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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 Annual Price Stability Index/Service Price Index Filing of Denver & Ephrata Telephone and Telegraph Company	:	Docket No. P-981430F1000; R-00061377
2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company	:	Docket No. P-981428F1000; R-00061375
2006 Annual Price Stability Index/Service Price Index Filing of Conestoga Telephone & Telegraph Company	:	Docket No. P-981429F1000; R-00061376

REPLY EXCEPTIONS
OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

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

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

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

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

By Notice dated November 14, 2006, the Commission established a Prehearing Conference for November 28, 2006 before Administrative Law Judge Susan Colwell. During that Prehearing Conference, ALJ Colwell granted Verizon's Petition to Intervene and established a procedural schedule for the reconsideration proceeding. Pursuant to that procedural schedule, the Companies and Verizon filed Direct Testimony on December 18, 2006; the Companies, Verizon, OCA and OSBA filed Rebuttal Testimony on January 5, 2007; and the Companies and Verizon filed Surrebuttal Testimony on January 12, 2007. One day of hearings was held in Harrisburg on January 17, 2007 for the purpose of admitting testimony and exhibits into the record and for cross examination of witnesses. Main and Reply Briefs were filed by the parties on January 26, 2007 and February 2, 2007, respectively.

ALJ Colwell's Recommended Decision was issued on February 22, 2007. ALJ Colwell determined that the D&E companies are not in violation of any Commission regulation or Order and that there is no legal reason to disallow the rates as submitted. In response to the Recommended Decision, Verizon filed Exceptions on March 13, 2007. No other party filed any Exceptions to ALJ Colwell's decision. In response to Verizon's Exceptions, the OCA submits the following Reply Exceptions.

II. SUMMARY

Verizon's Exceptions, both individually and collectively, are without merit and should be rejected. Verizon's argument essentially is that the increased revenue allowed should be collected from rates other than those rates that Verizon pays: access rates. In the process of trying to avoid paying what it is legally being charged, Verizon raises many policy arguments.

However, these arguments do not prohibit the D&E companies from raising its intrastate access charge rates. Verizon also argues that the Recommended Decision improperly placed the burden of proof on Verizon instead of the D&E companies. However, this argument fails to recognize that the ALJ initially determined that the D&E companies satisfied their burden, after which the burden switched to Verizon to prove why the rates should not increase.

Verizon has raised issues that would more appropriately be addressed in the pending rural access case investigation, and not as part of this proceeding involving only three small rural telephone companies. Verizon's arguments regarding the impact of the increase in intrastate access charges on competition are also without merit and should be rejected. Substantial record evidence demonstrates that the increase in D&E's intrastate access charge rates does not impact competition in the D&E territory. The Commission must also reject Verizon's arguments that the increase in intrastate access charge rates should be rejected because that rate subsidizes basic local service. There is no record evidence that supports a finding that a subsidy is present. In fact, there is substantial evidence to the contrary. Ultimately, Verizon proposes additional obligations and requirements on D&E's ability to make rate changes that are not supported in law or fact and Verizon would not want imposed on its own ability to make rate changes. The Commission's focus in this proceeding should be on the issue of whether D&E's rates are just and reasonable.

As such, the OCA submits that ALJ Colwell's Recommended Decision determining that no rescission or amendment is warranted at this time is sound and should not be changed.

III. REPLY EXCEPTIONS

OCA Reply Exception No. 1 - The ALJ Properly Determined That The D&E Companies' Access Charge Rate Increases Are Not In Violation Of Any Commission Regulation Or Order. Verizon Exception No. 1; ALJ R.D. at 31; OCA M.B. at 3-6; OCA R.B. at 1-4.

In its Exceptions, Verizon argues that the ALJ erred by holding that the Commission's policy to reduce other carrier's access charges is no longer "effective." Verizon Exc. at 6-14. Verizon further argues "there can be no doubt that the Commission's goal with respect to the extremely high access rates of rural carriers such as the D&E Companies has been, and continues to be, to reduce those rates." Id. at 7. Verizon then provides a discussion of various Orders that, it argues, support its position that it has long been the Commission's policy to reduce access rates, not increase them. Verizon's argument, however, does not distinguish between Commission policies and Commission orders and regulations.

ALJ Colwell correctly articulated in her decision that

> In the absence of a Commission determination regarding the proper method of figuring switched access rates, the [D&E] Companies are in violation of no Commission regulation or Order. ... Without a finding of a violation of any Commission orders or regulations, there is no legal reason to disallow the rates as submitted.

R.D. at 31. Despite Verizon's argument regarding the ALJ's determination whether the Commission's policies are still effective, the fundamental issue in this proceeding is that the D&E Companies have not violated any Commission regulation or order by increasing their intrastate access rates in response to the June 23, 2006 filing. As indicated below, it is well established that Commission policies do not have the force and effect of law but are only an indication of actions the Commission may take in response to a certain situation. *See*, page 8, *infra*. Verizon has never in this proceeding identified any Commission regulation or order, or

any other law, which the D&E Companies' actions violate. The ALJ's determination is sound and should be affirmed.

The Commission's prior orders that Verizon discusses in its Exception speak for themselves. The Commission is aware of its efforts over the past decade to reduce intrastate access rates as a matter of policy. However, the Commission itself has specifically recognized that none of those orders created an explicit prohibition against a telephone company raising its intrastate access rates. This fact was reiterated in the December 8, 2006 Reconsideration Order at this docket. The Commission there stated that its "Orders did not explicitly impose a ban on proposing increases to access charges." December 8, 2006 Order at 13; *see also*, Verizon Exc. at 13, 14. The Commission even recognized in its November 15, 2006 Order instituting this reconsideration proceeding that "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." November 15, 2006 Order at 15. Again, the Commission did not prohibit intrastate access charges from being increased.

Verizon further confuses the issues in this proceeding with additional arguments in this Exception, and others, that the D&E companies' access charges subsidize their rates for basic local service. Verizon Exc. at 8-10. Verizon's argument that the D&E companies' local rates are subsidized by their access rates is without merit and should be rejected. OCA witness Dr. Robert Loube testified extensively concerning the lack of proof that a subsidy exists. OCA M.B. at 4-7. Dr. Loube explained that so long as the local service charge is greater than the incremental cost of providing local service, it is impossible to demonstrate that a subsidy exists. OCA St. 1-R at 5. Dr. Loube added that access service rates do not contribute a subsidy unless the price of access is higher than its stand-alone cost. Id. The applicable question is not whether

a subsidy exists, but how the network costs that are shared between access and local service should be recovered. Id.

Verizon has not contested Dr. Loube's testimony regarding subsidies. In fact, Verizon's own witness dismissed the issue regarding the definition of subsidy as irrelevant to this case. Verizon witness Price contended that the question of how shared network costs should be considered in determining the existence of a subsidy is unimportant to this proceeding. Verizon St. 1.2 at 9. Mr. Price claimed: "That argument is not relevant to the issues for this proceeding, and will certainly be raised in the generic investigation of the small carriers' access rates." Id.

Based on Dr. Loube's testimony, it is apparent that the local residential incremental cost of service is less than the rate being paid. *See*, OCA R.B. at 2. The record in this proceeding is clear that access rates do not provide a subsidy and residential rates do not receive a subsidy. Id. Verizon's reliance on prior Commission orders regarding this issue is without merit and should be rejected, particularly as its own witness recognized that the Commission never examined on a substantive basis the facts underlying the small carriers' access charges. Verizon M.B. at 23. Whether a subsidy exists between the D&E companies' access and local rates is a factual determination that can only be made based upon record evidence. Such evidence has not been provided in this proceeding.

Dr. Loube further testified that Verizon's argument that the D&E Companies' local rates are subsidized by their intrastate access rates is without merit because the D&E Companies impose a per-line carrier charge on interexchange carriers. OCA St. 1-R at 10. Therefore, "because these rates are per-line rates, no subsidy is generated by high-volume users to support costs associated with low-volume users." Id. Additionally, it is not possible to assert the existence of a subsidy in this proceeding because no party to this case filed an incremental cost

study. Id. at 10-11. As a result, "it is not possible to determine if local service is receiving a subsidy from other services whenever it is not possible to state that the price is below the incremental cost of service." Id. at 11. Any assertion by Verizon that the D&E Companies' access rates provide a subsidy of local service cannot be supported by the record in this proceeding.

Finally, to the extent that the Commission determines to explicitly prohibit intrastate access charge increases, and codify its policy on this matter, it should do so in the pending investigation at Docket No. I-00040105 that has currently been stayed by the Commission. That investigation is the proper forum for a thorough review of the arguments for and against small rural telephone companies, such as the D&E companies, adjusting their intrastate local access rates. Any determinations made in this proceeding regarding a small rural carrier's ability to raise its intrastate access rate may have an impact on other small rural carriers who are similarly situated.

General policies alone are not sufficient to determine rate levels in specific cases. Rather, current rates and costs should be considered when setting rates. The ALJ properly determined that the D&E Companies' access charge rate increases are in violation of no Commission regulation or order.

OCA Reply Exception No. 2 - The ALJ Properly Determined That The Record In This Proceeding Does Not Establish That The D&E Companies' Intrastate Access Rates Are Unjust Or Unreasonable. Verizon Exception No. 2; ALJ R.D. at 30-31.

In its Exceptions, Verizon argues that the ALJ erred in holding that only an express prohibition in a Commission order or regulation, and not the Commission's policy to reduce access charges, can support a finding of unjust or unreasonable rate structure. Verizon Exc. at 14-17. Verizon further argues that the ALJ "makes no attempt to determine whether the access

increases are just and reasonable, only whether they are per se illegal." Id. at 15. These arguments are similar to the arguments Verizon raises in its first Exception discussed above. As such, the OCA incorporates its Reply Exception No. 1 as part of this Reply Exception. Even so, Verizon's Exception No. 2 should be rejected just as its Exception No. 1 should be rejected as well.

Verizon's reliance on Commission "policies" to support its argument is unfounded and should be rejected. It is well established that the Commission's policies do not have the force and effect of law but are only an indication of what actions the Commission may take in response to a certain situation. Pennsylvania Human Relations Comm'n v. Norristown Area School Dist., 473 Pa. 334, 374 A.2d 671 (1977) ("PHRC"); *see also*, Pacific Gas & Electric Co. v. FPC, 506 F.2d 33 (D.C. Cir. 1974)("Pacific Gas").

Verizon argues that "the RD blithely concludes that unless the Commission has expressly ruled that access rates increases will ***never*** be allowed, the Commission has no choice but to allow these ***particular*** increases to remain in effect, regardless of whether they are consistent with Commission policy." Id. at 15 (emphasis in original). However, the standard that Verizon seeks to establish, that the Commission has rejected ever allowing an access rate increase, is without merit and should be rejected. If Verizon's standard were to be accepted, Pennsylvania telephone companies would be prohibited *per se* from ever being able to propose a potential increase in any access rates regardless of rate levels, costs, the changing nature of the industry and other relevant factors. Telephone companies should have the opportunity to propose access rate increases as just and reasonable under the facts for each company. Such a determination should be made on the facts and evidence provided to the Commission in each proceeding. Verizon's argument to the contrary should be rejected.

The Commission should also reject Verizon's argument that D&E has made no serious attempt to make a showing in this case that an access rate increase can be just and reasonable under specific circumstances. Verizon Exc. at 16. Verizon's argument here reverses the burden of proof in this proceeding. The D&E companies have previously demonstrated that their rates were just and reasonable and the Commission allowed them to be implemented as such. On reconsideration, the D&E companies provided further evidence supporting such a finding. ALJ Colwell discussed the burden of proof as it pertains to this proceeding and accurately recognized that, in light of the D&E companies showing in this reconsideration proceeding, the burden then shifted to Verizon. R.D. at 15-17. As a result, it is Verizon, not the D&E companies who have failed to meet their burden since D&E met its initial burden of proof.

Finally, Verizon argues that the D&E companies' access rate increases do not protect "other carriers that have no choice but to pay the D&E companies' tariffed rates for switched access service for calls originated from or terminated to D&E end users." Verizon Exc. at 17. Verizon, as well as all other customers that pay the applicable rates, have the opportunity to contest how certain allowed rate increases should be recovered. Verizon has been permitted to put on the record extensive testimony concerning these matters but the ALJ correctly determined that Verizon has failed to show that the D&E companies' increases should be rejected. Moreover, it is not Verizon or Verizon local exchange customers who are paying for the access rate increase. Rather, it is Verizon's long distance customers who may see an increase in the price of their service to pay Verizon's increased cost. As a result, these customers, some of whom are D&E local exchange customers, are paying for the use of D&E's equipment and facilities that allow Verizon's long distance subsidiaries to originate and terminate calls.

The ALJ properly determined that the record in this proceeding does not establish that the D&E companies' intrastate access rates are unjust or unreasonable. Verizon's argument to the contrary should be rejected.

OCA Reply Exception No. 3 - The ALJ Properly Determined That After The Proponent Has Satisfied Its Burden, The Focus Shifts To Determining Whether The Opposing Party Has Submitted Evidence Of Equal Or Higher Weight To Rebut The First Party's Evidence. Verizon Exception No. 3; ALJ R.D. at 15-17, 31-32.

In its Exceptions, Verizon argues "the RD's burden-shifting conclusion directly contradicts the Commission's directive that ***D&E*** (not Verizon) has the burden to justify its proposal to increase rates." Verizon Exc. at 18 (emphasis in original). Verizon further argues that Section 315 of the Public Utility Code requires that burden of proof to show that any proposed or existing rate is just and reasonable shall be upon the utility. Id., *quoting*, 66 Pa. C.S. § 315(a). Verizon's argument, and its reliance on Section 315, overlooks the fact that prior to shifting the burden to Verizon, the ALJ determined that the D&E companies already satisfied their burden that their intrastate access rates were just and reasonable. The ALJ clearly outlined the burden of proof issue in the Conclusions of Law and appropriately followed the law. R.D. at 31-32. As such, Verizon's argument is without merit and should be rejected.

The ALJ determined that the D&E companies' intrastate access charge increases do not violate any Commission order or regulation. R.D. at 31. This determination was based on the substantial record evidence that the D&E companies submitted in this proceeding. *See*, R.D. at 4-9. Once the ALJ made the determination that D&E satisfied its burden, the burden then switched to Verizon to prove that D&E's rates were not just and reasonable or otherwise in accordance with the law. It is this burden, and not the initial burden of proof, that the ALJ correctly determined Verizon failed to satisfy.

Verizon also argues that the Commission previously found that the D&E rates were "inflated." Verizon Exc at 17. Such a finding is not relevant because the conditions that may have supported that finding do not exist. D&E has presented evidence in this proceeding that shows that its current access rates are in line with its costs and thus not inflated. *See*, R.D. at 19-20. In response to the Commission directives in its reconsideration order, D&E presented evidence in this proceeding that the ALJ determined further supported a finding that the D&E companies satisfied their burden. *See*, R.D. at 4-9. As a result, it then becomes incumbent upon the party opposing those rates, which in this case is Verizon, to carry their burden to prove that the rates should not be adopted. It is that burden that Verizon has failed to satisfy.

Verizon's arguments regarding Section 315 are without merit and should be rejected because the ALJ found that the D&E companies satisfied their initial burden. This burden of demonstrating that the rates are not just and reasonable has then shifted to Verizon. It is incumbent upon Verizon to prove why its position should be adopted. Verizon did not satisfy that burden so its Exception must be denied.

The ALJ properly determined that, after the proponent of the burden of proof has satisfied its burden, the focus shifts to determining whether the opposing party has submitted evidence of equal or higher weight to rebut the first party's evidence. The D&E companies have satisfied their burden of proof in this proceeding but Verizon has not been able to effectively rebut that showing. Verizon's argument should be dismissed.

OCA Reply Exception No. 4 - The ALJ Properly Determined The D&E Companies Have Satisfied Their Burden In This Proceeding. Verizon Exception No. 4; ALJ R.D. at 29-31; OCA M.B. at 10-15.

1. Introduction.

In its Exceptions, Verizon argues that the ALJ erred in determining that the D&E companies have satisfied their burden of proving the access rate increases to be just and reasonable. Verizon Exc. at 20-33. This is a multi-pronged Exception that raises several arguments. Some of these arguments reargue issues previously stated in other Exceptions. For example, Verizon continues to argue that the D&E intrastate access charge increases represent a subsidy of their local service charge. The OCA previously articulated why the intrastate access charge increases do not represent a subsidy and incorporates that discussion herein. As discussed further below, Verizon's arguments are without merit and should be rejected.

2. The D&E Rate Increases Do Not Violate Any Commission Order Or Regulation.

To begin, Verizon reiterates its argument that the D&E intrastate access charge increases violate Commission policy. Verizon Exc. at 21. Verizon previously raised the issue regarding violating Commission policy in a prior Exception. The OCA demonstrated above that the ALJ correctly concluded that the D&E rate increases violate no Commission order or regulation. It is well established that Commission policies do not have the force and effect of law but are only an indication of what actions the Commission may take in response to a certain situation in the future. PHRC, Pacific Gas, *supra*.

3. Verizon's Argument Regarding Maintaining The Status Quo Is Without Merit And Should Be Rejected.

Verizon next argues that it is unjust and unreasonable for D&E to raise their intrastate access charges because it "disturbs the status quo." Verizon Exc. at 21-23. Verizon argues that

D&E's recent request for a stay of the rural access investigation case, *supra*, while raising those same rates, is "basis alone to conclude that the increases are unjust and unreasonable." Id. at 22. However, Verizon provides no support for this argument. Nor is there any evidence in the record of this proceeding to support this argument. Clearly, Verizon would not argue that a ***reduction*** in D&E's intrastate access rates would violate the status quo because such a reduction benefits Verizon.

However, Verizon argues that the status quo should be maintained in this instance where Verizon does not benefit from the ***increase*** in intrastate access rates paid by Verizon. Otherwise, Verizon argues that D&E's rates are "unchecked," Id. at 23, but fails to identify any order or regulation that these increases violate. Verizon's argument should be rejected.

4. Verizon's Arguments Should Be Rejected Because They Raise Additional Requirements For D&E Beyond What Is Required By Chapter 30.

Next, Verizon argues that the D&E companies should be required to demonstrate "that their previous access rates were inadequate or that there is any need to increase their reliance on revenues from other carriers." Id. at 23-26. Verizon's argument creates an additional burden or standard that must be accomplished for the companies to raise rates in a manner that otherwise is consistent with Chapter 30 and the companies' individual Chapter 30 plans. Ultimately, Verizon again fails to provide any citation or record evidence for its argument. In particular, in making this argument, Verizon fails to recognize that D&E's intrastate access charge increases are allowed under the Companies' Chapter 30 plans.

Verizon again relies on its contention that the D&E intrastate access charge rate increases are a subsidy. *See e.g.*, Verizon Exc. at 24. Here, Verizon adds that if "D&E is allowed to increase its access rates without justification, then other carriers will be emboldened to try the same thing." Id. In making this argument, Verizon recognizes that its concern with D&E's

increases in this proceeding are best addressed in the rural access investigation. Verizon should not be allowed to attack the D&E companies in this proceeding to discourage certain actions of other companies that should be addressed in the generic investigation. If Verizon disagrees with the stay implemented in that investigation, that is an issue to be addressed in that docket and not in this proceeding that pertains specifically to D&E's June 2006 rate changes.

Verizon also argues here that D&E's intrastate access charge increases "keep its own retail rates artificially low and thus discourage competition within its territorial boundaries." Id. at 25. Substantial record evidence in this proceeding demonstrates that Verizon's arguments regarding the impact of D&E's rate changes on competition are without merit and should be rejected. OCA M.B. at 10-13. Consumers rates should not be increased by $2, for example, just so a hypothetical competitor can raise rates and become more profitable. There is no evidence to demonstrate that such competitive conditions would actually occur. Furthermore, OCA witness Dr. Loube testified that the profit a competitor could earn in a particular market is dependent on all the revenues that the competitor would receive from serving a customer, not just basic local exchange revenues. OCA St. 1-R at 20. Since a competitor could also raise its access rates by the same amounts as D&E, there is no competitive advantage to D&E raising its intrastate access rates.

Dr. Loube further testified that Verizon's arguments are inconsistent with positions Verizon has taken on this issue in the Commission's recent Pennsylvania Missoula workshop. Id. at 21 (citations omitted). Additionally, Verizon has not presented any evidence that long distance carriers are leaving rural markets and serving only urban markets as a result of intrastate access increases as Verizon suggests. Id. at 23. Instead, long distance competition in general has decreased as a result of consolidation in the industry through mergers and acquisitions, including

Verizon's acquisition of MCI. Id. at 24-27. Finally, Dr. Loube noted that Verizon's arguments should be rejected because long distance companies normally set their rates based on nationwide considerations, not increases in a particular market. Id. at 23. Verizon's argument regarding the impact of D&E's access charge increases on long distance competition is without merit and should be rejected.

5. Verizon's Comparison Of D&E's Intrastate Access Rates To Other Carriers Is Without Merit And Should Be Rejected.

Verizon argues in its Exceptions that "another factor that the Commission should consider when analyzing whether these [D&E] rate increases are just and reasonable is how these rates compare to the rates other carriers charge for the same services." Verizon Exc. at 26. However, again, Verizon provides no cite to precedent or record evidence for support of this argument. Verizon is again creating a standard for D&E to change its rate that it would likely not have imposed on itself. Other carriers' intrastate access charge rates are not determinative in this proceeding.

Verizon adds that "although the D&E carriers attempt to depict themselves as 'frontrunners' in access reform among the rural ILECs, the record evidence ... shows that, at best the D&E carriers are in the middle of the pack." Id. at 30. Verizon claims that "these are among the questions that must be addressed in the rural carrier access investigation." Id. Whether or not Verizon is correct concerning the scope of the rural access case, such a proposition does not demonstrate that this issue need be addressed in the current proceeding. Verizon's point should be raised in the investigation proceeding.

6. The D&E Companies Acted Within Their Discretion In Implementing The Increase To Their Intrastate Access Rates.

Verizon's final argument in this Exception is that "it is unjust and unreasonable to allow the D&E Companies to raise access rates because they could have implemented their PSI filings without raising access rates." Verizon Exc. at 31-33. ALJ Colwell correctly determined that D&E exercised its discretion to raise its intrastate access rates amongst the other rates they could have raised in order to recoup their allowed revenues under the Chapter 30 plan. R.D. at 30. Verizon recognizes this discretion in its Exception. Verizon Exc. at 31. Verizon's argument again is without support in the record and should be rejected.

Verizon argues that "even if one assumed that all of the revenue presently allocated to access increases would instead be allocated to basic rate increases, D&E's rates would increase by only $1.35, Conestoga's by only $1.28, and Buffalo Valley's by only $0.96." Id. at 32. Verizon recognizes too that D&E's $1.35 increase would put that company $0.86 over the Commission's $18 affordability benchmark level. Id. Verizon's argument that the D&E Companies' additional PSI revenue should be spread evenly over basic local service rates should be rejected. Verizon's argument essentially is that the increased revenue allowed should be collected from rates other than those rates that Verizon pays: access rates.

Verizon does not recognize the impact on consumers of allocating the allowed increased revenue to basic rates. As Dr. Loube noted, the telephone penetration rate in Pennsylvania has declined from as high as 98.0 percent in 2002 to 94.8 percent in March 2006. OCA St. 1-R at 27-28 (citation omitted). Dr. Loube added that "one factor that may be contributing to the decrease is the fact that the rate for local service has been increasing." Id. at 28. As discussed further below, Verizon's argument also will have a negative impact on the Pennsylvania Universal Service Fund. Furthermore, Verizon's argument should be rejected because it

contradicts the directives of the General Assembly to maintain basic local service rates at affordable rates. 66 Pa.C.S. § 3011(2).

Finally, to support its argument, Verizon argues that "the companies have provided no evidence to back up their bare claim that competitive pressures would prevent them from making these rate increases." Verizon Exc. at 33. Verizon assumes that it has the knowledge and experience to discount and contradict the determination made by the Vice President of Marketing and Vice President of Customer Service for D&E and provides no evidence to contradict those determinations. The D&E companies' determination regarding the competitive pressures they face should be given more weight than Verizon's argument because Verizon has failed to provide evidence to support its contrary position.

7. Conclusion.

The Commission should reject Verizon's Exception that the ALJ erred in holding that the D&E companies have satisfied their burden of proving the access rate increases are just and reasonable. Verizon has not provided any evidence or legal justification to support its arguments. Instead, Verizon inappropriately argues for additional requirements and obligations to be placed on D&E's ability to apply rate increases as permitted under D&E's Chapter 30 Plan. Verizon's argument that the increased revenue allowed should be collected from rates other than those rates that Verizon pays, access rates, should be rejected.

OCA Reply Exception No. 5 - Verizon's Argument That It Is Not Necessary That D&E's Access Rates Be Just And Reasonable Is Without Merit And Should Be Rejected. Verizon Exception No. 5; OCA R.B. at 4-5.

Verizon Excepts to the ALJ's supposed failure to address Verizon's alternative argument that D&E's access revenue should be rebalanced to other noncompetitive rates under section 3017(a) of the Public Utility Code. Verizon Exc. at 33-34, *citing*, 66 Pa.C.S. § 3017(a). Verizon

argues that access rates are different from other noncompetitive revenues because Section 3017(a) "provides the Commission with specific authority to further access reform policies by reducing the D&E companies' access rates to pre-July 1, 2006 levels (ie, to maintain the status quo), without finding that the increases were 'unjust and unreasonable,' so long as the reduction is done on a revenue-neutral basis." Id. at 34. Verizon then criticizes the RD because it does not mention Section 3017(a). Verizon's argument is without merit and should be rejected.

To begin, Chapter 30 specifically provides that "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." 66 Pa. C.S. § 3015(g). This provision was specifically reiterated by the General Assembly in Section 3019(h). 66 Pa. C.S. § 3019(h). Verizon even recognized the application of Section 1301 in its Main Brief. Verizon M.B. at 9-10. On this basis alone, Verizon's argument that Section 1301 is somehow not applicable to this proceeding is without merit and should be rejected.

Furthermore, however, Section 3017(a) provides, as a general rule "the commission may not require a local exchange telecommunications company to reduce access rates except on a revenue neutral basis." 66 Pa.C.S. § 3017(a). Nowhere in Section 3017, or in Chapter 30 in its entirety, is there any indication from the General Assembly that Section 1301 does not apply to access rates as Verizon contends. Section 3017(a) is simply a prohibition against ordering the reduction of access rates on a non-revenue neutral basis. Id. This has nothing to do with the requirement that all rates under Chapter 30 must remain "just and reasonable." Verizon's argument attempts to change the law by writing in an exception that simply does not exist. Section 3017 pertains to the ***Commission requiring*** a company to ***reduce*** its access rates. This case presents the situation where a ***company*** is ***voluntarily increasing*** access rates.

As such, Verizon's argument that it is not necessary that D&E's access rates be just and reasonable is without merit and should be rejected. Verizon's argument directly contradicts the explicit mandate from the General Assembly that provides that Section 1301 requires rates to be just and reasonable.

OCA Reply Exception No. 6 - The Positions Advocated By Verizon Will Put An Unnecessary Strain On The Pennsylvania Universal Service Fund. Verizon Exception No. 6; ALJ R.D. at 6-8; OCA M.B. at 15-16.

In its Exception, Verizon argues that the ALJ erred in failing to consider Verizon's alternative request that, if the D&E increases are allowed to stand, the Commission should reduce the D&E carriers' receipts from the Pennsylvania Universal Service Fund ("Pa USF") by a corresponding amount. Verizon Exc. at 35-37. Verizon further argues "if the D&E carriers increase their access rates now without corresponding decreases to their PaUSF draw, they will obtain that same revenue from two sources." Id. at 37. Verizon claims "this double-dipping is unconscionable and should not be allowed." Id. Verizon's argument is without merit and should be rejected.

In response to Verizon's arguments in the reconsideration proceeding below, the OCA noted that this Commission has established the $18 Pa USF benchmark as an average rate ceiling over which Pennsylvania telephone companies cannot charge their customers. Access Charge Investigation Per Global Order of September 20, 1999, Docket Nos. M-00021596, *et al.*, Opinion and Order (entered July 15, 2003). To the extent a local exchange company's rates exceed that benchmark, as Verizon argues for in this proceeding, the Company may only charge the end user the $18 average rate and must draw the additional funds from the Pa USF.

In light of Verizon's argument in this proceeding that the D&E Companies' additional revenue should be spread evenly over basic local rates, *see*, page 16, *supra*, some of the D&E

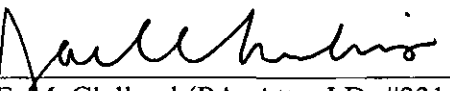
Companies' basic local rates would exceed that $18 benchmark. Such additional funding would then be drawn from the Pa USF, and reduce the size of the Pa USF. Such actions would put an additional strain on the Pa USF. The OCA submits that the increase in the D&E local rates would represent the first time since the local rate benchmark was established that the benchmark would be exceeded by a rate increase of any company. The OCA is concerned about taking this action in this case. The Commission must recognize that Verizon's argument with regard to the allocation of the additional revenues would affect not only the rate paid by the D&E Companies' consumers, but withdrawals from the Pa USF as well.

Verizon's argument in its Exception will be detrimental to the Pa USF and should be rejected. The Pa USF has helped to keep down the cost to consumers of basic local telephone service. As indicated previously, the number of consumers in Pennsylvania with telephone service has decreased over the past five years. Therefore, even with the Pa USF, many Pennsylvanians are having difficulty maintaining basic local service. Verizon's argument to reduce the D&E companies' draw from the Pa USF if their intrastate access charge increases are allowed to remain the same could further increase the number of consumers who cannot afford basic local telephone service. Verizon argues that the ALJ's finding that D&E is a net payer into the fund is only "one-third of the story." Verizon Exc. at 36. Regardless of whether the D&E company is a net payer, it is clear that the Pa USF is a vital public benefit and the Commission should reject Verizon's attempts to weaken the fund.

IV. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that the Commission should adopt the Recommended Decision of Administrative Law Judge Susan Colwell. The Commission should not reverse the D&E Companies' intrastate access rate increases that were implemented following the Commission's Order entered June 23, 2006. There is no record evidence in this proceeding that would support reversing the Commission's June 23, 2006 Order. As a result, Verizon's Exceptions should be denied and the decision recommended by Administrative Law Judge Colwell be allowed to stand.

Respectfully submitted,



Philip F. McClelland (PA. Atty. I.D. #23165)
Senior Assistant Consumer Advocate
Joel H. Cheskis (PA. Atty. I.D. #81617)
Assistant Consumer Advocate
For: Irwin A. Popowsky
Consumer Advocate

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

Dated: March 26, 2007
93199

CERTIFICATE OF SERVICE

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

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

Dated this 26th day of March, 2007.

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Johnnie E. Simms, Esq.*
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Harrisburg, PA 17120

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Verizon Pennsylvania Inc.
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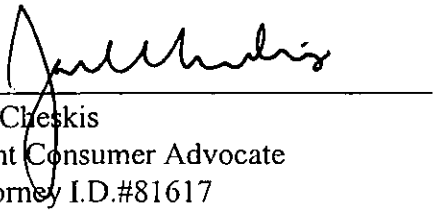

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***Receiving Proprietary Information where applicable**

DATE: April 4, 2007

SUBJECT: P-00981428F1000
P-00981429F1000
P-000981430F100

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James McNulty
Secretary
nvl

2006 Annual Price Stability Index/Service Price Index filing of:
Buffalo Valley Telephone Company
Conestoga Telephone & Telegraph Company
Ephrata Telephone & Telegraph Company

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

Exceptions have been filed by:

OFFICE OF CONSUMER ADVOCATE
VERIZON COMPANIES (PROPRIETARY & EXPURGATED)

Reply Exceptions have been received from:

DENVER & EPHRATA TELEPHONE & TELEGRAPH CO ET AL
OFFICE OF CONSUMER ADVOCATE
OFFICE OF SMALL BUSINESS ADVOCATE

cc: Susan Hoffner

COMMONWEALTH OF PENNSYLVANIA

DATE: July 31, 2007

SUBJECT: I-00040105
P-00981428F1000, R-00061375
P-00981429F1000, R-00061376
P-00981430F1000, R-00061377

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary

Buffalo Valley Telephone Company

Attached is a copy of a Petition for Reconsideration, filed by Buffalo Valley Telephone Company in connection with the above docketed proceedings.

This matter is assigned to your Office for appropriate action.

Attachment

cc: ALJ
LAW

DOCUMENT
FOLDER

BTL

ksb

DOCKETED
JUL 31 2007

COMMONWEALTH OF PENNSYLVANIA

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

IRWIN A. POPOWSKY
Consumer Advocate

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

ORIGINAL

August 23, 2007

DOCUMENT
FOLDER

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

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

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

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

Dear Secretary McNulty:

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

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

DOCKETED
SEP 2 9 2007

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

Sincerely,

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

Enclosures
cc: All parties of record
Honorable Susan D. Colwell
Cheryl Walker Davis/OSA
*95328

CERTIFICATE OF SERVICE

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

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

Dated this 23rd day of August, 2007.

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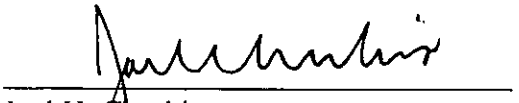

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ORIGINAL

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Suzan.D.Paiva@Verizon.com

DOCUMENT FOLDER

December 31, 2007

RECEIVED

DEC 31 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

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

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

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

Dear Mr. McNulty:

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

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

Very truly yours,

Suzan D. Paiva

Suzan D. Paiva

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

B-2294
L-1649

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

Pursuant to 52 Pa. Code § 5.572(e), the Verizon companies[1] hereby answer the Petition for Reconsideration ("PFR") filed by the Office of Consumer Advocate ("OCA") of this Commission's December 7, 2007 Order on Reconsideration.

INTRODUCTION

On December 7, 2007 the Commission resolved the limited issues raised by D&E's[2] PFR of the Commission's July 11, 2007 Order – in which, following an evidentiary proceeding, the Commission rescinded D&E's attempt to implement 2006 PSI/SPI filings by raising switched access rates and directed D&E to provide refunds and rate reductions, but

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

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

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

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

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

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

---

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

"the average residential local telephone bill is capped at $18 per month," as a result of the *Global Order* and the July 15, 2003 Order adopting the rural ILECs' rate rebalancing proposal – the precise same argument it makes again here. (OCA Response to D&E PFR at 4). According to OCA's answer to D&E's PFR, Denver & Ephrata could not increase its residential rates over $18 unless it obtained recovery from the USF to prevent charging residential end users more than $18. These are exactly the same argument that OCA raises now, in this second PFR.

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

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

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

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

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

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

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

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

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

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

(12/7/07 Order at 37).

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

opportunity to make those arguments in the rural carriers' access investigation.[5] Attempting to sweep them in here will do nothing but delay and complicate this case -- a case that the Commission rightly determined should be promptly closed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Date: December 31, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

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EXHIBIT A

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October 9, 2007

EMAIL AND FIRST CLASS MAIL

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

Dear Suzan:

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

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

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

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By

Michael L. Swindler

c: Leonard Beurer
Janet Tuzinski, FUS

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