

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Lackawaxen Telecommunications Services, Inc. 2017 Annual Price Stability Index/Service Price Index Report and Supplement No. 137 to Lackawaxen Telecommunications Services, Inc. Tariff Pa. P.U.C. No. 2 **Public Meeting held June 14, 2017**
2598885-TUS
Docket No. R-2017-2598885

Lackawaxen Telecommunications Services, Inc. Amended Alternative Regulation and Network Modernization Plan **Docket No. P-00981432F1000**

STATEMENT OF COMMISSIONER DAVID W. SWEET

This case involves the annual filing of the Chapter 30 Plan, Price Stability Mechanism (PSM) Price Stability Index (PSI) and Service Price Index (SPI) by Lackawaxen Telecommunications Services, Inc. (Lackawaxen or Company), a small, rural telecommunications carrier providing service in Pike County, Pennsylvania.

Lackawaxen's Chapter 30 plan was approved as a part of a Joint Petition filed in 1998 on behalf of 19 of Pennsylvania's smallest and most rural carriers assembled as the Pennsylvania Telephone Association Small Company Group (PTA SCG).¹ The Chapter 30 Plans for each of these companies, approved by orders of this Commission entered two years after the petition was filed, essentially include the same terms and provisions for alternative regulation under Chapter 30 of our Public Utility Code.²

In its pending 2017 PSI Filing, the Company proposes to implement a revenue increase of \$38,208 by increasing the monthly rates for residential and business one-party line services by \$2.00. This proposed increase would result in a monthly residential single-party local service rate of \$19.00, which remains below the current federal residential benchmark rate of \$20.00, and an equivalent business rate of \$17.40. Notice of the filing and an opportunity to be heard were provided. No complaints were filed and no hearings were held.

¹ Those companies comprised Armstrong Telephone Company-Pennsylvania, Armstrong Telephone Company-North, The Bentleyville Telephone Company, buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company, Hickory Telephone Company, Lackawaxen, Laurel Highland Telephone Company, Marianna & Scenery Hill Telephone Company, The North-Eastern Pennsylvania Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, Venus Telephone Corporation, and Yukon Waltz Telephone Company.

² See *Petition of Armstrong Telephone Company-Pennsylvania et al.*, Docket Nos. P-00981425 *et al.* (Order entered January 20, 2000).

Staff finds that the Company's proposed rate increases are inconsistent with the terms of its Chapter 30 plan because the resulting rate increases would produce a revenue increase of \$38,208, but the Company has only \$20,492 available to increase rates. The \$20,492 revenue increase as contained in Staff's recommendation comprises two parts: \$10,377 derived from the Company's current 2017 PSI filing calculation based on a 1.264% allowed revenue increase produced by the change in the GDP-PI from the Company's last filing to its current filing; and \$10,015 from the increases the Company banked under its 2016 and 2015 PSI filings that remain available.

I respectfully submit that Staff's calculation of the Company's available bank, as apparently acquiesced to by the Company commencing in 2013 without explanation or amendment of its Plan, has left the Company with a bank deficit that should be available under the Company's banking provision of its Chapter 30 plan. For that reason, I dissent from approval of the Staff recommendation regarding Lackawaxen's currently pending 2017 PSI proposal.

I. Lackawaxen's Chapter 30 Plan Banking Provision

The Company's Chapter 30 Plan approved by this Commission was subject to extensive litigation, and included participation by the Commission's Office of Trial Staff, now Investigation and Enforcement, the Office of Consumer Advocate, and AT&T. The Company's banking provision as included in that Plan, and as it continues to this day, was not contested in our final order. It states as follows:

7. If the Company elects not to increase its rates by the full amount allowed under the terms of the Plan, including exogenous events in a given year, the Company may increase its rates in future years to reflect the full amount of the allowable increases previously deferred. The Company may bank increases for a period not to exceed **four (4) consecutive years**. The Company may not bank decreases, but may offset increases with decreases for banking purposes. The Company will not, however, attempt to recover any revenues foregone as a result of deferring the increase in prices.³

³ See Streamlined Form of Regulation and Network Modernization Plan of Lackawaxen Telephone Company, Docket No. P-00981432 (Original Plan filed pursuant to the Pennsylvania Public Utility Commission Opinions and Orders entered January 20, 2000, March 30, 2000, and December 20, 2000), *as amended* March 4, 2005 by Chapter 30 as amended, reenacted, and revised August 15, 2014) (emphasis added) at 11-12. An omitted footnote to this section was inserted in an August 2014 revision to the Plan. It addresses the Company's use of the SPI for State Tax Adjustment Surcharge (STAS) changes; it does not affect the allowed banking period of **four consecutive years**.

II. Lackawaxen's History of PSI Banks

A. First PSI Filing - 2006

Under the terms of its approved Plan, Lackawaxen filed its first PSI filing in May 2006. In the 2006 filing, the Company was authorized to implement a revenue increase of \$45,054. It chose to implement rate increases to recover an additional \$13,179 in revenues and banked the remaining allowed increase of \$31,875.⁴ Our order approved the PSI, noting that the Company was allowed to bank increases for a period not to exceed four consecutive years.⁵

B. Second PSI Filing - 2007

In May 2007, the Company filed its second PSI filing. In the 2007 filing, the Company was authorized to implement a revenue increase of \$53,668. By 2007, the authorized four-year bank of its 2006 filing had used the first year of its four-year bank. The Company chose neither to implement that increase nor to use any of its 2006 banked amount. The PSI Bank Status Report approved in that filing appeared as follows:

PSI/SPI FILING	EXPIRATION	BANKED ANNUAL REVENUE
2006	Use by 2010	\$32,339 ⁶
2007	Use by 2011	<u>\$53,668</u>
TOTAL BANKED REVENUE		\$86,007⁷

Source: Attachment 3, Company Bank Status Report.

C. Third PSI Filing - 2008

In May 2008, the Company filed its third PSI filing. In the 2008 filing, the Company was authorized to implement a revenue increase of \$43,407. Through the authorized four-year bank of its 2006 filing, by 2008 the Company had used the second year of its 2006 four-year bank. The Company chose neither to implement the newly authorized 2008 increase nor to use any of the 2006 or 2007 banked amounts. The PSI Bank Status Report approved in that filing appeared as follows:

PSI/SPI FILING	EXPIRATION	BANKED ANNUAL REVENUE
2006	Use by 2010	\$32,339
2007	Use by 2011	\$53,668
2008	Use by 2012	<u>\$43,407</u>
TOTAL BANKED REVENUE		\$129,414⁸

⁴ Source: Attachment 3, Company PSI Adjustment Calculation (confidential page, not confidential number).

⁵ Order entered June 22, 2006.

⁶ The discrepancy between the 2006 bank reported in 2006 and that bank as restated in the 2007 filing is not apparent from the filing.

⁷ Order entered July 2, 2007.

D. Fourth PSI Filing - 2009

In May 2009, the Company filed its fourth PSI filing. In the 2009 filing, the Company was authorized to implement a revenue increase of \$35,668. Through the authorized four-year bank of its 2006 filing, the Company had by its 2009 filing used the third of its four-year bank. The Company chose neither to implement the newly authorized 2009 increase nor to use any of the 2006, 2007, or the 2008 banked amounts. The PSI Bank Status Report approved in that filing appeared as follows:

PSI/SPI FILING	EXPIRATION	CURRENT BANKED REVENUE	THIS FILING		REMAINING BANKED REVENUE
			DEPOSIT	WITHDRAWAL	
2006	Use by 2010	\$32,339	\$0		\$32,339
2007	Use by 2011	\$53,668	\$0		\$53,668
2008	Use by 2012	\$43,407	\$0		\$43,407
2009	Use by 2013		\$35,668	\$0	\$35,668
PRIOR TOTAL BANKED REVENUE		\$129,414			
NEW TOTAL BANKED REVENUE					\$165,082

Source: Attachment 3, Company Bank Status Report

Thus, in our order approving the 2009 PSI filing, we authorized the carry-over of the 2006 PSI increase to use by 2010, leaving the 2006 authorized increase available for one more year, or the fourth of the four-year bank.⁹

E. Fifth PSI Filing - 2010

In May 2010, the Company filed its fifth PSI filing. In the 2010 filing, the Company was authorized to implement a revenue increase of \$6,503. The Company's 2010 banking report approved in our order allowed the Company to use the 2006 bank by the May 2010 PSI filing or lose it, having reached the end of its four consecutive years banking period. The Company chose neither to implement the newly authorized 2010 increase nor to use any of the 2006, 2007, 2008, or 2009 banked amounts because the Company did not implement any rate increases. The 2006 bank then lapsed, and the Company banked the newly-authorized 2010 revenue increase. The PSI Bank Status Report approved in that filing appeared as follows:

PSI/SPI FILING	EXPIRATION	CURRENT BANKED REVENUE	THIS FILING		REMAINING BANKED REVENUE
			DEPOSIT	WITHDRAWAL	
2007	Use by 2011	\$53,668	\$0		\$53,668
2008	Use by 2012	\$43,407	\$0		\$43,407
2009	Use by 2013	\$35,668	\$0		\$35,668
2010	Use by 2014		\$6,503	\$0	\$6,503
PRIOR TOTAL BANKED REVENUE		\$165,082 ¹			
NEW TOTAL BANKED REVENUE					\$139,246

¹ The 2006 banked amount of \$32,339 has lapsed with this filing and has been removed from this sheet, leaving total banked revenues available prior to this year's bank, of \$132,743.

Source: Attachment 3, Company Bank Status Report (emphasis added).

⁸ Order entered July 1, 2008; Source: Attachment 3, Company Bank Status Report.

⁹ Order entered June 23, 2009.

As we stated in approving the Company's PSI Filing:

[T]he Company is retiring an unused amount of \$32,339 authorized to it under its 2006 PSI/SPI Filing in accordance with the banking terms outlined in its Chapter 30 Plan.² Previously the Company's cumulative bank was \$165,082. Retiring the 2006 Banked amount and adding in the 2010 Banked amount of \$6,503 creates a new cumulative bank of \$139,246.

²Pursuant to the Company's Chapter 30 Plan, **unused banked amounts expire after a 4-year banking period.**¹⁰

F. Sixth PSI Filing - 2011

In May 2011, the Company filed its sixth PSI filing. In the 2011 filing, the Company was authorized to implement a revenue increase of \$12,199. As we had approved in all prior years, the authorized four-year bank of its 2007 authorized revenue increase had to be used by its last available opportunity, the May 2011 PSI filing, which was the fourth and final year of its four-year bank, or it would lapse. This was consistent with our approval of the 2007 authorized increase in 2007, 2008, 2009, and 2010.

For the first time under its Chapter 30 Plan the Company chose to implement a minor revenue increase of \$700. Because the 2007 banked increase would lapse in 2011, the Company proposed to implement the increase in 2011 by withdrawing \$700 from the 2007 bank and allowing the remainder to lapse. The Company also then chose to bank the entire newly authorized 2011 increase of \$12,199. The PSI Bank Status Report approved in that filing appeared as follows:

PSI/SPI FILING	EXPIRATION	CURRENT BANKED REVENUE	THIS FILING		REMAINING BANKED REVENUE
			DEPOSIT	WITHDRAWAL	
2007	Use by 2011	\$53,668		\$700	\$ 0
2008	Use by 2012	\$43,407		\$0	\$43,407
2009	Use by 2013	\$35,668		\$0	\$35,668
2010	Use by 2014	\$6,503		\$0	\$ 6,503
2011	Use by 2015		\$12,199		\$12,199
PRIOR TOTAL BANKED REVENUE		\$139,246 ¹			
NEW TOTAL BANKED REVENUE					\$97,777

¹ The \$52,968 remaining in the Company's 2007 bank [after withdrawal of \$700] **has lapsed with this filing** and has been removed from this sheet, leaving total banked revenues available prior to this year's bank, of \$85,578.
Source: Attachment 3, Company Bank Status Report (emphasis added).

¹⁰ Order entered June 4, 2010 (emphasis added).

In our order approving this 2011 filing, we allowed the Company to implement an increase by withdrawing its proposed \$700 revenue increase from its 2007 bank, and only after the withdrawal allowing the remainder of that bank to lapse, and then banking for the first time the newly authorized 2011 increase which, as it was first banked and approved with this filing, had four years, or until 2015, to be used or lapse. As we stated in approving the Company's 2011 PSI Filing:

The banking methods Lackawaxen uses in its 2011 filing are consistent with its Amended Chapter 30 Plan. As discussed above, Lackawaxen is using previously banked revenue amounts to implement its proposed increases in its 2011 filing. The Company will bank the entire \$12,199 available to it in its current filing for future use. When combined with the current cumulative bank of \$85,578, a new cumulative bank of \$97,777 is produced and will be carried forward.¹¹

In addition to noting the withdrawal from the 2007 banked amount for the 2011 revenue increase and the bank of the then newly authorized 2011 revenue increase in Attachment 3 to its filing, the Company also noted withdrawal of the \$700 from the 2007 bank in its Executive Summary ("This revenue increase will be drawn from Lackawaxen's 2007 revenue bank, the remainder of which will lapse, and the Company will bank the total allowable 2011 revenue increase as authorized under and in compliance with the Company's Chapter 30 Plan."); and its Attachment 2 ("Proposed Revenue Adjustment, \$700 (from 2007 bank).")

G. Seventh PSI Filing – 2012

In May 2012, the Company filed its seventh PSI filing. In the 2012 filing, the Company was authorized to implement a revenue increase of \$24,110. As demonstrated in the banking report included in the Company's 2012 filing and approved in our order, the Company had to use the 2008 bank by 2012 or lose it. In other words, as we had approved in all prior years, the authorized four-year bank of its 2008 authorized revenue increase had to be used by or in the May 2012 PSI filing, the fourth and final year of its four-year bank, or it would lapse. This was consistent with our approval of the 2008 authorized increase in 2008, 2009, 2010, and 2011.

The Company chose neither to implement the newly authorized 2012 increase nor to use any of the 2008, 2009, 2010, or 2011 banked amounts because it proposed no rate increases. Because the Company did not use it, in its filing the Company reflected the 2008 bank remaining as \$0 (lapsed) by removing the \$36,222 from its available remaining banked revenue and banked the newly-authorized 2012 revenue increase. The PSI Bank Status Report approved in that filing appeared as follows:

¹¹ Order entered June 9, 2011, at 4 (emphasis added).

PSI/SPI FILING	EXPIRATION	CURRENT BANKED REVENUE	THIS FILING		REMAINING BANKED REVENUE
			DEPOSIT	WITHDRAWAL	
2008	Use by 2012	\$36,222	\$0		\$ 0
2009	Use by 2013	\$35,668	\$0		\$35,668
2010	Use by 2014	\$ 6,503	\$0		\$ 6,503
2011	Use by 2015	\$12,199			\$12,199
2012	Use by 2016	\$24,110			\$24,110
PRIOR TOTAL BANKED REVENUE		\$ 90,592 ¹			
NEW TOTAL BANKED REVENUE					\$78,480

¹ The Company's previously reported banked revenue of \$97,777 was reduced to \$90,592 in the Company's 2011 STAS filing. The remainder of the Company's 2008 bank **has lapsed with this filing** and has been removed from this sheet.

Source: Attachment 3, Company Bank Status Report (emphasis added).

In our order approving this 2012 filing, we stated as follows:

The banking methods Lackawaxen uses in its 2012 filing are consistent with its Amended Chapter 30 Plan. The Company will bank the entire \$24,110 available in its current filing for future use. When combined with the current cumulative bank of \$54,370, a new cumulative bank of \$78,480 is produced and will be carried forward.¹²

H. Eighth PSI Filing – 2013

In May 2013, the Company filed its eighth PSI filing. It is in this 2013 filing, with no explanation available from the record and no changes having been made to the Company's Chapter 30 Plan, that the Company's banking procedure for the first time deviated from its past practice, and our action deviated from our past orders.

In the 2013 filing, the Company was authorized to implement a revenue increase of \$15,730. The banking report included in the Company's 2013 filing appears facially inconsistent. As had been the prior practice approved in our prior orders, the Company had to propose using the 2009 banked increase amount of \$35,668 by the May 2013 PSI filing or lose it. In other words, as we had approved in all prior years, the authorized four-year bank of its 2009 authorized revenue increase had to be used by or in the May 2013 PSI filing, the fourth and final year of its four-year bank, or it would lapse. That would have been *consistent* with our approval of the 2009 authorized increase in 2009, 2010, 2011, and 2012.

Simultaneous with the Company's representation in its now reformatted bank status report included with its SPI report, however, the Company also showed the 2009 bank as lapsed notwithstanding the fact that the Company proposed to implement rate increases designed to recover increased revenues of \$11,556. Instead of implementing those rate increases from the 2009 \$35,668 banked amount and *then* allowing the remainder to lapse as we had approved in prior orders, the Company "retired" that entire 2009 bank and implemented the revenue increase

¹² Order entered June 7, 2012, at 4 (emphasis added).

by drawing down the entire 2010 bank and part of the Company's 2011 bank, leaving the remainder of the 2011 increase banked, the 2012 increase banked, and depositing the 2013 \$15,730 allowable increase in the bank for the first time, for a total new banked revenue allowance of \$46,986.

As demonstrated from this historical review, Lackawaxen's authorized PSI increases previously had been approved to remain banked through four consecutive years. They were then made available for use or loss on the fifth anniversary of the filing that produced the bank, effectuating the "four consecutive year" period approved in the Company's Chapter 30 Plan. Nonetheless, we approved this filing as consistent with the Company's Chapter 30 Plan even though it was markedly inconsistent with our practice since 2006. It was also specifically inconsistent with our 2012 Order in which we approved for use in 2013 the 2009 bank of \$35,668. It appears, however, that the Company acquiesced to this deviation.

I. Subsequent 2014, 2015, and 2016 PSI Filings and the Pending 2017 PSI Filing

In subsequent PSI filings, the Company continued to use its historic banked amounts in a manner that extinguished the four-year bank at the end of a three-year period. For example, in the 2016 PSI Filing, the Company implemented a total of \$36,624 in rate increases, drawing from the 2013, 2014, and part of the 2015 banked amounts while losing the \$1,946 remaining in the 2012 bank even though we had previously approved the 2012 authorized PSI increase to be banked through and *used in* the May 2016 PSI filing.

III. Conclusion

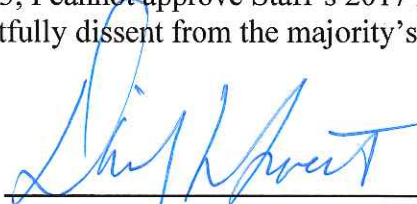
As a consequence of this unexplained change to the Company's banking procedure, the Company finds itself in this year's proposed PSI filing with insufficient banked past PSI and currently authorized PSI increases to implement its desired rate increases. It is unclear whether the Company would have had sufficient authorized banked increases in this 2017 filing to implement all its desired rate increases had the full four consecutive years banking process that we had approved from 2006 through 2012 been continued. However, unless it chooses to amend its Chapter 30 Plan and we approve that amendment, the Company should continue to have available to it the full four consecutive year banking provision we approved in our 2000 Order approving its Chapter 30 Plan and approved as a practice from 2006 through 2012.

To illustrate, if, for the sake of simplicity, we were to approve for the Company a one-year bank in 2017, by necessity the Company would have to be able to use the 2017 authorized revenue increase in 2018 or the one-year bank would be illusory. The same construct must apply to the Company's approved four-year bank. Absent any language in the Company's Plan providing any different application of the bank, and I find none, a four-year bank must remain available for use only after the passage of four full consecutive years, otherwise it is an illusory four-year bank.¹³

¹³ In other cases, we have approved PSI filings deploying the banking procedure consistent with Lackawaxen's practice of allowing a four-year bank through and including in the filing made after the fourth consecutive year. For example, in our order approving the 2011 PSI filing of the Bentleyville Telephone Company, we acknowledged the

I recognize that Staff interprets the Company's banking provision differently. However, based on the Company's past filings and our past approvals through 2012, and without any explanation for a change, I believe the accurate interpretation of a four-year bank is that the Company must have the opportunity to use a banked increase up through the fifth anniversary date of its approved bank but no more. I dissent today only with respect to the Lackawaxen 2017 PSI Filing because only in this case was it apparent that premature elimination of the four-year banked amounts worked a hardship to the Company. Other incumbent local exchange carriers operating under a Chapter 30 Plan, notably Verizon and CenturyLink, have the ability to implement annual price increases under their Chapter 30 Plans without any time limitations on banking.¹⁴ Perhaps Lackawaxen and similarly-situated small rural LECs should consider petitioning this Commission for similar relief if they find their current plans either are ambiguous, or, as I conclude, are being ambiguously and inconsistently interpreted.

Accordingly, based upon a thorough review of the Lackawaxen's Chapter 30 Plan, its filing history, and our approvals prior to 2013, I cannot approve Staff's 2017 PSI recommendation. For these reasons, I respectfully dissent from the majority's decision.



David W. Sweet, Commissioner

June 14, 2017

company's use of the 2007 banked revenue increase for an intervening STAS adjustment and, with respect to the remainder of the 2007 bank, noted the retirement of the remainder of the 2007 *in* the 2011 proceeding. As we stated then:

In its 2011 filing, the Company did not file for any rate increases, but indicated that the entire allowed increase of \$16,674 authorized under this filing will be banked in accordance with its Plan. Bentleyville's 2007 banked revenue of \$37,147 was reduced by \$12,528 with its 2010 annual State Tax Adjustment Surcharge (STAS) Tariff filing. The Company is *now* retiring the remainder of its 2007 banked revenue of \$24,629 per the banking terms outlined in its Chapter 30 Plan.

Order entered June 13, 2011, Docket No. P-2011-2236760 (emphasis added).

We also approved an increase in 2011 from a 2007 banked increase for the Hickory Telephone Company:

The banking methods Hickory uses in its 2011 filing are consistent with its Amended Chapter 30 Plan. Previously, the Company's cumulative bank was \$58,476. In implementing its rate increases, **Hickory will use \$20,336 consisting of \$10,268 from 2007** and \$10,068 from 2008. The Company will bank the entire \$7,395 available under its 2011 PSI filing, thereby producing a new cumulative bank of \$45,535 to be carried forward.

Order entered June 9, 2011, Docket No. R-2011-2237763 (emphasis added).

¹⁴ See *Verizon Pennsylvania Inc. price Change Opportunity Filing*, Docket Nos. P-00930715F1000, R-00051228 (Public Meeting March 2, 20016); *CenturyLink Chapter 30 Plan, Petition of the United Telephone Company of Pennsylvania for Approval under Chapter 30 and Act 183 of the Public Utility Code of an Alternative Regulation and Network Modernization Plan*, Docket No. P-00981410F1000.