

November 18, 1993

VIA HAND DELIVERY

John G. Alford, Secretary
PA Public Utility Commission
Room B-19, North Office Building
Harrisburg, PA 17120

RECEIVED
93 NOV 19 PM 2:25
PA. P. U. C.
INFO. CONTROL DIV.

Re: PA Public Utility Commission v. Commonwealth Telephone Company, Docket No. I-00920020

Dear Secretary Alford:

Enclosed for filing in the above-captioned proceeding please find the original and two (2) copies of the Answer of Commonwealth Telephone Company to the Objections of AT&T Communications of Pennsylvania, Inc. As evidenced by the attached Certificate of Service, all parties of record have been served a copy of same.

As always, should you have any questions or comments, please do not hesitate to contact me at your convenience.

Sincerely,

TUCKER ARENSBERG, P.C.

NORMAN JAMES KENNARD

RES

NJK/dmb
ctco/inv2/ans2att.obj

Enclosure

cc: All Parties of Record

DOCUMENT
FOLDER

ORIGINAL

RECEIVED
9/19/93 PM 2:25
PA. P. D. C. DIV.
INFO. CONTROL DIV.

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

DOCKET NO. I-00920020

COMMONWEALTH TELEPHONE COMPANY

DOCKETED

NOV 24 1993

**ANSWER OF COMMONWEALTH TELEPHONE
COMPANY TO AT&T'S OBJECTIONS TO
THE JOINT SETTLEMENT PETITION**

AND NOW COMES Commonwealth Telephone Company ("CTCO"), by and through its counsel, Tucker Arensberg, P.C., pursuant to the Pennsylvania Public Utility Commission's ("Commission") Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.103(c), and hereby responds to the Objections of AT&T Communications of Pennsylvania, Inc. ("AT&T"), and, in support thereof, CTCO avers as follows:

1. By Opinion and Order entered at I-920020, the Commission assigned an investigation to the Office of Administrative Law Judge, the scope of which it defined as follows:

- 4. That the parties should investigate the parent corporation management service fee expense and all related affiliated interest charges, and following that analysis, Commonwealth's earnings should be analyzed.
- 5. That the presiding ALJ be, and hereby is, directed to make specific findings of

DOCUMENT
FOLDER

fact concerning Commonwealth's affiliated interest charges and overall earnings....

Opinion and Order entered July 9, 1992, Ordering ¶¶ 4 and 5.

2. On June 25, 1992, AT&T filed a separate Complaint, the sole stated objective of which was a reduction in the tariffed rates that AT&T pays to CTCO for access services. In its Prehearing Memorandum dated August 6, 1992, AT&T identified only access charge issues as those in which it would become involved. By Order dated December 18, 1992, the presiding Administrative Law Judge ("ALJ") consolidated AT&T's Complaint with the instant docket.

3. On October 18, 1993, CTCO, the Office of Trial Staff ("OTS"), and the Office of Consumer Advocate ("OCA") executed and filed a Joint Petition for Settlement of Investigation ("Joint Petition" or "Settlement Petition").

4. AT&T, at the time of execution of the Settlement Petition, declined to become a signatory party, and the parties preserved, in the document, an offer to cap CTCO's carrier common line charge at \$3.52 per line per month, in exchange for AT&T becoming a subsequent signatory party. Joint Petition at ¶16. If AT&T does not timely join in the Settlement, then the Joint Petitioners propose that the \$335,000 of rate reduction represented by the CCL cap be flowed to ratepayers through an alternative means. Id.

5. In the Joint Petition, CTCO and OTS have expressly requested that AT&T's Complaint be severed from the instant proceeding and placed at a new, separate docket. Id.

6. By "Objections" dated November 5, 1993, eighteen (18) days after service of the Joint Petition¹, AT&T filed "Objections" thereto.

7. It is notable that AT&T's "Objections":

- (a) Do not object to the severing of AT&T's Complaint in the event of approval of the Joint Petition;
- (b) Do not raise any legal or factual arguments claiming any inability of or prejudice to AT&T in continuing to pursue its issues at a separate complaint docket; and
- (c) Do not allege that CTCO is over-earning.

AT&T simply claims that access charges should be further reduced beyond the option of capping CCL charges offered by the other parties.²

8. AT&T's "Objections" are filed in procedural error and, therefore, should not be considered by Your Honor:

- (a) They are not timely filed. A settlement petition is a "hearing motion" and, thus, 52 Pa. Code § 5.103 controls. Thereunder, a "participant has 10 days from the date of service within which to answer or object to a motion...". Since no other time frame was otherwise fixed, AT&T's "Objections" are untimely and, hence, must be dismissed.³ Due

¹ As set forth in the Certificate of Service which conveyed the Joint Petition to the Commission and the parties, service was made upon AT&T via Federal Express. Therefore, AT&T was "served" on October 18, 1993. 52 Pa. Code § 1.56(a).

² While AT&T also complains that the Joint Petition does not definitively resolve the affiliated interest issues, this is a matter in which AT&T has expressed not one single iota of interest. Moreover, as noted subsequently in this Answer, AT&T's allegations in this regard are grossly in error.

³ In a separate, but related docket, AT&T was given twenty (20) days within which to file comments. Informal Investigation into the Marketing Practices of Commonwealth Long Distance Company, M-930447, Tentative Order entered October 19, 1993. AT&T's Comments

to the fact that service was accomplished by Federal Express, the period of time provided for an answer or objection to a hearing motion commenced to run on October 18, 1993. 52 Pa. Code § 1.56(b); and

- (b) The "Objections" are improperly addressed to the Commission. Instead, the pleading should have been addressed to Your Honor.

9. AT&T's "Objections", if considered, should be rejected on substantive grounds.

10. The Joint Petition fully and completely resolves those issues which the Commission directed be investigated, namely, the cost of affiliated transactions and CTCO's earnings.

11. The Joint Petitioners have proposed a \$2.6 million decrease in CTCO's on-going, annual jurisdictional net operating revenues. Joint Petition at ¶ 12(a), (b), and (c); See, also, Id. at ¶ 13(a). AT&T has not participated in the earnings side of this investigation. The parties addressing themselves to these issues were the OCA and OTS, both of whom have stated that the resulting overall revenues of CTCO are "just and reasonable" and/or "in the public interest". Joint Petition at Appendix "E" (OTS) and Appendix "F" (OCA). As set forth by CTCO in its Statement, the total company rate of return achieved after implementation of the settlement rates will be 7.7% overall and 9.0% on equity. Id. at Appendix "D" and attachment thereto.

12. AT&T makes no allegation that, either current earnings or those which result from the Settlement Petition, are "unjust or

to the Tentative Order were also dated November 5, 1993, the same date upon which its "Objections" were filed here. However, the two dockets are different and different response dates apply.

unreasonable". AT&T, rather, argues a point of rate design -- that access charge rates are too high and local service rates are too low.

13. However, the rate design issue which AT&T seeks to advance are not prejudiced by adoption of the Joint Petition. AT&T is free to pursue its separately filed Complaint and argue there for the exact same relief sought by its "Objections" -- a reduction in access charges and a concomitant increase in local service charges. AT&T totally fails to raise any concern regarding its ability to prosecute a separate complaint. Rather, it seeks to destroy the Settlement arrived at by the other parties.

14. AT&T's arguments are based upon unrebutted evidence. AT&T's "Objections" are full of rhetoric and hyperbole, the source of which is the testimony of its witness, Mr. Christopher Rozycki. While this testimony has been cross-examined, neither CTCO nor any of the other parties have had the opportunity to present rebuttal testimony. Therefore, AT&T's allegations consist of nothing more than unrebutted conclusions. However, it is notable that, during cross-examination, Mr. Rozycki testified as follows:

- The access charges proposed by AT&T are less than the cost of providing access service, as identified in either CTCO's or AT&T's cost study. Tr. 498.
- Interstate access charge revenues are being used to subsidize local exchange rates. Tr. 481. AT&T does not contend that these revenues in any way generate additional earnings for shareholders. Tr. 482.
- Mr. Rozycki's testimony does not address CTCO's earnings, either intrastate or on a total company basis. Tr. 482. He agreed that the current total company overall rate of return of 8.41% (before

application of the rate decrease contained in the Joint Petition) is not "excessive". Tr. 483.

- AT&T believes that "the best way" to address interstate access charges would be upon application to the FCC and not this Commission. Tr. 492.
- If CTCO's CCL charge is capped as a result of this proceeding (as proposed in the Joint Petition), then CTCO's access charges will be cost based. Tr. 464. (After discussion with AT&T's lawyer, the witness recanted this statement, but not convincingly. See, Tr. 579).
- Many of the PA PUC proceedings in which capping has been required (See, list in AT&T "Objections" at Page 7) involved no access charge decrease -- only a CCL cap (as is offered in the Joint Petition). Tr. 515-517.
- AT&T provides no assurances that it will ever offer Reach Out Pennsylvania® to CTCO's ratepayers. Tr. 475.
- Access line growth in CTCO's service territory is 2% and toll growth is 5.5%. Tr. 520.
- AT&T has no factual basis to conclude that CTCO's toll rates do not cover imputed access charges. Tr. 504. It is espousing theory only.

Therefore, the "facts" underlying AT&T's "Objections" failed, at several critical junctures, to withstand the scrutiny of cross-examination. It is not a reliable basis upon which to cavalierly destroy a settlement carefully developed by the other parties.

15. AT&T never participated in this proceeding on the issue of affiliated interest charges either. While AT&T has no interest in this area, it nevertheless complains about the other parties' resolution. Its criticisms are unfounded. The Joint Petitioners do not propose to "side-step" the issues, but rather propose a separate mechanism whereby the affiliated issues will be resolved

more quickly and more efficiently.⁴ Moreover, contrary to AT&T's assertion, the parties have, at Appendix "G" of the Settlement, set forth stipulated facts which permit Your Honor to make specific findings concerning affiliated interest charges. It is misleading for AT&T to suggest that Your Honor would somehow not fulfill his duty to the Commission were the Settlement approved.

16. Finally, the relief sought by AT&T is irresponsible. Objections at 12-13. Only Issue Nos. 1 and 2 (earnings and affiliate agreements) are at issue under the Commission's Order instituting this investigation. On these issues, AT&T has participated not at all. AT&T's real interest is in Issue Nos. 3 through 5, which it remains free to pursue in its own separately filed Complaint.

17. In summary, AT&T's "Objections" should be rejected for the following reasons:

- (a) The issues of affiliated costs and company earning which were raised by the Commission are resolved by the parties with an interest therein;
- (b) The access charge and reseller marketing practices it raises are not a part of the issues set forth by the Commission in instituting this investigation;

⁴ The resolution of these affiliate issues will have no impact upon CTCO's rates, as erroneously averred by AT&T. Objections at 12. Per the express terms of the Joint Petition, the parties may not recommend or seek a change in revenues or rates as a result of the resolution of the three separated affiliated interest questions, because the "parties have incorporated their respective positions on these various affiliated issues in reaching the proper revenue requirement for CTCO reflected in this settlement." Joint Petition at ¶ 12(g). Therefore, AT&T continues to have no interest in these issues whatsoever.

- (c) AT&T points to no prejudice which could or would result from the severance and separate prosecution of its Complaint;
- (d) AT&T's due process rights are preserved;
- (e) The parties should have a full opportunity to rebut AT&T's assertions and develop a complete record.

Simply stated, AT&T should proceed to develop its case on its separate, unrelated issues, without unfairly limiting the parties, Your Honor's, and the Commission's ability to decide the issues of affiliated costs and company earnings, which are the subject of the Commission's investigation and in which AT&T has not taken an interest.

WHEREFORE, for the above-stated reasons, Commonwealth Telephone Company respectfully requests that Your Honor and this Commission dismiss AT&T's "Objections" and adopt the Joint Petition for Settlement of Investigation as filed on October 18, 1993.

Respectfully submitted,

Norman James Kennard, Esquire
TUCKER ARENSBERG, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

Dated: November 18, 1993

ATTORNEYS FOR COMMONWEALTH
TELEPHONE COMPANY

ORIGINAL



OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

RLS

IRWIN A. POPOWSKY
Consumer Advocate

(717) 783-5048

November 19, 1993

John G. Alford, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
NOV 19 PM 5:05
PA. P. U. C.
INFO. CONTROL DIV.

RE: Pennsylvania Public Utility
Commission v. Commonwealth
Telephone Company, Inc.
Docket No. I-00920020

Dear Secretary Alford:

Enclosed please find an original and two (2) copies of the Office of Consumer Advocate's Response to AT&T's Objections to the Joint Petition for Settlement of Investigation for filing in the above-captioned matter. Please note that Philip F. McClelland has been out of the office because of illness. Therefore, we were unable to file this Response earlier.

If you have any questions regarding this matter, please contact me at your convenience.

Sincerely,

Mark Shostak

Mark J. Shostak
Assistant Consumer Advocate

Enclosures

cc: all parties of record

DOCUMENT
FOLDER

ORIGINAL

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

Docket No. I-00920020

COMMONWEALTH TELEPHONE
COMPANY

OFFICE OF CONSUMER ADVOCATE'S RESPONSE
TO AT&T'S OBJECTIONS TO THE JOINT
PETITION FOR SETTLEMENT OF INVESTIGATION

RECEIVED
93 NOV 19 PM 4 0
PA. P. U. COMM. DIV.
INFO. CONTROL

The Office of Consumer Advocate (OCA) is in receipt of objections from AT&T to the Joint Petition for Settlement of Investigation. The OCA would simply note that the proposed settlement -- at least in the OCA's view -- was intended to preserve the right of AT&T to pursue many of the issues it has raised in its objections. All parties agree AT&T's Complaint may go forward. OCA did not join in the request by Commonwealth and OTS that the AT&T Complaint be severed, but believes AT&T's Complaint may go forward either in this or a separate forum.

OCA is satisfied with the result of the Settlement from the perspective of Commonwealth's other ratepayers. OCA wants these ratepayers to get the benefits of the Settlement as soon as possible. These benefits include free residential touchtone service and accelerated extended area service for 17 routes. As set forth in the Settlement, AT&T could accept a common carrier line cap as part of an overall settlement or it can go forward with its Complaint to reduce access charges.

OCA does not oppose AT&T going forward with its Complaint

DOCKETED
NOV 29 1993

DOCUMENT
FOLDER

on issues concerning reduced access charges as well as its concerns regarding long distance anti-competitive practices. With respect to the other affiliate issues, the OCA notes that one purpose of a separate investigation on affiliate interest issues is to avoid problems raised by the Company regarding the applicability in this case of the Pennsylvania Supreme Court case Lyness v. State Board of Medicine, 605 A.2d 1204 (1992). In addition, these affiliate transaction investigations could be consolidated into one proceeding and need not be done in three separate proceedings, as suggested by AT&T.

The OCA certainly would object, however, to the suggestion in AT&T's Objections that a reduction in AT&T's access charges may in turn result in as much as a 40% rate increase for other Commonwealth customers. Commonwealth's customers have not received notice of any proposed rate increase; any increase in rates would be entirely inappropriate in this case, and the OCA would strongly oppose any efforts to impose a rate increase on any other customers as a result of this proceeding.

Respectfully submitted,

Mark Shostak
Mark J. Shostak
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

Dated: November 19, 1993

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission
v.
Commonwealth Telephone Company
Docket No. I-00920020

I hereby certify that I have this day served a true copy of the Office of Consumer Advocate's Response to AT&T's Objections to the Joint Petition for Settlement of Investigation 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 19th day of November, 1993.

SERVICE IN PERSON

Kandace F. Melillo
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

Hon. George M. Kashi
Administrative Law Judge
PA Public Utility Commission
Room G-08A, North Office Bldg.
Harrisburg, PA 17120

SERVICE BY FACSIMILE and FIRST CLASS MAIL, POSTAGE PREPAID

Norman J. Kennard, Esq.
Tucker Arensberg, P.C.
116 Pine Street
Harrisburg, PA 17101

Mark A. Keffer, Esq.
American Telegraph
& Telephone
Room 3A2
3201 Jermantown Road
Fairfax, VA 22030

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Scott Burnside, V.P.
Revenue & Public Affairs
Commonwealth Telephone Co.
100 Lake Street
Dallas, PA 18612

Mark Shostak
Mark J. Shostak
Assistant Consumer Advocate

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
November 24, 1993

In Re: I-00920020

(See letter dated 09/17/93)

DOCKETED
NOV 30 1993

RLS

Pennsylvania Public Utility Commission
v.
Commonwealth Telephone Company

Assessment of the impact of significant increase in certain operating expenses on the common equity return rate

NOTICE

This is to inform you that a further prehearing conference on the above captioned case will be held Friday, December 17, 1993 at 10:00 a.m. in an available hearing room, Ground Floor, North Office Building, North Street and Commonwealth Avenue, Harrisburg, Pennsylvania.

The presiding officer in this proceeding is Administrative Law Judge George M. Kashi. Judge Kashi can be contacted at P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265; telephone (717) 783-5452.

IF YOU ARE A PERSON WITH A DISABILITY, AND WISH TO ATTEND THE HEARING SCHEDULED ABOVE, AND REQUIRE AN AUXILIARY AID, SERVICE, OR OTHER ACCOMMODATION TO PARTICIPATE IN THE PROCEEDING, PLEASE CONTACT THE AT&T RELAY SERVICE NUMBER 1-800-654-5988 OR NORMA R. LEWIS (717) 787-1399 AT THE PENNSYLVANIA PUBLIC UTILITY COMMISSION (PUC) TO DISCUSS HOW THE PUC MAY BEST ACCOMMODATE YOUR NEEDS.

cc: Judge Kashi
John Frazier - BPL
Consumer Advocate
Law Bureau
Norma Lewis
Stephen Springer
Beth Plantz
Docket Room

Certified Mail
Receipt Requested &
Reg. Mail to Complainant

**DOCUMENT
FOLDER**

December 13, 1993

VIA HAND DELIVERY

John G. Alford, Secretary
PA Public Utility Commission
Room B-19, North Office Building
Harrisburg, PA 17120

RLS

RECEIVED
93 DEC 13 PM 1:21
PA. P. U. C.
INFO. CONTROL DIV.

Re: PA Public Utility Commission v. Commonwealth Telephone Company
Docket No. I-00920020

Dear Secretary Alford:

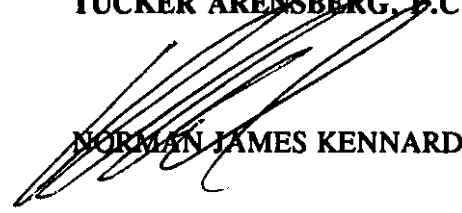
Enclosed please find the Joint Petition for Commission Review and Answer to a Material Question as submitted by the Office of Trial Staff, the Office of Consumer Advocate, and Commonwealth Telephone Company. Pursuant to 52 Pa. Code § 5.302(b), Briefs are due to be filed on or before December 20, 1993. 52 Pa. Code § 5.303 requires that the Commission respond to the material question within thirty (30) days of the filing of the instant Joint Petition.

Given the Commission's upcoming Public Meeting schedule, therefore, the parties request that the matter be listed for consideration at the Commission's Public Meeting of January 6, 1994.

As evidenced by the attached Certificate of Service, all parties of record have been served with a copy of this letter and the Joint Petition, including AT&T Communications of Pennsylvania, Inc., which has been served via facsimile transmission this date.

Sincerely,

TUCKER ARENSBERG, P.C.



NORMAN JAMES KENNARD

NJK/dmb
ctcof/mv2/jointpet.doc

Enclosure

cc: All Parties of Record
Honorable George M. Kashi
Office of Special Assistants

DOCUMENT
FOLDER

ORIGINAL

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

COMMONWEALTH TELEPHONE
COMPANY

:
:
:
:
:
:
:

DOCKET NO. I-00920020

RECEIVED
93 DEC 13 PM 4:21
A.P.U.C.
INF CONTROL DIV.

JOINT PETITION FOR
COMMISSION REVIEW AND ANSWER
TO A MATERIAL QUESTION

RECEIVED

DEC 22 1993

DOCUMENT
FOLDER

Dated: December 13, 1993

On October 18, 1993, the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), and Commonwealth Telephone Company ("CTCO" or "Company"), (hereinafter collectively referred to as "Joint Petitioners"), filed a Joint Petition for Settlement of Investigation. By Order dated November 18, 1993, the presiding Administrative Law Judge entered an Interim Order Denying Approval Of Joint Petition For Settlement Of Investigation.

Therefore, the parties seek to have the following material question reviewed and answered by this Commission pursuant to 52 Pa. Code § 5.302:

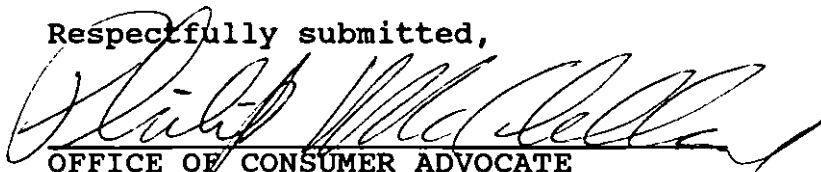
MATERIAL QUESTION: Whether the Settlement reached by the parties is in the public interest and should be approved by this Commission.

SUGGESTED ANSWER: AFFIRMATIVE.

This Settlement provides, inter alia, for an immediate rate decrease for the benefit of customers of approximately \$2.6 million. The Company's operations, including its relationships with affiliates, has received intense scrutiny through extensive discovery and litigation. The Settlement represents a fair and equitable resolution of all issues among the settling parties, except those related to affiliated accounting methods, and serves the public interest. Moreover, it explicitly identifies the specific affiliated issues raised and provides a separate mechanism for resolution of the questions presented. The approval of the settlement also permits the non-settling party, AT&T, to go forward with its separate Complaint.

Joint Petitioners submit that interlocutory review will expedite the conduct of the Commission's investigation. Moreover, the presiding Administrative Law Judge appears to have denied approval of the Settlement, most significantly, for the reason that the Settlement proposed a separate vehicle for final resolution of affiliated issues, rather than resolution in the instant docket, as potentially contemplated by this Commission. Therefore, interlocutory review is further necessary to obtain Commission guidance.

Respectfully submitted,



OFFICE OF CONSUMER ADVOCATE

By: Philip F. McClelland, Esquire
Mark J. Shostak, Esquire



OFFICE OF TRIAL STAFF

By: Carol F. Pennington, Esquire
Kandace F. Melillo, Esquire



COMMONWEALTH TELEPHONE COMPANY

By: Norman James Kennard, Esquire

Submitted: December 13, 1993

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :
v. : DOCKET NO. I-00920020
COMMONWEALTH TELEPHONE COMPANY :

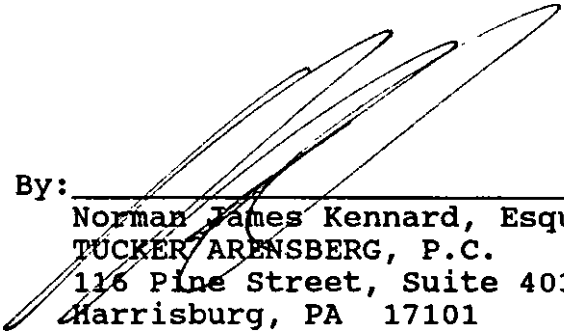
CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of December, 1993, I have served a true and correct copy of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code § 1.54:

Kandace F. Melillo, Esquire
Carol F. Pennington, Esquire
Office of Trial Staff
Pitnick Building, Third Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Philip F. McClelland, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Mark Keffer, Esquire^{*}
AT&T Communications of PA, Inc.
Third Floor
3201 Jermantown Road
Fairfax, VA 22030-2885

By: 
Norman James Kennard, Esquire
TUCKER ARENSBERG, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

Attorneys for COMMONWEALTH
TELEPHONE COMPANY

^{*} - Via Facsimile Transmission

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :
v. : DOCKET NO. I-00920020
COMMONWEALTH TELEPHONE COMPANY :

CERTIFICATE OF SERVICE

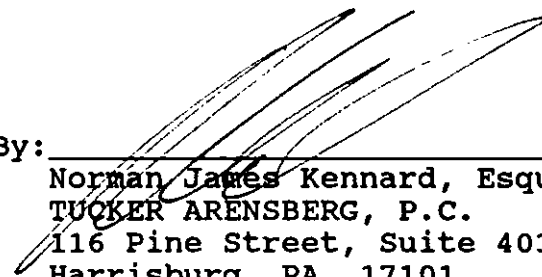
I hereby certify that, on this 18th day of November, 1993, I have served a true and correct copy of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code § 1.54:

The Honorable George M. Kashi*
Administrative Law Judge
Room G08
PA Public Utility Commission
Harrisburg, PA 17105-3265

Kandace F. Melillo, Esquire*
Office of Trial Staff
North Office Building, Room 210
Harrisburg, PA 17120

Phillip F. McClelland, Esquire*
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Mark Keffer, Esquire
AT&T Communications of PA, Inc.
Third Floor
3201 Jermantown Road
Fairfax, VA 22030-2885

By: 
Norman James Kennard, Esquire
TUCKER ARENSBERG, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

Attorneys for COMMONWEALTH
TELEPHONE COMPANY

* - Via Hand Delivery

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
December 13, 1993**

RLS

In Re: I-00920020

RECEIVED
93 DEC 13 AM 9:49
PA. P. U. C. DIV.
INFO. CONTROL DIV.

(See letter dated 1/24/93)

**Pennsylvania Public Utility Commission
v.
Commonwealth Telephone Company**

Assessment of the impact of significant increase in certain operating expenses on the common equity return rate

NOTICE

This is to inform you that the further prehearing conference now scheduled to be held on Friday, December 17, 1993 at 10:00 a.m. in Harrisburg, Pennsylvania in the subject proceeding has been cancelled.

The presiding officer in this proceeding is Administrative Law Judge George M. Kashi. Judge Kashi can be contacted at P.O. Box 3265, Harrisburg, Pennsylvania 17105-3265; telephone (717) 783-5452.

cc: Judge Kashi
John Frazier - BPL
Consumer Advocate
Law Bureau
Norma Lewis
Stephen Springer
Beth Plantz
Docket Room

DOCKETED
DEC 15 1993

DOCUMENT
FOLDER

December 20, 1993

VIA HAND DELIVERY

John G. Alford, Secretary
PA Public Utility Commission
Room B-19, North Office Building
Harrisburg, PA 17120

RECEIVED
93 DEC 20 PM 4:1
PA. P. U. C.
INFO. CONTROL D.

Re: PA Public Utility Commission v. Commonwealth Telephone
Company
Docket No. I-00920020

Dear Secretary Alford:

Enclosed for filing in the above-captioned matter please find the original and nine (9) copies of the Brief of Commonwealth Telephone Company in Support of Material Question. As evidenced by the attached Certificate of Service, all parties of record have been served with a copy of same.

As always, should you have any questions or comments, please do not hesitate to contact me at your convenience.

Sincerely,

TUCKER ARENSBERG, P.C.

NORMAN JAMES KENNARD

DOCUMENT
FOLDER

NJK/dmb
ctc:inv2/support.doc

Enclosure

cc: All Parties of Record
The Honorable George M. Kashi
Office of Special Assistants

ORIGINAL

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

COMMONWEALTH TELEPHONE
COMPANY

:
:
:
:
:
:
:
:
:
:
:

DOCKET NO. I-00920020

RECEIVED
SYSTEMS UNIT
PA. P. U. C.
INFO. CONTROL DIV.

**BRIEF OF COMMONWEALTH TELEPHONE
COMPANY IN SUPPORT OF MATERIAL QUESTION**

DOCKETED
DEC 30 1993

**DOCUMENT
FOLDER**

Dated: December 20, 1993

Norman James Kennard, Esquire
Tucker Arensberg, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

ATTORNEYS FOR COMMONWEALTH
TELEPHONE COMPANY

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

COMMONWEALTH TELEPHONE
COMPANY

:
:
:
:
:
:
:
:
:
:

DOCKET NO. I-00920020

**BRIEF OF COMMONWEALTH TELEPHONE
COMPANY IN SUPPORT OF MATERIAL QUESTION**

Norman James Kennard, Esquire
Tucker Arensberg, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

ATTORNEYS FOR COMMONWEALTH
TELEPHONE COMPANY

Dated: December 20, 1993

TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | STATEMENT OF THE CASE..... | 1 |
| II. | SUMMARY OF ARGUMENT..... | 2 |
| III. | ARGUMENT..... | 4 |
| | A. INTERLOCUTORY REVIEW IS PROPER..... | 4 |
| | B. AFFILIATE ISSUES..... | 6 |
| | 1. Commonwealth Communications..... | 6 |
| | Inc. ("CCI") | |
| | 2. C-TEC Services, Inc. ("C-TEC")..... | 7 |
| | 3. Tec-Air, Inc. ("Tec-Air")..... | 9 |
| | 4. Affiliated Expense Impacts..... | 9 |
| | 5. The ALJ's Criticisms..... | 10 |
| | C. THE PROPOSED RATE REDUCTION..... | 12 |
| | AND EARNINGS IMPACT | |
| | D. AT&T'S OBJECTIONS..... | 13 |
| IV. | CONCLUSION..... | 15 |

TABLE OF CITATIONS

CITATIONS

| | |
|--|-------|
| <u>Investigation into Water Contamination of Springbrook Reservoir Owned by Pennsylvania Gas & Water, I-840037, Order entered June 27, 1984</u> | 4 |
| <u>Re: Application of Knight Limousine Service, Inc., 59 Pa. P.U.C. 538 (1985)</u> | 4 |
| <u>Statement of Policy on Expanded Interconnection for Intrastate Special Access, M-920376, Opinion and Order adopted June 10, 1993.</u> | 4 |
| <u>Pennsylvania Public Utility Commission v. C&S Water and Sewer Company, R-881147, I-890088, and G-890186, Opinion and Order entered July 22, 1991.....</u> | 4, 10 |
| <u>Affiliated Interest Agreement Between Commonwealth Telephone Company and Commonwealth Communications, Inc., G-920315.....</u> | 7 |
| <u>Affiliated Interest Agreement, G-890183.....</u> | 8 |
| <u>Proposed Policy Statement Re: Settlement Guidelines and Procedures for Major Rate Cases, L-930088 at 1.....</u> | 12 |
| <u>Policy Statement Re: Establishment of Alternative Dispute Resolution Process, M-930476 at 1.....</u> | 12 |
| <u>Lyness v. Commonwealth State Board of Medicine, 529 Pa. 513, 605 A,2d 1204 (1992).....</u> | 12 |
| <u>Petition of Bentleyville Telephone Company, P-930654, Opinion and Order entered May 26, 1993.....</u> | 13 |
| <u>Policy Statement Re: Disclosure of Residual Ratemaking Data by Average Schedule Telephone Companies, L-930087, Order entered November 16, 1993.....</u> | 13 |
| <u>Pennsylvania Public Utility Commission v. Buffalo Valley Telephone, I-00920014, Opinion and Order entered August 25, 1993.....</u> | 13 |

TABLE OF CITATIONS (cont'd)

| | |
|--|----|
| Public Meeting Agenda of April 2, 1992 at OSA-836 and Motion of Commissioner Joseph Rhodes, Jr..... | 12 |
| Public Meeting Agenda of June 4, 1992 at OSA-862 and Motion of Chairman David W. Rolka..... | 12 |

STATUTES

| | |
|------------------------------|------|
| 52 Pa. Code § 5.02 | 1 |
| 52 Pa. Code § 5.302(a) | 1, 4 |
| 52 Pa. Code § 5.302(b) | 1 |

I. STATEMENT OF THE CASE

The Joint Petition for Settlement of Investigation ("Joint Petition" or "Settlement") contains a brief factual history of the proceeding and the Interim Order Denying Approval of the Joint Petition for Settlement of Investigation ("Interim Order") contains a more detailed description of the procedural background of this case. Joint Petition at ¶¶ 2-10; Interim Order at 1-6. Both are accurate.

On December 13, 1993, the Office of Consumer Advocate ("OCA"), the Office of Trial Staff ("OTS"), and Commonwealth Telephone Company ("CTCO" or "Company") (collectively referred to as "Joint Petitioners"), filed a Joint Petition for Commission Review and Answer to a Material Question. The Joint Petitioners requested that the Commission review the following Material Question, pursuant to 52 Pa. Code § 5.02, and answer it in the affirmative:

Whether the Settlement reached by the parties is in the public interest and should be approved by this Commission.

This Brief is filed pursuant to the requirements of 52 Pa. Code § 5.302(b).

II. SUMMARY OF ARGUMENT

The Administrative Law Judge has recommended disapproval of the Joint Petition, principally, if not solely, because the Joint Petitioners have proposed a forum for resolution of certain, limited affiliated interest agreements outside of this Investigation. This is not a reasonable basis upon which to deny the Settlement.

The Commission's directive was to investigate affiliated expenses and, then, review company earnings. The Joint Petitioners have identified three distinct affiliate issues, which they propose to be resolved by clarification and/or amendment to those existing affiliated interest document agreements previously approved pursuant to the Commission's "G-Docket" process. The issues presented are strictly legal/policy in nature and, thus, litigation is unnecessary to their resolution.

The \$2,634,000 rate decrease agreed to in the Joint Petition exceeds the value of the affiliate issues identified by the parties. Even under the unlikely, worst case scenario, where none of CTCO's positions are accepted in the subsequent "G-Docket" consideration, the rate reduction is greater than the resulting affiliate expense adjustment. The parties to the Settlement have expressly agreed that their positions on the preserved affiliate issues have been reflected in the level of rate reduction proposed. Therefore, Joint Petitioners have been true to the Commission's directive to review affiliate expenses and, then, revenue overall earnings.

This Commission has recently renewed its commitment to the settlement process and alternative disputes resolution. Consistent with these policy directives, the Joint Petition is a carefully balanced and creative mechanism proposed by the parties, which insures that the \$2.6 million rate reduction is received as soon as possible for the benefit of customers and which, simultaneously, creates an alternative forum, other than full litigation, for the amendment and clarification of the affiliated interest agreements. The proposed rate reduction fully resolves the earnings aspect of this

Investigation. Based upon the 1993 test year results utilized in this proceeding, CTCO's total company rate of return achieved after implementation of settlement rates will be 7.7% overall and 9.0% on equity. While CTCO, an average schedule company, does not endorse residual ratemaking, it is cognizant of the Commission's concerns in this regard. It is very clear from these total company figures that interstate earnings are subsidizing intrastate operations and a residual ratemaking result is already accomplished without further adjustment beyond that proposed in the Settlement.

AT&T has been offered a per line CCL cap, consistent with the majority of Commission proceedings addressing the access charge issue. The vast majority of local exchange carriers in Pennsylvania have not been required to decrease access charges, only to create a cap. AT&T, to this point, has refused this offer, arguing that this is the minimum relief to which it is entitled. The Settlement proposes that AT&T's Complaint, which is directed only at access charges and reseller marketing practices and which was consolidated by the ALJ with this Investigation, now be severed and permitted to proceed independently. This is particularly appropriate, since AT&T has demonstrated absolutely no interest in either affiliated costs or company earnings, the two issues which form the sole basis of this Investigation.

III. ARGUMENT

A. INTERLOCUTORY REVIEW IS PROPER

Interlocutory review of the Material Question presented is proper. While the procedure of interlocutory review is to be used sparingly, it is appropriately utilized in the following circumstances:

- (1) To "prevent substantial prejudice";
- (2) To "expedite the conduct of the proceeding";
- (3) "[I]n those circumstances in which guidance from the Commission is necessary regarding a dispute as to the major direction of an investigation"; or
- (4) "[W]here the relevancy of a major issue is involved, when, if guidance is not forthcoming, many days of hearing time may be needlessly expended."

52 Pa. Code § 5.302(a); Investigation into Water Contamination of Springbrook Reservoir Owned by Pennsylvania Gas & Water, I-840037, Order entered June 27, 1984; Re: Application of Knight Limousine Service, Inc., 59 Pa. P.U.C. 538 (1985); Statement of Policy on Expanded Interconnection for Intrastate Special Access, M-920376, Opinion and Order adopted June 10, 1993.

In prior instances, where the presiding Administrative Law Judge has proposed rejection of a settlement petition, this Commission has granted interlocutory review. See, for example, Pennsylvania Public Utility Commission v. C&S Water and Sewer Company, R-881147, I-890088, and G-890186, Opinion and Order entered July 22, 1991.

At least two of these bases for interlocutory review reside in this case. First, interlocutory review will fully expedite the conduct of the Commission's investigation. Indeed, if approved, the Settlement will terminate the Investigation and mark the record closed. Joint Petition at 12 (Request for Relief at ¶ (c)).

The Settlement provides, inter alia, for an immediate rate decrease of approximately \$2.6 million for the benefit of customers. This decrease is shared by residential touch-tone users, all local

service customers, and interexchange carriers. This result occurs after intense scrutiny has been focused upon the Company's operations, including its relationship with affiliates, through extensive discovery¹ and litigation².

The Settlement fully and fairly resolves the earnings issues by those parties participating in that aspect of this Investigation. Moreover, it explicitly identifies the specific affiliated issues raised by the parties, establishes stipulated facts relative to those issues, and proposes that the Commission utilize its normal procedures established for amendments to affiliated contracts. AT&T, the only party who has not settled, may go forward with its separate Complaint or, as set forth in the Settlement, accept a reduction in access charges accomplished by reducing the per minute carrier common line rate to an access line cap.

Secondly, interlocutory review is necessary to obtain Commission guidance. The primary, if not sole, reason articulated by the Administrative Law Judge in denying approval of the Joint Petition is that the Settlement proposes a separate vehicle for final resolution of the affiliate issues, rather than resolution in the instant docket. CTCO perceives that the ALJ felt compelled to reject the Settlement, because affiliated transaction issues were identified as a topic to be resolved in this Investigation. The parties have proposed, instead, that the affiliate issues which they have identified and defined in the Settlement be resolved in the Commission's normal "G-Docket" process.

Therefore, interlocutory review of the Material Question is entirely appropriate.

¹ The OCA has propounded 16 sets of discovery, consisting of a total of 486 interrogatories. The OTS propounded 57 interrogatories, and AT&T has submitted 107 interrogatories. Additionally, the OTS and OCA conducted on-site document review and informal discovery at the Company's headquarters for two days in June of 1993. Approximately 20 data requests were also answered by CTCO.

² CTCO adduced a large body of testimony and exhibits comprising several hundred pages, which addressed, directly and forthrightly, affiliated transactions, company operations, and financial results. Seven witnesses were involved. On-the-record hearings were held on July 1 and 2, 1993, during which CTCO presented its witnesses and exhibits, all of which were subject to full cross-examination.

B. AFFILIATE ISSUES

The Joint Petitioners have identified three affiliate issues, relating to CCI, C-TEC, and Tec-Air, which should be resolved by clarification and/or amendment to those existing Affiliated Interest Agreements previously approved pursuant to the Commission's "G-Docket" process. A factual record on affiliated issues has already been developed.³

1. Commonwealth Communications, Inc. ("CCI")

As testified to by Mr. Mazza, CCI provides engineering design, development, and consulting services to CTCO, other C-TEC affiliates; and numerous non-affiliated businesses. CTCO St. 4 at 17. CCI is solicited only for those larger and more complex projects which require highly trained and experienced engineers. Id. at 18. For the more routine, day-to-day engineering matters, CTCO maintains engineers on its payroll. Id. at 18.

CTCO identified both the revenues and costs associated with CCI's provision of services to CTCO. CTCO St. 4 at 18-19 and 21. Further, the rates charged by CCI were compared with other engineering firms which provide similar services. CTCO St. 4 at 19-20; Tr. 341-342. CTCO also provided to the parties financial statements for CCI for the most recent three year period. Tr. 328-333 and 377-381. CTCO forthrightly identified CCI's retention percentage (revenues less expenses) as 31% for CTCO work.⁴ CTCO St. 4 at 21.

³ As set forth in the Settlement, the parties are permitted to use the record developed in this case and those stipulated facts attached as Appendix "G" to the Joint Petition in those "G-Docket" proceedings. Joint Petition at 7 (¶ 12(g)). As part of its direct presentation, CTCO sponsored the testimony of Mr. Paul W. Mazza, Executive Vice President of CTCO, which consisted of 25 pages of detailed narration. Financial and expense schedules, which included affiliated relationship impacts, were presented by Mr. Donald P. Cawley, Controller of CTCO.

⁴ The ALJ was confused where he cited to CCI margins to CTCO "which may exceed 31% or in some cases 45%". Interim Order at 13. There is no "question open" regarding this affiliate issue. Id. The numbers are stipulated. Joint Petition, Appendix "G", Stipulation No. B.4. CTCO pays fees to CCI which equates to a 31% margin. Tr. 369-370. Other customers, "non-affiliates", have generated higher margins of 45%. Tr. 370.

On October 1, 1992, CTCO filed an Affiliated Interest Agreement with CCI before this Commission. Affiliated Interest Agreement Between Commonwealth Telephone Company and Commonwealth Communications, Inc., G-920315. By Order entered December 10, 1992, the CCI/CTCO Affiliated Interest Agreement was approved. Under that Agreement, CTCO and CCI retain the mutual "right to establish an appropriate margin for services rendered from time-to-time" and/or to use CTCO's "authorized rate of return on real or personal property". Agreement at ¶¶ 2.1.5 and 2.1.6. CTCO maintains that the methods are optional. The OCA believes that "authorized rate of return" is the sole method permitted. Tr. 327-328.

Thus, there arose during this proceeding an argument which is purely legal in nature. Having stipulated the basic facts (Settlement at Appendix "G"), the parties have agreed that CTCO will file a request for clarification and/or amendment of the existing CCI/CTCO Affiliated Interest Agreement, Docket No. G-00920315, to establish method of CCI profit which is permissible. There are no outstanding factual matters for which litigation is necessary. Given that the "G-Docket" process was utilized to review and approve the initial Agreement, this process is also properly used to seek clarification and/or amendment.

2. C-TEC Services, Inc. ("C-TEC")

Mr. Mazza fully and completely described CTCO's affiliate relationship with C-TEC. CTCO St. 4 at 1-17. Services provided to CTCO by C-TEC include financial, legal, human resource, executive, public relations, and treasury. The provision of services was approved by this Commission on December 21, 1989 at Docket No. G-890183. Id. at 14. CTCO set forth the revenues and costs of C-TEC, demonstrating that C-TEC was in an overall loss position of \$573,177 (after taxes). Id. at 16-17.

C-TEC's costs are charged back to CTCO according to the PA PUC-approved method, based upon the recommendation of Temple, Barker & Sloan contained in the Company's most recent Management Audit. *Id.* at 14. First, those C-TEC expenses which are directly and specifically undertaken for a particular affiliate (including CTCO) are directly assigned to that affiliate, primarily based upon time-sheet reporting. In 1992, CTCO was directly assigned approximately \$610,000, relating to executive, land and buildings, human resources, and legal.⁵ *Id.* at 15.

The remaining costs (i.e., the residual) are allocated among C-TEC's affiliates based upon a Commission approved 3-factor formula, as follows:

The allocable share of such costs to be paid by each group, including the telephone group, shall be determined by multiplying the residual costs (total costs less direct charges) of providing the service by the average proportionate share of the Group. Proportionate shares will be determined by applying the following equally-weighted factors to the total of all Groups receiving those services: i) Operating expenses; ii) Full time equivalent employees; and iii) Gross assets.

Affiliated Interest Agreement at § 1.2.2, G-890183.

The Joint Petitioners have identified, as C-TEC affiliate issues, several regulatory policy matters for which litigation is totally unnecessary. The first is whether intangible assets should be excluded from the factor of the formula which weights assets. Joint Petition at ¶ 12(g)(ii). Further, the OCA has reserved the opportunity to argue that depreciation and amortization should be included in the factor which weighs expenses. Joint Petition, Appendix "G" at 3 (Stipulation Nos. C.8. and 9).

⁵ The ALJ was mistaken regarding the "lack of record and timekeeping by affiliates making charges to the Company". Interim Order at 13. Those services which are susceptible to timekeeping are charged in this manner. Tr. 356-357 and 375-376. Those persons' time which is not recorded, principally corporate officers, become part of the residual. Tr. 376.

Finally, CTCO has agreed, in the Settlement to true-up the 3-factor formula to include actual, final year-end figures in its financial reports made to this Commission. Joint Petition at 6 (¶ 12(g)(ii)). Budgeted figures are currently used. Tr. 312.

3. Tec-Air, Inc. ("Tec-Air")

The Affiliated Interest Agreement between CTCO and Tec-Air was filed on April 26, 1990 at Docket No. G-900214 and was approved by this Commission. Mr. Mazza presented testimony regarding Tec-Air, the CTCO affiliate which provides air transport services for individuals within the C-TEC organization. CTCO St. 4 at 22-23. The testimony discusses the direct charges paid by CTCO to Tec-Air, the benefits of the use of Tec-Air services, and the manner of the calculation of its charges. After cost and expenses, Tec-Air lost \$1. *Id.* at 23.

The issue identified here by the parties is whether Tec-Air's indirect costs should be recovered. Joint Petition at 7 (¶ 12(g)(iii)). The record and the stipulations at Appendix "G" of the Joint Petition set forth the necessary facts relating to this affiliate transaction. Tr. 319-320. Again, the question presented is one of regulatory policy and need not be resolved by litigation.

4. Affiliated Expense Impacts

CTCO and the Joint Petitioners have identified the expense impacts of the affiliated issues identified in the Settlement. Joint Petition, Appendix "G" (Stipulation Nos. A.6. (Tec-Air), B.4. (CCI), and C.5. (C-TEC)).

Even if the Commission's legal/policy determinations on the preserved "G-Docket" issues were each resolved contrary to the positions taken by CTCO⁶, the accumulated dollar value would be less

⁶ This unlikely resolution would be: (1) No profit whatsoever for CCI; (2) No allocations associated with Tec-Air; and (3) The inclusion of net intangible assets and depreciation expense into the formula.

than the rate reduction proposed by this Settlement. Based upon the expense values stipulated by the parties, the effect, of the affiliate issues is \$2,030,000.

On the other hand, the Settlement proposes an annual reduction in revenues of \$2,634,000, an amount in excess of the above-stated, worse-case-scenario affiliated interest impacts. For this reason, the Settlement states as follows:

The parties have incorporated their respective positions on these various affiliated issues in reaching the proper revenue requirement for CTCO reflected in this Settlement.

Joint Petition at ¶ 12(g). In other words, as part of the settlement process, the parties have focused on affiliated transaction expense and explored the Company's earnings, reaching a settlement proposal which incorporates both.

5. The ALJ's Criticisms

It is clear, from reading ALJ Kashi's Interim Order, that the Judge felt the parties' proposal to use the "G-Docket" process did not allow him to meet the Commission's directive that: "The ALJ should make specific findings regarding the appropriate level of affiliated expenses incurred by Commonwealth." Commission Order entered July 9, 1992 at 2; See, Interim Order at 11-12.

However, settlement is for the purpose of avoiding litigation and limiting disputes. In C&S Water and Sewer, a 1991 case, the Commission had consolidated a base rate increase, an investigation of its own and an affiliated interest filing into a single proceeding. The parties there entered into a settlement of the revenue issues only and proposed that all dockets be terminated. C&S Water and Sewer Associates, supra. The presiding Administrative Law Judge rejected the settlement reached by the parties on grounds, inter alia, that: "I find the suggestion of closing the affiliated interest investigation wholly unsatisfactory." Id., Interim Order No. 6 at 11. The parties in C&S Water and

Sewer requested interlocutory review and the Commission reversed the ALJ decision, granting the Joint Petition for Settlement in its entirety:

Additionally, the ALJ notes that the subject Joint Petition is silent on the issue of the affiliated interest investigation and, therefore, recommends that the Joint Petition for Settlement should not be approved. We recognize that a 'Settlement' as that under review, reflects a compromise of the positions held by the parties of interest which, arguably fosters and promotes the public interest.

Id., Opinion and Order entered July 22, 1991 at 7-8.

The parties here have designed a different result. The Settlement proposes that, rather than ignore the affiliate issues, they be resolved, albeit by a separate mechanism. It is overly harsh for the Administrative Law Judge to characterize this process as "let's sidestep the affiliate issues in the case and put them into a 'paper shuffle' 'G-Docket'." Interim Order Denying Approval at 13.

Resolution in a separate "G-Docket" is appropriate for several reasons. It is administratively efficient. This Commission has the necessary Staff and established procedures for dealing with affiliated interest matters. Further, the agreements to be clarified and/or amended were previously submitted and approved pursuant to this same "G-Docket" process.

However, first and foremost, the parties desire to institute the rate reductions contemplated in the Settlement as quickly as possible and complete the litigation in this docket expediently in order to minimize the already considerable expense associated with this proceeding, which is ultimately borne by the ratepayer. As expressed in the Settlement, the parties have considered the dollar value of the various reserved affiliate issues in deriving the Settlement rate reduction. Therefore, there is no need to delay implementation of the rate reduction pending resolution of the affiliate issues.

This Commission has recognized recently, in several difference contexts, that settlement and resolution through means other than litigation is a process to be encouraged. As stated by the Commission in Order entered November 15, 1993:

In addition to avoiding the time, expense, and uncertainty of litigation, a negotiated settlement usually terminates the controversy without further appeals⁷ and, most importantly, resolves the disputed issues in a manner that reflects an appropriate balance of all interests involved. The Commission has had the occasion to review many negotiated settlements over the years that reflect careful, balanced and creative approaches to resolving difficult regulatory issues.

Proposed Policy Statement Re: Settlement Guidelines and Procedures for Major Rate Cases, L-930088

at 1. On October 19, 1993, this Commission stated that:

The high cost, delay, and uncertainty associated with litigation has led many tribunals to explore the use of an Alternative Dispute Resolution ("ADR") Process. Indeed, it has been suggested that the adversarial mode of resolving disputes is particularly unsuited to regulatory agencies given their broad public policy mandates, and that ADR and other means of mediation can be more useful and efficient in addressing certain regulatory issues.

Policy Statement Re: Establishment of Alternative Dispute Resolution Process, M-930476 at 1.

The Joint Petition before you accomplishes these objectives. The proposed "G-Docket" process suggested by the parties permits the negotiated rate decrease to go into effect immediately and establishes a forum, other than litigation, to resolve issues which do not require a fully adversarial context within which to obtain resolution.

C. THE PROPOSED RATE REDUCTION AND EARNINGS IMPACT

The Settlement proposes revenue reductions of over \$2.6 million.⁸

⁷ Under Lyness, CTCO has raised the constitutional issue of the Commissioners' commingling of prosecutorial and adjudicatory functions in the creation and litigation of this proceeding. Lyness v. Commonwealth State Board of Medicine, 529 Pa. 513, 605 A.2d 1204 (1992). See, Tr. 22; Public Meeting Agenda of April 2, 1992 at OSA-836 and Motion of Commissioner Joseph Rhodes, Jr.; Public Meeting Agenda of June 4, 1992 at OSA-862 and Motion of Chairman David W. Rolka. Upon approval by this Commission of the terms of the Settlement, this appellate issue becomes moot. Otherwise, it is preserved. Joint Petition at 9 (¶ 14).

⁸ CTCO does not understand the statement contained in the Interim Order: "The proposed rate reduction does not look at the company earnings or growth in revenues." Interim Order at 14. The test year methodology used in this proceeding is the exact same used in rate cases. The impact on test

Based upon the 1993 test year utilized in this proceeding, CTCO's total company⁹ rate of return achieved after implementation of the settlement rates will be 7.7% overall and 9.0% on equity. Joint Petition, Appendix "D" at Attachment. On a Part 36 separated basis, CTCO's intrastate rates already yield a negative operating loss, which equates to a negative return on property of 1.6% and a return in equity of negative 8.0%. Id. Thus, it is very clear that interstate earnings are subsidizing intrastate operations and, effectively, a residual ratemaking result is already accomplished without further adjustment, beyond that proposed in the Settlement. It should be further noted that these financial results include revenues from competitive services such as directory advertising and intrastate billing & collection.¹⁰

D. AT&T'S OBJECTIONS

AT&T presented late-filed "Objections" to the Interim Order, which were attached by the Administrative Law Judge as Appendix "H". CTCO filed a timely response thereto on November 18, 1993, apparently too late to be incorporated into the Interim Order. Therefore, it is attached hereto

year earnings was identified by the Joint Petitioners, including the Company's Statement in Support. Joint Petition at Appendix "D". It should also be noted that the Interim Order incorrectly cites the level of revenue decrease as "\$2.39 million". Id. at 14.

⁹ CTCO, an average schedule company, presents these total company figures, because of this Commission's recent statements regarding residual jurisdictional ratemaking. See, for example, Petition of Bentleyville Telephone Company, P-930654, Opinion and Order entered May 26, 1993; Policy Statement Re: Disclosure of Residual Ratemaking Data by Average Schedule Telephone Companies, L-930087, Order entered November 16, 1993. While CTCO does not endorse residual ratemaking, it is cognizant of the Commission's concerns.

¹⁰ In a recent Order dismissing an earnings investigation, the Commission utilized Part 36 separated results for an average schedule company and excluded Yellow Pages from the analysis in identifying the return on equity which was used as the basis for the dissolution of an Order to Show Cause. Pennsylvania Public Utility Commission v. Buffalo Valley Telephone, I-00920014, Opinion and Order entered August 25, 1993.

for the convenience of the Commission. CTCO's Answer fully and completely addressed AT&T's Objections to the Settlement.¹¹

AT&T's Objections to the Settlement should be rejected for the following summarized reasons:

- (a) The issues of affiliated costs and company earnings, which were raised by the Commission and form the sole basis of this Investigation, are resolved by the parties who have addressed them -- the Joint Petitioners. AT&T has not once cross-examined or testified on these issues;
- (b) The access charge and reseller marketing practices raised by AT&T are not a part of the issues identified by the Commission in instituting its Investigation;
- (c) AT&T has not objected to the proposed severance and separate prosecution of its Complaint. It has only sought to destroy the proposed Settlement of the Investigation; and
- (d) AT&T's due process rights to continue pursuit of the issues raised in its separate Complaint, issues which are not a part of this Investigation, are preserved under the Joint Petition.

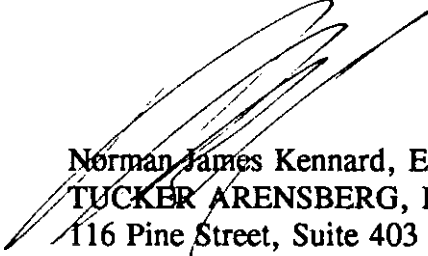
Simply stated, AT&T should proceed to develop its own case on its separate, unrelated issues, without unfairly limiting the parties' and the Commission's ability to decide the issues of affiliated costs and company earnings, which are the subject of the Commission's investigation and in which AT&T has not demonstrated any interest whatsoever.

¹¹ Several factual points are worth reiteration. AT&T is proposing access charges which are less than the cost of providing service. Tr. 498. The AT&T witness admitted that if CTCO's CCL charge is capped, then CTCO's access charges would be "cost-based". Tr. 464. Many of the Commission proceedings in which capping has been required involved no access charge decrease -- only a CCL cap, as is offered in the Joint Petition. Tr. 515-517.

IV. CONCLUSION

WHEREFORE, for the above-stated reasons, Commonwealth Telephone Company respectfully requests that this Commission approve the Joint Petition for Settlement of Investigation.

Respectfully submitted,



Norman James Kennard, Esquire
TUCKER ARENSBERG, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

Dated: December 20, 1993

**ATTORNEYS FOR COMMONWEALTH
TELEPHONE COMPANY**

November 18, 1993

RECORDED
NOV 19 PM 2:12
T.H. D.C. DIV.
INFO. CONTROL

VIA HAND DELIVERY

John G. Alford, Secretary
PA Public Utility Commission
Room B-19, North Office Building
Harrisburg, PA 17120

Re: PA Public Utility Commission v. Commonwealth
Telephone Company, Docket No. I-00920020

Dear Secretary Alford:

Enclosed for filing in the above-captioned proceeding please find the original and two (2) copies of the Answer of Commonwealth Telephone Company to the Objections of AT&T Communications of Pennsylvania, Inc. As evidenced by the attached Certificate of Service, all parties of record have been served a copy of same.

As always, should you have any questions or comments, please do not hesitate to contact me at your convenience.

Sincerely,

TUCKER ARENSBERG, P.C.

NORMAN JAMES KENNARD

NJK/dmb
ctco/inv2/ans2att.obj

Enclosure

cc: All Parties of Record

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :

v. :

COMMONWEALTH TELEPHONE COMPANY :

DOCKET NO. I-00920020

RECEIVED
SEP 19 1971 PM 2:12
F.A.T. U.C.
INFO CONTROL DIV.

**ANSWER OF COMMONWEALTH TELEPHONE
COMPANY TO AT&T'S OBJECTIONS TO
THE JOINT SETTLEMENT PETITION**

AND NOW COMES Commonwealth Telephone Company ("CTCO"), by and through its counsel, Tucker Arensberg, P.C., pursuant to the Pennsylvania Public Utility Commission's ("Commission") Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.103(c), and hereby responds to the Objections of AT&T Communications of Pennsylvania, Inc. ("AT&T"), and, in support thereof, CTCO avers as follows:

1. By Opinion and Order entered at I-920020, the Commission assigned an investigation to the Office of Administrative Law Judge, the scope of which it defined as follows:

4. *That the parties should investigate the parent corporation management service fee expense and all related affiliated interest charges, and following that analysis, Commonwealth's earnings should be analyzed.*
5. *That the presiding ALJ be, and hereby is, directed to make specific findings of*

fact concerning Commonwealth's affiliated interest charges and overall earnings....

Opinion and Order entered July 9, 1992, Ordering ¶¶ 4 and 5.

2. On June 25, 1992, AT&T filed a separate Complaint, the sole stated objective of which was a reduction in the tariffed rates that AT&T pays to CTCO for access services. In its Prehearing Memorandum dated August 6, 1992, AT&T identified only access charge issues as those in which it would become involved. By Order dated December 18, 1992, the presiding Administrative Law Judge ("ALJ") consolidated AT&T's Complaint with the instant docket.

3. On October 18, 1993, CTCO, the Office of Trial Staff ("OTS"), and the Office of Consumer Advocate ("OCA") executed and filed a Joint Petition for Settlement of Investigation ("Joint Petition" or "Settlement Petition").

4. AT&T, at the time of execution of the Settlement Petition, declined to become a signatory party, and the parties preserved, in the document, an offer to cap CTCO's carrier common line charge at \$3.52 per line per month, in exchange for AT&T becoming a subsequent signatory party. Joint Petition at ¶16. If AT&T does not timely join in the Settlement, then the Joint Petitioners propose that the \$335,000 of rate reduction represented by the CCL cap be flowed to ratepayers through an alternative means. Id.

5. In the Joint Petition, CTCO and OTS have expressly requested that AT&T's Complaint be severed from the instant proceeding and placed at a new, separate docket. Id.

6. By "Objections" dated November 5, 1993, eighteen (18) days after service of the Joint Petition¹, AT&T filed "Objections" thereto.

7. It is notable that AT&T's "Objections":

- (a) Do not object to the severing of AT&T's Complaint in the event of approval of the Joint Petition;
- (b) Do not raise any legal or factual arguments claiming any inability of or prejudice to AT&T in continuing to pursue its issues at a separate complaint docket; and
- (c) Do not allege that CTCO is over-earning.

AT&T simply claims that access charges should be further reduced beyond the option of capping CCL charges offered by the other parties.²

8. AT&T's "Objections" are filed in procedural error and, therefore, should not be considered by Your Honor:

- (a) They are not timely filed. A settlement petition is a "hearing motion" and, thus, 52 Pa. Code § 5.103 controls. Thereunder, a "participant has 10 days from the date of service within which to answer or object to a motion...". Since no other time frame was otherwise fixed, AT&T's "Objections" are untimely and, hence, must be dismissed.³ Due

¹ As set forth in the Certificate of Service which conveyed the Joint Petition to the Commission and the parties, service was made upon AT&T via Federal Express. Therefore, AT&T was "served" on October 18, 1993. 52 Pa. Code § 1.56(a).

² While AT&T also complains that the Joint Petition does not definitively resolve the affiliated interest issues, this is a matter in which AT&T has expressed not one single iota of interest. Moreover, as noted subsequently in this Answer, AT&T's allegations in this regard are grossly in error.

³ In a separate, but related docket, AT&T was given twenty (20) days within which to file comments. Informal Investigation into the Marketing Practices of Commonwealth Long Distance Company, M-930447, Tentative Order entered October 19, 1993. AT&T's Comments

to the fact that service was accomplished by Federal Express, the period of time provided for an answer or objection to a hearing motion commenced to run on October 18, 1993. 52 Pa. Code § 1.56(b); and

- (b) The "Objections" are improperly addressed to the Commission. Instead, the pleading should have been addressed to Your Honor.

9. AT&T's "Objections", if considered, should be rejected on substantive grounds.

10. The Joint Petition fully and completely resolves those issues which the Commission directed be investigated, namely, the cost of affiliated transactions and CTCO's earnings.

11. The Joint Petitioners have proposed a \$2.6 million decrease in CTCO's on-going, annual jurisdictional net operating revenues. Joint Petition at ¶ 12(a), (b), and (c); See, also, Id. at ¶ 13(a). AT&T has not participated in the earnings side of this investigation. The parties addressing themselves to these issues were the OCA and OTS, both of whom have stated that the resulting overall revenues of CTCO are "just and reasonable" and/or "in the public interest". Joint Petition at Appendix "E" (OTS) and Appendix "F" (OCA). As set forth by CTCO in its Statement, the total company rate of return achieved after implementation of the settlement rates will be 7.7% overall and 9.0% on equity. Id. at Appendix "D" and attachment thereto.

12. AT&T makes no allegation that, either current earnings or those which result from the Settlement Petition, are "unjust or

to the Tentative Order were also dated November 5, 1993, the same date upon which its "Objections" were filed here. However, the two dockets are different and different response dates apply.

unreasonable". AT&T, rather, argues a point of rate design -- that access charge rates are too high and local service rates are too low.

13. However, the rate design issue which AT&T seeks to advance are not prejudiced by adoption of the Joint Petition. AT&T is free to pursue its separately filed Complaint and argue there for the exact same relief sought by its "Objections" -- a reduction in access charges and a concomitant increase in local service charges. AT&T totally fails to raise any concern regarding its ability to prosecute a separate complaint. Rather, it seeks to destroy the Settlement arrived at by the other parties.

14. AT&T's arguments are based upon unrebutted evidence. AT&T's "Objections" are full of rhetoric and hyperbole, the source of which is the testimony of its witness, Mr. Christopher Rozycki. While this testimony has been cross-examined, neither CTCO nor any of the other parties have had the opportunity to present rebuttal testimony. Therefore, AT&T's allegations consist of nothing more than unrebutted conclusions. However, it is notable that, during cross-examination, Mr. Rozycki testified as follows:

- The access charges proposed by AT&T are less than the cost of providing access service, as identified in either CTCO's or AT&T's cost study. Tr. 498.
- Interstate access charge revenues are being used to subsidize local exchange rates. Tr. 481. AT&T does not contend that these revenues in any way generate additional earnings for shareholders. Tr. 482.
- Mr. Rozycki's testimony does not address CTCO's earnings, either intrastate or on a total company basis. Tr. 482. He agreed that the current total company overall rate of return of 8.41% (before

application of the rate decrease contained in the Joint Petition) is not "excessive". Tr. 483.

- AT&T believes that "the best way" to address interstate access charges would be upon application to the FCC and not this Commission. Tr. 492.
- If CTCO's CCL charge is capped as a result of this proceeding (as proposed in the Joint Petition), then CTCO's access charges will be cost based. Tr. 464. (After discussion with AT&T's lawyer, the witness recanted this statement, but not convincingly. See, Tr. 579).
- Many of the PA PUC proceedings in which capping has been required (See, list in AT&T "Objections" at Page 7) involved no access charge decrease -- only a CCL cap (as is offered in the Joint Petition). Tr. 515-517.
- AT&T provides no assurances that it will ever offer Reach Out Pennsylvania® to CTCO's ratepayers. Tr. 475.
- Access line growth in CTCO's service territory is 2% and toll growth is 5.5%. Tr. 520.
- AT&T has no factual basis to conclude that CTCO's toll rates do not cover imputed access charges. Tr. 504. It is espousing theory only.

Therefore, the "facts" underlying AT&T's "Objections" failed, at several critical junctures, to withstand the scrutiny of cross-examination. It is not a reliable basis upon which to cavalierly destroy a settlement carefully developed by the other parties.

15. AT&T never participated in this proceeding on the issue of affiliated interest charges either. While AT&T has no interest in this area, it nevertheless complains about the other parties' resolution. Its criticisms are unfounded. The Joint Petitioners do not propose to "side-step" the issues, but rather propose a separate mechanism whereby the affiliated issues will be resolved

more quickly and more efficiently.⁴ Moreover, contrary to AT&T's assertion, the parties have, at Appendix "G" of the Settlement, set forth stipulated facts which permit Your Honor to make specific findings concerning affiliated interest charges. It is misleading for AT&T to suggest that Your Honor would somehow not fulfill his duty to the Commission were the Settlement approved.

16. Finally, the relief sought by AT&T is irresponsible. Objections at 12-13. Only Issue Nos. 1 and 2 (earnings and affiliate agreements) are at issue under the Commission's Order instituting this investigation. On these issues, AT&T has participated not at all. AT&T's real interest is in Issue Nos. 3 through 5, which it remains free to pursue in its own separately filed Complaint.

17. In summary, AT&T's "Objections" should be rejected for the following reasons:

- (a) The issues of affiliated costs and company earning which were raised by the Commission are resolved by the parties with an interest therein;
- (b) The access charge and reseller marketing practices it raises are not a part of the issues set forth by the Commission in instituting this investigation;

⁴ The resolution of these affiliate issues will have no impact upon CTCO's rates, as erroneously averred by AT&T. Objections at 12. Per the express terms of the Joint Petition, the parties may not recommend or seek a change in revenues or rates as a result of the resolution of the three separated affiliated interest questions, because the "parties have incorporated their respective positions on these various affiliated issues in reaching the proper revenue requirement for CTCO reflected in this settlement." Joint Petition at ¶ 12(g). Therefore, AT&T continues to have no interest in these issues whatsoever.

- (c) AT&T points to no prejudice which could or would result from the severance and separate prosecution of its Complaint;
- (d) AT&T's due process rights are preserved;
- (e) The parties should have a full opportunity to rebut AT&T's assertions and develop a complete record.

Simply stated, AT&T should proceed to develop its case on its separate, unrelated issues, without unfairly limiting the parties, Your Honor's, and the Commission's ability to decide the issues of affiliated costs and company earnings, which are the subject of the Commission's investigation and in which AT&T has not taken an interest.

WHEREFORE, for the above-stated reasons, Commonwealth Telephone Company respectfully requests that Your Honor and this Commission dismiss AT&T's "Objections" and adopt the Joint Petition for Settlement of Investigation as filed on October 18, 1993.

Respectfully submitted,

~~Norman James Kennard, Esquire
TUCKER ARENSBERG, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900~~

Dated: November 18, 1993

ATTORNEYS FOR COMMONWEALTH
TELEPHONE COMPANY

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :
v. : DOCKET NO. I-00920020
COMMONWEALTH TELEPHONE COMPANY :

CERTIFICATE OF SERVICE

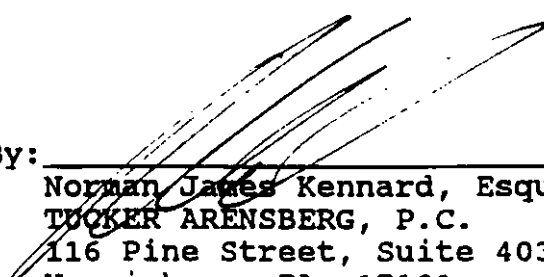
I hereby certify that, on this 18th day of November, 1993, I have served a true and correct copy of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code § 1.54:

The Honorable George M. Kashi
Administrative Law Judge
Room G08
PA Public Utility Commission
Harrisburg, PA 17105-3265

Kandace F. Melillo, Esquire
Office of Trial Staff
North Office Building, Room 210
Harrisburg, PA 17120

Phillip F. McClelland, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Mark Keffer, Esquire
AT&T Communications of PA, Inc.
Third Floor
3201 Jermantown Road
Fairfax, VA 22030-2885

By: 
Norman James Kennard, Esquire
TUCKER ARENSBERG, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

Attorneys for COMMONWEALTH
TELEPHONE COMPANY

* - Via Hand Delivery

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

DOCKET NO. I-00920020

COMMONWEALTH TELEPHONE COMPANY :

CERTIFICATE OF SERVICE

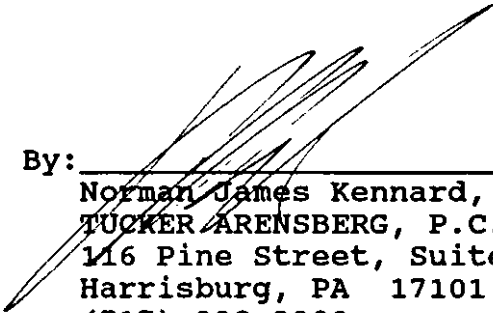
I hereby certify that, on this 20th day of December, 1993, I have served a true and correct copy of the foregoing document upon the persons set forth below by First Class Mail, postage prepaid or by hand-delivery (unless service is otherwise indicated), in accordance with 52 Pa. Code § 1.54:

Kandace F. Melillo, Esquire
Carol F. Pennington, Esquire
Office of Trial Staff
Pitnick Building, Third Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Philip F. McClelland, Esquire
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Mark Keffer, Esquire
AT&T Communications of PA, Inc.
Third Floor
3201 Jermantown Road
Fairfax, VA 22030-2885

By: _____


Norman James Kennard, Esquire
TUCKER ARENSBERG, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101
(717) 238-2900

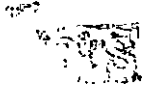
Attorneys for COMMONWEALTH
TELEPHONE COMPANY



ORIGINAL

OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

IRWIN A. POPOWSKY
Consumer Advocate



(717) 783-5048

December 20, 1993

John G. Alford, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
PA. P. U. C.
INFO. CONTROL DIV.
DEC 20 11:05

Re: Pa. Public Utility Commission
v. Commonwealth Telephone Co.
Docket No. I-00920020

Dear Secretary Alford:

Enclosed for filing, please find an original and nine copies of the Office of Consumer Advocate's Brief In Support Of the Joint Petition For Commission Review and Answer To A Material Question in the above-referenced proceeding.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

Mark Shostak

Mark J. Shostak
Assistant Consumer Advocate

Enclosures

cc: Honorable George M. Kashi
John F. Povilaitis
Bernard A. Ryan, Jr.
All parties of record

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

COMMONWEALTH TELEPHONE
COMPANY

Docket No. I-00920020

RECEIVED
GENERAL INVESTIGATIVE
DIVISION
DEC 20 1993

BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF PETITION FOR COMMISSION
REVIEW AND ANSWER TO A MATERIAL QUESTION

FILED
DEC 30 1993

Philip F. McClelland
Mark J. Shostak
Assistant Consumer Advocates

FOR:
Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

**DOCUMENT
FOLDER**

DATED: December 20, 1993

TABLE OF CONTENTS

I. BACKGROUND 1

II. ARGUMENT IN SUPPORT OF COMMISSION REVIEW 4

 A. The Material Question Presented By The Joint
 Petitioners Should Be Reviewed At This Time 4

 1. Introduction 4

 2. The Settlement Presented Is In The Public
 Interest And Continued Litigation May Not Lead
 To Further Benefit To Ratepayers 4

 3. Results Gained Through Litigation Will
 Certainly Be Delayed And May Not Be Realized
 Due To Potential Legal Challenges 6

 4. The Settlement Appropriately Resolves The
 Revenue Impact Of Commonwealth's Affiliated
 Interest Transactions And Appropriately
 Directs Remaining Affiliate Issues To Another
 Proceeding 7

 5. Further Investigation Into Commonwealth's
 Earnings Might Not Result In Further Benefit
 To Most Of Commonwealth's Ratepayers 10

 6. The Settlement Does Not Interfere With AT&T's
 Pursuit Of Its Interests 11

III. CONCLUSION 12

I. BACKGROUND

On April 8, 1992, the Commission by Order instituted an investigation of Commonwealth Telephone Company's ("Commonwealth" or the "Company") operating expenses that bear on the rate of return of common equity capital. Investigation at Docket No. I-00920020. In its Order the Commission indicated that it was concerned the Company may have filed an inaccurate earnings position.

On June 25, 1992, AT&T Communications of Pennsylvania Inc. ("AT&T") filed a Complaint against Commonwealth's interstate carrier access charges.

On July 9, 1992, the Commission entered an additional Order expanding its investigation to include the appropriateness of Commonwealth's affiliated transactions and in particular fees paid to the Parent Corporation for Management Services. See Order at 2. The Commission assigned the proceeding to the Office of Administrative Law Judge for a Recommended Decision and directed the Office of Trial Staff ("OTS") to participate in the proceeding. Also on July 9, 1992, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention.

On July 29, 1992, Commonwealth filed a motion to strike or dismiss with prejudice AT&T's Complaint. In its Motion the Company alleged that the relief sought by AT&T was outside of the scope of this proceeding. On August 6, 1992, a prehearing conference was held, at which Commonwealth argued that its earnings

would only be at issue if irregularities were found in its affiliated transactions.

On December 18, 1992, Administrative Law Judge ("ALJ") Kashi issued an Order which denied Commonwealth's motion to dismiss AT&T's Complaint. In addition, the ALJ's Order put the parties on notice that the Company's present rates, if determined to be unjust and unreasonable, may be revised in this proceeding.

On May 3, 1993, Commonwealth filed its testimony and on May 21, 1993, Commonwealth filed Supplemental Testimony providing further detail concerning accounting and affiliated interest issues.

On May 27, 1993, a prehearing conference was held, setting forth a schedule for hearings. On June 21 and 22, 1993, the OCA conducted informal discovery at Commonwealth's corporate offices in Dallas, Pennsylvania. On July 1 and 2, 1993, Commonwealth's witnesses were cross-examined.

On August 9, 1993, AT&T filed its direct testimony, and on September 22, 1993, AT&T's witness was cross examined.

On October 18, 1993, Commonwealth, OCA and OTS together filed the Joint Petition For Settlement of Investigation ("Settlement" or "Joint Petition").

On November 5, 1993, AT&T filed Objections to the Joint Petition, alleging that it is unfair to reduce local rates without reducing access rates and that the settlement fails to resolve affiliate issues.

On November 18, 1993, Commonwealth responded to AT&T's Objections, and on November 19, 1993, OCA and OTS responded to AT&T's Objections.

On November 18, 1993, the ALJ issued an interim Order denying the Joint Petition for Settlement of Investigation. In denying the Petition for Settlement the ALJ stated that the settlement failed to resolve the affiliated interest concerns raised by the Commission and that it failed to provide information on the Company's earnings. The ALJ concluded that the Settlement was not in the public interest.

Therefore, on December 13, 1993, the Joint Petitioners filed a Petition for interlocutory review.

II. ARGUMENT IN SUPPORT OF COMMISSION REVIEW

A. The Material Question Presented By The Joint Petitioners Should Be Reviewed At This Time.

1. Introduction

Under the requirements set forth in 52 Pa. Code Section 5.302(a), a material question merits interlocutory review if interlocutory review will:

[P]revent substantial prejudice or expedite the conduct of the proceeding.

52 Pa. Code § 5.302(a).

The OCA submits that failure to provide interlocutory review will lead to needless further litigation, delay of significant benefits to ratepayers, jeopardize significant benefits offered to ratepayers, and leave the petitioners without direction as to a significant matter in this proceeding.

2. The Settlement Presented Is In The Public Interest And Continued Litigation May Not Lead To Further Benefit To Ratepayers.

The OCA submits that the Settlement offers significant benefits to Commonwealth ratepayers. Commonwealth's current average one-party residential monthly service rate of \$5.80 is already 30% less than the industry state-wide average of \$8.45, and 44% less than the Bell of Pennsylvania's average service rate of \$10.30. Commonwealth St. 1, Exh. SB-17, SB-18. The Settlement further reduces Commonwealth's residential rates by providing touch-tone service free of charge and extended area service ("EAS") to a number of routes on an expedited basis.

Providing touch-tone free of charge to Commonwealth residential customers offers substantial savings to ratepayers and makes the Company's system more efficient. Approximately 76% of Commonwealth's residential customers currently pay an additional \$1.00 for touch-tone service. The Joint Petition provides that Commonwealth will provide touch-tone service free of charge to all residential subscribers. As such, 76% of Commonwealth's residential subscribers will receive an immediate 14.7% reduction in their basic/touch-tone rates, while the remaining subscribers will have the option of adding touch-tone service free of charge. Altogether Commonwealth's residential customers are receiving an effective \$1.6 million dollar reduction in payments to Commonwealth as a result of this change. The provision of touch-tone free of charge will enable all ratepayers to use touch-tone service to set up calls, and therefore increases the overall efficiency of the network. As such, free touch-tone service will benefit all users and Commonwealth as well.

Under the terms of the Settlement, Commonwealth will also implement EAS by December 31, 1994 to 17 routes set forth in the Joint Petition, at a net cost to Commonwealth of approximately \$699,000 in 1994. Local calling area restrictions are one of the most frequent customer complaints received by the OCA. Accordingly, this provision provides substantial relief to all of Commonwealth's customers in the affected calling areas in an expedited fashion.

As set forth above, the OCA submits that free touch-tone service and expedited EAS to 17 routes represents substantial benefits to Commonwealth's ratepayers.

3. Results Gained Through Litigation Will Certainly Be Delayed And May Not Be Realized Due To Potential Legal Challenges.

The OCA submits that the approval of the instant Settlement is especially warranted in light of potential delays and legal challenges that might prevent ratepayers from receiving substantial benefits in this case. Specifically, it must be noted that at about the same time that the PUC issued its Order initiating this investigation, the State Supreme Court decided Lyness v. State Board of Medicine, (Lyness), 605 A.2d 1204 (1992). That case generally calls into question the procedures under which a Pennsylvania administrative agency can both initiate and adjudicate a proceeding against a party.

During this proceeding, Commonwealth has raised the argument that under Lyness this Commission will be unable to order rate reductions in this proceeding as a result of the manner in which this case was initiated. Commonwealth has stated that it will argue that the facts in this case are similar to those of Lyness and its progeny,¹ where the court ruled that the commingling of prosecutorial and adjudicatory roles by an administrative body violated the due process protection provided in the Pennsylvania

¹ See Copeland v. Township of Newton, 608 A.2d 601 (1992); Stone and Edwards Insurance Agency, Inc., v. Department of Insurance, 616 A.2d 1060 (1992); Giffin v. Chronister, 616 A.2d 1070 (1992).

Constitution. While the OCA does not necessarily agree with the Company's interpretation of Lyness, or that it is applicable to this case, the OCA submits that settlement of this case would render the Lyness issue essentially moot, and thus avoid extensive delays in resolving this matter and ensure significant benefits to ratepayers. Moreover, the OCA submits that the relief provided by the Settlement will provide real and immediate benefit to Commonwealth ratepayers.

4. The Settlement Appropriately Resolves The Revenue Impact Of Commonwealth's Affiliated Interest Transactions And Appropriately Directs Remaining Affiliate Issues To Another Proceeding.

As part of this proceeding, the OCA has thoroughly examined Commonwealth's affiliated expenses. In its initial Order, the PUC expressed concern about a substantial increase in Commonwealth's affiliated interest expenses. Order at 2, Attachment A (April 8, 1992); Motion of Chairman David W. Rolka (June 3, 1992). This concern has been addressed in part within this proceeding. Specifically, in this proceeding the OCA has examined in detail through numerous interrogatories, on-site discovery, informal discussions, and cross-examination Commonwealth's affiliated expenses. As a result of this investigation, the OCA was prepared to argue that Commonwealth was being overcharged by its affiliates.

The rate reduction in the Settlement reflects, for the most part, the removal of the excessive charges from Commonwealth's

affiliates. The OCA was prepared to argue in this case concerning the affiliate issues addressed in the settlement that Commonwealth is being overcharged by its affiliates as follows: \$652,618 by its Tec-Air affiliate for air travel; \$477,569 by Commonwealth Communications, Inc., ("CCI") for engineering work; and, \$904,755 by C-TEC for an inappropriate allocation formula. Thus, if litigated, the OCA would seek a reduction of \$2.03 million to reflect the removal of the affiliate overcharges identified in the Settlement.² Therefore, the OCA submits that Commonwealth's revenue reduction of \$2.64 million pursuant to the Settlement is a reasonable and appropriate compromise resolution to the rate effect of Commonwealth's affiliate transactions.

Commonwealth also has agreed to revise and resubmit its affiliate agreements in a new docket. This will allow the OCA and other parties to fully examine Commonwealth's affiliate transactions and to make the necessary changes to these agreements in a separate proceeding, which would not be tainted by any Lyness challenges.

Such refiling will occur within three months and will address the Company's affiliated interest agreements with CCI, Tec-Air, and C-TEC. The purpose of this refiling will be to clarify and amend certain aspects of these affiliate agreements. Once those agreements are refiled, the OCA and other parties will be able to address whether the amendments resolve their and the

² In addition, the OCA was prepared to argue for a \$990,000 adjustment to Commonwealth's charge from C-TEC for executive bonuses.

Commission's concerns. The OCA has agreed, however, that it will not seek rate reductions in these further proceedings beyond those which are already reflected in this settlement.

The specific issues concerning each affiliate agreement to be addressed in these subsequent proceedings are set forth in paragraph 12(g) of the Joint Petition and described below. Commonwealth's refiled C-TEC affiliated agreement will require the true-up of budgeted figures with actual figures in finalizing the 3-factor formula calculation for the allocation of C-TEC residual costs (also known as "Management Fees"). This change will reduce prospectively Commonwealth's allocated portion of C-TEC's management fee charges. Using actual figures in the Company's method of allocating C-TEC management fees would have reduced Commonwealth's allocated portion of C-TEC management fees charges in 1992 by 5.8%. The other affiliate issues to be addressed in these G Dockets will include: (1) Whether intangible assets, depreciation and amortization expense should be included in the 3-factor formula for the calculation of C-TEC's residual costs; (2) what constitutes an appropriate level of profit for work performed by CCI for Commonwealth; and, (3) whether indirect costs should be included in Tec-Air's charges to Commonwealth.

Commonwealth's refiling of its affiliate agreements preserves the rights of the parties to address the affiliated transaction issues set forth above and in paragraph 17(g) of the Joint Petition. In addition, the Joint Petition permits parties to use the record from this proceeding in these upcoming proceedings.

Furthermore, the parties have attached to the Settlement a stipulated synopsis of many of the essential facts concerning these discrete affiliate issues.

The OCA supports the refiling of these affiliated interest agreements, in part, because as set forth above, it would avoid problems raised by the Company regarding the applicability in this case of Lyness. Furthermore, by obtaining the rate reduction immediately, ratepayers can realize the benefits offered by the settlement in the near future, instead of after additional hearings and a potentially lengthy appeals process.

For the reasons set forth above, the OCA submits that the partial resolution of affiliate issues in the Settlement and deferral of other issues to a separate proceeding is in the public interest.

5. Further Investigation Into Commonwealth's Earnings Might Not Result In Further Benefit To Most Of Commonwealth's Ratepayers.

The ALJ in his Interim Order indicated that he is unable to conclude that the proposed Settlement is in the public interest without knowing Commonwealth's earnings. While the OCA did not agree with Commonwealth's overall earnings presentation, the OCA is satisfied with the resolution of the earnings investigation as set forth in the settlement.

6. The Settlement Does Not Interfere With AT&T's Pursuit Of Its Interests.

The OCA notes that AT&T is seeking lower access charges and has not signed the Settlement. The OCA does not object to AT&T going forward, without prejudice, with its Complaint and seeking lower access rates.³ However, the OCA would strongly object to any increase proposed by AT&T to other Commonwealth customers in its Complaint or in this proceeding. The OCA addressed this issue further in its Response to AT&T's Objections to The Joint Petition For Settlement. This Response is attached hereto as Appendix A.

³ The OCA did not join in the request by Commonwealth and OTS in the Settlement to have AT&T's Complaint severed from this proceeding and placed at a new, separate docket. This is noted at page 11 and footnote 5 of the settlement.

III. CONCLUSION

For the reasons set forth above, the OCA submits that the Settlement is in the public interest and therefore this petition for review should be granted so as to avoid needless litigation.

Respectfully submitted,

Mark J. Shostak
Mark J. Shostak
Assistant Consumer Advocate

Philip F. McClelland
Assistant Consumer Advocate

Irwin A. Popowsky
Consumer Advocate

Office of Attorney General
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

DATED: December 20, 1993
11938

IN THE COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|-----------------------------|---|-----------------------|
| PENNSYLVANIA PUBLIC UTILITY | : | |
| COMMISSION | : | |
| | : | |
| v. | : | Docket No. I-00920020 |
| | : | |
| COMMONWEALTH TELEPHONE | : | |
| COMPANY | : | |

OFFICE OF CONSUMER ADVOCATE'S RESPONSE
TO AT&T'S OBJECTIONS TO THE JOINT
PETITION FOR SETTLEMENT OF INVESTIGATION

The Office of Consumer Advocate (OCA) is in receipt of objections from AT&T to the Joint Petition for Settlement of Investigation. The OCA would simply note that the proposed settlement -- at least in the OCA's view -- was intended to preserve the right of AT&T to pursue many of the issues it has raised in its objections. All parties agree AT&T's Complaint may go forward. OCA did not join in the request by Commonwealth and OTS that the AT&T Complaint be severed, but believes AT&T's Complaint may go forward either in this or a separate forum.

OCA is satisfied with the result of the Settlement from the perspective of Commonwealth's other ratepayers. OCA wants these ratepayers to get the benefits of the Settlement as soon as possible. These benefits include free residential touchtone service and accelerated extended area service for 17 routes. As set forth in the Settlement, AT&T could accept a common carrier line cap as part of an overall settlement or it can go forward with its Complaint to reduce access charges.

OCA does not oppose AT&T going forward with its Complaint

on issues concerning reduced access charges as well as its concerns regarding long distance anti-competitive practices. With respect to the other affiliate issues, the OCA notes that one purpose of a separate investigation on affiliate interest issues is to avoid problems raised by the Company regarding the applicability in this case of the Pennsylvania Supreme Court case Lyness v. State Board of Medicine, 605 A.2d 1204 (1992). In addition, these affiliate transaction investigations could be consolidated into one proceeding and need not be done in three separate proceedings, as suggested by AT&T.

The OCA certainly would object, however, to the suggestion in AT&T's Objections that a reduction in AT&T's access charges may in turn result in as much as a 40% rate increase for other Commonwealth customers. Commonwealth's customers have not received notice of any proposed rate increase; any increase in rates would be entirely inappropriate in this case, and the OCA would strongly oppose any efforts to impose a rate increase on any other customers as a result of this proceeding.

Respectfully submitted,

Mark Shostak
Mark J. Shostak
Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120
(717) 783-5048

Dated: November 19, 1993

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission
v.
Commonwealth Telephone Company
Docket No. I-00920020

I hereby certify that I have this day served a true copy of the Office of Consumer Advocate's Brief In Support Of The Joint Petition For Commission Review and Answer To A Material Question 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 20th day of December, 1993.

SERVICE IN PERSON

Kandace F. Melillo
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Norman J. Kennard, Esq.
Tucker Arensberg, P.C.
116 Pine Street
Harrisburg, PA 17101

Scott Burnside, V.P.
Revenue & Public Affairs
Commonwealth Telephone Co.
100 Lake Street
Dallas, PA 18612

Mark A. Keffer, Esq.
American Telegraph
& Telephone
Room 3A2
3201 Jermantown Road
Fairfax, VA 22030

Mark Shostak
Mark J. Shostak
Assistant Consumer Advocate

ORIGINAL



Mark A. Keffer
Senior Attorney

Room 3-D
3033 Chain Bridge Road
Oakton, VA 22185
703 691-6046
FAX 703 691-6093

December 20, 1993



Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265

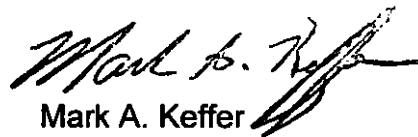
Re: Docket No. I-00920020

RECEIVED
PA. P. U. C.
INFO. CONTROL DIV.
20 DEC 20 PM 4:18

Dear Mr. Alford:

Enclosed for filing in the above-cited docket are an original and nine copies of AT&T's Brief in Support of Judge Kashi's Decision to Reject the Proposed Settlement Agreement.

Very truly yours,


Mark A. Keffer

Enclosures

cc: Parties of Record

DOCUMENT
FOLDER

01 1993

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUC
v.
COMMONWEALTH
TELEPHONE COMPANY**

Docket No. I-920020

JACKETED

DEC 3 0 1993

**BRIEF OF AT&T
IN SUPPORT OF JUDGE KASHI'S DECISION
TO REJECT THE PROPOSED SETTLEMENT AGREEMENT**

Administrative Law Judge Kashi made the right decision in rejecting the October 18, 1993, Joint Petition for Settlement of Investigation ("Joint Settlement Petition") filed by Commonwealth, OCA and OTS. There are two key reasons why the Settlement Petition should be rejected: (1) the settlement proposes to reduce local rates while leaving access charges virtually unchanged, even though Commonwealth's local rates are already among Pennsylvania's lowest and its access charges among the highest, and even though Commonwealth's own cost studies show that local rates are priced substantially below cost and access rates substantially above; and (2) the settlement proposes to defer to three future proceeding issues which the ALJ was directed to resolve in this case.

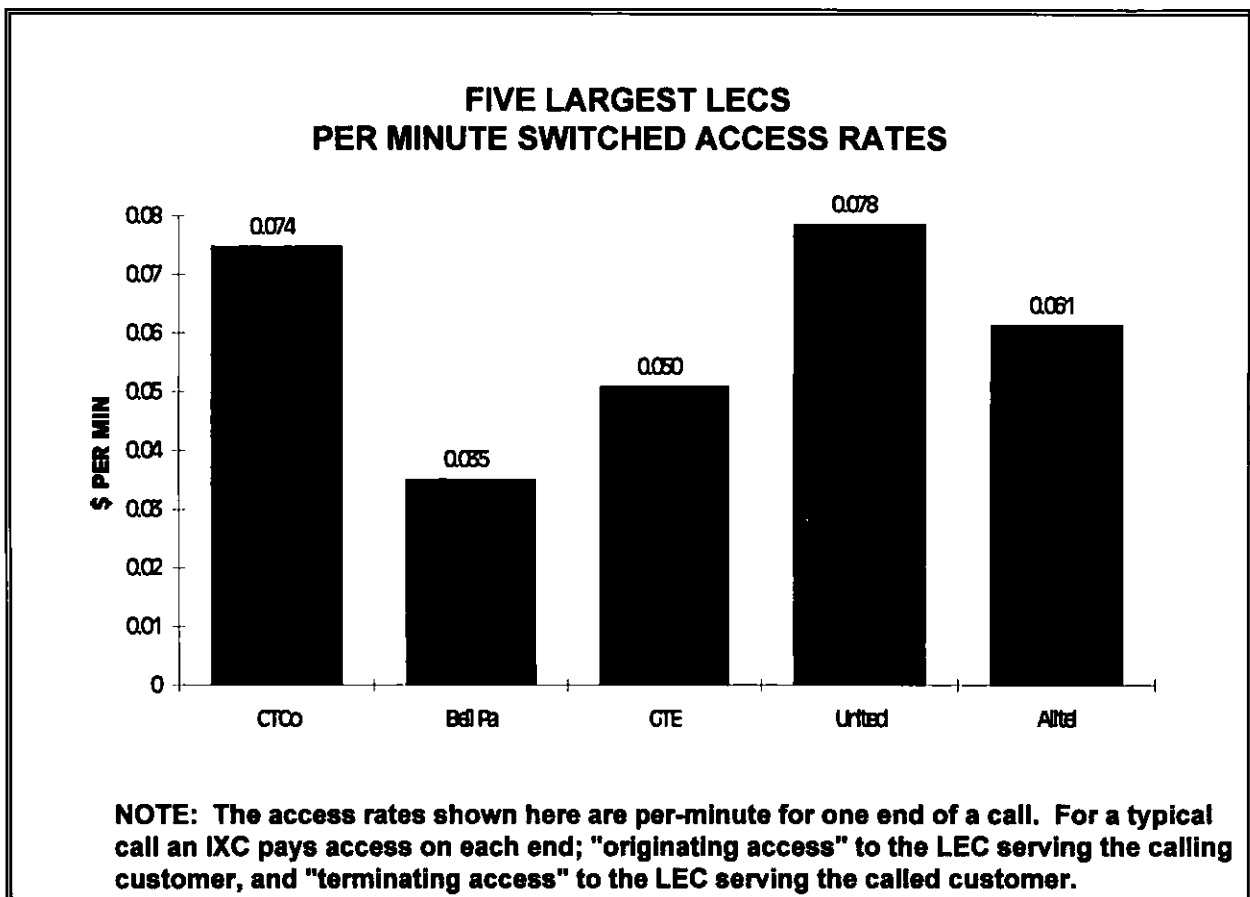
**DOCUMENT
FOLDER**

RECEIVED
51 DEC 29 PM 4:18
PA. P. U. C.
INFO. CONTROL DIV.

I. Commonwealth's access charges are among the highest in the state and priced well above fully distributed costs; in contrast, its local rates are among the lowest in Pennsylvania and are priced far below cost -- the Settlement Petition proposes to make these differences even more extreme.

A. Commonwealth's access charges already are very high.

Commonwealth has kept its access charges incredibly high, virtually the highest of any major Pennsylvania local exchange carrier:



These high access charges far exceed Commonwealth's costs of providing access services. On a total company basis, Commonwealth is collecting over \$16 million more in access charges than are warranted by its own unadjusted

fully-distributed cost studies.¹ For *intrastate* access, Commonwealth's own cost study shows that its intrastate access rates are some \$2.6 million above fully-distributed costs. In the *interstate* arena, where Commonwealth has chosen to collect "average schedule"² rates, its access revenues are \$14 million above fully distributed costs.³ Thus, overall, Commonwealth's access charges collect over \$16 million in contribution above fully-distributed costs.

B. The \$16 million in access contribution has kept Commonwealth's local service rates extremely low.

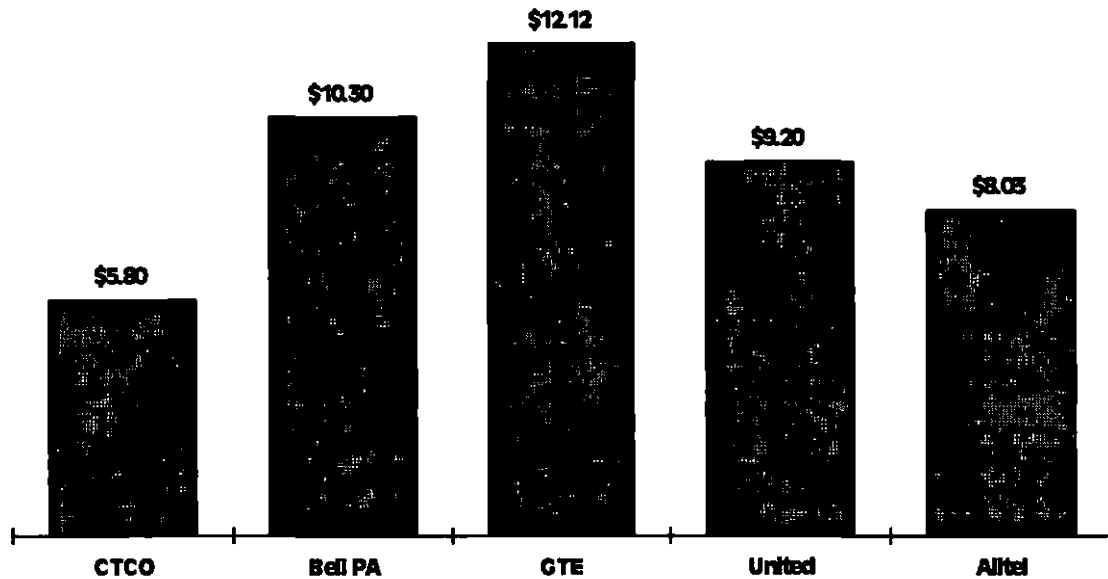
Commonwealth's local rates are among the lowest in Pennsylvania, and do not come close to covering the costs of providing local service. Compared to other major local exchange carriers, Commonwealth's local service rates are very low:

¹ Generally, telephone companies perform fully distributed cost studies using the FCC's "Part 36" rules (47 CFR Part 36). Because these rules assign more common and overhead costs than would be supportable in a competitive marketplace, they are a useful method of identifying an upper limit to the amount of contribution above incremental cost which should be recovered from the service. In this case, Commonwealth witness Laffey prepared a Part 36 study showing Commonwealth's costs for a 1993 projected test year. See Laffey Direct at Exh. JYL-2.

² As AT&T witness Rozycki testified (at pp. 8-9), typically, average schedule companies are very small firms that do not have the resources or the wherewithal to conduct cost studies. Commonwealth, however, is a large company with substantial resources. It claims to be the 20th largest telephone company in the nation (out of about 1200), and probably is the largest "average schedule" company in the country.

³ See Testimony of AT&T witness Rozycki at pp. 8-9. Moreover, as the Commission recently recognized in its Policy Statement entered November 16, 1993, in Docket No. L-930087, the federal court decision in Crockett Telephone v. FCC, 963 F.2d 1564 (D.C. Cir. 1992), gives the Commission clear authority to engage in "residual ratemaking" for companies, like Commonwealth, that elect "average schedule" interstate access rates. To the extent interstate "average schedule" rates are above cost, the overearnings are available for intrastate ratemaking.

FIVE LARGEST LECs Average Monthly Residential Rates



Source: Commonwealth witness Burnside Testimony at Exhibit SB-18.

Not surprisingly, Commonwealth's low rates are below cost. The Company's fully distributed cost study shows that Commonwealth's local services have costs of \$54.5 million, but produce revenues of only \$23.3 million. See Direct Testimony of Commonwealth witness Laffey at Exh. JJL-2; see also Testimony of AT&T witness Rozycki at p. 21.

- C. Rather than begin to move access and local rates closer to their respective costs, the Joint Settlement Petition proposes to make the differences more extreme.**

No other Pennsylvania company has such extreme differences between access and local services. The facts of this case support some re-balancing of

the relationships between access and local service, so that access charges are reduced and local rates begin to move closer to their underlying costs.

The Joint Settlement Petition, however, proposes to make matters worse. It proposes to reduce local rates even further, and proposes virtually no reductions in access charges. Under the terms of the Petition, local service rates would be reduced \$2.3 million, while access charges remain essentially unchanged. In relative terms, this would move the rates for these services even further from the costs shown in Commonwealth's own cost study.⁴

Where local rates are already extremely low and access is extremely high, and where local rates are way below cost and access is way above cost, sound regulatory policy, simple logic, and basic fairness all indicate that changes need to be made.

D. The per-line CCL "cap" offered to AT&T in the Joint Settlement Petition is an inadequate response to the shortcomings in Commonwealth's access pricing.

Contrary to Commonwealth's Statement in Support of the Joint Petition, the parties' offer to AT&T to cap the Carrier Common Line Charge, by itself, does not constitute an adequate response to Commonwealth's access problem. In the

⁴ In other instances where cost studies have *not* been available, the Commission still has precluded the subsidy from access from growing any more pronounced. For example, in Docket P-900490, the Commission found that where ALLTEL was going to reduce rates, but had not performed service-specific cost studies, it was appropriate to reduce rates by a fixed percentage across the board. (See Order entered March 15, 1991.) If that occurred in this case, access, local and other services would be reduced by about 3.5% each (the proposed \$2.6 million reduction divided by Commonwealth's \$73.5 million operating revenues shown in data responses). Under the Joint Settlement Petition, however, residential customers would get a 15% reduction (average local rate is \$5.80, Touch Tone charge is \$1.00: $\$1.00/\$6.80=14.7\%$) and access customers would not get any reduction at all.

In this case, however, Commonwealth *has* performed service-specific cost studies which show, clearly, that access is way overpriced and local service is way underpriced, relative to cost. Couple this with the fact that Commonwealth's access charges are among the State's highest, and local rates already are among the lowest, and there is strong support for reducing access charges by a percentage amount greater than any reduction in local service rates.

first place, the Commission has consistently required LECs to cap the Carrier Common Line every time the issue has been addressed.⁵ By offering the cap in "settlement," Commonwealth was simply "offering" to do something it would be required to do anyway.⁶ Moreover, Commonwealth's calculations about the value of the CCL cap are deceptive. The test year for this case is 1993, and the proposed cap is based on 1993 CCL revenues. Thus, for the test year the proposed reduction is **zero**. For future years, it is true that a per-line cap can result in reductions, but only if the growth in the number of lines is less than the

⁵ To date, capping has been required for the following 25 companies:

Bell of Pennsylvania, Docket R-842779, October 24, 1985
GTE, Docket R-850229, April 10, 1986
Venus Telephone, Docket R-870657, October 2, 1987
Sugar Valley Telephone, Docket R-870685, October 2, 1987
Citizens Utilities, Docket R-870640, January 16, 1988
Pymatuning Independent Telephone, Docket R-880915, June 1, 1988
Oswayo River Telephone, Docket R-880984, July 26, 1988
Canton Telephone, Docket R-881117, January 12, 1989
Enterprise Telephone, Docket R-891207; September 8, 1989
Conestoga Telephone, Docket P-890381, March 20, 1990
Lakewood Telephone Company, Docket R-891443, May 2, 1990
Breezewood Telephone Co., Docket R-901666, January 4, 1991
ALLTEL Pennsylvania, Inc., Docket No. P-900490, March 15, 1991
Denver and Ephrata Tel. Co., Docket R-912035, August 29, 1991
North Pittsburgh Tel. Co., Docket R-912138, December 20, 1991
Bentleyville Telephone Company, Docket R-922207, April 30, 1992
ALLTEL-Murraysville Tel. Co., Docket R-922429, October 1, 1992
North Eastern Pennsylvania Tel. Co., Docket I-870076, October 5, 1992
Citizens Tel. Co. of Kecksburg, Docket I-870076, October 5, 1992
Ironton Tel. Co., Docket I-870076, October 5, 1992
Yukon Waltz Tel. Co., Docket I-870076, October 5, 1992
North Penn Tel. Co., Docket I-870076, October 5, 1992
Mahanoy & Mahantango Tel. Co., Docket I-870076, October 5, 1992
Armstrong Tel. Co. North; Docket I-870076, October 5, 1992
Palmerton Tel. Co., Docket R-922483, November 24, 1992

Additionally, Armstrong Telephone Co. has agreed to cap its CCLC by January 1, 1994, and ALLTEL-Brookville has committed to cap at the conclusion of the merger of ALLTEL's Pennsylvania companies.

⁶ This point was expressly acknowledged by Judge Kashi at page 14 of his November 18, 1993 decision.

growth in access minutes. When Commonwealth says that a per line cap is worth \$335,000 in 1994, and that it will save AT&T \$4 million over the next **six years**, it is basing those numbers on projections and assumptions which have not been put in the record, which have not been examined by AT&T or the Commission, and which may never come to pass.⁷

Of course, the Commission should not be taken in by long term projections of "savings" which make it seem like those savings are bigger than they really are. Apart from the fact that the numbers are based on untested and unsubstantiated projections, the simple fact is that over the same **six year** period for which Commonwealth calculates AT&T's "savings," the proposed local service reductions would reduce Commonwealth's revenues from already-below-cost services by about \$14 million (\$2.3 million per year X 6 years; see Commonwealth statement at p. 8). And if this amount were adjusted for growth the same way that AT&T's "savings" apparently were, the \$14 million figure would be much higher.

E. It is nonsense for other parties to suggest that it would be fair to AT&T to approve the Settlement Petition and have access issues addressed in a separate proceeding.

One proposal put forth by Commonwealth and the OTS (but not supported by OCA) is that the Commission can approve the Settlement Petition and allow AT&T to pursue its access claim in another case. If approved, such a proposal would be extremely unfair to AT&T. In this case Commonwealth has put \$2.6 million in rate reductions on the table. If the Settlement Petition is approved, that money is gone, making it far less likely that AT&T could be successful in a

⁷ AT&T served interrogatories on Commonwealth to determine how the company calculated the value of the rate changes proposed in the Joint Settlement Petition, particularly what assumptions were used in the projections. So far, however, Commonwealth has failed to respond.

stand-alone access case. Given the relationships between Commonwealth's access and local service rates, the Commission should view that outcome as unacceptable.

Moreover, AT&T has put forth its access charge recommendations in this case, and its witness has been cross-examined on them. If access issues were shifted to another proceeding, it would require a substantial duplication of effort.

II. The Joint Settlement Petition also should be rejected because it attempts to defer to three separate proceedings issues that the ALJ was directed to address in this case.

The Commission's Order entered July 9, 1992, states, unambiguously, that:

...the presiding ALJ be, and hereby is, directed to make specific findings of fact concerning Commonwealth's affiliated interest charges and overall earnings. Order at p. 3.

Despite this clear mandate from the Commission, the parties to the Joint Settlement Petition want to "sidestep" the affiliate issues in this case, and instead have those questions addressed in three separate investigations.

See Joint Settlement Petition at para. 12(g).

Aside from the obvious questions about whether the Commission wants to approve a Settlement Petition that fails to respond to issues which the Commission expressly identified, and aside from whether the Commission wants to take those issues from a single case and have them addressed in three separate cases, this approach has potential harm for AT&T. Each of the three proposed separate affiliate investigations has the potential to reduce Commonwealth's regulated costs, and thus its rates. If AT&T wants to protect its

interests, it would have to participate in three separate cases, and make its arguments three separate times. This is not a very efficient or cost-effective way to approach these issues.

III. Conclusion.

The Commission should reject the proposed settlement agreement, either by declining to answer the material question before it or by sending this matter back to Judge Kashi with explicit instructions to resolve all outstanding issues, including, but not necessarily limited to: (1) whether Commonwealth is overearning, (2) whether Commonwealth's affiliate interest agreements are appropriate and in the public interest, and (3) what appropriate actions need to be taken to correct the relationships between Commonwealth's local service rates and its access charges.

Respectfully submitted,

**AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.**

By 

Mark A. Keffer
3033 Chain Bridge Road
Room 3D
Oakton, VA 22185
(703) 691-6046

December 20, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December 1993 copies of the Brief of AT&T Communications of Pennsylvania, Inc. to Judge Kashi's Decision to Reject the Proposed Settlement Agreement have been sent first class mail, postage prepaid, and/or hand delivered to:

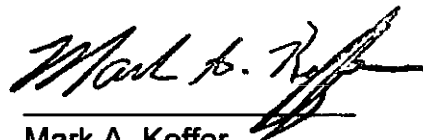
Honorable George M. Kashi
Administrative Law Judge
PA PUBLIC UTILITY COMMISSION
Room G-8 North Office Building
P.O. Box 3265
Harrisburg, PA 17120

Phillip F. McClelland
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Michael Swindler, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

Norman James Kennard, Esquire
Tucker Arensberg, P.C.
116 Pine Street
Harrisburg, PA 17101

Kandace F. Melillo, Esq.
Prosecutor, Office of Trial Staff
Public Utility Commission
210 North Office Bldg.
P.O. Box 3265
Harrisburg, PA 17105-3265


Mark A. Keffer



COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
 P.O. BOX 3265, HARRISBURG, PA 17105-3265

ORIGINAL

December 20, 1993

IN REPLY PLEASE
 REFER TO OUR FILE

John G. Alford, Secretary
 Pa. Public Utility Commission
 Post Office Box 3265
 Harrisburg, PA 17105-3265

RECEIVED
 DEC 20 1993

SECRETARY'S OFFICE
 Public Utility Commission

PA. P. U. C.
 CONTROL DIV.
 9 07 20 PM 1:59
 20011120

Re: Pennsylvania Public Utility Commission
 v.
 Commonwealth Telephone Company
 Docket No. I-00920020



Dear Secretary Alford:

Enclosed, please find an original and three (3) copies of the **Office Of Trial Staff Brief In Support Of Joint Petition For Commission Review And Answer To A Material Question**, for filing in the above-captioned proceeding. Copies of this Brief are being served on all interested parties.

Sincerely yours,

Carol F. Pennington
 Carol F. Pennington
 Prosecutor
 Office Of Trial Staff

Enclosure

CFP:gdp

cc: (w/encl.)

- Hon. David W. Rolka, Chairman
- Hon. Joseph Rhodes, Jr., Vice Chairman
- Hon. John M. Quain, Commissioner
- Hon. Lisa Crutchfield, Commissioner
- Hon. John Hanger, Commissioner
- Cheryl Walker Davis, Director - OSA
- John J. Povilaitis, Chief Counsel - Law Bureau
- Parties of Record

DOC TEN FOLDER

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

COMMONWEALTH TELEPHONE COMPANY

:
:
:
:
:
:

**Docket No.
I-00920020**

RECEIVED
DEC 20 1993

**SECRETARY'S OFFICE
Public Utility Commission**

RECORDED
INDEXED
DEC 20 1993
P.A.U.C.
INFO. CONTROL DIV.

**OFFICE OF TRIAL STAFF
BRIEF IN SUPPORT OF
JOINT PETITION FOR
COMMISSION REVIEW AND
ANSWER TO A MATERIAL
QUESTION**

DEC 30 1993

**Kandace F. Melillo
Carol F. Pennington
Prosecutors
Office of Trial Staff**

**Pa. P.U.C.
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976**

Dated: December 20, 1993

**DOCUMENT
FOLDER**

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| I. INTRODUCTION | 1 |
| II. ARGUMENT | 3 |
| A. The Material Question Posed By Joint Petitioners Is Appropriate For Commission Review And Answer At This Time | 3 |
| B. The Commission Should Not Only Review This Material Question But Should Answer The Question In The Affirmative. | 5 |
| III. CONCLUSION | 10 |

TABLE OF CITATIONS

Page

CASES:

Investigation Into Water Contamination of
Spring Brook Reservoir Owned by Pennsylvania
Gas and Water Company, I-840037 (June 27, 1984) . . . 3

Lyness v. State Board of Medicine, 605 A.2d
1204 (1992) 5

Pa. P.U.C. and Masthope Rapids Property Owners
Council v. C S Water & Sewer Associates,
Docket Nos. R-881147, R-881147C001, I-890088,
G-890186, Order entered July 22, 1991 3

Statement of Policy on Expanded Interconnection
for Intrastate Special Access, Docket No.
M-00920376, Opinion and Order entered June 10,
1993 3

RULES, REGULATIONS AND STATUTES:

52 Pa. Code §5.302 3

66 Pa. C.S. §331(e) 3

I. INTRODUCTION

On April 2, 1992, the Commission initiated an investigation, at Docket No. I-00920020, into the current earnings of Commonwealth Telephone Company (CTCo or the Company). By Commission Order entered July 9, 1992, this earnings investigation was expanded for the purposes of examining the Parent Corporation Management Service Fee expense and all related affiliated interest charges. Following that analysis, the parties were to explore all relevant earnings information to determine whether CTCo's return (incorporating pro forma adjustments consistent with ratemaking principles) is reasonable in light of existing market conditions, or whether an adjustment is appropriate.

This matter was assigned to Administrative Law Judge (ALJ) George M. Kashi for a Recommended Decision and the scheduling of such further proceedings as necessary. The Office of Trial Staff (OTS) was directed to participate in proceedings before the Administrative Law Judge. AT&T Communications of Pennsylvania, Inc. ("AT&T") filed a Complaint at Docket No. I-00920020 against the intrastate carrier access charges of CTCo. The Office of Consumer Advocate (OCA) filed a Notice of Intervention in this proceeding.

Prehearing conferences were held on August 6, 1992, December 29, 1992, and May 27, 1993. Extensive discovery was conducted by the parties and answered by CTCo. In addition,

OCA and OTS conducted on-site document review and informal discovery at the Company's headquarters, located in Dallas, PA.

On-the-record hearings for cross-examination of Company witnesses were held on July 1 and 2, 1993, and a further hearing was held on September 22, 1993, for cross-examination of AT&T's witness.

On October 18, 1993, the Company, OCA, and OTS filed a Joint Petition For Settlement Of Investigation (Joint Petition). AT&T did not join in the settlement and filed objections to it on November 8, 1993. The Joint Petition was the result of considerable effort on the part of the settling parties to achieve a balanced and appropriate result, after consideration of the record evidence concerning affiliate fees and excess earnings. In addition, specific findings of fact concerning affiliated issues were stipulated to and made part of the Joint Petition. This Joint Petition was rejected by Interim Order of ALJ Kashi, served upon the parties on November 18, 1993.

On December 13, 1993, the Company, OCA, and OTS filed a Joint Petition for Commission Review and Answer to a Material Question, pursuant to 66 Pa. C.S. §331(e) and 52 Pa. Code §5.302. The material question is as follows:

MATERIAL QUESTION: Whether the Settlement reached by the parties is in the public interest and should be approved by this Commission?

SUGGESTED ANSWER: Affirmative.

II. ARGUMENT

- A. The Material Question Posed By Joint Petitioners Is Appropriate For Commission Review And Answer At This Time.

Section 331(e) of the Public Utility Code, 66 Pa. C.S. §331(e), and corresponding Commission regulations at 52 Pa. Code §5.302, provide an interlocutory appeal to the Commission on a material question arising in the course of a proceeding where interlocutory review will prevent substantial prejudice to any party or expedite the conduct of the proceeding. In addition, the Commission has granted interlocutory review in the course of Commission-instituted investigations, such as the instant proceeding, where guidance is necessary to provide direction and thereby obviate needless hearing days. See, Statement of Policy on Expanded Interconnection for Intrastate Special Access, Docket No. M-00920376, Opinion and Order entered June 10, 1993; see also, Investigation Into Water Contamination of Spring Brook Reservoir Owned by Pennsylvania Gas and Water Company, I-840037 (June 27, 1984). Also, the Commission has previously granted interlocutory review upon request of parties whose settlement had been rejected by the ALJ. See, Pa. P.U.C. and Masthope Rapids Property Owners Council v. C S Water & Sewer Associates, Docket Nos. R-881147, R-881147C001, I-890088, G-890186, Order entered July 22, 1991.

Interlocutory review of the material question posed by Joint Petitioners will unquestionably expedite the conduct

of this proceeding and provide guidance on an issue which, in large part, precipitated rejection of the settlement by the ALJ. See, ALJ Interim Order denying approval of settlement, pp. 13-14. That issue is whether the Commission requires resolution of all affiliate accounting issues herein, or whether these technical accounting issues would be more appropriately resolved in a separate "G" docket. If the ALJ's rejection of the settlement and his reasons for the rejection are upheld, the parties will have been guided to pursue the technical intricacies of affiliate accounting in the within investigation. If, on the other hand, the settling parties are upheld and these affiliate intricacies are removed to a separate "G" docket, the proceeding will unquestionably be expedited and a potential roadblock to settlement eliminated.

In addition, interlocutory review will also potentially prevent substantial prejudice to parties. Two of the parties in this proceeding are the OCA, which represents the interests of consumers, and the OTS, which represents the public interest. Consumer interests are potentially substantially prejudiced by the ALJ's rejection of the proposed settlement as CTCO's customers are not achieving immediate rate relief. Since the eventual outcome of this proceeding is uncertain, it is not known when, if ever, consumers will receive rate relief if the settlement is not approved. Also, absent provisions for refunds and interest from the date the settlement would otherwise have likely gone into effect,

CTCo's customers cannot be made whole even if rate relief is eventually granted.^{1/} Absent interlocutory review, consumers will not even have the opportunity to achieve immediate rate relief. The public interest is also prejudiced by rejection of a settlement which clearly serves the public interest. Interlocutory review is necessary to prevent this substantial prejudice.

B. The Commission Should Not Only Review This Material Question But Should Answer The Question In The Affirmative.

The ALJ appears to have rejected the proposed settlement because of language contained in the Commission Opinion and Order entered July 9, 1992, requesting the ALJ to make specific findings regarding both the appropriate level of affiliate expenses incurred by CTCo and CTCo's overall earnings. However, the language in the body of the Opinion concerning the appropriate level of affiliate expenses is advisory rather than directive (i.e. "should" vs. "shall").^{2/}

^{1/} CTCo has indicated an intention to raise due process objections to the within investigation, similar to those raised successfully by Dr. Lyness in Lyness v. State Board of Medicine, 605 A.2d 1204 (1992). This could further delay rate relief for consumers. While OTS does not necessarily agree with CTCo's interpretation of Lyness, OTS does agree that acceptance by the Commission of the within settlement would render the Lyness argument moot.

^{2/} CTCo's Statement in Support of the Joint Petition, attached as "Appendix D" to the ALJ's Interim Order of November 18, 1993, contains several reasons why it is appropriate to resolve specific technical issues concerning the affiliated interest agreements in a separate "G" docket. As stated by CTCo, the agreements to be clarified and/or amended were previously submitted and

The directive language concerning affiliate expenses, which is contained in the Ordering paragraphs, only requires specific findings of fact concerning Commonwealth's affiliate charges. The settling parties (i.e. Joint Petitioners) have presented stipulations of fact to the ALJ concerning the affiliate charges (Appendix "G" to the Joint Petition) and these findings could arguably satisfy the Commission's directive in its July 9 Order. These findings could also be used in the separate "G" docket wherein the accounting intricacies of the affiliated agreements are proposed to be addressed.

The Ordering paragraphs, however, also direct the ALJ to make specific findings concerning overall earnings, and this was not directly addressed in the Joint Petitioners' factual stipulation. It was simply not possible for the Joint Petitioners to expressly agree to this issue,^{3/} as is often the case in settlements. Most rate investigation settlements do not achieve separate and distinct resolution of all issues, but achieve a balance of competing issues by agreement as to an overall revenue increase or decrease.

approved pursuant to the "G" docket process and the Commission has staff and established procedures for dealing with these matters. Also, these matters are of such a complex nature as to unnecessarily impede the resolution of the investigation, and serve to delay rate relief for CTCO's customers. See, p. 7 of Appendix "D".

^{3/} The overearning issue was indirectly addressed, however, as CTCO has agreed to a decrease of approximately \$2,634,000 in ongoing, annual jurisdictional net operating revenues.

If the parties to the within investigation are required to make specific findings as to overearnings, and other issues which could not be resolved by settlement or stipulation, then OTS has serious concerns as to whether the investigation can be settled. OTS simply does not believe it was the intent of the Commission, in commencing this investigation, to preclude all reasonable possibilities of settlement. Instead, OTS believes that the July 9 Order should be interpreted so as to serve the public interest in securing a just and expeditious resolution of the proceeding, without unduly adding to rate case expense. Joint Petitioners' proposed settlement clearly serves this interest and should be approved.

Once the ALJ's reservations concerning the lack of information to make specific excess earnings and appropriate affiliate expenses are resolved, the propriety of the settlement is unquestionably clear. In fact, the ALJ had no objections to the terms included in the settlement. His objections were as to "omissions" of the terms.

As indicated in the Joint Petition, the settlement provides an immediate decrease of approximately \$2,634,000 in CTC's on-going, annual jurisdictional net operating revenues, comprised of \$1.6 million for elimination of the residential touch tone charge, \$699,000 for acceleration of extended area service (EAS) and \$335,000 for a capping of the CCL charge or other rate reduction. The settlement also provided for

modernization goals, consisting of 100% conversion of central offices to digital technology by December 31, 1993, 100% deployment of fiber-optic cable on interoffice trunks by December 31, 1994, and full deployment of Signalling System-7 ("SS-7") by December 31, 1998. In addition, the affiliate accounting issues, which were specifically identified in this investigative proceeding, are to be resolved in a separate "G" docket under specific terms agreed to in this settlement. Also, CTCo has agreed to a three-year "stay-out", providing a measure of rate stability which would not be achievable even if this matter were fully litigated. Finally, and not least in importance, the settlement saves litigation expense, to the benefit of the Company and all its ratepayers.

Furthermore, the parties have complied with the Commission's request in its July 9 Order that CTCo's Parent Corporation Management Service Fee expense and all related affiliate interest charges be investigated and its earnings reanalyzed. Extensive discovery, including on-site visits to corporate offices, were conducted and Company witnesses were cross-examined on these very issues. Also, as stated in OTS's Statement In Support, the proposed settlement decrease in CTCo's operating revenues does reflect OTS's consideration of the level of excess earnings and the appropriate level of affiliate charges. Any contentions that the settlement does not reflect these issues are simply erroneous.

In response to AT&T's objections to the Joint Petition, which were filed on November 5, 1993, and which have been attached to ALJ Kashi's November 18, 1993 Interim Order as Appendix "H", OTS filed a letter, dated November 19, 1993. Unfortunately, ALJ Kashi did not have the opportunity to consider this letter as the Interim Order was finalized for distribution prior to his receipt of the letter. OTS has attached its letter response to AT&T's Objections to the within Brief as Appendix "A" for the consideration of the Commission in deciding the material question.

III. CONCLUSION

For all the foregoing reasons, the Office of Trial Staff hereby respectfully requests that the Commission grant review of the material question and answer the question in the affirmative.

Respectfully submitted,

Kandace F. Melillo
Kandace F. Melillo
Carol F. Pennington
Prosecutors
Office of Trial Staff

Pa. P.U.C.
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: December 20, 1993



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

November 19, 1993

IN REPLY PLEASE
REFER TO OUR FILE

- Honorable George M. Kashi
Administrative Law Judge
Pa. Public Utility Commission
608 North Office Building
Post Office Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission
v.
Commonwealth Telephone Company
Docket No. I-00920020

Dear Judge Kashi:

The Office of Trial Staff ("OTS") is in receipt of AT&T Communications of Pa., Inc.'s ("AT&T") Objections to the Joint Settlement Petition of Commonwealth Telephone Company ("CTCo"), the Office of Consumer Advocate ("OCA") and OTS. OTS is also in receipt of an Answer of CTCo to these Objections and understands that the OCA may also file a Response to these Objections. OTS respectfully requests the opportunity to respond briefly to these Objections.

OTS joined in the Settlement Petition, which was presented to your Honor on October 18, 1993, because OTS believes that the proposed Settlement is in the interests of the Company, its ratepayers and the public. Despite AT&T's contentions to the contrary, the settlement does address the issues set forth in the Pennsylvania Public Utility Commission ("Commission") Order. As stated in OTS's Statement in Support, the settlement decrease of approximately \$2,634,000 does reflect OTS's consideration of excess earnings and the appropriate level of affiliate charges. Moreover, a rate decrease is implemented without delay to CTCo's ratepayers, providing for rate relief sooner than if these matters were to be fully litigated.

The proposed Settlement does respond to AT&T's access charge concerns by providing for a "capped" carrier common line ("CCL") access rate of \$3.52 per line per month, for service rendered after January 1, 1994. The Commission has been moving towards the "capped" per line rate as opposed to the "minutes of use" ("MOU") rate. As indicated

APPENDIX "A"

November 19, 1993

Page 2

in Appendix "A" to the Settlement Petition, a CCL rate of \$3.52 is certainly well within the median range for "capped" CCL rates of The Pennsylvania Independent Telephone Association ("PITA") companies. Of course, AT&T has the right to proceed with its complaint against CTCo to attempt to secure lower access charges. That right is not in any way abrogated by the settlement reached among CTCo, OCA and OTS.

The proposed Settlement provides an additional benefit to AT&T in that touchtone would be rolled into basic service. This could give more CTCo customers access to touchtone, with residual benefits to AT&T (which provides services requiring touchtone access).

AT&T also complains that CTCo's local rates are "too low" in comparison to its "too high" access charges. AT&T's "solution" appears to be that perhaps local rates could be raised to offset, at least in part, decreases in access charges. OTS strongly opposes any suggestion that it would be "appropriate" to increase local service rates as a result of the within investigation. Furthermore, while AT&T contends that CTCo's local rates are "very cheap" when compared to four other major local exchange carriers (as shown on a table on page 4 of AT&T's Objections), the table which purports to reflect this comparison is very misleading. AT&T presents no data in that table comparing the number of access lines which a CTCo residential customer is able to reach within the local calling area to the number of local access lines for the other four companies shown therein. This data must also be considered in any valid local rate comparison.

For all the above reasons, plus the reasons contained in the Joint Petition, OTS supports the proposed Settlement and urges it be approved.

Very truly yours,

Kandace F. Melillo

Kandace F. Melillo
Prosecutor
Office of Trial Staff

KFM:gdp

cc: All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document(s), either personally, by facsimile, by first class and/or by Overnight/Express mail, upon the persons addressed below:

Honorable George M. Kashi
Administrative Law Judge
Pa. Public Utility Commission
G08 North Office Building
Post Office Box 3265
Harrisburg, PA 17105-3265

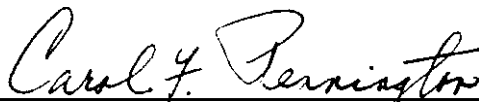
Norman James Kennard, Esquire
Tucker Arensberg, P.C.
116 Pine Street, Suite 403
Harrisburg, PA 17101

Scott Burnside, Vice President
Regulatory and Public Affairs
Commonwealth Telephone Company
100 Lake Street
Dallas, PA 18612

Phillip F. McClelland, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Mark A. Keffer, Attorney
AT&T Communications of PA
Room 3-D
3033 Chain Bridge Road Oakton,
VA 22185

Mr. Thomas S. Catlin, Vice Pres.
Exeter Associates
10801 Lockwood Drive
Silver Spring, MD 20901



Carol F. Pennington
Prosecutor - Office of Trial Staff
Pennsylvania Public Utility Commission

Date: December 20, 1993

I-00920020