

PTA Cross Exam. Ex. 1

OSBA Statement No. 1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF ALLTEL PENNSYLVANIA, :
INC., FOR APPROVAL OF AN ALTERNATE : Docket No. P-00981423
FORM OF REGULATION AND NETWORK :
MODERNIZATION PLAN :

Direct Testimony of
STANFORD L. LEVIN, Ph.D.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

On Behalf of the
Office of Small Business Advocate

Date Served: December 17, 1998

Date Submitted for the Record: _____

Testimony of Stanford L. Levin, Ph. D.

1 Q. Please state your name and business address.

2 A. My name is Stanford L. Levin. My business address is Department of
3 Economics, Southern Illinois University Edwardsville, Edwardsville,
4 Illinois.

5 Q. What is your occupation and current position?

6 A. I am an economist and Professor of Economics at Southern Illinois
7 University Edwardsville, where I have been teaching since 1972. I was
8 Chairman of the Department of Economics from 1986-1994. I am also
9 president of The Resource Group, Inc., an economic consulting firm in
10 St. Louis, Missouri.

11 Q. Please state your educational qualifications and professional
12 experience relevant to public utility regulation and the issues in
13 this proceeding.

14 A. I received a B. A. in economics from Grinnell College and a M.A. and
15 Ph. D. in economics from the University of Michigan. My
16 specialization in graduate school was the field of industrial
17 organization, which includes the study of regulated industries in the
18 economy. My teaching assignments include graduate and undergraduate
19 courses in industrial organization, public utility regulation, and
20 microeconomic theory. I regularly attend seminars on industrial
21 organization and regulation and have previously submitted testimony
22 before state and federal regulatory commissions in the U. S. and
23 Canada.

1 In the summer of 1970 I worked as an Industry Economist in the Office
2 of Economics at the Federal Power Commission. My duties involved work
3 on natural gas and electricity cases before that Commission as well as
4 an analysis of issues relevant to regulation.

5 From December, 1977, through August, 1978, I was on sabbatical leave
6 from Southern Illinois University at Edwardsville. During this time
7 I worked at Data Resources, Inc., in Washington, D. C., managing a
8 project for the Department of Natural Resources of the State of
9 Maryland. From 1979 to 1983, I was a consulting economist at the
10 Chicago Regional Office of the Federal Trade Commission, dealing
11 primarily with antitrust cases.

12 In November, 1984, I was appointed Commissioner of the Illinois
13 Commerce Commission, the public utility regulatory body in Illinois,
14 by Governor James R. Thompson. I served on the Commission until
15 March, 1986, at which time I returned to Southern Illinois University
16 at Edwardsville. While on the Illinois Commerce Commission, I was
17 Chairman of the Commission's Telecommunications Policy Committee and
18 a member of the Commission's Electric Policy Committee.

19 These and other professional activities, papers, and publications are
20 detailed in my vita, attached to my testimony as Appendix A.

21 Q. For whom are you testifying in this case?

22 A. I am testifying for the Pennsylvania Office of Small Business
23 Advocate.

1 Q. What is the purpose of your testimony?

2 A. I have been asked by the Office of Small Business Advocate to review
3 ALLTEL Pennsylvania's (ALLTEL) petition for approval of an alternative
4 form of regulation and network modernization, paying particular
5 attention to the aspects of this proposal that affect small
6 businesses. In performing this evaluation, I will provide some
7 suggestions for a definition of small business telecommunications
8 customers, some background information on the needs of small business
9 customers of telecommunications services, and some discussion of the
10 increased role of competition and the changing role for regulation in
11 this new telecommunications environment. Finally, I will examine
12 ALLTEL's plan with respect to the needs of small businesses, and I
13 will make some recommendations to the Pennsylvania Public Utility
14 Commission ("Commission") on how ALLTEL's proposal might be modified
15 to be consistent with a philosophy of telecommunications regulation
16 that is appropriate for a more competitive environment, while at the
17 same time meeting the needs of small businesses.

18 Q. Please summarize your testimony?

19 A. My testimony will make the following points.

- 20
- 21 • Small business customers of telecommunications services have
22 particular needs which must be met by regulation.

 - 23 • ALLTEL should not receive an exemption from the interconnection
24 and unbundling requirements in the Telecommunications Act of
25 1996.

1 • The Commission should insure that CLASS services and digital
2 subscriber line service are available to all customers as
3 quickly as possible.

4 • The alternate form of regulation approved by the Commission for
5 ALLTEL should allow protected business services that are priced
6 above cost to move closer to cost.

7 Q. Who are small business users of telecommunications services?

8 A. This is a difficult question to answer. In natural gas and electric
9 utility rates, for example, there are often "small business" rate
10 categories of one type or another. For electric utilities, these
11 customers might be separated by voltage level, load pattern, or peak
12 or total electricity consumption. While these categorizations are not
13 entirely precise, they do provide a useful start in identifying small
14 businesses.

15 Telephone company rates, by contrast, generally do not include a
16 "small business" rate, although we can make some judgments about who
17 small businesses might be.

18 Small businesses are engaged in activities which include small retail
19 operations, home businesses, and small commercial enterprises. Small
20 businesses include gas stations, restaurants, small stores, small
21 wholesale or manufacturing companies, and other similar
22 entrepreneurial activities.

1 Virtually all businesses of this type need one telephone line and many
2 may need more than one line. A second or third line could be used for
3 credit card verification, facsimile transmission, e-mail, or Internet
4 access, for example, or to insure that incoming calls could be taken
5 without resorting to call-waiting. An additional line might be
6 required for additional employees.

7 Q. What do you recommend that the Commission use as a definition of small
8 businesses for the purposes of ALLTEL's' alternate form of
9 regulation?

10 A. In its Opinion and Order in Docket No. P-00930715, Re: Bell Atlantic
11 Pennsylvania, Inc.'s Petition and Plan for Alternative Form of
12 Regulation under Chapter 30, dated June 23, 1994, the Commission
13 stated at page 96:

14 We also observe that in accordance with the
15 settlement between Bell and the OSBA, Bell agreed
16 to treat local exchange service business customers
17 with three or fewer access lines in the same manner
18 as residential customers with protected local
19 exchange service under the broad parameters of its
20 PSM proposal.

21 This definition for small business in this proceeding would provide
22 consistency with all of the previous Chapter 30 filings of incumbent
23 local exchange carriers, but I believe that this definition is no
24 longer appropriate for use by the Commission.

25 This definition was generated as a settlement to a proceeding that
26 occurred over four years ago. Within this time frame, the technology
27 and usage of telecommunications has changed. Businesses, including

1 small businesses, are more frequently utilizing access lines for data
2 services and for the Internet and are not exclusively dependent upon
3 voice services.

4 Since the use of telecommunications by small businesses is increasing,
5 I think the definition of a small business should accommodate recent
6 and anticipated changes in telecommunications usage. My
7 recommendation to the Commission in this proceeding is that small
8 businesses for the purpose of telecommunications should include those
9 customers who use 5-10 access lines.

10 Q. What do small business customers need from telecommunications
11 providers?

12 A. Small businesses need three things: 1) access to the same services as
13 larger customers, 2) the benefits of competition that are available to
14 larger customers, and 3) regulatory protection when they do not have
15 market choices.

16 Q. Why do small businesses need these three things?

17 A. Small businesses need these three things because they must be able to
18 compete with larger businesses, and they cannot compete successfully
19 if they do not have access to the same telecommunications services.
20 Small businesses will be disadvantaged not only locally but also
21 nationally and internationally.

22 Businesses, including small businesses, are becoming more and more
23 dependent on telecommunications services. Up-to-date

1 telecommunications services are widely believed to be an important
2 determinant of economic development. Although there is not a great
3 deal of rigorous analysis to support this contention, I believe that
4 telecommunications is important to the health of businesses, both
5 large and small.

6 The state of telecommunications varies greatly internationally, and
7 the unavailability of adequate telecommunications services will
8 prevent firms from locating in a region. Good telecommunications
9 services can stimulate business (for example, Hong Kong and
10 Singapore). Even within the U. S., however, while telecommunications
11 may not often affect a business's initial location decision (there are
12 some exceptions for intensive telecommunications users), later
13 decisions about where to expand and the health of the business in
14 general may well depend on the quality and availability of
15 telecommunications services.

16 Q. How do these needs of small businesses relate to the future of the
17 public switched network?

18 A. Small businesses are more dependent on the public switched network for
19 their telecommunications services than are larger businesses. Because
20 of their smaller size, they will have fewer options from competitors
21 of the incumbent local exchange carrier, at least initially, yet their
22 need for telecommunications services may be no less than that of
23 larger customers.

1 Small businesses need a regulatory framework to encourage or allow a
2 modern public switched network that is competitive with what is
3 available to larger businesses through private networks or alternative
4 competitive suppliers. To meet the needs of small businesses, the
5 public switched network must include the necessary infrastructure and,
6 insofar as possible, provide this infrastructure and service to rural
7 as well as urban areas.

8 Small businesses also need a regulatory environment which will
9 maximize the benefits of competition that might be available to them.

10 Q. Why is regulation necessary for telecommunications services?

11 A. Regulation is only necessary for essential telecommunications services
12 that are not competitive. In a non-competitive market, market forces
13 cannot be relied upon to protect customers from high prices. When
14 services are effectively competitive, then they do not need to be
15 regulated, either by traditional rate-base rate-of-return regulation
16 or by price cap regulation. Similarly, services which are not
17 essential to customers also do not need to be regulated. It is only
18 in the absence of effective competition for essential services that
19 regulation is required to prevent companies from abusing any market
20 power they might have.

21 Q. Why is traditional rate-base rate-of-return regulation not working as
22 well as it has in the past?

23 A. In general, the costs of traditional regulation have increased, while
24 the benefits have decreased. Regulators are asked to do more, as

1 there are rapid developments in the industry, new products and
2 services are available, and regulatory policies must be altered. At
3 the same time, technological change, the increased speed of change,
4 and competition mean that regulation will be less successful than in
5 the past.

6 Certainly, traditional regulation has had some significant successes
7 in the past. It has, for example, encouraged a modern
8 telecommunications network providing service to nearly everyone in the
9 country. These accomplishments were in an era of monopoly
10 telecommunications providers, an environment which was also well
11 suited to traditional regulation.

12 While traditional regulation may have been attractive in the past, the
13 changes in the telecommunications industry are making it much less so
14 today. There can no longer be the presumption that traditional
15 regulation is needed to protect customers from possible monopoly
16 abuses of the local exchange telephone company. There are regulatory
17 alternatives which may be more successful at less cost in today's
18 telecommunications world.

19 Q. What is the implication of the fact that virtually all
20 telecommunications companies that provide monopoly services also
21 provide some competitive services?

22 A. Now that virtually all telecommunications companies that provide
23 monopoly services also provide at least some competitive services, an
24 entirely new set of regulatory problems has arisen. Not only are

1 regulators faced with the burdens and shortcomings of traditional
2 regulation, which are exacerbated by the fast-paced changes taking
3 place in the market, but they must also cope with a new set of
4 problems as well.

5 Under rate-base rate-of-return regulation, companies providing both
6 competitive and non-competitive services, for example, may have an
7 incentive to act anti-competitively. They may attempt to discriminate
8 in favor of their own competitive services at the expense of
9 competitors, and they may attempt to cross-subsidize their competitive
10 services with revenues from their non-competitive services. Not only
11 might companies have incentives to engage in these anti-competitive
12 activities, but they might also have the ability to act anti-
13 competitively if they have sufficient market power.

14 Q. What will regulators want to do in this new environment?

15 A. Regulators want to improve the efficiency of regulated companies and
16 to foster the development of modern telecommunications networks and
17 services. They need to overcome the poor efficiency incentives
18 inherent in traditional regulation, while insuring that companies do
19 not behave anti-competitively. It is in this context that regulators
20 are re-examining the role of regulation and the regulatory framework.
21 Deregulation is appropriate for competitive services and for non-
22 essential services. For non-competitive, essential services that
23 should continue to be regulated, regulatory reform will help
24 regulators solve the problem of regulating a company that provides
25 both non-competitive and competitive services.

1 Q. Briefly summarize the problems with traditional rate-base rate-of-
2 return regulation.

3 A. Much has been written about the shortcomings of traditional rate-base
4 rate-of-return regulation, particularly in an environment where firms
5 provide both competitive and non-competitive services. In general,
6 the shortcomings fall into three areas: 1) the direct and indirect
7 costs of the process itself, 2) the inability to accurately allocate
8 rate-base and expenses among services as required with rate-base rate-
9 of-return regulation, and 3) the poor incentives to operate
10 efficiently and to control costs that are inherently provided to
11 carriers under this method of regulation.

12 In addition, traditional regulation handles with great difficulty
13 companies that provide both competitive and non-competitive services.
14 By itself, rate-base rate-of-return regulation provides little real
15 protection against anti-competitive behavior, a major regulatory
16 concern, and it restricts the development and provision of new
17 competitive services.

18 Q. What is the best solution to the problems of regulation in a more
19 competitive telecommunications environment?

20 A. This is, once again, a subject that has generated much research and
21 writing. It is clear, I think, that price regulation offers the best
22 alternative to traditional regulation for today's telecommunications
23 services that still require regulation.

24 Q. Please explain price regulation.

1 A. I will describe pure price regulation which represents an actual
2 departure from, rather than a modification of, the framework of
3 traditional rate-base rate-of-return regulation.

4 The fundamental characteristic of pure price regulation is that prices
5 are regulated directly without concern for cost allocations or a
6 regulated company's rate of return. In other words, pure price
7 regulation eliminates the regulatory link between prices and costs and
8 earnings.

9 Under price regulation, competitive and non-essential services are
10 deregulated, detariffed, or provided with significant pricing
11 flexibility. For the remaining non-competitive, essential services,
12 a price cap is established based on a weighted average of prices, and
13 this weighted average of prices cannot be exceeded, although prices
14 may be lower than those allowed by the cap. All services can be
15 aggregated for the purpose of price regulation, or service baskets can
16 be employed to establish the weighted price cap(s). Over time, the
17 pricing constraint represented by the price cap can be adjusted to
18 reflect productivity and inflation as well as exogenous factors such
19 as tax changes.

20 Regulatory oversight essentially consists of insuring that prices
21 remain under the weighted price cap, although performance requirements
22 can also be introduced and monitored, e. g., productivity and service
23 quality performance requirements. Rate moratoria or specific pricing
24 rules for certain services, e. g., local basic, may be adopted which

1 limit pricing flexibility but do not compromise pure price regulation.
2 Additionally, universal service requirements may be part of a price
3 regulation plan, as well as investment and technology commitments. In
4 this way, pricing, quality, and other goals are guaranteed to
5 customers in advance.

6 **Q. What are the advantages of price regulation?**

7 **A.** Price regulation has substantial advantages over traditional rate-base
8 rate-of-return regulation, advantages which the Pennsylvania
9 legislature certainly recognized when it revised the Pennsylvania
10 Public Utility Code to allow for price regulation. The most important
11 of these advantages are the improved incentives and pricing
12 flexibility.

13 **Q. What are the improved incentives which result from price regulation?**

14 **A.** Price regulation provides the regulated company with better incentives
15 to reduce costs and to achieve other efficiency gains. Under
16 traditional regulation, prices track costs; if a firm becomes more
17 efficient, this gain will be captured for ratepayers through lower
18 rates (and increases in costs will result in increased rates as well).
19 Under price regulation, a limit is set on price. This limit may
20 include certain anticipated productivity or efficiency gains, but any
21 gains in excess of those anticipated by the price cap plan will accrue
22 to shareholders (and a failure to meet the target will be at the
23 expense of shareholders). This provides the company with a greater
24 incentive to be efficient, and because the price cap plan may

1 anticipate some of these additional gains as part of the productivity
2 adjustment, both ratepayers and stockholders will gain from the plan.

3 Price regulation also offers the promise of reduced regulatory costs
4 and the reduced need to monitor behavior. This is because price
5 regulation eliminates any incentive to cross subsidize competitive
6 services. Since, under price regulation, any costs allocated from
7 competitive to non-competitive services cannot be recovered by
8 increasing prices for non-competitive services, extensive cost
9 allocation monitoring is not required.

10 Q. Why is pricing flexibility important?

11 A. Although services subject to effective competition do not need to be
12 regulated, there are many other services which are subject to some
13 degree of competition or which will be in the near future. It is
14 unlikely that prices established under regulation will be the prices
15 that would have been or which will be established in competitive
16 markets, and so some pricing flexibility can be desirable to assist
17 the company in adjusting its regulated prices.

18 This pricing flexibility can, within reason, benefit all of the
19 company's customers. If the company is prevented from changing its
20 prices in response to market conditions, it risks being artificially
21 disadvantaged relative to its competitors and, as a result, losing
22 those customers with the most choices. The result of this would be
23 that those customers with fewer choices in the market who remain with
24 the company will be faced with paying prices that must cover

1 relatively greater costs. This issue is important to small
2 businesses. Compared to larger businesses, they are likely to have
3 fewer choices in the market. They are more likely to be left to
4 purchase inferior services at higher prices from the incumbent
5 telephone company if the incumbent company is not allowed to compete
6 and loses the advantage of serving larger, more lucrative customers.

7 Q. Should there be any limits to this pricing flexibility?

8 A. Some limits may be required. We must remember that the services
9 subject to price regulation ought to be those where competition is not
10 sufficient to provide protection to customers. While overall prices
11 are subject to the price cap, any individual price could have almost
12 unlimited increases if they were offset by price reductions for other
13 services. Customers who do not have choices in the market,
14 particularly for essential services, should generally have more
15 protection in terms of future price increases.

16 Q. How can this additional protection be provided within the framework of
17 price regulation?

18 A. There are generally two methods of providing this additional
19 protection. One is to create separate baskets for different services,
20 with each basket being subject individually to the price cap. While
21 this can limit rate rebalancing and price increases, I believe that it
22 unnecessarily constrains the behavior of the firm. The other method
23 is to use a single basket, as ALLTEL has proposed, but to put in place
24 an additional rule or price constraint for certain essential services.

1 Q. How would that work in this case?

2 A. Let's consider local service for small businesses. A rule within the
3 price cap for small business local exchange rates would constrain
4 small business local exchange price increases. For example, small
5 business local exchange price increases could be limited to the rate
6 of inflation or to a fixed dollar amount per month in any particular
7 year. This rule would be a pricing constraint in addition to the
8 overall pricing constraint imposed by the price cap.

9 Q. Please summarize ALLTEL's proposal for an alternative form of
10 regulation.

11 A. ALLTEL's Petition for approval of an Alternative Form of Regulation
12 and Network Modernization Plan (Plan) is comprised of four parts
13 (Plan, page 3): (1) Network Modernization Plan (NMP), (2) Competitive
14 Services Plan (CSP), (3), Price Stability Plan for non-competitive
15 services (PSP,) and (4) Additional Commitments and Other Terms.

16 I do not propose to describe or comment on all aspects of the Plan in
17 detail. The fact that I have not commented on a specific aspect of
18 the Plan does not mean that I necessarily agree with the Plan. I do
19 propose to offer some comments on certain aspects of the Plan and its
20 four component parts that are of particular concern to small
21 businesses.

22 Q. Do you have any comments on the Network Modernization Plan?

23 A. I have just one comment. ALLTEL states that digital access lines,
24 SS7, and custom calling (CLASS) and other intelligent network features

1 are available to 83% of access lines today and will be available to
2 all access lines by 12/31/00 (Plan, page 4, and Jerome K. Novotny,
3 ALLTEL Statement No. 2, page 8). I think that CLASS and intelligent
4 network features in particular are an increasingly important part of
5 "basic" telecommunications services for small businesses. Not having
6 these features available can put a small business, particularly one
7 relying heavily on telecommunications for customer service, at a
8 disadvantage. If any part of the NMP is accelerated, I think it
9 should be the extension of SS7, CLASS, and intelligent network
10 services to all customers by 12/31/99.

11 Q. Do you have any comments on the Price Stability Plan?

12 A. Yes.

13 Q. What do you propose for prices for basic local exchange service that
14 are currently above cost?

15 A. One possibility to address these rates that are above cost is for the
16 PSP to include a plan for reducing any such prices so that they are
17 closer to cost. Such reductions would apply at least to those small
18 businesses who purchase ten or fewer lines.

19 An alternative is to limit the pricing flexibility ALLTEL receives
20 under its Plan. While pricing flexibility is an important component
21 of a price stability plan, even ALLTEL has recognized there are limits
22 to such flexibility in the absence of competition. ALLTEL has
23 proposed annual limits on the total increase which can be applied to
24 protected local business services. ALLTEL's small business rates are

1 almost twice as high as residential rates -- \$20.80 as contrasted to
2 \$11.49 (James H. Lauffer, ALLTEL Statement No. 1, pp. 6-7), and there
3 does not appear to be any cost justification for such a differential.
4 A PSP should both permit rate rebalancing to narrow this differential,
5 in accordance with costs and market conditions, and prevent small
6 business rates for protected local exchange services from being pushed
7 above cost, or further above cost, in the absence of competition. For
8 example, ALLTEL's proposal to limit residential and small business
9 local service price increases to a specific dollar amount, such as the
10 \$3.50 per month that ALLTEL has proposed (Plan, page 8), rather than
11 by a specified percentage, is consistent with the goal of narrowing
12 the differential, and this aspect of ALLTEL's plan, in particular,
13 should be preserved. If anything, however, the maximum annual dollar
14 increase for small business local exchange service should be set lower
15 than the maximum annual dollar increase for residential local exchange
16 service.

17 Q. How do the protections that are granted to residential customers under
18 the PSP relate to any protections granted to small business customers?

19 A. The rationale for protections for residential customers is generally
20 the same as for small business customers. The rationale centers
21 around the lack of competition for certain services purchased by
22 residential and small business customers and the need for regulation
23 to protect these customers. Any additional protections that might be
24 extended to residential customers beyond those included by ALLTEL in
25 its PSP should also be extended to small business customers. In
26 addition, any additional protections should not impede the narrowing

1 of the gap between residential and small business local exchange
2 service prices.

3 Q. What are your comments about the productivity offset in the price cap
4 formula?

5 A. The productivity offset is a differential between productivity gains
6 in the economy as a whole and the telecommunications industry. ALLTEL
7 has proposed no productivity offset (an offset of zero), but ALLTEL
8 has offered no evidence to support an offset of zero.

9 Q. What do you propose, then, as an alternative?

10 A. In the absence of any evidence on the offset, the productivity offset
11 of 2.8% that the Commission previously said would make such a price
12 cap formula presumptively valid would be appropriate. See page 10 of
13 the Corrected Opinion and Order entered August 25, 1995 at Docket No.
14 M-00930483.

15 Q. Do you see any connection between ALLTEL's Plan and the
16 interconnection and unbundling requirements in the Telecommunications
17 Act of 1996 (Act)?

18 A. Yes. Both an alternative form of regulation such as ALLTEL's Plan and
19 the interconnection and unbundling requirements in the Act are
20 consistent with competition in telecommunications. Offering a
21 company such as ALLTEL the opportunity to avail itself of an
22 alternative form of regulation (price cap regulation) is consistent
23 with, and, indeed, provides the foundation for, the interconnection
24 and unbundling requirements in the Act.

1 Q. What is your opinion of ALLTEL's petition to suspend the application
2 to ALLTEL of certain sections of the ACT?

3 A. ALLTEL states (OSBA Data Request, Set 1, Nos. 3 and 4) that the
4 Company is petitioning in Docket No. P-00971177 for a two year
5 suspension of the interconnection and unbundling requirements in
6 Sections 251(b) and (c) of the Telecommunications Act of 1996 (the
7 Act). ALLTEL further states that the Commission has granted a stay of
8 those sections of the Act pending a resolution of the docket.

9 Section 251(c) of the Act imposes several obligations on incumbent
10 local exchange carriers (ILECs) related to interconnection,
11 unbundling, resale, and collocation. In section 251 (f), the Act also
12 provides for an exemption of the requirements in section 251 (c). An
13 exemption for ALLTEL will delay compliance with those requirements of
14 section 251(c) which Congress placed in the Act to expedite the
15 development of local competition. Therefore, exemption from these
16 requirements may mean a delay in the development of competition for
17 ALLTEL's services.

18 Such a delay could have significant consequences for ALLTEL's
19 customers and especially for small business customers. The trend in
20 telecommunications, both nationally and in Pennsylvania, is towards
21 competition. A competitive telecommunications policy is being pursued
22 because the important benefits of telecommunications competition are
23 becoming increasingly apparent. Competition will begin first for
24 larger customers in more dense service areas, and it will then spread
25 to other customers. Small business customers are likely to benefit

1 from competition after larger business customers benefit from
2 competition. Any delay in competition in ALLTEL's territory will push
3 competition for ALLTEL's small business customers even further into
4 the future. Small businesses could be disadvantaged both in relation
5 to larger business customers and to all other businesses in more
6 competitive areas of the state and the country.

7 I believe that if ALLTEL is allowed to secure the benefits of price
8 regulation under its proposal for an alternative form of regulation,
9 then it is not necessary, nor is it good policy, to exempt ALLTEL from
10 the interconnection and unbundling provisions of the Act.

11 **Q. Please summarize your recommendations to the Commission.**

12 **A.** I suggest the following changes to ALLTEL's Plan, both to make the
13 plan fairer to small businesses and to create a better
14 telecommunications policy for Pennsylvania.

15 • Digital access service, SS7, and CLASS services should be made
16 available to all of ALLTEL's customers by 12/31/99.

17 • Any rates for protected services purchased by small businesses
18 that are above cost should be reduced to cost. Alternatively,
19 the alternate form of regulation put in place should permit rate
20 rebalancing to narrow the differential between residential and
21 business rates for protected services.

- 1 • Any additional protections that might be granted to residential
2 customers should also be extended to small business customers.
- 3 • The productivity offset in the Price Stability Plan should be
4 set at 2.8% as no evidence to the contrary has been offered.
- 5 • Customers, including small business customers, will be harmed by
6 excluding competition from ALLTEL's' territory, and, therefore,
7 ALLTEL should not be granted an exemption from the competition
8 and interconnection requirements in the Telecommunications Act
9 of 1996.

10 Q. Does this conclude your testimony?

11 A. Yes.

APPENDIX A

VITA OF STANFORD L. LEVIN

VITA

STANFORD L. LEVIN

Professor of Economics
Department of Economics
Alumni Hall, Room 3132
Southern Illinois University at Edwardsville
Edwardsville, IL 62026-1102

Office: 618-973-8057
618-650-2592
FAX: 618-650-3047
e-mail: slevin@siue.edu

5 Aylesbury Drive
St. Louis, MO 63132
Phone: 314-997-2319
Fax: 314-997-0605

Born May 1, 1946
Married, 2 Children
U. S. Citizen

EDUCATION

Ph. D., Economics
M.A., Economics
B.A., Economics

University of Michigan, 1974
University of Michigan, 1970
Grinnell College, 1968

HONORS AND AWARDS

Swedish Information Service, travel grant, 1997.
U. S. Department of Education, International Business Specialization, 1996-98.
Center for Research on Telecommunications Policy, local telecommunications, 1996.
Council on Economic Regulation grant to study the public interest in telecommunications, 1989.
National Academy of Sciences travel grant to study utility pricing in Yugoslavia, November, 1977.
Rackham Prize Fellow, 1971-72
Brookings Workshop in Regulation Fellowship, 1971
Ford Foundation Graduate Fellowship in Economics, 1969-70

EMPLOYMENT EXPERIENCE

Professor of Economics, Southern Illinois University at Edwardsville, 1985 to present. Chairman of the Department of Economics 1986-1994. Teaching duties include graduate and undergraduate micro and macroeconomics, industrial organization, and antitrust and public utility regulation.

Visiting Professor, University of Illinois at Urbana-Champaign, Fall, 1986. Taught Ph. D. level course in public utility regulation.

Commissioner, Illinois Commerce Commission, December, 1984, to March, 1986, appointed by Governor James R. Thompson. Chairman of the Commission's Telecommunications Policy Committee and member of the Commission's Electric Policy Committee. The Illinois Commerce Commission is the public utilities commission in Illinois.

President, The Resource Group, Inc., St. Louis, Missouri, 1980 to present. The Resource Group provides economic consulting services to a variety of clients in public utility regulatory cases, antitrust, evaluation of economic loss, accounting, and general economics.

Consulting Economist, Chicago Regional Office, Federal Trade Commission, 1979 to 1983, providing analysis and recommendations primarily in antitrust cases.

Associate Professor of Economics, Southern Illinois University at Edwardsville, 1978-85. Assistant Professor of Economics, Southern Illinois University at Edwardsville, 1974-78. Lecturer, Southern Illinois University at Edwardsville, 1972-74.

Sabbatical leave, December, 1977, to August, 1978, at Data Resources, Inc., Washington, D.C., engaged in electricity pricing studies.

Industry Economist, Office of Economics, Federal Power Commission, Summer, 1970.

Teaching Fellow, University of Michigan, Fall, 1970, and Summer, 1971.

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"Regulatory Tools," presented at Latin American Telecommunications Reforms, Organization of American States, Washington, D. C., April, 1991.

"State Regulatory Practices," presented at Telecommunications Policy: Implications for Economic Progress in Vermont, Burlington, February, 1991.

"Regulatory Issues: Who Pays for Modernization," Broadband: Converging on the Future, ComForum, Orlando, December, 1990.

"Regulatory Reform," Illinois Commerce Commission Blue Ribbon Commission on Regulatory Reform, Chicago, October, 1990.

"Cable Television," National Business and Economic Education Association Telecommunications Conference, Chicago, October, 1990.

"The Public Interest in Telecommunication," National Association of State Utility Consumer Advocates, Boston, November, 1989.

"Current Issues in Telecommunications," Illinois CPA Foundation, Chicago, November, 1989.

"Depreciation and Price Caps," USTA Capital Recovery Seminar, Scottsdale, October, 1989.

"Expanding the Horizons: Implications of Global Telecommunications for Oregon," U S WEST Communications Oregon Direct Dialogue, Portland, October, 1989.

"A Former Commissioner's Perspective on Affiliated Issues," USTA Affiliated Interest Issues Seminar, Tarpon Springs, Florida, October, 1989.

"Reducing Regulation of Communications Carriers at the State Level," American Bar Association annual meeting, Honolulu, August, 1989.

"The Evolving Bulk Power Supply Arrangements for a More Competitive Electric Industry: Financial and Regulatory Implications," 1989 Mid- America Regulatory Commissioners Conference, Chicago, June, 1989.

Keynote Address, "Challenge of the 90s," Kentucky Telephone Association annual meeting, Lexington, May, 1989.

"Competition, Deregulation, and Accounting for Telecommunications," 1989 Natural Gas, Telephone, and Electric Industry Accounting and Ratemaking Conference, Texas Society of CPAs, San Antonio, April, 1989.

"Pricing ONA," presentation and session leader at New York - New England Conference on Open Network Architecture, Saratoga Springs, April, 1989.

"The Pros and Cons of Regulatory Options: Pricing Caps," The Telecommunications Conference Center, "State Regulatory Initiatives," Washington, D. C., April, 1988.

"Utility Regulation and the Changing Electric Industry," Great Lakes Power Association Winter Meeting, Marion, Illinois, February, 1988.

"Pay Telephones: The State Regulatory View and Strategies for Progress," Bellcore Regulatory Issues Seminar, November, 1987.

"The Future of the Social Contract," New Mexico State University, "Negotiating the Social Contract", Chicago, September, 1987.

"Electric Rates, Tariff Structures, Competition, and the Outlook for the Future," 9th International Association of Energy Economists Conference, Calgary, Alberta, Canada, July, 1987.

"Competition -- Since Divestiture and Beyond," 80th Annual Convention of the Florida Telephone Association, Naples, Florida, June, 1987.

"Tariff Design for Electricity Markets in Transition," New England Conference of Public Utility Commissioners (NECPUC), Dixville Notch, New Hampshire, June, 1987.

"The Economics of Telecommunications," Telecommunications Public Policy Symposium, J. K. Kellogg Graduate School of Management, Northwestern University, September, 1986.

"The Economics of Traffic Sensitive Costs," Bellcore Traffic Sensitive Cost Recovery Conference, Seattle, July, 1986.

"State Regulation in the New Telecommunications Environment," Forum on Telecommunications Deregulation, Karl Eller Center, University of Arizona, Tucson, June, 1986.

"Competition in Wholesale Electric Markets," Illinois Municipal Electric Agency Annual Meeting, Springfield, Illinois, May, 1986.

"Telecommunications (De)Regulation in Illinois," Roundtable on State Approaches to Regulation, Minnesota State Planning Agency, St. Paul, April, 1986.

"Expectations for and Uses of Forecasting Models," Utility Modeling and Planning Seminar, Iowa-Illinois Gas and Electric Company, Chicago, April, 1986.

"Economic Cost and Regulation," Accounting Witness Seminar, Phoenix, April, 1986.

"State Regulatory Actions - Telecommunication Deregulation," The Telecommunications Conference Center, "Telecommunications Deregulation," Arlington, Virginia, March, 1986.

"Unified Tariffs for Access Charges," Dow, Lohnes & Albertson, "Telephony: State Perspectives," Washington, D.C., February, 1986.

"State Perspectives Toward Telecommunications By-Pass," Phillips Publishing Company, "By-Pass - Defining the Local Exchange," Washington, D.C., February, 1986.

"Competition for Intrastate Toll Services--Innovative Rate Design," Second Annual Conference on State Utility Regulation, Utah Division of Public Utilities and the University of Utah, "What Are the Future Directions for the State of Competitive Telecommunications Services," Salt Lake City, February, 1986.

"Federal and State Telecommunications Policy Issues," Public Utility Research Center Workshop, University of Florida, Gainesville, January, 1986.

"The States, the Feds, Access Charges, and Solutions," Bellcore, "Economic Alternatives for NTS Cost Recovery," Salt Lake City, January, 1986.

"The Role of Regulation in the Evolving Telecommunications Industry," The Energy Bureau, Inc., "Managing the Transition to Telecommunications Competition," Arlington, Virginia, October, 1985.

"Cost Requirements for Effective Telecommunications Regulation," Bellcore, "Economic Cost Modeling Forum," Atlantic City, September, 1985.

"Electric Utility Pricing," Regulation and the Rate-Making Process, New Mexico State University, October, 1981.

"Strategic Planning for Electric Utilities," various dates.

"An Introduction to Strategic Planning for Telecommunications," various dates.

Speaker, Financial Accounting Institute, various dates.

"Capital Recovery in the Telecommunications Industry," seminars sponsored by the United States Telephone Association, Bellcore, and Touche Ross & Company, various dates.

"From Costing to Ratemaking," and "Competition in the Electric Utility Industry," Seminars in Regulatory Economics, "Economics of Electric Power," Tucson, various dates.

"The Regulatory Response to a Competitive Telecommunications Industry," Seminars in Regulatory Economics, "Economics of Telecommunications," Tucson, various dates.

Talks on economic issues to various campus and regional groups.

Appearances on local radio and television programs.

PROFESSIONAL ACTIVITIES

Conferences

Member, Program Committee, and Regulatory Regimes Theme Coordinator, Twelfth Biennial Conference of the International Telecommunications Society, Stockholm, June, 1998.

One of five foreign experts invited to attend a conference and advise the Chinese on Anti-Monopoly Law, sponsored by the National People's Congress Finance and Economic Committee, Beijing, December, 1998.

Member, Program Committee, and Policy Theme head, International Telecommunications Society and International Computer Communication Consortium joint Conference, Global Networking '97, Calgary, June 1997.

Discussant, Eleventh International Conference, International Telecommunications Society, Seville, Spain, June, 1996.

Participant, Leadership Program on Japan, Ministry of International Trade and Industry, Tokyo, September, 1995.

Discussant, 10th Conference of the International Telecommunications Society, Sydney Australia, July, 1994.

Co-ordinator, Institute of Public Utilities, Michigan State University, various conferences, 1991-92.

Moderator, Stakeholders Symposium, Kansas University, May, 1991 and October, 1991.

Organizer, SIUE Center for Economic Education, "Local Measured Service," April and May, 1989.

Session Leader and Presentation, "New York - New England Conference on Open Network Architecture," Saratoga Springs, New York, April, 1989.

Organize two sessions and Session Chairman, Bellcore/Bell Canada conference, "Telecommunications Costing in a Dynamic Environment, San Diego, April, 1989.

Discussant, "Integrated Broadband Networks," Center for Telecommunications and Information Studies, Columbia University, September, 1988, and participant, February, 1989.

Participant, "The Changing Mission of Telecommunications Regulation at the State Level," The Aspen Institute, August, 1986; August, 1987; February, 1988; August, 1988; July, 1989; August, 1991.

Participant, U. S. West Academic Seminar, Keystone, Colorado, August, 1987; August, 1988.

Participant, Bellcore/MIT Broadband Conference, Salt Lake City, April, 1988.

Session Chairman and participant, "Telecommunications Demand Analysis," Bell Communications Research and Bell Canada, Key Biscayne, January 25-27, 1988.

Participant, Telecommunications Policy Research Conference, 1985- present.

Panelist, "The Telecommunications Industry in Transition: Phase III of Deregulation," E.C. Intelligence, October, 1986.

Discussant, Illinois Economic Association, Chicago, October, 1986.

Midwest Economic Association, Chicago, March 1986.

Midwest Economic Association, Chicago, April, 1984.

Eastern Economic Association, Montreal, May, 1980.

Atlantic Economic Society, Washington, DC, October, 1977

Western Economic Society, Anaheim, June, 1977.

Atlantic Economic Society, Washington, DC, September, 1975

Atlantic Economic Society, Richmond, September, 1974.

Participant, "Telecommunications Public Policy Symposium, J. K. Kellogg Graduate School of Management, Northwestern University, August, September, and December, 1986.

Panelist, "The Future of the Public Switched Network," National Association of Regulatory Utility Commissioners Communications Committee, Amos Tuck School of Business Administration, Dartmouth University, April, 1986.

Participant, "Congress and the Economy: Policy Choices Ahead," National Association of Business Economists, Washington, D.C., February, 1986.

Participant and member of Steering Committee, Advanced Workshop in Public Utility Economics and Regulation, Rutgers University, 1985-86.

Organizer and participant, "Transmission Access: Today and Tomorrow," Third NARUC Electric Research and Development Seminar, St. Charles, Illinois, October, 1985.

Chairman and session organizer, "Utility Diversification and the Consumer," Mid-America Regulatory Commissioners Convention, Acton, Oklahoma, June, 1985.

Participant, Financial Accounting Institute, Washington, D.C., May, 1985

Participant, National Association of Regulatory Utility Commissioners Tenth Technical Conference, Washington, D.C., February, 1985.

Chairman and panel organizer, "The Outlook for Telecommunications," Illinois Economic Association, Normal, Illinois, October, 1984.

Participant "Communications Regulation in Illinois: Perspectives of Future Policy," J. K. Kellogg Graduate School of Management, Northwestern University, October and December, 1983, and January, 1984.

Moderator and organizer, "Telecommunications in the 1980s," Continental Telephone and Illinois Bell Telephone, Southern Illinois University at Edwardsville, May 11, 1983.

Co-organizer of "New Directions in Antitrust," Southern Illinois University at Edwardsville, June 2, 1982.

Session chairman, Midwest Economic Association, Chicago, March, 1982.

Session chairman, Illinois Economic Association, St. Louis, October, 1976.

Participant, Illinois Bell Telephone Conferences on Regulated Industries, September, 1978, at Oakbrook, Illinois; October, 1976, at Eastern Illinois University; and October, 1974, at Northern Illinois University.

Participant, Michigan State University Institute of Public Utilities Seminar, Williamsburg, Virginia, December, 1977.

Participant, American Iron and Steel Institute Seminar, Notre Dame University, April, 1977.

Participant, Economics of Regulated Public Utilities, The University of Chicago, June, 1976.

Participant, Workshop in Computer-Assisted Instruction in Economics, Northern Illinois University, August, 1973.

Co-organizer, Conference in Industrial Organization at Southern Illinois University at Edwardsville, April, 1973.

Others

President-Elect, Illinois Economic Association, 1990, and President, 1991.

Referee, *The Review of Economics and Statistics*, *The Southern Economic Journal*, *The Rand Journal of Economics*, *Quarterly Review of Economics and Business*, *Review of Industrial Organization*, *Journal of Economic Surveys*, *Growth and Change*, *The Energy Journal*, *Review of Social Economy*, *International Journal of the Economics of Business*.

Board of Advisers, Bellcore, 1992 - 1996.

Board of Advisers, Council on Economic Regulation, 1990.

Advisory Board, Telecommunications Abstracts, 1988 - 1990

Advisory Board, Telecommunications Conference Center, 1987 - 1989.

Advisory Committee, Telecommunications Policy Research Conference, 1987 - 1990.

Participant, Telecommunications Outlook Project, Center for Telecommunications Management, University of Southern California, 1986 - present.

Board of Advisors, Chicago Energy Economists, 1985-1992.

Trustee, Illinois Economic Association, 1984-86.

Participant, National Association of Business Economists Quarterly Forecast, 1983-present.

Participant, International Business Condition Digest Monthly Consensus Outlook, 1982-84.

Member, Confluence St. Louis, and member of organizational Governance Committee.

Local Coordinator, 1981 and 1976 meetings of the Illinois Economics Association, St. Louis, Missouri.

Member, Olivette Energy Commission, 1979-1981.

Mentor, Presidential Scholar Program, 1980-84 and 1988 - 1990.

Member, 1976 Illinois Economic Association Program Committee.

Director, Office for Economic Education, Southern Illinois University at Edwardsville, 1974-75.

Memberships in Professional Organizations

American Economic Association
Midwest Economic Association
Western Economic Association
Southern Economic Association
Illinois Economic Association
Atlantic Economic Society
Missouri Valley Economic Association
National Association of Business Economists
International Association for Energy Economics
Industrial Organization Society
International Institute of Communications
International Telecommunications Society

CONSULTING

Telecommunications policy, local exchange competition and interconnection, cost analysis, competition assessment, pricing, and strategic planning.

Electric utility regulatory policy, competition analysis, cost analysis, rate design, and strategic planning.

Antitrust analysis and testimony for cases in a range of industries including chemicals, agricultural products, manufacturing, retail sales, the accounting profession, and others.

Analysis of the valuation of utility property for local tax assessment.

General economic consulting to companies and law firms for damage cases, valuation of time and future income, economic impact studies, and related economic issues.

6/98

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PTA Cross Exem
Ex. 2

Petition of Senators Fumo, Madigan and White, the :	
Pennsylvania Cable and Telecommunications :	Docket Nos.
Association and 7 Competitive Local :	P-
Exchange Carriers for Adoption of Partial :	
Settlement Resolving Pending Telecommunications :	
Issues :	
Petition of Bell Atlantic – Pennsylvania, Inc. for :	
a Determination of Whether IntraLATA Toll :	P-00971293
Service is Competitive :	
Petition of Bell Atlantic – Pennsylvania, Inc. for :	
a Determination of Whether 84 Business Services :	P-00971307
are Competitive :	
Investigation into Bell Atlantic – Pennsylvania, :	I-00980075
Inc.'s Entry into In-Region InterLATA Service :	M-00960840
Generic Investigation into Intrastate Access :	I-00960066
Charge Reform :	
Formal Investigation into Universal Service :	I-00940035
and Universal Service Funding Mechanism :	L-00950105
Application of MFS Intelenet of Pennsylvania, :	A-3010203F0002
Inc. (MFS Phase IV) :	P-00961137
Rulemaking Re: Updating and Revising Existing :	L-00940095
Filing Requirement Regulations :	L-00940095F0002
Bell Atlantic-Pennsylvania, Inc. v. MCImetro :	C-00967717
Access Transmission Services, Inc. :	R-00973866C001
In re: Investigation of Issuance of Local Telephone :	
Numbers to Internet Service Providers by :	
Competitive Local Exchange Carriers :	P-00981404

PETITION OF SENATORS FUMO, MADIGAN AND WHITE,
THE PENNSYLVANIA CABLE & TELECOMMUNICATIONS
ASSOCIATION AND 7 COMPETITIVE LOCAL EXCHANGE CARRIERS
FOR ADOPTION OF PARTIAL SETTLEMENT RESOLVING
PENDING TELECOMMUNICATIONS ISSUES

March 18, 1999

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SECRETARY'S BUREAU

approval of this Partial Settlement. Such a cap is not intended to preclude the reduction of Bell's protected service rates consistent with the terms and conditions of this Agreement. Furthermore, the rate cap precludes a shifting of costs between customer classes due to the designation of any of Bell's services as "competitive," under 66 Pa.C.S. §3005.

8. As to ILECs other than Bell, a rate ceiling will be implemented which caps the residential local rates of each ILEC other than Bell, including charges for dialtone, touchtone, and local usage, at \$16.00 per month for the term of the agreement. As set forth below, if an ILEC rate above \$16.00 per month is found to be just and reasonable by the Commission, the revenue associated with the difference between the rate ceiling and the approved rate will be recovered from a Universal Service Fund ("USF").

9. Except as specifically set forth in this Agreement, there will be no increases to protected service rates for ILECs other than Bell for the purpose of offsetting or recovering the reduction of switched access or toll rates charged by an ILEC for the term of this Agreement.

10. For the term of this Agreement, there will be no Subscriber Line Charge ("SLC") assessed on the bills of any ILEC which is designed to recover revenues associated with the reduction of either switched access rates or toll rates.

11. Pursuant to this Partial Settlement as set forth below, certain of Bell's local services for certain business customers will be classified as competitive under 66 Pa.C.S. §3005 resulting in deregulation of rates and earnings for those services to those customers. While agreeing to such competitive classification is an important concession

- (d) One member appointed by the Speaker of the House of Representatives; and
- (e) One member appointed by the Minority Leader of the Pennsylvania House of Representatives.

56. The funds from the TEDF shall be utilized to provide grants or loans to assist individuals, businesses or political subdivisions seeking to obtain access to advanced or modern telecommunication services or technologies. Funding decisions and other actions pertaining to the TEDF will be taken by the Board by vote qualified majority of the Board consisting of four of the five members.

57. Telecommunications carriers will not pass through the TEDF contributions to end users through a surcharge.

N. NETWORK MODERNIZATION

58. Despite the passage of Chapter 30 over five years ago, many Pennsylvania customers do not have access to optional services like call identification services and call forwarding, which have become common place for customers, in general, around the Nation. It is necessary and appropriate to assure that any ILEC which receives funding as a result of the Partial Settlement be required to make concrete commitments in advancement of network modernization.

59. Each ILEC which receives monies from a USF or the consumer education fund, as set forth below, will make an unconditional commitment to modernize its network in a manner which makes a full range of CLASS services available to each of its customers within one year of adoption of this Partial Settlement.

101. The Bell Pool will be adjusted by Bell to accommodate line growth on a monthly basis.

102. The Bell Pool will be recovered through a flat rate carrier charge ("CC") on access users calculated in proportion to the share of overall Bell access minutes of use for a given access user.

103. By no later than January 1, 2001, the Commission will initiate a docket to determine how the Bell Pool will be reduced and eliminated as set forth below.

(b) Small Company Access Charge Reduction and Restructuring

104. The small company access charge reduction and restructuring proposal in the Joint Petition in Settlement submitted to the Commission by Bell and the smaller Pennsylvania ILECs¹³ on March 10, 1997 at I-00940035 et al. ("Small Company Plan") is adopted by this Partial Settlement except as follows:

- (i) In addition to the funding provided by the USF included in the Small Company Plan, the USF will operate prospectively to support and reduce local residential customer bills when the Commission determines that an ILEC's just and reasonable residential local rate exceeds a local rate ceiling of \$16 per month for the term of this Partial Settlement. Future local rate increases, beyond the level of the rate ceiling, will be offset by the USF to ensure that the effective residual residential rate ceiling will not exceed \$16 (with a proportionate guarantee for business rates). If insufficient funds

¹³ The small Pennsylvania ILECs include all remaining ILECs except GTE and United Telephone Company ("Sprint/United").

expenses to cover the new level of USF support to assure compliance with the \$16 rate ceiling, the Commission will require that the USF be increased to the required level with all contributors paying their respective share of the increase.

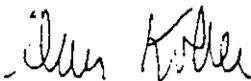
- (ii) The ILEC participants in the Small Company Plan will pass through the ITORP expense reduction they receive from other ILEC access reductions to end users through reductions in toll rates.
- (iii) Once the combination of USF support and ITORP expense reductions received by ILEC participants in the Small Company Plan reduces an ILEC's intraLATA rates to \$.09 per minute, any residual USF monies and all further ITORP expense reductions will be applied to reduce the Small Company Pool along with all associated ILEC actual or imputed reductions which result from reduction of the Small Company Pool.
- (iv) Bell's \$12 million USF contribution set forth in the Small Company Plan will be used to size the USF but will not act as a cap on Bell's contribution to the USF.

(c) GTE Access Reductions and Restructuring¹⁴

105. GTE will conform to the terms of the Small Company Plan, as described and modified above, but will not participate in the Small Company Pool.

¹⁴ The GTE Access Charge Reduction and Restructuring plan included in this Partial Settlement presumes the GTE/Bell Atlantic merger is not finalized. If it is finalized, the Joint Petitioners agree that GTE should be governed by Bell's Access Charge Reduction and Restructuring provisions.

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



Daniel Clearfield, Esquire
Alan Kohler, Esquire
Wolf, Block, Schorr and Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101
(717) 237-7160

**PENNSYLVANIA CABLE AND
TELECOMMUNICATIONS ASSN.**

Derrick Williamson, Esquire
Pamela Polacek, Esquire
McNees, Wallace and Nurick
100 Pine Street
Harrisburg, PA 17101
(717) 232-8000

Dated: March 18, 1999

RURAL TASK FORCE RECOMMENDATION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

RURAL TASK FORCE
RECOMMENDATION TO THE FEDERAL-STATE JOINT BOARD
ON UNIVERSAL SERVICE

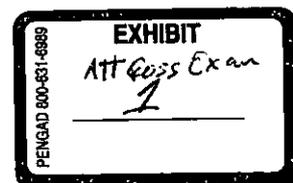
Adopted: September 22, 2000

Released: September 29, 2000

By the Rural Task Force:

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RURAL TASK FORCE RECOMMENDATION

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RURAL TASK FORCE RECOMMENDATION

I. EXECUTIVE SUMMARY

This document contains a comprehensive, balanced package that is the final Recommendation (Recommendation) of the Rural Task Force (Task Force). The Task Force was appointed by the Federal-State Joint Board on Universal Service (Joint Board) in CC Docket No. 96-45 pursuant to the Telecommunications Act of 1996 (1996 Act).¹ We urge that the Recommendation be implemented immediately and remain in place for five years. Plans should be made to reevaluate appropriate universal service funding approaches for areas served by "rural telephone companies"² prior to the end of the five-year period. The Recommendation represents the consensus of individual Task Force members.³ The Recommendation may or may not represent the positions of organizations or companies to which Task Force members belong.

The Task Force has expended considerable time over the past two years in learning, discussing, debating, negotiating, and compromising to develop this Recommendation. As a delicately-crafted package, it is meant to balance the mandate to preserve and advance universal service while at the same time facilitating competition in areas served by Rural Carriers. The Recommendation also strikes a careful balance between the need to provide a fund that is "sufficient" under the provisions of the 1996 Act while insuring that the overall size of the fund is reasonable. Each of the elements of this comprehensive package are interdependent and should be considered in concert with each other, and should be implemented expeditiously. The Task Force strongly recommends that this balance be honored in reviewing the complete package that comprises its Recommendation.

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). The 1996 Act amended the Communications Act of 1934, 47 U.S.C. Section 151 *et seq.* (1996 Act).

² "Rural telephone company" means a local exchange carrier operating entity to the extent that such entity-- (A) provides common carrier service to any local exchange carrier study area that does not include either-- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996 (47 U.S.C. Section 153 (37)). The term "Rural Carrier" as used in this Recommendation is meant to include carriers serving insular areas and to incorporate the statutory definition of "rural telephone company" as applied in the FCC rules. *See In re: Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order* (rel. May 8, 1997) at paragraph 96. *See also FCC Public Notice*, CC Docket No. 96-45, DA 98-1205 (rel. June 22, 1998) lists recognized self-certified "Rural Telephone Companies." This list is updated periodically. *See for example, FCC Public Notice*, CC Docket No. 96-45, DA001705 (rel. Aug. 1, 2000).

³ Several appointees were not present or involved during the final months of meetings and conference calls of the Task Force. Because they did not take part in the final deliberations and because the Task Force had agreed early on that they must be present to vote, several appointees' names do not appear on the Recommendation signature page.

RURAL TASK FORCE RECOMMENDATION

The following summarizes the major conclusions of the Task Force:

- The Task Force's Recommendation should be implemented immediately and remain in place for a five-year period. Plans should be made to reevaluate appropriate universal service funding approaches for areas served by Rural Carriers prior to the end of this five-year period.
- The Task Force recommends that the Synthesis Model not be used for determining the forward-looking costs of Rural Carriers.
- The Task Force recommends the Modified Embedded Cost Mechanism of federal universal service support for Rural Carriers be adopted for sizing the Rural Carrier federal universal service fund.
- The Task Force recommends a flexible system for disaggregating support to establish the portable per line support available to all eligible telecommunications carriers with timely distributions.
- The Task Force recommends that states be delegated responsibility for oversight of the use of universal service support in a manner similar to that used for the non-rural LECs.
- The Task Force recommends that the Joint Board review the definition of the services that are supported by federal universal service support mechanisms, and that a "no barriers to advanced services" policy be adopted.
- The Task Force recommends the Joint Board and Federal Communications Commission (FCC) enact modifications to the caps and limitations on universal service funding which currently exist:
 - The High Cost Loop Fund should be re-based by increasing it \$118.5 million, grown by an annual factor, and include a "safety net;"
 - The corporate operations expense limitation should be adjusted for growth; and
 - A "safety valve mechanism" should be added to the limitation on support for acquired or transferred exchanges.
- The Task Force recommends a set of principles to be used in addressing implicit support in interstate access charges, and recommends creation of High Cost Fund III to take the place of any implicit support removed from interstate access.

Court Reporter

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

December 10, 2008

(717) 783-2525
(717) 783-2831 (FAX)

E-mail and Hand Delivery

Hon. Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED

MAR 26 2009

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Judge Colwell:

Enclosed please find two copies of the Direct Testimony of Allen G. Buckalew, labeled OSBA Statement No. 1, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding. As evidenced by the enclosed certificate of service, all parties have been served as indicated.

If you have any questions, please contact me.

Sincerely,

Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Parties of Record
Allen G. Buckalew



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Direct Testimony of Allen G. Buckalew, labeled OSBA Statement No. 1, on behalf of the Office of Small Business Advocate, by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

Hon. Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-5452
(717) 787-0481 (fax)
scolwell@state.pa.us
(E-mail and Hand Delivery)

Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street
5th FL Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
jcheskis@paoca.org
(E-mail and Hand Delivery)

Zsuzsanna E. Benedek, Esquire
Embarq Pennsylvania
240 North Third Street, Suite 201
Harrisburg, PA 17101
(717) 245-6346
(717) 236-1389 (fax)
sue.e.benedek@embarq.com

Johnnie E. Simms, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
josimms@state.pa.us
(E-mail and Hand Delivery)

Jennifer A. Duane, Esquire
Sprint Communications Company, L.P.
401 9th Street, NW, Suite 400
Washington, DC 20004
(202) 585-1937
(202) 585-1894 (fax)
jennifer.a.duane@mail.sprint.com

Michelle Painter, Esquire
Painter Law Firm, PLLC
13017 Dunhill Drive
Fairfax, VA 22030
(703) 201-8378
(703) 968-5936 (fax)
painterlawfirm@verizon.net

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
213 Market St., 9th Floor
P. O. Box 865
Harrisburg, PA 17108-0865
(717) 237-7160
(717) 237-7161 (fax)
dclearfield@wolfblock.com
akohler@wolfblock.com

John P. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025
(Qwest)
(717) 236-7714
(717) 236-7816 (fax)
jpovilaitis@ryanrussell.com
mtotino@ryanrussell.com

Jennifer M. Sultzaberger, Esquire
Regina L. Matz, Esquire
Norman J. Kennard, Esquire
Thomas Long Niesen & Kennard
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
(RTCC)
(717) 255-7600
(717) 236-8278 (fax)
Jms@thomaslonglaw.com
rmatz@thomaslonglaw.com
Nkennard@thomaslonglaw.com

Bradford M. Stern, Esquire
Rothfelder Stern, L.L.C.
620 Central Avenue
Westfield, NJ 07090
(Omnipoint, T-Mobile, Nextel)
(908) 301-1211
(908) 301-1212 (fax)
bmstern@rothfelderstern.com

Robert C. Barber, Esquire
Mark Keffer, Esquire
Phil Shapiro, Esquire
AT&T Communications of PA, Inc.
1120 20th Street, NW, Suite 1000
Washington, DC 20036
(202) 457-2160 (rb)
(202) 457-3839 (mk)
(202) 664-9658 (fax)
rcbarber@att.com
mkeffer@att.com
pshapiro@att.com

Elizabeth Barnes
ebarnes@state.pa.us
(E-mail only)

Robert Marinko
rmarinko@state.pa.us
(E-mail only)

John C. Dodge, Esquire
Davis Wright Tremaine, LLP
1919 Pennsylvania Avenue, N.W. - #200
Washington, DC 20006
(202) 973-4205
(202) 973-4499 (fax)
JohnDodge@dwt.com

Kristin L. Smith, Esquire
Qwest Communications Corporation
1801 California St., 10th Floor
Denver, CO 80202
(303) 383-6614
(303) 298-8197 (fax)
kristin.smith@qwest.com

Susan M. Roach, Esquire
Drinker Biddle & Reath
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996
(Cellco, Verizon Wireless, Cingular)
(215) 988-2715
(215) 988-2757 (fax)
susan.roach@dbr.com

Suzan DeBusk Paiva, Esquire
Leigh A. Hyer, Esquire
Verizon
1717 Arch Street, 10th Floor
Philadelphia, PA 19103
(215) 466-4755
(215) 563-2658 (fax)
suzan.d.paiva@verizon.com
leigh.a.hyer@verizon.com

Dr. Robert Loube
Rhoads and Sinon, LLC
10601 Cavalier Drive
Silver Spring, MD 20901
(301) 681-0338
bobloube@earthlink.net

Thomas J. Sniscak, Esquire
Hawke McKeon Sniscak & Kennard
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
(717) 236-1300
(717) 236-4841 (fax)
tjsniscak@hmsk-law.com

Brian A. Rankin, Esquire
Comcast Cable Communications, LLC
One Comcast Center - 50th Floor
Philadelphia, PA 19103
(215) 286-7325
(215) 286-5039 (fax)
brian_rankin@comcast.com

Garnet M. Goins, Esquire
Benjamin J. Aron, Esquire
Sprint Communications Company LP
2001 Edmund Halley Drive - Second Floor
Reston, VA 20191
(703) 433-4248
(703) 433-4142 (fax)
garnet.goins@sprint.com
benjamin.aron@sprint.com

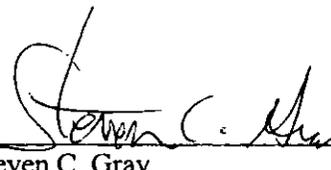
Christopher M. Arfaa, Esquire
Christopher M. Arfaa, PC
150 N. Radnor Chester Road - Suite F-200
Radnor, PA 19087-5245
(610) 977-2001
(610) 977-0043 (fax)
carfaa@arfaalaw.com

Orlando E. Vidal, Esquire
Sonnenschein Nath & Rosenthal, LLP
1301 K Street, N.W.
Suite 600 - East Tower
Washington, DC 20005
(202) 408-6431
(202) 408-6399 (fax)
ovidal@sonnenschein.com

Benjamin J. Aron, Esquire
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20919
(703) 592-7618
(730) 592-7404 (fax)
(First class mail only)

Pamela C. Polacek, Esquire
Shelby A. Linton-Keddie, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 260-1763 (fax)
ppolacek@mwn.com
skeddie@mwn.com

Joseph R. Stewart, Esquire
Embarq
50 West Broad Street - #3600
Columbus, OH 43215
(614) 220-8625
(614) 224-3902 (fax)
joseph.r.stewart@embarq.com



Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Date: December 10, 2008

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Direct Testimony Of
ALLEN G. BUCKALEW**

**On Behalf Of
The Office of Small Business Advocate
Of the Commonwealth of Pennsylvania**

Date Served: December 10, 2008

Date Submitted for the Record: _____

1 **QUALIFICATIONS AND INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Allen G. Buckalew. I am an Economist specializing in the
5 telecommunications industry at J.W. Wilson & Associates, Inc. Our offices are at
6 1601 N. Kent Street, Rosslyn Plaza C - Suite 1104, Arlington, VA 22209.

7 **Q. PLEASE OUTLINE YOUR EDUCATIONAL BACKGROUND.**

8 A. I hold an A.A. and a B.S. degree with high honors, both from the University of
9 Florida, and an M.S. degree from George Washington University. My major areas
10 of concentration were economics and telecommunications.

11 **Q. HOW HAVE YOU BEEN EMPLOYED IN THE PAST?**

12 A. Before I entered the University of Florida, I worked for four years in Naval
13 Telecommunications. After graduating from the University of Florida, I worked
14 for four years at the Federal Communications Commission ("FCC") as an Industry
15 Economist in the Common Carrier Bureau and was employed extensively in areas
16 involving telecommunications, economics, accounting, engineering, and policy
17 matters. For example, one of my major projects was "The Economic Implications
18 and Interrelationships Arising from Policies and Practices Relating to Customer
19 Interconnection, Jurisdictional Separations and Rate Structures," (Docket 20003).

1 This case opened the terminal equipment (e.g., telephones, and private branch
2 exchanges (“PBXs”)) market in the United States to competition. I also provided
3 economic analysis in several rate cases, including, for example, “Communications
4 Satellite Corporation, Investigation into Charges, Practices, Classifications, Rates
5 and Regulations,” (Docket 16070). My major responsibility was to serve as
6 economic advisor and analyst for the Common Carrier Bureau.

7 After the FCC, I was appointed Associate Director for Telecommunications
8 Research of the National Regulatory Research Institute (“NRRI”) at Ohio State
9 University. My responsibilities at NRRI focused on telecommunications policy as
10 seen from an analytical perspective that combined accounting, engineering, and
11 economic disciplines. During my employment at NRRI, I completed several
12 studies for state public utility commissions, including “The Impact of Measured
13 Telephone Rates on Telephone Usage of Government and Nonprofit
14 Organizations” (for the Public Utilities Commission of Ohio) and “Toward An
15 Analysis of Telephone License Contracts and Measured Rates” (for the Maryland
16 Public Service Commission). In addition, I have provided several state
17 Commissions with on-site technical and economic assistance. This assistance was
18 related to identifying, explaining and analyzing major issues in telephone cases.
19 Since joining J.W. Wilson & Associates, Inc. in May 1980, I have provided
20 economic analysis in numerous proceedings in most of the states of the United
21 States, Canada, Bolivia, Nepal, Egypt, and Tanzania. I also have provided

1 analysis for the Federal Communications Commission and the United States
2 Department of Justice. For example, I testified on behalf of the Department of
3 Justice in the case that broke up the Bell System. In addition, I have worked for
4 numerous state Attorneys General. For example, I evaluated the merger proposal
5 for Bell Atlantic and NYNEX for the National Association of Attorneys General
6 and the Bell Atlantic and GTE merger proposal for the Pennsylvania Attorney
7 General. I also analyzed the merger proposal for MCI and WorldCom for the
8 California Public Utilities Commission.

9 **Q. ARE YOU A MEMBER OF ANY PROFESSIONAL ORGANIZATIONS**
10 **AND HONOR SOCIETIES?**

11 A. Yes. I am a member of the Society of Depreciation Professionals, the American
12 Economic Association, Omicron Delta Epsilon (an international honor society in
13 economics) and Beta Gamma Sigma (an honor society in business).

14 **Q. COULD YOU BRIEFLY SUMMARIZE YOUR PROFESSIONAL**
15 **RESPONSIBILITIES TO DATE?**

16 A. Yes. My primary responsibilities have been to supervise and actively participate
17 in public utility regulatory policy research, especially in the telecommunications
18 field on behalf of federal and state government entities. These responsibilities
19 have required the use and application of economic, accounting, and engineering
20 analyses.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. The purpose of my testimony is to address what the Commission asked the parties
3 to address in its notice. My testimony recommends:

4 1. That the Commission make a finding that there is no \$18 cap on residential
5 local exchange rates and no corresponding cap on business local exchange rates
6 for purposes of the annual Chapter 30 revenue increases.

7 2. That if the current system continues, then the Pennsylvania Universal
8 Service Fund (“PAUSF”) subsidy system should be changed to include a cost-
9 based test that reflects the costs of each incumbent local exchange carrier
10 (“ILEC”).

11 **Q. THE COMMISSION ASKED PARTIES TO “ADDRESS WHETHER THE
12 CAP OF \$18 ON RESIDENTIAL MONTHLY SERVICE RATES AND ANY
13 CORRESPONDING CAP ON BUSINESS MONTHLY SERVICE RATES
14 SHOULD BE RAISED.” WHAT IS YOUR EXPERT OPINION?**

15 A. A cap on some rates for services while revenue is increased based on inflation
16 cannot be sustained in the long run. The situation that exists for some ILECs
17 today, with rates hitting the rate cap, demonstrates the problem. The basis of
18 Chapter 30 regulation is the assumption that an ILEC’s costs increase with
19 inflation. This assumption simply is not true, but it is the law. If some non-
20 competitive services and the related rates are exempt from these annual inflation

1 increases, other non-competitive services must be increased by more than the rate
2 of inflation in order to give the ILEC an opportunity to earn the higher revenues
3 authorized by the Price Stability Mechanism (“PSM”) filing. However, increasing
4 business local exchange rates by more than the rate of inflation has forced
5 business customers onto competitive services. This cycle will continue until the
6 only customers that remain on regulated rates are those that have few competitive
7 choices. In addition, there is no basis in the law for capped rates. Likewise, there
8 is no basis to spare any group of customers from increases presumed to be caused
9 by their use of telephone services.

10 **Q. YOU STATED THAT THERE IS NO BASIS IN LAW FOR CAPS ON**
11 **LOCAL EXCHANGE RATE INCREASES THAT RESULT FROM THE**
12 **ANNUAL CHAPTER 30 FILINGS OF THE RURAL ILECS. PLEASE**
13 **EXPLAIN.**

14 **A.** On advice of counsel, I would observe that on November 30, 2004, New Chapter
15 30 of the Public Utility Code, 66 Pa. C.S. §§ 3011 – 3019, took effect. New
16 Chapter 30 contained a cap on local exchange rate increases resulting from a non-
17 rural incumbent local exchange carrier’s annual PSM filing. New Chapter 30
18 contained no such cap on rates for rural incumbent local exchange carriers.

1 New Chapter 30 also grandfathered any existing rate caps that were in effect on
2 November 30, 2004. To qualify for grandfathering, the rate caps could either exist
3 in the rural ILEC's alternative form of regulation plan, or in a Commission order.

4 **Q. ARE YOU AWARE OF ANY RURAL ILEC THAT HAS A CAP ON**
5 **LOCAL EXCHANGE RATE INCREASES FOR THE PURPOSE OF THE**
6 **ANNUAL PSM FILINGS IN ITS ALTERNATIVE FORM OF**
7 **REGULATION PLAN?**

8 A. At the time of this writing, I am not. On advice of counsel, if any rural ILEC has
9 such a rate cap, it will have to provide evidence that its alternative form of
10 regulation plan included that cap on November 30, 2004.

11 **Q. ARE YOU AWARE OF ANY COMMISSION ORDERS THAT WERE IN**
12 **EFFECT ON NOVEMBER 30, 2004, WHICH ESTABLISHED A CAP ON**
13 **LOCAL EXCHANGE RATE INCREASES FOR THE PURPOSE OF THE**
14 **ANNUAL PSM FILINGS?**

15 A. On the advice of counsel, I am not. The Global Order¹ and the Sprint/RTCC
16 Settlement case² addressed caps on local exchange rate increases that were the

¹ *Joint Petition of Nextlink Pennsylvania, Inc., et al.*, 196 PUR 4th 172, 93 Pa. PUC 172 (Order entered September 30, 1999) *affirmed*, *Bell Atlantic-Pennsylvania v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated in part*, *MCI v. Pennsylvania Public Utility Commission*, 577 Pa. 294, 844 A.2d 1239 (Pa. 2004).

² *Access Charge Investigation per Global Order of September 30, 1999*, PUC Docket No. M-00021596, *et al.* (Order entered July 15, 2003).

1 result of changes in access and toll charges. Neither case addressed rate caps due
2 to annual PSM filings.

3 **Q. WHAT ABOUT THE MARCH 30, 2000, COMMISSION ORDER?**

4 A. On advice of counsel, it is my understanding that the March 30, 2000,
5 Commission order³ did attempt to establish a cap on local exchange rate increases
6 that result from annual PSM filings. However, that Commission order assumed
7 that any rural ILEC that needed to recover any revenue in excess of the residential
8 and business rate caps could get it from the PAUSF. In a subsequent case, the
9 Commission decided to not expand the PAUSF to include the funding of local
10 exchange rate increases that result from annual PSM filings.⁴ Thus, the March 30,
11 2000, Order never amounted to anything with regard to rate caps.

12 **Q. DO YOU HAVE ANY SPECIFIC RECOMMENDATIONS REGARDING**
13 **THE RATE CAPS IF THE OSBA LEGAL POSITION IS REJECTED BY**
14 **THE COMMISSION?**

15 A. Yes. Given the level of inflation, it is quite clear that the cap on monthly local
16 residential service rates should be increased if the OSBA's legal position is
17 rejected. Similarly, the cap should be raised when the rate increases are the result
18 of access charge and toll rate reductions. When the first cap was placed into effect

³ *Petition of the following Companies for Approval of an Alternative and Streamlined Form of Regulation Plan and Network Modernization Plan*, PUC Docket No. P-00981425, et al. (Order entered March 30, 2000).

⁴ *PAUSF Revised Final Rulemaking Order*, PUC Docket Nos. P-00991648 and P-00991649 (Order entered March 22, 2001), at 8.

1 in September 1999 (with regard to reductions in access and toll rates), that cap was
2 \$16 for residential local exchange service. In July 2003, the cap was increased to
3 \$18 (with regard to access and toll rate reductions). The new Chapter 30 rules
4 base annual rate adjustments on the overall health of the U.S. economy. From
5 September 1999 through July 2008 (the last published number), the Consumer
6 Price Index (“CPI”) increased by 31.01%. Using this change in the CPI would
7 suggest a cap rate of \$21 for residential local exchange services.

8 It is not so clear that the cap on business single line rates (established in the
9 Sprint/RTCC Settlement) should be increased. Generally, when I have examined
10 business local exchange rates, I have always found them to be higher than cost of
11 service, even with full assignment of loop costs to the local exchange category.
12 Although this can also be true for residential local exchange rates in many cases,
13 business rates usually exceed cost by a much larger percentage than do residential
14 rates. For this reason, caps on rates for business local exchange service should
15 remain unchanged.

16 **Q. RATEPAYERS IN PENNSYLVANIA ARE ALL SUBJECT TO CHAPTER**
17 **30 STATUTES. IS IT REASONABLE TO REQUIRE ALL RATEPAYERS**
18 **TO PAY THE INFLATION-ADJUSTED INCREASES?**

19 **A.** Yes. I do not agree that general inflation increases should be used to increase
20 local exchange rates. However, if inflation increases are going to be used, they

1 should be applied in an even-handed manner. In addition, it is unreasonable to
2 expect some ratepayers to be burdened with annual increases in local exchange
3 rates while others are exempted from the increases. It is also unreasonable to
4 expect the larger, more urban telephone company ratepayers to subsidize more
5 rural ratepayers unless there is a real social need for the subsidy.

6 **Q. SO ARE YOU SAYING THAT THERE SHOULD BE NO CAP FOR ANY**
7 **GENERAL GROUP OF RATEPAYERS UNLESS THERE IS A**
8 **DEMONSTRATED NEED FOR THE SUBSIDY?**

9 A. Yes. There should be a demonstrated cost-based need for any type of universal
10 service subsidy, and the costs should be ILEC-specific. The January 29, 2008
11 FCC notice stated that “we tentatively conclude that we should require
12 competitive ETCs [eligible telecommunications carriers] that seek high-cost
13 support to file cost data demonstrating their costs of providing service in high-cost
14 areas.” (FCC, Notice of Prepared Rulemaking, WC Docket No. 05-337, cc
15 Docket No. 96-45, January 29, 2008, ¶ 12 (emphasis added)). The FCC will
16 require any company that wants a universal service subsidy to justify it with that
17 company’s specific costs of providing local exchange service. The PUC should
18 apply the same rules to the PAUSF fund, or alternatively eliminate the PAUSF. In
19 addition, the rural companies have several years of increases in rates due to the
20 Chapter 30 regulations and these increases may have diminished any need for a

1 subsidy. However, the only way to determine whether there remains any need for
2 a subsidy is to examine each company's cost to provide service.

3 **Q. ARE YOU SAYING THAT THE FIRST THING THE PUC NEEDS TO DO**
4 **IS TO ESTABLISH EACH ILEC'S COST TO PROVIDE LOCAL**
5 **EXCHANGE SERVICE?**

6 A. Yes, if the PAUSF is continued. Moving the "cap" on rates to some other level
7 cannot be justified from an economic or social standpoint unless there is a "need"
8 for the subsidy. In order for there to be a "need," we must find two pieces to the
9 puzzle. One is: what is the "affordable" rate? Two is: what are the ILEC's costs?
10 Each ILEC that wants to draw from the PAUSF should provide its costs for basic
11 service.

12 **Q. DOES THE COMMISSION NEED TO DETERMINE WHAT AN**
13 **"AFFORDABLE" RATE IS FOR RURAL CONSUMERS?**

14 A. Yes. Determining an "affordable" rate is not an exercise in economic principles; it
15 is a public policy decision.

16 The PUC needs to determine an "affordable" rate for rural consumers. The idea
17 behind rural "affordable" rates is to have rates similar to urban areas services and
18 rates. I suggest that Verizon's urban rates be averaged to determine an
19 "affordable" rural rate, or that the rates of all carriers operating in major cities be
20 averaged to determine an "affordable" rural rate. When you use Verizon as the

1 guide to an “affordable” rate, the rate is about \$21, which is the same rate
2 produced by adjusting the original \$16 cap for inflation.

3 The PUC also needs to have cost data for each ILEC that wants a subsidy from the
4 PAUSF that would demonstrate that the ILEC’s costs are higher than this
5 “affordable” rate.

6 **Q. ASSUMING THE COMMISSION DETERMINES AN “AFFORDABLE”**
7 **RATE, WHAT ELSE NEEDS TO BE DONE?**

8 A. An “affordable” rate is just half of the universal service puzzle. Each ILEC that
9 wants to draw funds from the PAUSF should demonstrate that its costs are
10 substantially higher than the “affordable” rate. If an ILEC’s costs are not
11 substantially higher than the “affordable” rate, then the ILEC should not be
12 permitted to draw from the PAUSF.

13 **Q. DETERMINING A RATE CAP AND ESTABLISHING A UNIVERSAL**
14 **SERVICE FUND ASSUMES THAT RURAL CONSUMERS WOULD BE**
15 **DROPPED OFF THE TELEPHONE SYSTEM WITHOUT IT. IS IT**
16 **REASONABLE TO ASSUME THAT WITHOUT THE PAUSF SUPPORT,**
17 **RATES WOULD INCREASE BEYOND AN AFFORDABLE LEVEL?**

18 A. No. First, the FCC already has a national USF to support high cost areas in
19 Pennsylvania. Second, the PAUSF has not been shown to be necessary and should
20 have been phased out. Third, in today’s telecommunications market, consumers

1 have choices. They can purchase services from wireless carriers, voice over
2 internet protocol (“VOIP”) service, wireline service and cable telephony. All
3 consumers do not live or work in areas where there is workable competition (i.e.,
4 many choices), but there is always some choice.

5 Generalized support programs in today’s open market should end. You can’t have
6 competition and at the same time provide general subsidies. That is simply a tax
7 on one group of consumers to support another group of consumers without any
8 voice in how or why the first group is being taxed. Universal service funds in
9 today’s market are not sustainable, enforceable or held to any real accountability
10 standard. Why should small ILECs make excess profits while ratepayers of other
11 ILECs are supporting their operations? How can competitors enter these markets
12 when they can’t get these subsidies to support their consumers? The answer is to
13 allow the market to work and end company subsidies.

14 **Q. THE COMMISSION ALSO ASKED PARTIES TO ADDRESS WHETHER**
15 **THE COMMISSION HAS THE AUTHORITY UNDER CHAPTER 30 AND**
16 **OTHER RELEVANT PROVISIONS OF THE PUBLIC UTILITY CODE TO**
17 **PERFORM A JUST AND REASONABLE RATE ANALYSIS OF THE**
18 **RURAL ILECS’ RESIDENTIAL RATES FOR BASIC LOCAL**
19 **EXCHANGE SERVICES WHEN SUCH RATES EXCEED THE**
20 **APPROPRIATE RESIDENTIAL RATE BENCHMARK. PLEASE**
21 **COMMENT.**

1 A. The Commission has the authority under Chapter 30 and other relevant provisions
2 of the Public Utility Code to perform a just and reasonable rate analysis of any
3 ILECs' residential and business rates for basic local exchange services. The
4 OSBA believes that not only does the Commission have the authority to perform
5 that just and reasonable rate analysis, but that the Commission must use that
6 authority to analyze the costs and revenues of any ILEC that takes money from the
7 PAUSF.

8 **Q. THE COMMISSION ALSO ASKED PARTIES TO ADDRESS THE**
9 **APPROPRIATE BENCHMARK FOR THE RURAL ILEC RESIDENTIAL**
10 **RATE FOR BASIC LOCAL EXCHANGE SERVICE TAKING INTO**
11 **ACCOUNT THE STATUTORY REQUIREMENTS FOR MAINTAINING**
12 **AND ENHANCING UNIVERSAL TELECOMMUNICATIONS SERVICES**
13 **AT "AFFORDABLE" RATES. PLEASE COMMENT.**

14 A. I have recommended two ways for determining a generalized benchmark for rural
15 ILEC residential rates. An "affordable" rate could be constructed using the initial
16 \$16 rate cap and adjusting it for inflation. In other words, assume that the original
17 cap was "affordable" and increase it based on inflation. I also suggested that the
18 Commission could use Verizon's average residential rate as the benchmark.
19 However, the benchmark should also include a test based on the ILEC's costs. At
20 a minimum, I recommend that a benchmark be related to both an "affordable" rate

1 level and individual ILEC's actual costs. For example, a rural ILEC with costs
2 one and one-half times Verizon's average rate would qualify for support.

3 **Q. THE COMMISSION ALSO ASKED WHETHER THE PAUSF FUNDING**
4 **SUPPORT SHOULD BE RECEIVED BY RURAL ILECS THAT**
5 **INCREMENTALLY PIERCE THE APPROPRIATE RESIDENTIAL RATE**
6 **CAP BECAUSE OF THE REGULAR ANNUAL CHAPTER 30 REVENUE**
7 **INCREASES, AND WHETHER THE COMMISSION'S PAUSF**
8 **REGULATIONS AT 52 PA. CODE § 63.161 ET SEQ. SHOULD BE**
9 **ACCORDINGLY REVISED. WHAT DO YOU RECOMMEND?**

10 A. If the general subsidy is continued, and the Verizon average rate were used to
11 establish the cap for rural ILECs, then the cap would increase only if Verizon
12 applied an inflation-adjusted increase to the local exchange rates of its own
13 customers (i.e., only if the Verizon average were to increase). Rural companies
14 taking USF money would not be allowed to price higher than the cap for
15 consumers needing support.

16 **Q. THE COMMISSION ASKED WHETHER THE POTENTIAL**
17 **AVAILABILITY OF PAUSF DISTRIBUTIONS TO THOSE RURAL ILECS**
18 **THAT PIERCE THE APPROPRIATE RESIDENTIAL RATE CAP,**
19 **BECAUSE OF THEIR RESPECTIVE ANNUAL CHAPTER 30 REVENUE**
20 **INCREASES, HAVE ANY ANTI-COMPETITIVE OR OTHER ADVERSE**

1 **EFFECTS, ESPECIALLY WITH RESPECT TO THE CURRENTLY**
2 **ESTABLISHED PAUSF MECHANISM AND ITS PARTICIPATING**
3 **TELECOMMUNICATIONS UTILITY CARRIERS. WHAT ARE YOUR**
4 **THOUGHTS?**

5 A. The issue raised by the Commission should not be a major concern if a needs (cost
6 analysis) test is applied to an ILEC. However, the Commission should recognize
7 that any subsidy program that is applied to select companies (ILECs only) in a
8 competitive market is anti-competitive.

9 **Q. HOW WOULD A “NEEDS TEST” IMPACT THE ANNUAL FEDERAL**
10 **USF SUPPORT THAT THE PENNSYLVANIA RURAL ILECS RECEIVE?**

11 A. Again assuming the subsidy to companies continues, the annual Federal USF
12 support payments that Pennsylvania rural ILECs receive would not change, but
13 should be considered as an offset to each ILEC’s costs. In other words, if an
14 ILEC’s costs exceeded the “affordable” rate by, for example, 50%, and the Federal
15 support equaled that 50%, that ILEC would not also qualify for state support from
16 the PAUSF.

17 **Q. HOW WOULD THE “NEEDS TEST” IMPACT WHETHER THE**
18 **OVERALL FINANCIAL HEALTH OF THE RURAL ILECS (THAT NOW**
19 **GET BOTH PAUSF AND FEDERAL USF SUPPORT) SHOULD PLAY A**
20 **ROLE FOR CONTINUING TO RECEIVE PAUSF SUPPORT?**

1 A. The financial health of the individual ILEC is key to providing funding. Unless
2 there is a real need to subsidize an ILEC's rates, it should not be done.

3 **Q. HOW WOULD THE "NEEDS TEST" IMPACT WHETHER THE PAUSE**
4 **LEVEL OF SUPPORT DISTRIBUTIONS TO THE RECIPIENT RURAL**
5 **ILECS SHOULD BE ADJUSTED IN RELATION TO THE REVENUE**
6 **INCREASES IN LOCAL EXCHANGE RATES THAT HAVE BEEN OR**
7 **ARE IMPLEMENTED THROUGH THEIR RESPECTIVE CHAPTER 30**
8 **MODIFIED ALTERNATIVE REGULATION PLANS AND PRICE**
9 **STABILITY MECHANISMS?**

10 A. If the existing plan of subsidizing companies continues, then adjustments will need
11 to be made. Revenues will change and so will costs. In addition, what is an
12 "affordable" rate is likely to change. At the minimum, the rural ILEC's costs and
13 revenue (including Federal USF revenue) will need to be examined annually
14 before each annual PSM increase.

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 A. Yes, it does.

OSBA STATEMENT NO. 2

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

REBUTTAL TESTIMONY OF

ALLEN G. BUCKALEW

ON BEHALF OF

THE OFFICE OF SMALL BUSINESS ADVOCATE

RECEIVED

MAR 26 2009

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Date Served: January 15, 2009

Date Submitted for the Record: _____

1 QUALIFICATIONS AND INTRODUCTION

2 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Allen G. Buckalew. I am an Economist specializing in the
5 telecommunications industry at J.W. Wilson & Associates, Inc. Our offices are at
6 1601 N. Kent Street, Rosslyn Plaza C - Suite 1104, Arlington, VA 22209.

7 **Q. ARE YOU THE SAME ALLEN G. BUCKALEW WHO FILED DIRECT**
8 **TESTIMONY IN THIS CASE?**

9 A. Yes.

10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11 A. I will respond to the testimony submitted by OCA, the Pennsylvania Telephone
12 Association (PTA), and Verizon.

13 **Q. WHAT WILL YOU ADDRESS REGARDING THE TESTIMONY OF OCA**
14 **AND PTA?**

15 A. OCA and PTA are the only parties that want the cap on local exchange rates to
16 continue. However, the justification provided by these parties does not support the
17 continuation of the cap on local exchange rates. I believe that in order for the cap

1 to continue, there must be clear economic justification that is related directly to
2 why rural consumers need a subsidy from non-rural consumers.

3 Simply claiming that rural rates should be comparable to non-rural rates is not
4 sufficient justification for continuing the cap. For example, PTA claims that
5 “federal law requires comparability between urban and rural rates” (Laffey p.2).
6 That is not completely accurate. Section 254(b)(3) (47 CFR 254) states that
7 consumers should have access to services “that are reasonably comparable to those
8 services provided in urban areas and that are available at rates that are reasonably
9 comparable to rates charged for similar services in urban areas.” Rural consumers
10 have access to the same services as urban consumers and at rates that are
11 comparable. No party has shown that this is not true. Chapter 30 also treats rural
12 incumbent local exchange carriers’ (“ILECs”) rates the same as non-rural rates, as
13 the rates of rural ILECs are allowed to increase the same as non-rural ILECs’
14 rates.

15 In addition, there is already an existing subsidy system in place. In order to
16 accomplish the goal of universal service, that is, giving customers access to
17 comparable rates and services, the Federal Universal Service Fund was
18 established. The difference between the Federal and Pennsylvania USF
19 (“PAUSF”) support is that the Federal USF support is applied in a uniform fashion
20 to all carriers in the market, not just to the ILECs as the current Pennsylvania
21 system does.

1 Expanding the rural price cap to a new higher level or expanding the PAUSF to
2 include the competitors that provide rural service is not the answer. The answer in
3 today's competitive market must be focused and unbiased.

4 The Federal USF contains a program that already provides targeted support to low
5 income consumers, and is called Lifeline. Neither OCA nor PTA has provided
6 any evidence that rates, or service availability, in the rural areas is unreasonably
7 different than in the urban areas. And, if they had that evidence, it should form the
8 basis for an ILEC-specific approach, not a global support system for every rural
9 ILEC. Furthermore, the rural ILEC's costs should form the basis for any PAUSF
10 support to lower local exchange rates.

11 **Q. IS IT APPROPRIATE TO CONTINUE THE CAP ON RURAL LOCAL**
12 **EXCHANGE RATES?**

13 A. No. None of the parties has provided any cost or rate justification for the cap.
14 OCA testimony may suggest a need for a State program for low-income
15 consumers, but the possible need for a targeted State program does not support
16 continuation of the cap. In addition, OCA has not presented an analysis of the
17 contention that low-income consumers need an additional low-income plan (in that
18 a Federal program, i.e., Lifeline, already exists). The Federal USF provides direct
19 support to low-income consumers. If there is a need for additional specific low-
20 income support from the PAUSF, it has not been demonstrated.

1 Likewise, PTA's testimony provides no basis for the current cap and no cost
2 justification for why it should be continued. PTA's apparent argument is that the
3 PAUSF is more like an "entitlement" that does not have to be examined, because
4 PTA has not provided any data or analysis on whether the PAUSF has
5 accomplished any goal or on why the subsidy needs to be continued based on
6 specific rural ILEC financial conditions. PTA also is not concerned that other
7 Pennsylvania consumers are financially supporting these rural ILECs (see Laffey
8 p. 15). In addition, PTA believes that it does not have to, or can not, provide cost
9 or financial analysis, based on a preconceived difficulty producing any cost
10 support to show that the rural ILECs actually need the subsidy (Laffey p.20).
11 These are arguments held over from the days when the ILECs were the only game
12 in town. Now the very same ILECs paying to support PTA ILEC operations are
13 competitors or potential competitors. PTA admits that there are numerous
14 competitors, as it claims that it faces competition in rural areas (Laffey p. 6 and 7)
15 and has experienced line losses due to competitors. Therefore, even with a
16 subsidy, rural customers are moving to other competitive providers.

17 Rural consumers are finding reasonably comparable services and rates from
18 competitive suppliers that don't have rate caps and don't get subsidies.
19 Continuing the cap continues the subsidy, i.e., a subsidy that is paid by other
20 ratepayers and competitors. In fact, the subsidy could be keeping out competitors.
21 These competitors can offer comparable services and new services and may have

1 lower cost operations than the rural ILECs. The PUC should protect competition,
2 not ILECs. The continuation of the cap, and the general subsidy provided by the
3 PAUSF, protect ILECs from competition.

4 **Q. OCA CONSTRUCTS A BENCHMARK RATE USING A WEIGHTED**
5 **AVERAGE OF VERIZON'S RATES THAT IS EQUAL TO \$15.64 (Loube p.**
6 **2). IS THIS REASONABLE?**

7 A. It's not reasonable; but since any construction of a benchmark rate is arbitrary, it's
8 not wrong. However, to be reasonable, the OCA should compare the benchmark
9 rate to rates offered by competitors in the same rural areas. The OCA should also
10 examine all the charges and funds flowing to local ratepayers. For example,
11 calculating the comparable charge to Verizon's customers should include
12 Verizon's highest local exchange rate plus Verizon's subscriber line charge. This
13 benchmark should then be compared to each rural ILEC's local exchange rate plus
14 the subscriber line charge minus any Federal loop-related support that is received
15 by these rural ILECs. As stated in my Direct Testimony, there are any number of
16 ways to construct a cap, but there is no non-arbitrary way to construct one.

17 The facts in this case are that there is no economic reason to establish a new cap or
18 maintain the old one in a competitive market that is under Chapter 30 regulation.
19 Chapter 30 plans allow rural ILECs to increase rates based on inflation; but the
20 increases are not mandatory. It is the rural ILEC's choice to increase local

1 exchange rates. All a cap does is push individual rural ILEC discretionary rate
2 increases on to other ILECs. Chapter 30 does not require these rural ILECs to
3 increase local exchange rates; that choice is completely under their discretion.
4 But, why would the rural ILECs not implement local exchange rate increases since
5 (if the PAUSF is legally available in the case of annual rate increases) they can
6 recover the increases from other ILECs through the PAUSF and they never have
7 to disclose the real cost of providing local exchange service?

8 **Q. IS IT APPROPRIATE TO CONTINUE THE PAUSF?**

9 A. No. The Commission needs to take a hard look at the PAUSF; based on what has
10 been provided in this case, the PAUSF should be phased out. To continue to ask
11 all ratepayers to fund the PAUSF without examination of each recipient's costs is
12 wrong. The PUC has no knowledge of whether these ILECs today need a subsidy.
13 In addition, the PAUSF could be having the unintended consequence of keeping
14 lower cost competitors out of the rural areas, rather than promoting competition.
15 It may be hard for competitors to enter a market when the ILEC is being
16 subsidized. There is no reason to provide a general subsidy to all rural ILECs;
17 each ILEC's costs and particular operating conditions must be examined by the
18 PUC to justify a subsidy in today's market.

1 The parties in favor of a cap (OCA and PTA) also believe that a State USF is
2 appropriate, but they provide no economic rationale for why it is necessary to
3 provide this general subsidy.

4 **Q. WHY SHOULD THE CURRENT CAP ON BUSINESS RATES BE**
5 **CONTINUED AS IS, IF THE RESIDENTIAL CAP CONTINUES OR IS**
6 **INCREASED?**

7 A. Verizon claims that there is no cap on business local exchange rates (Price, p. 11
8 and 22). However, as explained later in my testimony, counsel advises that caps
9 on business local exchange rates were established by the same orders which
10 created and increased the cap on residential local exchange rates. No party has
11 presented evidence that the Commission's linkage of these caps should be
12 discontinued. Furthermore, there are economic reasons to include business local
13 exchange services, assuming any cap continues. For example, in the non-rural
14 ILECs, we have seen that as business rates are increased, business customers go to
15 competitors, or to competitive packages from the same ILEC. In addition,
16 business local exchange rates are generally already higher than the cost to provide
17 the service.

18 **Q. YOU MENTIONED THAT THE ORDERS WHICH ESTABLISHED A**
19 **RESIDENTIAL CAP ALSO ESTABLISHED A BUSINESS CAP. WHAT**
20 **WERE THE PRINCIPAL ORDERS?**

1 A. Counsel advises that *Joint Petition of Nextlink Pennsylvania, Inc., et al.*, 196 PUR
2 4th 172, 93 Pa. PUC 172 (Order entered September 30, 1999) *affirmed*, *Bell*
3 *Atlantic-Pennsylvania v. Pennsylvania Public Utility Commission*, 763 A.2d 440
4 (Pa. Cmwlth. 2000), *vacated in part*, *MCI v. Pennsylvania Public Utility*
5 *Commission*, 577 Pa. 294, 844 A.2d 1239 (Pa. 2004) (“*Global Order*”). and
6 *Access Charge Investigation per Global Order of September 30, 1999*, PUC
7 Docket No. M-00021596, *et al.* (Order entered July 15, 2003) (“*Rural Access*
8 *Settlement Order*”) addressed caps on both business and residential rate, not just
9 residential.¹

10
11 **Q. CAN A SYSTEM OF GENERAL SUBSIDIES LIKE THE LOCAL**
12 **EXCHANGE CAP BE SUSTAINED IN THE LONG RUN?**

13 A. No. PTA (Laffey p.11-14) thinks that the cap, or in reality the subsidy, can be
14 perpetuated by continuing to place the burden of funding PTA ILEC Chapter 30
15 increases on non-rural ILECs, CLECs, and IXC's forever. However, he has
16 provided no analysis, and is mistaken. I stated earlier in my direct testimony that a
17 cap on some rates while revenue is increased based on inflation cannot be
18 sustained in the long run. The situation that exists for some ILECs today, with
19 rates hitting the rate cap, demonstrates the problem. The basis of Chapter 30
20 regulation is the assumption that an ILEC's costs increase with inflation. If some

¹ See *Global Order* at 50-51. See also *Rural Access Settlement Order*, Attachment A, Paragraph 5), at 20.

1 non-competitive services, such as residential local exchange services, are exempt
2 from these annual inflation-based increases, other non-competitive services must
3 be increased by more than the rate of inflation in order to give the ILEC an
4 opportunity to earn the higher revenues authorized by the PSM filing. For
5 example, in non-rural ILECs where there is no cap on business rates but is a
6 statutory cap on residential rates, increasing business non-competitive local
7 exchange rates by more than the rate of inflation has forced business customers
8 onto competitive services. This cycle will continue until the only business
9 customers that remain on regulated rates are those that have no competitive
10 choice.

11 There is no reasonable rate justification to spare a group of customers from
12 increases caused by their use of telephone services, while the remaining group is
13 forced to pay the costs for the spared group. The same is true for ILECs in a
14 competitive market; there is no reasonable justification to push PTA or other rural
15 ILEC costs onto non-rural ILECs, CLECs, and IXCs.

16 **Q. THE OCA SPENDS CONSIDERABLE EFFORT TO DEVELOP AN**
17 **AFFORDABLE STANDARD BASED ON "BURDEN." IS THIS**
18 **RELEVANT TO THE PROCEEDING?**

19 **A.** No. The affordability standard relates the price of telephone services to income
20 levels, yet the OCA wants the cap applied to every customer no matter what that

1 customer's income (Colton p. 20). Assuming that there is some rate for telephone
2 service which is a "burden" relative to income, the subsidy should be directed to
3 the low-income consumer and not to all consumers. However, by capping the
4 rates of all residential customers, the OCA treats all residential customers as
5 though they are low-income. Counsel advises that OCA's position regarding
6 telephone service is inconsistent with Commission policy regarding electric, gas,
7 water, and wastewater service. Specifically, customer assistance programs for
8 electric, gas, water, and wastewater companies are available only to low-income
9 residential customers and are not available to middle-income and upper-income
10 residential customers.

11 The OCA states that the current Lifeline program, that provides support to low-
12 income consumers, is not a substitute for imposing an affordability constraint on
13 rural ILEC local exchange rates (Colton p.40). In other words, the targeted
14 subsidy used in the Lifeline programs is not sufficient, according to the OCA.
15 However, the OCA provides no basis for its conclusion. In fact, its conclusion is
16 not reasonable or sustainable in a competitive market. The entire
17 telecommunications industry has shifted to relying on competition, not
18 government regulation, for pricing telecommunications services. The state can't
19 impose an affordability constraint on all rural rates while expecting competition to
20 exist. In effect, you are asking the non-rural ILECs, CLECs, and IXCs to
21 subsidize rural ILECs in a competitive market. If additional low-income programs

1 are needed or the existing one needs to be improved, then that needs to be
2 investigated; attempting to shoe-horn help for people who need it by subsidizing
3 all residential customers is not the answer.

4 **Q. ARE THERE LOCAL EXCHANGE SUBSIDY PROGRAMS THAT**
5 **ALREADY SUPPORT LOW-INCOME CONSUMERS?**

6 A. Yes. The OCA ignores those programs or claims that they need to be better
7 (Colton p. 39). The facts are that we do have programs and these programs work.
8 Even the OCA is forced to admit that we as a country, and Pennsylvania in
9 particular, have telephone service to virtually everyone who wants it (Colton p.8).
10 Federal rules (47 CFR Part 54 Subpart E, starting at Section 54.400) provide low-
11 income consumers with direct support. There is no need for a general subsidy
12 program to all rural ILECs.

13 Under the existing Federal Lifeline program that is used in Pennsylvania,
14 consumers have choices in how they get and use local service support. In
15 addition, Lifeline support does not have to be tied to the existing ILEC; the
16 support is portable, a feature which is important to consumers. For example, for
17 several years the Center for Disease Control (“CDC”) has undertaken a study on
18 telephone use. That study suggests that low-income consumers have moved away
19 from wireline or telephone company services towards cellular or wireless service

1 as their primary service. Therefore, subsidizing the rural wireline ILECs is of no
2 benefit to these low-income customers.

3 **Q. AT&T WITNESSES ARGUE THAT RURAL ILECS' NETWORK**
4 **MODERNIZATION PLAN COMMITMENTS SHOULD NOT BE**
5 **RECOVERED BY LONG DISTANCE COMPANIES OR OTHER LECS.**
6 **DO YOU AGREE?**

7 A. Yes. There is no reason for other broadband competitors to fund the competitive
8 business of any ILEC's broadband business, yet that is exactly what the local
9 exchange cap advocated by the OCA and PTA does. It allows rural ILECs to
10 collect PAUSF funds for supporting the very same loop facilities that are being
11 upgraded for broadband service. For example, Comcast may have broadband
12 facilities in the very same location as the rural ILEC, but Comcast gets no support
13 from the PAUSF.

14 In addition, as Comcast stated through Dr. Pelcovits' testimony (p 24): "The
15 largest beneficiaries of the PaUSF are no longer 'small' rural companies, but
16 rather large, well-financed holding companies, which earn substantial revenues
17 from non-state-regulated services." The reason for this is competition. Because
18 we as a society have embraced the competitive model for telecommunications, the
19 general ILEC level subsidy system is no longer useful or acceptable. The market
20 must be allowed to work without any general ILEC level subsidies.

1 **Q. YOU RECOMMENDED WAYS TO INCREASE THE CAP IN YOUR**
2 **DIRECT TESTIMONY. WAS THAT YOUR PRIMARY**
3 **RECOMMENDATION?**

4 A. No. I was simply providing alternatives if the Commission decides to continue the
5 cap. My main point was, and is, that the cap should be removed because it
6 subsidizes all rural consumers, whether there is a need or not. In other words, it
7 treats all rural consumers as low-income consumers. There is no basis for that
8 assumption; rural consumers are faced with the same general economic conditions
9 as all consumers. We should be concerned with funding low-income consumers.
10 Today, that concern is already being treated through a customer specific program
11 that provides highly discounted local exchange rates, i.e., the existing Lifeline
12 program.

13 **Q. OCA SEEMS TO BE SAYING THAT RURAL CUSTOMERS NEED**
14 **SUPPORT VIA A RATE CAP TO STAY ON THE TELEPHONE SYSTEM,**
15 **DO YOU AGREE?**

16 A. No. There is no basis in fact that today's telephone rates are a burden to the
17 general rural population. The fact that most people have telephone service is
18 proof. In addition, we already have a Federal USF that is used to support low-
19 income consumers in Pennsylvania. This is the Lifeline program previously
20 discussed. Further, in today's telecommunications market, rural consumers have

1 choices. They can purchase services from wireless carriers, voice over internet
2 protocol (“VOIP”) service providers, competitive wireline service providers, and
3 cable telephony companies.

4 OCA’s proposal is misdirected as it treats all rural customers as low-income
5 customers. Just because someone has chosen to live in a more rural area does not
6 mean that person should automatically qualify for a subsidy. In other words, not
7 everyone who lives in a rural area is low-income.

8 Generalized support programs in today’s competitive market should end. You
9 can’t have competition and at the same time provide general subsidies. That is
10 simply a tax on one group of consumers to support another group of consumers
11 without giving the first group any voice in how or why it is being taxed

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 **A.** Yes, it does.

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

February 10, 2009

(717) 783-2525
(717) 783-2831 (FAX)

E-mail and Hand Delivery

Hon. Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

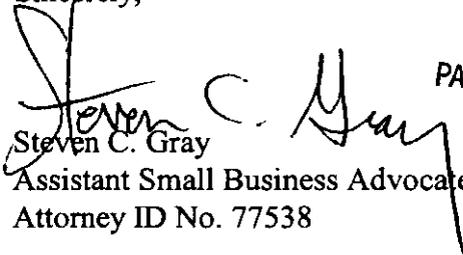
Re: Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund Docket No. I-00040105

Dear Judge Colwell:

Enclosed please find two copies of the Surrebuttal Testimony of Allen G. Buckalew, labeled OSBA Statement No. 3, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding. As evidenced by the enclosed certificate of service, all parties have been served as indicated.

If you have any questions, please contact me.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

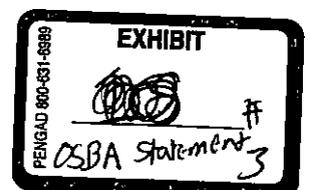
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Enclosures

cc: Parties of Record
Allen G. Buckalew



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Surrebuttal Testimony of Allen G. Buckalew, labeled OSBA Statement No. 3, on behalf of the Office of Small Business Advocate, by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

Hon. Susan D. Colwell
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-5452
(717) 787-0481 (fax)
scolwell@state.pa.us
(E-mail and Hand Delivery)

Joel H. Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street
5th FL Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
jcheskis@paoca.org
(E-mail and Hand Delivery)

Zsuzsanna E. Benedek, Esquire
Embarq Pennsylvania
240 North Third Street, Suite 201
Harrisburg, PA 17101
(717) 245-6346
(717) 236-1389 (fax)
sue.e.benedek@embarq.com

Johnnie E. Simms, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
josimms@state.pa.us
(E-mail and Hand Delivery)

Jennifer A. Duane, Esquire
Sprint/Nextel
901 7th Street, N. W. - 4th Floor
Washington, DC 20001-3865
(202) 585-1937
(202) 585-1894 (fax)
(First class mail only)

Michelle Painter, Esquire
Painter Law Firm, PLLC
13017 Dunhill Drive
Fairfax, VA 22030
(703) 201-8378
(703) 968-5936 (fax)
painterlawfirm@verizon.net

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
213 Market St., 9th Floor
P. O. Box 865
Harrisburg, PA 17108-0865
(717) 237-7160
(717) 237-7161 (fax)
dclearfield@wolfblock.com
akohler@wolfblock.com

John P. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan, Russell, Ogden & Seltzer
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025
(Qwest)
(717) 236-7714
(717) 236-7816 (fax)
jpovilaitis@ryanrussell.com
mtotino@ryanrussell.com

Jennifer M. Sultzaberger, Esquire
Regina L. Matz, Esquire
Norman J. Kennard, Esquire
Thomas Long Niesen & Kennard
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
(RTCC)
(717) 255-7600
(717) 236-8278 (fax)
Jms@thomaslonglaw.com
rmatz@thomaslonglaw.com
Nkennard@thomaslonglaw.com

Bradford M. Stern, Esquire
Rothfelder Stern, L.L.C.
620 Central Avenue
Westfield, NJ 07090
(Omnipoint, T-Mobile, Nextel)
(908) 301-1211
(908) 301-1212 (fax)
bmstern@rothfelderstern.com

Robert C. Barber, Esquire
Mark Keffer, Esquire
AT&T Communications of PA, Inc.
1120 20th Street, NW, Suite 1000
Washington, DC 20036
(202) 457-2160 (rb)
(202) 457-3839 (mk)
(202) 664-9658 (fax)
rcbarber@att.com
mkeffer@att.com

Elizabeth Barnes
ebarnes@state.pa.us
(E-mail only)

Robert Marinko
rmarinko@state.pa.us
(E-mail only)

John C. Dodge, Esquire
Davis Wright Tremaine, LLP
1919 Pennsylvania Avenue, N.W. - #200
Washington, DC 20006
(202) 973-4205
(202) 973-4499 (fax)
JohnDodge@dwt.com

Kristin L. Smith, Esquire
Qwest Communications Corporation
1801 California St., 10th Floor
Denver, CO 80202
(303) 383-6614
(303) 298-8197 (fax)
(First class mail only)

Susan M. Roach, Esquire
Drinker Biddle & Reath
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6996
(Cellco, Verizon Wireless, Cingular)
(215) 988-2715
(215) 988-2757 (fax)
susan.roach@dbr.com

Suzan DeBusk Paiva, Esquire
Leigh A. Hyer, Esquire
Verizon
1717 Arch Street, 10th Floor
Philadelphia, PA 19103
(215) 466-4755
(215) 563-2658 (fax)
suzan.d.paiva@verizon.com
leigh.a.hyer@verizon.com

Dr. Robert Loube
Rhoads and Sinon, LLC
10601 Cavalier Drive
Silver Spring, MD 20901
(301) 681-0338
bobloube@earthlink.net

Thomas J. Sniscak, Esquire
Hawke McKeon Sniscak & Kennard
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
(717) 236-1300
(717) 236-4841 (fax)
tjsniscak@hmsk-law.com

Brian A. Rankin, Esquire
Comcast Cable Communications, LLC
One Comcast Center - 50th Floor
Philadelphia, PA 19103
(215) 286-7325
(215) 286-5039 (fax)
brian_rankin@comcast.com

Garnet M. Goins, Esquire
Benjamin J. Aron, Esquire
Sprint Communications Company LP
2001 Edmund Halley Drive - Second Floor
Reston, VA 20191
(703) 433-4248
(703) 433-4142 (fax)
garnet.goins@sprint.com
benjamin.aron@sprint.com

Christopher M. Arfaa, Esquire
Christopher M. Arfaa, PC
150 N. Radnor Chester Road - Suite F-200
Radnor, PA 19087-5245
(610) 977-2001
(610) 977-0043 (fax)
carfaa@arfaalaw.com

Orlando E. Vidal, Esquire
Doug Bonner, Esquire
Sonnenschein Nath & Rosenthal, LLP
1301 K Street, N.W.
Suite 600 - East Tower
Washington, DC 20005
(202) 408-6431
(202) 408-6399 (fax)
ovidal@sonnenschein.com
dbonner@sonnenschein.com

Benjamin J. Aron, Esquire
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20919
(703) 592-7618
(730) 592-7404 (fax)
(First class mail only)

Pamela C. Polacek, Esquire
Shelby A. Linton-Keddie, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 260-1763 (fax)
ppolacek@mwn.com
skeddie@mwn.com

Joseph R. Stewart, Esquire
Embarq
50 West Broad Street - #3600
Columbus, OH 43215
(614) 220-8625
(614) 224-3902 (fax)
joseph.r.stewart@embarq.com


Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Date: February 10, 2009

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QUALIFICATIONS AND INTRODUCTION

3 **Q. ARE YOU THE SAME ALLEN G. BUCKALEW WHO HAS ALREADY**
4 **FILED TESTIMONY IN THIS CASE?**

5 A. Yes.

6 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

7 A. I am responding to statements made by OCA’s witness Dr. Loube (page 13)
8 regarding my Direct Testimony that are not accurate. Dr. Loube claims that I
9 recommended a standard for an “affordable” rate. However, I did no such thing.
10 What I did say is that the PUC needs to determine an “affordable” rate (p 10 of my
11 Direct Testimony) if it is going to continue imposing rate caps. Then, I showed
12 that there are various arbitrary ways to construct an affordable rate, but I did not
13 suggest a standard.

14 **Q. DR. LOUBE CLAIMS THAT THE “CAP ON THE RESIDENTIAL RATES**
15 **WILL NOT CAUSE UNDUE DISCRIMINATION FOR OTHER**
16 **RATEPAYERS.” (P.13) DOES HE PROVIDE ANY BASIS FOR THAT**
17 **CLAIM?**

18 A. No. He provides no factual or analytical basis for this claim. Treating all rural
19 ratepayers as low income consumers, as the OCA wants to do, is discrimination.
20 Dr. Loube also ignores the fact that it is a discretionary decision on the part of

1 rural ILECs whether to increase noncompetitive service rates each year or to bank
2 (and potentially forgo) some of the increase authorized under Chapter 30
3 regulation. Faced with additional costs caused by having to subsidize other
4 ILECs, the subsidizing ILECs will likely choose to increase consumer rates when
5 they might have otherwise banked the Chapter 30 increases.

6 **Q. DR. LOUBE CLAIMS THAT YOU CAN HAVE COMPETITION WHILE**
7 **SUBSIDIZING SOME COMPETITORS?**

8 A. Dr. Loube has forgotten basic economic theory. Subsidizing the marginal costs of
9 some players in a market will eventually drive out the non-subsidized carriers. In
10 a competitive market, price equals marginal costs. Ultimately, if the government
11 chooses to subsidize one competitor's marginal cost over another, which is the
12 case here, only the subsidized competitors will survive in the long run.

13 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

14 A. Yes, it does.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of The United Telephone	:	
Company of Pennsylvania d/b/a Sprint, and	:	
Of Sprint Long Distance, Inc., for all	:	
Approvals Required under the Pennsylvania	:	A-313200F0007
Public Utility Code in Connection with Changes	:	A-311379F0002
Of Control of The United Telephone Company	:	
Of Pennsylvania d/b/a Sprint and of Sprint	:	
Long Distance, Inc.	:	

RECOMMENDED DECISION

Before
Susan D. Colwell
Administrative Law Judge

RECEIVED

MAR 26 2009

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VERIZON Cross EX. 1

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I. HISTORY OF THE PROCEEDING

On August 26, 2005, The United Telephone Company of Pennsylvania (“United PA”) d/b/a Sprint and Sprint Long Distance, Inc. (collectively “Sprint”) filed a joint application for approvals required under the Pennsylvania Public Utility Code in connection with changes of control of the applicant companies. The Application include direct testimony of four witnesses and a motion for protective order.

The Joint Application was filed pursuant to Chapter 11 of the Public Utility Code, 66 Pa. C.S. § 1101-1103, seeking all Commission approvals necessary to effectuate the transfers of control of United PA and LTD Long Distance from Sprint to a holding company, namely LTD Holding Company. The stock of United PA, as well as other Sprint ILECs, will belong to LTD Holding Company as well as other assets and liabilities related to the local wireline telecommunications business. This “spin-off” would separate the wireline and wireless businesses.

Notice of the Application was published in the Pennsylvania Bulletin on September 10, 2005, and established that any protests or petitions to intervene must be filed on or before September 28, 2005. The Notice included the information that the Application had been assigned to the Office of Administrative Law Judge and that a prehearing conference would be held on October 4, 2005 in Hearing Room 3 of the Commonwealth Keystone Building in Harrisburg.

Notice of the prehearing conference was sent on August 26, 2005, and a notice correcting the docket numbers was issued immediately afterwards to OTS, OCA, and OSBA.

On September 12, 2005, the Office of Trial Staff (OTS) filed a Notice of Appearance.

On September 8, 2005, the Office of Consumer Advocate (OCA) filed its Notice of Intervention. On September 23, 2005, OCA filed a Protest, stating that the Application does not automatically support a conclusion that the proposed transfer of control will provide substantial, affirmative benefits to the public or that it will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way as required by Pennsylvania law.

On September 23, 2005, the Communication Workers of America (CWA) filed a Protest stating that the Application does not demonstrate how the actions will benefit the public or be consistent with the public interest, specifically in terms of the financial welfare of the companies involved. Neither does the Application describe how the companies will handle the Sprint pension assets, life insurance assets, and retiree health fund assets, and CWA sought adequate financial information regarding these and other issues.

On September 26, 2005, the Office of Small Business Advocate (OSBA) filed its Notice of Intervention and Protest, stating that the Application raised several issues of concern that may require the imposition of conditions.

The parties submitted a proposed Protective Order, which was issued on September 23, 2005.

Sprint filed a Motion for Admission *Pro Hac Vice* of Mark P. Trincherro, Esquire, on October 3, 2005.

On October 5, 2005, following a prehearing conference, a scheduling order was issued which granted Sprint's Motion for Admission *Pro Hac Vice* of Mark P. Trincherro, Esquire, shortened the response time for interrogatories in this proceeding to ten days, with the understanding that the parties would work together to solve any timing issues which might arise while attempting to meet this shortened time period, and adopted a schedule which set the hearings for November 30, 2005 through December 5, 2005. Briefs were due December 15, 2005, and Reply Briefs were due December 22, 2005.

On October 17, 2005, a Motion for Partial Judgment on the Pleadings was filed by all parties other than the Applicants. The Motion claimed that the Applicants had not met the requirements of 66 Pa. C.S. § 1102(a)(3) regarding the proposed transfer of the possession, use and/or ownership of the Shared Assets that are used and useful by United PA in serving the public in Pennsylvania. The Motion asked that the Commission deny the Applicants' request for a certificate of public convenience as it related to the transfer of the possession, use, and/or ownership of the shared assets, without prejudice to the right of the Applicants to file a new application when and if they can identify the specific property to be transferred and the other relevant information that is necessary to enable the Commission to conduct a proper review of any such transfer.

On November 7, 2005, Sprint filed its Answer to the Motion (both proprietary and non-proprietary versions), stating that granting the relief requested would be premature since the proceeding itself will allow the development of the record which the moving parties claim is deficient. Further, whether the shared assets in question are "used and useful," and therefore of some interest, is an evidentiary question. Sprint points out that the case that the moving parties depend upon was an adjudication at the end of the evidentiary proceeding, not a motion for judgment made prior to the submission of any evidence at all.

An Order denying partial judgment on the pleadings was issued on November 14, 2005. The moving parties relied upon *Pa. Public Util. Comm'n. v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, PUC Docket No. R-00038170 (Order entered September 19, 2003), 2003 Pa. PUC LEXIS 53 (*Dominion Peoples*), where the Commission held that where the record is devoid of the facts necessary to determine what the value of any of the property is, the identity of the buyer has not been determined, and the terms of the purported sale and the sale date are not in the record, approval would be contrary to the public interest.

The *Dominion Peoples* decision was rendered after full adjudication of the case and a record which was inadequate to support the utility's request. The issue presented in this case was one of fact, and a motion for summary judgment, full or partial, can only be granted if

there are no outstanding questions of material facts. The Motion was denied without prejudice to the rights of the moving parties to renew it following Sprint's factual presentation on the record.

Prior to the date set for the hearings to begin, the parties informed me that they had reached a settlement in principle with all parties except one. They asked that the hearing dates be amended to one day.

On Wednesday, November 30, 2005, the parties, with the exception of the CWA, submitted a Joint Petition for Settlement.

The hearing was held on Friday, December 2, 2005. A transcript from pages 23 to 154 was produced. Applicants presented the testimony of Kent Dickerson and Dr. Brian K. Staihr, both of whom appeared in person. The parties stipulated to the testimony of Applicant witnesses *John W. Mayo, Richard A. Hrip, Kevin P. Collins, and Gene M. Betts.*

CWA presented Sumanta Ray, in person. The parties stipulated to the testimony of OCA witness Matthew J. Kahal and Rowland L. Curry, OSBA witness Allen G. Buckalew, and OTS witness Joseph Kubas.

Although a non-unanimous settlement is not a true settlement but rather a stipulation among the signing parties that they would proceed according to its terms rather than consistent with the original positions assumed in the application and protests, all parties but CWA believed that the Commission's failure to adopt it without amendment would result in the settlement becoming null and void. Counsel for CWA, Scott Rubin, expressed his concern that these provisions in the settlement would permit the parties to come back, should the settlement be voided, and cross-examine witnesses and file briefs with what he believed would be essentially the same issues that were to be discussed at the scheduled hearing. Mr. Rubin stated that, since the parties other than the Applicants expressed in their prefiled testimony some of the concerns raised by his client, CWA, it appears that they have also reserved the right to return and cross-examine those witnesses if the joint petition for settlement is not approved.

Although Mr. Rubin is correct, the issue became moot when CWA withdrew its opposition to the Joint Petition for Settlement by letter dated January 23, 2006, prior to the issuance of this Recommended Decision. Therefore, at the time of the preparation of this Recommended Decision, the Joint Petition for Settlement is unopposed and is attached to this Recommended Decision as Annex A.

The evidence appearing in the testimony was intended to support the original positions of the parties. The protesting and intervening parties raised legitimate concerns regarding some of the issues in the Application. The parties were told that their Statements in Support and their Briefs were to address the issues raised in the testimony and to explain why the Settlement resolves those issues.

Statements in Support were filed by OCA, OTS and OSBA. Briefs and Reply Briefs were filed by Applicants, CWA and OSBA. The record closed upon receipt of Reply Briefs on December 22, 2006. The matter is now ready for decision.

II. DISCUSSION

1. **The Application**

The Application indicates that Sprint Nextel Corporation (“Sprint”) plans to separate its wireline local service operation into an independent, stand-alone operation. As part of that transaction, a new holding company, called “LTD Holding Company” in this application since its commercial name has not yet been revealed, was created to become the parent company of United PA and LTD Long Distance. LTD Long Distance was itself created to provide long distance service to customers within Sprint’s ILEC operations, including the customers of United PA. The names of both United PA and LTD Long Distance will be changed following the separation from Sprint.

Sprint states that within Sprint, the strategic focus of its local wireline companies is beginning to diverge from its increasingly wireless-centric national focus. The separation of

the two services will allow the creation of an independent, stand-alone corporation whose primary strategic focus will be building upon its local wireline capabilities by providing a full portfolio of quality services to residential and business customers in its local territory. Sprint states that the new independent company will be better able to meet the needs of its customers in Pennsylvania and other local markets. Application, p. 2.

Sprint is presently a global communications company providing wireless, long-distance and local communications services. Its Incumbent Local Exchange Carriers (ILECs), including United PA, provide a full portfolio of communications services, including local, long distance, high-speed data, wireless and video. As of December 31, 2004, Sprint's ILEC operations served approximately 7.7 million local access lines in 18 states. As of June 30, 2005, Sprint PA served approximately 385,584 total access lines in portions of Pennsylvania. Application, p. 3.

The merger agreement between Sprint Corporation and Nextel Communications, Inc. contained a provision that the companies would use their best efforts to separate the ILEC operating entities of Sprint, by means of a tax-free spin-off, to the then-existing stockholders of Sprint¹. To this end, LTD Holding Company was created to be a subsidiary of Sprint. LTD Holding Company will be the parent of United PA, LTD Long Distance, and Sprint's other ILEC operations in other states. It will operate independently of Sprint and will have its own management team and board of directors. The shares of LTD Holding Company will be issued to the existing shareholders of Sprint and Nextel. Application, p. 4.

Three current Sprint board members are expected to resign from that board in order to serve on the board of LTD Holding Company, which will become the largest independent local telephone company in the United States, with its 2004 annual revenues exceeding \$6 billion. Application p. 4.

¹ Sprint Communications Company L.P. and ASC Telecom, Inc. are the only other two Sprint affiliated operating entities with certificates of public convenience issued by the Commission, and these entities are unaffected by this Application.

United PA is presently a wholly owned subsidiary of Sprint. United PA is an ILEC providing local exchange service in all or parts of 25 counties located in central and western Pennsylvania. It is subject to alternative rate regulation, with a revised amended alternative regulation plan approved by the Commission as a result of Chapter 30, 66 Pa. C.S. §3011 et seq. Application, p. 5.

LTD Long Distance is a Delaware corporation which applied for a certificate of public convenience with this Commission to provide resold long distance services throughout Pennsylvania at Docket No. A-311379.

Assets and liabilities related to the local wireline telecommunications business will be under LTD Holding Company. Sprint asserts that from an operating perspective, little will change since the certificated entities will continue to provide the service for which they are certificated, they will have the same technical, financial and managerial ability to provide reliable services as they do presently. The Application names several executives and lists their extensive experience to show that the management of the LTD Holding Company will be capable and competent. Application, pp. 9-10.

The technical and managerial capability of United PA and LTD Long Distance will be the same as they are. Sprint asserts that all the equipment, buildings, systems, software licenses and other assets owned by United PA will remain assets of United PA. Application, p. 11.

Assets held by another Sprint entity and used jointly by United PA and one or more other Sprint entity were still being reviewed at the time of the Application filing. Objections by the parties to the lack of specificity were satisfied during the negotiation process, and at the time of preparation of this Decision, no objections remained.

Sprint has also created a new management company to provide those management services which it now provides. The Application states that this new company is staffed by many of the same experienced and knowledgeable persons currently providing these services.

These services include human resource, finance, tax services, communications, legal, planning, general support and information services, which, according to the Application, allow the individual operating companies to benefit from the efficiencies enjoyed with centralized support services. Application, p. 14.

Sprint avers that the separation will not alter existing relationships between United PA and its bargaining unit employees and their representatives. United PA will continue to honor its existing collective bargaining agreement with CWA for the United PA Butler service territory. Application p. 14.

Sprint assured the parties that pension assets adequate for the employees who were not staying with Sprint would be transferred in this transaction.

The Application states that United PA will continue to be financially capable of fulfilling all of the requirements of a public utility in Pennsylvania.

The Application states:

37. Historically, the ILEC operations of Sprint have operated with significant independence from the operations of the other Sprint divisions. The Sprint ILEC operations have always maintained separate financial records for regulatory purposes as well as separate property records for assets used in the provision of service. Consequently, the financial changes associated with the separation of LTD Holding Company are limited to the parent company and common services provided by the management company, and will have minimal effect on United PA. Application, p. 16.

The Application avers that LTD Holding Company will be capable of assisting United PA and LTD Long Distance to provide quality service to its customers in Pennsylvania. It states that LTD Holding Company will be a financially secure Fortune 500 company after separation. Sprint states that LTD Holding Company will have the ability to raise capital and invest in network, employees and systems to continue providing high quality service. It anticipates having “financial characteristics consistent with those companies that have been rated

'investment grade' by major ratings agencies. Based upon the proven record of financial performance of Sprint's ILEC operations, it is expected that LTD Holding Company will both generate ample cash flow and pay a dividend that is attractive to investors. All of these characteristics help to ensure that LTD Holding Company will have the fiscal stability to position itself and pursue strategies necessary to assist United PA and LTD Long Distance to succeed in a competitive environment." Application, pp. 16-17.

Sprint states that the wireline companies operate in an industry that has been and continues to be subject to technological advances, evolving consumer preferences, and dynamic change. Add recent regulatory developments, and the result is a market in which it is likely that the interest of Sprint's local wireline operations will begin to diverge from Sprint's "increasingly wireless-centric focus." Application, p. 18. Therefore, Sprint asserts, the establishment of the wireline services as an independent, stand-alone corporation will serve the public interest by creating a company whose primary strategic focus will be building upon its local wireline capabilities by providing a full portfolio of quality services to residential and business customers in its local franchised territory. Application, pp. 18-19.

Sprint states that the transition will be seamless and not apparent from the customers' point of view. The same services will be offered at the same prices. Application, p. 24.

In Sprint Stmt. 1.0, the testimony of John W. Mayo, Executive Director of the Center for Business and Public Policy in the McDonough School at Georgetown University and professor of economics, business and public policy at Georgetown University in the McDonough School of Business, presents an evaluation of the public policy merits of the proposed separation of the ILEC operations. He states that the proposed separation will cause minimal disruption to consumers while the continuity of management and points of customer interface will provide comfort to customers. In addition, the heightened focus on and accountability to the local market should increase senior managers' incentives for providing superior and value-oriented telecommunications services within the local area. Sprint Stmt. 1.0, p. 9.

In Professor Mayo's opinion, the "reorganization, then, neatly aligns the firm's self-interest and those of consumers. The result is that the reorganization creates the likelihood of both improved efficiencies and improved consumer service." Sprint Stmt. 1.0, p. 10.

Kevin P. Collins, managing director at Houlihan, Lokey, Howard & Zukin Financial Advisors, Inc., Houlihan, Lokey provides financial advice, including capital adequacy analysis, to businesses. Sprint engaged the services of Houlihan, Lokey to evaluate certain aspects of the spin-off which spurred this Application from a financial point of view. Sprint Stmt. 4.0. In Mr. Collins' opinion, LTD Holding Company will have adequate capital and the ability to pay its debts as they become absolute and mature, assuming a reasonable level of refinancing, while continuing to generate sufficient cash to reinvest in the business and pay dividends. The Houlihan, Lokey conclusion is that "the capital remaining in LTD Holding Company is not unreasonably small for the business in which it is engaged." Sprint Stmt. 4.0, p. 8.

Kent Dickerson, C.P.A., testified on behalf of Applicants as the Director of Cost Support for Sprint Nextel Corporation. Sprint Stmt. 3.0. He stated that the 2004 financial statements demonstrate that United PA has been a financially solid company, and because there will be no significant change to its operations and financial status as a result of the separation, it will continue to have the financial capability to invest in its network, generate sufficient cash to pay all expenses and pay a dividend to its shareholder. Therefore, post-separation, it will possess all of the attributes of financial capability it has now. Sprint Stmt. 3.0, p. 7.

The Sprint Brief avers that the Application itself, even without the additional enhancements provided by the Settlement, meets the statutory criteria and is in the public interest. The record, it avers, shows that United PA and LTD Long Distance will continue to have the technical, managerial, and financial capability to provide quality telecommunications services. Its main points are reprinted in the "Party Positions" portion of the "Discussion" section of this Recommended Decision.

2. Terms and Conditions of Settlement

(This section is taken directly from the Settlement Petition)

In consideration of the mutual promises and provisions contained in this Settlement, the Signatories desire to conclude litigation at the above-docketed matter and to settle contested issues.

17. United PA on September 1, 2005 submitted its 2005 Annual Price Cap filing under the United PA Amended Alternative Regulation Plan.² On November 4, 2005, United PA submitted a revised tariff in the support of its 2005 Annual Price Cap filing in response to, and in satisfaction of, the OSBA Complaint at Docket No. R-00050960C0001. From the effective date of this Settlement and continuing through June 30, 2009, United PA agrees not to implement any additional increase in the business and residential exchange rates contained in United PA's Revised 2005 Annual Price Cap filing of November 4, 2005³; provided, however, United PA reserves the right to seek increase(s) in the these business and residential exchange rates arising from or as a result of:

1. Decision(s) in or arising from the Federal Communications Commission's Unified Intercarrier Compensation and USF docket(s)⁴; or

2. Decision(s) arising from Part 3, A, Paragraph 9 (Exogenous Events) of United PA's Revised Amended Alternative Regulation Plan, filed June 9, 2005 at Docket No. P-00981410. United PA acknowledges that the decision to separate from Sprint Nextel as

² (Footnote 5 of the Settlement Petition). Pursuant to United PA's original and amended Alternative Regulation Plan, United PAs files and annual price Filing on or about September 1st of each year United PA has been operating under an alternative regulation plan. On September 1, 2005, United PA filed its 2005 Price Cap filing containing proposed tariff revisions. Under United PA's Revised Alternative Regulation Plan, the 2005 Price Cap Filing, which is docketed at Docket Nos. R-00050960 and P-00981410F1000, was proposed to become effective on December 16, 2005.

³ (Footnote 6 of the Settlement Petition) In its 2005 Price Cap Filing, as revised by the supplemental filing of November 4, 2005, Sprint proposed increasing the R-1 rate to \$18.00/month and the B-1 rate to \$26.53/month.

⁴ (Footnote 7 of the Settlement Petition) See, e.g., *In re Developing a Unified Intercarrier Compensation Regime*, (FCC Rel.: March 3, 2005), CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, FCC 05-33.

detailed in the Joint Application is an event within United PA's control for purposes of Part 3, A, Paragraph 9 (Exogenous Events) of United PA's Revised Amended Alternative Regulation Plan. United PA further acknowledges that it has the burden of proof in any exogenous events filing and that United PA will have to prove that the exogenous events is outside the company's control. Nothing herein limits the ability of parties to challenge such a filing.

18. Notwithstanding paragraph 17 above, Joint Applicants reserve the right to present arguments and positions as to any issue(s) in any proceeding before the Pennsylvania Public Utility Commission (*e.g.*, continuation of the state Universal Service Fund ("USF") and funding associated with the state USF), provided that the argument or position otherwise retains the business and residential exchange rates as approved in United PA's 2005 Price Cap filing through June 30, 2009.

19. United PA commits to make broadband available, within ten (10) business days of a request, for 80% its retail customers by December 31, 2007. United PA commits to make broadband available, within ten (10) business days of a request, for 85% of its retail customers by December 31, 2010.

20. From and after the effective date of this Settlement and continuing through December 31, 2007, United PA agrees to not issue any new external debt. For purposes of this agreement, the following are not considered "debt": leases and lease arrangements, obligations in respect of letters of credit, and obligations for the deferred purchase price of property or services.

21. From and after the effective date of this Settlement and continuing through December 31, 2007, United PA agrees to not pay any dividends in excess of earnings.

22. From and after the effective date of this Settlement and continuing through December 31, 2007, United PA will maintain a capital structure with a minimum of 50% equity and will provide an annual letter on or before December 31, 2006 and December 31, 2007 to the Commission and the OCA, the OSBA, and the OTS that will allow the review of this goal.

United PA reserves the right to petition the Commission for changes to United PA's capital structure under this provision.

23. From and after the effective date of this Settlement and continuing through December 31, 2007, United PA shall not, without receiving a notice of registration to the extent required under 66 Pa. C.S. § 1901, et seq., or under the applicable law:

i. Guarantee the debt or credit instruments of LTD Holding Company or any affiliate not regulated by the Commission; or

ii. Grant a mortgage or other lien or otherwise pledge as security for repayment of the principal or interest of any loan or credit instrument of LTD Holding Company or any affiliate not regulated by the Commission any property used and useful in providing retail utility service to the public subject to the Commission's jurisdiction; or

iii. Make any loan or otherwise extend credit to LTD Holding Company or any affiliate not regulated by the Commission when the term of the loan is 365 days or greater at an interest rate less than market.

24. United PA agrees to continue to notify the Commission of certain service quality reports as is currently required in the Commission's regulations at 52 Pa. Code Section 63.55. In addition, through December 31, 2008, United PA agrees to advise the OCA and OSBA if United PA's service outage repair index falls below 90% restored/repared within 24 hours: (a) in any month across the United PA system as a whole; or (b) for three consecutive months in any one exchange. In the event of such notification, United PA also commits to meet with OCA and OSBA to discuss and to address possible remedies or actions to be undertaken by United PA.

25. Upon execution of this Settlement, Joint Applicants agree to provide to all parties a letter executed by Michael Fuller, Chief Operating Officer of LTD Holding Company, setting forth LTD Holding Company's commitment to employ adequate resources and

investment to ensure that United PA maintains adequate service quality to its retail customers in Pennsylvania.

26. United PA and LTD Holding Company agree to provide OSBA twenty (20) days advance notice of contract execution for the continuation or renewal of any contractual arrangement between LTD Long Distance and Sprint Communications Company L.P. for long distance services. Upon request by OSBA, the executed contract(s) will be made available for review.

27. This Settlement is expressly conditioned upon the entry of a final Commission order approving all specific terms and conditions contained herein without modification. The Settlement proposed herein will go into effect upon the Commission's entry of a final order, that is not stayed on appeal, approving this Settlement and all the Settlement terms and conditions without modification.

28. This Settlement is made without any admission against or prejudice to any position that any Signatory either has made or might make in any other proceeding. The Settlement cannot and should not be used as precedent in any other proceeding, in this jurisdiction or elsewhere. It is also made without any admission against or prejudice to any position that any of the Signatories may have advanced or will advance in any other proceeding and without prejudice to their respective positions concerning the merits of the issues presented in this proceeding if this Settlement is rejected by the Commission or withdrawn by any of the Settling Parties as provided below. If this Settlement is not approved, no adverse inference shall be drawn against any Party as a consequence of any matter set forth herein. Commission approval of this Settlement shall not be construed or cited as binding or persuasive precedent in any other jurisdiction, or in any other Commission proceeding, or in any appeal from a Commission proceeding, except to effectuate the terms and conditions of this Settlement. This Settlement is a compromise and is conditioned upon the Commission's approval of all the terms and conditions contained herein without modification or amendment, except that this paragraph shall be effective regardless of whether the Settlement is accepted and adopted by the Commission.

29. If the Commission should not approve or modify the terms and conditions herein, this Settlement may be withdrawn by a Party upon written notice to the Commission and all other Signatories within ten (10) business days of receipt of the Commission's Order. In such withdrawal event, this Settlement shall be of no force and effect, except paragraphs 28 and 29 herein, and Signatories reserve their respective rights to conduct cross-examination, briefing and arguments, and to take, without prejudice, positions different from the terms of this Settlement. In the event of such withdrawal, this Settlement Agreement shall be terminated without admission against or prejudice to any position, which any party might adopt during any subsequent hearing.

30. The Signatories expressly agreed that this Settlement shall be modified only by a written document signed by all of the Signatories.

31. Signatories acknowledged that this Settlement is a non-unanimous agreement and that a party to the proceeding, namely CWA, has not joined in this Settlement. To the extent that evidentiary hearings occur and/or further briefing (including exceptions and reply exceptions occur) in this matter while the Settlement is pending, Signatories agree to support a Commission-ordered result that is based upon the proposed terms and conditions of this Settlement in any evidentiary hearing context or in any briefs or exceptions filed in this matter. Signatories also agree to make best efforts to support expeditious Commission approval of this Settlement, including, if required, the filing of testimony and/or statements in support.

32. It is explicitly stated herein and understood by Signatories that this Settlement constitutes a negotiated resolution of the issues raised Docket Nos. A-313200F0007 and A-311379F0002, with bargain-for concessions supporting the terms and conditions contained herein.

33. The Signatories specifically agree that the Commission's approval of this Settlement without modification resolves, with prejudice, all issues raised in this docketed

proceeding and/or specifically addressed herein and precludes the Signatories from asserting contrary positions during subsequent litigation.

34. This Settlement constitutes the entire agreement among the Signatories. The Signatories agree that it supersedes and controls all prior communications, correspondence, agreements, or prior drafts of agreements existing among the Parties or their representatives relative to the matters contained herein. This Settlement is determinative and conclusive of issues addressed herein and, upon entry of a final, Commission order, that is not stated on appeal, approving the Settlement, constitutes a final adjudication as to the Signatories.

35. Except as explicitly set forth in this Settlement, there are no representations, warranties, or inducements, whether oral, written or expressed or implied, that in any way affect or condition the validity of this Settlement or alter its terms and conditions.

36. The existence of this Settlement and the terms and conditions of the same do not require, and shall not be construed as requiring, that any Party extend this Settlement or any provision set forth in this Settlement to any other entity or person.

37. In conjunction with the entry of a final Commission Order approving this Settlement, the Signatories request that the Commission shall mark the proceeding closed.

38. This Settlement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflicts of law.

39. This Settlement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall constitute one into the same instrument and shall be effect [sic] on the latest date signed.

3. The Settlement's Public Interest Considerations

(This section is taken directly from the Settlement Petition)

40. In recognition of the Commission's policy in favor of seeking negotiated settlements to contested proceedings (*See*, 52 Pa. Code § 69-391), the Parties have reached an amicable resolution to this dispute as embodied herein.

41. Approval of this Joint Petition is in the public interest when approved as proposed. Specifically, the Settlement includes: (a) a significant rate stability provision (*i.e.*, through June 30, 2009); (b) includes accelerated broadband commitments on behalf of United P.A.; (c) addresses certain issues raised by the Signatories regarding the financial circumstances of the Joint Application; (d) imposes additional service quality reporting requirements on United P.A.-over and above that which are required under the regulations or existing law; (e) secures a service quality commitment letter; and (f) makes certain commitments to OSBA regarding the long distance commercial agreement contemplated in the Joint Application.

42. Approval of this Joint Petition is in the public interest in lieu of the Parties (and the Commission) incurring the time, the expense and uncertainty of further litigation regarding the specific facts and circumstances of this case. The Signatories will be filing Statements in this Support under separate cover.

(End of portion taken directly from Settlement Petition)

4. Party Positions

Each Party submitted expert testimony which was originally prepared and submitted to support either the Application, or opposition to it. The Parties then filed Statements in Support of the Joint Petition for Settlement or Briefs and Reply Briefs to provide further explanation. The January 23, 2006 CWA letter asks that the Commission disregard its Brief and Reply Brief, and neither is discussed herein. A summary of each party's position follows:

a. Applicants United PA and Sprint Long Distance (collectively “Sprint” or “Applicants”)

Applicants submitted the testimony of John W. Mayo, direct, rebuttal and rejoinder, Sprint Stmts. 1.0, 1.1 and 1.2; Richard A. Hrip, direct, rebuttal and rejoinder, Sprint Stmts. 2.0, 2.1 and 2.2; Kent W. Dickerson, direct, rebuttal and rejoinder, Sprint Stmts. 3.0, 3.1 and 3.2; Kevin P. Collins, direct, rebuttal and rejoinder, Sprint Stmts. 4.0, 4.1 and 4.2; Gene M. Betts, rebuttal Sprint Stmt. 5.0; and Dr. Brian K. Staihr, rejoinder, Sprint Stmt. 5.1. Sprint submitted its Exhibits 1 through 5 at the hearing. Pertinent parts of this testimony were included in the discussion of the Application, above, and will not be repeated here.

Sprint argues that even without the Joint Petition for Settlement, the Application satisfies all applicable legal criteria for Commission approval, specifically:

- (1) Both United PA and LTD Long Distance will remain regulated entities and will remain subject to any and all applicable regulatory requirements.
- (2) With the exception of a new company name and logo, the separation will result in continuous, transparent service to customers, utilizing existing numbers to obtain new services, report service problems and address billing and other customer care issues.
- (3) Services to customers will be at the same rates, terms and conditions.
- (4) United PA’s access tariffs will remain unchanged except for the name change, not impacting the terms of any interconnections agreement or obligations under state and federal laws.
- (5) Customer service, network, and operations functions critical to United PA will continue after separation.
- (6) None of United PA’s assets, stock, or property will be used to secure, or collateralize any of debt issued by LTD Holding Company.

(7) United PA's alternative rate regulation plan will not be modified, changed or impacted by the debt-to-equity ratios and the capital structure of LTD Holding Company as proposed.

(8) The proposed transaction will create the nation's largest independent (non-RBOC) local exchange company, with 2004 annual revenues of over \$6 billion.

(9) All of the equipment, buildings, systems, software licenses and other assets owned by United PA will remain assets of United PA.

(10) Assets shared by United PA and other operating divisions will either remain with Sprint United Management Company or will be transferred to LTD Holding Company subject to a new affiliated interest agreement.

(11) After separation, LTD Holding Company will have a heightened focus on its local customers which would not happen as part of a larger company with a wireless and national focus.

(12) The separation as proposed will allow United PA to compete more effectively in at least three ways: (a) consistent and clear direction and purpose by building on local wireline capabilities; (2) flexibility with creating bundles and product portfolios in specific markets; and (3) ability to develop products targeted to local customers.

In addition, the Joint Petition for Settlement adds the following benefits:

- (1) A rate stability feature through June 30, 2009.
- (2) Acceleration of United PA's broadband availability commitments.
- (3) A commitment by United PA to not issue any new external debt until after December 31, 2007.

(4) A commitment by United PA to not guarantee certain debts or credit instruments without receiving a notice of registration to the extent required by applicable law.

(5) A letter commitment to the signatories from LTD Holding Company's chief operating officer providing that United PA will employ adequate resources and investment to ensure its service quality to retail customers in Pennsylvania.

(6) A commitment to provide OSBA with advance notice of the continuation or renewal of contractual arrangements between LTD Long Distance and Sprint Communications Company, L.P. for long distance services.

b. OCA

OCA submitted the direct and surrebuttal testimony of two witnesses, Matthew J. Kahal, and Rowland L. Curry, OCA Statements 1, 1-S, 2 and 2-S. These statements were submitted prior to the parties' settlement but were submitted in support of it.

The testimony submitted by OCA witnesses expressed alarm at the Applicants' plan to finance the new holding company and the effect that the financing plan would have on United PA. Matthew I. Kahal, consultant to Exeter Associates, Inc., an economic consulting firm specializing in various aspects of public utility regulation and energy markets, testified that the "Commission should not approve the transfer of control unless the Applicant can convincingly demonstrate that the restructuring and accompanying financial plan will reasonably ensure that the new entity will be financially sound, adequately capitalized and with no significant weakening compared to the present structure. Absent such a demonstration, the Commission should be concerned regarding the effect of this proposal on local exchange service to the retail customers of United PA and should not approve it." OCA St. Kahal, p. 5, lines 14-19.

Mr. Kahal's findings are that (1) United PA is presently sound financially but that it should not be viewed independently from the parent company; (2) the wireline local exchange holding company's financial structure will change drastically post spin-off, with an enormous increase in debt leverage; (3) the decision to capitalize the new wireline entity with an enormous

amount of debt leverage and very little equity is not required in this type of transaction; (4) if the highly leveraged capital structure reduces the overall cost of capital, then the savings go to the shareholders, with Pennsylvania customers receiving service from a financially weaker utility; (5) Commission approval would send a strong and possibly inappropriate signal to other Pennsylvania utilities to reduce equity financing and move toward sharply lower equity ratios to finance jurisdictional utility operations in order to provide cost savings; (6) the Company's evidence that LTD Holding can both initially obtain and then retain an investment-grade credit rating is ambiguous at best; and (7) the proposed capital structure in this case is not a reasonable target for a public utility company. OCA Kahal Stmt. pp. 7-8.

Although OCA witness Kahal has no objection to the spin-off itself, he questions the business decision of Sprint Nextel to accompany the LTD Holding spin-off with an extreme increase in its debt leverage. It is neither a necessary part of the separation nor adequately explained by the Applicants. There is no benefit to United PA customers. It appears from the ratings reports that the LTD Holding Company debt will be used to fund Sprint Nextel's restructuring of its wireless operations. The proposed debt issuance could constrain United PA's investment decisions and impair its financial flexibility. Stmt. 10-11.

Mr. Kahal points out that Sprint Nextel will be separated into two independent corporations by spinning off the local utility segment to the existing Sprint Nextel shareholders. Therefore, the shareholders will own both companies, which are comprised of the same assets as pre-restructuring. The transaction which results in the negative equity to LTD Holding Company is unnecessary from the standpoint of the shareholders and affects only the relative values of Sprint Nextel and LTD Holding Company. Kahal Stmt. 15-16.

Mr. Kahal explains that the imposition of the long-term debt upon LTD Holding Company provides Sprint Nextel with a large and steady source of cash over time, presumably to make up for its sudden lack of access to the surplus cash flow through the substantial dividend remittances from the local utility operations. The cash flow is now obtained through interest payments. While this benefits Sprint Nextel, it does so at LTD Holding Company's expense. Kahal Stmt. p. 17.

OCA continues by stating that an extremely leveraged capital structure could endanger LTD Holding Company's access to investment funds, particularly if it cannot obtain an investment grade credit rating. Kahal Stmt. p. 18.

OCA witness Kahal points out that Applicants witness Collins compares LTD Holding Company's projected financial ratios to be in the range of comparable companies, but that only one of the comparable companies has an investment-grade rating. In addition, the comparison projections stop at 2010, and are showing a financial decline which would likely continue beyond the projections. Kahal Stmt. p. 23.

Rowland Curry is the principal of Curry & Associates, an independent telecommunications consulting firm. He has 35 years experience in the telecommunications industry, focusing on state and federal regulatory policy and technological issues. His testimony addresses customer service issues arising from the proposed restructuring plan.

Mr. Curry urges the Commission to take steps to ensure that the quality of telephone service provided by the divested operating company will not deteriorate as a result of fiscal pressures caused by the restructuring. These actions should include ensuring that the current levels of expenditure by United-PA in its maintenance programs are continued at healthy levels. The Commission should closely monitor United PA's adherence to its network modernization plan under Chapter 30, and should require United PA to implement a service quality monitoring process for a period of five years to evaluate the post-restructuring performance of the local exchange service operations. Curry Stmt. 1, p. 3.

In its Brief in Support of the Joint Petition for Settlement, OCA states that the financial issues raised in its testimony has been addressed by the Joint Petition for Settlement. OCA states that the Settlement develops financial conditions that will help ensure the continued financial viability of United PA and protects United PA customers from certain adverse impacts through the transition process. OCA believes that setting restrictions on cash transfers, loans, debt leverage and capital structure and debt issuances that expire on December 31, 1007 are

sufficient safeguards, and that these compromises reasonably address the issues raised by Mr. Kahal. OCA Brief, p. 7. In addition, Mr. Curry's concerns are addressed by the provisions in the Settlement which require United PA to: comply with existing Commission regulations and statutory provisions; and, to alert OCA and OSBA should it fail to restore less than 90% of its service outages within 24 hours within any month on a system-wide basis as well as alert OCA and OSBA should it fail to restore less than 90% of its service outages within any one exchange for three consecutive months. Settlement ¶ 24, OCA Brief, p. 8.

OCA believes that the rate stability portion of the Settlement is particularly valuable, since it provides a cap through June 30, 2009, with limited exceptions. The Settlement also provides for benefits regarding United PA's Chapter 30 alternative regulation plan by way of further explaining the exogenous event provision of Chapter 30. OCA Brief, pp. 9-11.

c. OSBA

OSBA presented the direct and surrebuttal testimony of Allen G. Buckalew, OSBA Stmts. 1 and 2. Mr. Buckalew is an economist specializing in the telecommunications industry, and his testimony was prepared and submitted prior to the parties' entering the settlement but was admitted to the record in support of the settlement. Mr. Buckalew states that the separation as proposed in the Application "is not in the public interest and places the modernization and quality of the existing telephone service of United PA in jeopardy." OSBA Stmt. 1 at 4.

The question presented to the Commission is whether LTD Holding Company will be financially strong enough to support the various state wireline telephone companies, including United PA. Mr. Buckalew states:

The Joint Applicants have presented testimony (including the testimony of an investment banker) to support the case that LTD will be a strong parent. However, it is obvious that LTD will not be a strong parent financially. The Joint Applicants propose to leverage LTD to over 100% of its current assets. The Joint Applicants' investment banker testified that such leverage is

acceptable because LTD is really worth more than twice the current assets. However, the investment banker ignores the fact that the revenues generated by United PA are directly related to United PA's investment in telephone plant, the fact the United PA's rates are set based on these assets, and the fact that United PA is subject to Chapter 30 regulation. Under Chapter 30, basic local exchange rates can only increase based on the level of inflation. In addition, LTD Long Distance is suffering from the same business decline that forced two other long distance providers (MCI and AT&T) to seek mergers with the financially strong integrated telecommunication companies SBC and Verizon. OSBA Stmt. 1, pp. 5-6.

Mr. Buckalew states that the spin-off, rather than providing any benefit to the wireline company, actually exposes it to more risk both operationally and financially. OSBA Stmt. 1, p. 6. He states that the Commission cannot determine whether this spin-off is in the public interest until it sees the operational agreements between Sprint Nextel and LTD Long Distance.

The new parent company will not be as strong as the current parent. Sprint Nextel is an integrated telecommunications company similar to what the merger of SBC and AT&T will create, and similar to what the merger of Verizon and MCI will create. The spin-off takes two services that are in a state of decline and separates them from cellular, which is growing. LTD Long Distance, to be placed under the new parent with United PA, is to be a long distance reseller, while Sprint Nextel keeps the long distance assets. This results in a cash flow from the toll service out of LTD Long Distance and back to Sprint Nextel, rather than to the new parent, LTD Holding Company. The capital structure proposed for LTD Holding Company will be all debt. While the parent is responsible for attracting capital for United PA and LTD Long Distance, its heavy debt financing will make it difficult for it to do so. OSBA Stmt. 1, pp. 9-10.

He explains the importance of capital structure as follows:

Capital structure is important because each source of capital has associated with it a certain level of risk and corresponding return. In a competitive market, a firm must be responsive to the interests of both its customers and investors. Customers are interested in the lowest possible product price.

Since debt is generally a cheaper source of capital than equity (and short term debt is cheaper than long term debt), consumers would generally prefer to maintain a more leveraged (lower equity %) capital structure. Investors, on the other hand, have a prime concern of return commensurate with risk. They have an interest in balancing the lower cost of debt with the higher financial risk associated with additional leverage. In an unregulated market, a firm balances these interests to keep both its customers and investors and avoid losing to competitors. Competitive forces tend to drive a company's relative usage of debt and equity to the optimal level for that Company and that industry. Ideally, a firm will obtain capital funds through a "mix" that will result in the most economical financing of its assets over the long run.

A regulated enterprise such as United PA that operates in a monopoly environment does not always have these market forces operating to the same extent as an unregulated entity in order to balance its use of debt and equity. When a regulated firm capitalizes itself in an inappropriate manner, the burden of this inefficiency falls on the customer. It is a company's prerogative to obtain its capital funds from any source it chooses, but the Commission has a responsibility to protect consumer interests in determining the proper capital structure

The imputation of a reasonable "deemed" capital structure for ratemaking purposes is an adjustment routinely made by the Commission and is used to calculate a fair rates of return in order to ensure that consumers are not burdened with excessive costs. This does not dictate to management a particular capital structure that must be achieved. . . . The proposed capital structure for LTD is much more debt intensive than would be reasonable for ratemaking purposes in a normal utility rate case. OSBA Stmt. 1, pp. 11-12.

Mr. Buckalew continues by stating that United PA may not be able to meet its broadband commitments if the capital structure is permitted to be developed as proposed. The transaction is being proposed to maximize the profits for Sprint Nextel by using debt financing to increase its profits and to keep the growing wireless business while shedding the declining businesses of wireline and long distance. OSBA Stmt. 1, p. 13.

Mr. Buckalew recommends denying the transaction as not in the public interest. In the alternative, conditions should be imposed:

1. The current capital structure of United PA (as of December 31, 2004) and LTD's current capital structure should be maintained.

2. A rate cap should be imposed on both residential and business local exchange rates to protect United PA's ratepayers from increases due to additional debt of the new parent corporation.

3. To prevent gaming of access charges on an intercompany basis, a requirement that LTD Long Distance must flow through any access charge reductions to its toll customers on a dollar-for-dollar basis should be imposed. OSBA Stmt. 1, pp. 15-16.

In its Brief, OSBA argues that the Settlement Petition sets forth a comprehensive list of issues that were resolved through the negotiation process to address the concerns the OSBA identified in its Protest and testimony. Specifically, the Settlement Petition addresses the first recommended condition by providing that business or residential local exchange rates will not be raised above the United PA revised 2005 Annual Price Cap filing through June 30, 2009, except under a limited set of circumstances⁵. This is one way in which United PA can remain isolated from any financial difficulties of its proposed parent, LTD Holding Company, related to the significant amount of debt that LTD Holding Company is assuming as part of the transfer of control of assets.

The Settlement Petition's accelerated broadband commitment is a bonus since it was not addressed in the Application; however, Mr. Buckalew had expressed his concern that the capital structure of the new parent company would make it difficult for United PA to meet its broadband deployment commitments. OSBA Stmt. 1, p. 13.

Mr. Buckalew's recommendation of imposition of a condition regarding maintaining the capital structure of United PA is bolstered by the Settlement Petition's provision

⁵ Exceptions include decisions in or arising from the FCC's Unified Intercarrier Compensation and USF dockets, or decisions arising from the exogenous events provision of the plan, filed June 9, 2005, at Docket No. P-00981410. *Settlement Petition*, ¶ 17.

that United PA not issue any new external debt through December 31, 2007. This provides some protection to United PA from LTD Holding Company's requesting additional cash flow at the inception of the relationship. The result is that United PA will have the opportunity to sink or swim on its own without LTD Holding Company's making immediate and unreasonable demands. OSBA Brief, pp. 10-11.

The Settlement Agreement prohibits United PA from making any dividend payments in excess of earnings, which is a new condition to address the concerns that any increase in debt payments from LTD Holding Company to Sprint Nextel had only one source, from the profits of the subsidiary companies. This provision is meant to ensure that United PA's financial health remains as viable as it was before the Application was filed, albeit for a limited time. OSBA Brief, pp. 11-12.

Similarly, the requirement of the Settlement Petition that United PA maintain a capital structure with a minimum of 50% equity is designed to ensure that the financial well-being of United PA is kept, at least at the beginning of the relationship. OSBA Brief, pp. 12-13.

The Settlement Petition responds to the concerns of OSBA that service problems are a potential consequence of the financial concerns expressed by Mr. Buckalew by providing the United PA will inform OCA and OSBA if its service outage repair index falls below 90% restored/repared within 24 hours in any month across the system or for three consecutive months in any one exchange. Meetings are required to address the problem if this happens. OSBA Brief, p. 14.

To address the concerns expressed by Mr. Buckalew regarding the contracts to be executed between Sprint Nextel and LTD Holding Company, the Settlement Petition provide that OSBA will have twenty days' advance notice of the execution of any contract for long distance services and allows OSBA to request that a future contract be made available for review. OSBA argues that allowing this degree of stakeholder review and feedback is a benefit. OSBA Brief, pp. 15-16.

d. OTS

OTS submitted the direct and surrebuttal testimony of Joseph Kubas, OTS Stmts. 1 and 1-SR. Mr. Kubas, a Fixed Utility Valuation Engineer since 1996, recommended that the Commission deny the Application because it does not provide details concerning specific shared assets, their value, or the consideration that may pass between the new owner, the current owner, United PA, or any affiliates of United PA. Mr. Kubas states that the Applicants should be required to provide a detailed list of the shared assets and describe if these shared assets will remain with United PA, transferred to an affiliate, or transferred to the LTD Holding Company. Any lease should be justified and explained. OTS Stmt. 1, p. 5.

In his surrebuttal, Mr. Kubas states that the information supplied by Applicant's witness Dickerson in Exhibit NO. KWD-8 is insufficient to satisfy the requirements of the Commission since it lacks specificity. OTS Stmt. 1-SR.

OTS filed a Statement in Support of Settlement, which states that the concerns expressed by Mr. Kubas were satisfied during the negotiation process when the Applicants provided details concerning shared assets and leasing arrangements to OTS, thus satisfying the OTS main concern. The Statement does not elaborate.

e. Communications Workers of America

CWA submitted the testimony of one witness into evidence. The testimony of Sumanta Ray, a research economist employed by the CWA, CWA Stmts. 1 (direct) and 1.1 (surrebuttal). Mr. Ray explained in detail his concern regarding pension assets and the lack of assurance in the Application that the United PA union workers would be covered following the spin-off. Since CWA withdrew its opposition to the settlement prior to the issuance of this Recommended Decision and asked that the Commission disregard its Brief and Reply Brief, the concerns of its membership are deemed to be satisfied.

5. Analysis

The Pennsylvania Public Utility Code requires that a proponent of a rule or order carries the burden of proof. 66 Pa. C.S. §332(a). As the proponent of a rule or order of this Commission under Chapter 11 of the Public Utility Code, the applicants bear the burden of proof.

Burden of proof is a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other side. If a party has satisfied its burden of proof, it must then be determined whether the opposing party has submitted evidence of "co-equal" value or weight to refute the first party's evidence. *Morrissey v. Commonwealth of Pennsylvania, Department of Highways*, 424 Pa. 87, 225 A.2d 895 (1986).

Finally, as to evidentiary requirements associated with the applicable legal standards, the Commission's findings must be supported by substantial evidence. The term "substantial evidence" has been defined by Pennsylvania appellate courts as such relevant evidence that reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Public Utility Commission*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't of Public Welfare, White Haven Center*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

Therefore, the Applicants bear the burden of proving that they satisfy the requirements of the Public Utility Code, which requires that application must be made prior to the transfer of stock used or useful in the public service. 66 Pa. C.S. § 1102(a)(3). The Commission may issue a certificate of public convenience upon a finding that "the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of

the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable. . . .” 66 Pa. C.S. § 1103(a).

This standard has been interpreted to require the Commission to find that the transaction would “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Publ. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972). “Further, when the ‘public interest’ is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on *all affected parties* and not merely on one particular group” *Middletown Township v. Pa. Publ. Util. Comm’n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984). The Commission has stated that:

[t]he standards of the *City of York* need not only be addressed by a quantification of the specific effects of alleged savings, particularly a specific level of capital investment by the merged entity in Pennsylvania. (citation omitted) Rather, we must view the public interest benefits in the context of the telecommunications industry in Pennsylvania, as a whole. In this regard, we would agree with the observation of ALJ Jones that, as a matter of law and policy, ‘a benefit can be to maintain the status quo of competition rather than to digress.’ . . .

In light of the foregoing, when we examine the merger in the broad context of the telecommunications industry in Pennsylvania, we find that the merger will affirmatively benefit the consuming public in a substantial way. We make this finding by observing that the Joint Applicants have shown, by a preponderance of the evidence, that the merger will enhance the likelihood of competition both in the mass market and enterprise market. . . . *Joint Application of SBC Communications, Inc. and AT&T Corp.*, PUC Docket Nos. A-311163F0006, A-310213F0008, A-310257F0005 at pp. 27-28, (Order entered October 6, 2005)(*SBC/AT&T Merger case*).

Similarly, the public interest is served when Sprint, following its merger with Nextel, realized that the size of the new corporation is unwieldy and that portions of that corporation, specifically the regulated wireline services, could suffer since the business emphasis of the new corporation is, openly, the fast-growing and more lucrative wireless services. Therefore, a new holding company has been created to provide the management and financial

services to the wireline companies so that they are separated from the national, wireless company. The regulated wireline services will not be harmed by the separation, especially since the Settlement Petition places restrictions on the financial side of the transaction which did not appear in the Application. In fact, the possibility exists that the new holding company may implement improvements since it will not be distracted by the fast-growing wireless company and its ever-changing technology and can concentrate fully on the regulated wireline business.

The Settlement Petition is consistent with Commission policy which encourages the parties to a proceeding to seek a negotiated settlement⁶. The parties either signing or not opposing the Settlement here are OCA, OSBA, OTS, and CWA. The people represented by these parties are consumers, small businesses, the public interest at large, and the members of the CWA bargaining units who work for United PA. The interests of each of these has been considered, and the representatives of each either agree with or do not oppose the terms of the Settlement Agreement in its entirety.

It is important to note that this decision stops short of finding that the Joint Application would be approved without the Settlement Agreement. The Parties raised valid concerns which would need to be addressed if the matter had not settled unanimously. However, it is the Settlement Agreement that is ripe for consideration, and approval of the Settlement Agreement, with all of the amendments and restrictions that it places on the Joint Applicants, is recommended as consistent with applicable law and the public interest.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this case. 66 Pa. C.S. §§1102(a)(3) and 1103(a).

2. The proposed separation of United PA, along with LTD Long Distance, into an independent stand alone operation, and the transfer of stock associated with the

⁶ "The Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation. . . ." 52 Pa. Code § 69.391(a).

proposed transaction, constitutes a transfer of a jurisdictional utility's tangible and intangible property used or useful in the public service. 66 Pa. C.S. §1102(a)(3); 52 Pa. Code §69.901.

3. The Commission will grant a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a).

4. The Pennsylvania Supreme Court has held that the Commission must find that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. *City of York v. Pa. Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972).

5. Section 1103(a) of the Pennsylvania Public Utility Code provides that the Commission in granting a certificate of public convenience “may impose such conditions as it deems just and reasonable.” 66 Pa.C.S. §1103(a). *See also*, 66 Pa.C.S. § 3019(b)(4).

6. The proponent of a rule or order carries the burden of proof. 66 Pa. C.S. §332(a).

7. Joint Applicants met their burden of proof in that Joint Applicants have demonstrated that, by a preponderance of the evidence, the change in control as set forth in the Settlement Petition is in the public interest.

8. Substantial evidence of record exists demonstrating that the Settlement is in the public interest.

9. Joint Applicants met their burden of proof in that Joint Applicants have demonstrated, by a preponderance of the evidence, that the transaction as proposed in the Joint Application and the Settlement will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

10. Substantial evidence of record exists demonstrating that the Joint Application and the Settlement will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

IV. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That The Joint Application of United Telephone Company of Pennsylvania's *d/b/a* Sprint and Sprint Long Distance, Inc. (collectively "Joint Applicants") For All Approvals Required Under The Pennsylvania Public Utility Code In Connection With Changes Of Control Of The United Telephone Company of Pennsylvania *d/b/a* Sprint And Sprint Long Distance, Inc. filed with the Pennsylvania Public Utility Commission on August 26, 2005, be approved consistent with the terms of the Settlement Petition submitted in this case.
2. That the Settlement entered between Joint Applicants and the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff, as filed with the Pennsylvania Public Utility Commission on November 30, 2005, be approved.
3. That a certificate of public convenience be issued evidencing the Pennsylvania Public Utility Commission's approval of the Petition for Settlement in this matter.
4. That the Secretary maintain under seal for 18 months from the date of this Opinion and Order, all documents which are currently under seal in this proceeding.

5. That this Order shall remain in full force and effect until further Order of the Commission.

6. That the Secretary mark these dockets closed.

Dated: February 2, 2006

Susan D. Colwell
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application for all Approvals	:	
Required Under the Pennsylvania Public	:	Docket Nos.:
Utility Code in Connection With Changes	:	A-313200F0007
of Control of the United Telephone	:	A-311379F0002
Company of Pennsylvania d/b/a Sprint	:	
and Sprint Long Distance, Inc.	:	

JOINT PETITION FOR SETTLEMENT

The United Telephone Company of Pennsylvania d/b/a Sprint and Sprint Long Distance, Inc. ("Joint Applicants"),¹ The Office of Trial Staff ("OTS"), The Office of Consumer Advocate ("OCA"), and The Office of Small Business Advocate ("OSBA"), collectively referred to as the "Signatories", pursuant to Section 5.232 of the regulations of the Pennsylvania Public Utility Commission ("Commission"), file this Joint Petition For Settlement ("Agreement" or "Settlement") seeking resolution of the above-referenced proceeding. In support thereof, the Signatories state as follows:

I. BACKGROUND

1. On August 26, 2005, United PA and LTD Long Distance filed a Joint Application (along with testimonies of Dr. John Mayo, Richard A. Hrip, Kent W. Dickerson, and Kevin P. Collins) seeking approval of a transaction in which Sprint Nextel Corporation

¹ For purposes of this Joint Petition for Settlement, The United Telephone Company of Pennsylvania d/b/a Sprint shall be individually referred to as "United PA." Similarly, Sprint Long Distance Inc. shall be individually referred to as "LTD Long Distance."

("Sprint")² plans to separate its wireline local service operation into an independent stand alone operation ("Joint Application").

2. The Joint Application requested all Commission approvals necessary to effectuate the transfers of control of United PA and LTD Long Distance³ from Sprint to a holding company, namely LTD Holding Company. To complete the separation, the stock of United PA (and the other Sprint ILECs) and LTD Long Distance will be contributed into LTD Holding Company as well as other assets and liabilities related to the local wireline telecommunications business.⁴

3. The Joint Application was filed pursuant to Chapter 11 of the Public Utility Code. 66 Pa. C.S. §§ 1101-1103.

4. On September 10, 2005, notice of the Joint Application was published in the *Pennsylvania Bulletin*. Protests and petitions were noticed as due on or before September 28, 2005. The Notice also provided that the matter was assigned to the Office of Administrative Law Judge and that a prehearing was scheduled for October 4, 2005.

5. On September 8, 2005, the OCA filed a Notice of Intervention. On September 23, 2005, OCA also filed a Protest.

² On December 15, 2004, Sprint Corporation and Nextel Communications, Inc. ("Nextel") entered into a merger agreement pursuant to which, upon obtaining requisite Sprint Corporation and Nextel stockholder approval and satisfaction of the other conditions to the merger, Nextel would merge with and into a wholly owned subsidiary of Sprint Corporation. The conditions of the merger agreement have been satisfied and the merger closed on August 12, 2005. The corporation's new name is "Sprint Nextel Corporation."

³ By Commission Order entered October 11, 2005, at Docket No. A-311379, LTD Long Distance was granted a certificate of public convenience to offer, render, furnish or supply resold interexchange toll telecommunications services throughout the Commonwealth of Pennsylvania.

⁴ The names of United PA and LTD Long Distance are expected to change as LTD Holding Company separates from Sprint and chooses its new corporate name and brand. Once chosen, any state-required registrations, filings or notifications will be provided.

6. On September 12, 2005, the OTS filed a Notice of Appearance.
7. On September 23, 2005, the Communications Workers of America (“CWA”) filed a Protest.
8. On September 26, 2005, the OSBA filed a Notice of Intervention and Protest.
9. On September 23, 2005, based upon an agreement by all parties, presiding Judge, Susan D. Colwell entered a Protective Order in this docket.
10. On October 4, 2005; a prehearing conference was held in Harrisburg, Pennsylvania. At the prehearing conference, a procedural schedule was established and, on October 5, 2005, a Procedural Order was issued.
11. Pursuant to the established procedural schedule, OTS, OCA, OSBA and CWA submitted pre-filed direct testimony on October 25, 2005.
12. On November 8, 2005, Joint Applicants submitted pre-filed rebuttal testimony in this matter.
13. On November 17, 2005, the OTS, OCA, OSBA and CWA respectively submitted pre-filed surrebuttal testimony in this matter.
14. On November 28, 2005, Joint Applicants submitted pre-filed written rejoinder testimony.
15. The Signatories and other parties have held various discussions and have arrived at terms and conditions, set forth below, to resolve all issues arising from this matter. This Settlement consists of compromises and concessions regarding the respective

litigation positions of the Parties so as to reach an amicable settlement in lieu of further protracted and expensive litigation.

16. Settlements conserve litigation and administrative costs to the Parties and to the Commission and allow Signatories to negotiate outcomes that are mutually acceptable to them, subject to Commission approval. The Commission encourages settlements, pursuant to 52 Pa. Code Section 69.401.

II. TERMS AND CONDITIONS OF SETTLEMENT

In consideration of the mutual promises and provisions contained in this Settlement, the Signatories desire to conclude litigation at the above-docketed matter and to settle contested issues.

17. United PA on September 1, 2005 submitted its 2005 Annual Price Cap filing under the United PA Amended Alternative Regulation Plan.⁵ On November 4, 2005, United PA submitted a revised tariff in support of its 2005 Annual Price Cap filing in response to, and in satisfaction of, the OSBA Complaint at Docket No. R-00050960-C0001. From the effective date of this Settlement and continuing through June 30, 2009, United PA agrees not to implement any additional increase in the business and residential exchange rates contained in United PA's Revised 2005 Annual Price Cap filing of

⁵ Pursuant to United PA's original and amended Alternative Regulation Plan, United PA files an annual price cap filing on or about September 1st of each year United PA has been operating under an alternative regulation plan. On September 1, 2005, United PA filed its 2005 Price Cap filing containing proposed tariff revisions. Under United PA's Revised Alternative Regulation Plan, the 2005 Price Cap Filing, which is docketed at Docket Nos. R-00050960 and P-00981410F1000, was proposed to become effective on December 16, 2005.

⁶ In its 2005 Price Cap Filing, as revised by the supplemental filing of November 4, 2005, Sprint proposed increasing the R-1 rate to \$18.00/month and the B-1 rate to \$26.53/month.

November 4, 2005⁶; provided, however, -United PA reserves the right to seek increase(s) in these business and residential exchange rates arising from or as a result of:

1. Decision(s) in or arising from the Federal Communications Commission's Unified Intercarrier Compensation and USF docket(s);⁷ or
2. Decision(s) arising from Part 3, A, Paragraph 9 (Exogenous Events) of United PA's Revised Amended Alternative Regulation Plan, filed June 9, 2005, at Docket No. P-00981410. United PA acknowledges that the decision to separate from Sprint Nextel as detailed in the Joint Application is an event within United PA's control for purposes of Part 3, A, Paragraph 9 (Exogenous Events) of United PA's Revised Amended Alternative Regulation Plan. United PA further acknowledges that it has the burden of proof in any exogenous event filing and that United PA will have to prove that the exogenous event is outside the company's control. Nothing herein limits the ability of parties to challenge such a filing.

18. Notwithstanding paragraph 17 above, Joint Applicants reserve the right to present arguments and positions as to any issue(s) in any proceeding before the Pennsylvania Public Utility Commission (*e.g.*, continuation of the state Universal Service Fund ("USF") and funding associated with the state USF), provided that the argument or

³ See, *e.g.*, *In re Developing a Unified Intercarrier Compensation Regime*, (FCC Rel.: March 3, 2005), CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, FCC 05-33.

position otherwise retains the business and residential exchange rates as approved in United PA's 2005 Price Cap filing through June 30, 2009.

19. United PA commits to make broadband available, within ten (10) business days of a request, for 80% of its retail customers by December 31, 2007. United PA commits to make broadband available, within 10 business days of a request, for 85% of its retail customers by December 31, 2010.

20. From and after the effective date of this Settlement and continuing through December 31, 2007, United PA agrees to not issue any new external debt. For purposes of this agreement, the following are not considered "debt": leases and lease arrangements, obligations in respect of letters of credit, and obligations for the deferred purchase price of property or services.

21. From and after the effective date of this Settlement and continuing through December 31, 2007, United PA agrees to not pay any dividends in excess of earnings.

22. From and after the effective date of this Settlement and continuing through December 31, 2007, United PA will maintain a capital structure with a minimum of 50% equity and will provide an annual letter on or before December 31, 2006 and December 31, 2007 to the Commission and the OCA, the OSBA, and the OTS that will allow the review of this goal. United PA reserves the right to petition the Commission for changes to United PA's capital structure under this provision.

23. From and after the effective date of this Settlement and continuing through December 31, 2007, United PA shall not, without receiving a notice of registration to the extent required under 66 Pa. C.S. §1901, et seq., or under other applicable law:

- i. Guarantee the debt or credit instruments of LTD Holding Company or any affiliate not regulated by the Commission; or
- ii. Grant a mortgage or other lien or otherwise pledge as security for repayment of the principal or interest of any loan or credit instrument of LTD Holding Company or any affiliate not regulated by the Commission any property used and useful in providing retail utility service to the public subject to the Commission's jurisdiction; or
- iii. Make any loan or otherwise extend credit to LTD Holding Company or any affiliate not regulated by the Commission when the term of the loan is 365 days or greater at an interest rate less than market.

24. United PA agrees to continue to notify the Commission of certain service quality reports as is currently required in the Commission's regulations at 52 Pa. Code Section 63.55. In addition, through December 31, 2008, United PA agrees to advise the OCA and OSBA if United PA's service outage repair index falls below 90% restored/repaired within 24 hours: (a) in any month across the United PA system as a whole; or (b) for three consecutive months in any one exchange. In the event of such notification, United PA also commits to meet with OCA and OSBA to discuss and to address possible remedies or actions to be undertaken by United PA.

25. Upon execution of this Settlement, Joint Applicants agree to provide to all parties a letter executed by Michael Fuller, Chief Operating Officer of LTD Holding Company, setting forth LTD Holding Company's commitment to employ adequate resources and investment to ensure that United PA maintains adequate service quality to its retail customers in Pennsylvania.

26. United PA and LTD Holding Company agree to provide OSBA twenty (20) days advance notice of contract execution for the continuation or renewal of any contractual arrangement between LTD Long Distance and Sprint Communications Company L.P. for long distance services. Upon request by OSBA, the executed contract(s) will be made available for review.

27. This Settlement is expressly conditioned upon the entry of a final Commission order approving all specific terms and conditions contained herein without modification. The Settlement proposed herein will go into effect upon the Commission's entry of a final order, that is not stayed on appeal, approving this Settlement and all the Settlement terms and conditions without modification.

28. This Settlement is made without any admission against or prejudice to any position that any Signatory either has made or might make in any other proceeding. The Settlement cannot and should not be used as precedent in any other proceeding, in this jurisdiction or elsewhere. It is also made without any admission against or prejudice to any position that any of the Signatories may have advanced or will advance in any other proceeding and without prejudice to their respective positions concerning the merits of the issues presented in this proceeding if this Settlement is rejected by the Commission or withdrawn by any of the Settling Parties as provided below. If this Settlement is not approved, no adverse inference shall be drawn against any Party as a consequence of any matter set forth herein. Commission approval of this Settlement shall not be construed or cited as binding or persuasive precedent in any other jurisdiction, or in any other Commission proceeding, or in any appeal from a Commission proceeding, except to effectuate the terms and conditions of this

Settlement. This Settlement is a compromise and is conditioned upon the Commission's approval of all the terms and conditions contained herein without modification or amendment, except that this paragraph shall be effective regardless of whether the Settlement is accepted and adopted by the Commission.

29. If the Commission should not approve or modify the terms and conditions herein, this Settlement may be withdrawn by a Party upon written notice to the Commission and all other Signatories within ten (10) business days of receipt of the Commission's Order. In such withdrawal event, this Settlement shall be of no force and effect, except paragraphs 28 and 29 herein, and Signatories reserve their respective rights to conduct cross-examination, briefing and argument, and to take, without prejudice, positions different from the terms of this Settlement. In the event of such withdrawal, this Settlement Agreement shall be terminated without admission against or prejudice to any position, which any Party might adopt during any subsequent hearing.

30. The Signatories expressly agree that this Settlement shall be modified only by a written document signed by all of the Signatories.

31. Signatories acknowledge that this Settlement is a non-unanimous agreement in that a party to the proceeding, namely CWA, has not joined in this Settlement. To the extent that evidentiary hearings occur and/or further briefing (including exceptions and reply exceptions occur) in this matter while this Settlement is pending, Signatories agree to support a Commission-ordered result that is based upon the proposed terms and conditions of this Settlement in any evidentiary hearing context or in any briefs or exceptions filed in this matter. Signatories also agree to make best efforts to support

expeditious Commission approval of this Settlement, including, if required, the filing of testimony and/or statements in support.

32. It is explicitly stated herein and understood by Signatories that this Settlement constitutes a negotiated resolution of the issues raised Docket Nos. A-313200F0007 and A-311379F0002, with bargained-for concessions supporting the terms and conditions contained herein.

33. The Signatories specifically agree that the Commission's approval of this Settlement without modification resolves, with prejudice, all issues raised in this docketed proceeding and/or specifically addressed herein and precludes the Signatories from asserting contrary positions during subsequent litigation.

34. This Settlement constitutes the entire agreement among the Signatories. The Signatories agree that it supersedes and controls all prior communications, correspondence, agreements, or prior drafts of agreements existing among the Parties or their representatives relative to the matters contained herein. This Settlement is determinative and conclusive of issues addressed herein and, upon the entry of a final, Commission order, that is not stayed on appeal, approving the Settlement, constitutes a final adjudication as to the Signatories.

35. Except as explicitly set forth in this Settlement, there are no representations, warranties, or inducements, whether oral, written or expressed or implied, that in any way affect or condition the validity of this Settlement or alter its terms and conditions.

36. The existence of this Settlement and the terms and conditions of the same do not require, and shall not be construed as requiring, that any Party extend this Settlement or any provision set forth in this Settlement to any other entity or person.

37. In conjunction with the entry of a final Commission Order approving this Settlement, the Signatories request that the Commission shall mark the proceeding closed.

38. This Settlement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflicts of law.

39. This Settlement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall constitute one and the same instrument and shall be effect on the latest date signed.

III. PUBLIC INTEREST CONSIDERATIONS

40. In recognition of the Commission's policy in favor of seeking negotiated settlements to contested proceedings (*See*, 52 Pa. Code § 69.391), the Parties have reached an amicable resolution to this dispute as embodied herein.

41. Approval of this Joint Petition is in the public interest when approved as proposed. Specifically, the Settlement includes: (a) a significant rate stability provision (*i.e.*, through June 30, 2009); (b) includes accelerated broadband commitments on behalf of United PA; (c) addresses certain issues raised by the Signatories regarding the financial circumstances of the Joint Application; (d) imposes additional service quality reporting requirements on United PA – over and above that which are required under the

regulations or existing law; (e) secures a service quality commitment letter; and (f) makes certain commitments to OSBA regarding the long distance commercial agreement contemplated in the Joint Application.

42. Approval of this Joint Petition is in the public interest in lieu of the Parties (and the Commission) incurring the time, expense and uncertainty of further litigation regarding the specific facts and circumstances of this case. The Signatories will be filing Statements in Support under separate cover.

IV. CONCLUSION

43. **WHEREFORE**, the Signatories, intending to be legally bound, respectfully request that the Presiding Judge and the Commission approve the Settlement terms and conditions set forth herein without modification and take any such other actions as are necessary and appropriate.

Respectfully Submitted,

By: _____
Zsuzsanna Benedek, Esquire
240 North Third Street, Suite 201
Harrisburg, PA 17101

**On behalf of The United Telephone
Company of Pennsylvania *d/b/a* Sprint
And LTD Long Distance, Inc.**

By: _____
Robert V. Eckenrod, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
400 North Street, 2nd Floor
Harrisburg, PA 17101

On behalf of The Office of Trial Staff

By: _____
Philip F. McClelland, Esquire
Shaun A. Sparks, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101

**On behalf of The Office of
Consumer Advocate**

By: _____
Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

**On behalf of The Office of
Small Business Advocate**

Dated: November 30, 2005