscribing to that service on a non-package basis.

[4] In addition, ALJ Fordham recommended that the $243,517 carryover from Verizon's 2003 PCO be added to the 2004 PCO filing, bringing the total two company PCO reduction to $15,138, 517

(Pet. for Resolution ¶10 at 6).

Answers to the Petition for Resolution were filed by AT&T, MCI and Qwest. In its Answer, AT&T notes that throughout this proceeding, it has consistently expressed it support for the rate rebalancing and access charge reductions proposed in the Verizon/OCA Joint Proposal. Since the terms of the modified agreement, which now has the active support of the OSBA, does not materially change the rebalancing and access goals of the original Verizon/OCA Joint proposal, AT&T maintains its position that the Commission should grant the Petition for Resolution. At the same time, AT&T reiterates its position that it expressed in its Brief and Exceptions that the Commission should immediately take advantage of the comprehensive record from this proceeding and establish a plan that will reduce the Verizon companies' intrastate access charges to interstate level within the next several years. (AT&T Answer at 1-3).

In their Answers, Qwest and MCI asserts that the Commission should deny the Petition for Resolution. As previously expressed in their Exceptions, these Parties argue that the Petition for Resolution involves only a limited subset of supportive Parties and ignores various issues forwarded by the IXCs that should have been addressed in this proceeding. From a legal argument, Qwest and MCI do not believe that the Commission should adopt a settlement in which none of the IXCs has agreed to the resolution. (Qwest Answer at 2; MCI Answer at 1-2).

More specifically, Qwest and MCI object to the Petition for Resolution because, in their view, intrastate switched access rates would still remain well above interstate rates and the Petition for Resolution does nothing to bring intrastate access rates to parity with interstate rates. Furthermore, they believe that the Carrier Charge should be eliminated because it is clearly a subsidy that is not assessed in a competitively-neutral manner. (Qwest Answer at 3; MCI Answer at 4). MCI asserts that the Joint Petition for

Resolution is flawed because, based on record evidence, it does not bring access rates to cost, or even close to cost.[54] MCI specifically argues that Verizon's initial testimony contained a proposal to eliminate the Carrier Charge[55] but the Joint Petition for Resolution maintains the policy of having IXCs contribute to the cost of the loop. (MCI Answer at 4-5).

Both Parties also object to the Joint Petition for Proposal because it fails to establish a time frame to bring access rates to cost. Qwest cites to the FCC's actions in the *CALLS* and *MAG Orders* in which the FCC continues to reduce interstate access rates by removing implicit support for local service out of interstate access rates. Qwest submits that this Commission should follow the FCC's lead in the same manner, rather than in the manner proposed in the Joint Petition for Resolution. (Qwest Answer at 3-4; MCI Answer at 6-7).

Similar to its argument in its filed Exceptions to the Recommended Decision, Qwest submits that if the Commission is unwilling to reduce access rates immediately to interstate levels, it believes that the reduction contemplated in the Joint Petition for Resolution should be considered as a first step in an established multiphase reduction of access charges, and that the Commission should establish a framework to bring access rates to parity with interstate rates. (Qwest Answer at 6).

In light of the fact that Verizon PA, Verizon North, OCA and OSBA fully support the Joint Petition for Resolution and the IXCs view it as an important first step in the process of further reducing the Verizon companies' access charges, we shall modify the ALJ's Recommended Decision and grant the Joint Petition for Resolution.

Although the terms of the of the Joint Petition for Resolution vary slightly from those terms originally contained in the Verizon/OCA Joint Proposal, the modified

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54 *See* Transcript at 113-114. *See also* MCI Cr. Exh. 1. MCI Reply Brief at 4.

55 *See* Verizon St. 1.0 (Berry/Wirl) at 15. Surrebuttal of Testimony of William E. Taylor at 6.

proposal is an improvement over the first proposal because it meets the goal of the *Merger Order* in attaining access charge parity between Verizon PA and Verizon North via an overall revenue reduction in access charges, while permitting the Verizon companies to use their 2004 PCO rate reductions, as well as the remaining carryover from Verizon PA's 2003 PCO, to limit offsetting increases not only to residence, but also to business local service rates. Furthermore, the terms of the modified proposal are in the best interest of the IXCs because the amount of access charges they pay to Verizon PA and Verizon North on a cumulative annual basis will be reduced by more than $55 million annually. In addition, the Joint Petition for Resolution is an improvement over the Verizon/OCA Joint Petition because it specifically addresses how the one-time accrual resulting from the delay in implementing the 2004 PCO filings, after their normal implementation dates, will be used. Therefore, in light of the above, we shall approve the Joint Petition for Resolution based on our conclusion that it is just, fair, reasonable and in the public interest.

4. Verizon PA's and Verizon North's 2004 PCO Filings

As noted in previous sections of this Opinion and Order, Verizon PA and Verizon North filed their 2004 PCO Filings on February 26, 2004, concurrently with its Joint Petition for Resolution of Litigation in the instant proceeding.

Based on the PCO calculations, Verizon PA is required to file tariff rate changes which would result in an annual revenue decrease of approximately $13,480,000, whereas Verizon North is required to file tariff rate changes that would result in an annual revenue decrease of approximately $1,415,000.

In the Executive Summary attached to the PCO calculations, Verizon proposes to use the entire 2004 PCO amounts as well as the carryover of $243,517 from its 2003 PCO to partially offset the switched access rate reductions contemplated in the instant proceeding. As such, the total two-company PCO monies that will be available to offset the switched access rate reductions will be $15,138,517.

Verizon also proposes to use the one-time financial benefit accrued to the companies due to the delay in implementation of the PCO filing beyond the normal implementation dates (*i.e.* January 1, 2004 for Verizon PA and March 1, 2004 for Verizon North) to support their Lifeline programs. However, Verizon notes that the quantity of that lump-sum cannot be quantified until the actual implementation date of the PCO's is determined.

Finally, Verizon states that tariff changes associated with the PCO filings will be made in compliance with the Commission's order in this instant Formal Complaint proceeding.

Our review of the calculations submitted by Verizon PA and Verizon North indicates that they are accurate and consistent with the terms of the Companies' Price Stability Mechanism/Price Change Opportunity formulas approved in their respective Chapter 30 Plans at Docket Nos. P-00930715 and P-00001854. In addition, we are of the opinion that the request by the Verizon Companies to use the total negative PCO amounts of $15,138,517 is reasonable and in the public interest. Therefore, we shall approve Verizon PA's and Verizon North's 2004 PCO filings consistent with this Opinion and Order.

Conclusion

Based upon our review of the record evidence in this proceeding, the Parties' Exceptions shall be granted in part and denied in part, consistent with the discussion in the body of this Opinion and Order. In addition, we shall modify the ALJ's Recommended Decision by: (1) granting the Joint Petition for Resolution in lieu of the Verizon/OCA Joint Proposal; and (2) reversing the ALJ's recommendation with regard marking the instant proceeding closed and direct that instant docket remain open and remand certain matters to the Office of Administrative Law Judge for further development of the record and the issuance of a Recommended Decision on those matters that were unresolved in the first phase of this proceeding. Finally, we shall approve the Verizon Companies' 2004 PCO calculations and grant their request for the use of the

associated monies from the 2004 PCOs and the remainder of the 2003 PCO;

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Access Reform filed by Verizon Pennsylvania Inc. and Verizon North Inc. on December 30, 2002, is denied.

2. That the recommendation by the Administrative Law Judge to approve the Verizon/Office of Consumer Advocate Proposal, which was discussed in the Verizon Statement 1.1, the Surrebuttal Testimony of Debra M. Berry and Michael J. Wirl, and the terms of which are set forth in DMB Exhibit 1 is reversed, consistent with the discussion contained in the body of this Opinion and Order.

3. That the Petition of Verizon Pennsylvania Inc., Verizon North Inc., Office of Small Business Advocate and Office of Consumer Advocate for Resolution of Litigation, that was filed on February 26, 2004, at Docket No. C-20027195, is granted, consistent with this Opinion and Order and the following terms and conditions:

a. The existing Traffic Sensitive Access Charges will be changed to establish parity between the Verizon Pennsylvania Inc. and Verizon North Inc. and will be reduced from **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** to **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per minute for Verizon Pennsylvania Inc. and increased from **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** to **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per minute for Verizon North Inc.

b. The effective Carrier Charge rate per minute will be changed to establish parity between Verizon Pennsylvania Inc. and Verizon North Inc. and will decrease from **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**to **[BEGIN PROPRIETARY]** **[END**

PROPRIETARY]for Verizon Pennsylvania Inc. and decrease from **[BEGIN PROPRIETARY] [END PROPRIETARY]**to **[BEGIN PROPRIETARY] [END PROPRIETARY]**for Verizon North Inc. As a result, the Carrier Charge on a per line, per month basis will remain at the current level of $0.58 for Verizon Pennsylvania Inc. and will be reduced from **[BEGIN PROPRIETARY] [END PROPRIETARY]** to **[BEGIN PROPRIETARY] [END PROPRIETARY]** for Verizon North Inc.

c. A weighted average of the combined Traffic Sensitive Access Charge and the Carrier Charge on a per minute of use basis for Verizon Pennsylvania Inc. and Verizon North Inc. will be reduced from **[BEGIN PROPRIETARY] [END PROPRIETARY]** per minute to **[BEGIN PROPRIETARY] [END PROPRIETARY]** per minute, which will result in an access charge revenue reduction of **[BEGIN PROPRIETARY] [END PROPRIETARY]**.

d. Verizon Pennsylvania Inc. and Verizon North Inc. will implement changes in rate structure to align with the interstate structure, which changes will not affect the amount of the access reduction noted above.

e. All rate changes will be made on a revenue neutral basis. No more than $40 million would come from Residential basic local service rate increases on a combined Verizon Pennsylvania Inc. and Verizon North Inc. basis, and such increases shall be less than $1.00 per residential line based on recovery across the combined companies' customer base. The residential increases shall apply to dial tone line rates for all customers subscribing to that service on a non-package basis.

f. The remaining offsetting rate changes shall be applied to business basic local rate increases on a combined Verizon Pennsylvania Inc. and Verizon North Inc. basis. Such increases will be less than $1.00 per

business line based on recovery across the combined companies' customer base, but in no event shall the average increase imposed on business local exchange lines be greater than the average increase imposed on residential lines. The business increases apply to dial tone line rates for all customers subscribing to that service on a non-package basis.

g. Verizon Pennsylvania Inc. shall use some or all of its remaining $243,517 from its 2003 PCO to offset the access rate reductions and to ensure that the rate changes will be revenue neutral.

h. Verizon Pennsylvania Inc. and Verizon North Inc. shall use monies from their 2004 PCOs to offset the access reductions resulting from this proceeding and to ensure that increases for business local exchange customers would be no greater than the increases for residential local exchange customers.

i. No basic rate increases shall occur before January 1, 2004.

j. The one-time financial benefit accrued to Verizon Pennsylvania Inc. and Verizon North Inc. due to the delay in implementation of the PCO filings beyond the normal implementation dates (*i.e.*, January 1, 2004 for Verizon PA and March 1, 2004 for Verizon North) will be used to help fund the Verizon Companies' support of their Lifeline programs. The quantity of the lump-sum will be quantified after the actual implementation date of the PCO is determined.

4. That Verizon Pennsylvania Inc.'s and Verizon North Inc.'s 2004 PCO filings that were filed on February 26, 2004, and the requested use of those 2004 PCOs as well as the remaining carryover from the 2003 PCO, are approved, consistent with this Opinion and Order.

5. That upon entry of this Opinion and Order and after notice through bill insert, bill message or separately mailed notice to all customers at least 30 days prior to the date of any rate change, Verizon Pennsylvania Inc. and Verizon North Inc. shall file revised tariffs or tariff supplements, to become effective on one day's notice, effecting the rates resulting from a final calculation based on updated usage volumes, consistent with the terms of the Joint Petition for Resolution of Litigation that was filed on February 26, 2004.

6. That the ALJ's recommendation to close this case is reversed and that those policy issues and other access charge concerns that were raised by the IXCs in their Exceptions, but which were not specifically resolved by a recommendation from the ALJ in this instant proceeding, as delineated in the body of this Opinion and Order, shall be remanded to the ALJ for the further development of the record and the issuance of a recommended decision.

7. That a copy of this Opinion and Order be served on all Parties in this proceeding.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 23, 2004

ORDER ENTERED: July 28, 2004

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

Public Meeting held December 16, 2004

Commissioners Present:

Wendell F. Holland, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli

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

ORDER

BY THE COMMISSION:

The Commission hereby *institutes* an investigation for consideration of whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers (rural ILECs)[56] and all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund (Fund) are reduced.

This formal investigation will assist the Commission in determining what regulatory changes are necessary to 52 Pa. Code §§ 63.161-63.171 given the complex issues involved as

[56] There are approximately 32 rural ILECs operating in Pennsylvania. We are including Sprint/United as a rural ILEC. This Order is concerning only the rural ILECs' access charge reform. Verizon PA and Verizon North are non-rural ILECs and their access charge reform has been on a separate track at Docket No. C-20027195, *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.* At C-20027195, an Order was issued on July 23, 2004, which after a period of litigation, the Commission adopted a Petition for Resolution filed by Verizon PA, Verizon North, the Office of Consumer Advocate (OCA) and Office of Small Business Advocate (OSBA) as the first phase of access charge reform in Pennsylvania. Access charges are expected to be reduced in Verizon PA's and Verizon North's territories in February, 2005.

well as the recent legislative developments.[57] Subsequent to the formal investigation, the Commission will seek input from affected parties as we enter the formal rulemaking process.

Background

The Commission is responsible for assuring the maintenance of universal telecommunications services at affordable rates in Pennsylvania. Universal services are those telecommunication services "essential for a resident of this Commonwealth to participate in modern society at any point in time." 52 Pa. Code § 63.162. Basic local service (access to public switched telephone network to enable a resident to make and receive telephone calls within the local calling area) is the only "essential" service today for purposes of the Fund, although the nature of basic universal service may evolve.

The affordability of basic local service is maintained in part by contributions to and disbursements from the Fund. Contributions are made by telecommunications carriers, with the exception of wireless carriers, that provide intrastate telecommunications services. Disbursements are made to ILECs operating in the Commonwealth, with the exception of Verizon Pennsylvania Inc. and Verizon North. Thus, the Fund helps to maintain the affordability of local service provided by all but the two largest ILECs in Pennsylvania.

The Fund was established in 1999 to simultaneously advance the Commission's policies of promoting competition in Pennsylvania's intraLATA toll markets and maintaining the affordability of basic local service. The relationship between the Fund, toll rates, and basic local service rates is governed by access charges. Access charges are the rates charged by LECs to other companies seeking access to the LEC's local loop in order to provide services to the end-user. A typical example of access charge usage is a competitive toll carrier (interexchange carrier or IXC) that wants to compete with the incumbent for an end-user customer's intraLATA toll call business. The IXC must pay time and distance sensitive access charges to the LEC for access to the local loop facilities that will connect the IXC with the end-user.

[57] The General Assembly has repealed 66 Pa. C.S. § 1325 (limiting local exchange service increases) and added 66 Pa. C.S. §§ 3011-3019 (governing alternative form of regulation of telecommunications services).

Traditionally, ILECs have priced access charges above cost as a means of generating additional revenues that can be used to subsidize local rates and, thus, keep basic local service affordable. The Commission endorsed this practice of subsidizing local rates with above-cost access charges in the days of monopoly service. In the 1990s, our policy evolved to favor competition in local markets and its associated benefits. It is now the Commission's policy to promote competitive local markets by bringing the ILEC's access charges closer to costs. Traditionally, the transition to cost-based levels have been achieved using revenue-neutral means to ensure there is a provider of last resort available to all consumers within the rural ILECs territories, to give the ILECs a reasonable amount of time to modernize their networks and ready themselves for competition, to avoid rate shock to the rural ILECs' end-user customers whose local rates would otherwise be increased to recover lost access charge revenue, and to avoid undue economic harm to the incumbent.

The Fund was conceived to be an interim funding mechanism operating during the period of access charge reform. According to the Commission's Order establishing the Fund, it was originally scheduled to expire on December 31, 2003. In 2003, the life of the Fund was extended to allow additional time to consider any and all rate issues and modification of Fund regulations. The extension was accomplished by approving a Joint Procedural Stipulation presented by industry stakeholders and statutory advocates of the public interest. For further discussion, see *Access Charge Investigation per Global Order of September 30, 1999*, Order (entered July 15, 2003), Docket Nos. M-00021596 *et al*, and, *Re Nextlink Pennsylvania, Inc.*, Order (entered Sep. 30, 1999), 93 PaPUC 172, 196 P.U.R.4th 172, Docket Nos. P-00991648, P-00991649 (*Global Order*), at pp. 11-60 (Access Charges) and pp. 142-155 (Universal Service Fund/Carrier Charge Pool). *See generally AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania, Inc.*, Order (entered July 28, 2004), Docket No. C-20027195; and *AT&T Communications of Pennsylvania, Inc. v. Verizon Pennsylvania, Inc.*, Docket No. M-00031694C0001.

Scope of the Investigation

As stated in our prior Order of July 15, 2003, at M-00021596, *In re: Access Charge Investigation per Global Order of September 30, 1999,* at 12, at that time we did not declare the access rates established by that Order as the final word on access reform. Rather, we characterized the Order as the next step in implementing continued access reform in

Pennsylvania in an efficient and productive manner. The Order also agreed with the Petitioners that a rulemaking proceeding should be initiated no later than December 31, 2004, to address what if any modifications should be made to the Fund regulations and agreed to the simultaneous institution of an appropriate proceeding for consideration of any and all rate issues and rate changes which should or would result in the event that disbursements from the Fund are reduced in the future. We also indicated that the proceedings might be combined as one proceeding.

In the Commission's judgment, it is now an appropriate time to consider further access charge reform. Therefore, an investigation is hereby instituted to consider whether intrastate access charges and intraLATA toll rates should be further reduced in the rural ILECs' territories, and to consider any and all rate issues and rate changes that should or would result in the event that disbursements from the Fund are reduced or eliminated.[58] This investigation will form the basis for any proposed regulatory changes and is an appropriate way to address the intention of our July 2003 Order in light of recent legislative changes. The USF rate issues (access charge rates, toll rates, local service rates) should be addressed in a full, formal investigation before any formal changes to the regulations are proposed and moved through the regulatory process. Consequently, the matter will be assigned to the Office of Administrative Law Judge for appropriate proceedings, including but not limited to, a fully developed analysis and recommendation on the following questions:

(a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.

(b) What rates are influenced by contributions to and/or disbursements from the Fund?

(c) Should disbursements from the Fund be reduced and/or eliminated as a matter of policy and/or law?

(d) Assuming the Fund expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?

[58] This investigation shall remain separate from the pending proceeding before Administrative Law Judge Fordham at C-20027195 regarding Verizon PA's and Verizon North's access charge reform.

(e) If the Fund continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier's contribution be based on? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?

(f) What regulatory changes are necessary to 52 Pa. Code §§ 63.161-63.171 given the complex issues involved as well as recent legislative developments?

Consideration should be given to applicable orders, regulations, policy statements and guidelines of this Commission, including any necessary changes occasioned by recent amendments to the Public Utility Code.[59] The General Assembly has repealed 66 Pa.C.S. § 1325 (limiting local exchange service increases) and added 66 Pa. C.S. §§ 3011-3019 (governing alternative form of regulation of telecommunications services). We would expect, for example, the parties to address the policy and legal ramifications of new sections 3011 (declaring the policy of the Commonwealth), 3015(B) (governing rate changes for rural telecommunications carriers) and 3017 (providing that Commission "may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis" and limiting a competitive local exchange carrier's ability to charge access rates higher than the ILEC's rate). Act No. 183, P.L. ____ (Nov. 30, 2004).

We discourage any proposal or recommendation that would impede a reasonable consumer's ability to compare the cost and/or quality of available competing services. Plain language and clear descriptions are desired. See, *e.g.*, 52 Pa. Code § 69.251.

The investigation will address the estimated rate impacts of any further changes to access charges and toll rates and will form the basis for any proposed regulatory changes; **THEREFORE,**

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[59] If applicable, federal reforms of the intercarrier compensation scheme should also be addressed.

IT IS ORDERED:

1. That an investigation to consider whether intrastate access charges and intraLATA toll rates in rural ILECs' territories should be decreased and to consider any and all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund are reduced and/or eliminated is hereby instituted.

2. That the investigation is assigned to the Office of Administrative Law Judge for appropriate proceedings and a recommended decision.

3. That a copy of this Order shall be delivered for publication to the *Pennsylvania Bulletin*.

BY THE COMMISSION:

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 16, 2004

ORDER ENTERED: December 20, 2004

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

Public Meeting held January 13, 2005

Commissioners Present:

Wendell F. Holland, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas, Recusing
Kim Pizzingrilli

AT&T Communications of Pennsylvania, LLC C-20027195

v.

Verizon North Inc. and Verizon Pennsylvania Inc.

Petition of Verizon Pennsylvania Inc., Verizon North Inc., Office of Small Business Advocate and Office of Consumer Advocate For Resolution of Litigation

Verizon Pennsylvania Inc.'s 2003 Price Change Opportunity P-00930715

Verizon Pennsylvania Inc.'s 2004 Price Change Opportunity

Verizon North Inc.'s 2004 Price Change Opportunity P-00001854

OPINION AND ORDER

BY THE COMMISSION:

Matter Before the Commission

Before the Commission for consideration is a Joint Petition for Clarification (Joint Petition) filed on November 17, 2004, by AT&T Communications of

Pennsylvania LLC (AT&T), MCI WorldCom Communications, Inc. (MCI) and Qwest Communications Corporation (Qwest) (collectively Joint Petitioners) with regard to the Commission's Opinion and Order entered July 28, 2004, in the above-captioned proceedings regarding the compliance obligations of Verizon Pennsylvania Inc. (Verizon PA) and Verizon North Inc. (Verizon North) (collectively Verizon). Answers to the Joint Petition were filed by Verizon on December 1, 2004, and the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OSA) on November 29, 2004, and November 30, 2004, respectively.

Discussion

A. Introduction

On July 28, 2004, this Commission entered an Opinion and Order (July 28th Order) that granted a Joint Petition for Resolution of Litigation, which was filed by Verizon PA, Verizon North, OSBA and OCA on February 26, 2004. The July 28th Order, *inter alia*, permitted Verizon to reduce and restructure its access charges by allowing them to file a revenue-neutral, rate rebalancing filing in which the net revenue reductions from access charge increases and decreases will be offset with revenue increases from increases in monthly dial tone line rates for residential and business local exchange customers. In accepting the terms of the Joint Petition for Resolution of Litigation, the Commission did not specify a date certain on which Verizon must complete the rate rebalancing. The Commission did, however, require Verizon to provide notice to all customers "at least 30 days prior to the date of any rate change" and to "file revised tariffs or tariff supplements, to become effective on one day's notice," when it directed the following in Ordering Paragraph # 5 of the July 28th Order:

> That upon entry of this Opinion and Order and after notice through bill insert, bill message or separately mailed notice to all customers at least 30 days prior to the date of any rate change, Verizon Pennsylvania Inc. and Verizon North Inc. shall file revised tariffs or tariff supplements, to become effective on one day's notice, effecting the rates resulting

> from a financial calculation based on updated usage volumes, consistent with the terms of the Joint Petition for Resolution of Litigation that was filed on February 26, 2004.

(July 28th Order, Ordering Paragraph # 5).

Additionally, with regard to the remaining unresolved matters in this proceeding, the Commission remanded those matters to the Office of Administrative Law Judge when it directed the following in Ordering Paragraph # 6:

> That the ALJ's recommendation to close this case is reversed and that those policy issues and other access charge concerns that were raised by the IXCs in their Exceptions, but which were not specifically resolved by a recommendation from the ALJ in this instant proceeding, as delineated in the body of this Opinion and Order, shall be remanded to the ALJ for the further development of the record and the issuance of a recommended decision.

(July 28th Order, Ordering Paragraph # 6)

The topics contained in the instant Joint Petition concern the Commission's directives in Ordering Paragraphs # 5 and # 6, quoted above, and which we shall address in this Opinion and Order.

B. The Joint Petition

The Joint Petitioners are all interexchange carriers that pay switched access charges to Verizon for the origination and termination of toll calls made by the Joint Petitioners' customers. The Joint Petitioners state that the purpose of the instant Joint Petition is two-fold: (1) to ask the Commission to establish February 1, 2005 as the latest date by which Verizon must implement the access charge reductions addressed in the Commission's July 28th Order, and to make any access charge reductions retroactive to February 1, 2005, should Verizon fail to meet that date, and (2) to ask the Commission

to complete the access reform process, either by commencing the remand contemplated in the July 28th Order or else, resolve the access problem once and for all by directing Verizon to reduce its access charges based on facts already present in this record and to implement offsetting increases in basic exchange rates. (Jt. Pet. at 1).

We shall address each of the Joint Petitioners' requests in the following sequence:

1. Joint Petitioners' request to establish February 1, 2005 as the compliance filing deadline date;

2. Joint Petitioners' request for retroactive rates to February 1, 2005;

3. Joint Petitioners' request for termination of Remand and further reduction of access charges based on facts already present in the record; and,

4. Joint Petitioners' request for commencement of the Remand contemplated in the July 28th Order on an expedited basis.

C. *Discussion*

1. Joint Petitioners' Request to Establish February 1, 2005 as the Compliance Filing Deadline Date

a. Position of the Parties:

The Joint Petitioners generally complain that Verizon has unnecessarily delayed implementing the access charge reductions mandated by the July 28th Order. They assert that, based on the requirements of the July 28th Order, the earliest date that Verizon could have implemented the rate changes was November 1, 2004. They allege that Verizon is unnecessarily delaying the filing of access charge reductions by taking advantage of the fact that the Commission has not specified an exact date on when those access charge reductions must be filed. (Jt. Pet., ¶ 15 at 7).

The Joint Petitioners cite to verbal and written communications that they had with Verizon in which Verizon originally indicated that it would file tariff filings in compliance with the July 28th Order by the end of 2004.[60] The Joint Petitioners point out that the compliance filing date was subsequently pushed back to January 1, 2005, and then again to February 1, 2005. (Jt. Pet., ¶10 at 5). They argue that they continue to incur financial harm for each month of delay in the implementation of lower access charges, which the Commission determined to be unreasonably high in July 2004. (Jt. Pet., ¶ 16 at 7). In light of the fact that six months will have passed from the date of the July 28th Order until February 1, 2005, the Joint Petitioners request that the Commission compel Verizon to avoid any further delay in making the required compliance filings beyond February 1, 2005.

Verizon responds that it does not object to implementing the rate changes on February 1, 2005. Verizon noted that it has already informed the Commission and Qwest that it intended to make such changes effective on that date. However, Verizon does object to the Joint Petitioners implication that Verizon could have, or should have, implemented these changes earlier, as well as the Joint Petitioners' attempt to persuade the Commission to forego the remand proceeding and to reduce access charges further without the benefit of further record development. (VZ Answer at 2, 4).

With regard to the Joint Petitioners' opinion that Verizon should have implemented the required rate changes earlier, Verizon notes that, as the Joint Petitioners conceded, the July 28th Order did not contain a specific date for Verizon to make its compliance filing. Although Verizon conceded, and the Joint Petitioners agreed, that November was the earliest possible date that the changes could have been implemented consistent with the Commission's requirement that customer notice be required "at least 30 days prior to the date of any rate change," Verizon contends that the complexity of the

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[60] *See* Joint Petition, ¶10 at 5. Also see Attachment A to Joint Petition that contains copies of letters between Qwest and Verizon concerning clarification of the compliance filing date.

required rate changes made even the November date impractical. In defense of this statement, Verizon offers the following explanation:

> In any event, as Verizon has explained, implementation of the rate changes ordered by the Commission is more complicated than a simple rate rebalancing. Implementation requires a complete restructuring of Verizon North's transport rate elements, because Verizon North had never implemented the Local Transport Restructure (LTR) used in Verizon PA and in the interstate access world. In addition, new port rate elements from the interstate jurisdiction had to be established for both Verizon PA and Verizon North. These activities took time and resources, and in particular programming resources to implement complex billing changes. In addition, the impact of the rate changes themselves had to be recalculated. Updating this information is not a simple matter because Verizon had to determine the impact of updated volumes based on a rate structure that is not currently in place. All of these rate impacts had to be calculated before Verizon could prepare customer notification and tariff changes.

(VZ Answer at 5).

The OCA submits that it does not oppose requiring the access reductions, and related local rate increases, taking place on February 1, 2005, provided that the Commission also rules on the use of the $4.7 million in Verizon's related PCO filing to offset the resulting local rate increases by that date.[61]

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[61] Verizon's PCO filing was filed on November 1, 2004. Consistent with the requirements of the July 28th Order, Verizon proposes to reduce the required local rate increases necessary to offset access reductions by $4.7 million or from $0.92 to $0.80 per line per month. This instant Opinion and Order does not address the merit of Verizon's proposed PCO filing.

b. Disposition

We are of the opinion that the Joint Petitioners' request that the Commission establish February 1, 2005 as the date certain by which Verizon must file its compliance filings is a reasonable request. At the same time we find that this issue may be moot in light of the fact that Verizon has already committed to making its compliance filing in sufficient time to become effective no later than February 1, 2005. We take administrative notice that Verizon recently notified all of its customers in December 2004 informing them of the proposed rate changes that will become effective February 1, 2005. We also note that Verizon has committed in its PCO filing that was filed with the Commission on November 1, 2004, that Verizon would file associated tariff changes on January 31, 2005, to become effective on February 1, 2005. In this regard, Verizon must adhere to its proposed and committed effective date of February 1, 2005, notwithstanding any regulatory delays that may occur in the compliance filing review process.

2. Joint Petitioners' Request for Retroactive Rates to February 1, 2005

a. Position of the Parties

For the same reasons stated above in Issue # 1, the Joint Petitioners request that the Commission order Verizon to compensate the IXCs for the reductions in access rates that should have been in effect on February 1, 2005, in the instance that Verizon fails to meet its committed February 1, 2005 compliance filing date. (Jt. Pet., ¶ 17 at 8).

Verizon notes in its Answer that, as described in its PCO filing, it has already committed to file the compliance tariff changes on January 31, 2005, to be effective on February 1, 2005. (Verizon Answer at 5, Note 6). As such, although not explicitly stated, it appears that Verizon is of the opinion that retroactive rates will not be an issue.

b. Disposition

This issue is the second part of the Joint Petitioners' request in the first issue above, in which the Joint Petitioners request that the Commission order Verizon to compensate the IXCs for the reduction in rates that should have been effective if Verizon fails to meet the February 1, 2005 date. We are of the opinion that granting such a request would establish poor public policy in light of the fact that unknown variables may exist which could, for good cause shown, further delay the access charge decreases and local rate increases. We further note that retroactive access charge reductions would also entail retroactive local rate increases, which could potentially have a negative impact on end-user customers' rates depending upon the length of the delay until the new rates become effective. Therefore, we shall deny the Joint Petitioners' request on this matter.

3. Joint Petitioners' Request for Termination of Remand and Further Reduction of Access Charges Based on Facts Already Present in the Record

a. Position of the Parties

The Joint Petitioners also request that the Commission issue a final decision on further access charge reform without remanding the case to the OALJ for additional proceedings "due to the urgent need for immediate access charge reform and the fact that the record has already been fully developed in this proceeding." The Joint Petitioners repeat their same claim they made throughout this proceeding that the record contains sufficient evidence to support eliminating Verizon's access charge problem in two years, at a cost of two monthly local rate increases of less than 80 cents each. (Jt. Pet., ¶ 18 at 8).

Verizon, the OSBA and the OCA all object to the Joint Petitioners' request that the Commission "resolve the access problem once and for all by directing Verizon to reduce its access charges based on facts already present in the record and to implement offsetting increases in basic exchange rates."

Verizon argues that the Commission on two occasions ordered that this matter be remanded for further proceedings. The first occasion was in the Commission's July 28th Order, which remanded this case to the ALJ "for the further development of the record and the issuance of a recommended decision concerning those policy issues and other access charge concerns that were raised by the IXCs in their Exceptions." The second occasion involved the Commission Order entered November 23, 2004, which denied Verizon's Petition to reconsider remanding this case to the ALJ, based on the finding that the *Duick* standards were not met.[62] (Verizon Answer at 6). In light of that Commission decision, Verizon submits that the Joint Petitioners have provided no reason why the Commission should now abandon its recently reaffirmed decision to remand this proceeding.

The OSBA rejoins that the Commission should deny the Joint Petitioners' request to issue a final decision on further access charge reform based upon the current record in this proceeding. In support of this position, the OSBA notes that the Joint Petitioners in their Petition on page 2, styled their Petition as a "**clarification**, pursuant to Sections 5.41 and **5.572(a)**" (emphasis by OSBA) of the Commission's regulations when, in fact, they are actually requesting the Commission to **reconsider** its decision to remand the proceeding for further development of the record. The OSBA asserts that whether the Joint Petition is one of clarification or of reconsideration, the Joint Petitioners waived their right to file such a Petition in light of the fact that they waited 112 days after the entry date of the Order to file the Joint Petition for "clarification" which is well beyond the 15 days permitted under 52 Pa. Code 5.572(a). As such, the OSBA is of the opinion that the July 28th Order stands, and the Joint Petitioners request "to issue a final decision on further access charge reform" should not be granted. (OSBA Answer at 2-3).

The OCA also objects to the Joint Petitioners' request for the Commission to issue a final decision on further access charge reform by directing Verizon to reduce its

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[62] *See Duick v. PG&W*, 56 Pa. P.U.C. 553, 51 P.U.R. 4th 284 (1982) (*Duick*), citing *Pa. Railroad Co. v. Pa. P.S.C.*, 179 A. 850 (Pa. Super. ct. 1935).

access charges based on the facts already presented in the record and to implement offsetting increases in basic exchange rates. The OCA asserts that the Joint Petition must be rejected to the extent it requests further basic local rate increases without hearing. The OCA is of the opinion that any consideration of further access rate reductions and basic rate increases should occur only after the specific issues to be addressed are clearly defined and a further evidentiary record on those specific issues is developed. (OCA Answer at 3-4).

Furthermore, the OCA notes that additional significant developments at the federal level are occurring that may impact the intrastate access issues that are the subject of the remanded proceeding. The OCA cites in details its concerns regarding the fact that a group of telecommunications providers identified as the Intercarrier Compensation Forum (ICF), of which AT&T and MCI are members, recently submitted a proposed ICF Plan that would eliminate the same intrastate access issues that are the subject of this proceeding.[63] The OCA is especially concerned because the ICF Plan specifically states that "the [FCC] may lawfully raise the [Subscriber Line Charge (SLC)] to cover a portion of the costs formerly covered by intrastate access charges as an exercise of plenary authority to ensure a sustainable and explicit universal service system."[64] As such, the OCA submits that the FCC, upon urging of the ICF, is considering the assumption of authority over the same intrastate access charges that the instant proceeding is intended to address.

The OCA is of the opinion that the same reform of intrastate access charges cannot take place both at the PUC and the FCC. The OCA is especially concerned because the ICF proposes a potential increase of $4.00 to the federal SLC and

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63 *See* Letter from Gary M. Epstein, Counsel for the Intercarrier Compensation Forum to Marlene H. Dortch, Secretary, Federal Communications Commission, dated October 5, 2004. (ICF Plan). In addition to AT&T and MCI, the ICF members also include: Global Crossing North America Inc., General Communications, Inc., Iowa Telecom., Level 3 Communications, LLC, SBC Communications Inc., Sprint Corporation and Valor Telecommunications.

64 *Id.* at 44.

higher USF charges whereas the existing record contains an IXC proposal that may eliminate the Verizon access charge problem in two years at a cost of two monthly local rate increases of less than 80 cents each. In light of the fact that the Joint Petition makes no reference to the ICF proposal submitted to the FCC, the OCA asserts that no further intrastate access charge reductions should be ordered by this Commission without a clear consideration of the ICF proposal submitted to the FCC, and how this may affect any further intrastate reductions in Pennsylvania. For these reasons, the OCA urges the Commission to reject the Joint Petitioners' request to implement further access charge reductions and basic rate increases without any further hearings. (OCA Answer at 4-7).

b. Disposition

We are of the opinion that the Joint Petitioners' request "to resolve the access problem once and for all by directing Verizon to reduce its access charges based on facts already present in this record and to implement offsetting increases in basic exchange rates" is without merit. First, as Verizon appropriately indicated in its Answer, we have already acted on two occasions to order that this matter be remanded for further proceedings. Based on our review of the Joint Petition, we conclude that, as noted by the OSBA in its Answer, the Joint Petitioners request on this issue is actually a Petition for Reconsideration. Even though the Joint Petitioners' request was not timely filed consistent with the standard 15-day requirement for such a Petition pursuant to 52 Pa. Code § 5.572(a), we nevertheless conclude that the request does not meet the standards of *Duick* in light of the fact that no new evidence was raised by the Joint Petitioners, and we have already rejected their same argument in our July 28th Order. Furthermore, as we will discuss later in this Opinion and Order, the OCA noted that activity occurring on the federal level may impact state access charges, and it may be necessary for the Parties in this proceeding to consider that federal activity in the remand proceeding. Finally, now that the PCO has been filed and Verizon has committed to making its compliance filing to become effective February 1, 2005, the Parties will have a better understanding of the actual level of Verizon's remaining access charges so that they could proceed in a manner that best addresses whether the newly restructured access charges should be reduced to

cost or eliminated. Therefore, for all of the above reasons, we shall deny the Joint Petitioners' request on this issue.

4. Joint Petitioners' Request for Commencement of the Remand Contemplated in the July 28th Order on an Expedited Basis

a. Position of the Parties

In the instance that the Commission maintains its position to remand the unresolved access charge matters to the Office of Administrative Law in Issue # 3, above, the Joint Petitioners request that the Commission expedite the remand proceeding due to the urgent need for immediate access charge relief. (Jt. Pet., ¶ 19 at 9).

In response, Verizon argues that the Commission should deny the Joint Petitioners' request because no statutory or other external deadlines exist that would support an expeditious resolution of the remand proceeding. Furthermore, Verizon notes that the Joint Petitioners provided no rationale why the issues need to be addressed expeditiously, and no other rationale as to why this issue deserves more expeditious treatment than the many other issues being considered by the Commission. (VZ Answer at 7).

The OSBA is also of the opinion that the Commission should deny the Joint Petitioners' request to conduct the remanded proceeding on an expedited basis. In support of its position, the OSBA notes that nothing in the Commission's July 28th Order mentioned or required that the remanded proceeding be conducted in an "expedited" manner. The OSBA avers that the Joint Petitioners' request is actually a request for an **amendment** to the Commission's July 28th Order, rather than a request for **clarification**. However, regardless of whether the Petition is one of clarification or of an amendment, the OSBA again asserts that the Joint Petitioners request for "expedited consideration" should not be granted because this request is well beyond the 15 days permitted under 52 Pa. Code 5.572(a). (OSBA Answer at 3).

b. Disposition

With regard to the Joint Petitioners' request that we commence the remand contemplated in the July 28th Order, we hesitate to mandate that the OALJ conclude this proceeding on an expedited basis. However, to the extent possible, we strongly encourage the ALJ assigned to this matter to endeavor to issue a Recommended Decision on Remand as expeditiously as possible.

5. New Matter

As noted by the OCA, there have been significant developments in the federal arena that may impact the remand proceeding. We are especially concerned about any impact that the proposed ICF proposal, if it is ultimately approved by the FCC, may have jurisdictionally on access charge regulation in Pennsylvania, our ability to further reduce or restructure intrastate access charges, and whether any FCC action may lead to a double recovery by the LECs in Pennsylvania in light of the remanded proceeding, and if the FCC permits intrastate access charges to be offset by increases to the federal SLC. Therefore, to the extent that any determination is made by the FCC that ultimately adopts the ICF proposal, or any other FCC action that is concluded prior to this remand proceeding that would assume authority over the intrastate access charges addressed in this proceeding, we shall direct the ALJ to expand the scope of this proceeding for the purpose of addressing the impact the FCC action may have on our jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding.

Conclusion

We shall grant the Joint Petition, in part, and deny it in part, consistent with the discussion in the body of this Opinion and Order. Specifically, we shall grant the Joint Petitioners' request that establishes February 1, 2005 as the compliance filing deadline date, notwithstanding any regulatory delays that may occur in the compliance review process. We shall also grant the Joint Petitioners' request that the Remand proceeding be conducted in an expedited manner only to the extent that the Office of Administrative Law Judge is able to do so. However, we shall deny the Joint Petitioners' request for (1) retroactive rates to February 1, 2005, if Verizon fails to comply by that date, and (2) termination of the Remand proceeding. Finally, we shall direct the presiding Administrative Law Judge assigned to this case to expand the scope of this proceeding with regard to any FCC activity concerning the proposal submitted by the Intercarrier Compensation Forum on October 5, 2004, and to address the impact that any FCC action may have on our jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding, to the extent that the FCC issues a decision prior to the issuance of the Recommended Decision on Remand in this proceeding; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition of AT&T Communications of Pennsylvania, LLC, MCI WorldCom Communications, Inc., and Qwest Communications Corporation, which was filed on November 22, 2004, is granted, in part, and denied, in part, consistent with the discussion delineated in the body of this Opinion and Order.

2. That the ALJ assigned to this remand proceeding is directed to expand the scope of this proceeding with regard to any activity before the Federal Communications Commission concerning the proposal submitted by the Intercarrier Compensation Forum on October 5, 2004, and to address the impact that any FCC action may have on our jurisdictional responsibilities, as well as its relationship to the final

recommended decision on access rates arising from this remand proceeding, to the extent that the FCC issues a decision prior to the issuance of the Recommended Decision on Remand in this proceeding.

3. That a copy of this Opinion and Order be served on all Parties to the above-captioned dockets.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 13, 2005

ORDER ENTERED: January 18, 2005

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held August 11, 2005

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
William R. Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick, Dissenting

Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund — I-00040105

OPINION AND ORDER

BY THE COMMISSION:

Before this Commission for consideration is a Petition For Interlocutory Review (Petition) of a Material Question filed by the Rural Telephone Company Coalition (RTCC), the Commission's Office of Trial Staff (OTS) and the Office of Consumer Advocate (OCA) (collectively referred to as "Joint Petitioners") (Joint Petition for Interlocutory Review) on June 21, 2005, in the above-captioned proceeding. *See* 52 Pa. Code § 5.302. The Joint Petition for Interlocutory Review was filed in response to a June 8, 2005 *Order Disposing of Motions* by Administrative Law Judge (ALJ) Susan D. Colwell in the above captioned proceeding. In the June 8, 2005 Order, ALJ Colwell, *inter alia*, denied the *Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate and Office of Trial Staff for the Commission to Defer*

This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92[65] (hereinafter, *Motion to Defer*), which was filed on May 23, 2005.

It is the Joint Petitioners' intent that the Commission should have ruled on the *Motion to Defer* because, in their opinion, the ALJ is not authorized to modify a Commission order. However, in light of the fact that the ALJ did rule, the Joint Petitioners are now requesting that the Commission grant interlocutory review of a material question and/or rule on the *Motion to Defer* as originally filed. Briefs in Support of the Joint Petition for Interlocutory Review were received from the OCA and the RTCC. The Office of Small Business Advocate (OSBA) was not a signatory to the Joint Petition for Interlocutory Review, but filed a Brief in support of said petition. A Brief in Opposition to the Joint Petition for Interlocutory Review was received jointly from AT&T Communications of Pennsylvania, LLC, Qwest Communications Corporation and MCImetro Access Transmission Services, LLC (alternately "IXCs") (Joint Brief).

History of the Proceedings

On December 20, 2004, the Commission entered an Order (*December 20, 2004 Order*) in the above-captioned case instituting an investigation into whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers (rural ILECs). This investigation was instituted as a result of the Commission's prior Order entered July 15, 2003, at Docket No. M-00021596,[66] which, *inter alia*, discussed implementing continuing access charge reform in Pennsylvania. The July 15, 2003 Order also provided that a rulemaking proceeding would be initiated no later than December 31, 2004, to address possible modifications to the Pennsylvania

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[65] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005) (Unified Intercarrier Compensation Proceeding).

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

Universal Service Fund (USF) regulations and the simultaneous institution of a proceeding to address all resulting rate issues should disbursements from the USF be reduced in the future.

The *December 20, 2004 Order* directed that the Office of Administrative Law Judge conduct the appropriate proceedings including, but not limited to, a fully developed analysis and recommendation on the following questions:

> (a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.
>
> (b) What rates are influenced by contributions to and/or disbursements from the [Pennsylvania Universal Service] Fund?
>
> (c) *Should disbursements from the [Pennsylvania Universal* Service] Fund be reduced and/or eliminated as a matter of policy and/or law?
>
> (d) Assuming the [Pennsylvania Universal Service] Fund expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?
>
> (e) If the [Pennsylvania Universal Service] Fund continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier's contribution be based on? Do wireless companies split their revenue bases by *intrastate*, and if not, will this be a problem?
>
> (f) What regulatory changes are necessary to 52 Pa. Code §§ 63.161-63.171 given the complex issues involved as well as recent legislative developments?

On February 16, and April 21, 2005, ALJ Colwell conducted in-person prehearing conferences.[67] During the second prehearing conference, the Parties, *inter alia*, discussed the

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[67] A list of the Parties who entered appearances and were represented by counsel during the prehearing conference is included on pages 2-3 of the ALJ's *Order Disposing of Motions.*

schedule for the proceeding as well as whether or not the case should be stayed pending the outcome of the FCC proceeding. As a result of the April 21, 2005, prehearing conference, presiding ALJ Colwell issued an April 22, 2005 Scheduling Order.

On May 23, 2005, the Joint Petitioners filed a *Motion to Defer*. Specifically, in their *Motion to Defer*, the Joint Petitioners requested a stay of the instant investigation because, in their view, it would be "unreasonable, unproductive and inefficient" for this Commission to act in advance of the FCC. Their rationale was based on the observation that the outcome of the FCC's *Unified Intercarrier Compensation* proceeding has the potential to directly impact, if not render moot, the universal service and access charge issues in this proceeding. (*Motion to Defer* at 6-9).

By Order dated June 8, 2005, ALJ Colwell denied the *Motion to Defer*. The ALJ based her denial on the following rationale:

> I can see no point in delaying this proceeding at this level. The Commission was aware of the pending federal proceeding when the underlying order in this matter was issued. The directive to me was clear: to conduct appropriate proceedings, including but not limited to, a fully developed analysis and recommendation on the questions presented. My contribution will be a recommended decision, which will not become final by operation of law and can be delayed at the Commission level indefinitely should the Commission choose to wait until the federal proceeding is completed before delivering a final decision in this matter. There is no prejudice to any party nor to the consumers of Pennsylvania by proceeding at this time, and the ultimate decision on what to decide and when to decide it will still belong to the Commission.

(*Order Disposing of Motions* at 9-10).

On June 21, 2005, the instant Joint Petition for Interlocutory Review was filed. As noted, the Joint Petitioners take the position that the Commission, and not the ALJ, should determine and rule on whether the Joint Petitioners' request to defer the instant investigation should be granted.

As noted, Briefs in support of the *Joint Petition* for Interlocutory Review were filed by the RTCC and the OSBA on June 28, 2005, and by the OSBA on July 1, 2005. A Brief in opposition to the Joint Petition for Interlocutory Review was filed jointly by the IXCs on July 1, 2005.

Discussion

1. Petition for Interlocutory Review

In pertinent part, 52 Pa. Code § 5.302(a) - Petition for interlocutory Commission review and answer to a material question, provides as follows:

> (a) During the course of a proceeding, a participant may file a *timely petition directed to the Commission requesting review and* answer to a material question which has arisen or is likely to arise. The petition shall . . . state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

The Joint Petitioners request interlocutory review of the following material question:

> Did the presiding officer erroneously issue an Order on a Motion filed with the Commission and erroneously conclude not to stay the instant investigation pending action by the Federal Communications Commission [FCC] on the same matters at issue in this Commission investigation?

The Joint Petitioners proposed that both parts of the material question be answered in the affirmative.[68]

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[68] The Joint Petitioners incorporate, by reference, their arguments contained in their May 23, 2005 *Motion to Defer*, which they attached as Attachment 2 to the instant Petition.

The RTCC argues that the Commission, rather than the ALJ, should have acted on its *Motion to Defer*. (RTCC Brief at 4). The RTCC states that it was the intent and expectation of the Joint Petitioners that the Commission directly rule on the *Motion to Defer*. However, as noted, ALJ Colwell subsequently ruled on the *Motion to Defer* by Order dated June 8, 2005. As such, the RTCC supports the Joint Petition for Interlocutory Review that specifically seeks to obtain a Commission ruling on the *Motion to Defer*.

In their Brief, the IXCs oppose the Joint Petition for Interlocutory Review and argue that it should be denied. They assert that the Joint Petition is, essentially, a request to reconsider the directives resulting from the ALJ Scheduling Order and, therefore, is not timely. (Brief at 5). The IXCs also allege that the Joint Petition is procedurally deficient because it does not raise a material issue and, further, does not meet the standard applicable to interlocutory review of discovery rulings, 52 Pa. Code § 5.304.

In addition to timeliness, the IXCs oppose the Joint Petition because it allegedly does not raise a material issue. Therefore, even if the standard of 52 Pa. Code § 5.304 applicable to review of discovery rulings is used, the IXCs contend that the Commission would be required to reject the Joint Petition on the basis that an exceptional circumstance is not present. (IXC Brief at 5). Also, the IXCs find no merit in the Joint Petitioners' request to defer by citing the fact that the instant investigation began after the FCC initiated its intercarrier compensation proceeding (2001) and that this Commission has directed the continuation of access charge reform in related proceedings involving Verizon Pennsylvania Inc. and Verizon North Inc. (Brief at 10).

The IXCs subsequently make extensive argument concerning the legal and policy implications of deferring the investigation. (Brief at 11-15). In addition to raising the point that this Commission has continued movement toward access charge reform in recognition of integrally related proceedings at the federal level, the IXCs also note the following: (a) the RTCC, which is comprised of rural ILECs, has previously made requests to delay intercarrier compensation reform pending the FCC proceedings and the present request was fully considered

by the presiding ALJ and rejected; (b) the multiple proposals for intercarrier compensation reform, which are under consideration by the FCC, support going forward rather than delay because the FCC dockets could result in policies that take a variety of directions and take several years to complete; and (c) the allegation that the FCC will decide the same issues which are under consideration in the Pennsylvania proceeding is speculative.

Disposition

Pursuant to 52 Pa. Code § 5.303, the Commission shall do one of the following with regard to a petition seeking interlocutory review and answer to a material question that has arisen during the course of proceeding:

> (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the participants.
>
> (2) Determine that the petition was improper and return the matter to the presiding officer.
>
> (3) Decline to answer the question.
>
> (4) Answer the question.

We shall answer the material question presented, consistent with our discussion herein. As a threshold consideration, we note that the correctness or erroneousness of the ALJ's action is not a relevant consideration in determining whether interlocutory review is appropriate. *See Shea v. Freeport Teleph. & Teleg.Co.*, Docket No. C-812580 (Order entered February 15, 1984). The principal concern in our consideration of a material question is whether interlocutory review is necessary in order to prevent substantial prejudice. Therefore, our analysis will focus on whether the alleged error, and any prejudice flowing from that issue, could not be satisfactorily cured during the normal Commission review process. *Re Knights Limousine Service, Inc.*, 59 Pa. PUC 538 (1985).

On consideration of the Joint Petition, we conclude that it raises a colorable claim of prejudice that could not be cured during the normal Commission review process. We shall, therefore, answer the material question. We shall answer the first part of the question in the

negative, finding that the ALJ acted in accordance with Section 5.103 of our regulations, 52 Pa. Code § 5.103(d), which authorizes the presiding ALJ, under certain circumstances, to issue an Order on a Motion that has been filed with the Commission. Thus, the ALJ's actions, consistent with our regulations, do not provide a basis for prejudice to the Parties. However, as discussed later in this Opinion and Order, we conclude that deferring this proceeding based on pending FCC proceedings provides a reasonable basis to grant the *Motion to Defer* so as to avoid a waste of administrative resources. As such, we shall answer the second part of the question in the affirmative, finding that it is in the public interest to defer the instant investigation consistent with the terms and conditions specified in this Opinion and Order.

2. The Material Question

As noted, the material question raises two separate questions as isolated below:

(1) Did the presiding officer erroneously issue an Order on a Motion filed with the Commission?

(2) Did the presiding officer erroneously conclude not to stay the instant investigation pending action by the FCC on the same matters at issue in this Commission investigation?

a. Material Question – Part 1

With regard to this first part of the material question, the Joint Petitioners have argued that since an ALJ is not empowered to stay a Commission directive, ALJ Colwell should not have ruled on the May 23, 2005 *Motion to Defer*. (Petition at 2).

The IXCs contend the Joint Petitioners' argument – that the Commission, rather than the ALJ, should decide on the *Motion to Defer* – fails under the Commission's regulations at 52 Pa. Code § 5.103(d). (IXC Brief at 9).

Disposition

As noted, the correctness or erroneousness of the ALJ's ruling is not dispositive of the appropriateness of interlocutory review. We note that the ALJ's ruling on the *Motion to Defer*, rather than prejudice the position of a party, has, in fact, assisted in the development of the pertinent issues involved. As noted by the IXCs, Section 5.103(d) of our Rules of Practice, expressly contemplate ALJ rulings on motions.

Based on the foregoing, we answer the first part of the material question presented in the negative, finding that ALJ Colwell had the requisite authority to make a ruling on the Joint Petitioners' *Motion to Defer* consistent with our regulations that permit a presiding ALJ to rule on Motions that are properly made in the evidentiary phase of a Commission adjudicative investigation.

b. Material Question – Part 2

With regard to the second prong of the material question, the Joint Petitioners assert that this part should be answered in the affirmative. They argue that there are significant and compelling reasons for justifying a delay in the instant proceeding. (Petition at 3).

In their Brief, the RTCC supports the Joint Petition for Interlocutory Review's request to defer the access charge investigation for a limited period of at least twenty-four months, or until the FCC acts on its Intercarrier Compensation proceeding at CC Docket No. 01-02, in order to await the impact and to assess the status of the FCC's actions. (RTCC Brief at 9 and 11). The RTCC suggests that a twenty-four month delay will not be detrimental to access charge reform in Pennsylvania in light of the fact that this Commission has actively and persistently addressed access reform since 1998 when it consolidated its generic access charge investigation with the *Global Order*. (RTCC Brief at 5).

The OCA also believes that the Commission should postpone the instant investigation pending action by the FCC on the same issues. (OCA Main Brief at 3). The RTCC

also submits that it would not be unreasonable to defer the intrastate access charge investigation given the magnitude of the pending FCC reform efforts in conjunction with the levels of access reform already achieved in Pennsylvania. (RTCC Brief at 8).

The RTCC also addresses the various access charge reductions that the rural ILECs have already implemented (RTCC Brief at 5) and then provides various scenarios of how it perceives Pennsylvania ILECs and ratepayers will be harmed if certain proposals before the FCC's intercarrier compensation proceeding are adopted. (RTCC Brief at 8-9). Both, the RTCC and the OCA are of the opinion that numerous aspects of the various plans before the FCC (See RTCC Brief at 6-8) may have the potential not only to conflict with the instant proceeding, but also to penalize the rural Pennsylvania ILECs and their ratepayers if the Commission continues to advance further access charge and universal service reform in the instant proceeding. The RTCC and the OCA are also concerned because they view many of the currently pending plans before the FCC as having the potential to significantly impact rural access reform in Pennsylvania in light of the fact that some of the proposals address both interstate and intrastate access and USF funds. (RTCC Brief at 6; OCA Brief at 4-5).

The IXCs are of the opinion that the position taken by the Joint Petitioners – that the FCC will decide the same issues pending in the instant investigation before this Commission – is not only highly speculative, but defies the position taken by at least some of the RTCC members in the FNPRM proceeding, who argued that the FCC cannot legally impose intrastate access standards on state commissions. The IXCs note that the Rural Alliance, which is an organization comprised of over 200 rural ILECs, including some of the RTCC member companies, proposed before the FCC that intercarrier reform be addressed through a collaborative involving the FCC and 50 state commissions. They are concerned because of the potential length of time that such a collaborative proceeding would take and that such a collaborative, if it occurs, would add even further delay to intrastate access charge reform. (IXC Brief at 13).

The RTCC and OCA specifically point out that one of the issues posed by the FCC is the FCC's authority to preempt the state's regulation of intrastate access and local

interconnection and the establishment of alternative cost recovery mechanisms within the intrastate jurisdiction.[69] (RTCC Brief at 9; OCA Brief at 5). As such, the RTCC is of the opinion that the FCC's Order will impact matters raised in the instant proceeding and may result in the Commission having to undertake a further proceeding to change the results of this proceeding. (RTCC Brief at 9). The OCA asserts that there is significant overlap between the issues to be addressed in this investigation and the issues to be addressed in the FCC's Uniform Intercarrier Compensation proceeding and that this Commission must be aware that the FCC may preempt its actions in certain areas. (OCA Brief at 7). Even if the FCC does not preempt the states in this area, the RTCC submits that it may offer guidelines to the states for access reform and encourage reforms through incentive mechanisms. (RTCC Brief at 10).

The OCA argues that it is difficult for the Parties in the instant investigation to present to this Commission, options that are consistent with a potential order from the FCC's FNPRM with any specificity given the range of potential outcomes that may develop from the FCC proceeding. The OCA opines that the Commission should delay the commencement of this proceeding to allow the Parties to better present their positions and to allow the Commission to resolve those remaining issues that the FCC has not addressed. (OCA Brief at 7).

The RTCC also supports the Joint Petition for Interlocutory Review to defer the instant investigation because it is concerned that if Pennsylvania moves too quickly in reducing intrastate access charges before new federal mechanisms were put into place, Pennsylvania consumers and carriers could lose the opportunity to benefit fully from increased federal funding. (RTCC Exc. at 11). The OCA argues that it would not be sound public policy and would prejudice consumers to continue this proceeding in advance of the FCC's proceeding because doing so could lead to higher rates for Pennsylvania consumers purchasing protected noncompetitive local services than if the Commission waited for the FCC to act.

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[69] The RTCC notes that some of the same IXCs participating in the instant proceeding (*e.g.*, AT&T and MCI, who are members of the Intercarrier Forum before the FCC) are taking the position in the FCC proceeding to urge the FCC to preempt intrastate access. If this were to occur, the RTCC opines that any action taken by this Commission in the instant proceeding would be voided by the FCC's ruling.

The OCA is concerned that any expanded funds will generally fund intrastate access reductions from the FCC's FNPRM order and will not apply to intrastate access reductions that were ordered prior to such an Order. (OCA Brief at 9). The OCA also provides detailed scenarios of the impact on Pennsylvania ILECs or customers if the FCC were to adopt certain proposed plans in the FNPRM proceeding. (OCA Brief at 9-11) and expresses its opinion that continuing this proceeding in advance of the FCC's proceeding may foreclose an opportunity to receive federal universal service funds. (OCA Brief at 11).

The IXCs note that this docket is one of two that the Commission opened to reform access charges and that the Commission has already determined that intrastate access charge reform should not await completion of the FCC Unified Intercarrier Compensation proceeding. In a proceeding closely related to the instant investigation,[70] where the Commission currently is in the process of completing a two-step elimination of subsidies from Verizon's access rates, the IXCs argue that the Commission has already rejected the central argument made by the Joint Petitioners in this instant case (*i.e.*, that Pennsylvania access reform should be delayed until the FCC completes its Unified Intercarrier Compensation proceeding at CC Docket No. 01-92) when it addressed this matter in its January 18, 2005 Order at Docket No. C-20027195. The IXCs maintain that the Commission concluded on pages 15-16 of that Order that the remand proceedings should go forward, that the matter should be expedited subject to any constraints on the ALJ and that the scope of the investigation should be expanded to address the ICF Plan as well as any FCC action on intercarrier compensation reform "to the extent that the FCC issues a decision prior to issuance of the Recommended Decision on Remand in this proceeding." (IXC Brief at 3).

The RTCC is of the opinion that while the Commission admittedly referred to the FCC proceeding in its Order involving Verizon, it is not known whether the PUC was aware of the broad scope or potential ramifications of the FCC proceeding on access reform. They also argue that the Verizon proceeding is not a new proceeding involving a potentially whole new level of access reform. Rather, they note that it is a remand proceeding involving access issues

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[70] *See AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania, Inc.*, Docket No. C-20027195.

from a prior proceeding. The RTCC opines that the impact of universal service funding and access reform on the RTCC companies will have far more deleterious effects on the RTCC companies than it would on Verizon. (RTCC Brief at 12).

Disposition

This part of the material question presents more complex issues that hold the potential of serious implications for both telecommunications carriers operating in Pennsylvania and their respective end-user consumers. These implications arise not only from the yet unknown outcome of the FCC's Unified Intercarrier Compensation proceeding, but are also based on the interaction between the Unified Intercarrier Compensation proceeding potential outcomes and this Commission's implementation of Act 183 of 2004, or the new Chapter 30 law. P.L. 1398, 66 Pa. C.S. § 3011 et seq.

This Commission's implementation of the new Chapter 30 law includes statutorily mandated annual revenue and rate increases for those rural ILECs that have Commission-approved amended network modernization plans (NMPs).[71] The Commission has already approved four (4) such revenue and rate increases for rural ILECs with approved amended NMPs that operate under price stability mechanisms and price change opportunity (PSM/PCO) formulas.[72] The new Chapter 30 law also directs that the Commission "may not require a local exchange telecommunications company [ILEC] to reduce access rates except on a revenue-neutral basis." 66 Pa. C.S. § 3017(a). In other words, without prejudging the outcome of this investigation, potential intrastate carrier access charge reductions that may be achieved in

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71 66 Pa. C.S. § 3015(a)&(b).

72 *See generally ALLTEL Pennsylvania, Inc.*, Docket No. R-00050574, Secretarial Letter issued July 29, 2005; *Buffalo Valley Telephone Company*, Docket No. R-00050520, Secretarial Letter issued July 29, 2005; *Conestoga Telephone and Telegraph Company*, Docket No. R-00050521, Secretarial Letter issued July 29, 2005; *Denver and Ephrata Telephone and Telegraph Company*, Docket No. R-00050522, Secretarial Letter issued July 29, 2005. These revenue and rate increases are based on the statutory level of the inflation offset in the PSM/PCO formulas that has been set at 0% or 0.5% depending on the ILEC's rural or non-rural status and its selected amended NMP option. 66 Pa. C.S. § 3015(a).

the context of this proceeding for the rural ILECs may have to be absorbed totally or in part by the rural ILECs' basic local exchange service ratepayers on a "revenue-neutral basis."

However, the intrastate access charge reform for the rural ILECs is not independent from the potential outcomes of the FCC's Unified Intercarrier Compensation proceeding. A number of the rural ILECs operating in Pennsylvania are "average schedule companies," *i.e.*, their operational revenues, expenses, and assets are not subject to jurisdictional intrastate/interstate allocations. Thus, the overall annual revenue level of these ILECs depends on the receipt of federal Universal Service Fund (USF) support distributions. Similarly, these ILECs are also recipients of support contributions from the Pennsylvania USF (Pa. USF).[73] Furthermore, certain outcomes of the FCC's Unified Intercarrier Compensation proceeding can directly affect the intrastate carrier access charges of the rural ILECs.[74]

It is intuitively understood that the levels of the rural ILECs' intrastate carrier access charges affect the services that are offered in the Commonwealth by IXCs as well as by other categories of telecommunications carriers. However, it should also be noted that under the new Chapter 30 law, IXC services have been classified as "competitive" and the Commission cannot "fix or prescribe" the rates and charges for IXC services. 66 Pa. C.S. § 3018 (a)&(b).

In its Brief, the OCA clearly and persuasively demonstrates the risks to the end-user ratepayers of the rural ILECs if this investigation were allowed to proceed while the FCC's Unified Intercarrier Compensation proceeding was still pending. For example, the OCA points out that, depending on the outcome of the FCC's Unified Intercarrier Compensation proceeding, if this Commission proceeds with intrastate access charge reform, potentially increased federal USF funding may not apply to rural ILEC intrastate access charge reductions that will be put in place prior to the conclusion of the FCC's proceeding. (OCA Brief at 8-9). Similarly, the OCA persuasively argues that, under certain outcomes in the same FCC proceeding, the rural ILECs'

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73 *See generally Rulemaking Re Establishing Universal Service Fund Regulations at 52 Pa. Code §§63.161-63.172*, Docket No. L-00000148, Revised Final Rulemaking Order entered March 23, 2001, 31 Pa.B. 3402 (June 30, 2001).

74 *See generally Unified Intercarrier Compensation*, ¶¶ 114-115, at 51-52.

ratepayers may bear the same burden twice from the same reduction in intrastate access charges if such reductions are not simultaneously coordinated between this Commission and the FCC. (OCA Brief at 9-10). In short, the interests of the rural ILEC ratepayers will be seriously prejudiced if this investigation is not coordinated *with* the ongoing FCC Unified Intercarrier Compensation proceeding. Such prejudice meets the applicable legal standards of granting the stay of the investigation in accordance with the request of Joint Petitioners and, in our opinion, outweighs the potential benefits that could be achieved through a more immediate implementation of intrastate carrier access charge reform for the rural ILECs through this investigation.

However, granting a stay must balance the interests of the participating parties in this investigation and of the end-user consumers of telecommunications services within Pennsylvania. For these reasons, we disagree with the original request of Joint Petitioners in their Motion to Defer that this matter should be deferred "pending the outcome of the FCC intercarrier compensation proceeding at Docket No. 01-92, but not to exceed a period of twenty-four months or until the FCC acts on its Intercarrier Compensation proceeding, whichever is earlier." Joint Petition, Attachment 2 (*Motion to Defer*), ¶ 14, at 12. Rather, we believe that this investigation should be stayed for a period not to exceed twelve months or until the FCC issues its ruling in its Unified Intercarrier Compensation proceeding, whichever occurs earlier.

We shall direct that, upon the termination of the 12-month stay or upon the issuance of an FCC ruling in its Unified Intercarrier Compensation proceeding, the Parties to this investigation should submit the appropriate status reports to the Commission. Our staff will monitor developments in the FCC's Unified Intercarrier Compensation proceeding and, upon the receipt of the status reports from the parties, will formally and timely advise the Commission on the resumption of this investigation. We will then address the Staff recommendation at a future Public Meeting and take appropriate action in reinstituting this investigation.

Furthermore, the resumption of this investigation should include and provide record evidence addressing the legal, ratemaking, and regulatory accounting linkages between: (1) the FCC's ruling in its Unified Intercarrier Compensation proceeding; (2) the intrastate

access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§ 3015 and 3017; (3) the Pa. USF; and (4) the potential rate effects on the basic local exchange services of the rural ILECs.

Conclusion

On consideration of the Joint Petition, we shall answer the first part of the material question in the negative. In addition, we shall also answer the second part of the material question in the affirmative, while granting it in part and denying it in part consistent with the terms and conditions contained in the discussion of this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Petition of the Rural Telephone Coalition, Office of Trial Staff and Office of Consumer Advocate for Interlocutory Commission Review and Answer to a Material Question and a Stay of Proceedings is granted, consistent with the discussion contained in this Opinion and Order.

2. That the first part of the material question, as isolated from the original material question and restated below, is answered in the NEGATIVE:

> Did the presiding officer erroneously issue an Order on a Motion filed with the Commission?

3. That the second part of the material question, as isolated from the original material question and restated below, is answered in the POSITIVE, and granted, in part, and denied, in part, consistent with Ordering Paragraphs Nos. 4 through 10, below.

> Did the presiding officer erroneously conclude not to stay the instant investigation pending action by the Federal Communications Commission on the same matters at issue in this Commission investigation?

4. That a stay of this investigation be granted for a period not to exceed twelve (12) months, unless extended by Commission Order, or until the Federal Communications Commission issues its ruling in its *Unified Intercarrier Compensation* proceeding, whichever occurs earlier.

5. That the Commission Staff from the Office of Special Assistants and the Law Bureau is hereby directed to monitor the Federal Communications Commission's *Unified Intercarrier Compensation* proceeding.

6. That the Commission shall entertain future requests for further stays of this investigation for good cause shown and for the purpose of coordinating this Commission's actions with the Federal Communications Commission's ruling in its *Unified Intercarrier Compensation* proceeding.

7. That upon the expiration of the twelve-month stay of the instant investigation or the issuance of a Federal Communications Commission ruling in the *Unified Intercarrier Compensation* proceeding, whichever occurs earlier, the Parties to this proceeding shall submit status reports to the Commission pertaining to common or related matters in the instant investigation and the Federal Communications Commission's Unified Intercarrier Compensation proceeding and the need for any coordination of those matters or any new matters that may arise once the instant investigation is reinstituted.

8. That, upon the receipt of the status reports directed in Ordering Paragraph No. 7, above, the Office of Special Assistants and the Law Bureau shall prepare a Staff recommendation for the Commission's timely consideration at a Public Meeting on reinstituting this investigation and taking any other appropriate action.

9. That upon the resumption of this investigation, the participating Parties shall be afforded the due process opportunity to appropriately supplement the evidentiary record.

10. That, upon the resumption of this investigation, the participating Parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between: (a) the Federal Communications Commission's ruling in its *Unified Intercarrier Compensation* proceeding; (b) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa.

C.S. §§ 3015 and 3017; (c) the Pennsylvania Universal Service Fund; and (d) the potential effects on rates for the basic local exchange services of the rural ILECs.

BY THE COMMISSION,

James J. McNulty,
Secretary

(SEAL)

ORDER ADOPTED: August 11, 2005

ORDER ENTERED: August 30, 2005

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 22, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman, Statement attached
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick, Statement attached

Buffalo Valley Telephone Company
Supplement No. 54 to Tariff PA PUC No. 7
Supplement No. 8 to Tariff PA PUC No. 8 — R-00061375

2006 Annual Price Stability Index / Service Price Index
Filing of Buffalo Valley Telephone Company — P-00981428F1000

ORDER

BY THE COMMISSION:

BACKGROUND

Before us for disposition are the Buffalo Valley Telephone Company ("Buffalo Valley" or "Company") annual 2006 Annual Price Stability Index / Service Price Index (PSI/SPI) Filing and the associated tariffs to effectuate increases to local and access revenues. Buffalo Valley is a rural telephone company and the filing was made under the provisions of the new Chapter 30 law, Act 183 of 2004, P.L. 1398 (66 Pa. C.S. §§ 3011-3019) ("Act 183") and pursuant to the Company's Alternative Regulation and Network Modernization Plan ("Chapter 30 Plan").

As a result of the passage of Act 183, companies with Chapter 30 Plans are entitled to significantly lower inflation offset values within their respective price cap formulas in exchange for a commitment to accelerated broadband deployment. Inflation offsets previously ranging from 2% to 2.93% were reduced to either 0% or 0.5%, depending on each company's

Chapter 30 Plan. In Buffalo Valley's case, the inflation offset was reduced from 2% to 0%. Accordingly, annual Price Stability Plan ("Plan") filings have the potential for substantial revenue and rate impacts on end-user consumers.

Under the Company's Plan, the allowable change (increase or decrease) in rates for noncompetitive services is based on the annual change in the Gross Domestic Product Price Index ("GDP-PI"). The Plan also contains special provisions for protected services and addresses revenue neutral adjustments to the rates of noncompetitive services. The Plan set forth in Buffalo Valley's Chapter 30 Plan is a complete substitution of the rate base/rate of return regulation. Noncompetitive services are defined as regulated services or business activities that have not been determined or declared to be competitive. The following services are defined as protected services: Service provided to residential consumers or business consumers that is necessary to complete a local exchange call; Touch Tone; Switched Access service; Special Access service; and Ordering installation, restoration and disconnection of these services. 66 Pa. C.S. § 3012

COMPANY FILING

Pursuant to the Plan, Advance Notice was issued on March 14, 2006, informing the Commission of the forthcoming rate changes. On May 3, 2006, Buffalo Valley filed its annual Plan filing using the change in 2004 and 2005 third quarter GDP-PI (Gross Domestic Product – Price Index) of 4.016% that produced an overall 3.70% increase allowable for noncompetitive revenues.

Buffalo Valley proposes to implement its Plan by increasing rates mainly for Switched Access Services through rate changes in Tariff-Telephone Pa. PUC No. 8, and basic and Non-Basic local services in Tariff-Telephone Pa. PUC No. 7. The overwhelming majority of the rate increases are targeted towards switched access services amounting to 77%, compared to 23% for non-basic local services. The proposal to increase switched access service rates is accomplished by an increase of $0.97 to the Carrier Common Line (CCL) charge, and an increase of $0.002402 per Minutes of Use (MOU) for Tandem Switching and $0.000247 MOU for Local Switching. The Company proposes a per line rate increase of $0.30 for basic local

services, PBX and Pay Telephone rates. The Company also proposes to increase non-basic local services rates for Return Check Charge, Foreign Exchange Mileage charges, and charges for Business Private Line Services for non-mileage related services. The proposed tariff revisions are filed to become effective July 1, 2006.

On June 1, 2006, and June 9, 2006, Buffalo Valley submitted certain responses and additional information to Staff inquiries relating to the filing. The additional information includes actual annual intrastate revenue figures for the period ending December 2005, and the Company's composite and individual access services rates per MOU for interstate as well as intrastate traffic. Buffalo Valley also responded to a staff inquiry regarding why an overwhelming majority of the rate increases are directed towards access charges despite the industry trend to move in the opposite direction by reducing access service charges so they are closer to their actual cost. According to the Company, it has aggressively implemented local service rate increases over the past five years through a combination of price cap filings and rate rebalancing filings and it believes that additional local service rate increases would accelerate access line loss.

The Company states in its response that certain aspects of the *Global Order* addressed access charge reductions, but the overriding theme was mirroring intrastate access service rates with interstate access service rates. The Company also states that it has previously reduced its CCL rates and has been aggressive in reducing access services rates. The Company believes that it is in its customers' best interest to have their rates in line with other ILECs so that when intercarrier compensation and access reform is implemented, it will be implemented in a similar fashion for all ILECs. In response to Staff request for a cost study for access services, the Company responded that it is an average schedule company and does not have any cost studies available to prove that the proposed access services rates were equal to or less than the cost for the Company to provide them.

DISCUSSION

1. Plan Calculations and Rate Increases

The annual Buffalo Valley Plan submissions under Chapter 30 law must conform to its Commission-approved Amended Chapter 30 Plan. Buffalo Valley submitted calculations it used to arrive at the PSI and SPI for the year 2006 based on the third quarter Gross Domestic Product Price Index for the years 2004 and 2005. Section 3015 (a)(1)(iii) of the Public Utility Code (Code), 66 Pa. C.S. § 3015(a)(1)(iii), enabled Buffalo Valley to remove the productivity offset, thus allowing the Company to increase rates for every positive change to the Company's PSI.

Our review of the calculations submitted by Buffalo Valley indicates that the 2006 SPI is calculated to be 1.0623 allowing for a 3.70% rate increase calculated on the prior year total intrastate revenue.

As an initial matter, we disagree with the 2005 annual revenues that Buffalo Valley used in its PSI/SPI calculation. Rather than using actual 2005 year-end revenues, Buffalo Valley calculated its eligible revenue increase amount using the revenue for the month of December 2005. Buffalo Valley then annualized the eligible increase by 12 to arrive at the annual rate increase for which it is seeking approval. As such, Buffalo Valley's calculated annualized 2005 annual revenues are 4% higher than its actual 2005 annual revenues,[75] allowing the Company to increase rates more than it is actually entitled.

Accordingly, we find the Company's PSI/SPI calculations to be only partially consistent with the terms of the Company's Price Stability Plan formula approved in its Chapter 30 Plan at Docket No. P-00981428F1000. As such, we will require Buffalo Valley to amend its calculations in Attachments 2 to 4 to its filing based on the actual intrastate revenue for the 12 month period ending December 2005, and adjust the eligible rate increases in Company's Exhibit 1.

2. Local Service Rate Increase

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75 Upon request from Staff, Buffalo Valley provided its annual revenue amounts for the year ending December 2005.

A review of the proposed rate changes to local services was found to be consistent with the Company's Plan. Accordingly, these rates will be allowed to go into effect as filed.

3. Access Services Rate Increase

Upon consideration, we believe that the proposed increase in access service charges as a vehicle to recover the Company's allowable PSI revenues should be resolved as set forth below. The proposal appears to contradict long-standing access service reform in Pennsylvania including Docket No. I-00040105, the Pennsylvania Universal Service Fund rules and policies, and the Company's current Amended Chapter 30 Plan. For these reasons and the reasons set forth in more detail below, we shall give the Company the alternative to either allocate increase to local rates or bank the remaining amount until a further date.

Switched Access charges are the rates charged by LECs to other companies seeking access to the LEC's facilities in order to provide toll services to the end-user. Inter exchange carriers (IXC) rely on the switched and special access facilities of the LECs to transmit calls between customers and IXC facilities. Accordingly, access services are "protected services" pursuant to the listing of "switched access service" as a protected service under Chapter 30. 66 Pa. C.S. § 3012

Traditionally, in the ILEC monopoly environment ILECs priced access service charges above cost as a means of generating additional revenues that were used to support local rates and thus keep basic local services affordable. The current laws require that the Commission promote and encourage the provisions of competitive services by a variety of service providers on equal terms and throughout the geographic areas of this Commonwealth, without jeopardizing reasonableness of rates or the provision of universal telecommunications service at affordable rates. 66 Pa. C.S. §§ 3011(2), 3011(8).

Buffalo Valley's proposed rate increases for switched access service charges may be contrary to these provisions. Switched access rate increases contradict Pennsylvania's long-standing attempt to reduce local carriers' dependence on access revenues and preserving the

affordability of local rates. An increase in switched access services rates may avoid an increase in local rates that could attract more service providers. In addition, an increase in switched access service charges may also undermine the obligation to promote the competition that could occur if ILEC access service charges were priced closer to costs.

By the same token, however, 66 Pa. C.S. § 3011(2) and (8) empowers the Commission to maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services deployment of broadband telecommunications network in rural, suburban and urban areas. Finally, the Commission must also ensure that rates, terms and conditions for protected services are reasonable and do not impede development of competition. 66 Pa. C.S. § 3011.

In furtherance of these objectives, the Commission established a Pennsylvania Universal Services Fund (PaUSF). Buffalo Valley will collect approximately $651,288 support for the year 2006 from the PaUSF to support its current access service charges. The current rate, reduced from the rates in effect prior to creation of the PaUSF, is consistent with the goals of access reform, the promotion of competition, maintenance of universal service, and the obligation to ensure that rates, terms, and conditions are just and reasonable. Buffalo Valley has already rebalanced rates by decreasing intrastate access and toll rates and increasing local service rates in furtherance of access reform and to reduce any possible subsidization from toll and access service charges that may have existed prior to toll competition. All jurisdictional Pennsylvania telecommunications service providers are contributing to the PaUSF based on their intrastate end-user revenues. The rural Companies, including Buffalo Valley, are encouraged and permitted to restructure their access, toll and local rates, accordingly.

The primary purpose of the PaUSF is to maintain the affordability of local service rates for end-user customers while allowing rural telephone companies to reduce their dependency on switched access service revenues and intraLATA toll rate revenues on a revenue neutral basis. See: 52 Pa. Code § 63.161. The Commission is responsible for assuring the maintenance of universal telecommunications services at affordable rates in Pennsylvania.

Universal services are those telecommunication services "essential for a resident of this Commonwealth to participate in modern society at any point in time." 52 Pa. Code § 63.162

Buffalo Valley's proposed rate increases to switched access services appear to hinder this participation, as well as contravene its earlier agreement to reduce switched access service charges as stipulated in a Joint Procedural Stipulation (Joint Stipulation) in response to the Commission's Access Charge Investigation – Phase II.[76] That Joint Stipulation calls for further switched access service charge reductions in a revenue-neutral method that are recovered not through an increase in the size of the PaUSF, but through gradual increases to local residential and business rates. The Joint Stipulation envisions a continuation of the current PaUSF support under the existing Regulations codified at 52 Pa. Code §§ 63.161-63.171 until a future rulemaking determines otherwise. This is evident in the fact that, although the fund was originally set to expire by December 31, 2003, the PaUSF was continued pursuant to a Joint Stipulation filed by the parties in the proceeding. Buffalo Valley is a party to the Joint Stipulation.

The Joint Stipulation provides for each ILEC to do what is permitted under their respective Chapter 30 Plans. This includes a restructuring of rates on a revenue-neutral basis in a manner that does not increase local rates by more than $3.50 per month. While the Joint Stipulation did not necessarily require the rural ILECs to mirror interstate access service charges, we note that mirroring interstate rates is a step towards attaining cost-based intrastate access service charges while avoiding arbitrage and promoting competition.

In the Joint Stipulation[77], the ILECs reserve the right to change access services rates in order to ensure each access rate element recovers its cost based upon development of a cost study when the ILECs service price index allows for an increase. In the instant filing, Buffalo Valley failed to provide a cost study consistent with the Joint Proposal requirement that a cost study accompany access services rates changes for access services rates below cost.

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76 Joint Procedural Stipulation regarding Access Charge Investigation per Global Order of September 30, 1999, order entered on July 15, 2003, Docket Nos. M-00021596 *et al.*

77 See part 2 paragraph 2 to Attachment A to RTCC/Sprint/OCA/OSBA Joint Access Proposal attached to Commission Order at Docket No. M-00021596 *et al.* entered on July 15, 2003.

Moreover, Buffalo Valley's proposal may also contravene the Commission's grant of a recent request of the ILECs, including Buffalo Valley, to suspend the investigation of further reductions in switched access services rates. This request arose in the context of a Commission investigation and rulemaking proceeding at Docket No. I-00040105, by Order entered on December 20, 2004, which was further considering additional intrastate switched access service reform in the service territories of rural ILECs and to address possible modifications to the PaUSF regulations and resulting rate issues should disbursements from the PaUSF be reduced in the future. This investigation was instituted as a result of the Commission's prior Order entered July 15, 2003, at Docket No. M-00021596 which, *inter alia*, discussed implementing continuing access services rate reform in Pennsylvania.

The investigation is also looking into what possible regulatory changes are necessary to 52 Pa. Code §§ 63.161-63.171, given the complex issues involved as well as any necessary changes occasioned by recent amendments to the Public Utility Code.

> "Consideration should be given to applicable orders, regulations, policy statements and guidelines of this Commission, including any necessary changes occasioned by recent amendments to the Public Utility Code[78] The General Assembly has repealed 66 Pa. C.S. § 1325 (limiting local exchange service increases) and added 66 Pa. C.S. §§ 3011-3019 (governing alternative form of regulation of telecommunications services). We would expect, for example, the parties to address the policy and legal ramifications of new sections 3011 (declaring the policy of the Commonwealth), 3015(B) (governing rate changes for rural telecommunications carriers) and 3017 (providing that Commission "may not require a local exchange telecommunications company to reduce access services rates except on a revenue-neutral basis" and limiting a competitive local exchange carrier's ability to charge access rates higher than the ILEC's rate). Act No. 183, P.L. ____ (Nov. 30, 2004)"[79].

As indicated above, however, the Commission, at the request of the Rural Telephone Company Coalition, including Buffalo Valley and other ILECs, stayed the proceeding

78 If applicable, federal reforms of the intercarrier compensation scheme should be addressed.

79 Commission Order at Docket No. I-00040105, Page 6.

for a period of twelve months or until the FCC issues its ruling in its *Unified Intercarrier* Compensation proceeding (FCC Docket 01-92), whichever occurs earlier. (Docket No. I-00040105 Order entered on August 30, 2005). The Commission established this deadline when granting the request, given the complexity of the federal proceeding, the probable impact in Pennsylvania, and the Commission's involvement in that proceeding. The Commission granted the request with the expectation that this federal proceeding would be completed within a twelve month period.

The Commission's decision also reflected the ILEC's request for a stay from any further access reduction until the FCC acts on its Intercarrier Compensation proceeding at CC Docket No. 01-92. An important consideration for granting this request is the fact that carriers in states with extensive intrastate access service charge reforms in place prior to a federal resolution could be at a disadvantage in securing federal support to lower their rates compared to states that did not engage in intrastate access reform prior to federal action.

Moreover, when granting the stay, we required parties to the investigation to submit appropriate status reports to the Commission and directed Commission Staff to monitor the developments in the FCC Intercarrier proceeding. Accordingly, we ordered:

> "10. That, upon the resumption of the investigation, the participating parties shall address and provide evidence on the legal, ratemaking, and regulatory accounting linkage between a) the Federal Communications Commission's ruling in its Unified Intercarrier Compensation proceeding; (b) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §3015 and 3017; (c) the Pennsylvania Universal Service Fund and d) the potential effect on rates for the basic local exchange services of the rural ILECs." [80]

We believe Buffalo Valley's proposed access services rate increases in the instant filing could undermine our decision to suspend this investigation of further access reforms, particularly reductions in access services rates, because the proposal reverses the current reforms by increasing the existing access service rates. Such a result could undermine the progress already achieved in our efforts to reduce and reform access service charges and promote

[80] See Ordering paragraph 10, at I-00040105, entered August 30, 2005.

competition in the toll and local arenas. We believe that maintenance of the current regulatory status quo, pending federal action, necessitates preservation of Buffalo Valley's current access services rates.

In addition, the Commission has consistently promoted competition as required by Chapter 30. Consistent with this obligation, the Commission endorsed reform in ILEC access services rates in order to minimize any access services support for local rates. The transition to cost-based access and local service rates is expected to be achieved using revenue-neutral means while also ensuring there is a provider of last resort available to all consumers within the rural ILECs territories. The Commission's approach also sought to give the ILECs a reasonable time to modernize their networks and ready themselves for competition.

Given these important and sometimes competing regulatory and legal considerations, we believe that the proposed increase in access services rates as a vehicle to recover PSI revenues may contradict the policy of implementing switched access services reform. Access service rate increases at this time also seem to undermine the promotion of competitive markets by increasing the gap between access service charges and costs. The proposed access services rate increases set forth in this filing appear to be inconsistent with the ILEC agreement to pursue continued access reduction and the Commission's current policy of promoting competition.

In particular, the proposed Buffalo Valley PSI/SPI submission does not simply implement a revenue and rate increase on services. The proposal unfairly targets access services by subjecting them to an overwhelming majority of the rate increases on IXCs (2.36% for local switching and 624% for Tandem Switching). As noted, access services are protected services, subject to proof that the rates are just and reasonable under 66 Pa. C.S. § 3109(h), Chapter 13 of the Code, as well as the Company's amended Chapter 30 Plan. The Company fails to provide adequate justification on whether the proposed rate increase for access services is in the public interest and whether or not it will negatively affect competition and, in addition, universal service in Pennsylvania. Furthermore, since the Company did not submit any cost studies with

its filing establishing that the current rates are below cost, we cannot ascertain whether or not access services rate elements are priced below cost or unfairly above cost level.

Moreover, the Company's proposal represents a departure from the current practice of recovering PSI revenue increases from local rate increases or banking these revenues for future recovery. We recognize that two major sources for recovering PSI revenues are local rates or access services. The current practice of avoiding increases in access services rates reflects the desire to promote competition by preserving Pennsylvania's progress on access service charge reform. Increases in access services rates is difficult to accept given that Buffalo Valley is a recipient of PaUSF support and because increases could undermine that access services reform. By the same token, however, increases in local rates that produce the kind of access line losses the Company wants to avoid could contravene the Commission's legal obligation to preserve universal service in Pennsylvania and unnecessarily increase funding demands on PaUSF in advance of any national intercarrier compensation reform. The Commission's acceptance of these proposed access services rates increases could also trigger multiple requests for similar increases throughout Pennsylvania. A deluge of access rate increases and local rate increases could erode the precarious gains made on access reform and universal service.

The Commission recognizes that this proposal presents a very difficult issue and that it requires a careful balancing of multiple and sometimes conflicting considerations. The delicate balancing of these considerations is reflected by Commission decisions that promote competition through access reform resulting in access service rate decreases supported by our PaUSF, as opposed to increases, while simultaneously avoiding adverse harm to universal service and triggering funding support demands from the PaUSF for local rates that exceed $18.00.

The Company recognized as much in consultations with Staff and in their responses to information requests. Consequently, the Commission is extremely reluctant to disturb this very delicate balance absent truly compelling reasons to the contrary and in advance of national intercarrier compensation reform.

For these reasons, we find Buffalo Valley's proposal to allocate and recover seventy-seven percent (77%) of their 2006 PSI revenue from access services rate increases in Tariff-Telephone Pa. PUC No. 8 as possibly contrary to the above-discussed considerations; **THEREFORE,**

IT IS ORDERED:

1. That the proposed revenue and rate increase proposed by Buffalo Valley Telephone Company, including increases to basic local rates, PBX, Pay Telephone Services, Return Check Charge, Foreign Exchange Mileage charges, and Business Private Line Services for non mileage related services in its local Tariff-Pa. PUC No. 7 be permitted to go into effect as filed.

2. That the Company submit revised Attachments 2 to 4 (from its original filing) using actual 2005 annual year-end revenue for the calculation of revenue increase and adjust the eligible rate increases in Company's Exhibit 1within five (5) days of the entry date of this Order.

3. That the Company's 2006 PSI/SPI filing is in partial compliance with its Commission-approved Amended Chapter 30 Plan.

4. That the Company be given the alternative to either "bank" the proposed revenue increase associated with the access service or, alternatively, allocate the proposed revenue increase amount associated with access service to the basic local exchange services in accordance with the applicable provisions of the Company's Amended Chapter 30 Plan.

5. That the Company shall provide the appropriate notification to the Commission's Bureau of Fixed Utilities, within five (5) days of the date of entry of this Order, of which, if any, alternative they will exercise consistent with Ordering Paragraph No. 4 above.

6. That, in the event that the Company does not choose either of the alternatives set forth in Ordering Paragraph 4 above, the proposed access services rate increases be permitted to go into effect as filed subject to any final determinations on access reform, including the pending intrastate access reform proceeding in Docket No. I-0004015 as it now exists or changes made by the Commission or at the federal level.

7. That the access reform proceeding in Docket No. I-0004015 shall examine, but not be limited to, whether this proposal is consistent with the regulations and policies governing the Pennsylvania Universal Service Fund, the Company's previously granted request for suspension of further intrastate access reform in Docket No. I-00040105, the Company's previously approved Amended Chapter 30 Plan set forth in Docket P-00981430F1000, and the continuing statutory obligations set forth in Sections 3011(1)-(13), 3019(h) and Chapter 13 of the Public Utility Code.

8. That the Company file the appropriate modified tariff supplements to become effective on one day's notice in accordance with the determinations made by the Company based on this Order.

9. That a copy of this Order be served upon Buffalo Valley Telephone Company, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Administrative Law Judge.

10. That a copy of this Order be served on the Office of Trial Staff for such further action as it may deem appropriate.

11. That the Commission's Secretary shall publish this Order in the *Pennsylvania Bulletin.*

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 22, 2006

ORDER ENTERED: June 23, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 22, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman, Statement attached
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick, Statement attached

Conestoga Telephone & Telegraph Company Supplement No. 206 to Tariff PA PUC No. 10 Supplement No. 7 to Tariff PA PUC No. 11	R-00061376
2006 Annual Price Stability Index / Service Price Index Filing of Conestoga Telephone & Telegraph Company	P-00981429F1000

ORDER

BY THE COMMISSION:

BACKGROUND

Before us for disposition are the Conestoga Telephone & Telegraph Company ("Conestoga" or "Company") annual 2006 Annual Price Stability Index / Service Price Index (PSI/SPI) Filing and the associated tariffs to effectuate increases to local and access service revenues. Conestoga is a rural telephone company and the filing was made under the provisions of the new Chapter 30 law, Act 183 of 2004, P.L. 1398 (66 Pa. C.S. §§ 3011-3019) ("Act 183") and pursuant to the Company's Alternative Regulation and Network Modernization Plan ("Chapter 30 Plan").

As a result of the passage of Act 183, companies with Chapter 30 Plans are entitled to significantly lower inflation offset values within their respective price cap formulas in exchange for a commitment to accelerated broadband deployment. Inflation offsets previously ranging from 2% to 2.93% were reduced to either 0% or 0.5%, depending on each company's

Chapter 30 Plan. In Conestoga's case, the inflation offset was reduced from 2% to 0%. Accordingly, annual Price Stability Plan ("Plan") filings have the potential for substantial revenue and rate impacts on end-user consumers.

Under the Company's Plan, the allowable change (increase or decrease) in rates for noncompetitive services is based on the annual change in the Gross Domestic Product Price Index ("GDP-PI"). The Plan also contains special provisions for protected services and addresses revenue-neutral adjustments to the rates of noncompetitive services. The Plan set forth in Conestoga's Chapter 30 Plan is a complete substitution of the rate base/rate of return regulation. Noncompetitive services are defined as regulated services or business activities that have not been determined or declared to be competitive. The following services are defined as protected services: Service provided to residential consumers or business consumers that is necessary to complete a local exchange call; Touch Tone; Switched Access service; Special Access service; and Ordering installation, restoration and disconnection of these services. 66 Pa. C.S. § 3012

COMPANY FILING

Pursuant to the Plan, Advance Notice was issued on March 14, 2006, informing the Commission of the forthcoming rate changes. On May 3, 2006, Conestoga filed its annual Plan filing using the change in 2004 and 2005 third quarter GDP-PI (Gross Domestic Product – Price Index) of 4.016% that produced an overall 3.70% increase allowable for noncompetitive revenues.

Conestoga proposes to implement its Plan by increasing rates mainly for Switched Access Services through rate changes in Tariff-Telephone Pa. PUC No. 11, and certain Non-Basic local services in Tariff-Telephone Pa. PUC No. 10. The overwhelming majority of the rate increases are targeted towards switched access services amounting to 99%, compared to 1% for non-basic local services. The proposal to increase switched access service rates is accomplished by lowering of $0.33 to the Carrier Common Line (CCL) charge, and an increase of $0.000962 per Minutes of Use (MOU) for Tandem Switching and $0.007644 MOU for Local Switching. The non-basic local services rate increases are proposed for Return Check Charge, Foreign

Exchange Mileage charges, and charges for Business Private Line Services for non-mileage-related services. The proposed tariff revisions are filed to become effective July 1, 2006.

On June 1, 2006, and June 9, 2006, Conestoga submitted certain responses and additional information to Staff inquiries relating to the filing. The additional information includes actual annual intrastate revenue figures for the period ending December 2005, and the Company's composite and individual access service rates per MOU for interstate as well as intrastate traffic. Conestoga also responded to a staff inquiry regarding why an overwhelming majority of the rate increases are directed towards access service charges, despite the industry trend to move in the opposite direction by reducing access service charges so they are closer to their actual cost. According to the Company, it has aggressively implemented local service rate increases over the past five years through a combination of price cap filings and rate rebalancing filings and it believes that additional local service rate increases would accelerate access service line loss.

The Company states in its response that certain aspects of the *Global Order* addressed access service charge reductions, but the overriding theme was mirroring intrastate access service rates with interstate access service rates. The Company also states that it has previously reduced its CCL rates and has been aggressive in reducing access service rates. The Company believes that it is in its customers' best interest to have their rates in line with other ILECs, so that when intercarrier compensation and access service reform is implemented it will be implemented in a similar fashion for all ILECs. In response to Staff request for a cost study for access service services, the Company responded that it is an average schedule company and does not have any cost studies available to prove that the proposed access service rates were equal to or less than the cost for the Company to provide them.

DISCUSSION

1. Plan Calculations and Rate Increases

The annual Conestoga Plan submissions under Chapter 30 law must conform to its Commission-approved Amended Chapter 30 Plan. Conestoga submitted calculations it used

to arrive at the PSI and SPI for the year 2006 based on the third quarter Gross Domestic Product Price Index for the years 2004 and 2005. Section 3015 (a)(1)(iii) of the Public Utility Code (Code), 66 Pa. C.S. § 3015(a)(1)(iii), enabled Conestoga to remove the productivity offset, thus allowing the Company to increase rates for every positive change to the Company's PSI.

Our review of the calculations submitted by Conestoga indicates that the 2006 SPI is 1.0623, allowing for a 3.70% rate increase calculated on the prior year total intrastate revenue.

As an initial matter, we disagree with the 2005 annual revenues that Conestoga used in its PSI/SPI calculation. Rather than using actual 2005 year-end revenues, Conestoga calculated its eligible revenue increase amount using the revenue for the month of December 2005. Conestoga then annualized the eligible increase by 12 to arrive at the annual rate increase for which it is seeking approval. As such, Conestoga's calculated annualized 2005 annual revenues are 5% higher than its actual 2005 annual revenues,[81] allowing the Company to increase rates more than it is actually entitled.

Accordingly, we find the Company's PSI/SPI calculations to be only partially consistent with the terms of the Company's Price Stability Plan formula approved in its Chapter 30 Plan at Docket No. P-00981429F1000. As such, we will require Conestoga to amend its calculations in Attachments 2 to 4 to its filing based on the actual intrastate revenue for the 12 month period ending December 2005, and adjust the eligible rate increases in Company's Exhibit 1.

2. Local Service Rate Increase

A review of the proposed rate changes to local services was found to be consistent with the Company's Plan. Accordingly, these rates will be allowed to go into effect as filed.

3. Access Services Rate Increase

81 Upon request from Staff, Conestoga provided its annual revenue amounts for the year ending December 2005.

Upon consideration, we believe that the proposed increase in access service charges as a vehicle to recover the Company's allowable PSI revenues should be resolved as set forth below. The proposal appears to contradict long-standing access service reform in Pennsylvania including Docket No. I-00040105, the Pennsylvania Universal Service Fund rules and policies, and the Company's current Amended Chapter 30 Plan. For these reasons and the reasons set forth in more detail below, we shall give the Company the alternative to either allocate the increase to local rates or bank the remaining amount until a further date.

Switched access service charges are the rates charged by LECs to other companies seeking access to the LEC's facilities in order to provide toll services to the end-user. Inter exchange carriers (IXC) rely on the switched and special access facilities of the LECs to transmit calls between customers and IXC facilities. Accordingly, access services are "protected services" pursuant to the listing of "Switched Access Services" as a protected service under Chapter 30. 66 Pa. C.S. § 3012

Traditionally, in the ILEC monopoly environment, ILECs priced access service charges above cost as a means of generating additional revenues that were used to support local rates and thus keep basic local services affordable. The current laws require that the Commission promote and encourage the provisions of competitive services by a variety of service providers on equal terms and throughout the geographic areas of this Commonwealth without jeopardizing reasonableness of rates or the provision of universal telecommunications service at affordable rates. 66 Pa. C.S. §§ 3011(2), 3011(8).

Conestoga's proposed rate increases for switched access service charges may be contrary to these provisions. Switched access service rate increases contradict Pennsylvania's long-standing attempt to reduce local carriers' dependence on access service revenues and preserve the affordability of local rates. An increase in switched access service rates may avoid an increase in local rates that could attract more service providers. In addition, an increase in access service charges may also undermine the obligation to promote the competition that could occur if ILEC access service charges were priced closer to costs.

By the same token, however, 66 Pa. C.S. § 3011(2) and (8) empowers the Commission to maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services deployment of broadband telecommunications network in rural, suburban and urban areas. Finally, the Commission must also ensure that rates, terms and conditions for protected services are reasonable and do not impede development of competition. 66 Pa. C.S. § 3011.

In furtherance of these objectives, the Commission established a Pennsylvania Universal Services Fund (PaUSF). Conestoga's will collect approximately $1,731,156 support for the year 2006 from the PaUSF to support its current access service charges. The current rate, reduced from the rates in effect prior to creation of the PaUSF, is consistent with the goals of access service reform, the promotion of competition, maintenance of universal service, and the obligation to ensure that rates, terms, and conditions are just and reasonable. Conestoga has already rebalanced rates by decreasing intrastate access service rates and toll rates and increasing local service rates in furtherance of access service reform and to reduce any possible subsidization from toll and access service charges which may have existed prior to toll competition. All jurisdictional Pennsylvania telecommunications service providers are contributing to the PaUSF based on their intrastate end-user revenues. The rural Companies, including Conestoga, were encouraged and permitted to restructure, their access, toll and local rates, accordingly.

The primary purpose of the PaUSF is to maintain the affordability of local service rates for end-user customers while allowing rural telephone companies to reduce their dependency on switched access service revenue and intraLATA toll rate revenues on a revenue-neutral basis. See: 52 Pa. Code § 63.161. The Commission is responsible for assuring the maintenance of universal telecommunications services at affordable rates in Pennsylvania. Universal services are those telecommunication services "essential for a resident of this Commonwealth to participate in modern society at any point in time." 52 Pa. Code § 63.162

Conestoga's proposed rate increases for switched access services appear to hinder this participation as well as contravene its earlier agreement to reduce access service charges as

stipulated in a Joint Procedural Stipulation (Joint Stipulation) in response to the Commission's Access Charge Investigation – Phase II.[82] That Joint Stipulation calls for further switched access service charge reductions in a revenue-neutral method that are recovered not through an increase in the size of the PaUSF, but through gradual increases to local residential and business rates. The Joint Stipulation envisions a continuation of the current PaUSF support under the existing Regulations codified at 52 Pa. Code §§ 63.161-63.171 until a future rulemaking determines otherwise. This is evident in the fact that, although the fund was originally set to expire by December 31, 2003, the PaUSF was continued pursuant to a Joint Stipulation filed by the parties in the proceeding. Conestoga is a party to the Joint Stipulation.

The Joint Stipulation provides for each ILEC to do what is permitted under their respective Chapter 30 Plans. This includes a restructuring of rates on a revenue-neutral basis in a manner that does not increase local rates by more than $3.50 per month. While the Joint Stipulation did not necessarily require the rural ILECs to mirror interstate access service charges, we note that mirroring interstate rates is a step towards attaining cost-based intrastate access service charges while avoiding arbitrage and promoting competition.

In the Joint Stipulation[83], the ILECs reserve the right to change access service rates in order to ensure each access service rate element recovers its cost based upon development of a cost study when the ILECs service price index allows for an increase. In the instant filing, Conestoga failed to provide a cost study consistent with the Joint Proposal requirement to change access service rates that are below cost based on the cost study.

Moreover, Conestoga's proposal may also contravene the Commission's grant of a recent request of the ILECs, including Conestoga, to suspend the investigation of further reductions in switched access service rates. This request arose in the context of a Commission investigation and rulemaking proceeding at Docket No. I-00040105, by Order entered on December 20, 2004, which was further considering additional intrastate access service reform in

82 Joint Procedural Stipulation regarding Access Charge Investigation per Global Order of September 30, 1999, order entered on July 15, 2003, Docket Nos. M-00021596 *et al.*

83 See part 2 paragraph 2 to Attachment A to RTCC/Sprint/OCA/OSBA Joint Access Proposal attached to Commission Order at Docket No. M-00021596 et al. entered on July 15, 2003.

the service territories of rural ILECs and to address possible modifications to the PaUSF regulations and resulting rate issues should disbursements from the PaUSF be reduced in the future. This investigation was instituted as a result of the Commission's prior Order entered July 15, 2003, at Docket No. M-00021596 which, *inter alia*, discussed implementing continuing access service charge reform in Pennsylvania.

The investigation is also looking into what possible regulatory changes are necessary to 52 Pa. Code §63.161-63.171 given the complex issues involved as well as any necessary changes occasioned by recent amendments to the Public Utility Code.

> "Consideration should be given to applicable orders, regulations, policy statements and guidelines of this Commission, including any necessary changes occasioned by recent amendments to the Public Utility Code[84] The General Assembly has repealed 66 Pa. C.S. § 1325 (limiting local exchange service increases) and added 66 Pa. C.S. §§ 3011-3019 (governing alternative form of regulation of telecommunications services). We would expect, for example, the parties to address the policy and legal ramifications of new sections 3011 (declaring the policy of the Commonwealth), 3015(B) (governing rate changes for rural telecommunications carriers) and 3017 (providing that Commission "may not require a local exchange telecommunications company to reduce access service rates except on a revenue-neutral basis" and limiting a competitive local exchange carrier's ability to charge access rates higher than the ILEC's rate). Act No. 183, P.L. ____ (Nov. 30, 2004)"[85].

As indicated above, however, the Commission, at the request of the Rural Telephone Company Coalition, including Conestoga and other ILECs, stayed the proceeding for a period of twelve months or until the FCC issues its ruling in its *Unified Intercarrier* Compensation proceeding, (FCC 01-92) whichever occurs earlier. (Docket No. I-00040105 Order entered on August 30, 2005). The Commission established this deadline when granting the request given the complexity of the federal proceeding, the probable impact in Pennsylvania, and the Commission's involvement in that proceeding. The Commission granted the request

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84 If applicable, federal reforms of the intercarrier compensation scheme should be addressed.

85 Commission Order at Docket No. I-00040105, Page 6.

with the expectation that this federal proceeding would be completed within a twelve-month period.

The Commission's decision also reflected the ILEC's request for a stay from any further access services rate reduction until the FCC acts on its Intercarrier Compensation proceeding at CC Docket No. 01-92. An important consideration for granting this request is the fact that carriers in states with extensive intrastate access service charge reforms in place prior a federal resolution could be at a disadvantage in securing federal support to lower their rates compared to states that did not engage in intrastate access services rate reform prior to federal action.

Moreover, when granting the stay we required parties to the investigation to submit appropriate status reports to the Commission and directed Commission Staff to monitor the developments in the FCC Intercarrier proceeding. Accordingly, we ordered:

> "10. That, upon the resumption of the investigation, the participating parties shall address and provide evidence on the legal, ratemaking, and regulatory accounting linkage between a) the Federal Communications Commission's ruling in its Unified Intercarrier Compensation proceeding; (b) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §3015 and 3017; (c) the Pennsylvania Universal Service Fund and d) the potential effect on rates for the basic local exchange services of the rural ILECs." [86]

We believe that Conestoga's proposed access service rate increases in the instant filing could undermine our decision to suspend this investigation of further access service reforms, particularly reductions in access service rates, because the proposal reverses the current reforms by increasing the existing access service rates. Such a result could undermine the progress already achieved in our efforts to reduce and reform access service charges and promote competition in the toll and local arenas. We believe that maintenance of the current regulatory status quo, pending federal action, necessitates preservation of Conestoga's current access service rates.

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[86] See Ordering paragraph 10, at I-00040105, entered August 30, 2005.

In addition, the Commission has consistently promoted competition as required by Chapter 30. Consistent with this obligation, the Commission endorsed reform in ILEC access service rates in order to minimize any access service charge support for local rates. The transition to cost-based access service and local service rates is expected to be achieved using revenue-neutral means while also ensuring there is a provider of last resort available to all consumers within the rural ILECs territories. The Commission's approach also sought to give the ILECs a reasonable time to modernize their networks and ready themselves for competition.

Given these important and sometimes competing regulatory and legal considerations, we believe that the proposed increase in access service rates as a vehicle to recover PSI revenues may contradict the policy of implementing switched access service reform. Access service rate increases at this time also seem to undermine the promotion of competitive markets by increasing the gap between access service charges and costs. The proposed access rate increases set forth in this filing appear to be inconsistent with the ILEC agreement to pursue continued access service reduction and the Commission's current policy of promoting competition.

In particular, the proposed Conestoga PSI/SPI submission does not simply implement a revenue and rate increase on services. The proposal unfairly targets access services by subjecting them to an overwhelming majority of the rate increases on IXCs (3.70% for local switching and 50% for Tandem Switching). As noted, access services are protected services, subject to proof that the rates are just and reasonable under 66 Pa. C.S. § 3109(h), Chapter 13 of the Code, as well as the Company's amended Chapter 30 Plan. The Company fails to provide adequate justification on whether the proposed rate increase for access services is in the public interest and whether or not it will negatively affect competition and, in addition, universal service in Pennsylvania. Furthermore, since the Company did not submit any cost studies with its filing establishing that the current rates are below cost, we cannot ascertain whether or not access services rate elements are priced below cost or unfairly above cost level.

Moreover, the Company's proposal represents a departure from the current practice of recovering PSI revenue increases from local rate increases or banking these revenues

for future recovery. We recognize that two major sources for recovering PSI revenues are local rates or access service charges. The current practice of avoiding access service rate increases reflects the desire to promote competition by preserving Pennsylvania's progress on access service charge reform. An increase in access service rates is difficult to accept given that Conestoga is a recipient of PaUSF support and because increases could undermine that access service reform. By the same token, however, increases in local rates that produce the kind of access service line losses the Company wants to avoid could contravene the Commission's legal obligation to preserve universal service in Pennsylvania and unnecessarily increase funding demands on PaUSF in advance of any national intercarrier compensation reform. The Commission's acceptance of these proposed access service rates increases could also trigger multiple requests for similar access service rate increases throughout Pennsylvania. A deluge of access service rate increases and local rate increases could erode the precarious gains made on access service reform and universal service.

The Commission recognizes that this proposal presents a very difficult issue and that it requires a careful balancing of multiple and sometimes conflicting considerations. The delicate balancing of these considerations is reflected by Commission decisions that promote competition through access service reform resulting in access service rate decreases supported by our PaUSF, as opposed to increases, while simultaneously avoiding adverse harm to universal service and triggering funding support demands from the PaUSF for local rates that exceed $18.00.

The Company recognized as much in consultations with Staff and in their responses to information requests. Consequently, the Commission is extremely reluctant to disturb this very delicate balance absent truly compelling reasons to the contrary and in advance of national intercarrier compensation reform.

For these reasons, we find Conestoga's proposal to allocate and recover ninety-nine percent (99%) of their 2006 PSI revenue from access services rate increases in Tariff-Telephone Pa. PUC No. 11 as possibly contrary to the above-discussed considerations; **THEREFORE,**

IT IS ORDERED:

1. That the proposed revenue and rate increase proposed by Conestoga Telephone and Telegraph Company increases to Return Check Charge, Foreign Exchange Mileage charges, and Business Private Line Services for non-mileage-related services in its local Tariff-Pa. PUC No. 10 be permitted to go into effect as filed.

2. That the Company submit revised Attachments 2 to 4 (from its original filing) using actual 2005 annual year-end revenue for the calculation of revenue increase and adjust the eligible rate increases in Company's Exhibit 1within five (5) days of the entry date of this Order.

3. That the Company's 2006 PSI/PSM filing is in partial compliance with its Commission-approved Amended Chapter 30 Plan.

4. That the Company be given the alternative to either "bank" the proposed revenue increase associated with the access service or, alternatively, allocate the proposed revenue increase amount associated with access service to the basic local exchange services in accordance with the applicable provisions of the Company's Amended Chapter 30 Plan.

5. That the Company shall provide the appropriate notification to the Commission's Bureau of Fixed Utility Services, within five (5) days of the date of entry of this Order, of which, if any, alternative they will exercise consistent with Ordering Paragraph No. 4 above.

6. That, in the event that the Company does not choose either of the alternatives set forth in Ordering Paragraph 4 above, the proposed access services rate increases be permitted to go into effect as filed subject to any final determinations on access reform, including the pending intrastate access reform proceeding in Docket No. I-0004015 as it now exists or changes made by the Commission or at the federal level.

7. That the access reform proceeding in Docket No. I-0004015 shall examine, but not be limited to, whether this proposal is consistent with the regulations and policies governing the Pennsylvania Universal Service Fund, the Company's previously granted request for suspension of further intrastate access reform in Docket No. I-00040105, the

Company's previously approved Amended Chapter 30 Plan set forth in Docket P-00981430F1000, and the continuing statutory obligations set forth in Sections 3011(1)-(13), 3019(h) and Chapter 13 of the Public Utility Code.

8. That the Company file the appropriate modified tariff supplements to become effective on one day's notice in accordance with the determinations made by the Company based on this Order.

9. That a copy of this Order be served upon Conestoga Telephone and Telegraph Company, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Administrative Law Judge.

10. That a copy of this Order be served on the Office of Trial Staff for such further action as it may deem appropriate.

11. That the Commission's Secretary shall publish this Order in the *Pennsylvania Bulletin.*

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 22, 2006

ORDER ENTERED: June 23, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 22, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman, Statement attached
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick, Statement attached

Denver & Ephrata Telephone & Telegraph Company Supplement No. 251 to Tariff PA PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16	R-00061377
2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company	*P-00981430F1000*

ORDER

BY THE COMMISSION:

BACKGROUND

Before us for disposition are the Denver & Ephrata Telephone & Telegraph Company ("D&E" or "Company") annual 2006 Annual Price Stability Index / Service Price Index (PSI/SPI) Filing and the associated tariffs to effectuate increases to local and access services revenues. D&E is a rural telephone company and the filing was made under the provisions of the new Chapter 30 law, Act 183 of 2004, P.L. 1398 (66 Pa. C.S. §§ 3011-3019) ("Act 183") and pursuant to the Company's Alternative Regulation and Network Modernization Plan ("Chapter 30 Plan").

As a result of the passage of Act 183, companies with Chapter 30 Plans are entitled to significantly lower inflation offset values within their respective price cap formulas in exchange for a commitment to accelerated broadband deployment. Inflation offsets previously ranging from 2% to 2.93% were reduced to either 0% or 0.5%, depending on each company's

Chapter 30 Plan. In D&E's case, the inflation offset was reduced from 2% to 0%. Accordingly, annual Price Stability Plan ("Plan") filings have the potential for substantial revenue and rate impacts on end-user consumers.

Under the Company's Plan, the allowable change (increase or decrease) in rates for noncompetitive services is based on the annual change in the Gross Domestic Product Price Index ("GDP-PI"). The Plan also contains special provisions for protected services and addresses revenue-neutral adjustments to the rates of noncompetitive services. The Plan set forth in D&E's Chapter 30 Plan is a complete substitution of the rate base/rate of return regulation. Noncompetitive services are defined as regulated services or business activities that have not been determined or declared to be competitive. The following services are defined as protected services: Service provided to residential consumers or business consumers that is necessary to complete a local exchange call; Touch Tone; Switched Access service; Special Access service; and Ordering installation, restoration and disconnection of these services. 66 Pa. C.S. § 3012

COMPANY FILING

Pursuant to the Plan, Advance Notice was issued on March 14, 2006, informing the Commission of the forthcoming rate changes. On May 3, 2006, D&E filed its annual Plan filing using the change in 2004 and 2005 third quarter GDP-PI (Gross Domestic Product – Price Index) of 4.016% that produced an overall 3.70% increase allowable for noncompetitive revenues.

D&E proposes to implement its Plan by increasing rates mainly for Switched Access Services through rate changes in Tariff-Telephone Pa. PUC No. 16, and certain Non-Basic local services in Tariff-Telephone Pa. PUC No. 15. The overwhelming majority of the rate increases are targeted towards switched access services amounting to 96%, compared to 4% for non-basic local services. The proposal to increase switched access service rates is accomplished by an increase of $1.20 to the Carrier Common Line (CCL) charge, and an increase of $0.000939 per Minutes of Use (MOU) for Tandem Switching and $0.000636 MOU for Local Switching. The non-basic local services rate increases are proposed for Return Check Charge, Foreign

Exchange Mileage charges, and charges for Business Private Line Services for non-mileage-related services. The proposed tariff revisions are filed to become effective July 1, 2006.

On June 1, 2006, and June 9, 2006, D&E submitted certain responses and additional information to Staff inquiries relating to the filing. The additional information includes actual annual intrastate revenue figures for the period ending December 2005, and the Company's composite and individual access services rates per MOU for interstate as well as intrastate traffic. D&E also responded to a staff inquiry regarding why an overwhelming majority of the rate increases are directed towards access services charges despite the industry trend to move in the opposite direction by reducing access services charges so they are closer to their actual cost. According to the Company, it has aggressively implemented local services rate increases over the past five years through a combination of price cap filings and rate rebalancing filings and it believes that additional local service rate increases would accelerate access services line loss.

The Company states in its response that certain aspects of the *Global Order* addressed access services charge reductions, but the overriding theme was mirroring intrastate access service rates with interstate access service rates. The Company also states that it has previously reduced its CCL rates and has been aggressive in reducing access services rates. The Company believes that it is in its customers' best interest to have their rates in line with other ILECs, so that when intercarrier compensation and access services reform is implemented it will be implemented in a similar fashion for all ILECs. In response to Staff request for a cost study for access services, the Company responded that it is an average schedule company and does not have any cost studies available to prove that the proposed access services rates were equal to or less than the cost for the Company to provide them.

DISCUSSION

1. Plan Calculations and Rate Increases

The annual D&E Plan submissions under Chapter 30 law must conform to its Commission-approved Amended Chapter 30 Plan. D&E submitted calculations it used to arrive

at the PSI and SPI for the year 2006 based on the third quarter Gross Domestic Product Price Index for the years 2004 and 2005. Section 3015(a)(1)(iii) of the Public Utility Code (Code), 66 Pa. C.S. § 3015(a)(1)(iii), enabled D&E to remove the productivity offset, thus allowing the Company to increase rates for every positive change to the Company's PSI.

Our review of the calculations submitted by D&E indicates that the 2006 SPI is 1.0623, allowing for a 3.70% rate increase calculated on the prior year total intrastate revenue.

As an initial matter, we disagree with the 2005 annual revenues that D&E used in its PSI/SPI calculation. Rather than using actual 2005 year-end revenues, D&E calculated its eligible revenue increase amount using the revenue for the month of December 2005. D&E then annualized the eligible increase by 12 to arrive at the annual rate increase for which it is seeking approval. As such, D&E's calculated annualized 2005 annual revenues are 5% higher than its actual 2005 annual revenues,[87] allowing the Company to increase rates more than it is actually entitled.

Accordingly, we find the Company's PSI/SPI calculations to be only partially consistent with the terms of the Company's Price Stability Plan formula approved in its Chapter 30 Plan at Docket No. P-00981430F1000. As such, we will require D&E to amend its calculations in Attachments 2 to 4 to its filing based on the actual intrastate revenue for the 12 month period ending December 2005, and adjust the eligible rate increases in Company's Exhibit 1.

2. Local Service Rate Increase

A review of the proposed rate changes to local services was found to be consistent with the Company's Plan. Accordingly, these rates will be allowed to go into effect as filed.

3. Access Services Rate Increase

87 Upon request from Staff D&E provided its annual revenue amounts for the year ending December 2005.

Upon consideration, we believe that the proposed increase in access service charges as a vehicle to recover the Company's allowable PSI revenues should be resolved as set forth below. The proposal appears to contradict long-standing access service reform in Pennsylvania including Docket No. I-00040105, the Pennsylvania Universal Service Fund rules and policies, and the Company's current Amended Chapter 30 Plan. For these reasons and the reasons set forth in more detail below, we shall give the Company the alternative to either allocate the increase to local rates or bank the remaining amount until a further date.

Switched access service charges are the rates charged by LECs to other companies seeking access to the LEC's facilities in order to provide toll services to the end-user. Inter exchange carriers (IXC) rely on the switched and special access facilities of the LECs to transmit calls between customers and IXC facilities. Accordingly, access services are "protected services" pursuant to the listing of "Switched Access Service" as a protected service under Chapter 30. 66 Pa. C.S. § 3012

Traditionally, in the ILEC monopoly environment, ILECs have priced access services above cost as a means of generating additional revenues that were used to support local rates and thus keep basic local services affordable. The current laws require that the Commission promote and encourage the provisions of competitive services by a variety of service providers on equal terms and throughout the geographic areas of this Commonwealth without jeopardizing reasonableness of rates or the provision of universal telecommunications service at affordable rates. 66 Pa. C.S. §§ 3011(2), 3011(8).

D&E's proposed rate increases for switched access service charges may be contrary to these provisions. Switched access services rate increases contradict Pennsylvania's long-standing attempt to reduce local carriers' dependence on switched access service revenues and preserve the affordability of local rates. An increase in switched access service rates may avoid an increase in local rates that could attract more service providers. In addition, an increase in switched access services charges may also undermine the obligation to promote the competition that could occur if ILEC access services were priced closer to costs.

By the same token, however, 66 Pa. C.S. §§ 3011(2) and (8) empowers the Commission to maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services deployment of broadband telecommunications network in rural, suburban and urban areas. Finally, the Commission must also ensure that rates, terms and conditions for protected services are reasonable and do not impede development of competition. 66 Pa. C.S. § 3011.

In furtherance of these objectives, the Commission established a Pennsylvania Universal Services Fund (PaUSF). D&E's will collect approximately $143,232 support for the year 2006 from the PaUSF to support its current access service charges. The current rate, reduced from the rates in effect prior to creation of the PaUSF, is consistent with the goals of access services reform, the promotion of competition, maintenance of universal service, and the obligation to ensure that rates, terms, and conditions are just and reasonable. D&E has already rebalanced rates by decreasing intrastate access and toll rates and increasing local services rates in furtherance of access services reform and to reduce any possible subsidization from toll and access services which may have existed prior to toll competition. All jurisdictional Pennsylvania telecommunications service providers are contributing to the PaUSF based on their intrastate end-user revenues. The rural Companies, including D&E, were encouraged and permitted to restructure their access, toll and local rates, accordingly.

The primary purpose of the PaUSF is to maintain the affordability of local services rates for end-user customers while allowing rural telephone companies to reduce their dependency on switched access services revenue and intraLATA toll rate revenues on a revenue-neutral basis. See: 52 Pa. Code § 63.161. The Commission is responsible for assuring the maintenance of universal telecommunications services at affordable rates in Pennsylvania. Universal services are those telecommunication services "essential for a resident of this Commonwealth to participate in modern society at any point in time." 52 Pa. Code § 63.162

D&E's proposed rate increases to switched access services appears to hinder this participation as well as contravene its earlier agreement to reduce switched access service as stipulated in a Joint Procedural Stipulation (Joint Stipulation) in response to the Commission's

Access Charge Investigation – Phase II.[88] That Joint Stipulation calls for further switched access services charge reductions in a revenue-neutral method that are recovered not through an increase in the size of the PaUSF, but through gradual increases to local residential and business rates. The Joint Stipulation envisions a continuation of the current PaUSF support under the existing Regulations codified at 52 Pa. Code §§ 63.161-63.171 until a future rulemaking determines otherwise. This is evident in the fact that, although the fund was originally set to expire by December 31, 2003, the PaUSF was continued pursuant to a Joint Stipulation filed by the parties in the proceeding. D&E is a party to the Joint Stipulation.

The Joint Stipulation provides for each ILEC to do what is permitted under their respective Chapter 30 Plans. This includes a restructuring of rates on a revenue-neutral basis in a manner that does not increase local rates by more than $3.50 per month. While the Joint Stipulation did not necessarily require the rural ILECs to mirror interstate access services charges, we note that mirroring interstate rates is a step towards attaining cost-based intrastate access services charges while avoiding arbitrage and promoting competition.

In the Joint Stipulation[89], the ILECs reserve the right to change access services rates in order to ensure each access services rate element recovers its cost based upon development of a cost study when the ILECs service price index allows for an increase. In the instant filing, D&E failed to provide a cost study consistent with the Joint Proposal.

Moreover, D&E's proposal may also contravene the Commission's grant of a recent request of the ILECs, including D&E, to suspend the investigation of further reductions in access services rates. This request arose in the context of a Commission investigation and rulemaking proceeding at Docket No. I-00040105, by Order entered on December 20, 2004, which was further considering additional intrastate switched access services reform in the service territories of rural ILECs and to address possible modifications to the PaUSF regulations and resulting rate issues should disbursements from the PaUSF be reduced in the future. This

88 Joint Procedural Stipulation regarding Access Charge Investigation per Global Order of September 30, 1999, order entered on July 15, 2003, Docket Nos. M-00021596 *et al.*

89 See part 2 paragraph 2 to Attachment A to RTCC/Sprint/OCA/OSBA Joint Access Proposal attached to Commission Order at Docket No. M-00021596 et al. entered on July 15, 2003.

investigation was instituted as a result of the Commission's prior Order entered July 15, 2003, at Docket No. M-00021596 that, *inter alia*, discussed implementing continuing access services rate reform in Pennsylvania.

The investigation is also looking into what possible regulatory changes are necessary to 52 Pa. Code §63.161-63.171, given the complex issues involved as well as any necessary changes occasioned by recent amendments to the Public Utility Code.

> "Consideration should be given to applicable orders, regulations, policy statements and guidelines of this Commission, including any necessary changes occasioned by recent amendments to the Public Utility Code[90] The General Assembly has repealed 66 Pa. C.S. § 1325 (limiting local exchange service increases) and added 66 Pa. C.S. §§ 3011-3019 (governing alternative form of regulation of telecommunications services). We would expect, for example, the parties to address the policy and legal ramifications of new sections 3011 (declaring the policy of the Commonwealth), 3015(B) (governing rate changes for rural telecommunications carriers) and 3017 (providing that Commission "may not require a local exchange telecommunications company to reduce access service rates except on a revenue-neutral basis" and limiting a competitive local exchange carrier's ability to charge access rates higher than the ILEC's rate). Act No. 183, P.L. ____ (Nov. 30, 2004)"[91].

As indicated above, however, the Commission, at the request of the Rural Telephone Company Coalition, including D&E and other ILECs, stayed the proceeding for a period of twelve months or until the FCC issues its ruling in its *Unified Intercarrier* Compensation proceeding (FCC 01-92), whichever occurs earlier. (Docket No. I-00040105; Order entered on August 30, 2005). The Commission established this deadline when granting the request, given the complexity of the federal proceeding, the probable impact in Pennsylvania, and the Commission's involvement in that proceeding. The Commission granted the request with the expectation that this federal proceeding would be completed within a twelve month period.

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90 If applicable, federal reforms of the intercarrier compensation scheme should be addressed.

91 Commission Order at Docket No. I-00040105, Page 6.

The Commission's decision also reflected the ILEC's request for a stay from any further access services reduction until the FCC acts on its Intercarrier Compensation proceeding at CC Docket No. 01-92. An important consideration for granting this request is the fact that carriers in states with extensive intrastate access services charge reforms in place prior to a federal resolution could be at a disadvantage in securing federal support to lower their rates compared to states that did not engage in intrastate access services reform prior to federal action.

Moreover, when granting the stay, we required parties to the investigation to submit appropriate status reports to the Commission and directed Commission Staff to monitor the developments in the FCC Intercarrier proceeding. Accordingly, we ordered:

> "10. That, upon the resumption of the investigation, the participating parties shall address and provide evidence on the legal, ratemaking, and regulatory accounting linkage between a) the Federal Communications Commission's ruling in its Unified Intercarrier Compensation proceeding; (b) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §3015 and 3017; (c) the Pennsylvania Universal Service Fund and d) the potential effect on rates for the basic local exchange services of the rural ILECs." [92]

We believe that D&E's proposed access services rate increases in the instant filing could undermine our decision to suspend this investigation of further access services reforms, particularly reductions in access services rates, because the proposal reverses the current reforms by increasing the existing access service rates. Such a result could undermine the progress already achieved in our efforts to reduce and reform access services charges and promote competition. We believe that maintenance of the current regulatory status quo, pending federal action, necessitates preservation of D&E's current access services rates.

In addition, the Commission has consistently promoted competition as required by Chapter 30. Consistent with this obligation, the Commission endorsed reform in ILEC access services rates in order to minimize any access services support for local rates. The transition to cost-based access services and local services rates is expected to be achieved using revenue-neutral means while also ensuring there is a provider of last resort available to all consumers

[92]See Ordering paragraph 10, at I-00040105, entered August 30, 2005.

within the rural ILECs territories. The Commission's approach also sought to give the ILECs a reasonable time to modernize their networks and ready themselves for competition.

Given these important and sometimes competing regulatory and legal considerations, we believe that the proposed increase in access services rates as a vehicle to recover PSI revenues may contradict the policy of implementing switched access services reform. Switched access service rate increases at this time also seem to undermine the promotion of competitive markets by increasing the gap between access services rates and costs. The proposed access services rate increases set forth in this filing appear to be inconsistent with the ILEC agreement to pursue continued access services reduction and the Commission's current policy of promoting competition.

In particular, the proposed D&E PSI/SPI submission does not simply implement a revenue and rate increase on services. The proposal unfairly targets access services by subjecting them to an overwhelming majority of the rate increases on IXCs (3.70% for local switching and 50% for Tandem Switching). As noted, access services are protected services, subject to proof that the rates are just and reasonable under 66 Pa. C.S. § 3109(h), Chapter 13 of Code, as well as the Company's amended Chapter 30 Plan. The Company fails to provide adequate justification on whether the proposed rate increase for access services is in the public interest and whether or not it will negatively affect competition and, in addition, universal service in Pennsylvania. Furthermore, since the Company did not submit any cost studies with its filing establishing that the current rates are below cost, we cannot ascertain whether or not access services rate elements are priced below cost or unfairly above cost level.

Moreover, the Company's proposal represents a departure from the current practice of recovering PSI revenue increases from local rate increases or banking these revenues for future recovery. We recognize that two major sources for recovering PSI revenues are local rates or access services. The current practice of avoiding access services rate increases reflects the desire to promote competition by preserving Pennsylvania's progress on access services charge reform. An increase in access services rates is difficult to accept because D&E is a recipient of PaUSF support and because increases could undermine that access service reform.

By the same token, however, increases in local rates that produce the kind of access services line losses the Company wants to avoid could contravene the Commission's legal obligation to preserve universal service in Pennsylvania and unnecessarily increase funding demands on PaUSF in advance of any national intercarrier compensation reform. The Commission's acceptance of these proposed access services rates increases could also trigger multiple requests for similar access services rate increases throughout Pennsylvania. A deluge of access services rate increases and local rate increases could erode the precarious gains made on access services reform and universal service.

The Commission recognizes that this proposal presents a very difficult issue and that it requires a careful balancing of multiple and sometimes conflicting considerations. The delicate balancing of these considerations is reflected by Commission decisions that promote competition through access services reform resulting in switched access service rate decreases supported by our PaUSF, as opposed to increases, while simultaneously avoiding adverse harm to universal service and triggering funding support demands from the PaUSF for local rates that exceed $18.00.

The Company recognized as much in consultations with staff and in their responses to information requests. Consequently, the Commission is extremely reluctant to disturb this very delicate balance absent truly compelling reasons to the contrary and in advance of national intercarrier compensation reform.

For these reasons, we find D&E's proposal to allocate and recover ninety-six percent (96%) of their 2006 PSI revenue from access services rate increases in Tariff-Telephone Pa. PUC No. 16 as possibly contrary to the above-discussed considerations; **THEREFORE,**

IT IS ORDERED:

1. That the proposed revenue and rate increase proposed by D&E Telephone and Telegraph Company increases to Return Check Charge, Foreign Exchange Mileage charges, and Business Private Line Services for non-mileage-related services in its local Tariff-Pa. PUC No. 15 be permitted to go into effect as filed.

2. That the Company submit revised Attachments 2 to 4 (from its original filing) using actual 2005 annual year-end revenue for the calculation of revenue increase and adjust the eligible rate increases in Company's Exhibit 1within five (5) days of the entry date of this Order.

3. That the Company's 2006 PSI/PSM filing is in partial compliance with its Commission-approved Amended Chapter 30 Plan.

4. That the Company be given the alternative to either "bank" the proposed revenue increase associated with the access services or, alternatively, allocate the proposed revenue increase amount associated with access services to the basic local exchange services in accordance with the applicable provisions of the Company's Amended Chapter 30 Plan.

5. That the Company shall provide the appropriate notification to the Commission's Bureau of Fixed Utility Services, within five (5) days of the date of entry of this Order, of which, if any, alternative they will exercise consistent with Ordering Paragraph No. 4 above.

6. That, in the event that the Company does not choose either of the alternatives set forth in Ordering Paragraph 4 above, the proposed access services rate increases be permitted to go into effect as filed subject to any final determinations on access reform, including the pending intrastate access reform proceeding in Docket No. I-0004015 as it now exists or changes made by the Commission or at the federal level.

7. That the access reform proceeding in Docket No. I-0004015 shall examine, but not be limited to, whether this proposal is consistent with the regulations and policies governing the Pennsylvania Universal Service Fund, the Company's previously granted

request for suspension of further intrastate access reform in Docket No. I-00040105, the Company's previously approved Amended Chapter 30 Plan set forth in Docket P-00981430F1000, and the continuing statutory obligations set forth in Sections 3011(1)-(13), 3019(h) and Chapter 13 of the Public Utility Code.

8. That the Company file the appropriate modified tariff supplements to become effective on one day's notice in accordance with the determinations made by the Company based on this Order.

9. That a copy of this Order be served upon D&E Telephone and Telegraph Company, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Administrative Law Judge.

10. That a copy of this Order be served on the Office of Trial Staff for such further action as it may deem appropriate.

11. That the Commission's Secretary shall publish this Order in the *Pennsylvania Bulletin.*

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 22, 2006

ORDER ENTERED: June 23, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held July 20, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

Buffalo Valley Telephone Company — R-00061375
Supplement No. 54 to Tariff PA PUC No. 7
Supplement No. 8 to Tariff PA PUC No. 8

2006 Annual Price Stability Index / Service Price Index — P-00981428F1000
Filing of Buffalo Valley Telephone Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Petition for Reconsideration filed by Buffalo Valley Telephone Company (BVTC) on July 10, 2006. By this Petition, BVTC seeks reconsideration on certain issues determined by our Opinion and Order entered on June 23, 2006, at the above docketed proceedings.

Pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 1701, the filing of a Petition for Review may limit the time frame within which this Commission may act if it wishes to consider the Petition for Reconsideration now before us. In the event that appellate review of the June 23, 2006 Opinion and Order is filed, the thirty-day time period within, which we must take action on this Petition for Reconsideration, expires on July 23, 2006.

Under these circumstances, we shall act on the Petition for Reconsideration now before us at this time so as to retain jurisdiction to further address the Petition on the merits. Accordingly, we shall grant reconsideration, within the meaning of Pa. R.A.P. Rule 1701(b)(3), pending review of and further consideration on, the merits of the Petition; **THEREFORE,**

IT IS ORDERED:

That the Petition for Reconsideration filed on July 10, 2006, by Buffalo Valley Telephone Company is hereby granted, pending further review of and consideration on, the merits.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 20, 2006

ORDER ENTERED: July 21, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held July 20, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

Conestoga Telephone & Telegraph Company Supplement No. 206 to Tariff PA PUC No. 10 Supplement No. 7 to Tariff PA PUC No. 11	R-00061376
2006 Annual Price Stability Index / Service Price Index Filing of Conestoga Telephone & Telegraph Company	P-00981429F1000

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Petition for Reconsideration filed by Conestoga Telephone & Telegraph Company (Conestoga) on July 10, 2006. By this Petition, Conestoga seeks reconsideration on certain issues determined by our Opinion and Order entered on June 23, 2006, at the above docketed proceedings.

Pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 1701, the filing of a Petition for Review may limit the time frame within which this Commission may act if it wishes to consider the Petition for Reconsideration now before us. In the event that appellate review of the June 23, 2006 Opinion and Order is filed, the thirty-day time period within, which we must take action on this Petition for Reconsideration, expires on July 23, 2006.

Under these circumstances, we shall act on the Petition for Reconsideration now before us at this time so as to retain jurisdiction to further address the Petition on the merits. Accordingly, we shall grant reconsideration, within the meaning of Pa. R.A.P. Rule 1701(b)(3), pending review of and further consideration on, the merits of the Petition; **THEREFORE,**

IT IS ORDERED:

That the Petition for Reconsideration filed on July 10, 2006, by Conestoga Telephone & Telegraph Company is hereby granted, pending further review of and consideration on, the merits.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 20, 2006

ORDER ENTERED: July 21, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held July 20, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

Denver & Ephrata Telephone & Telegraph Company Supplement No. 251 to Tariff PA PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16	R-00061377
2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company	P-00981430F1000

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Petition for Reconsideration filed by Denver & Ephrata Telephone & Telegraph Company (D&E) on July 10, 2006. By this Petition, D&E seeks reconsideration on certain issues determined by our Opinion and Order entered on June 23, 2006, at the above docketed proceedings.

Pursuant to Rule 1701 of the Pennsylvania Rules of Appellate Procedure, Pa. R.A.P. Rule 1701, the filing of a Petition for Review may limit the time frame within which this Commission may act if it wishes to consider the Petition for Reconsideration now before us. In the event that appellate review of the June 23, 2006 Opinion and Order is filed, the thirty-day time period within, which we must take action on this Petition for Reconsideration, expires on July 23, 2006.

Under these circumstances, we shall act on the Petition for Reconsideration now before us at this time so as to retain jurisdiction to further address the Petition on the merits. Accordingly, we shall grant reconsideration, within the meaning of Pa. R.A.P. Rule 1701(b)(3), pending review of and further consideration on, the merits of the Petition; **THEREFORE,**

IT IS ORDERED:

That the Petition for Reconsideration filed on July 10, 2006, by Denver & Ephrata Telephone & Telegraph Company is hereby granted, pending further review of and consideration on, the merits.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 20, 2006

ORDER ENTERED: July 21, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Public Meeting held November 9, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

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

ORDER

BY THE COMMISSION:

Presently before this Commission for consideration is the Joint Motion of The Rural Telephone Company Coalition[93] (RTCC), Office of Consumer Advocate (OCA), Office of Trial

[93] The RTCC consists of the following rural incumbent local exchange carriers: Windstream Pennsylvania, Inc. f/k/a ALLTEL Pennsylvania, Inc., Armstrong Telephone Company – PA, Armstrong Telephone Company-North, Bentleyville Communications Corporation, d/b/a The Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telephone Company of Kecksburg, Commonwealth Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company d/b/a D&E Telephone Company, Deposit Telephone Company, Frontier Communications of Breezewood, Inc., Frontier Communications of Canton, Inc., Frontier Communications of Lakewood, In., Frontier Communications of Oswayo River, Inc., Frontier Communications of Pennsylvania, Inc., The Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Mahanoy & Mahantango Telephone Company, Marianna &

Staff (OTS), and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania ("Embarq Pennsylvania") (f/d/b/a Sprint), (collectively "Joint Movants"). The Joint Motion concerns the RTCC/OCA/OTS/Embarq Pennsylvania's request that the Commission grant a further stay of the above-captioned investigation at I-00040105. Verizon Pennsylvania, Inc., Verizon North, Inc. and MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services (collectively "Verizon"), Qwest Communications, and Sprint Nextel Corporation filed status reports and answers to the Joint Motion requesting the Commission resume the investigation. The Joint Movants filed a status report in support of continuing the stay. T-Mobile Northeast LLC, f/k/a Omnipoint Holdings, Inc. d/b/a T-Mobile, Voicestream Pittsburgh LP d/b/a T-Mobile, and Cellco Partnership d/b/a Verizon Wireless (collectively, the "Wireless Carriers") submitted a joint status report stating that because the FCC's *Unified Intercarrier Compensation* proceeding at CC Docket No. 01-92, and pending federal legislation may substantially alter the law governing intrastate universal service programs, these continuing federal administrative and legislative activities present a "moving target" of uncertain result with respect to the parameters and outcomes of any further investigation undertaken in this docket at this time. Therefore, the Wireless Carriers believe there is no value in continuing an active investigation on the questions posed by the Commission in its December 16, 2004 order initiating the investigation. The Commission's and interested parties' resources would be better spent elsewhere to address intrastate intercarrier compensation issues, according to the Wireless Carriers. The Office of Small Business Advocate filed an Answer agreeing with the Joint Movants that the FCC's *Unified Intercarrier Compensation* proceeding and pending Congressional legislation could significantly impact the issues raised in the instant proceeding.

Procedural History

Scenery Hill Telephone Company, The North-Eastern Pennsylvania Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Sugar Valley Telephone Company, Venus Telephone Corporation, West Side Telephone Company and Yukon-Waltz Telephone Company.

The *Global Order*[94] of September 30, 1999 reduced access charges of all local incumbent exchange carriers operating in Pennsylvania. That order directed a Pennsylvania Universal Service Fund (PaUSF) be established to enable the rural incumbent local exchange carriers (ILECs) and Sprint/United to reduce access charges and intraLATA toll rates while at the same time ensuring that residential basic local service rates do not exceed the designated price cap of $16.00 per month. The *Global Order* also called for an investigation to be initiated in January 2001 to further refine a solution to the question of how the carrier charge (CC) pool can be reduced and to consider the appropriateness of a toll line charge to recover any resulting reductions.

On July 15, 2003 at Docket Nos. M-00021596, P-00991648, P-00991649, M-00031694, M-00031694C0001, and P-00930715, this Commission entered an order granting a Joint Procedural Stipulation filed on June 5, 2003, by the RTCC, Sprint/United, OTS, OCA, OSBA, AT&T Communications of Pennsylvania, Inc., Verizon and MCI WorldCom Network Services, Inc. The Order further reduced intrastate access charges for the rural telephone companies operating within the Commonwealth, and increased the cap on basic local service rates from $16.00 to $18.00 per month. The size of the Pennsylvania Universal Service Fund ("PaUSF" or "Fund") was not changed. No regulations were promulgated to alter the regulations[95] governing the PaUSF or to terminate the Fund. The Fund continues until a further rulemaking is completed.

On December 20, 2004, the Commission entered an order in the above-captioned case instituting an investigation into whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers. This investigation was instituted as a result of the Commission's prior order of July 15, 2003, which discussed implementing continuing access charge reform in

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[94] *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999)(*Global Order*); 196 P.U.R. 4th 172, *aff'd sub* nom. *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlth. 2000), *alloc. granted.*

[95] The regulations governing the PaUSF are found at 52 Pa. Code §§ 63.161 – 63.171. There is no sunset provision.

Pennsylvania. The July 15, 2003 order also provided that a rulemaking proceeding would be initiated no later than December 31, 2004, to address possible modifications to the PaUSF regulations and the simultaneous institution of a proceeding to address all resulting rate issues should disbursements from the PaUSF be reduced in the future.

The *December 20, 2004 Order* directed the Office of Administrative Law Judge conduct the appropriate proceedings including, but not limited to, a fully developed analysis and recommendation on the following questions:

(a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.

(b) What rates are influenced by contributors to and/or disbursements from the PaUSF?

(c) Should disbursements from the PaUSF be reduced and/or eliminated as a matter of policy and/or law?

(d) Assuming the PaUSF expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?

(e) If the PaUSF continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier's contribution be based upon? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?

(f) What regulatory changes are necessary to 52 Pa. Code §§63.161 – 63.171 given the complex issues involved as well as recent legislative developments?

Following the institution of this investigation, the Federal Communications Commission (FCC) on March 3, 2005, entered its order instituting an intercarrier compensation proceeding at CC Docket No. 01-92 (FNPRM). The FCC is examining the intercarrier compensation system including interstate and intrastate access, reciprocal compensation and universal service. The FCC stated that one of the main reasons reform is needed is because the current intercarrier compensation system is based on jurisdictional and regulatory distinctions that are no longer linked to technological or economic differences. FNPRM at par. 15. The FCC also established

goals for intercarrier compensation reform including the preservation of universal service and the promotion of economic efficiency (FNPRM at par. 33).

By order entered August 30, 2005, this Commission stayed the instant investigation for a period not to exceed twelve months unless extended by Commission order, or until the FCC issues its ruling in its *Unified Intercarrier Compensation* proceeding. We further ordered parties to submit status reports pertaining to related matters in the instant investigation and the FCC's *Unified Intercarrier Compensation* proceeding and the need for any coordination of these matters that may arise after the instant investigation is reinstated. We also stated that we shall entertain future requests for further stays of this investigation for good cause shown and for the purpose of coordinating this Commission's action with the FCC's ruling in its *Unified Intercarrier Compensation* proceeding.

We further ordered that upon the expiration of the twelve-month stay of the investigation or the issuance of a FCC ruling in the *Unified Intercarrier Compensation* proceeding, whichever occurs earlier, the parties to the proceeding shall submit status reports to the Commission pertaining to common or related matters in the instant investigation and the FCC's *Unified Intercarrier Compensation* proceeding and the need for any coordination of those matters or any new matters that may arise once the instant investigation is reinstituted.

Upon receipt of the status reports, Commission Staff was directed to prepare a recommendation regarding the reinstitution of this investigation and taking of any other appropriate action.

On July 18, 2006, the so-called Missoula Plan was submitted to the FCC. The Missoula Plan was the product of a NARUC task force that included numerous working groups and stakeholders. Generally, the Missoula Plan seeks to unify intercarrier charges for all traffic over a four-year time period, reduce intercarrier compensation rates, provide an ability to recover those reduced rates through explicit means, move rates for all traffic closer together, and establish uniform default interconnection rules. By notice issued July 25, 2006, the FCC requested parties submit comments on the Missoula Plan by September 25, 2006, and reply

comments by November 9, 2006. Further, on August 17, 2006, this Commission adopted a motion of Vice Chairman Cawley convening a workshop and facilitated discussion of interested participants, to facilitate the development of comments to the FCC. The workshop was conducted and comments were submitted to the FCC on October 25, 2006, regarding this Commission's opinion of the Missoula Plan. This FCC proceeding continues to have significant potential to directly impact if not render moot the issues in the instant proceeding.

On or about August 30, 2006, status reports were submitted to the Commission by the RTCC, OTS, OCA, Embarq[96], Verizon, Sprint/Nextel Corp.[97], the Wireless Carriers, and Qwest Communications. Additionally, the RTCC, OTS, OCA and Embarq filed a Joint Motion for further stay of investigation to which the other parties which filed status reports in objection. This Motion is ripe for a decision

Background of *Global Order*

We established the PaUSF through our *Global Order* wherein we stated:

> The USF is a means to reduce access and toll rates for the ultimate benefit of the end-user and to encourage greater toll competition, while enabling carriers to continue to preserve the affordability of local service rates. Although it is referred to as a fund, it is actually a pass-through mechanism to facilitate the transition from a monopoly environment to a competitive environment – an exchange of revenue between telephone companies which attempts to equalize the revenue deficits occasioned by mandated decreases in their toll and access charges.

Global Order, page 142.

The establishment of the PaUSF was carried out on a revenue-neutral basis and included the rebalancing of intrastate access charges, toll rates, and local rates by the rural local exchange carriers. The PaUSF was a modified version of a settlement plan submitted by the RTCC and Bell Atlantic-Pennsylvania, Inc. (Bell is now Verizon-Pa.).

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[96] The RTCC, OTS, OCA and Embarq filed a joint status report.

[97] Sprint Nextel Corp. filed on behalf of Sprint Communications Company L.P., its interexchange and competitive local exchange carrier entity and its wireless entities operating in the state, Sprint Spectrum, L.P. d/b/a Sprint PCS and Nextel Communications, Inc., and NPCR, Inc. d/b/a Nextel Partners.

The components of the PaUSF, from the standpoint of the RTCC members, are briefly summarized below:

1. All small incumbent local exchange carriers, which included all ILECs other than Bell and GTE North (GTE North is now Verizon-North), were directed to be recipients of the PaUSF. The PaUSF was established for the purpose of the rate rebalancing needs of the rural local exchange carriers including reductions in their intrastate access and toll rates. All Pennsylvania telecommunications service providers (excluding wireless carriers) were directed to contribute to the PaUSF based upon their intrastate end-user revenues.

2. The RTCC members were permitted to restructure, modify and reduce their access, toll and local rates, as follows:

a) Intrastate traffic sensitive switched access rates and structure (including local transport restructure) were converted to mirror interstate switched access rates and structure in effect on July 1, 1998.

b) The Common Carrier Line Charge ("CCLC") was restructured as a flat-rate Carrier Charge ("CC") and reduced to an intrastate rate not exceeding $7.00 per line and allocated to intrastate toll providers based on their relative minutes of use.

c) The RTCC members were given the opportunity to reduce their intrastate toll rates to an average rate not lower than $.09 per minute.

d) The RTCC members with low local exchange rates were permitted to increase their residential one-party basic, local rates to an average monthly charge of at least $10.83, to the extent necessary to offset the reduced toll rates.

e) Those RTCC members with an average monthly R-1 rate above $16.00 (inclusive of touch-tone) were directed to provide their customers with a Universal Service credit to effectively reduce the rate to $16.00 with the difference coming out of the PaUSF.

See Global Order at pp. 151-152. Sprint was not an original participant in the RTCC plan in the Global proceeding, but after pleading its inclusion in the USF at the *Global Order* hearings, the Commission ordered that it be included as a recipient carrier and in exchange for access charge reductions, it be allowed to draw $9,000,000 from the PaUSF annually.

We also stated in our *Global Order*:

> [W]e shall initiate an investigation on or about January 2, 2001, to further refine a solution to the question of how the Carrier Charge (CC) pool can be reduced. At its conclusion, but no later than December 31, 2001, the pool will be reduced. In addition, we shall consider the appropriateness of a Toll Line Charge (TLC)[or an intrastate Subscriber Line Charge] to recover any resulting reductions.

Global Order at 60.

Further Intrastate Rate Rebalancing History

In addition to the Commission's competitive undertakings on the intrastate side, the FCC instituted numerous proceedings aimed at further addressing an orderly transition from monopoly to a more competitive environment.

Pursuant to TA-96, the FCC undertook reform of both interstate access charges and federal universal service support mechanisms. Beginning in 1997, the FCC adopted several measures to move interstate access charges for price cap carriers toward lower, cost-based levels by revising the recovery of loop and other non-traffic sensitive costs from per-minute charges to flat rate per line charges thereby aligning rates more closely with the way the costs are incurred. For example, in order to phase out Carrier Common Line ("CCL") charges, the per-minute charges assessed on interexchange ("IXC") carriers through which ILECs recover their residual interstate loop costs that are not recovered through their capped federal SLCs, the FCC created the presubscribed interexchange carrier charge ("PICC"), a flat, per line monthly charge imposed on IXCs. The FCC also shifted the non-traffic sensitive costs of the line ports from per-minute local switching charges to the common line category and established a mechanism to phase out the per-minute transport interconnection charge (TIC). The FCC held that more rate structure modifications would be required to create a system that accurately reflects the true cost of service in all respects. The FCC believes the market-based approach, in which competitive forces primarily drive access charges down to cost-based levels, would serve the public interest better than regulatory-prescribed rates.

In the *Interstate Access Support Order*[98] the FCC continued the process of access charge and universal service reform for price cap carriers. This order prescribed a more straightforward, and purportedly economical rational, common line rate structure by increasing the caps on the federal SLC, a flat monthly charge assessed directly on end-users to recover interstate loop costs, and phasing out the PICC, which the FCC viewed as economically inefficient due to the indirect flow of loop costs to end-users through IXCs. The FCC also revisited the controversial "X-factor," changing its function from a productivity offset to a tool for reducing per-minute access charges to target levels proposed by the CALLS members.

The FCC also established a new interstate access support mechanism, capped at $650 million annually, to replace what the FCC deemed implicit support included in the interstate access charges of price cap carriers, finding $650 million to be a reasonable amount that would provide sufficient, but not excessive, support. In this regard, the FCC observed that a range of funding levels might be deemed "sufficient" for purposes of TA-96, and that "identifying an amount of implicit support in our interstate access charge system to make explicit is an imprecise exercise."[99]

In recognition of the need for a more comprehensive review of the issues of access charge and universal service reform for the remaining 1,300 or so rural carriers serving less than 2% of the nation's access lines, the FCC placed such reforms for the non-price cap carriers on a separate track. As documented in a series of white papers prepared by the Rural Task Force, which was constituted by the FCC to study the differences between the provision of telecommunications services in rural and non-rural areas, rural carriers generally have higher operating and facilities costs due to lower subscriber density, smaller exchanges and limited economies of scale. [100] Significantly, rural carriers rely more heavily on revenues from access

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[98] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges,* CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, May 31, 2000, (*Access Charge Reform Order)* at 15998 Par. 35.

[99] *Interstate Access Support Order* at 13046 par. 201.

[100] *See Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9164-65 (1977) (*Universal Service First Report and Order)* at 8917 par. 253 (subsequent history omitted); *Rural Task Force Order.*

charges and universal service support in order to provide ubiquitous and affordable local service. On May 23, 2001, the FCC released its *Fourteenth Report and Order and Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC RCD 11244 (released May 23, 2001) ("Rural Task Force Order").

The *Rural Task Force Order* changed the manner in which rural interstate universal service support is currently calculated and applied. Among other things, the *Rural Task Force Order* endorsed use of a modified embedded cost mechanism for rural carriers, as opposed to a forward-looking cost mechanism required for price cap carriers, to determine rural carrier support, and included implementation of a rural growth factor (the sum of annual line growth and a general inflation factor) and a safety net additive and safety valve to provide support for new investment and growth above stated thresholds. While created as an interim plan, the FCC also made clear its intention to develop "a long-term plan that better targets support to carriers serving high-cost areas, while at the same time recognizing the significant differences among rural carriers, and between rural and non-rural carriers."[101]

Having taken major steps in beginning to reform interstate high-cost support, interstate access charges and universal service support systems for non-rural carriers through a series of reports and orders in the matter of *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 and the *Interstate Access Support Order*, and the interstate high-cost support for rural carriers through the *Rural Task Force Order*, the FCC began to address the matter of interstate access charge and universal service support reforms for the rural carriers. On November 8, 2001, the FCC issued its *Second Report and Order* at CC Docket Nos. 01-304, 00-256 (MAG Plan), 96-45 (USF), 98-77 (Access Charge Reform) and 98-166 (Authorized ROR), in what is referred to as the MAG Order. In the *MAG Order*, the FCC stated its intent to align the interstate access rate structure with a lower, more cost-based level, remove what the FCC deemed to be implicit support for universal service and replaced it with explicit, portable and competitively neutral support. Specifically, the *MAG Order* lowered interstate access charges from approximately

[101] *Id.* at 11249 par. 8.

$0.046 per minute to possibly as low as $0.022 per minute; increased the interstate SLC over a period of time; and phased out the CCL by July 1, 2003, and replaced it with a portable Interstate Common Line Support ("ICLS") universal service mechanism. In addition, SLC caps were increased effective January 1, 2002, raising monthly per line rates from $3.50 to $5.00 for residence and single line business, and from $6.00 and $6.50, respectively. These interstate changes have resulted in significant increases to most Pennsylvania consumers which are in addition to the intrastate increases in local service rates under Chapter 30 rate rebalancings.

Discussion

In the instant proceeding, the Joint Movants request that the Commission issue an order staying the above-captioned investigation pending the outcome of the FCC unified intercarrier compensation proceeding at CC Docket No. 01-92 for at least one year after the Commission enters an order acting on this motion, or until the FCC rules on its *Unified Intercarrier Compensation* proceeding, whichever is earlier. For the reasons that follow, we shall continue the stay of the investigation for another year or upon completion of the FCC's *Unified Intercarrier Compensation* proceeding, whichever occurs first.

Although, the Joint Proposal does not expressly state that it advocates a continuation of the current PaUSF under the existing regulations codified at 52 Pa.Code §§ 63.161-63.171, we may infer that it is the position of the Joint Movants that the *status quo* be maintained until there is a resolution after an investigation and until a future rulemaking determines otherwise.

We acknowledge that the Missoula Plan as well as other plan proposals before the FCC could have a significant impact on rural access reform as many of these proposals propose interstate and intrastate access charge reform as well as federal and state universal service funds. Most of the proposed plans propose that rural carriers should continue to receive funding of their networks to foster universal service and in many cases create supplemental rural universal service funding or access charge replacement funding to compensate rural carriers for additional required access reform. The Missoula Plan contains provisions that, if adopted, would affect our jurisdiction over setting intrastate access charges. The Missoula Plan eliminates differences between intrastate access, interstate access and reciprocal compensation.

In Pennsylvania, we have taken steps to gradually reduce intrastate access charges through revenue-neutral methods, in an effort to increase competition in rural areas, while assuring affordable and reliable residential service in those areas by establishing our own Pennsylvania Universal Service Fund. We have a closed system, whereby certificated carriers offering service in Pennsylvania help support the intrastate access charge reform by contributing to the Pennsylvania Universal Service Fund. Intrastate revenues are re-distributed within the Commonwealth. This fund supports rural ILECs that are undergoing network modernization to offer residential rates at reasonable costs while still promoting competition in the rural more high-cost areas of the state. Most states do not have a similar fund.

The Missoula Plan apparently advocates that the FCC should exercise its authority to preempt state regulation of intrastate access and local interconnection and establish alternative cost recovery mechanisms within the intrastate jurisdiction. If adopted, it is unclear what this would cost Pennsylvania carriers and their ratepayers. If a federal USF were to replace individual state USFs in access charge reform, it is possible that Pennsylvania would be a net-contributor to the federal Fund regarding access charge reform because we have already undertaken reform within our state, and our intrastate access charges are lower than many other states. Thus, other states would have a greater need to draw from a Federal USF to support a revenue-neutral intrastate access charge reduction. Probably, the states with higher revenues then would be contributing more to the Fund. This national re-distribution of wealth, from urban to rural states is a political policy, but not one which Pennsylvania advocates, because, although we have rural areas within our state, we are not a rural state when compared to Arkansas, Alaska, and Wyoming for example. Pennsylvania is generally a net-contributor to the Federal Universal Service Fund currently. Although we receive some monies for our Lifeline/Link-Up programs, Rural Health Care, Schools and Libraries, and High-Cost Support, our ratepayers pay far more into the Federal USF, than is given back by those four programs. All carriers operating in the nation would be contributing on a *pro-rata* share possibly based upon their revenues, and possibly, Pennsylvanians would pay a large portion of the cost.

The Missoula Plan proposes an "Early Adoptor Fund" of $200 million to support states that have already reduced intrastate access charges to closer mirror interstate access charges. However, since our PaUSF's inception in April, 2000, our 35 rural ILECs have received over $200 million from the PaUSF in aggregate. Therefore, Pennsylvania would possibly not be able to fully recover under the "Early Adopter Fund" as proposed. The Missoula Plan also brings into question whether this Commission should act quickly to order further intrastate access charge reductions which possibly then would hurt our chances in the future of receiving federal subsidy monies for these reductions. Given all of these potential changes at the federal level that can affect universal service, we agree that the Joint Motion should be granted.

Moreover, we are persuaded to stay the investigation because there is pending United States Congressional legislation designed to change existing federal USF funding and potentially related issues and Congress is now back in session. A bill called the Universal Service Reform Act of 2006 (HR 5072) was introduced by House Representatives Rick Boucher and Lee Terry this year. A comprehensive legislative telecommunications reform initiative sponsored by Senator Stevens (HR 5252) also contains stabilization provisions for federal universal service funding purposes. Further stay of the procedural schedule at Docket No. I-00040105 remains both judicious and warranted until changes arising from the federal legislative landscape have settled and are known.

Verizon opposes the Joint Motion because three of the Joint Movants (Denver & Ephrata Telephone and Telegraph Company, Buffalo Valley Telephone Company and Conestoga Telephone and Telegraph Company) have unilaterally raised their intrastate access charges, actions inconsistent with their request for a stay. This Commission's recent rulings reviewing the PSI filings of the three movants allowed the three carriers to increase access rates as part of their 2006 Annual Price Stability Index/ Service Price Index filings on the express condition that these rates would be subject to further investigation in the instant investigation.[102] While we

[102] *Denver & Ephrata Telephone & Telegraph Company Supplement No. 251 to Tariff PaPUC No. 15 and Supplement No. 10 to Tariff PaPUC No. 16,* Order, R-00061377, June 23, 2006. *2006 Annual Price Stability Index/ Service Price Index Filing of D&E Telephone and Telegraph Company,* Order, P-00981430F1000, June 23, 2006, *Buffalo Valley Telephone Company Supplement No. 54 to Tariff Pa.PUC No. 7 and Supplement No. 8 to Tariff Pa.PUC No. 8,* Order, R-00061375, *2006 Annual Price Stability*

criticized the move to raise access rates noting that it appeared to contradict long-standing access service reform in Pennsylvania, we also ruled that if the companies did not bank the proposed increases or allocate them to basic local exchange services, the instant investigation would be expanded to include an examination of whether the three companies' access rate increases are consistent with the regulations and policies governing the PaUSF, the request for a stay of investigation, the previously approved Amended Chapter 30 Plans set forth in Docket No. P-0098143F1000, and the continuing statutory obligations set forth in Sections 3011(1)-(13), 3019(h) and Chapter 13 of the Public Utility Code.

As noted, Denver and Ephrata Telephone & Telegraph Company, Buffalo Valley Telephone Company and Conestoga Telephone and Telegraph Company (D&E Companies) filed a joint response to Verizon's opposition to further stay. First, the D&E companies argue Verizon failed to object to the 2006 Chapter 30 filings even though it was served with timely notice. Second, the companies argue they are faced with intermodal competition which precludes further increases in their basic exchange rates and the minor increases to their intrastate access charges were the only realistic means to achieve additional revenues to carry-out their accelerated Chapter 30 broadband deployment commitments. Finally, the companies argue Verizon is disingenuous and conflicting in its position because its own position regarding further reductions of Verizon's intrastate access charges at Docket No. C-20027195 is the same as the Joint Movants. In that proceeding, Verizon recognizes that the FCC's *Unified Intercarrier Compensation* proceeding will comprehensively address all types of intrastate compensation, including intrastate access rates. Verizon further stated that any rush by the Commission to get ahead of the FCC is ill-advised.

We agree with Verizon that to date, the D&E companies have neither banked their proposed increase, nor allocated it to basic local exchange services. Instead, they raised intrastate access charges. This policy seems contrary to our policy of the *Global Order*, wherein

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Index/Service Price Index Filing of Buffalo Valley Telephone Company, Order, P-00981428F1000, *Conestoga Telephone & Telegraph Company Supplement No. 206 to Tariff Pa.PUC No. 10, Supplement No. 7 to Tariff Pa.PUC No. 11*, Order, R-00061376, June 23, 2006. *2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone & Telegraph Company*, P-00981429F1000, Order, June 23, 2006.

we emphasized a need for reducing intrastate access charges in the rural ILEC territories to gradually mirror interstate access charges in order to bring about greater competition in those areas. The Pennsylvania Universal Service Fund was established in April, 2000, in order to reimburse the rural ILECs for revenue losses attributable to reductions in intrastate access charges and intraLATA toll rates during this period of transition from a monopolistic industry to a competitive one, while at the same time ensuring basic local service rates for residential customers would stay under a reasonable cap. We are concerned as to how increases in intrastate access charges proposed by those same companies that participate in the Pennsylvania Universal Service Fund will ultimately affect the fund.

It is important to note that since the *Global Order* of September 30, 1999, this Commission has been lowering intrastate access charges in an effort to transition from a monopolistic to a competitive environment in rural areas within the Commonwealth. Generally, since *Global,* we have only discussed the reduction of access charges. The fact that we never expressly stated that increases to access charges were precluded until the next investigation was held, does not mean the Commission intended to carve out an exception to our general public policy rule of lowering intrastate access charges and allow for intermittent increases to intrastate access charges with rural ILEC PSI filings. Such a policy would cause problems in the administration of the Pennsylvania Universal Service Fund which depends upon annual recalculations regarding what is owed recipient carriers versus what contributors owe on an annual basis. To allow carriers to increase their intrastate access charges mid-year would cause problems in calculating support owed the recipient carriers, and calculating mid-year reductions in the overall size of the fund.

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

service policies, and lawful under the companies' Chapter 30 plans. Moreover, revenues from increases in access charges collected from the date of this order may be subject to refund depending upon the outcome of these further hearings. The bifurcation of these hearings from the instant matter should adequately address Verizon's concerns regarding the instant motion. Further, given our action to reconsider the access charge increases previously approved for Denver & Ephrata Telephone &Telegraph Company, Conestoga Telephone Company and Buffalo Valley Telephone Company, other rural ILECs contemplating the submission of PSI filings should be prepared to fully support the justness and reasonableness of any proposed increase to intrastate access charges during the stay of this proceeding both in regard to Chapter 30 and the policies that underlie the Pennsylvania Universal Service Fund.

Sprint Nextel urges this Commission to deny the Joint Motion on the grounds that intrastate access reform, particularly for the rural carriers, is urgently needed. Sprint Nextel claims it pays an average intrastate access rate in Pennsylvania that is much higher than the national average intrastate access rate and significantly higher than interstate access rates paid to Pennsylvania ILECs, yet it offers no specifics regarding this claim. Further delay in the reduction of implicit subsidies in intrastate access rates is not warranted according to Sprint Nextel. If the FCC acts while the investigation is ongoing, that action should be factored into the proceeding and any necessary adjustments could be addressed at that time. However, Sprint Nextel argues that it is unlikely the FCC will act before mid-2007. Further, Sprint Nextel argues that it is uncertain whether preemptive action by the FCC against the states would be upheld by the courts. Sprint Nextel admits the FCC's resolution of the proceeding will have an impact on Pennsylvania's local exchange carriers, but it denies any evidentiary record compiled by moving forward with the investigation would be moot or stale if the FCC acts. Finally, although Sprint Nextel admits there is legislative activity underway at the federal level addressing universal service, there is no time frame set for deliberations and any definitive legislation action may not take place for several congressional sessions.

We are not persuaded by Sprint Nextel's argument to resume the investigation at this time. The looming decision of the FCC regarding the Missoula Plan and of pending federal

legislation warrant a further one year stay of the investigation. Sprint Nextel's assertions that it pays more in Pennsylvania for intrastate access charges are made without specifics. There is no direct comparison between rural ILECs operating in our state with similar companies in other states. Neither is there a direct comparison between a national average intrastate access charge for rural companies with our companies or a comparison between interstate access charges and the intrastate access charges for rural carriers in our state.

Accordingly, for these above-stated reasons, the Joint Movants' request that the Commission stay this matter pending the outcome of the FCC *Unified Intercarrier Compensation* proceeding at Docket No. 01-92, for at least a period of twelve months or until the FCC acts on its Unified Intercarrier Compensation proceeding, whichever is earlier, will be granted.

Finally, we note that our contract with the third-party administrator of the Pennsylvania Universal Service Fund, Solix, Inc., is due to expire on December 31, 2006. Since, there has been no resolution to access charge reform, the *status quo* stays in place, and the Pennsylvania Universal Service Fund shall continue under the existing regulations codified at 52 Pa. Code §§ 63.161 – 63.171 until such time as regulations are promulgated eliminating or modifying the Fund. Law Bureau as Issuing Office is coordinating the selection of an Administrator of the Pennsylvania Universal Service Fund through a competitive bidding process for a contractual period of January 1, 2007 through December 31, 2010 with a possible one-year extension through December 31, 2011. The request for proposals has been posted on our website, www.puc.state.pa.us since October 25, 2006, and questions and answers pertaining to same are being placed upon the Commission's website as they are received and answered. Proposals are due by 1:30 p.m. on November 27, 2006. Ultimately, a provision shall be made in the final contract that the contract may need to be amended later if the Pennsylvania legislature authorizes or mandates changes or if the Commission orders the termination or the modification of the fund. Thus, if the fund is eliminated through the regulatory process prior to the expiration of the contract, the contract will terminate earlier than 2010; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Motion of the Rural Telephone Company Coalition, Office of Consumer Advocate, Office of Trial Staff, and the United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania is granted in its entirety and this Investigation shall be further stayed pending the outcome of the FCC's *Unified Intercarrier Compensation* proceeding at CC Docket No. 01-92 or for one year from the date of entry of this Order, whichever is earlier.

2. That the Commission Staff from the Office of Special Assistants and the Law Bureau is hereby directed to monitor the Federal Communications Commission's *Unified Intercarrier Compensation* proceeding.

3. That the Commission shall entertain future requests for further stays of this investigation for good cause shown and for the purpose of coordinating this Commission's actions with the Federal Communications Commission's ruling in its *Unified Intercarrier Compensation* proceeding.

4. That upon the expiration of the twelve-month stay of the instant investigation or the issuance of a Federal Communications Commission ruling in the *Unified Intercarrier Compensation* proceeding, whichever occurs earlier, the parties to this proceeding shall submit status reports to the Commission pertaining to common or related matters in the instant investigation and the Federal Communications Commission's Unified Intercarrier Compensation proceeding and the need for any coordination of those matters or any new matters that may arise once the instant investigation is reinstituted. Status reports are due thirty days prior to the expiration of the on-year stay or thirty days after the FCC decision is made regarding the *Unified Intercarrier Compensation* proceeding, whichever occurs earlier.

5. That upon receipt of the status reports directed in Ordering paragraph 4, above, the Office of Special Assistants and Law Bureau shall prepare a Staff recommendation for the Commission's timely consideration at a Public Meeting on reinstituting this investigation and taking any other appropriate action.

6. That the Office of Administrative Law Judge will conduct expedited hearings pursuant to 66 Pa.C.S. §703(g) reconsidering our orders of June 23, 2006, which had allowed Denver & Ephrata Telephone & Telegraph Company, Conestoga Telephone Company and Buffalo Valley Telephone Company to raise intrastate access charges. A recommended decision shall be made on or before February 28, 2007.

7. That upon the resumption of this investigation, the participating parties shall be afforded due process opportunities to supplement the evidentiary record.

8. That upon resumption of this investigation, the participating parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between: (a) the Federal Communications Commission's ruling in its *Unified Intercarrier Compensation* proceeding; (b) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§3015 and 3017; (c) the Pennsylvania Universal Service Fund; and (d) the potential effects on rates for the basic local exchange services of the rural ILECs.

9. That the Pennsylvania Universal Service Fund shall continue under the existing regulations codified at 52 Pa.Code §§ 63.161-63.171 until such time as regulations are promulgated eliminating or modifying the Fund.

10. That revenues from increased intrastate access charges collected by Denver & Ephrata Telephone & Telegraph Company, Conestoga Telephone Company and Buffalo Valley Telephone Company may be subject to refund.

11. That Law Bureau is directed as Issuing Office to coordinate the selection of an Administrator of the Pennsylvania Universal Service Fund through a competitive bidding process for a contractual period from January 1, 2007 through December 31, 2010 with a possible one-year extension through December 31, 2011. A provision should be made in the contract that the contract may need to be amended later if the Pennsylvania legislature authorizes or mandates changes or if the Commission orders the termination or the modification of the fund.

Thus, if the fund is eliminated through the regulatory process prior to the expiration of the contract, the contract will terminate earlier than 2010.

12. That a copy of this order be delivered to all telecommunications carriers operating in Pennsylvania and Solix, Inc. f/k/a NECA Services, Inc., the current Administrator of the Pennsylvania Universal Service Fund.

13. That a copy of this order be delivered for publication to the *Pennsylvania Bulletin.*

BY THE COMMISSION:

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 9, 2006

ORDER ENTERED: November 15, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 7, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

Buffalo Valley Telephone Company Supplement No. 54 to Tariff Pa. PUC No. 7 And Supplement No. 8 to Tariff Pa. PUC No. 8	R-00061375
2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company	P-00981428F1000

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Petition for Reconsideration (Petition) filed by Buffalo Valley Telephone Company (Buffalo Valley) on July 10, 2006. By this Petition Buffalo Valley seeks reconsideration of the Commission's June 23, 2006 Opinion and Order (June 23, 2006 Order) that addressed the Company's 2006 Annual Price Stability Index/ Service Price Index (PSI/SPI) filing, at the above docketed proceeding. By Order entered on July 20, 2006, we granted the Petition pending further review of, and consideration on, the merits.

History of the Proceeding

On May 3, 2006, Buffalo Valley filed its 2006 Annual PSI/SPI fling and the associated tariffs to effectuate increases to local and access service revenues made under the provisions of the new Chapter 30 law, Act 183 of 2004, P.L. 1398 (66 Pa. C.S. §§ 3011-3019) (Act 183) and pursuant to its Alternative Regulation and Network Modernization Plan (Chapter 30 Plan).

Buffalo Valley's annual calculation of its PSI/SPI formula, based on a 4.016% change in the 2004 and 2005 third quarter GDP-PI (Gross Domestic Product – Price Index), allows the Company to increase its noncompetitive service rates to produce a 3.70% increase its annual noncompetitive service revenues. In its accompanying tariffs, Buffalo Valley proposed to implement its annual PSI/SPI by increasing various basic and non-basic local service rates in Tariff-Telephone Pa. P.U.C. No. 7 and its Switched Access Service[103] rates in Tariff-Telephone Pa. P.U.C. No. 8, to become effective on July 1, 2006. Buffalo Valley proposed to apply the overwhelming majority of the rate increase, or 77%, to its switched access services and the remaining 23% of the increase to non-basic local services.

The June 23, 2006 Order concluded that the proposed rate changes to local services were consistent with the Company's Amended Chapter 30 Plan and, thus, permitted the proposed rate increases for basic and non-basic services in its local Tariff-Telephone Pa. P.U.C. No. 7 to become effective as filed. However, the Commission had two specific concerns with regard to Buffalo Valley's PSI/SPI filing. First, the Commission expressed its concern about Buffalo Valley's proposal which calculated its eligible revenue increase based on a calculated twelve-month average using the revenues for the month of December 2005 multiplied by twelve, rather than using actual 2005 year-end revenues. The use of Buffalo Valley's calculation would result in an annual revenue amount that is 4% higher than its actual annual revenue amount. As such, the Commission concluded that Buffalo Valley's calculation is inconsistent with its

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[103] Switched Access Services are protected services, pursuant to 66 Pa. C.S. § 3012, that local exchange carriers charge other telecommunications carriers for use of their facilities to provide toll services to end-users.

PSI/SPI Price Stability Plan Formula, which was approved in its Chapter 30 Plan at Docket No. P-00981428F1000. The Commission, therefore, directed Buffalo Valley to amend its calculations based on its actual intrastate revenues for the twelve-month period ending December 2005, and to adjust the eligible rate increases summarized in Exhibit 1 to its May 3, 2006 filing.

The Commission's second concern involved Buffalo Valley's proposal to increase its switched access charges. In the June 23, 2006 Order, the Commission stated that Buffalo Valley's proposal to increase access charge rates appeared to contradict the Commission's long-standing access service reform policy in Pennsylvania in which access charges have been decreasing, rather than increasing. The Commission further noted that the pending rural telephone company access charge investigation at Docket No. I-00040105, which is being conducted to determine how to implement additional access charge reductions among rural companies in Pennsylvania, has been stayed at the request of Buffalo Valley and other rural carriers for twelve months from August 2005, or until the FCC makes a final determination in its proceeding to develop a Unified Intercarrier Compensation regime. Furthermore, the Commission expressed concern about conflicts between the proposed access charge increases and the Pennsylvania Universal Service Fund's rules and policies, as well as Buffalo Valley's current Amended Chapter 30 Plan.

The Commission noted that the proposal by Buffalo Valley is a departure from the current practice by LECs to recover PSI/SPI revenue increases from local service rates or to bank them for future increases. Accordingly, the Commission gave Buffalo Valley the alternatives to either: (1) "bank" the remaining allowable revenue increases to its basic local exchange services rates, rather than to apply the increases on its access charges; (2) allocate the remaining allowable revenue increases to its basic local exchange services rates, rather than to apply the increases on its access charges; or (3) effectuate the proposed rate increases for access services, subject to any final determinations on access reform, including the Commission's pending intrastate access reform proceeding at Docket No. I-0004015, and at the federal level.

Buffalo Valley chose the third option and on June 28, 2006, it filed its revised PSI/SPI calculations and revised tariff rates in it Access Tariff-Telephone Pa. P.U.C. No. 8, to

reflect those calculations. The compliance tariff was permitted to become effective on July 1, 2006.[104]

Accordingly, Buffalo Valley's access service rate increases in its revised Access Tariff-Telephone Pa. P.U.C. No. 8, which were filed on June 28, 2006, are now subject to any final determinations that result from this Commission's access reform, including the pending intrastate access reform proceeding at Docket No. I-0004015, or any changes at the federal level.[105]

As noted, on July 10, 2006, Buffalo Valley filed the Petition for Reconsideration (Petition) of the June 23, 2006 Opinion and Order. By Order entered on July 20, 2006, we granted the Petition pending further review of, and consideration on the merits.

In a letter filed on August 10, 2006 at Docket Nos. R-00061377 and P-00981430F1000, Verizon Pennsylvania Inc. requested that its response as *Amicus Curiae* filed on July 20, 2006, in the similar and related proceeding involving Denver and Ephrata Telephone and Telegraph Company at Docket Nos. R-00061377 and P-00981430F1000, apply equally to the instant Petition for Reconsideration filed by Buffalo Valley.

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[104] *See* July 13, 2006 Secretarial Letter at Docket No. R-00061375.

[105] It is important to note that by Order entered November 15, 2006, at Docket No. I-00040105, *et al.*, the Commission, *inter alia*, further stayed the rural telephone company access charge reform proceeding for another year, or until the FCC rules on its Unified Intercarrier Compensation proceeding, whichever is earlier. However, the Commission further directed, pursuant to 66 Pa. C.S. § 703(g), that the Office of Administrative Law Judge shall hold expedited hearings for the limited purpose of reconsidering the June 23, 2006 Order with regard only to that portion of the June 23, 2006 Order that allowed Buffalo Valley to raise intrastate access charges and to determine whether any rescission or amendment of the Order would be warranted by the evidence, consistent with the Commission's access charge reform and universal service policies, and lawful under the Buffalo Valley's Chapter 30 Plan. The Commission further directed that a recommended decision be made on or before February 28, 2007. (*See* Ordering Paragraph No. 6). As such, this instant Opinion and Order will address and dispose of the Company's Petition for Reconsideration as it relates to Buffalo Valley's request for the Commission to: (1) recall its "criticisms" against Buffalo Valley for raising access charges, and (2) reversing the mandated changes to the manner in which Buffalo Valley calculates its PSI/SPI formula.

Discussion

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(g) of the Code, 66 Pa. C.S. § 703(g), relating to rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572(b) of our Regulations, 52 Pa. Code § 5.572(b), relating to petitions for relief following the issuance of a final decision. The standards for a petition for relief following the issuance of a final decision were addressed in *Duick v. PG&W*, 56 Pa. PUC 553 (1982) (*Duick*).

Duick held that a petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. *Duick* at 559.

We note that, pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572, our power to modify or rescind final orders is limited to certain circumstances. A petition to modify or rescind a final Commission order may only be granted judiciously and under appropriate circumstances, because such an order will result in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *City of Philadelphia v. Pa. PUC*, 720 A.2d 845 (Pa. Cmwlth. 1998); and *West Penn Power Company v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995).

1. Buffalo Valley's Petition for Reconsideration

In its Petition, Buffalo Valley states that it is seeking reconsideration of: (1) the criticisms raised in the June 23, 2006 Order regarding its proposal to increase its switched access service charges; and (2) the mandated changes in its PSI/SPI procedure. (Petition at 3).

With regard to the first issue, Buffalo Valley is concerned about what it views as "criticisms" by the Commission's June 23, 2006 Order with regard to its proposal to increase switched access charges. Buffalo Valley states that the June 23, 2006 Order opined that the switched access charge increases "contradict the policy of implementing switched access service reform" and "undermines the promotion of competitive markets by increasing the gap between access service rates and costs."[106] Buffalo Valley requests that the Commission reconsider its "criticisms" for the following reasons: 1) Buffalo Valley has significantly reduced its switched access charges pursuant to the Commission's policy (Petition at 8-10); 2) the June 23, 2006 Order overlooks the impact of intermodal competition (Petition at 10-15); and 3) the switched access charge increases do not violate any Commission Order (Petition at 15-17).

In response to the Commission's concern that Buffalo Valley's "proposed increase in access service rates as a vehicle to recover PSI revenues may contradict the policy of implementing switched access reform," Buffalo Valley argues that its proposed rates now mirror its interstate rates, consistent with Commission policy. Buffalo Valley also views its actual trend in its access rates over the longer term as being consistent with the Commission's access reform policy because the CCL rate, which at the time of the *Global Order*[107] was $7.00, was subsequently reduced to $4.20 and now, after the 2006 PSI filing, is $5.17.

With regard to its argument that the June 23, 2006 Order overlooked the impact of intermodal competition, Buffalo Valley maintains that it is facing competition from cable companies and non-facilities based VoIP providers that offer telecommunications services over broadband connections, as well as from wireless carriers. (Petition at 10-12). In addition, Buffalo Valley claims it continues to lose access lines from intermodal competitors and that any increases to local service rates would further accelerate its access line losses and revenue erosion. (Petition at 13). As such, Buffalo Valley asserts that proposing increases to its switched access charges was the only realistic option for Buffalo Valley to take. (Petition at 15).

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106 June 23, 2006 Order at 11.

107 *Joint Petition of Nextlink Pennsylvania, Inc., et al., 196 PUR 4th 172 (1996).*

Finally, as noted, Buffalo Valley claims that the Commission has never issued any prior Order that would preclude it from making rate increases to its switched access charges. (Petition at 15).

With regard to its second request, Buffalo Valley claims that its Chapter 30 Plan provides only that the base revenue for calculation of its annual PSI/SPI revenue entitlement is "the sum of effective rates (and units of demand) which were realized during the previous twelve-month period." Buffalo Valley also maintains that it has consistently calculated the base revenues in the prior years, since 2002, by using December revenues and multiplying such revenues by twelve. (Petition at 5). Buffalo Valley also argues that it is not reasonable for the Commission to change the way Buffalo Valley calculates its entitlement after it committed to accelerate its broadband network commitment by seven years. (Petition at 5-6). Accordingly, Buffalo Valley believes that there are sufficient grounds for reconsideration of the Commission's June 23, 2006 Order to change the PSI/SPI calculation back to the methodology it previously employed.

Disposition:

Initially, we will address whether Buffalo Valley's Petition, with regard to the Commission's alleged "criticisms" is acceptable under *Duick*. As noted, Buffalo Valley requests that the Commission withdraw the alleged "criticisms" that its access proposal to increase switched access charges "contradicts the policy of implementing switched access service reform" and "undermines the promotion of competitive markets by increasing the gap between access service rates and costs."[108] We conclude that this request by Buffalo Valley and its supporting arguments are not persuasive.

First, we find that Buffalo Valley's request does not seek any actual relief in this regard. It merely requests that we reconsider our remarks. We are of the opinion that our June 23, 2006 Order contains factual statements which we expressed based on this Commission's

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[108] June 23, 2006 Order at 11.

access charge policy that has been in place for over twenty years since the first access charge tariffs were approved in 1984.[109] In this regard, the Petition is contrary to the standards established under *Duick*, in that Buffalo Valley failed to provide us with any "new and novel arguments" as to why we should recall the specified comments in our June 23, 2006 Order. *Duick* at 559.

Buffalo Valley also argues, without providing any substantial proof, that its access charges are favorable when compared to other rural ILECs. In this regard, Buffalo Valley's argument totally disregards a condition to which it accepted in the Joint Access Proposal, in response to the Commission's Access Charge Investigation—Phase II, which was approved by this Commission on July 15, 2003, at Docket No. M-00021596, *et al.* Buffalo Valley provided no substantive cost data to prove that its access charges are below costs and need to be increased from their present levels.[110]

Again, we find that Buffalo Valley provided no credible arguments against our positions in its Petition for Reconsideration. Moreover, Buffalo Valley's assertion that no prior Commission Order precludes Buffalo Valley from raising access charges is erroneous. Even though

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[109] It is important to note that the issue of access charge reform for rural ILECs has been addressed in our *Global Order* and is also currently being addressed in our investigation at Docket No. I-00040105.

[110] The Joint Access Proposal condition further reinforces our position that access charges should not be changed unless the ILECs can prove that each access rate element recovers its cost based upon the development of a cost study when the ILECs SPI allows for an increase. Specifically, that condition states that:

> Each ILEC reserves the right, subject to Chapter 30 Plan requirements, to change its access rates to ensure that each access rate element at least recovers its cost and the ILEC's service price index continues to be equal to or less than the ILEC's price stability index, in the event the ILEC's access rates are determined to be below cost based upon the development of a cost study.

See ATTACHMENT (Joint Access Proposal) to July 15, 2003 Order at Docket No. M-00021596.

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

Also, we are not persuaded by Buffalo Valley's intermodal competition argument. Any intermodal competition that exists today is faced by all LECs, and not just in Buffalo Valley's territory[111]. In fact, Buffalo Valley intentionally engages in competitive business ventures with its own affiliates and this assists Buffalo Valley in countering outside competition.

Buffalo Valley is also not taking into consideration access line loss due to customers moving to its own DSL service that is non-jurisdictional, or intermodal services provided by its own parent Company D&E Communications Inc., which provide cell phone, cable modem, and broadband phone services through high speed internet services. In light of the above, we shall deny Buffalo Valley's request on this matter.

Buffalo Valley's second request for reconsideration -- that we reconsider directing Buffalo Valley to use actual revenues for each month of the year rather than a twelve-month average based on the month of December -- also fails to meet the standards established under *Duick*. Buffalo Valley fails to introduce any convincing arguments that would persuade us to reverse our position regarding the appropriate period to use in its annual PSI calculation.

In support of this rationale, it is important to note, first and foremost, that Buffalo Valley's Chapter 30 Plan, as amended pursuant to Act 183,[112] does not allow for an entitlement for additional revenues using a calculation of PSI based on one month or a particular month's revenue. Buffalo Valley's Amended Streamlined Form of Regulation and Network Modernization Plan specifically directs how the PSI should be calculated:

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[111] Buffalo Valley along with its affiliates Denver and Ephrata Telephone and Telegraph Company and Conestoga Telephone and Telegraph Company are the only ILECs to date that have filed for access service rate increases.

[112] *See* 66 Pa. C.S. § 3011 *et seq.*

Part 3 – Price Stability Plan for Non competitive Services
A. Price Stability Mechanism (PSI and SPI)

4. Annually, the Company will calculate the new PSI, which will include the added impact of the exogenous events, according to the following methodology:

$$\mathbf{PSI_t = PSI_{t-1}\ (1+\%\ \Delta GDP\text{-}PI\text{-}X\pm Z)}$$

Which comprise the PSM formula," where:

PSI_t: The new index that determines the maximum for the noncompetitive service category based on the cumulative changes in the price cap index for the current twelve month period.

PSI_{t-1}: The current index that determines the current maximum prices for the noncompetitive service category based on the cumulative changes in the price cap index for the previous twelve month period.[3]

Foot note (3): The PSI applies to the **sum** of effective rates (and units of demand) which were **realized during the previous twelve month period.** (Emphasis added)

(Buffalo Valley's Chapter 30 Plan at 8-10)

It is clear from the above formula that the new PSI equals the current index that determines the current maximum prices for the non-competitive service category based on the *cumulative* changes in the price cap index applied to the sum of effective rates and units of demand realized during the previous twelve-month period. The key here is that the combined *cumulative* sum of the effective rates on the units of demand during the previous twelve months is comprised of the actual revenue based on the sum of *effective rates (and units of demand)* which were *realized* during the previous twelve-month period and not just for the month of December. It is noted that by using just the December 2005 revenue to calculate annual revenue amount for the year reflects a four percent higher amount compared to using the actual cumulative twelve months' revenues. This is substantial in light of the fact that each successive year builds on the previous year's revenue.

Regardless of the manner in how Buffalo Valley made its calculations in the past, it should, in future filings, adhere to the plain reading of its PSI formula, which clearly states that

"[t]he PSI applies to the sum of effective rates (and units of demand) **which were realized during the previous twelve-month period."** (Emphasis added). We stress that it does not state that the PSI applies the sum of those "effective rates" and "units of demand" that were estimated, based on the last month of the previous year. As such, we direct Buffalo Valley to use actual, rather than estimated, effective rates and units of demand in future PSI/SPI filings.

Buffalo Valley also argues that in light of the fact that it changed its local residential and business one-party rates on August 1, 2005 of the base period, only five months of this rate change would be reflected in the actual revenues for the twelve-month period ended December 31, 2005. It argues that only through its methodology will the full twelve-month impact of the Gross Domestic Product Price Index on this change be reflected in the annual Chapter 30 revenue entitlement. (Petition at 7). We disagree. As noted above, the definition of the SPI_{t-1} is based on the *cumulative changes* in the price index for the previous twelve-month period, and not on the *annualized changes* in the price index based on the month of December of the prior year.

Finally, it is important to note that the directive in our June 23, 2006 Order to use actual year-end revenues rather than annualized revenues based on the month of December is considered a corrective step, rather than a newly "mandated change," that the Company must follow prospectively when calculating its annual PSI. Accordingly, we deny Buffalo Valley's request for a reconsideration of this issue.

2. Verizon's *Amicus Curiae* Filing[113]

On July 24, 2006, pursuant to 52 Pa. Code § 5.502(d), Verizon[114] filed its Response as *Amicus Curiae* (Response) to Buffalo Valley's Petition for Reconsideration noting that it is its first opportunity to submit an *Amicus Curiae* response since there was no briefing schedule for this case.

In its *Amicus Curiae* response, Verizon is concerned with Buffalo Valley's access charge increases and its request that the Commission take back its "criticisms" of its access proposal and to allow them to become effective without comment. Verizon avers that Buffalo Valley is not seeking any substantive changes in the Commission Order through its Petition. Nor is the Petition seeking any actual relief. Verizon contends that Buffalo Valley's request to erase the Commission's "comments" is "illusory" because it seeks no actual relief and should, therefore, be denied on that basis alone. (VZ Response at 1).

Verizon strongly disagrees with Buffalo Valley's characterization of its proposed access increase as being only "subtle" and "minor." Verizon also states that it effectively has to provide a double subsidy to Buffalo Valley and other rural carriers. The first subsidy is in the form of universal service fund support, and the second is in the form of intrastate access rates that are very much higher than those assessed by Verizon on the rural carriers.

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[113] As noted, Verizon filed its Response as *Amicus Curiae* in the matter involving the filing by Denver and Ephrata Telephone and Telegraph Company (D&E) at Docket Nos. R-00061377 and P-00981430F1000. However, in its letter dated August 10, 2006, and filed at Docket No. R-00061377 and P-00981430F1000, Verizon indicated that the same response should apply to the identical proceedings of Buffalo Valley Telephone Company (Docket Nos. R-00061375 and P-00981428F1000) and Conestoga Telephone and Telegraph Company (Docket Nos. R-00061376 and P-00981429F1000). Buffalo Valley did not file a separate response to counter Verizon's August 10, 2006 letter. For this reason, we use the same discussion as it applies to D&E in this Opinion and Order.

[114] "Verizon" includes ILECs Verizon Pennsylvania Inc. and Verizon North Inc., CLEC MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services and IXCs MCI Communications Services Inc. and Verizon Select Services Inc.

Verizon argues that if other rural carriers follow Buffalo Valley's approach (as Buffalo Valley's affiliates Denver and Ephrata Telephone and Telegraph Company and Conestoga Telephone and Telegraph Company already have), the collective financial impact on other carriers could be significant. Verizon also opines that if Buffalo Valley's business plan cannot be self-sustaining, unless it obtains substantial new subsidization, the Commission is correct in questioning the wisdom of increasing the very implicit subsidies which it has repeatedly disavowed. (VZ Response at 4). Verizon also asserts that if this is Buffalo Valley's position, the continuing need for a state universal service fund should be reexamined altogether. (VZ Response at 4).

In light of the above, Verizon requests that the Commission deny Buffalo Valley's Petition on the access issue and decline to alter the language in it Order. (VZ Response at 5).

It is important to note that by our action in the Opinion and Order at Docket Nos. R-00061377 and P-00981430F1000, which we also adopt today, we are denying Denver and Ephrata Telephone and Telegraph Company's Motion to Strike or Dismiss the *Amicus Curiae* Response of Verizon. In that Opinion and Order, we conclude that Verizon's *Amicus Curiae* filing is acceptable under the provisions of 52 Pa. Code § 5.502(d). We also conclude that Verizon's response is a submittal substantially in the nature of a brief and, based on our review, shall be considered as such consistent with the terms of 52 Pa. Code § 5.1. At the same time, however, it is important to note that the arguments raised by Verizon in its *Amicus Curiae* parallel those arguments that Verizon raised in its Answer to the Joint Motion of the RTCC, OCA, OTS and Embarq Pennsylvania to grant either a one-year further stay of the rural access charge investigation or until the FCC rules on its Unified Intercarrier Compensation proceeding, whichever is earlier.[115] In light of the fact that the same arguments will be raised in the expedited access charge investigation proceeding instituted by our November 15, 2006 Order at

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[115] *See, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, et al.*, Docket No. I-00040105, *et al.* (Order entered November 15, 2006).

Docket No. I-00040105, *et al.*, we expect that the presiding ALJ will address in the recommended decision arising from that limited, expedited investigation the merits of Verizon's arguments as they pertain to the Company's desire to increase access charges.

Conclusion

Upon review and consideration of the record evidence, we conclude that the Petition does not meet the standards under *Duick* and, therefore, shall be denied consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That, consistent with the discussion in the body of this Opinion and Order, Buffalo Valley Telephone Company's Petition for Reconsideration of the Commission's June 23, 2006 Order at Docket Nos. R-00061375 and P-00981428F1000, is denied with regard to:

   a. its request that the Commission reconsider recalling its "criticisms" against Buffalo Valley Telephone Company because of its action to increase access charges; and,

   b. its request that the Commission reconsider the mandated changes to the manner in which Buffalo Valley Telephone Company's annual Price Stability Index/Service Index Price formula should be calculated.

2. That the response of Verizon Pennsylvania Inc. as *Amicus Curiae* is accepted, consistent with this Opinion and Order, and that Verizon Pennsylvania Inc.'s concerns contained therein regarding increases to Buffalo Valley Telephone Company's access charges, shall be addressed in the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006,at Docket No. I-00040105.

3. That this matter be marked closed upon entry of the final Order resulting from the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006, at Docket No. I-00040105, *et al.*

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 7, 2006

ORDER ENTERED: December 7, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 7, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

Conestoga Telephone and Telegraph Company R-00061376
Supplement No. 206 to Tariff PA PUC No. 10
Supplement No. 7 to Tariff PA PUC No. 11

2006 Annual Price Stability Index / Service Price Index Filing of P-00981429F1000
Conestoga Telephone and Telegraph Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Petition for Reconsideration (Petition) filed by Conestoga Telephone and Telegraph Company (Conestoga) on July 10, 2006. By this Petition Conestoga seeks reconsideration of the Commission's June 23, 2006 Opinion and Order (June 23, 2006 Order) that addressed the Company's 2006 Annual Price Stability Index/ Service Price Index (PSI/SPI) filing, at the above docketed proceeding. By Order entered on July 20, 2006, we granted the Petition pending further review of, and consideration on, the merits.

History of the Proceeding

On May 3, 2006, Conestoga filed its 2006 Annual PSI/SPI fling and the associated tariffs to effectuate increases to local and access service revenues made under the provisions of the new Chapter 30 law, Act 183 of 2004, P.L. 1398 (66 Pa. C.S. §§ 3011-3019) (Act 183) and pursuant to its Alternative Regulation and Network Modernization Plan (Chapter 30 Plan).

Conestoga's annual calculation of its PSI/SPI formula, based on a 4.016% change in the 2004 and 2005 third quarter GDP-PI (Gross Domestic Product – Price Index), allows the Company to increase its noncompetitive service rates to produce a 3.70% increase its annual noncompetitive service revenues. In its accompanying tariffs, Conestoga proposed to implement its annual PSI/SPI by increasing various basic and non-basic local service rates in Tariff-Telephone Pa. P.U.C. No. 10 and its Switched Access Service[116] rates in Tariff-Telephone Pa. P.U.C. No. 11, to become effective on July 1, 2006. Conestoga proposed to apply the overwhelming majority of the rate increase, or 99%, to its switched access services and the remaining 1% of the increase to non-basic local services.

The June 23, 2006 Order concluded that the proposed rate changes to local services were consistent with the Company's Amended Chapter 30 Plan and, thus, permitted the proposed rate increases for basic and non-basic services in its local Tariff-Telephone Pa. P.U.C. No. 10 become effective as filed. However, the Commission had two specific concerns with regard to Conestoga's PSI/SPI filing. First, the Commission expressed its concern about Conestoga's proposal which calculated its eligible revenue increase based on a calculated twelve-month average using the revenues for the month of December 2005 multiplied by twelve, rather than using actual 2005 year-end revenues. The use of Conestoga's calculation would result in an annual revenue amount that is 5% higher than its actual annual revenue amount. As such, the Commission concluded that Conestoga's calculation is inconsistent with its PSI/SPI Price Stability Plan Formula, which was approved in its Chapter 30 Plan at Docket No. P-00981429F1000. The Commission, therefore, directed Conestoga to amend its calculations based on its actual intrastate revenues for the

[116] Switched Access Services are protected services, pursuant to 66 Pa. C.S. § 3012, that local exchange carriers charge other telecommunications carriers for use of their facilities to provide toll services to end-users.

twelve-month period ending December 2005, and to adjust the eligible rate increases summarized in Exhibit 1 to its May 3, 2006 filing.

The Commission's second concern involved Conestoga's proposal to increase its switched access charges. In the June 23, 2006 Order, the Commission stated that Conestoga's proposal to increase access charge rates appeared to contradict the Commission's long-standing access service reform policy in Pennsylvania in which access charges have been decreasing, rather than increasing. The Commission further noted that the pending rural telephone company access charge investigation at Docket No. I-00040105, which is being conducted to determine how to implement additional access charge reductions among rural companies in Pennsylvania, has been stayed at the request of Conestoga and other rural carriers for twelve months from August 2005, or until the FCC makes a final determination in its proceeding to develop a Unified Intercarrier Compensation regime. Furthermore, the Commission expressed concern about conflicts between the proposed access charge increases and the Pennsylvania Universal Service Fund's rules and policies, as well as Conestoga's current Amended Chapter 30 Plan. The Commission noted that the proposal by Conestoga is a departure from the current practice by LECs to recover PSI/SPI revenue increases from local service rates or to bank them for future increases. Accordingly, the Commission gave Conestoga the alternatives to either: (1) "bank" the remaining allowable revenue increases to its basic local exchange services rates, rather than to apply the increases on its access charges; (2) allocate the remaining allowable revenue increases to its basic local exchange services rates, rather than to apply the increases on its access charges; or (3) effectuate the proposed rate increases for access services, subject to any final determinations on access reform, including the Commission's pending intrastate access reform proceeding at Docket No. I-0004015, and at the federal level.

Conestoga chose the third option and on June 28, 2006, it filed its revised PSI/SPI calculations and revised tariff rates in it Access Tariff-Telephone Pa. P.U.C. No. 11, to reflect those calculations. The compliance tariff was permitted to become effective on July 1, 2006.[117]

Accordingly, Conestoga's access service rate increases in its revised Access Tariff-Telephone Pa. P.U.C. No. 11, which were filed on June 28, 2006, are now subject to any final

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[117] *See* July 13, 2006 Secretarial Letter at Docket No. R-00061375.

determinations that result from this Commission's access reform, including the pending intrastate access reform proceeding at Docket No. I-0004015, or any changes at the federal level.[118]

As noted, on July 10, 2006, Conestoga filed the Petition for Reconsideration (Petition) of the June 23, 2006 Opinion and Order. By Order entered on July 20, 2006, we granted the Petition pending further review of, and consideration on the merits.

In a letter filed on August 10, 2006 at Docket Nos. R-00061377 and P-00981430F1000, Verizon Pennsylvania Inc. requested that its response as *Amicus Curiae* filed on July 20, 2006, in the similar and related proceeding involving Denver and Ephrata Telephone and Telegraph Company at Docket Nos. R-00061377 and P-00981430F1000, apply equally to the instant Petition for Reconsideration filed by Conestoga.

Discussion

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(g) of the Code, 66 Pa. C.S. § 703(g), relating to rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572(b) of our Regulations, 52 Pa. Code § 5.572(b), relating to petitions for relief following the issuance of a final decision. The standards for a petition for relief following the issuance of a final decision were addressed in *Duick v. PG&W*, 56 Pa. PUC 553 (1982) (*Duick*).

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[118] It is important to note that by Order entered November 15, 2006, at Docket No. I-00040105, *et al.*, the Commission, *inter alia*, further stayed the rural telephone company access charge reform proceeding for another year, or until the FCC rules on its Unified Intercarrier Compensation proceeding, whichever is earlier. However, the Commission further directed, pursuant to 66 Pa. C.S. § 703(g), that the Office of Administrative Law Judge shall hold expedited hearings for the limited purpose of reconsidering the June 23, 2006 Order with regard only to that portion of the June 23, 2006 Order that allowed Conestoga to raise intrastate access charges and to determine whether any rescission or amendment of the Order would be warranted by the evidence, consistent with the Commission's access charge reform and universal service policies, and lawful under Conestoga's Chapter 30 Plan. The Commission further directed that a recommended decision be made on or before February 28, 2007. (*See* Ordering Paragraph No. 6). As such, this instant Opinion and Order will address and dispose of the Conestoga's Petition for Reconsideration as it relates to Conestoga's request for the Commission to: (1) recall its "criticisms" against Conestoga for raising access charges, and (2) reversing the mandated changes to the manner in which Conestoga calculates its PSI/SPI formula.

Duick held that a petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. *Duick* at 559.

We note that, pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572, our power to modify or rescind final orders is limited to certain circumstances. A petition to modify or rescind a final Commission order may only be granted judiciously and under appropriate circumstances, because such an order will result in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *City of Philadelphia v. Pa. PUC*, 720 A.2d 845 (Pa. Cmwlth. 1998); and *West Penn Power Company v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995).

1. Conestoga's Petition for Reconsideration

In its Petition, Conestoga states that it is seeking reconsideration of: (1) the criticisms raised in the June 23, 2006 Order regarding its proposal to increase its switched access service charges; and (2) the mandated changes in its PSI/SPI procedure. (Petition at 3).

With regard to the first issue, Conestoga is concerned about what it views as "criticisms" by the Commission's June 23, 2006 Order with regard to its proposal to increase switched access charges. Conestoga states that the June 23, 2006 Order opined that the switched access charge increases "contradict the policy of implementing switched access service reform" and "undermines the promotion of competitive markets by increasing the gap between access service rates and costs."[119] Conestoga requests that the Commission reconsider its "criticisms" for the following reasons: 1) Conestoga has significantly reduced its switched access charges pursuant to the Commission's policy (Petition at 8-10); 2) the June 23, 2006 Order overlooks the impact of intermodal competition (Petition at 10-15); and 3) the switched access charge increases do not violate any Commission Order (Petition at 15-17).

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[119] June 23, 2006 Order at 11.

In response to the Commission's concern that Conestoga's "proposed increase in access service rates as a vehicle to recover PSI revenues may contradict the policy of implementing switched access reform," Conestoga argues that its proposed rates now mirror its interstate rates, consistent with Commission policy. Conestoga also views its actual trend in its access rates over the longer term as being consistent with the Commission's access reform policy because the CCL rate, which at the time of the *Global Order*[120] was $7.00, was subsequently reduced to $4.83 and now, after the 2006 PSI filing, is $4.50.

With regard to its argument that the June 23, 2006 Order overlooked the impact of intermodal competition, Conestoga maintains that it is facing competition from cable companies and non-facilities based VoIP providers that offer telecommunications services over broadband connections, as well as from wireless carriers. (Petition at 10-12). In addition, Conestoga claims it continues to lose access lines from intermodal competitors and that any increases to local service rates would further accelerate its access line losses and revenue erosion. (Petition at 13). As such, Conestoga asserts that proposing increases to its switched access charges was the only realistic option for Conestoga to take. (Petition at 15).

Finally, as noted, Conestoga claims that the Commission has never issued any prior Order that would preclude it from making rate increases to its switched access charges. (Petition at 15).

With regard to its second request, Conestoga claims that its Chapter 30 Plan provides only that the base revenue for calculation of its annual PSI/SPI revenue entitlement is "the sum of effective rates (and units of demand) which were realized during the previous twelve-month period." Conestoga also maintains that it has consistently calculated the base revenues in the prior years, since 2002, by using December revenues and multiplying such revenues by twelve. (Petition at 5). Conestoga also argues that it is not reasonable for the Commission to change the way Conestoga calculates its entitlement after it committed to accelerate its broadband network commitment by seven years. (Petition at 5-6). Accordingly, Conestoga believes that there are sufficient grounds for reconsideration of the Commission's June 23, 2006 Order to change the PSI/SPI calculation back to the methodology it previously employed.

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120 *Joint Petition of Nextlink Pennsylvania, Inc., et al., 196 PUR 4th 172 (1996).*

Disposition:

Initially, we will address whether Conestoga's Petition, with regard to the Commission's alleged "criticisms" is acceptable under *Duick*. As noted, Conestoga requests that the Commission withdraw the alleged "criticisms" that its access proposal to increase switched access charges "contradicts the policy of implementing switched access service reform" and "undermines the promotion of competitive markets by increasing the gap between access service rates and costs."[121] We conclude that this request by Conestoga and its supporting arguments are not persuasive.

First, we find that Conestoga's request does not seek any actual relief in this regard. It merely requests that we reconsider our remarks. We are of the opinion that our June 23, 2006 Order contains factual statements which we expressed based on this Commission's access charge policy that has been in place for over twenty years since the first access charge tariffs were approved in 1984.[122] In this regard, the Petition is contrary to the standards established under *Duick*, in that Conestoga failed to provide us with any "new and novel arguments" as to why we should recall the specified comments in our June 23, 2006 Order. *Duick* at 559.

Conestoga also argues, without providing any substantial proof, that its access charges are favorable when compared to other rural ILECs. In this regard, Conestoga's argument totally disregards a condition to which it accepted in the Joint Access Proposal, in response to the Commission's Access Charge Investigation—Phase II, which was approved by this Commission on July 15, 2003, at Docket No. M-00021596, *et al.* Conestoga provided no substantive cost data to prove that its access charges are below costs and need to be increased from their present levels.[123]

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121 June 23, 2006 Order at 11.

122 It is important to note that the issue of access charge reform for rural ILECs has been addressed in our *Global Order* and is also currently being addressed in our investigation at Docket No. I-00040105.

123 The Joint Access Proposal condition further reinforces our position that access charges should not be changed unless the ILECs can prove that each access rate element recovers its cost based upon the development of a cost study when the ILECs SPI allows for an increase. Specifically, that condition states that:

Again, we find that Conestoga provided no credible arguments against our positions in its Petition for Reconsideration. Moreover, Conestoga's assertion that no prior Commission Order precludes Conestoga from raising access charges is erroneous. Even though our Orders did not explicitly impose a ban on proposing increases to access charges, as previously discussed, the Commission's *Global Order* strongly expressed a policy and schedules for further access charge reductions. Furthermore, this matter is being addressed in our Access Charge Investigation for rural ILECs at Docket No. I-00040105.

Also, we are not persuaded by Conestoga's intermodal competition argument. Any intermodal competition that exists today is faced by all LECs, and not just in Conestoga's territory[124]. In fact, Conestoga intentionally engages in competitive business ventures with its own affiliates and this assists Conestoga in countering outside competition.

Conestoga is also not taking into consideration access line loss due to customers moving to its own DSL service that is non-jurisdictional, or intermodal services provided by its own parent Company D&E Communications Inc., which provide cell phone, cable modem, and broadband phone services through high speed internet services. In light of the above, we shall deny Conestoga's request on this matter.

Conestoga's second request for reconsideration – that we reconsider directing Conestoga to use actual revenues for each month of the year rather than a twelve-month average based on the month of December – also fails to meet the standards established under *Duick*. Conestoga fails to introduce any convincing arguments that would persuade us to reverse our position regarding the appropriate period to use in its annual PSI calculation.

> Each ILEC reserves the right, subject to Chapter 30 Plan requirements, to change its access rates to ensure that each access rate element at least recovers its cost and the ILEC's service price index continues to be equal to or less than the ILEC's price stability index, in the event the ILEC's access rates are determined to be below cost based upon the development of a cost study.

See ATTACHMENT (Joint Access Proposal) to July 15, 2003 Order at Docket No. M-00021596.

[124] Conestoga along with its affiliates Denver and Ephrata Telephone and Telegraph Company and Buffalo Valley Telephone Company are the only ILECs to date that have filed for access service rate increases.

In support of this rationale, it is important to note, first and foremost, that Conestoga's Chapter 30 Plan, as amended pursuant to Act 183,[125] does not allow for an entitlement for additional revenues using a calculation of PSI based on one month or a particular month's revenue. Conestoga's Amended Streamlined Form of Regulation and Network Modernization Plan specifically directs how the PSI should be calculated:

> **Part 3 – Price Stability Plan for Non competitive Services**
> **A. Price Stability Mechanism (PSI and SPI)**
>
> 5. Annually, the Company will calculate the new PSI, which will include the added impact of the exogenous events, according to the following methodology:
>
> $$\mathbf{PSI_t = PSI_{t-1}\ (1+\%\ \Delta GDP\text{-}PI\text{-}X\pm Z)}$$
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> Which comprise the PSM formula," where:
>
> PSI_t: The new index that determines the maximum for the noncompetitive service category based on the cumulative changes in the price cap index for the current twelve month period.
>
> PSI_{t-1}: The current index that determines the current maximum prices for the noncompetitive service category based on the cumulative changes in the price cap index for the previous twelve month period.[3]
>
> *Foot note* (3): The PSI applies to the **sum** of effective rates (and units of demand) which were **realized during the previous twelve month period.** (Emphasis added)

(Conestoga's Chapter 30 Plan at 8-10)

It is clear from the above formula that the new PSI equals the current index that determines the current maximum prices for the non-competitive service category based on the *cumulative* changes in the price cap index applied to the sum of effective rates and units of demand realized during the previous twelve-month period. The key here is that the combined *cumulative* sum of the effective rates on the units of demand during the previous twelve months is comprised of the actual revenue based on the sum of *effective rates (and units of demand)* which were *realized* during the previous twelve-month period and not just for the month of December. It is noted that by using just the

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[125] *See* 66 Pa. C.S. § 3011 *et seq.*

December 2005 revenue to calculate annual revenue amount for the year reflects a four percent higher amount compared to using the actual cumulative twelve months' revenues. This is substantial in light of the fact that each successive year builds on the previous year's revenue.

Regardless of the manner in how Conestoga made its calculations in the past, it should, in future filings, adhere to the plain reading of its PSI formula, which clearly states that "[t]he PSI applies to the sum of effective rates (and units of demand) **which were realized during the previous twelve-month period.**" (Emphasis added). We stress that it does not state that the PSI applies the sum of those "effective rates" and "units of demand" that were estimated, based on the last month of the previous year. As such, we direct Conestoga to use actual, rather than estimated, effective rates and units of demand in future PSI/SPI filings.

Conestoga also argues that in light of the fact that it changed its local residential and business one-party rates on August 1, 2005 of the base period, only five months of this rate change would be reflected in the actual revenues for the twelve-month period ended December 31, 2005. It argues that only through its methodology will the full twelve-month impact of the Gross Domestic Product Price Index on this change be reflected in the annual Chapter 30 revenue entitlement. (Petition at 7). We disagree. As noted above, the definition of the SPI_{t-1} is based on the *cumulative changes* in the price index for the previous twelve-month period, and not on the *annualized changes* in the price index based on the month of December of the prior year.

Finally, it is important to note that the directive in our June 23, 2006 Order to use actual year-end revenues rather than annualized revenues based on the month of December is considered a corrective step, rather than a newly "mandated change," that the Company must follow prospectively when calculating its annual PSI. Accordingly, we deny Conestoga's request for a reconsideration of this issue.

2. Verizon's *Amicus Curiae* Filing[126]

On July 24, 2006, pursuant to 52 Pa. Code § 5.502(d), Verizon[127] filed its Response as *Amicus Curiae* (Response) to Conestoga's Petition for Reconsideration noting that it is its first opportunity to submit an *Amicus Curiae* response since there was no briefing schedule for this case.

In its *Amicus Curiae* response, Verizon is concerned with Conestoga's access charge increases and its request that the Commission take back its "criticisms" of its access proposal and to allow them to become effective without comment. Verizon avers that Conestoga is not seeking any substantive changes in the Commission Order through its Petition. Nor is the Petition seeking any actual relief. Verizon contends that Conestoga's request to erase the Commission's "comments" is "illusory" because it seeks no actual relief and should, therefore, be denied on that basis alone. (VZ Response at 1).

Verizon strongly disagrees with Conestoga's characterization of its proposed access increase as being only "subtle" and "minor." Verizon also states that it effectively has to provide a double subsidy to Conestoga and other rural carriers. The first subsidy is in the form of universal service fund support, and the second is in the form of intrastate access rates that are very much higher than those assessed by Verizon on the rural carriers.

Verizon argues that if other rural carriers follow Conestoga's approach (as Conestoga's affiliates Denver and Ephrata Telephone and Telegraph Company and Buffalo Valley Telephone Company already have), the collective financial impact on other carriers could be significant. Verizon also opines that if Conestoga's business plan cannot be self-sustaining, unless it

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126 As noted, Verizon filed its Response as *Amicus Curiae* in the matter involving the filing by Denver and Ephrata Telephone and Telegraph Company (D&E) at Docket Nos. R-00061377 and P-00981430F1000. However, in its letter dated August 10, 2006, and filed at Docket No. R-00061377 and P-00981430F1000, Verizon indicated that the same response should apply to the identical proceedings of Buffalo Valley Telephone Company (Docket Nos. R-00061375 and P-00981428F1000) and Conestoga Telephone and Telegraph Company (Docket Nos. R-00061376 and P-00981429F1000). Conestoga did not file a separate response to counter Verizon's August 10, 2006 letter. For this reason, we use the same discussion as it applies to D&E in this Opinion and Order.

127 "Verizon" includes ILECs Verizon Pennsylvania Inc. and Verizon North Inc., CLEC MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services and IXCs MCI Communications Services Inc. and Verizon Select Services Inc.

obtains substantial new subsidization, the Commission is correct in questioning the wisdom of increasing the very implicit subsidies which it has repeatedly disavowed. (VZ Response at 4). Verizon also asserts that if this is Conestoga's position, the continuing need for a state universal service fund should be reexamined altogether. (VZ Response at 4).

In light of the above, Verizon requests that the Commission deny Conestoga's Petition on the access issue and decline to alter the language in it Order. (VZ Response at 5).

It is important to note that by our action in the Opinion and Order at Docket Nos. R-00061377 and P-00981430F1000, which we also adopt today, we are denying Denver and Ephrata Telephone and Telegraph Company's Motion to Strike or Dismiss the *Amicus Curiae* Response of Verizon. In that Opinion and Order, we conclude that Verizon's *Amicus Curiae* filing is acceptable under the provisions of 52 Pa. Code § 5.502(d). We also conclude that Verizon's response is a submittal substantially in the nature of a brief and, based on our review, shall be considered as such consistent with the terms of 52 Pa. Code § 5.1. At the same time, however, it is important to note that the arguments raised by Verizon in its *Amicus Curiae* parallel those arguments that Verizon raised in its Answer to the Joint Motion of the RTCC, OCA, OTS and Embarq Pennsylvania to grant either a one-year further stay of the rural access charge investigation or until the FCC rules on its Unified Intercarrier Compensation proceeding, whichever is earlier.[128] In light of the fact that the same arguments will be raised in the expedited access charge investigation proceeding instituted by our November 15, 2006 Order at Docket No. I-00040105, *et al.*, we expect that the presiding ALJ will address in the recommended decision arising from that limited, expedited investigation the merits of Verizon's arguments as they pertain to the Company's desire to increase access charges.

Conclusion

Upon review and consideration of the record evidence, we conclude that the Petition does not meet the standards under *Duick* and, therefore, shall be denied consistent with this Opinion and Order; **THEREFORE,**

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128 *See, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, et al.*, Docket No. I-00040105, *et al.* (Order entered November 15, 2006).

IT IS ORDERED:

1. That, consistent with the discussion in the body of this Opinion and Order, Conestoga Telephone and Telegraph Company's Petition for Reconsideration of the Commission's June 23, 2006 Order at Docket Nos. R-00061376 and P-00981429F1000, is denied with regard to:

   a. its request that the Commission reconsider recalling its "criticisms" against Conestoga Telephone and Telegraph Company because of its action to increase access charges; and,

   b. its request that the Commission reconsider the mandated changes to the manner in which Conestoga Telephone and Telegraph Company's annual Price Stability Index/Service Price formula should be calculated.

2. That the response of Verizon Pennsylvania Inc. as *Amicus Curiae* is accepted, consistent with this Opinion and Order, and that Verizon Pennsylvania Inc.'s concerns contained therein regarding increases to Conestoga Telephone and Telegraph Company's access charges, shall be addressed in the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006,at Docket No. I-00040105.

3. That this matter be marked closed upon entry of the final Order resulting from the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006, at Docket No. I-00040105, *et al.*

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 7, 2006

ORDER ENTERED: December 7, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 7, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

Denver and Ephrata Telephone and Telegraph Company — R-00061377
Supplement No. 251 to Tariff PA PUC No. 15 and Supplement No. 10 to Tariff PA PUC No. 16

2006 Annual Price Stability Index / Service Price Index Filing of Denver and Ephrata Telephone and Telegraph Company — P-00981430F1000

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is the Petition for Reconsideration (Petition) filed by Denver and Ephrata Telephone and Telegraph Company (D&E) on July 10, 2006. By this Petition D&E seeks reconsideration of the Commission's June 23, 2006 Opinion and Order (June 23, 2006 Order) that addressed the Company's 2006 Price Stability Index/ Service Price Index (PSI/SPI) filing, at the above docketed proceeding. By Order entered on July 20, 2006, we granted the Petition pending further review of, and consideration on, the merits.

History of the Proceeding

On May 3, 2006, D&E filed its 2006 Annual PSI/SPI Filing and the associated tariffs to effectuate increases to local and access service revenues made under the provisions of the new Chapter 30 law, Act 183 of 2004, P.L. 1398 (66 Pa. C.S. §§ 3011-3019) (Act 183) and pursuant to its Alternative Regulation and Network Modernization Plan (Chapter 30 Plan).

D&E's annual calculation of its PSI/SPI formula, based on a 4.016% change in the 2004 and 2005 third quarter GDP-PI (Gross Domestic Product – Price Index), allows the Company to increase its noncompetitive service rates to produce a 3.70% increase its annual noncompetitive service revenues. In its accompanying tariffs, D&E proposed to implement its annual PSI/SPI by increasing various basic and non-basic local service rates in Tariff-Telephone Pa. P.U.C. No. 15 and its Switched Access Service[129] rates in Tariff-Telephone Pa. P.U.C. No. 16, to become effective on July 1, 2006. D&E proposed to apply the overwhelming majority of the rate increase, or 96%, to its switched access services and the remaining 4% of the increase to basic and non-basic local services.

The June 23, 2006 Order concluded that the proposed rate changes to local services were consistent with the Company's Amended Chapter 30 Plan and, thus, permitted the proposed rate increases for basic and non-basic services in its local Tariff-Telephone Pa. P.U.C. No. 15 become effective as filed. However, the Commission had two specific concerns with regard to D&E's PSI/SPI filing. First, the Commission expressed its concern about D&E's proposal which calculated its eligible revenue increase based on a calculated twelve-month average using the revenues for the month of December 2005 multiplied by twelve, rather than using actual 2005 year-end revenues. The use of D&E's calculation would result in an annual revenue amount that is 5% higher than its actual annual revenue amount. As such, the Commission concluded that D&E's calculation is inconsistent with its PSI/SPI Price Stability Plan Formula, which was approved in its Chapter 30 Plan at Docket No. P-00981430F1000. The Commission, therefore, directed D&E to amend its calculations based on its actual intrastate

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[129] Switched Access Services are protected services, pursuant to 66 Pa. C.S. § 3012, that local exchange carriers charge other telecommunications carriers for use of their facilities to provide toll services to end-users.

revenues for the twelve-month period ending December 2005, and to adjust the eligible rate increases summarized in Exhibit 1 to its May 3, 2006 filing.

The Commission's second concern involved D&E's proposal to increase its switched access charges. In the June 23, 2006 Order, the Commission stated that D&E's proposal to increase access charge rates appeared to contradict the Commission's long-standing access service reform policy in Pennsylvania in which access charges have been decreasing, rather than increasing. The Commission further noted that the pending rural telephone company access charge investigation at Docket No. I-00040105, which is being conducted to determine how to implement additional access charge reductions among rural companies in Pennsylvania, has been stayed at the request of D&E and other rural carriers for twelve months from August 2005, or until the FCC makes a final determination in its proceeding to develop a Unified Inter-carrier Compensation regime. Furthermore, the Commission expressed concern about conflicts between the proposed access charge increases and the Pennsylvania Universal Service Fund's rules and policies, as well as D&E's current Amended Chapter 30 Plan. The Commission noted that the proposal by D&E is a departure from the current practice by LECs to recover PSI/SPI revenue increases from local service rates or to bank them for future increases. Accordingly, the Commission gave D&E the alternatives to either: (1) "bank" the remaining allowable revenue increases to its basic local exchange services rates, rather than to apply the increases on its access charges; (2) allocate the remaining allowable revenue increases to its basic local exchange services rates, rather than to apply the increases on its access charges; or (3) effectuate the proposed rate increases for access services, subject to any final determinations on access reform, including the Commission's pending intrastate access reform proceeding at Docket No. I-0004015, and at the federal level.

D&E chose the third option and on June 28, 2006, it filed its revised PSI/SPI calculations and revised tariff rates in its Access Tariff-Telephone Pa. P.U.C. No. 16, to reflect those calculations. The compliance tariff was permitted to become effective on July 1, 2006.[130]

Accordingly, D&E's access service rate increases in its revised Access Tariff-Telephone Pa. P.U.C. No. 16, which were filed on June 28, 2006, are now subject to any final

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130 *See* July 13, 2006 Secretarial Letter at Docket No. R-00061375.

determinations that result from this Commission's access reform, including the pending intrastate access reform proceeding at Docket No. I-0004015, or any changes at the federal level.[131]

As noted, on July 10, 2006, D&E filed the Petition for Reconsideration (Petition) of the June 23, 2006 Order. By Order entered on July 20, 2006, we granted the Petition pending further review of, and consideration on the merits.

On July 24, 2006, Verizon Pennsylvania Inc. (Verizon) filed its *Amicus Curiae* response to D&E's Petition under 52 Pa. Code § 5.502(d), noting that it is its first opportunity to submit an *Amicus Curiae* response since there was no briefing schedule for this case.

On July 31, 2006, D&E filed a Motion to Strike or Dismiss *Amicus Curiae* Response of Verizon alleging that is not in compliance with the Commission's Rules and Practice and Procedure.

On August 10, 2006, Verizon filed a letter, in lieu of a more formal response, objecting to D&E's Motion to Strike Verizon's *Amicus Curiae* Response.

Discussion

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(g) of the Code, 66 Pa. C.S. § 703(g), relating to rescission

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[131] It is important to note that by Order entered November 15, 2006, at Docket No. I-00040105, *et al.*, the Commission, *inter alia*, further stayed the rural telephone company access charge reform proceeding for another year, or until the FCC rules on its Unified Intercarrier Compensation proceeding, whichever is earlier. However, the Commission further directed, pursuant to 66 Pa. C.S. § 703(g), that the Office of Administrative Law Judge shall hold expedited hearings for the limited purpose of reconsidering the June 23, 2006 Order with regard only to that portion of the June 23, 2006 Order that allowed D&E to raise intrastate access charges and to determine whether any rescission or amendment of the Order would be warranted by the evidence, consistent with the Commission's access charge reform and universal service policies, and lawful under D&E's Chapter 30 Plan. The Commission further directed that a recommended decision be made on or before February 28, 2007. (*See* Ordering Paragraph No. 6). As such, this instant Opinion and Order will address and dispose of D&E's Petition for Reconsideration as it relates to D&E's request for the Commission to: (1) recall its "criticisms" against D&E for raising access charges, and (2) reversing the mandated changes to the manner in which D&E calculates its PSI/SPI formula.

and amendment of orders. Such requests for relief must be consistent with Section 5.572(b) of our Regulations, 52 Pa. Code § 5.572(b), relating to petitions for relief following the issuance of a final decision. The standards for a petition for relief following the issuance of a final decision were addressed in *Duick v. PG&W*, 56 Pa. PUC 553 (1982) (*Duick*).

Duick held that a petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. *Duick* at 559.

We note that, pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572, our power to modify or rescind final orders is limited to certain circumstances. A petition to modify or rescind a final Commission order may only be granted judiciously and under appropriate circumstances, because such an order will result in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation*, 490 Pa. 264, 416 A.2d 461 (1980); *City of Philadelphia v. Pa. PUC,* 720 A.2d 845 (Pa. Cmwlth. 1998); and *West Penn Power Company v. Pa. PUC,* 659 A.2d 1055 (Pa. Cmwlth. 1995).

1. D&E's Petition for Reconsideration

In its Petition, D&E states that it is seeking reconsideration of: (1) the criticisms raised in the June 23, 2006 Order regarding its proposal to increase its switched access service charges; and (2) the mandated changes in its PSI/SPI procedure. (Petition at 3).

With regard to the first issue, D&E is concerned about what it views as "criticisms" by the Commission's June 23, 2006 Order with regard to its proposal to increase switched access charges. D&E states that the June 23, 2006 Order opined that the switched access charge increases "contradict the policy of implementing switched access service reform" and "undermines the promotion of competitive markets by increasing the gap between access

service rates and costs."[132] D&E requests that the Commission reconsider its "criticisms" for the following reasons: 1) D&E has significantly reduced its switched access charges pursuant to the Commission's policy (Petition at 8-10); 2) the June 23, 2006 Order overlooks the impact of intermodal competition (Petition at 10-15); and 3) the switched access charge increases do not violate any Commission Order (Petition at 15-17).

In response to the Commission's concern that D&E's "proposed increase in access service rates as a vehicle to recover PSI revenues may contradict the policy of implementing switched access reform," D&E argues that its proposed rates now mirror its interstate rates, consistent with Commission policy. D&E also views its actual trend in its access rates over the longer term as being consistent with the Commission's access reform policy because the CCL rate, which at the time of the *Global Order*[133] was $6.11, was subsequently reduced to $4.04 and now, after the 2006 PSI filing, is $5.24.

With regard to its argument that the June 23, 2006 Order overlooked the impact of intermodal competition, D&E maintains that it is facing competition from cable companies and non-facilities based VoIP providers that offer telecommunications services over broadband connections, as well as from wireless carriers. (Petition at 10-12). In addition, D&E claims it continues to lose access lines from intermodal competitors and that any increases to local service rates would further accelerate its access line losses and revenue erosion. (Petition at 13). As such, D&E asserts that proposing increases to its switched access charges was the only realistic option for D&E to take. (Petition at 15).

Finally, as noted, D&E claims that the Commission has never issued any prior Order that would preclude it from making rate increases to its switched access charges. (Petition at 15).

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[132] June 23, 2006 Order at 11.

[133] *Joint Petition of Nextlink Pennsylvania, Inc., et al., 196 PUR 4th 172 (1996).*

With regard to its second request, D&E claims that its Chapter 30 Plan provides only that the base revenue for calculation of its annual PSI/SPI revenue entitlement is "the sum of effective rates (and units of demand) which were realized during the previous twelve-month period." D&E also maintains that it has consistently calculated the base revenues in the prior years, since 2002, by using December revenues and multiplying such revenues by twelve. (Petition at 5). D&E also argues that it is not reasonable for the Commission to change the way D&E calculates its entitlement after it committed to accelerate its broadband network commitment by seven years. (Petition at 5-6). Accordingly, D&E believes that there are sufficient grounds for reconsideration of the Commission's June 23, 2006 Order to change the PSI/SPI calculation back to the methodology it previously employed.

Disposition:

Initially, we will address whether D&E's Petition, with regard to the Commission's alleged "criticisms" is acceptable under *Duick.* As noted, D&E requests that the Commission withdraw the alleged "criticisms" that its access proposal to increase switched access charges "contradicts the policy of implementing switched access service reform" and "undermines the promotion of competitive markets by increasing the gap between access service rates and costs."[134] We conclude that this request by D&E and its supporting arguments are not persuasive.

First, we find that D&E's request does not seek any actual relief in this regard. It merely requests that we reconsider our remarks. We are of the opinion that our June 23, 2006 Order contains factual statements which we expressed based on this Commission's access charge policy that has been in place for over twenty years since the first access charge tariffs were approved in 1984.[135] In this regard, the Petition is contrary to the standards established under *Duick*, in that D&E failed to provide us with any "new and novel arguments" as to why we should recall the specified comments in our June 23, 2006 Order. *Duick* at 559.

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[134] June 23, 2006 Order at 11.

[135] It is important to note that the issue of access charge reform for rural ILECs has been addressed in our *Global Order* and is also currently being addressed in our investigation at Docket No. I-00040105.

D&E also argues, without providing any substantial proof, that its access charges are favorable when compared to other rural ILECs. In this regard, D&E's argument totally disregards a condition to which it accepted in the Joint Access Proposal, in response to the Commission's Access Charge Investigation—Phase II, which was approved by this Commission on July 15, 2003, at Docket No. M-00021596, *et al.* D&E provided no substantive cost data to prove that its access charges are below costs and need to be increased from their present levels.[136]

Again, we find that D&E provided no credible arguments against our positions in its Petition for Reconsideration. Moreover, D&E's assertion that no prior Commission Order precludes D&E from raising access charges is erroneous. Even though our Orders did not explicitly impose a ban on proposing increases to access charges, as previously discussed, the Commission's *Global Order* strongly expressed a policy and schedules for further access charge reductions. Furthermore, this matter is being addressed in our Access Charge Investigation for rural ILECs at Docket No. I-00040105.

Also, we are not persuaded by D&E's intermodal competition argument. Any intermodal competition that exists today is faced by all LECs, and not just in D&E's territory[137]. In fact, D&E intentionally engages in competitive business ventures with its own affiliates and this assists D&E in countering outside competition.

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[136] The Joint Access Proposal condition further reinforces our position that access charges should not be changed unless the ILECs can prove that each access rate element recovers its cost based upon the development of a cost study when the ILECs SPI allows for an increase. Specifically, that condition states that:

> Each ILEC reserves the right, subject to Chapter 30 Plan requirements, to change its access rates to ensure that each access rate element at least recovers its cost and the ILEC's service price index continues to be equal to or less than the ILEC's price stability index, in the event the ILEC's access rates are determined to be below cost based upon the development of a cost study.

See ATTACHMENT (Joint Access Proposal) to July 15, 2003 Order at Docket No. M-00021596.

[137] D&E along with its affiliates Buffalo Valley Telephone Company and Conestoga Telephone and Telegraph Company are the only ILECs to date that have filed for access service rate increases.

D&E is also not taking into consideration access line loss due to customers moving to its own DSL service that is non-jurisdictional, or intermodal services provided by its own parent Company D&E Communications Inc., which provide cell phone, cable modem, and broadband phone services through high speed internet services. In light of the above, we shall deny D&E's request on this matter.

D&E's second request for reconsideration – that we reconsider directing D&E to use actual revenues for each month of the year rather than a twelve-month average based on the month of December – also fails to meet the standards established under *Duick*. D&E fails to introduce any convincing arguments that would persuade us to reverse our position regarding the appropriate period to use in its annual PSI calculation.

In support of this rationale, it is important to note, first and foremost, that D&E's Chapter 30 Plan, as amended pursuant to Act 183,[138] does not allow for an entitlement for additional revenues using a calculation of PSI based on one month or a particular month's revenue. D&E's Amended Streamlined Form of Regulation and Network Modernization Plan specifically directs how the PSI should be calculated:

> **Part 3 – Price Stability Plan for Non competitive Services**
> **A. Price Stability Mechanism (PSI and SPI)**
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> 6. Annually, the Company will calculate the new PSI, which will include the added impact of the exogenous events, according to the following methodology:
>
> $$\mathbf{PSI_t = PSI_{t-1}\ (1+\%\ \Delta GDP\text{-}PI\text{-}X \pm Z)}$$
>
> Which comprise the PSM formula," where:
>
> PSI_t: The new index that determines the maximum for the noncompetitive service category based on the cumulative changes in the price cap index for *the current twelve month period.*

[138] *See* 66 Pa. C.S. § 3011 *et seq.*

PSI_{t-1}: The current index that determines the current maximum prices for the noncompetitive service category based on the cumulative changes in the price cap index for the previous twelve month period.[3]

Foot note (3): The PSI applies to the **sum** of effective rates (and units of demand) which were **realized during the previous twelve month period**. (Emphasis added)

(D&E's Chapter 30 Plan at 8-10)

It is clear from the above formula that the new PSI equals the current index that determines the current maximum prices for the non-competitive service category based on the *cumulative* changes in the price cap index applied to the sum of effective rates and units of demand realized during the previous twelve-month period. The key here is that the combined *cumulative* sum of the effective rates on the units of demand during the previous twelve months is comprised of the actual revenue based on the sum of *effective rates (and units of demand)* which were *realized* during the previous twelve-month period and not just for the month of December. It is noted that by using just the December 2005 revenue to calculate annual revenue amount for the year reflects a four percent higher amount compared to using the actual cumulative twelve months' revenues. This is substantial in light of the fact that each successive year builds on the previous year's revenue.

Regardless of the manner in how D&E made its calculations in the past, it should, in future filings, adhere to the plain reading of its PSI formula, which clearly states that "[t]he PSI applies to the sum of effective rates (and units of demand) **which were realized during the previous twelve-month period."** (Emphasis added). We stress that it does not state that the PSI applies the sum of those "effective rates" and "units of demand" that were estimated, based on the last month of the previous year. As such, we direct D&E to use actual, rather than estimated, effective rates and units of demand in future PSI/SPI filings.

D&E also argues that in light of the fact that it changed its local residential and business one-party rates on August 1, 2005 of the base period, only five months of this rate change would be reflected in the actual revenues for the twelve-month period ended December 31, 2005. It argues that only through its methodology will the full twelve-month impact of the Gross Domestic Product Price Index on this change be reflected in the annual Chapter 30 revenue entitlement. (Petition at 7). We disagree. As noted above, the definition of the SPI_{t-1} is

based on the *cumulative changes* in the price index for the previous twelve-month period, and not on the *annualized changes* in the price index based on the month of December of the prior year.

Finally, it is important to note that the directive in our June 23, 2006 Order to use actual year-end revenues rather than annualized revenues based on the month of December is considered a corrective step, rather than a newly "mandated change," that the Company must follow prospectively when calculating its annual PSI. Accordingly, we deny D&E's request for a reconsideration of this issue.

2. Verizon's *Amicus Curiae* Filing

On July 24, 2006, pursuant to 52 Pa. Code § 5.502(d), Verizon[139] filed its Response as *Amicus Curiae* (Response) to D&E's Petition for Reconsideration noting that it is its first opportunity to submit an *Amicus Curiae* response since there was no briefing schedule for this case.

In its *Amicus Curiae* response, Verizon is concerned with D&E's access charge increases and its request that the Commission take back its "criticisms" of its access proposal and to allow them to become effective without comment. Verizon avers that D&E is not seeking any substantive changes in the Commission Order through its Petition. Nor is the Petition seeking any actual relief. Verizon contends that D&E's request to erase the Commission's "comments" is "illusory" because it seeks no actual relief and should, therefore, be denied on that basis alone. (VZ Response at 1).

Verizon strongly disagrees with D&E's characterization of its proposed access increase as being only "subtle" and "minor." Verizon expresses concern that D&E's per-line carrier charge is increasing by $1.20, or approximately 30%, resulting in a Carrier Charge of

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[139] "Verizon" includes ILECs Verizon Pennsylvania Inc. and Verizon North Inc., CLEC MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services and IXCs MCI Communications Services Inc. and Verizon Select Services Inc.

$5.24 per line.[140] (VZ Response at 3). Verizon also states that it effectively has to provide a double subsidy to D&E and other rural carriers. The first subsidy is in the form of universal service fund support, and the second is in the form of intrastate access rates that are very much higher than those assessed by Verizon on the rural carriers. By comparison, Verizon assesses a Carrier Charge of $0.58. (VZ Response at 3-4). Verizon points out that D&E's instant rate increase alone is approximately twice as much as Verizon's entire carrier charge. As such, Verizon is of the opinion that the Commission was justifiably concerned about the high level of D&E's access charges. (VZ Response at 3).

Verizon argues that if other rural carriers follow D&E's approach (as D&E's affiliates Buffalo Valley Telephone Company and Conestoga Telephone and Telegraph Company already have), the collective financial impact on other carriers could be significant. Verizon also opines that if D&E's business plan cannot be self-sustaining, unless it obtains substantial new subsidization, the Commission is correct in questioning the wisdom of increasing the very implicit subsidies which it has repeatedly disavowed. (VZ Response at 4). Verizon also asserts that if this is D&E's position, the continuing need for a state universal service fund should be reexamined altogether. (VZ Response at 4).

In light of the above, Verizon requests that the Commission deny D&E's Petition on the access issue and decline to alter the language in it Order. (VZ Response at 5).

On July 31, 2006, D&E filed a Motion to Strike or Dismiss *Amicus Curiae* Response (Motion) of Verizon alleging that is not in compliance with the Commission's Rules and Practice and Procedure. In its Motion, D&E indicates that it provided notice of its PSI/SPI filing to all its access customers, including Verizon, and Verizon raised no objections to the proposed rate changes, filed no complaint in opposition thereto, filed no intervention therein and elected not to participate in any respect in the resolution of the filing. D&E argues that Verizon should not, therefore, be permitted to raise arguments that it already had an opportunity to raise. (D&E Motion at 2, 6).

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[140] We note that the actual Carrier Charge filed by D&E in its compliance filing was $5.17 per line per month. This was a result of the directive in the June 23, 2006 Order to use actual calendar year 2005 revenues.

D&E also argues that Verizon's *Amicus Curiae* is not in compliance with the Commission's Rules of Practice and Procedure and should, therefore, be stricken or dismissed on procedural grounds. D&E contends that Section 5.502(d) of the Commission's Regulations, 52 Pa. C.S. § 5.502(d), does not permit *Amicus* Response to a Petition for Reconsideration and that the only Commission rule that addresses the *Amicus Curiae* status of a submission made to the Commission is 52 Pa. Code §5.502(d), which are only limited to briefs and does not authorize *Amicus* pleadings. (Response at 3-4).

D&E cites to Section 5.1(a) of our Regulations, 52 Pa. C.S. § 5.1(a), as to when pleadings are allowed and argues that this section does not recognize *amicus curiae* response to a petition as a permitted pleading. (Response at 4). It also cites to Section 1.36 of our Regulations, 52 Pa. C.S. §1.36, pertaining to verification of the facts, and asserts that Verizon's *Amicus Curiae* sets forth facts not part of D&E's filing. As such, D&E argues that if Verizon's *Amicus Curiae* response were viewed as a pleading (*i.e.*, an Answer to a Petition), it should fail because it does not conform to the Commission's Rules regarding answers to petitions under 52 Pa. Code § 5.1(a) and fails to comply with Section 1.36(a) of the Commission's Regulations. (Response at 4-5).

D&E also contends that should the Commission decide to view the *Amicus Curiae* as an allowable brief, it still does not conform to the Commission's Regulations regarding *Amicus Curia* briefs under Section 5.502(d) of the Regulations, 52 Pa. Code §5.502(d). D&E argues that Verizon uses much of its *Amicus* response to complain about the disparity between what D&E may charge for switched access compared to what Verizon may charge. As such, D&E opines that the Commission must strike or dismiss the *Amicus Curiae* response as being beyond that allowed by Section 5.502(d).

If the Commission does not act to strike or dismiss Verizon's *Amicus Curiae* response, D&E requests that the Commission reject Verizon's position for the following alleged reasons:

- There is no basis for Verizon's contention that D&E's access charge increases represent an "unprecedented proposal because: (a) D&E's TS and LS access charges have been increased to mirror D&E's interstate switched access charges (Response at 7); and (b) D&E's new $5.17 CCL rate is substantially below the $7.00 benchmark established in the *Global Order* and is significantly below the existing CCL rates of most other rural ILECs operating in Pennsylvania (Response at 8).

- There is no basis for Verizon's claim that D&E has not made "substantial progress" in lowering access rates when D&E's existing rates are compared to those in effect at the time of the *Global Order*. (Response at 9).

- There is no merit in Verizon's argument when it compares D&E's access charge rate levels with Verizon's own access charge rate levels because D&E does not have the scale of economy of Verizon so their costs and rates are higher. (Response at 10)..

- Verizon should not be permitted, in an *amicus* capacity, to use this proceeding to introduce USF policy issues in its favor relevant to upcoming proceedings (*i.e.*, the Commission's USF Investigation at Docket No. M-00021596). (Response at 10-12).

We conclude that Verizon's *Amicus Curiae* filing is acceptable under the provisions of 52 Pa. Code § 5.502(d). While D&E's position that our regulation refers specifically to the permission to file a brief and a brief is not expressly defined as a "pleading" within the terms of 52 Pa. Code § 5.1, we conclude that the Verizon response is a submittal substantially in the nature of a brief and, based on our review, shall be considered as consistent with the provision. We shall, therefore, deny D&E's Motion to Strike or Dismiss *Amicus Curiae.*

It is important to note that the arguments raised by Verizon in its *Amicus Curiae* parallel those arguments that Verizon raised in its Answer to the Joint Motion of the RTCC, OCA, OTS and Embarq Pennsylvania to grant either a one-year further stay of the rural access charge investigation or until the FCC rules on its Unified Intercarrier Compensation proceeding,

whichever is earlier.[141] In light of the fact that the same arguments will be raised in the expedited access charge investigation proceeding instituted by our November 15, 2006 Order at Docket No. I-00040105, *et al.*, we expect that the presiding ALJ will address in the recommended decision arising from that limited, expedited investigation the merits of Verizon's arguments as they pertain to the Company's desire to increase access charges.

Conclusion

Upon review and consideration of the record evidence, we conclude that the Petition does not meet the standards under *Duick* and, therefore, shall be denied consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That, consistent with the discussion in the body of this Opinion and Order, Denver and Ephrata Telephone and Telegraph Company's Petition for Reconsideration of the Commission's June 23, 2006 Order at Docket Nos. R-00061377 and P-00981430F1000, is denied with regard to:

   a. its request that the Commission reconsider recalling its "criticisms" against Denver and Ephrata Telephone and Telegraph because of its action to increase access charges; and,

   b. its request that the Commission reconsider the mandated changes to the manner in which Denver and Ephrata Telephone and Telegraph Company's annual Price Stability Index/Service Price Index formula should be calculated.

2. That Denver and Ephrata Telephone and Telegraph Company's Motion to Strike Verizon Pennsylvania Inc.'s *Amicus Curiae* response is denied.

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[141] *See, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund, et al.*, Docket No. I-00040105, *et al.* (Order entered November 15, 2006).

3. That the response of Verizon Pennsylvania Inc. as *Amicus Curiae* is accepted, consistent with this Opinion and Order, and that Verizon Pennsylvania Inc.'s concerns contained therein regarding increases to Denver and Ephrata Telephone and Telegraph Company's access charges, shall be addressed in the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006, at Docket No. I-00040105.

4. That this matter be marked closed upon entry of the final Order resulting from the limited and expedited rural access charge proceeding initiated by Commission Order entered November 15, 2006, at Docket No. I-00040105, *et al.*

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 7, 2006

ORDER ENTERED: December 8, 2006

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held November 30, 2006

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick, Dissenting Statement attached

AT&T Communications of Pennsylvania, LLC C-20027195

v.

Verizon North Inc. and Verizon Pennsylvania Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission are the Exceptions on Remand (Exc.-R) filed on January 9, 2006, by Verizon Pennsylvania Inc. (Verizon PA) and Verizon North Inc. (Verizon North) (jointly referred to as Verizon),[142] AT&T Communications of Pennsylvania LLC (AT&T), Qwest Communications Corporation (Qwest), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and the Office of Trial Staff (OTS) to the Recommended Decision on Remand of Administrative

[142] Verizon PA and Verizon North filed their Exceptions jointly.

Law Judge (ALJ) Cynthia Williams Fordham issued December 7, 2005, in the above captioned matter. Reply Exceptions on Remand (R.Exc.-R) were filed on January 25, 2006, by Verizon, AT&T, Qwest, the OCA and the OSBA.[143]

History of the Proceeding

The following history of the proceeding is derived substantially from pages 1-9 of ALJ's Fordham's Recommended Decision.

In the *Global Order*[144] of September 30, 1999, the Commission directed all local incumbent exchange carriers operating in Pennsylvania to reduce their access charges. The *Global Order* further provided for a subsequent access charge proceeding to be started in January 2001 to determine additional access charge reductions and the possible elimination of the Carrier Charge pool.

On November 4, 1999, soon after the *Global Order* was entered, the Commission entered an Order in *Re Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger,* Docket Nos. A-310200F0002, A-311350F0002, and A-310222F0002 (*Merger Order*), wherein the Commission approved the Bell Atlantic/GTE merger. The *Merger Order, inter alia,* required GTE North (now Verizon North) and Bell Atlantic PA (now Verizon PA) to

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[143] It is noted that, for good cause shown, the Parties were granted an extension of time to file Exceptions and Reply Exceptions. As such, the originally scheduled filing dates to file Exceptions and Reply Exceptions were extended from December 27, 2005 and January 6, 2006, until January 8, 2006 and January 25, 2006, respectively.

[144] Re Nextlink Pennsylvania, Inc., Docket No. P-00991648; P-00991649, 93 Pa PUC 172 (September 30, 1999) (*Global Order*); 196 P.U.R. 4th 172, aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 763 A.2d 440 (Pa. Commonwealth 2000), alloc. granted.

commence a proceeding to determine consolidated statewide rates for access charges within thirty months after the merger closed.

By Secretarial Letter dated October 24, 2001, the Commission postponed the *Global Order's* formal statewide access charge investigation, and initiated a collaborative in an attempt to further reduce access charges without the need for formal hearings. Subsequently, in January 2002, the Commission initiated a formal generic access charge investigation at Docket No. M-00021596 to accommodate the access charge investigation required by the *Global Order*.

On December 30, 2002, Verizon PA and Verizon North filed a separate Joint Petition (Verizon Joint Petition) regarding further reductions to their access charges pursuant to the *Merger Order*, the *Global Order*, and the Generic Access Charge Investigation at M-00021596.[145] The proposal in the Verizon Joint Petition was published in the *Pennsylvania Bulletin* on January 18, 2003, at 33 Pa. B. 502.

On March 21, 2002, at Docket No. C-20027195, AT&T filed a Formal Complaint against Verizon North seeking to have Verizon North's access charges reduced to Verizon PA's levels pursuant to the requirements in the Commission's *Merger Order* at A-310200F0002, *et al.* On April 10, 2002, the OCA intervened in this proceeding. *AT&T's Formal* Complaint was initially dismissed by Chief ALJ Robert Christianson, but was subsequently reinstated by Commission Order entered December 24, 2002 (*December 24, 2002 Order*). The December 24, 2002 Order also bifurcated the generic access charge investigation so that all Verizon matters, including AT&T's Formal Complaint, would be litigated at Docket Number C-20027195 and the rural ILEC access charge investigation would continue being litigated at Docket Number M-00021596. In addition, the Commission later ruled that Verizon's compliance with the *Merger Order's*

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[145] *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc.

directive to establish parity between Verizon PA's and Verizon North's access charges would also be addressed at C-20027195.[146]

On November 26, 2002, Verizon PA submitted its annual Price Change Opportunity (PCO) filing wherein it requested authority to use its $17.7 million negative PCO money for 2003 to fund its contributions to the Pennsylvania Universal Service Fund (PA USF). That filing was docketed at M-00031694 and P-00930715 (Verizon's Chapter 30 Plan docket). On January 31, 2003, AT&T filed a Formal Complaint at M-00031694C0001 challenging Verizon PA's proposal to use its negative PCO money to support Verizon's 2003 contribution to the PA USF. On February 27, 2003, Verizon PA. filed an Answer and Motion to dismiss AT&T's Formal Complaint at Docket No. M-00031694.

Although Verizon PA and Verizon North agreed to one proposed access charge reduction plan, AT&T, MCI WorldCom Network Services, Inc (MCI), Qwest, the OCA, the OSBA and the OTS objected to the Verizon Joint Petition. Given that there were contested, material factual issues (*i.e.*, the cost of traffic sensitive rates and how low the intrastate access charges should be), by Order entered May 5, 2003, the Commission referred the Verizon Joint Petition to the Office of Administrative Law Judge (OALJ) for evidentiary hearings and the issuance of a recommended decision.

In accordance with the Commission's directives, the matter was assigned to Administrative Law Judge Cynthia Williams Fordham, who held hearings on this matter on August 25 and 26, 2003.

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[146] See, *In re the Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket Nos. A-310200F0002, A-311350F0002, and A-310222F0002 (Order entered December 24, 2002).

On September 9, 2003, the Commission entered a Summary Judgment Order in Verizon Pennsylvania Inc's 2003 Price Change Opportunity, at Docket No. M-00031694, and AT&T Communications of Pennsylvania, Inc. v. Verizon Pennsylvania, Inc. Re: Verizon Pennsylvania Inc's 2003 Price Change Opportunity, at Docket Nos. M-00031694C0001 and P-00930715. In that Order, the Commission: (1) denied AT&T's Motion for Summary Judgment; (2) granted Verizon Pennsylvania Inc.'s Motion for Summary Judgment Regarding the 2003 PCO; (3) approved Verizon's November 26, 2002 PCO filing; (4) authorized Verizon to use $17,474,483 from its 2003 PCO money to fund its required contributions to the Pennsylvania Universal Service Fund for the year 2003; and (5) ordered that the remaining balance of $243,517 of Verizon Pa.'s 2003 PCO be addressed by the Administrative Law Judge presiding over C-20027195, or, in the alternative, carried over and addressed with Verizon Pa.'s 2004 PCO filing which was scheduled for November 2003.

The record in Phase I consisted of 480 transcript pages (Tr.), the statements and exhibits of the parties, and seven Main and Reply Briefs, filed by Verizon, AT&T, MCI Qwest, the OCA, the OSBA and the OTS.

On November 18, 2003, ALJ Fordham's Recommended Decision was issued wherein she recommended approval of the Joint Proposal which was included in Verizon PA's Statement No. 1.1, the Surrebuttal Testimony of Debra M. Berry and Michael J. Wirl. Verizon PA, Verizon North, the OCA and the OTS presented the Joint Proposal during the course of the proceeding.

On February 26, 2004, Verizon PA, Verizon North, the OCA and the OSBA filed a Petition for Resolution of Litigation. AT&T, MCI and Qwest filed Answers to the Petition.

By Opinion and Order entered on July 28, 2004 (*July 28, 2004 Order*), the Commission addressed Exceptions to ALJ Fordham's Recommended Decision and granted the Petition for Resolution of Litigation filed by Verizon PA, Verizon North, the OCA and the OCA in the original access charge case at this docket number. In said Order, the Commission permitted Verizon to reduce and restructure its access charges by allowing Verizon to file a revenue neutral, rate rebalancing filing in which the net revenue reductions from access charge increases and decreases would be offset with revenue increases in monthly dial tone line rates for residential and business local exchange customers. In addition, the Commission remanded the case to the Office of Administrative Law Judge for the further development of a record, and issuance of a recommended decision, on issues that were not decided in the *July 28, 2004 Order*. The issues on remand (the subject of this Opinion and Order) include, but are not limited to, the consideration of specific access charge reduction proposals, the removal of implicit subsidies from access charges and the reduction or elimination of the Carrier Charge.

On August 9, 2004, Verizon filed a Petition for Reconsideration of the *July 28, 2004 Order*. Verizon contended that the Commission was in error when it remanded the proceeding for further development of the record and the issuance of a recommended decision.

On November 17, 2004, AT&T, MCI and Qwest filed a Joint Petition for Clarification with the Commission since Verizon failed to implement the access rate restructuring from the *July 28, 2004 Order* by November of 2004. The Joint Petition for Clarification requested a date certain by which Verizon would implement the access charge reductions required by *the July 28, 2004 Order* and that the compliance rates be made retroactive to February 1, 2005, if necessary. The Joint Petition for Clarification also requested that the Commission complete the access reform process by either promptly commencing the remand proceeding or adjudicating the matter based upon the

record developed in the original proceeding. Answers to the Joint Petition for clarification were filed by Verizon, the OCA and the OSBA.

By Opinion and Order entered on November 23, 2004, the Commission denied Verizon's Petition for Reconsideration, affirming its decision to remand the proceeding for issuance of a recommended decision on policy issues including: (1) a recommendation of the "next steps" for access reform (*July 28, 2004 Order* at 16); (2) a recommendation on whether access charges should be reduced "to cost" (Id. at 18); and (3) a recommendation on the elimination of the Carrier Charge (Id. at 20).

By Order entered January 18, 2005, at Docket No. C-20027195, *et al.* (*January 18, 2005 Order*), the Commission granted, in part, and denied, in part, the Joint Petition for Clarification filed by AT&T, MCI and Qwest. The Commission granted the Joint Petitioners' request that established February 1, 2005, as the compliance filing deadline date, notwithstanding any regulatory delays that might occur in the compliance review process. The Commission also granted the Joint Petitioners' request that the Remand proceeding be conducted in an expedited manner only to the extent that the Office of Administrative Law Judge was able to do so. However, the Commission denied the Joint Petitioners' request for: (1) retroactive rates to February 1, 2005, if Verizon failed to comply by that date, and (2) termination of the Remand proceeding. Since there have been significant developments in the federal arena that might impact the remand proceeding, the Commission directed the presiding Administrative Law Judge to expand the scope of this proceeding with regard to any FCC activity concerning the proposal submitted by the Intercarrier Compensation Forum on October 5, 2004 in the FCC's Intercarrier Compensation proceeding at CC Docket No. 01-92 (the *Intercarrier Compensation Proceeding*), and to address the impact that any FCC action may have on the Commission's jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding, to the extent

that the FCC issues a decision prior to the issuance of the Recommended Decision on Remand in this proceeding.

On February 17, 2005, ALJ Fordham held the first telephonic prehearing conference on remand. The following parties participated: Verizon; AT&T; MCImetro Access Transmission Services LLC ("MCI"); Qwest; OTS; OCA; OSBA; and the Rural Telephone Company Coalition. Among other things, the issues, witnesses and the FCC proceeding relating to the proposal submitted by the Intercarrier Compensation Forum on October 5, 2004 were discussed.

On April 4, 2005, a further telephonic prehearing conference on remand was held. The following parties participated in the prehearing conference: Verizon; AT&T; MCI; Qwest; OTS; OCA; OSBA; and the Rural Telephone Company Coalition.

During the April 4, 2005 prehearing conference, a procedural schedule was established and Sprint was designated as an inactive party.

The parties filed direct testimony, rebuttal testimony and surrebuttal testimony in accordance with the procedural schedule. Written testimony and exhibits were entered into the record during a hearing held on July 19, 2005. A summary of the statements and exhibits entered into evidence is included on pages 7-8 of the Recommended Decision on Remand.

The evidentiary record closed on July 22, 2005. Verizon, AT&T, MCI, Qwest, the OCA, the OSBA and the OTS filed Main Briefs (M.B. Remand) and Reply Briefs (R.B. Remand) on August 18, 2005 and August 31, 2005, respectively. The record on remand consists of 130 transcript pages (Tr. 1-R), the statements, exhibits, seven main briefs and seven reply briefs. As noted, ALJ Fordham's Recommended Decision on Remand (R.D.-R) was issued on December 7, 2005. Exceptions were filed on January 9,

2006, by Verizon, AT&T, Qwest, the OCA, the OSBA and the OTS. Reply Exceptions were filed on January 25, 2006, by Verizon, AT&T, Qwest, the OCA and the OSBA.

Discussion

A. Summary of the ALJ's Recommended Decision

In her Recommended Decision, ALJ Fordham accurately summarized the positions of the Parties in this Phase II Remand investigation with regard to access charge rate structure reductions as follows:

> In Phase II, the OCA, OSBA and OTS (the "public advocates") continue to advance the position that the loop is a "joint cost," and that portions of that loop cost must be allocated to IXCs through access charges. They object to shifting revenue from access charges to basic rates. Instead they argue that the Phase I access reductions have benefited the IXCs and that the consumers have not benefited. In addition, they argue that the IXCs are not paying their proper share of loop costs. OCA stated that the Commission should recognize that the carrier charge is an efficient mechanism for recovering a reasonable share of loop costs from the IXCs. OCA proposes that if the Commission concludes that further intrastate access rate reductions are necessarily required at this time, the Commission should apply the plan that the National Association of State Utility Consumer Advocates ("NASUCA") proposed to the FCC [in its *Intercarrier Compensation* proceeding at CC Docket No. 01-92].
>
> The IXCs, AT&T, MCI and Qwest recommend that the implicit subsidies in Verizon's access rates be removed. The IXCs argue that the intrastate access rates should immediately mirror interstate rates or should be set based on the Total Element Long Run Incremental Cost ("TELRIC") methodology required by federal law for leasing network elements to provide local service. They suggest that the intrastate access charges be reduced on a revenue neutral and competitively neutral basis. The public parties contend that either method would result in rates below Verizon's intrastate costs of providing access. The IXCs contend that leaving any

"subsidy" in access rates will impede toll competition and drive the IXCs out of business. Furthermore, the IXCs contend that the carrier charge should be eliminated because providing intrastate long distance service over the local loop does not generate additional cost to the local carrier.

AT&T contends that high access charges have kept intrastate long distance rates too high requiring Pennsylvania consumers to spend too much for their in-state long distance calling (AT&T M.B. Remand at 5). AT&T states that wireless carriers have been able to steal market share from Pennsylvania long distance carriers because the wireless carriers can offer their customers "free" long distance since they do not pay long distance access charges to complete long distance calls within very large Major Trading Areas ("MTAs"). (AT&T M.B. Remand at 5). A map of MTAs in Pennsylvania is in MCI Statement 1.0 Remand, Exhibit 1. (MCI M. B. Remand at 7; AT&T M.B. Remand at 5, fn. 9).

AT&T complains that Verizon's carrier charge is a relatively fixed amount each month. Since the number of access minutes is shrinking, the effective per minute access rate is increasing. AT&T and other IXCs protest that they cannot compete against wireless carriers, e-mail, Voice Over Internet Protocol ("VOIP") and Virtual Foreign Exchange ("VFX") because none of the competitors pay subsidy laden access rates (AT&T M.B. Remand at 6, MCI M.B. Remand at 6; Qwest M. B. Remand at 14, 15).

Qwest contends that artificially high access charges discriminate between the traditional wireline technologies and the newer wireless, cable and other technologies in violation of the principles set forth in the Telecommunications Act of 1996 (Qwest M. B. Remand at 14).

MCI asserts that the interstate access rates imposed by Verizon remain significantly in excess of cost. MCI contends that the above cost rates must be lowered to cost based levels (MCI M.B. Remand at 2).

MCI interpreted the Commission's statement on the second page of the Phase I Order as an admission that access rates need to be reduced to cost-based levels (MCI M.B. Remand at 3). MCI stated that in the September 1999 Global

> Order, the Commission recognized that access reductions should be reduced and that the carrier charge should possibly be eliminated to promote competition (MCI M.B. Remand at 4, *Phase I Order* at 19, 20). It was noted that it has been this Commission's policy to work toward implicit subsidies that may exist in access charge rates. MCI recommends that Verizon's access rates be reduced to cost immediately. In the alternative, MCI requests that Verizon reduce its access rates to the level of interstate access rates as a transitional step before the rates are reduced to cost (MCI Remand M.B. at 5, Reply Brief ["R.B."] at 9).
>
> OCA contends that the Commission should recognize that reducing the intrastate access charge at this time would not have a significant beneficial impact on competition in the long distance market. OCA argues that increasing local rates at this time will have a negative impact on universal service (OCA M.B. Remand at 9, 14-16, 21-23).
>
> Furthermore, AT&T, MCI, OCA and OSBA want the Commission to calculate the required local rate increases based on all lines served (AT&T R. B. Remand at 19; MCI M.B. Remand at 12, OCA M.B. Remand at 42, 43; OSBA M.B. Remand at 3, R.B. Remand at 3, 10-13)). They argue that this would reduce the rate increases to the end users. Verizon objects to extending the increase to all customers including those with contracts or bundled services (Verizon M.B. Remand at 38, 39).

(R.D.-R at 11-13).

Consistent with the directive on pages 15-16 of our *January 18, 2005 Order*, the ALJ discussed two of the numerous proposals being addressed in the FCC's *Intercarrier Compensation Proceeding*. The two proposals summarized by the ALJ are (1) the Intercarrier Compensation Forum (ICF) proposal[147] (R.D.-R at 19-22) and (2) the National Association of State Utility Consumer Advocates (NASUCA) proposal R.D.-R

[147] Members of the ICF are AT&T Corp., Global Crossing North America Inc., General Communications, Inc., Iowa Telecom, Level 3 Communications, LLC, MCI, Inc., SBC Communications, Inc. Sprint Corporation and Valor Telecommunications.

at 23-24). The ALJ also noted that in the *Further Notice of Proposed Rulemaking* (FNPRM), the FCC requested comments from the industry on a number of issues that could impact the intrastate access charges that are the subject of this instant proceeding. The ALJ stated that approximately 100 parties filed comments to the FCC on May 23, 2005, including the following parties in this instant proceeding: Verizon, AT&T, MCI, Qwest (as part of the ICF) and the OCA (as part of NASUCA).[148] (R.D.-R at 25-26). The ALJ indicated that Verizon did not support the adoption of any of the plans in the FCC's FNPRM because none of the plans satisfied all of the principles/criteria in its Comments.[149] (R.D.-R at 26).[150]

The ALJ noted that Verizon, the OCA, OSBA and OTS each preferred that the Commission defer action in this proceeding until the FCC completes its ruling in its *Intercarrier Compensation Proceeding*.[151] (R.D.-R at 26-27). These parties argue in favor of deferment for the following reasons:

- It would be consistent with the Commission's previous action that stayed the *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund* (Rural Access

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[148] Verizon's comments are attached as Exhibit Kane-2 to Verizon St. 1.0 Remand; The ICF comments are attached as Exhibit Kane-3 to Verizon St. 1.0 Remand; and Qwest's comments are attached as Exhibit Kane-4 to Verizon St. 1.0 Remand.

[149] Verizon M.B. Remand at 12.

[150] It is important to note that since the time that ALJ Fordham's Recommended Decision was issued on December 7, 2005, a new intercarrier compensation proposal referred to as the "Missoula Plan" was submitted to the FCC on July 18, 2006. On September 11, 2006, this Commission held a public workshop in which it facilitated discussion by proponents and opponents of the Plan. Generally, the Missoula Plan is supported by rural telecom carriers but has been dismissed by most BOCs as having too many inequities. This Commission filed comments with the FCC regarding its position on October 25, 2006.

[151] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005) (Unified Intercarrier Compensation Proceeding).

Charge Investigation), at Docket No. I-00040105, for at least twelve months to allow the Commission to coordinate its actions with the FCC Ruling in its *Intercarrier Compensation Proceeding* and the same should apply in the instant proceeding (RD at 27 citing to Verizon M.B. Remand at 13, 14; OCA M.B. Remand at 5; OSBA M.B. at 8, 90).

- The FCC is currently in the process of reviewing in its *Intercarrier Compensation Proceeding* whether it has the authority to preempt the authority of state commissions to approve access charges. (R.D.-R at 27 citing to OCA M.B. Remand at 8).

- Reducing intrastate access charges prior to the FCC's ruling could result in local rate increases that otherwise might be avoided through an increased SLC allowed by the FCC (R.D.-R at 27 citing OCA M.B. Remand at 9-10) or from additional federal USF payments that may depend on the level of state access rates in existence immediately prior to the start of the FCC plan. (R.D.-R at 28 citing OCA M.B. Remand at 14).

- Depending on the FCC's final action, a potential double recovery of access charge reductions by Verizon could exist if the access charge reductions are permitted to be recovered by the states through increases in basic local service rates and by the FCC through a SLC increase. (R.D.-R at 27 citing OCA M.B. Remand at 11-13).

- Some of the plans being reviewed by the FCC would base the total allowed revenue that can be obtained from the federal USF on the level of state access rates in existence immediately prior to the start of the FCC plan. (R.D.-R at 28 citing to OCA M.B. Remand at 14).

The OTS contended that no immediate action is warranted and that the relief sought by the IXCs should be denied because the ratepayers have not benefited from the past access charge reductions via toll rate reductions and the IXCs have failed to prove that access charge reductions are necessary. (R.D.-R at 28 citing to OTS M.B. Remand at 10; OTS R.B. Remand at 5).

AT&T, MCI and Qwest urged the Commission to reject the proposals to defer action in this proceeding and urged the Commission to act now for the following reasons:

- The Commission's action to defer action in the Rural ILEC access charge proceeding did not set a precedent for this proceeding because the underlying rationale for that action are specific to rural carriers and are irrelevant to Verizon. (R.D.-R at 29 citing AT&T R.B. Remand at 2-4).

- Verizon is not dependent on receipt of federal USF high cost funds for revenue recovery and there is no risk for Verizon that aggressive intrastate access reform will interfere with USF recovery. (R.D.-R at 29 citing to AT&T R.B. Remand at 4, 5).

- The Verizon companies do not receive explicit support from the Pennsylvania USF and that this reason, which was also relied upon in the Motion to defer the rural ILEC access charge investigation is not pertinent in this proceeding. (R.D.-R at 29 citing to AT&T R.B. Remand at 5). AT&T also noted that the Commission, in the *January 18, 2005 Order*, previously addressed the issue of deferring this proceeding until a final determination is made in the FCC's Intercarrier Compensation proceeding. However, rather than deferring, the Commission remanded the proceeding for additional hearing to consider, *inter alia*, federal activation on Intercarrier compensation. AT&T argued that to defer at this time

would constitute a wasteful abuse of the administrative process. (R.D.-R at 30-31 citing AT&T R.B. Remand at 7, 8).

The ALJ noted that Qwest and MCI agreed with AT&T that access reform is overdue and that there is no need to defer action. (R.D.-R at 31-32 citing to Qwest M.B. Remand at 6, 7; and MCI M.B. at 3, 10, 11, R.B. Remand at 2).

After reviewing the arguments of the Parties, the ALJ made the following recommendations and conclusions:

1. That the Commission should move forward with additional access charge reform for Verizon and deny the requests of those Parties' who argued to stay the instant investigation until after the FCC makes a ruling in the ICR proceeding. (R.D.-R at 58-60);

2. That, with regard to Verizon's Phase I Compliance filing: (a) Verizon has demonstrated that it complied with the Phase I Order and should not be required to true-up on an annual basis using the most recent available data on access volumes and end user line volumes as requested by AT&T. (R.D.-R at 60); and (b) Verizon should be required to use historical access minute volumes, rather than forecasted access minutes, in rebalancing local and access rates because a forecast of such minutes would not insure that the revenue would be closer to the estimated recovery amount. (R.D.-R at 60-61);

3. That the Commission: (a) should not endorse the ICF plan or adopt portions of this plan in resolving this case because the states should continue to have a role in regulating intrastate access charges. (R.D.-R at 61-62); and (b) should not adopt the NASUCA plan because it does not address the IXC's requests, does not allow for neutral rate rebalancing as required by Chapter 30, and would not assist the

Commission in deciding the next steps for access reform in Pennsylvania. (R.D.-R at 62);

4. That, within six months to a year after the Commission's Order in this matter is entered, Verizon's Carrier Charge of $0.58 per minute should be eliminated and the cost associated with the local loop, which is currently being recovered by the Carrier Charge, should be paid by the local end user customers (equivalent to a maximum of $0.95 per line per month) rather than by the IXCs. (R.D.-R at 63-64);

5. That the Commission should deny the IXCs' request to price access charges by using the total element long run incremental costing (TELRIC) methodology because the IXCs failed to prove that TELRIC costs represent Verizon's actual expected cost of providing service. (R.D.-R at 65);

6. That the Commission should require Verizon to reduce the remaining intrastate traffic sensitive access charges to interstate levels within one to two years after the final Order in this matter is entered. (R.D.-R at 65 - 66);

7. That the Commission should reject the IXC's proposal that Verizon's remaining access charges be reduced to cost. (R.D.-R at 66);

8. That the Commission should deny requests by AT&T, MCI, the OCA and the OSBA that recovery of access charge reductions through local line increases include non-contractual lines and competitive lines. (R.D.-R at 66-67);

9. That this proceeding be marked closed after the Carrier Charge and the reduction of intrastate rates to interstate rates is completed. If additional access reform

would still be required, a separate proceeding should be commenced at that time. (R.D.-R at 66).

B. Exceptions

As a preliminary matter, we note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Burden of Proof

a. Position of the Parties

This issue was not discussed on the record.

b. ALJ Recommendation

In her Recommended Decision, ALJ Fordham concluded that "the IXCs are requesting that Verizon's existing rates be changed," and therefore "are the proponents of a rule or order" which have the burden of proof in challenging the rates." (R.D.-R at 17).

c. Exceptions

Qwest excepts to the ALJ's recommendation on this issue and requests that the Commission should properly attribute the burden of proof to Verizon rather than to

the IXCs. In support of this argument, Qwest submits that while the IXCs in this proceeding advocated reductions in Verizon's intrastate access charges, it was the Commission who initiated this remanded proceeding to consider additional access charge reductions. Qwest further asserts that the Commission's *Global Order* originally prompted this proceeding for the purpose of reducing implicit subsidies in access charges and, subsequently, through its *July 28, 2004 Order*, remanded the matter to examine further access reductions to the ALJ. In light of the above, Qwest contends that Verizon had the burden of proving its access charges are just and reasonable, pursuant to Section 315(a) of the Code, 66 Pa. C.S. § 315(a), which states that "[i]n any proceeding upon the motion of the Commission involving any proposed or existing rate of any public utility . . . the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility." (Qwest Exc.-R No. 1 at 2-3).

Verizon rejoins that the ALJ correctly concluded, as a matter of law, that the IXCs had the burden of proof in challenging Verizon's tariffed access rates pursuant to Section 332(a), 66 Pa. C.S. § 332(a), which states that "the proponent of a rule or order has the burden of proof." (VZ R.Exc.-R at 8).

Verizon argues that 66 Pa. C.S. § 315(a) is a limited exception to Section 332(a), and that Qwest stretches its interpretation to fit this case into the limited statutory exception by arguing that this case is a "proceeding upon the motion of the commission" in which the utility has the burden of proof. Verizon contends that Qwest's argument is refuted by the caption and docket number of this case (*i.e.*, "AT&T v. Verizon" docketed as a "C" for Complaint proceeding). Verizon also argues that the specific purpose of the remand proceeding, as ordered in Ordering Paragraph No. 6 of the *July 28, 2004 Order*, was to address the merits of "those policy issues and other access charge concerns that were raised by the IXCs in their Exceptions." (VZ R.Exc.-R at 9).

Verizon also cites to *Brockway Glass Co.*[152] and *Schellhammer*[153] to support its argument that the IXCs have the burden of proof because they are challenging Verizon's existing rates.

d. Disposition

On consideration of the positions of the Parties, we shall grant the Exceptions of Qwest and reverse the presiding ALJ on this issue. We would agree with Qwest that the extensive history of this proceeding begins with the Commission's *Global Order*. In this Order, this Commission began the laborious process of implementing access charge reform.[154] The proceedings which have followed have been sequential phases of this Commission-initiated proceeding. The goal of this investigation is to obtain access charge reform. However, given the nature of the task, this process has had, of necessity, to proceed in several stages.

Notwithstanding that the instant docket bears a "C" designation, signaling a formal complaint by a participant, Verizon's rates, while existing rates, have not been endorsed by this Commission as the final stage in the access charge reform process that began years ago. Substantially similar to this Commission's development of unbundled network element (UNE) rates, pursuant to the federal Telecommunications Act of 1996

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[152] *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 633 Pa. Commw. 238, 243, 437 A.2d 1067, 1070 (1981). (*Brockway*). "Where a customer is heard to complain concerning a *proposed* change in rate, the burden of proof is upon the public utility to show the proposed rate is just and reasonable. Where the complaint involves an *existing* rate, however, the burden then falls upon the customer to prove that the charge is no longer reasonable." (Emphasis in original).

[153] *Schellhammer v. Pennsylvania Public Utility Commission*, 157 Pa. Commw. 86, 629 A.2d 189 (1993). (Schellhamer). (customer complaining about an existing rate has the burden of proof).

[154] The *Global Order* proceedings were preceded by the Commission's Generic Investigation of Intrastate Access Charge Reform, Docket No. I-00960066, 1998 Pa. PUC LEXIS 32, June 30, 1998.

(TA-96), 47 U.S.C. § 252(d), we have not closed the Commission-initiated investigation that began the inquiry. *See Generic Investigation Re Verizon . . . Unbundled Network Element Rates*, Docket No. R-00016683.

Based on the foregoing, we shall grant the Exceptions of Qwest on this issue.

2. ALJ Recommendation Not to Stay Proceeding Pending FCC ICC Decision

a. Position of the Parties

Verizon, the OCA, and the OSBA argued that the Commission should defer action in this case until after the FCC's *Intercarrier Compensation Proceeding*.[155] (Verizon M.B. Remand at 1-3, 13-17; OCA M.B. Remand at 3, 5-17; OSBA M.B. Remand at 8-9). These Parties opine that this would be consistent with the Commission's prior action in the rural telephone companies' access charge investigation at Docket No. I-00040105,[156] which was stayed for a period of twelve months, or until the FCC issues its ruling in the intercarrier compensation proceeding, whichever occurs first.[157] They also argued that there is no urgent need to complete the proceeding at this time because the IXCs have not demonstrated how customers in Pennsylvania have benefited from past access charge reductions or how customers will benefit from reductions in this

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[155] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005) (Unified Intercarrier Compensation Proceeding).

[156] *See Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Order entered August 30, 2005).

[157] We note that the stay of the rural telephone company investigation expired at the end of August 2006. However, by Opinion and Order entered November 13, 2006, at Docket No. I-00040105, *et al.*, the Commission acted, *inter alia*, to stay the rural telephone access charge investigation for an additional pending the outcome of the FCC's *Unified Intercarrier Compensation* proceeding at CC Docket No. 01-92, or for one year from the date of entry of that Order, whichever is earlier.

proceeding. (OCA M.B. Remand at 17-21). They further asserted that while the IXCs insist on the Commission taking immediate action in this case, the IXCs are not insisting that the FCC take immediate action in the *Intercarrier Compensation Proceeding*.[158] (VZ M.B. Remand at 15-16). The OCA contended that deferring action in this proceeding would ensure that potential double recovery of any access reductions by the FCC and the Commission that would most likely be made up by local service rate increases would be avoided. (OCA M.B. Remand at 10-13). It asserted that a delay in the Commission's potential reduction in intrastate access rates may also more likely allow Pennsylvania carriers to share in the universal service funding that may be made available as a result of the FCC proceeding. (OCA M.B. Remand at 3-4; 14). The OCA also argued that if the Commission postpones reducing access charges pending FCC action, the amount of revenue required to offset any access rate reductions will diminish because total access revenues are declining as a direct result of decreasing access minutes. (OCA St. 1R-R at 4). As such, the OCA believes that delaying access charge reform may decrease the burden of access reform on local rates in Pennsylvania. (OCA M.B. Remand at 15).

AT&T, MCI and Qwest argued that the Commission should act now to complete this phase of access reform. (AT&T M.B. Remand at 5-7; 11-14; MCI M.B. Remand at 10-12; Qwest M.B. Remand at 22-28).[159] These Parties argue that further reductions would be consistent with the Commission's prior stated policy in 1999 in the *Global Order* as well as the spirit of the Phase I Order. These parties argue that

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[158] Verizon submits that AT&T and MCI proposed a plan to the FCC that would allow a phase down with three years to achieve a single termination rate for all traffic, and then a transition period where this uniform rate is gradually reduced to shift cost recovery to end users culminating in a bill and keep regime as of July 1, 2011. (VZ. St. 1.0 Remand, Exhibit 3, ICF Comments at 6 and Appendix C at 6).

[159] The ALJ's Recommended Decision at 37-58 discusses detailed arguments proffered by each party as to why the Commission should or should not wait for the FCC's ruling in the Unified Intercarrier Compensation proceeding before deciding on this case.

immediate reductions will help reduce the competitive disadvantage that the IXCs have experienced because they are required to pay "subsidy laden access rates" that wireless carriers do not have to pay. (AT&T M.B. Remand at 12). The IXCs are also concerned that high access rates also give Verizon an unfair competitive advantage for its long distance services because Verizon only has to pay access rates to itself. They argue that this just shifts money from its long distance provider to its local service provider and that Verizon, therefore, avoids access charges for all calls that originate and/or terminate with its local exchange customers.[160] (AT&T M.B. Remand at 13). AT&T cites to its declining intrastate access minutes from Verizon from 2001 to 2004, and argues that this trend will continue until the access problem is resolved. (AT&T M.B. Remand at 14). These Parties also are concerned that, given the complex nature of the issues before the FCC, quick resolution of the *Intercarrier Compensation Proceeding* is unlikely. They argue that delaying further action in this proceeding would result in postponing the benefits of lower access rates to Pennsylvania consumers and would unfairly extend the competitive advantages held by the incumbent ILECs and wireless carriers in the intrastate toll market. (MCI M.B. Remand at 11-12).

The IXCs are also of the opinion that acting now to eliminate implicit subsidies from access charges and to reduce the jurisdictional gap between interstate and intrastate switched access charges would diminish the opportunity for regulatory driven arbitrage, enhance the competitive landscape and reduce customer confusion. (Qwest M.B. Remand at 23). Qwest is of the opinion that the impact of the FCC's *Intercarrier Compensation Proceeding* on local customers' rates would be minimized if the Commission acts to reduce its access rates as close as possible to the interstate access rates. It argues that the Commission can control the uncertainty of the outcome of the *Intercarrier Compensation Proceeding* by taking the initiative and minimizing the impact

[160] AT&T St. 1.0 at 11-18; AT&T St. 1-R at 16.

that local rate rebalancing will have on Pennsylvania consumers. [161] (Qwest M.B. Remand at 25).

b. ALJ Recommendation

As noted, the ALJ recommended that the Commission should move forward with additional access charge reform for Verizon and deny the requests of those parties who argued that the Commission should wait to make a decision in this case until after the FCC makes a ruling in the ICR proceeding. (R.D.-R at 58-60).

The ALJ made this recommendation because of the complexity of the FCC proceeding and the difficulty in predicting when the FCC will finally act. The ALJ also relied upon AT&T's demonstration that the Commission had several opportunities to stay this proceeding, but opted against it, even when it was aware of the FCC proceeding. The ALJ explained that the Commission expanded, rather than deferred, action on this case when it remanded this investigation to the ALJ to include information about the impact of the FCC proceeding even after the OCA suggested that the Commission stay this case because the FCC Intercarrier Compensation proceeding would impact on this matter. (R.D.-R at 60). Furthermore, the ALJ indicated that if it was the Commission's desire to stay this proceeding, the Commission would have stayed this investigation when it stayed the *Rural Access Charge Investigation* at Docket No. I-00040105, in August 2005. (R.D.-R at 59).

The ALJ also noted that the stay of the *Rural Access Charge Investigation* is distinguishable from the instant proceeding because: (1) the *Rural Access Charge Investigation* was instituted at the end of 2004, whereas the instant proceeding started in May 2003; (2) the instant proceeding is a remand in which the Parties have already presented testimony and submitted briefs in Phase 1 and the current remanded phase; (3) Verizon is neither a small company nor an average schedule company that receives

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[161] Qwest Remand St. 1.0 at 7.

federal Universal Service Fund Support; and (4) the Commission and the FCC will be able to adjust any additional charges to consumers to prevent the ILECs from recovering twice for the same access charge reduction. (R.D.-R at 59-60).

c. Exceptions

Verizon, the OCA and the OSBA filed Exceptions to the ALJ's recommendation on this matter. Generally, these Parties are of the opinion that the Recommended Decision does not justify moving forward in this proceeding without the benefit of the FCC's Intercarrier Compensation Reform proceeding. (*See* Verizon Exc.-R at 5–14; OCA Exc.-R at 3-11; OSBA Exc.-R at 3-5).

These Parties disagree with the ALJ's rationale that if the Commission wanted to stay this proceeding, it would have directed a stay when it responded to the ALJ's Phase I Recommended Decision in its *July 28, 2004 Order*. They assert that the Commission was unaware that the FCC was about to embark upon its own, more comprehensive investigation of Intercarrier compensation that would encompass the same issues it directed the ALJ to address on remand in its *July 28, 2004 Order*. They also submit that it was only in January 2005, when the Commission recognized the potential impact of developments in the federal arena on this remand proceeding and subsequently expanded the scope of the remand to a specific industry proposal and any impact the FCC action may have on our jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding.[162] Verizon notes that it wasn't until March 3, 2005, when the FCC subsequently issued a Further Notice of Proposed Rulemaking (FNPRM) seeking comments from the industry on a number of issues that could impact

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[162] January 18, 2005 Order at 14.

intrastate access charges and potentially alter or eliminate this Commission's jurisdiction over these issues.[163] (Verizon Exc.-R at 6-7).

The excepting Parties also submit that the Commission's decision in its *July 28, 2004 Order* to continue litigating this proceeding remanded the matter to the ALJ only for further record development concerning various access issues but did not predetermine that the Commission would unilaterally order access reductions without waiting for FCC Unified Intercarrier Proceeding. The OCA points out that the Commission concluded on page 14 of the *January 18, 2005 Order* that the ALJ shall be directed "to expand the scope of this proceeding for the purpose of addressing the impact the FCC action may have on our jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding." (OCA Exc.-R at 5). The OCA is of the opinion that it would be more costly to Pennsylvania consumers for the Commission to order access reductions at this time, before the FCC's ICC order and without advance coordination with any new FCC requirements.

The OCA also excepts to the ALJ's erroneous conclusion that Verizon PA and Verizon North are ineligible for federal Universal Service Fund support and, therefore, will not be harmed by this Commission moving forward with this investigation. The OCA notes that the FCC's 2004 Universal Service Report indicates that Verizon North does, in fact, receive FCC High Cost Support as Interstate Access Support. (OCA

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[163] In the FNPRM, the FCC specifically asked for comments on matters such as whether the FCC has legal authority to reform intrastate compensation mechanisms that have traditionally been handled by state commission (¶ 35, 80, 82); whether the FCC has authority to replace intrastate access regulation with some alternative mechanism (¶ 79); how lost revenue from intrastate access charges could be offset, including the possibility of subscriber charges and universal service funding (¶ 114); and whether the FCC should create a federal mechanism to offset any lost intrastate revenues, or whether the states should be responsible for establishing alternative cost recovery mechanisms for LECs within the intrastate jurisdiction (¶ 115).

Exc.-R at 6, Note 9, referencing the FCC's 2004 USF Report). The OCA also submits that just because Verizon PA does not receive support now does not mean that it will continue to not receive any support after the *Intercarrier Compensation Proceeding* is completed. (OCA Exc.-R at 6-7). The OCA also repeats the same argument it made in its brief that delaying this proceeding and allowing the FCC to take the first step in rebalancing rates may avoid the double recovery of any access revenue reduction. (OCA Exc.-R at 8).

The OSBA is of the opinion that the Commission's rationale for staying the Rural ILEC access charge proceeding should equally apply to this proceeding. (OSBA Exc.-R at 4-5). The OSBA disagrees with the ALJ's rationale used in determining that the Rural ILEC access charge proceeding is "distinguishable" from this proceeding. The OSBA cites to the Commission's discussion on pages 15-16 of that Order regarding the interaction of the yet unknown outcome of the FCC's Unified Intercarrier Compensation proceeding and this Commission's implementation of Act 183 of 2004, or the new Chapter 30 law. P.L. 1398, 66 Pa. C.S. § 3011 et seq. In that discussion, the Commission expressed concern about the potential effect on the rural ILECs' basic local exchange rates because any access charge restructuring would have to be implemented on a revenue-neutral basis under the new Chapter 30. (OSBA Exc.-R at 4-5).

Despite the argument made by Qwest, AT&T and MCI that it may take years before the FCC finalizes its actions in the Intercarrier Compensation Proceeding, the excepting Parties assert that the ALJ relied on speculation from those IXCs who suggested that the FCC will not act quickly. In this regard, Verizon avers that the FCC proceeding has been fully briefed, and individual FCC Commissioners have indicated that the agency is taking this matter seriously and urged the FCC to reach a resolution promptly.[164] (Verizon Exc.-R at 9).

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[164] VZ St. 1.0 Remand (Kane Direct) at 11.

Verizon and the OCA also disagree with the ALJ's rationale that if the Commission wanted this proceeding stayed, it would have stayed it at the same time it stayed the Rural Access Charge Investigation in August 2005. Verizon contends that, procedurally, the Commission could not have stayed this case at the same time as the Rural Access Charge Investigation because this case was not before it. (Verizon Exc.-R at 9). The OCA argues that the Commission's decision to stay the Rural Access Proceeding, but not this instant proceeding, does not mean that the Commission has prejudged that Verizon should proceed to further rate rebalancing without awaiting the FCC decision. (OCA Exc.-R at 6).

Verizon and the OCA also disagree with the ALJ's rationale not to stay this case because Verizon and Verizon North are ineligible for Universal Service Fund support.[165] They claim that this statement is factually incorrect, because Verizon North currently receives federal USF support to replace revenue lost by past FCC reductions in interstate access rates.[166] (VZ Exc.-R at 11; OCA Exc.-R at 6). Additionally, the excepting Parties contend that the issue is not just what federal USF funding the Verizon companies receive now, but rather what federal USF support, or some other funding mechanism, that may be provided in the future as a final result of the FCC's Intercarrier Compensation proceeding. (VZ Exc.-R at 11; OCA Exc.-R at 6-7). Verizon submits that the outcome could potentially apply to either of the two Verizon companies in Pennsylvania regardless of whether it currently receives federal funding today. (VZ Exc.-R at 11).

The excepting Parties are also concerned that if the Commission acts in advance of a final FCC Intercarrier Compensation Order, Verizon and its customers may

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165 R.D.-R at 59, 60.

166 As support for this argument, Verizon cites to a FCC report on its website that summarizes the amount of high-cost support received by qualifying telephone companies. *See,* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/mr04-3.pdf.

well lose the opportunity to use such funding. The OCA is particularly concerned that if the Commission decides to increase local rates to fund access reductions outside of Subscriber Line Charge (SLC) increases, it may be more difficult to reach such annual SLC benchmarks and new forms of federal USF may be less available. The OCA also submits that the FCC is unlikely to establish prospective funding for actions that have already occurred. Furthermore, the OCA is of the opinion that now that the FCC, through the efforts of the National Association of Regulatory Utility Commissions (NARUC) and the stakeholder parties are moving closer to issuing an ICC order, it would be unfortunate if Pennsylvania were to lose substantial funding because it decided to move in advance of the FCC. (OCA Exc.-R at 7-8). The OCA is also concerned that moving ahead to reduce access charges in Pennsylvania on the eve of federal Intercarrier Compensation reform will complicate the process of two regulatory commissions attempting simultaneously to revise the same access rates, and this may lead to the possibility of imposing double costs on Pennsylvania consumers and losing FCC financial support for any state rate rebalancing that is ordered. (OCA Exc.-R at 3-4).

Like the OCA, Verizon disagrees with the ALJ's general dismissal of the OCA's argument that reducing Verizon's intrastate access rates now could jeopardize future federal universal service funds or result in double recovery from end users.[167] Verizon points out that the OCA made virtually the same arguments in the rural ILEC access case, and the Commission noted its concern that "potentially increased federal USF funding may not apply to rural ILEC intrastate access charge reductions that will be put into place prior to the conclusion of the FCC's proceeding."[168] Verizon also cites other similarities of the OCA's arguments in this case and in the Rural ILEC investigation and is of the opinion that the Commission should rule in a similar fashion to delay further access charge reform in the instant proceeding until after the FCC acts. (Verizon Exc.-R at 12).

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[167] R.D.-R at 60.

[168] Rural Access Charge Investigation Order at 17.

Verizon also expresses its concern about serious risks of administrative waste that would occur if the Commission acts prior to a final FCC decision. Verizon argues that at the same time that the IXCs are demanding immediate access reductions in this proceeding, they are asking the FCC to preempt this Commission over intrastate access charges. In addition, Verizon asserts that the IXCs insist that this Commission take immediate action to reduce access charges but are suggesting a more leisurely schedule before the FCC. Verizon is concerned that if the FCC adopts the IXC's position to preempt the states with regard to intrastate access charges, all of the Commission's and the Parties' efforts expended in this case could be wasted because the Commission would lose its authority over intrastate access charge rates. (Verizon Exc.-R at 12-13).

Additionally, the OCA disagrees with the ALJ's suggestion that deferral of *this proceeding is necessary only if the FCC preempts state action. The OCA contends* that the same problems of coordinating federal benefits to pay for state access reductions would develop whether the FCC preempts the states or merely attempts to coordinate with state activity and encourage state access reform. Under either path, the OCA asserts that the Commission must consider the best way to maximize federal Intercarrier Compensation funding available to Pennsylvania. (OCA Exc.-R at 9).

In response to the ALJ's recommendation that the Commission can retroactively "adjust any rate increases to customers to prevent double recovery,"[169] the OCA urges the Commission not to complicate this process by 1) ordering the increases and decreases in tariffed local and access rates, 2) waiting for and tracking parallel federal efforts that accomplish the same thing, and 3) implementing state rate adjustments in order to retroactively resolve differences between FCC and Commission mechanisms. The OCA contends that such a "tracker" mechanism would be unprecedented and needlessly complex. (OCA Exc.-R at 10).

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[169] R.D.-R at 60.

For the foregoing reasons, Verizon, the OCA and the OSBA urge the Commission to wait until the FCC's decision in the Intercarrier Compensation proceeding and respond accordingly, rather that to adopt the ALJ's recommendation to forge ahead without no coordinated actions with the FCC.

AT&T disagrees with Verizon and the statutory advocates that the Commission should await a final FCC decision on access charge reform. AT&T is of the opinion that the ALJ's recommendations to eliminate the Carrier Charge within one year and to reduce the remaining traffic sensitive access rates to interstate levels within two years is reasonable because it balances the IXC's need for access reductions while accommodating Verizon's need to recover the lost access revenues in a reasonable and sustainable manner. (AT&T R.Exc.-R at 1).

AT&T also provides references and cites to the fact that the neighboring states of Virginia, West Virginia and Maryland have recently implemented similar access charge reductions in recent months without waiting for the FCC to act. (AT&T R.Exc.-R at 1). AT&T opines that the Commission should act now in light of the fact that the Commission has carefully built an exhaustive record on access matters over the past twelve years and now has all the tools it needs to resolve Verizon's access issues. (AT&T R.Exc.-R at 2, 4).

AT&T submits that it is important to move forward in light of the fact that the record evidence shows that AT&T's intrastate access minutes from Verizon have decreased significantly over the three-year period from 2001 to 2004. (AT&T R.Exc.-R at 2-3; AT&T St. 1-R at 10; AT&T St. 1.2-R at 14, 15). AT&T attributes its loss of access minutes due to new entrants not having to pay the same high access rates as the IXCs. As such, AT&T asserts that the ALJ's recommendation is a reasonable attempt to correct the cost disparity between IXCs and recent new entrants so that Pennsylvania

consumers could continue to have wireline long distance service as a viable option, while allowing local exchange carriers to recover lost access revenues from other sources. (AT&T R.Exc.-R at 3).

d. Disposition:

Upon our review of the Exceptions and in light of the recent activities at the FCC, we are of the opinion that it would be best to defer a decision in this proceeding until after the FCC concludes its *Intercarrier Compensation Proceeding* and the Missoula Plan filing, or for a period of at least another year, whichever is less.[170] Until then, we shall maintain the *status quo* on the intrastate carrier access charges of Verizon Pennsylvania Inc. (Verizon PA) and Verizon North Inc. (Verizon North).

In making this determination, it is important to note that on November 9, 2006, we acted to continue the stay of the Rural ILECs Access Charge Investigation.[171] We took that action in view of the FCC's continuing *Intercarrier Compensation Proceeding* and the pending Missoula Plan filing. In view of the potential impact that these two federal proceedings may have on intrastate carrier access charge reform, we deemed it reasonable to continue the stay of the Rural ILEC Access Charge Investigation. In a subsequent and related Order in the Rural ILEC Access Charge Investigation proceeding, entered November 15, 2006, we noted the following:

> In Pennsylvania, we have taken steps to gradually reduce intrastate access charges through revenue-neutral methods, in an effort to increase competition in rural areas,

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[170] *See generally In re Developing a Unified Intercarrier Compensation Regime – Missoula Intercarrier Compensation Reform Plan*, FCC Docket No. CC 01-92, DA 06-1510.

[171] *Investigation Regarding Intrastate Access Charges And IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, Docket Nos. I-00040105, R-00061377 et al., Order entered November 15, 2006 (Rural ILEC Access Charge Investigation).

while assuring affordable and reliable residential service in those areas by establishing our own Pennsylvania Universal Service Fund. We have a closed system, whereby certificated carriers offering service in Pennsylvania help support the intrastate access charge reform by contributing to the Pennsylvania Universal Service Fund. Intrastate revenues are re-distributed within the Commonwealth. This fund supports rural ILECs that are undergoing network modernization to offer residential rates at reasonable costs while still promoting competition in the rural more high-cost areas of the state. Most states do not have a similar fund.

The Missoula Plan apparently advocates that the FCC should exercise its authority to preempt state regulation of intrastate access and local interconnecttion and establish alternative cost recovery mechanisms within the intrastate jurisdiction. If adopted, it is unclear what this would cost Pennsylvania carriers and their ratepayers. If a federal USF were to replace individual state USFs in access charge reform, it is possible that Pennsylvania would be a net-contributor to the federal Fund regarding access charge reform because we have already undertaken reform within our state, and our intrastate access charges are lower than many other states. Thus, other states would have a greater need to draw from a Federal USF to support a revenue-neutral intrastate access charge reduction. Probably, the states with higher revenues then would be contributing more to the Fund. This national re-distribution of wealth, from urban to rural states is a political policy, but not one which Pennsylvania advocates, because, although we have rural areas within our state, we are not a rural state when compared to Arkansas, Alaska, and Wyoming for example. Pennsylvania is generally a net-contributor to the Federal Universal Service Fund currently. Although we receive some monies for our Lifeline/Link-Up programs, Rural Health Care, Schools and Libraries, and High-Cost Support, our ratepayers pay far more into the Federal USF, than is given back by those four programs. All carriers operating in the nation would be contributing on a *pro-rata* share possibly based upon their revenues, and possibly, Pennsylvanians would pay a large portion of the cost.

The Missoula Plan proposes an "Early Adoptor Fund" of $200 million to support states that have already reduced

> intrastate access charges to closer mirror interstate access charges. However, since our PaUSF's inception in April, 2000, our 35 rural ILECs have received over $200 million from the PaUSF in aggregate. Therefore, Pennsylvania would possibly not be able to fully recover under the "Early Adopter Fund" as proposed. The Missoula Plan also brings into question whether this Commission should act quickly to order further intrastate access charge reductions which possibly then would hurt our chances in the future of receiving federal subsidy monies for these reductions. Given all of these potential changes at the federal level that can affect universal service, we agree that the Joint Motion should be granted.
>
> Moreover, we are persuaded to stay the investigation because there is pending United States Congressional legislation designed to change existing federal USF funding and potentially related issues and Congress is now back in session. A bill called the Universal Service Reform Act of 2006 (HR 5072) was introduced by House Representatives Rick Boucher and Lee Terry this year. A comprehensive legislative telecommunications reform initiative sponsored by Senator Stevens (HR 5252) also contains stabilization provisions for federal universal service funding purposes. Further stay of the procedural schedule at Docket No. I-00040105 remains both judicious and warranted until changes arising from the federal legislative landscape have settled and are known.

Rural ILEC Access Charge Investigation, Docket Nos. I-00040105, R-00061377 *et al.*, Order entered on November 15, 2006, at 11-12.

We are of the opinion that the major issues in the instant proceeding present material similarities with the issues in the Rural ILEC Access Charge Investigation. In the instant case, however, we are faced with the choice of delaying taking any action, as certain parties advocate, or proceeding with the incremental access charge reform recommended by the ALJ.

We agree with the OCA and other parties that the potential impact of the FCC *Intercarrier Compensation Proceeding* and the associated Missoula Plan proposal

may affect *both* interstate *and intrastate* access charge reform, and that the end-user consumers of Verizon PA's and Verizon North's basic local exchange services may have to absorb these effects into their local rates, *e.g.*, through increases in their federal subscriber line charges (SLCs). In addition, it is likely that the absorption of these effects may be "on top" of the "revenue neutral" adjustment of the Verizon ILEC local rates following the elimination of the Carrier Charge as recommended by the ALJ. In this regard, we are persuaded by the OCA's demonstration of the cumulative effect of this Commission's and the FCC's potential access reform actions if such actions are *not coordinated.*[172]

We also agree with the OCA that if we were to adequately coordinate the "revenue neutral" elimination of the Carrier Charge with interstate (and potentially intrastate) access charge reforms resulting from the FCC's *Intercarrier Compensation Proceeding* access charge reforms, the Commission would need to establish a "rate tracker mechanism" that "would be unprecedented and needlessly complex." OCA Exc.-R at 10. In a similar vein, we concur with the OCA argument that the premature elimination of the intrastate Carrier Charge may deprive the Verizon ILECs of possible future available federal support through the FCC that might be designed to offset such access charge reductions. *Id.*, at 10-11.

In light of the above, and consistent with our reasoning and actions in the Rural Access Charge Investigation, we shall further stay the instant proceeding pending the outcome of the FCC's *Intercarrier Compensation Proceeding* at CC Docket No. 01-92, or for a period of one year, whichever is earlier;[173] **THEREFORE,**

IT IS ORDERED:

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172 OCA M.B.-R, at 12.

173 It is important to note that in light of our decision to stay the instant remand investigation at this time, the remaining Exceptions are rendered moot.

1. That the Exceptions filed by Verizon Pennsylvania Inc. and Verizon North Inc., AT&T Communications of Pennsylvania LLC, Qwest Communications Corporation, the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff, are granted, in part, denied, in part, or otherwise deemed moot, consistent with the discussion in the body of this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Cynthia Williams Fordham is modified consistent with this Opinion and Order.

3. That the instant proceeding be stayed pending the outcome of the FCC's *Intercarrier Compensation* case at CC Docket No. 01-92 or for a period of twelve (12) months from the date of entry of this Opinion and Order, unless extended by Commission Order, whichever is earlier.

4. That the Commission Staff from the Office of Special Assistants and the Law Bureau is hereby directed to monitor developments in the Federal Communications Commission's *Intercarrier Compensation Proceeding*.

5. That upon the expiration of the twelve-month stay of the instant proceeding or the issuance of a Federal Communications Commission ruling in the *Intercarrier Compensation* case, whichever occurs earlier, the parties to this proceeding shall submit status reports to the Commission pertaining to common or related matters in the instant proceeding and the FCC's *Intercarrier Compensation Proceeding* and the need for any coordination of such matters or any new issues that may arise once the instant proceeding is reactivated. Such status reports shall be due thirty (30) days prior to the expiration of the one-year stay of the instant proceeding or thirty (30) days after the FCC ruling in its *Intercarrier Compensation Proceeding*, whichever occurs earlier.

6. That upon the receipt of the of the status reports described in Ordering Paragraph No. 5 above, the Office of the Special Assistants and the Law Bureau

shall prepare a Staff recommendation for the Commission's timely consideration at a Public Meeting that would reactivate the instant proceeding and either dispose of the outstanding substantive issues with additional and updated input by the parties in the form of additional briefs and evidentiary written submissions, or refer the matter to the Office of Administrative Law Judge in a second remand proceeding.

7. That the intrastate carrier access charges of Verizon Pennsylvania Inc. and Verizon North Inc. shall not be modified at this time.

8. That a copy of this Opinion and Order be served on all Parties to this proceeding.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 30, 2006

ORDER ENTERED: January 8, 2007