



**CenturyLink™**

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April 14, 2020

**VIA ELECTRONIC MAIL**

Honorable Joel H. Cheskis and Honorable Benjamin Myers  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
400 North Street  
Keystone Bldg.  
Harrisburg, PA 17101

Re: The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink  
2018 Annual Price Stability Index/Service Price Index Report Filing –  
Docket No. R-2018-3004019

The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink  
2019 Annual Price Stability Index/Service Price Index Report Filing –  
Docket No. R-2019-3012238

Office of Consumer Advocate v. The United Telephone Company of  
Pennsylvania LLC d/b/a CenturyLink  
Docket Nos. C-2018-3005400 and C-2019-3102876

Your Honors:

On behalf of The United Telephone Company of Pennsylvania, LLC d/b/a CenturyLink (“CenturyLink”) enclosed please find the Statement of Mark D. Harper. Please note that Attachment 1 to the Statement has been marked as CONFIDENTIAL. Mr. Harper references an Opinion entered July 16, 1999 at PA PUC Docket No. P-00981410. A courtesy copy of the Opinion (from LEXIS) is attached.

CenturyLink requests that the attached Statement of Mark D. Harper be made part of the record in this consolidated proceeding. CenturyLink agrees to waive cross examination of Statements submitted by the Office of Consumer Advocate and Office of Small Business Advocate. The waiver of cross examination should not be construed as supporting any particular claim or argument in those Statements. CenturyLink continues to support the proposed Settlement and a prompt resolution in this matter.

Should you have any questions, please do not hesitate to contact me at 717-775-3088.

Sincerely,

Sue Benedek

ZEB/sac

cc: All Persons on the attached Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The United Telephone Company of Pennsylvania LLC	:	
d/b/a CenturyLink 2018 Annual Price Stability	:	R-2018-3004019
Index/Service Price Index Report Filing	:	
Office of Consumer Advocate	:	
v.	:	
The United Telephone Company of Pennsylvania LLC	:	C-2018-3005400
d/b/a CenturyLink	:	
The United Telephone Company of Pennsylvania LLC	:	
d/b/a CenturyLink 2019 Annual Price Stability	:	R-2019-3012238
Index/Service Price Index Report Filing	:	
Office of Consumer Advocate	:	
v.	:	
The United Telephone Company of Pennsylvania LLC	:	C-2019-3012876
d/b/a CenturyLink	:	

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**CERTIFICATE OF SERVICE**

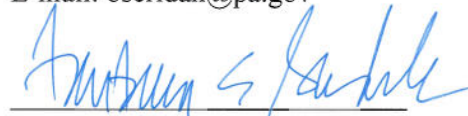
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I hereby certify that I have this 14th day of April, 2020, served a true copy, via electronic mail, of the Statement of Mark D. Harper, upon parties of record in accordance with the requirements of 52 Pa.

Code §1.54:

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The United Telephone Company of Pennsylvania LLC :  
d/b/a CenturyLink 2018 Annual Price Stability : R-2018-3004019  
Index/Service Price Index Report Filing :

Office of Consumer Advocate :  
v. :  
The United Telephone Company of Pennsylvania LLC : C-2018-3005400  
d/b/a CenturyLink :

The United Telephone Company of Pennsylvania LLC :  
d/b/a CenturyLink 2019 Annual Price Stability : R-2019-3012238  
Index/Service Price Index Report Filing :

Office of Consumer Advocate :  
v. :  
The United Telephone Company of Pennsylvania LLC : C-2019-3012876  
d/b/a CenturyLink :

**STATEMENT  
OF  
MARK D. HARPER**

**ON BEHALF OF  
THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA LLC D/B/A  
CENTURYLINK**

**APRIL 14, 2020**

**I. QUALIFICATIONS**

1. My name is Mark D. Harper. My business address is 100 CenturyLink Drive, Monroe, Louisiana, 71203. My current position is Senior Director Public Policy for CenturyLink.
2. I received a Bachelor of Science degree with an emphasis in Finance from Washington State University in Pullman, Washington in 1983. After college, I was employed for four (4) years in the accounting firm of Ernst & Young in its Telecommunications Group. In that role, I provided financial and regulatory consulting services to numerous telephone companies of all sizes. In 1987, I accepted a position with United Telecommunications, which ultimately became Sprint. For the last 33 years whether at Sprint and its successors or CenturyLink, I have been directly involved with the development and implementation of various state and federal policies impacting the company and with company compliance with state and federal requirements.
3. In my current position, I am responsible for the development and implementation of regulatory and legislative policy and strategy, including regulatory matters and proceedings affecting CenturyLink in the Commonwealth of Pennsylvania. In the course of my 33 plus years in the telecommunications industry, I have directed and assisted in the transition to and the implementation of myriad changes in telecommunication laws and policies. I also have presented written and oral testimony and statements before state commissions and legislative committees in the states of Iowa, Kansas, Missouri, Nebraska, New Jersey, Pennsylvania, Texas, and Virginia on various telecommunications topics including access charges, universal service policies and funds, and competition.
4. This Statement was prepared by me. I have attached a verification to my Statement. My Statement is submitted on behalf of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (hereinafter “CenturyLink” or “United of PA”).

**II. PURPOSE OF STATEMENT**

5. On or about January 23, 2020, all parties to this consolidated proceeding submitted a Settlement package to the presiding Administrative Law Judges (“ALJs”).
6. On February 10, 2020, the presiding ALJs notified the parties that they had concerns about the Settlement that they desired to discuss with the parties at an in-person, on-the-record further prehearing during the first week of March.
7. On March 10, 2020, a telephonic further prehearing was held to discuss the concerns of the ALJs and to determine options given possible rejection of the Settlement by the ALJs. On March 13, 2020, the parties notified the ALJs that they were willing to proceed with either: (1) The ALJs writing a Recommended Decision and following the normal course of filing exceptions and reply exceptions; or (2) The parties submitting written statements from their respective experts on the feasibility of quantifying an impact from the Tax Change and

Jobs Act (“TCJA”) and implementing the exogenous events provision in CenturyLink’s Amended Chapter 30 Plan. Based upon Agreement of the Parties and upon approval of the presiding ALJs, written statements would be made a part of the record with cross examination by the parties waived. At CenturyLink’s request, the March 31, 2020 due date for the Statements was extended to April 14, 2020 due to shifting priorities arising from the Coronavirus.

8. My understanding is that the presiding ALJs in this consolidated proceeding had concerns with the Settlement given the Commission’s October 25, 2018 Order at Docket M-2018-2641242. My understanding is that this proceeding involves the consolidated formal complaints of the Office of Consumer Advocate (“OCA”) and the interventions of the Office of Small Business Advocate (“OSBA”).
9. While I am not an attorney, I view the proposed Settlement in this consolidated proceeding as consistent with the Commission’s October 25, 2018 Order at Docket M-2018-2641242. Based upon my reading of the Commission’s October 25, 2018 Order, the Commission in that Order temporarily stayed its August 9 Secretarial Letter on the issue of whether “the tax rate reductions in the TCJA are qualifying exogenous events pursuant to the ILECs’ Commission approved Chapter 30 plans.” October 25, 2018 Order at p. 5 Had the Commission at Docket M-2018-2641242 intended to require specific evidence in this proceeding, then the Commission in its October 25, 2018 Order could have required a bureau of the Commission to participate in this proceeding. Through this Statement I have addressed the infeasibility under CenturyLink’s Amended Chapter 30 Plan and given CenturyLink’s circumstances “to resolve whether any TCJA tax savings should be accounted for” relative to CenturyLink. October 25, 2018 Order at p. 8. And, the parties presented the Settlement with public benefits.
10. The main purpose of this Statement is to address the following: (1) The feasibility of quantifying an impact from the TCJA; and (2) The feasibility of implementing the exogenous events provision in CenturyLink’s Amended Chapter 30 Plan. These matters are addressed at Section III of my Statement.
11. Finally, at the March 10, 2020 further prehearing, the ALJs had questions of CenturyLink regarding the banking provision of CenturyLink’s Amended Chapter 30 Plan and CenturyLink’s current count of customer counts. I address these questions in Section IV of my Statement.

### **III. CENTURYLINK’S STATEMENT**

#### **A. The feasibility of quantifying an impact from the TCJA.**

12. The TCJA of 2017 is a comprehensive package of changes to federal tax requirements, including many changes impacting tax amounts beyond the tax rate. Analyzing the potential impacts of the TCJA specifically for Pennsylvania and specifically for the

intrastate services that are subject to the PSM would be exceptionally complex, requiring a number of assumptions and parameters that would need to be identified and agreed upon, and ultimately leading an unneeded exercise because CenturyLink did not pay federal income taxes on 2018 and will not for several years to come.

13. In my opinion, quantifying the TCJA's impact on CenturyLink particularly as it relates to the rates for the services within CenturyLink's PSM would be incredibly difficult and controversial and is unnecessary for several reasons.
14. First, CenturyLink, unlike fixed utilities in Pennsylvania, has been subject to a price cap form of regulation for over twenty years and has not had a litigated base rate case for many years prior to Commission approval of its Chapter 30 Plan. On October 16, 1998, CenturyLink's predecessor in interest filed a petition seeking approval of an alternative regulation plan and network modernization plan (CTL's Chapter 30 Plan) under Chapter 30 of the Public Utility Code. The Commission adopted a partial settlement and authorized the Company to implement an alternative plan of regulation and, as pertinent to this Statement, the Plan included a Price Stability Plan (PSP) which incorporated the price cap technique developed by another telephone company (Commonwealth) in its network modernization plan at P-00961024. *Re: United Telephone Company of Pennsylvania* Docket No. P-00981410, Order entered July 16, 1999.
15. A portion of the Commission's 1999 Order, the Commission succinctly stated as follows regarding CenturyLink's Chapter 30 Plan:

**In general, a price cap is linked to an aggregate measure of inflation like the Gross Domestic Product Price Index (GDP-PI) or the Consumer Price Index (CPI) with a productivity offset.** Provisions for exogenous or external events are also included in the price cap formula. **This system of regulation substitutes price caps for rate of return regulation.** Prices subject to competition are excluded from Price Cap Regulation. Commission Opinion and Order at Docket No. P-00981410 at page 9 (LEXIS copy) (emphasis added).
16. Similarly, Act 183 the statutory successor to Chapter 30, defines "Alternative form of Regulation" as: A form of regulation of telecommunications services other **than the traditional rate base or rate of return regulation**, including a streamlined form of regulation, as approved by the commission. 66 Pa.C.S. § 3012 (emphasis added).
17. Pursuant to Act 183 of 2004, P.L. 1398 (66 Pa. C.S. §§ 3011-3019), CenturyLink filed its amended Chapter 30 Plan, at Docket No. P-00981410. *Petition for Amended Alternative Regulation and Network Modernization Plan of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink*, Docket No. P-00981410F1000 (Order entered June 23, 2005). As pertinent to this proceeding, the Price Stability Plan (PSP) portion of the Company's Amended Chapter 30 Plan sets forth a Price Stability Mechanism (PSM),

which constitute the price cap model principles and the procedures applicable to changes in the Company's rates. *See*, CenturyLink Amended Chapter 30 Plan at pp. 15-25 (Part 3 - Price Stability Plan for Noncompetitive Services). CenturyLink's PSM provisions, including the price cap model, and the exogenous event provision did not change with the passage of Act 183 and the filing of CenturyLink's Amended Chapter 30 Plan.

18. Alternative regulation was a complete substitute for rate of return regulation in Pennsylvania for the subset of intrastate services within CenturyLink's price cap model. This is an important underlying concept. I am highlighting it because the concept of a price cap model utilizing, as the Commission in CenturyLink's 1999 Chapter 30 Order noted, aggregate measures like the GDP-PI are by their nature designed to have price caps reflect the aggregate changes in cost inputs over time like broad tax changes that cut across the economy such as the TCJA and not to isolate a single event. A pricing model utilizing a formula and an aggregate measure (such as the GDP-PI component in CenturyLink's pricing cap model) that has been operating for over 20 years cannot be easily unraveled for one component, like the TCJA. The underlying information and data, as existing for fixed utilities, does not exist for CenturyLink. CenturyLink does not have a defined rate base or allowable expenses and its prices are not linked to anything similar.
19. Even if somehow one could conjure an approach, as a person who has had 37 years in the telecommunications industry, I would immediately question the integrity and confidence of those results. It would be layer on layer of assumptions and guesses. CenturyLink has been subject to a price cap form of regulation in Pennsylvania for far too long to be able to access the data and information needed to quantify the impact, if any, from the TCJA that applies to the subset of rates in CenturyLink's PSM as has been done by the Commission for regulated cost-based rates of fixed utilities.
20. Second, attempting to quantify an impact from the TCJA upon CenturyLink is further complicated by the fact that CenturyLink does not have a presumed federal tax obligation. CenturyLink, an ILEC in Pennsylvania, does not file federal income tax returns and does not have any federal income tax obligations. CenturyLink, Inc. is the ultimate parent of various operating subsidiaries, including CenturyLink, or United of PA. CenturyLink, Inc., files a consolidated federal income tax return on behalf of all qualifying entities and subsidiaries of CenturyLink, Inc. Due to offsetting Net Operating Losses (NOLs) applied on the parent company federal tax return, however, CenturyLink Inc. did not have a cash tax obligation for federal income taxes in 2018 and does not anticipate have a federal income tax liability for several years to come.
21. The amount of CenturyLink, Inc.'s federal income taxes paid in recent years has been reduced significantly or completely offset by net operating loss carry forwards that have been utilized. As set forth in CenturyLink, Inc.'s 2019 Annual 10-K, at December 31, 2019, CenturyLink, Inc. reported federal net operating losses of \$6.2 billion. CenturyLink, Inc. expects to use substantially all of these tax attributes to reduce future federal tax liabilities, although the timing of that use will depend upon our future earnings and future

tax circumstances. Therefore, CenturyLink expects little to no impact from the TCJA on the company's federal tax obligations for calendar year 2018 and several subsequent tax years.<sup>1</sup>

22. In other words, CenturyLink did not experience any savings from the TCJA. If one wanted to presume savings and attempt to calculate hypothetical savings, that exercise would fall apart at multiple levels. Unlike fixed utilities where rates are tied to a recently computed revenue requirement that includes an allowance for taxes, such a linkage was broken many years ago for CenturyLink and for good reason. There is no one-to-one connection between a revenue requirement calculation and CenturyLink's rates. CenturyLink functions in a competitive marketplace and the PSM was designed to allow some pricing flexibility and incentive to increase efficiency for alternatively regulated carriers like CenturyLink. The results have certainly been good for the consumer. CenturyLink's prices for services within the basket have been constrained by the price cap formula and CenturyLink's competitors are now the voice service provider for over 75% of the housing units in CenturyLink's serving area. Therefore, the quantification exercise fails both in terms of necessity and in terms of competitive equity. CenturyLink's competitors will not be forced to arbitrarily reduce rates but instead will have the freedom to choose how to reflect any tax savings in its product offerings or investments. The exercise would further fail because as demonstrated by CenturyLink's discovery responses in the case, CenturyLink is experiencing negative intrastate net operating income, thus no theoretical TCJA savings.
23. CenturyLink been subject to alternative regulation for decades in Pennsylvania making it infeasible to access isolated data points as addressed above. The TCJA was not just an income tax rate reduction. Given the complicated nature of the TCJA, along with the federal tax filing structure and the utilization of NOLs, it would be extremely difficult and highly controversial to develop an analytically sound or reasonable adjustment for CenturyLink. There is no credible and viable method, of which I am aware, to create a fictional federal tax obligation for the rates in question given CenturyLink's circumstances.
24. Third, it is important to underscore that CenturyLink operates as an incumbent local exchange company (ILEC) in 37 states. CenturyLink's operating companies are subject to some type of alternative regulation scheme in virtually all of these states. The TCJA was enacted near the end of 2017. To the best of my knowledge, information and belief, only one other state has an active proceeding examining the TJCA under its applicable statutes and regulatory schemes. The other states have not acted, which in my opinion is consistent with the competitive marketplace and that a cost-based, rate of return reality cannot be readily applied.
25. In sum, while the TCJA may have mathematically reduced the corporate rate, it would be extremely difficult and highly controversial to identify and determine with confidence and integrity any TCJA impact given CenturyLink's circumstances. Moreover, as addressed

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<sup>1</sup> <https://ir.centurylink.com/financials/sec-filings/default.aspx>

below, even if an impact could be confidently assumed for purposes of quantifying an impact for the services in question of the TCJA, the only way to recognize an impact from TCJA is that it must qualify as an exogenous event under CenturyLink's Chapter Amended 30 Plan. CenturyLink maintains that it does not.

**B. The feasibility of implementing CenturyLink's exogenous events provision due to the TCJA.**

26. As briefly addressed above, CenturyLink's PSP as approved in 1999, is a price cap model form of alternative regulation. As pertinent to this proceeding, CenturyLink's PSP employs the Price Stability Index (PSI) to calculate the allowable change in prices for non-competitive services based upon the annual change in GDP-PI, as adjusted for exogenous events.
27. For 2018, the service that are subject to the PSP comprise approximately 26% of CenturyLink's intrastate revenues.
28. The TCJA does not qualify as an exogenous event. As PTA's Comments at Docket No. M-2018-2641242, at pages 13-14, correctly noted:

GDP-PI measures the changes in prices of goods and services that are included in the U.S. Gross Domestic Product. . . .Should expenses be reduced across the economy, prices are lowered in the national economy, which, in turn, leads to a lower GDP-PI. Thus, treating the TCJA as an exogenous event would result in doubling the financial impact on the PTA Companies – once through a lower GDP-PI and a second time by implementing the change based on the Companies' specific tax circumstances.
29. The Commission also has already determined (for the Verizon companies) that corporate income tax rate changes - like the TCJA at issue herein – are not a qualifying exogenous event.<sup>2</sup> CenturyLink recognizes that the Commission can change its policy and prior orders. I am not an attorney, but there does not appear to be anything in the TCJA meriting that the Commission change course. The TCJA was not unique to the telecommunications industry but is a tax change designed to impact all industries and companies across the nation.
30. On this exogenous event issue, the settling parties appear to disagree as to whether TCJA qualifies as an exogenous event under CenturyLink's Amended Chapter 30 Plan. CenturyLink maintains that the TCJA does not qualify as an exogenous event. However, CenturyLink supports the proposed Settlement and supports the public interest benefits

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<sup>2</sup> *Re: Bell Atlantic – Pennsylvania, Inc.'s Petition and Plan for Alternative Form of Rate Regulation Under Chapter 30*, Docket No. P-00930715; P-00930715C001; and P-00930715C002 (Order entered June 28, 1994), slip op. at 114-122.

under that Settlement in order to reach an amicable result and avoid contentious continued litigation.

31. In relevant part, the exogenous event provision in CenturyLink’s Amended Chapter 30 Plan provides as follows:

Notwithstanding any other limitations specified herein, the Company, or any other party, may request that the Commission make special revenue adjustments within the scope of the PSI to recognize significant exogenous events that are outside the Company’s control as follows:

- (a) Jurisdictional shifts in cost recovery when interstate revenues actually change;
- (b) Subsequent state or federal regulatory and legislative changes which affect revenues or expenses, to the extent they are not captured in GDP-PI; and
- (c) Unique changes in the telephone industry that are not reflected in the overall inflation factor as measured by GDP-PI.

For example, the institution of a universal service fund in Pennsylvania, and any requirement that the Company participate as a contributor, shall be a qualifying exogenous event. Exogenous revenue changes shall be flowed through on a dollar-for-dollar basis, using the most recent per books revenue levels, without any investigation or review of earnings. Exogenous expense changes shall be flowed through, dollar-for-dollar, on the basis of review of that single expense item for which an exogenous change is sought, without any investigation or review of earnings, and using the most recent per books level of such expense. Results shall be adjusted to recognize the impact of gross receipts taxes. The Tariff Filing Process and Part 3, Section A, paragraph 8 herein shall apply to any such exogenous changes.

32. The TCJA does not qualify as an exogenous event under CenturyLink’s exogenous provision. First, the TCJA clearly does not create a jurisdictional shift in cost recovery due to interstate revenue change, as would be required for subpart (a) of CenturyLink’s exogenous event language to apply.
33. As for subparts (b) and (c) of CenturyLink’s exogenous event provision, both are only relevant to extent that the event is not “captured” or “reflected” in GDP-PI. The TCJA clearly is not unique change in the telephone industry. Changes in federal corporate tax rates are applicable to all companies and firms throughout the economy and thus are included in GDP-PI. and there is no evidence that it will not be reflected in GDP-PI. For this reason, the TCJA does not quality under CenturyLink’s Amended Chapter 30 Plan.
34. Further, even if for the sake of argument the TCJA is to be considered an exogenous event, the complex provisions of the TCJA, the corporate filing structure of CenturyLink, and the lack of a model for properly assigning any impact to those services within the PSM make it infeasible to determine and implement any impact as an exogenous event.

35. CenturyLink fully supports the proposed Settlement. CenturyLink has submitted a Statement in Support of the Settlement in this consolidated docket. I adopt CenturyLink's Statement in Support. Other than the Settlement's provision regarding banked amounts under CenturyLink's Amended Chapter 30 Plan which I address below, I shall not repeat here CenturyLink's position regarding the public interest benefits arising from the Settlement.

**IV. CENTURYLINK'S RESPONSES TO QUESTIONS FROM THE BENCH**

36. The March 10, 2020 further prehearing was held telephonically. I was on the telephonic call. It is my understanding that presiding ALJ Cheskis asked two questions of CenturyLink: (1) Had CenturyLink previously drawn from its banked amounts? And, if so, how much and when? And, (2) What are the number of CenturyLink's current customers that are (could be) impacted by the PSM? I shall respond to both questions at this point.

37. Under the banking provisions of CenturyLink's Amended Chapter 30 Plan, certain decreases "may be banked for application in future years, not to exceed four (4) consecutive years." CenturyLink Amended Chapter 30 Plan, at p. 24 (E. Banking of Annual Price Decreases). For increases, CenturyLink may apply them in future years, without limitation as to time. *Id.*, fn. 14.

38. Without doing an exhaustive review to the beginning of the PSP for CenturyLink, I determined that CenturyLink recently utilized the following banked amounts to support rates increases as follows:

2012	\$1,004,547
2014	\$ 162,866
2015	\$ 297,020
2016	\$ 161,841

39. While the amount of revenue subject to CenturyLink's PSP has dramatically decreased over the years as customers have chosen other providers and, in some cases, services deemed competitive from CenturyLink, there still remains a significant number of customers that could be impacted by the PSP. Attachment 1 identifies some of the services and the number of customers (demand) that would be impacted by changes in CenturyLink's PSM. Attachment 1 contains a partial list of services and customers, focusing on those services that have the largest number of customers and are primarily driven by a monthly subscription.

40. This information further supports the value of the actions CenturyLink has agreed to take in the Settlement. First, when it submits its upcoming 2020 PSP Filing on or before September 1, 2020, CenturyLink has agreed for purposes of this Settlement not to increase not to increase the rates within the PSP. CenturyLink will forego these potential revenues and the customers for these services will enjoy rate stability throughout 2021. This rate

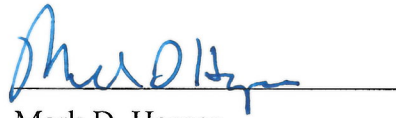
stability will benefit nearly 27,000 residential and business basic service customer, E911 providers, 9,000 customers with customer calling features or Caller ID, and many businesses with data circuits. Absent this Settlement, CenturyLink could propose in its upcoming 2020 PSP filing to raise rates for these customers based on the change in GDP-PI and any portion of its \$10.5 million in banked revenue increases. .

41. CenturyLink has agreed for purposes of this Settlement to reduce the existing banked unused revenue increases by the amounts banked in the 2018 and 2019 filings, \$473,890 and \$438,621, respectively. Further, CenturyLink has agreed not to increase the cumulative bank by the maximum allowed revenue increase from CenturyLink's 2020 PSP Filing, an amount which is estimated to range from \$425,000 to \$475,000.
42. In total, the value associated with the eliminations from bank amounts ranges from an estimated \$1.337 million to \$1.387 million. This amount – nearly \$1.4 million – represents potential future end user rate increases that under the terms of the Settlement CenturyLink has agreed to forgo. The data provided above demonstrates that in the past and as recently as 2016 CenturyLink has used banked revenue increase amounts as the basis for rate increases. Therefore, the reduction of banked amounts is a tangible benefit to customers, eliminating up to \$1.4 million in potential future rate increases. That is \$3.89 per month for every basic service residential and business customer in the PSP.
43. This concludes my Statement.

## VERIFICATION

I, Mark D. Harper, hereby state that the facts set forth in my Statement are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

Date: April 13, 2020



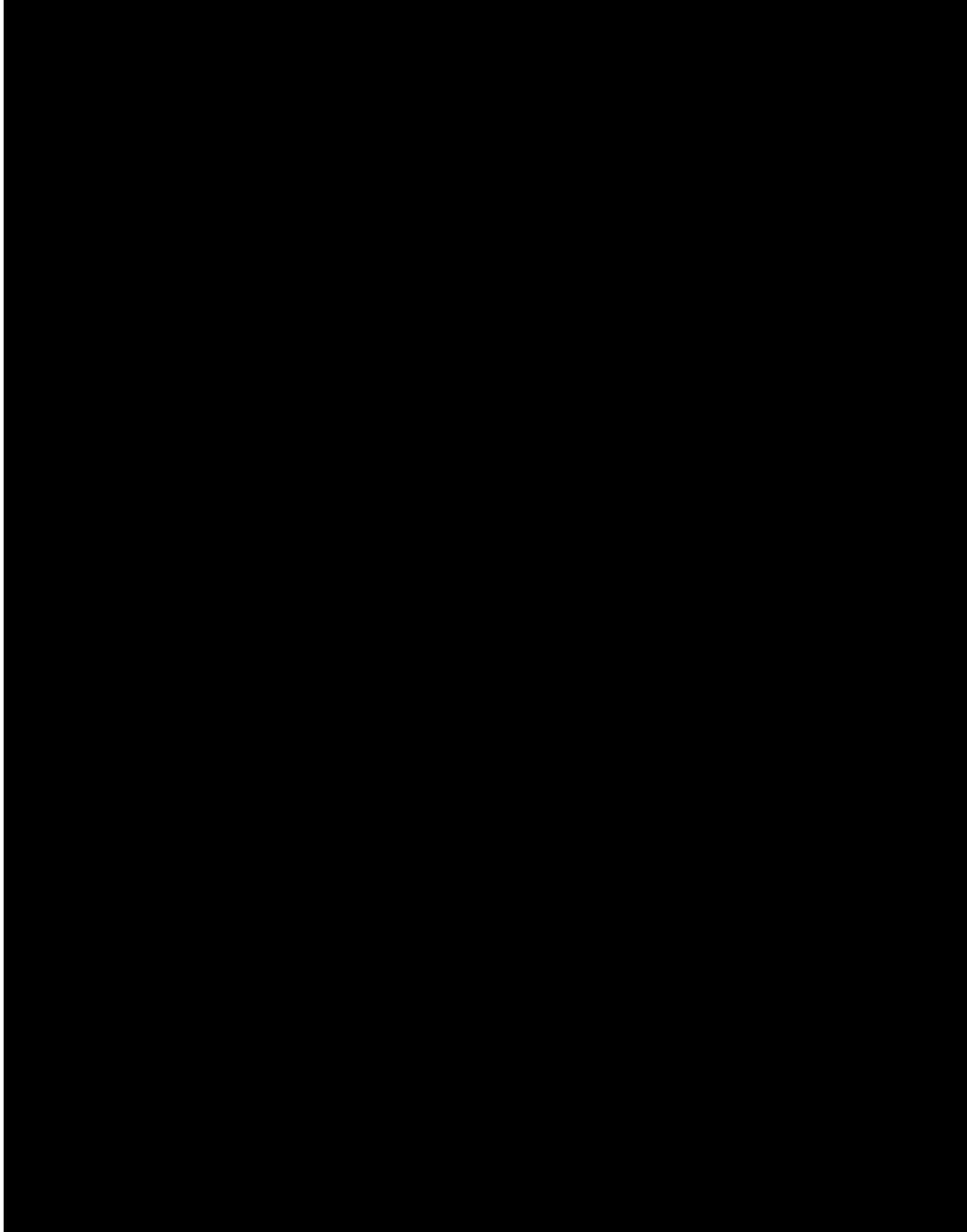
Mark D. Harper

**CTL Statement Mark D. Harper - Attachment 1**  
Selected Services and Demand Units from CenturyLink 2020 PSM Filing

**BEGIN CONFIDENTIAL**

Service

Demand (Monthly unless otherwise noted)



**END CONFIDENTIAL**

**93 Pa. PUC 1**

Pennsylvania Public Utility Commission

June 24, 1999; entered July 16, 1999

P-00981410

**Reporter**

93 Pa. PUC 1

**Re United Telephone Company of Pennsylvania**

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**Core Terms**

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sprint, network, settlement, customer, revised plan, partial settlement, offset, recommend, settlement agreement, tariff, access charge, deployment, inflate, telephone company, switch, residential, minute, terminal, generic, fiber, impute, notice, telecommunication, classification, revise, deregulate, broadband, noncompetitive, annual, restructure

## Synopsis

ORDER adopting settlement under which a nondominant local exchange telephone carrier is authorized to implement an alternative plan of regulation. The plan is deemed to be within the spirit of Chapter 30 of the Public Utility Code, which allows for alternative or streamlined forms of regulation for qualifying carriers, so as to promote local exchange competition and facilitate the introduction of broadband technologies throughout the state. Commission finds that the plan is properly predicated on the carrier's commitment to accelerate the deployment of network modernization. The plan includes such elements as a price stability mechanism, an access charge rebalancing schedule, and an accelerated timeline for network modernization.

**Headnotes**

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## 1. TELEPHONES, § 1

**[PA.]** Alternative or streamlined form of regulation --- Pursuant to Chapter 30 of the Public Utility Code --- Competitive services --- Commitment to network modernization --- Nondominant local exchange carrier --- Settlement.

p. 3.

## 2. SERVICE, § 433

**[PA.]** Telecommunications --- Alternative or streamlined form of regulation --- Pursuant to Chapter 30 of the Public Utility Code --- As facilitating network modernization and local exchange competition --- Nondominant local exchange carrier --- Settlement.

p. 3.

### 3. REGULATION

**[PA.]** Alternative forms --- Streamlined or relaxed regulation --- Telecommunications carriers --- Purposes --- Facilitation of network modernization plans --- Accelerated deployment of broadband technologies --- Chapter 30 of the Public Utility Code --- Nondominant local exchange carrier --- Settlement.

p. 3.

### 4. PUBLIC UTILITIES, § 117

**[PA.]** Regulatory status --- Telephone carrier --- Alternative or streamlined form of regulation --- Pursuant to Chapter 30 of the Public Utility Code --- Nondominant local exchange carrier --- Settlement.

p. 3.

### 5. MONOPOLY AND COMPETITION, § 83

**[PA.]** Telecommunications --- Facilitation of competitive services --- Via alternative or streamlined form of regulation --- Pursuant to Chapter 30 of the Public Utility Code --- Network modernization as a component --- Nondominant local exchange carrier --- Settlement.

p. 3.

### 6. PUBLIC UTILITIES, § 117

**[PA.]** Regulatory status --- Telephone carrier --- Alternative or streamlined regulatory framework --- Deregulation of competitive services --- Nondominant local exchange carrier --- Settlement.

p. 5.

### 7. MONOPOLY AND COMPETITION, § 83

**[PA.]** Telecommunications --- Deregulation of competitive services --- Via alternative or streamlined regulatory framework --- Nondominant local exchange carrier --- Settlement.

p. 5.

### 8. RATES, § 534

**[PA.]** Telephone rate design --- Special factors --- Alternative or streamlined regulation --- Price stability mechanism as a component --- Associated inflation offset --- Substantiation of 2% offset factor --- Nondominant local exchange carrier --- Settlement.

p. 10.

### 9. TELEPHONES, § 2

**[PA.]** Construction and equipment --- Commitment to network modernization --- Accelerated schedule for --- Deployment of broadband technologies --- Pursuant to alternative or streamlined form of regulation --- Nondominant local exchange carrier --- Settlement.

p. 12.

### 10. SERVICE, § 435

**[PA.]** Telecommunications --- Equipment and facilities --- Commitment to network modernization --- Accelerated schedule for --- Deployment of broadband technologies --- Pursuant to alternative or streamlined form of regulation --- Nondominant local exchange carrier --- Settlement.

p. 12.

11. RATES, § 588

**[PA.]** Telephone rate design --- Originating and terminating fees --- Reductions in and rebalancing of access charges --- Pursuant to alternative or streamlined regulatory framework --- Phase-in of access charge of 12 cents per minute --- Nondominant local exchange carrier --- Settlement.

p. 16.

12. RATES, § 534

**[PA.]** Telephone rate design --- Special factors --- Alternative or streamlined regulation --- Deferral of toll imputation formula --- Nondominant local exchange carrier --- Settlement.

p. 17.

**Opinion By:** BY THE COMMISSION

## Opinion

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Commissioners Present:

John M. Quain, Chairman Robert K. Bloom, Vice Chairman David W. Rolka Nora Mead Brownell, Statement attached Aaron Wilson, Jr.

### ***OPINION AND ORDER***

Before the Commission for consideration is the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Louis G. Cocheres issued May 14, 1999, in the above-captioned proceeding. On June 1, 1999, Exceptions were filed by the United Telephone Company of Pennsylvania, Inc., d/b/a Sprint (United), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Office of Trial Staff (OTS), and AT&T Communications of Pennsylvania (AT&T). On June 9, 1999, United, the OCA, the OSBA and AT&T filed Reply Exceptions. Additionally, on June 9, 1999, the OSBA filed a letter indicating that it would not be filing Reply Exceptions.

### ***I. INTRODUCTION***

This matter is the Petition of United for approval of a plan for alternative regulation as is provided in Chapter 30 of the Public Utility Code, 66 Pa. C.S. §§ 3001-3009. The Petition was submitted pursuant to 66 Pa. C.S. § 3003(a)-(c).

### ***II. HISTORY OF THE PROCEEDING***

On October 16, 1998, the Commission received the Petition of United For Approval Under Chapter 30 of the Public Utility Code of an Alternative Regulation Plan and Network Modernization Plan. The OCA, OSBA and AT&T intervened. The OTS participated.

A Prehearing Conference was held before ALJ Cocheres on November 20, 1998. At that time, a litigation schedule for the service of testimony, hearing dates and filing of briefs was finalized. A total of four (4) Prehearing Orders were issued including a Protective Order, dated January 6, 1999.<sup>1</sup>

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<sup>1</sup> No proprietary information is directly referenced in this Opinion and Order.

Two public input hearings were held; January 5, 1999, in Chambersburg, Pennsylvania and January 7, 1999, in Butler, Pennsylvania.

On March 10, 1999, a document entitled "Settlement Agreement Among The United Telephone Company of Pennsylvania, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate" (Partial Settlement) was submitted to the presiding ALJ. Included with the Partial Settlement was a revised Alternative Regulation Plan (Revised Plan) which was labeled Appendix A. Also included were the various statements in support of the settlement from the signatory parties and other attachments. AT&T was not a signatory to the agreement.

The presiding ALJ held an initial hearing on March 15, 1999, to provide AT&T and United the opportunity to complete litigation of all outstanding issues and to clarify some of the settlement terms.

As a result of the March 15 hearing, the Partial Settlement was revised to accommodate certain requests and suggestions made by ALJ Cocheres during the settlement conference portion of the hearing. The revised Partial Settlement was submitted and dated March 24, 1999. (A copy of the March 24, 1999 version of the final Partial Settlement, Revised Plan and the attachments were appended to the Recommended Decision).

Main Briefs were filed by United and AT&T. Reply Briefs were filed by United, AT&T and the OTS.

On May 14, 1999, the Recommended Decision was issued. ALJ Cocheres recommended that the Partial Settlement, as revised, be rejected for perceived deficiencies with respect to the competitive services provision, competitive safeguards, inflation offset, access charges, and imputation relating to access charges. (R.D., pp 1; 37-38). Exceptions and Replies were filed as noted.

### **III. DISCUSSION**

#### *A. Overview*

In the usual case where a settlement has been presented by the participants to a proceeding, there would be a section of the Recommended Decision devoted to explaining the terms and conditions of such settlement and whether or not the proffered settlement is in the public interest. See, generally 52 Pa. Code § 5.231. The Commission has, and continues to encourage settlements among parties.

ALJ Cocheres was of the opinion that his recommendations on the litigated issues negated the value of the settlement. (R.D., p. 3). He, therefore, discussed the salient portions of the settlement within the context of his recommendations on litigated issues.

The OCA, in Exceptions, argues that testimony was not introduced into the record because the case settled before the evidentiary hearings were held. Further, the OCA asserts that parties to a settlement should not be burdened with the additional expense of litigating a settled issue such as this because the Settlement Agreement represents a fair resolution of the issues involved in the Chapter 30 case. (OCA Exc., p. 3).

The OSBA also filed Exceptions and argues that a settlement in a contentious proceeding such as this is consistent with the Commission's Regulations which encourage settlements between parties. 52 Pa. Code § 5.231. The OSBA believes that we should review the Settlement "with an eye towards the material benefits provided to Pennsylvania small business consumers by the Settlement." (OSBA Exc., p. 3).

The OTS, in its Exceptions, asserts that the Partial Settlement is supported by record evidence and is compliant with the Public Utility Code, 66 Pa. C.S. § 101, et seq. (OTS Exc., p. 3). The OTS, like the OCA, argues that settling parties should not be required to litigate issues which have been addressed through settlement between the parties contesting those issues where the non-settling party did not take a position. (OTS Exc., p. 3).

AT&T, the sole non-signatory to the Partial Settlement, did not file Exceptions on the ALJ recommendation to reject. However it believes that there is no record evidentiary support for the Revised Plan and that the Partial

Settlement should not be approved. AT&T asserts that it strongly opposed this Partial Settlement and, thus, never reached agreement with any other party. (AT&T R. Exc., p. 3-8).

[1-5] On review of the record in this matter and on consideration of the positions of the parties, we conclude that overall the Settlement proffered by the signatories has merit and is supported by substantial evidence of record. The Settlement does require, however, modification and/or clarification to comply with the statutory mandates of the Public Utility Code as will be discussed, below. However, we shall accept the overall structure of the Settlement, as modified in this Opinion and Order, but without prejudice to the resolution of related issues in the "Global Telecommunications" proceeding.<sup>2</sup> Our action here should not be misconstrued as reflecting upon that proceeding or the position of any party therein. We shall continue our discussion of the pertinent provisions of the Settlement and conclude with the pertinent findings required by Chapter 30.

Any Exception not specifically granted has been duly considered and deemed rejected. ([Univ. of Pa. v. Pa. P.U.C., 485 A.2d 1217 \(Pa. Cmwlth. 1984\)](#)).

## *B. Competitive Services*

### *1. Recommended Decision*

The ALJ concluded that United failed to establish a *prima facie* case that any service it offers should be classified as competitive. See *R.D.* at 9. The ALJ stated that United's position appeared to be based upon the assumption that, if the Commission declared any telecommunications services competitive in any prior Chapter 30 case, then similar services offered by United (and mentioned in United's Petition) should automatically be considered to be competitive as well. The ALJ rejected this position.

As the rationale for his determination, the ALJ stated that Chapter 30 sets forth the criteria which the Commission must evaluate in order to conclude that a service offered by a company is competitive. Among the standards are the following: (1) ease of market entry; (2) existence and impact of cross-subsidization; (3) presence and viability of other competitors and their market share; (4) opportunity for competitors to offer those services at competitive prices; and (5) the availability of similar services in the relevant geographic area. 66 Pa. C.S. § 3005(a)(1). The ALJ pointed out that this list was not exhaustive, but that it was sufficient to demonstrate that the evidence to justify a competitive service classification must be specific to the company in question and its relevant market.

The ALJ quoted with approval AT&T's critique of the United's position, found on pages 16-17 of AT&T's Main Brief. He further stated that, even if one assumed that the AT&T premise was wrong, he still found United's testimony of the kinds of facts needed to support the required statutory findings for a competitive service insufficient. Essentially, the ALJ extensively referenced the testimony of United witness Binder and agreed with AT&T that such testimony consisted primarily of legal argument. (*R.D.*, p. 12). For example, according to the ALJ, other than identifying those services set forth in the original and Revised Plans which United desired to be classified competitive, there was no mention of any competitor in the market, nor of its market share, the relevant geographic market, the availability of substitute services, etc.

Finally, the ALJ stated that, not only were these necessary facts omitted from United's case-in-chief, but also from the rebuttal testimony, as well and that he considered these omissions from both rounds of testimony significant. The ALJ concluded with the observation that United, in its presentation of its case, exhibited a failure to comprehend that a competitive services classification is based on company specific data. (*R.D.*, pp. 9-13).

### *2. Exceptions*

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<sup>2</sup> See *In re the Joint Petition of Bell Atlantic-Pennsylvania, Inc., CONNECTIVE Communications, Inc., NETWORK Access Solutions and the Rural Telephone Company Coalition*, Docket No. P-00991648; and *In re The Joint Petition of Senators Vincent J. Fumo, Roger A. Madigan and Mary Jo White, Pennsylvania Cable & Television Association and Seven Competitive Local Exchange Carriers for Adoption of Partial Settlement Resolving Telecommunications Issues*, Docket No. P-00991649.

*(a) United*

United excepts to the ALJ's rejection of its competitive services proposal, stating that the ALJ erred in his failure to find that customer premise equipment (CPE), inside wire, billing and collection (B&C) and voicemail services are competitive. In refuting the ALJ's finding that United failed to establish a *prima facie* case on this issue, United points to two (2) critical points, as follows: (1) CPE and inside wiring actually are deregulated and, for that reason, do not fall under the purview of the Commission under Chapter 30 and the section on competitive services at 66 Pa. C.S. 3005; and (2) AT&T has never suggested that these services were not competitive, but, rather, has referred to the wrong legal standard in order to buttress its arguments.

In this connection, United argues that CPE and inside wire were declared to be competitive by the Federal Communications Commission (FCC) in 1981 and 1986, respectively. Thus, United argues that this Commission was required to, and did, comply with overseeing the deregulation and detariffing of those services within the Commonwealth, issuing Orders in 1983 and 1986, declaring those services to be deregulated and detariffed.<sup>3</sup>

United argues further that a similar situation exists for B&C, which was detariffed for United in 1987, based upon the Commission's finding that B&C services are competitive. *Pa. PUC v. United*, Docket No. P-870199 (April 13, 1987).

United's position is that CPE, inside wire and B&C services were deregulated and detariffed well before the effective date of Chapter 30. Therefore, the legislature could not have contemplated that services that previously were declared to be competitive or deregulated would then come under the Commission's requirement for review as a competitive service under 66 Pa. C.S. § 3005. United reminds the Commission that it is axiomatic that statutes cannot be given retroactive effect, unless clearly and manifestly so intended by the legislature. (United Exc., p. 12 citing [Krenzelak v. Krenzelak, 503 Pa. 373, 380, 469 A.2d 987, 990 \(1983\)](#)).

With regard to voicemail, United explains that this service is not considered a telecommunications service under the Federal Telecommunications Act, [47 U.S.C. § 201](#), et seq., and that the Commission also has previously determined that voicemail is a competitive service for other, similarly situated, local exchange companies in their Chapter 30 proceedings.<sup>4</sup>

United argues that, with respect to all the services at issue herein, AT&T never disagreed with United's claim that all these services already were competitive. Also, AT&T never presented any evidence in rebuttal of United's testimony on this issue. Rather, AT&T has simply stated that a competitive declaration should "not be automatic." (AT&T Direct Testimony, p. 34). United concludes that, in the end, there is a preponderance of evidence to support United's claim, including the stipulation of the OCA, the OSBA and the OTS as to the competitive nature of these services. (United Exc., pp. 11-15).

*(b) AT&T Replies*

In reply, AT&T asserts that United's arguments concerning its Competitive Services Deregulation Plan border on the ridiculous, and were properly rejected by the ALJ. In essence, states AT&T, United asserts that "deregulated" and "detariffed" have the same meaning as "competitive." On the contrary, argues AT&T, the provisions of Section 3005(a) of the Code, requiring company-specific proof that a service is competitive, completely refutes United's argument. Simply put, continues AT&T, the statute does not contain an exception for "deregulated" or "detariffed" services.

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<sup>3</sup> See United Exceptions at 11, citing *In the Matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Service (Second Computer Inquiry)*, 88 FCC 2d 512 (1981); *In the Matter of Detariffing the Installation and Maintenance of Inside Wire*, CC Docket No. 79-105, Second Order (February 24, 1986); *Pa. PUC v. United*, Docket No. M-820334 (November 8, 1983); *Pa. PUC v. United*, Docket No. M-850009 (December 5, 1986).

<sup>4</sup> In this connection, United cites Commonwealth Telephone and Ironton Telephone Company, Docket Nos. P-961024 and P-971182, respectively.

AT&T further takes issue with United's assertion that it "never suggested that these services were not competitive," stating that this claim is untrue. AT&T avers that it has consistently argued that United has never provided the evidence upon which the Commission could make the findings required by 66 Pa. C.S. § 3005(a)(1). The "unrefuted testimony" referenced by United consists of legal argument, rather than the evidence required by the statutory section. Finally, AT&T argues that United's attempt to introduce "facts" not of record concerning alleged competitive alternatives to these services, under the guise of "official notice," should be rejected. (AT&T R. Exc., pp. 15-16).

### *3. Resolution*

**[6, 7]** On review of this issue, we agree with United and so find that with respect to competitive services, its revised plan and Partial Settlement meets the statutory burden under Section 3005.

United's proposal, in fact, does not seek competitive classification for any "new" service but, instead, maintains the status quo with regard to previously deregulated services. In this regard, its proposal is substantially the same as the provision approved for Commonwealth Telephone Company by our Opinion and Order entered January 17, 1997, at Docket No. P-00961024 (Commonwealth Order; slip op. at 166).<sup>5</sup>

United points to two (2) critical points, which were persuasive in the Commonwealth Order: (1) CPE and inside wiring actually are deregulated and, for that reason, do not fall under the purview of the Commission under Chapter 30 and the Section on competitive services at 66 Pa. C.S. 3005; and (2) AT&T has never suggested that these services were not competitive, but, rather, has referred to the wrong legal standard in order to buttress its arguments.

In making a determination under Section 3005, this Commission is authorized to consider "all relevant evidence submitted to it." Because the United proposal essentially maintains the status quo with regard to deregulated services, we find that the proof is sufficient. Accordingly, we see no need to suggest any modification to this aspect of the Revised Plan.

### *C. Competitive Safeguards*

#### *1. Recommended Decision*

AT&T raised the issue of the sufficiency of the proposed competitive safeguards. The ALJ, because he recommended that the Revised Plan be rejected, noted that United would be required to file a new petition in six (6) months (66 Pa. C.S. § 3004(b)) and would then have the opportunity to seek competitive service classifications which must be subject to safeguards. Accordingly, the ALJ proposed one observation for guidance.

ALJ Cocheres concluded that, with one exception, United should have prevailed on this issue. The primary challenge raised by AT&T concerned United's initial failure to include the filing of tariffs and price lists for competitive services in its original plan. (AT&T M. B., pp. 18-19). The ALJ stated that, had the original plan remained in contention, he would have agreed with AT&T. However, the ALJ agreed with United that the Revised Plan remedied that criticism. (United R.B., pp. 7-8).

The protections included in the Revised Plan (Revised Plan, pp. 22, 36-39) were a noticeable improvement over the protections offered in the original plan. Accordingly, the ALJ concluded that the Revised Plan remedied almost all of the criticisms and failings in the original plan. The exception to this general finding, stated the ALJ, was that the Revised Plan would allow a service to be deemed competitive if the Commission failed to act on United's petition within sixty (60) days. The sixty (60) day procedure is binding even if a complaint is filed. (Appendix A, pp. 20-21).

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<sup>5</sup> We note that at page 20 of United's Partial Settlement, it does make the conclusory statement that "the following services are currently competitive" and then refers to CPE, B&E and voicemail. The Commonwealth's Plan more accurately states "the following services are currently deregulated and shall continue to be classified as competitive." (See Commonwealth Order, p. 13).

AT&T argued that this procedure violated Chapter 30. (AT&T M.B., pp. 17-18). The ALJ agreed with AT&T. Section 3005(a) requires sixty (60) days notice of the request for a competitive service classification, notice of a hearing, and a hearing. This provision also gives the Commission one hundred and eighty (180) days in which to enter an order. 66 Pa. C.S. § 3005(a). The ALJ concluded that the purpose of this statutory scheme is to give the LEC the opportunity to make a record from which the Commission could derive the necessary statutory findings as set forth in the other subsections of 3005. 66 Pa. C.S. § 3005(a)(1)-(2) and (e). Accordingly, the ALJ concluded that Part 2.A. P 4, p. 21 of the Revised Plan (Appendix A) did not meet the statutory standard, and should not be accepted. (R.D., pp. 13-15).

## 2. Exception

### (a) *United*

United excepts to the recommendation of the ALJ. United argues that the Public Utility Code states that a request for competitive classification should have an effective date of no less than sixty (60) days from the filing date, and that the Commission must rule on the matter in no more than one hundred and eighty (180) days of the filing date. 66 Pa. C.S. § 3005(a). Thus, reasons United, Section 3005(a) is permissive in allowing the Commission to have up to one hundred and eighty (180) days to consider such a petition; however, it does not "require" that the Commission use or preserve one hundred and eighty (180) days to consider such requests.

United points out that the settlement initially proposed that the Commission conclude its review in sixty (60) days. United also avers that representatives of the public interest, consumer interest and small business interest agreed that a sixty (60) day procedure was reasonable for United, provided that they received in-hand service of the filing on or before the filing date.

United points out that the ALJ recommended at the hearing that the proposed sixty (60) day procedure be changed to allow sixty (60) days *or until the next Commission public meeting*. (Tr. 156). United states that this change was consistent with the language in the final *Plan for Citizens of Kecksburg Telephone Company*, Docket No. P-00971229 (March 4, 1998), and that the OCA, the OSBA, the OTS and United agreed to make the ALJ's modification in order to alleviate any administrative concerns about the sixty (60) day procedure. (Revised Plan at 21). Yet, continues United, despite his recommendation and this change, the ALJ found that anything less than the full one hundred and eighty (180) days mentioned in Section 3005(a) would be contrary to the statute. (R.D., p. 15).

Finally, United points out that AT&T did not argue that the sixty (60) day procedure was unfair or disadvantageous but that AT&T claimed that it was in violation of Section 3005(a). (AT&T M.B., pp. 16-17). United argues that such an interpretation is contrary to the plain wording and intent of that Section. United further points out that the Commission has the discretion to approve a sixty (60) day period for United's Chapter 30 Plan. (United Exc., pp. 15-16).

### (b) *AT&T Replies*

In response, AT&T takes issue with United's assertion that it did not argue that the sixty (60) day procedure was unfair or disadvantageous. On the contrary, avers AT&T, it asserted, and the ALJ determined, that the sixty (60) day procedure was contrary to Section 3005(a) of the Code and is an unlawful Chapter 30 plan provision which is *per se* "unfair" and "disadvantageous." Accordingly, asserts AT&T, the Commission should reject United's argument that the sixty (60) day procedure does not violate Section 3005(a) for the reasons outlined by the ALJ. (AT&T R. Exc., pp. 16-17).

## 3. Resolution

With respect to this issue, we agree with the ALJ's observation that United's Revised Plan, which would allow a service to be deemed competitive if the Commission fails to act on a petition within sixty (60) days, is inconsistent with the statute. Title 66 Pa. C.S. § 3005(a) requires a sixty (60) day notice of a request for competitive service classification, notice of a hearing, and a hearing. This provision also gives the Commission one hundred and

eighty (180) days in which to enter an order. Accordingly, we conclude that United's Revised Plan should be modified to be consistent with the statute.

#### *D. Inflation Offset*

##### *1. Price Stability Mechanism*

###### *(a) United's Price Stability Plan*

United proposed a Price Stability Plan (PSP) which basically incorporates the price cap technique developed by Commonwealth in its network modernization plan at P-00961024.<sup>6</sup>

In general, a price cap is linked to an aggregate measure of inflation like the Gross Domestic Product Price Index (GDP-PI) or the Consumer Price Index (CPI) with a productivity offset. Provisions for exogenous or external events are also included in the price cap formula. This system of regulation substitutes price caps for rate of return regulation. Prices subject to competition are excluded from Price Cap Regulation.

The characteristics of United's PSP are summarized below:

1. The PSP employs the Price Stability Index (PSI) to calculate the change in price ( $\Delta$ ) for non-competitive services based upon the annual  $\Delta$ GDP-PI less a productivity offset of 1.1% (explained below), adjusted for any **exogenous event**.

2. Initially, the Price Stability Index (PSI) is the aggregate cap for all non competitive services and would be set at 100 for the beginning of the PSP and would change each year according to the following formula:

$$PSI_{s-2 dt u s+2} = PSI_{s-2 dt-1 u s+2} \times [1 + \% \Delta GDP-PI_{s-2 dt-1 u s+2} - Productivity Offset + Z]$$

where, PSI = price stability index, t = current year, t-1 = last year, GDP-PI = gross domestic price index, Z denotes **exogenous events** which are increases or decreases in revenues or expenses. (See: Emily Binder Testimony p. 17-18, for further details).

3. The Service Price Index (SPI) is the cumulative measure of price changes. For each annual price cap filing, a new SPI will be calculated based on the proposed price changes. The proposed price of a telecom service,  $P_{s-2 dt u s+2}$ , divided by the current price of a telecom service,  $P_{s-2 dt-1 u s+2}$ , multiplied by the current SPI for the service yields the proposed SPI.

For example, in the formula,  $SPI_{s-2 dt u s+2} = P_t/P_{t-1}$  ( $SPI_{s-2 dt-1 u s+2}$ ), if  $P_{s-2 dt u s+2} = \$ 9.50$ ,  $P_{s-2 dt-1 u s+2} = \$ 10.00$  and the current  $SPI_{s-2 dt-1 u s+2} = \$ 1.88$ , then  $\$ 9.50/\$ 10.00 (\$ 1.88) = \$ 1.79$ . The cumulative  $SPI_{s-2 dt u s+2}$  is the summation of the individual SPI's for each service. The total or cumulative  $SPI_{s-2 dt u s+2}$  (100.25), must be equal or less than the PSI as a check on the reasonableness of any annual PSI calculation. (See: Appendix EEB-3 of Emily Binder's testimony for the development of the 100.25,  $SPI_{s-2 dt u s+2}$  figure).

4. Sprint's PSP permits United to request the Commission to make special revenue adjustments within the scope of the PSI to recognize **exogenous events**.

##### 5. Examples of **Exogenous events**

. Jurisdictional shifts in cost recovery when interstate revenues actually change (i.e. these shifts are not reflected in the overall inflation factor as measured by the GDP-PI).

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<sup>6</sup> The productivity offset of 2.0% agreed upon in the Settlement Agreement among the United Telephone Company of Pennsylvania, the OTS, the OCA, and the OSBA coincides with the productivity offset in Commonwealth's Chapter 30 Opinion and Order entered on January 17, 1997, at Docket No. P-00961081. For a discussion of the portions of Chapter 30 of the Public Utility Code which relate to a price stability mechanism, see pages 11-12 of the Commonwealth Opinion and Order.

- . A universal service fund in Pennsylvania and any requirement that the company participate as a contributor.
- . Subsequent state or federal regulatory and legislative changes which affect revenues or expenses, to the extent that they are not captured in the GDP-PI.
- . Unique changes in the telephone industry which are not reflected in the overall inflation factor as measured by the GDP-PI.

(See: March 24, 1999, Final Settlement Revised, pp. 28-29).

*(b) United's Position*

Within the framework of the PSP outlined above, United's Witness Dr. William Taylor has proposed a productivity offset of 1.1%. (See: United Statement No. 3, p. 10). Dr. Taylor submitted that in general, U.S. output prices have grown about 2% faster per year than an index of overall telephone prices. (i.e., GDP-PI less CPI-Tel from 1936-1997 averaged 1.87%). This figure is the average productivity factor or offset --- the difference between the average of telephone prices and national inflation. Dr. Taylor states that a productivity offset derived from these factors would probably overstate the proper target for a telephone company the size of United (i.e. the above price index CPI-Tel includes the average prices for all telecom firms, large and small and for all telecom services).

Dr. Taylor elucidated that there are two (2) methods to calculate the productivity target or offset in the price stability index calculation. First of all, Dr. Taylor averred that the Bureau of Labor Statistics (BLS) calculates price indices separately for different telecom services. Using BLS price indices for local service and intrastate toll service and publicly available industry data on revenues for the same services, a LEC index was constructed by combining changes in BLS local exchange and intrastate toll price indices using industry revenues as weights. Averaged over the entire length of the available data from 1979-1997, the historical X (productivity factor) achieved by the LEC industry is .65% per year.

Secondly, Dr. Taylor stated that the productivity target can also be determined by comparing total factor productivity (TFP) of the telecommunications industry, or for a set of comparable LEC's, with that of the U.S. economy for the same historical time period. Taylor submits that this productivity differential is an equally valid measure of X in the price cap formula in which annual price changes for the regulated firm are limited to U.S. inflation less X. Taylor's TFP analysis yields a productivity factor (X) of 1.62%. The 1.62% figure is the difference between the average 1988-1997 TFP of smaller firms the size of United (1.76%) and the .14 TFP of the United States sample.

The results of Taylor's study, thereby, suggested a productivity offset of between .65% and 1.62%. Based on these results, Taylor estimates a 1.1% productivity offset which approximates the midpoint of this range. This 1.1% represents an annual 1.1% reduction in prices relative to inflation.

*(c) Partial Settlement*

The parties to the Partial Settlement agreed to an inflation or productivity offset of 2% in lieu of the 1.1% as originally proposed by United.

In support of the Partial Settlement, United submitted that the Partial Settlement was in the interest of all signatory parties as well as in the public interest.

The OTS added that the 2% inflation offset is consistent with several other previously approved Chapter 30 plans, in lieu of the 1.1% inflation offset originally proposed by United. This enhances the consumer benefits of price cap regulation, by providing further control on aggregate price increases and by promoting utility efficiency.

The OSBA lauded the Partial Settlement, as it pertains to the PSP, because it limits the maximum increase to local business rates to one-half of the increase to basic local residential rates. The OSBA averred that this begins the much needed process of narrowing the wide differential between residential and business local rates.

*(d) Recommended Decision*

The ALJ recommended the rejection of the 2% inflation offset agreed upon by the parties to the Partial Settlement. The ALJ contended that although United maintained that it provided record evidence to support the 2% figure from its witness, Dr. Taylor's testimony and exhibits do not support United's position. The ALJ points out that Dr. Taylor advocated an inflation offset in the range of .65% to 1.62%; however, 2% does not fall within this range. (R.D., pp. 15-17).

*(e) Exceptions*

*(i) United*

United excepts to the Recommended Decision and contends that it is flawed in its failure to recommend approval of the 2% inflation offset. United continues that Dr. Taylor's recommended inflation offset range of .65% to 1.62% is uncontroverted in the record. United emphasizes that Dr. Taylor's position is in excess of that contained in the settlement and represents a compromise by United to accept less than what the preponderance of evidence would support. In other words, a higher agreed upon offset of 2% contrasted with the .65% to 1.62% range espoused by Dr. Taylor causes United to receive significantly lower aggregate price hikes for its telecommunications services in years subsequent to the settlement.

Secondly, United submits that there is empirical support for a 2% inflation offset in the body of Dr. Taylor's testimony. "In general, U.S. output prices have grown about two percentage points faster per year than an index of overall telephone prices." (United Exc., p .6.) Moreover, United discloses that Inflation offsets of 2% have been recently established by the Commission for Commonwealth, Citizens, TDS and Ironton,<sup>7</sup> so there is abundant precedent for a 2% level.

*(ii) OTS*

The OTS submits that the ALJ erred in concluding that the 2% inflation offset in the Partial Settlement was not supported by record evidence. In addition to a reiteration of United's arguments presented above, OTS points out that Dr. Taylor referenced a separate component of the inflation offset, termed a "stretch factor," in his rebuttal testimony, from .5% to 2%. (OTS Exc., p. 4). OTS emphasizes that a .9% stretch factor is within that referenced range and, when added to the 1.1% productivity differential advocated by Dr. Taylor, exactly equals an inflation offset of 2.0%. OTS reasons that since the referenced stretch factor is clearly contained in the evidentiary record, the ALJ's conclusion that no record evidence supports the 2% offset is inaccurate.

The OTS supports its previous contentions by indicating that the Commission previously sanctioned the use of the .5% to 2% stretch factor range in Chapter 30 cases to derive an inflation offset that was not expressly supported by any witness of record. The OTS continues that in the Commonwealth Telephone Company Chapter 30 proceeding, the Commission used the .5% to 2% range of the experts on stretch factors to determine an appropriate stretch factor of 1.04%. (OTS Exc., p. 5)

*(f) Resolution*

**[8]** Both United and OTS, in their Exceptions, remind us that we have recently established inflation offsets of 2% for Commonwealth, Citizens, the TDS companies, and Ironton. After a review of the evidence in this proceeding and upon consideration of the Exceptions of United and OTS, we see no reason to deviate from our decisions in the aforementioned Chapter 30 cases.

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<sup>7</sup> See: Commonwealth Telephone Company, Docket No. P-00961081, entered on January 17, 1997; Ironton Telephone Company, Docket No. P-00971182, entered on December, 18, 1997; Citizens Tel. Co. of Kecksburg, Docket No. P-00971229, entered on June 9, 1998; TDS Telecom / Mahanoy & Mahantango, Docket No. P-00961115, TDS Telecom/Sugar Valley, Docket No. P-00973891, both entered on January 28, 1998. Recommended Decision

We agree with the parties to the Partial Settlement that an inflation offset of 2% is proper and abundantly substantiated in the record. After a review of Dr. Taylor's testimony and exhibits, we find that his recommended inflation offset range of .65% to 1.62% is indeed uncontroverted in the record. We agree with United that Dr. Taylor's recommended range is in excess of the 2% figure contained in the Settlement and indeed represents a concession by United to accept less than what the preponderance of evidence would support. Ironically, a higher agreed-upon inflation offset of 2% contrasted with the .65% to 1.62% range espoused by Dr. Taylor will cause United to receive lower aggregate price hikes for its non-competitive telecommunications services in the years subsequent to the settlement.

OTS indicated in its Exceptions that the Commission, in the Commonwealth Order, employed a stretch factor or productivity growth adjustment of 1.04%. This figure is obviously less than a .9% stretch factor that would raise the original 1.1% recommendation of United's witness Taylor, to the agreed upon inflation adjustment of 2%.

We, therefore, determine that a 2% inflation offset is not only consistent with the weight of the evidence presented in this proceeding, but also comports with our previous decisions on the same issue.

#### *E. Network Modernization Plan*

Chapter 30 codifies the General Assembly's stated policy to accelerate the deployment of a universally available, state-of-the-art, public switched broadband telecommunications network in rural, suburban and urban areas throughout the Commonwealth. See [Popowsky, et al. v. Pa. PUC, 550 Pa. 449, 706 A.2d 1197 \(1997\)](#).

Section 3003(b)(1)-(3) of Chapter 30 requires a LEC (1) to commit to a plan which makes universal broadband available throughout its network by December 31, 2015; (2) to reasonably balance deployment of the facilities throughout the service territory and; (3) to deploy the facilities at or adjacent to governmental, educational and medical centers.

As part of this proceeding, United maintained that its existing network is already developed to a significant degree. As part of its NMP proposal, United asserted that it intends to use the "best technology available to progress efficiently, economically and expeditiously to universal broadband availability." (Petition, PP 14-24, pp. 5-6; see also ARP, Exh. 1 to Pet., pp. 3-10; United Stmt. 1, pp. 2-18).

The NMP was subsequently modified in the Revised Plan. While the NMP does not commit United to deploy any specific technology for broadband deployment, United has specifically committed to certain milestones which are expressed in rounded data below:

	1998	2003
Digital Switching	100%	100%
Basic Rate ISDN (BRI)	78%	98%
Primary Rate ISDN (PRI)	65%	98%
Fiber Cable	88%	100%
Fiber Optic Terminal Equipment (FOTS)	66%	94%
Availability of tentative SONET Rings in the interoffice network as a	17%	75%

93 Pa. PUC 1

percentage of total SONET Rings		
identified for placement (IX Rings)		
Projection of Central Offices that will be IX SONET Rings as a percentage of total central offices in the network	19%	70%
Carrier Serving Areas (CSAs) deployed	46%	64%
Broadband availability within 60 days	72%	80%
Broadband availability within 5 days	44%	53%
Fiber availability for target markets	76%	91%
Education	71%	86%
Healthcare	82%	97%
Government	80%	95%
County 911 Centers	86%	100%
Industrial Parks	76%	91%
	1998	2003
Signaling System 7 (SS7)	90.8%	98%
Custom Local Area Signaling Services (CLASS) display services	87%	96%
CLASS non-display services	89%	96%

2008	2013	2015
100%	100%	100%
100%	100%	100%
100%	100%	100%
100%	100%	100%
100%	100%	100%
100%	100%	100%

## 93 Pa. PUC 1

92%	100%	100%
80%	94%	100%
88%	96%	100%
69%	92%	100%
100%	100%	100%
100%	100%	100%
100%	100%	100%
100%	100%	100%
100%	100%	100%
100%	100%	100%
2004	2008	2013
100%	100%	100%
100%	100%	100%
100%	100%	100%

Asynchronous Transfer Mode (ATM)	As yet undeployed, but investigation for future use will begin in 1999.
Advanced Intelligent Network (AIN)	Presently, United is equipping AIN switch triggers to provide Local Number Portability (LNP) functionality pursuant to federal Local Number Portability (LNP) guidelines. Deployment of other AIN services will depend upon marketing strategies and customer demand.

(See, Appendix to A to R.D., pp. 3-19).

United asserted that its NMP met all Chapter 30 requirements. (United M.B., p. 8).

AT&T argued that United's proposed deployment of interactive broadband was not supported by record evidence. AT&T maintained that the NMP did not provide for accelerated deployment and, therefore, failed to provide the *quid pro quo* needed to justify approval of an alternate form of rate regulation. (R.D., pp. 4-5).

### *1. Recommended Decision*

ALJ Cocheres, citing the testimony of United's witness Studdard, agreed that United met its burden on its NMP. Mr. Studdard explained United's plan for providing universal broadband availability by the year 2015. (R.D., pp. 15-17, citing United St. 1 and 1.1; also United Ex. 1, pp. 3-19 to Appendix A, pp. 3-19). Under these circumstances, the ALJ concluded that the proof offered by United was more than sufficient to find that the NMP in the Revised Plan is in compliance with the statute.

Since, however, the ALJ rejected the entire Partial Settlement, the NMP was also rejected. (R.D., Ord. P No. 1).

### *2. Exceptions*

#### *(a) United*

United cites as error the ALJ's total rejection of the Revised Alternative Regulation Plan including the NMP, notwithstanding his conclusion that the NMP complies with Chapter 30. United asserts that a network modernization plan is "inextricably intertwined with a petition for alternative form of regulation" and that deployment of an "advanced technological network throughout its service territory is the linchpin [sic] of a company's ability to make the transition to alternative regulation." Noting that AT&T presented no factual evidence to undermine the ALJ's conclusion that the NMP complies with Chapter 30, United argues that the NMP should and can be approved. (United Exc., pp. 9-11).

#### *(b) OTS*

The OTS argues that United's NMP fulfills the stated objective of Chapter 30 and should, therefore, be approved as part of the Alternative Plan of Regulation. The OTS asserts that failure to approve the NMP will only serve to delay deployment of United's broadband network. (OTS Exc., pp. 12-13).

#### *(c) OSBA*

The OSBA also argues that it is an error to reject a conforming NMP which the ALJ found to be "acceptable and in the public interest." The OSBA asserts that approval of United's NMP will provide a key benefit to small business customers and that rejection of the NMP will substantially delay or preclude such benefits. (OSBA Exc., pp. 3).

### *3. Resolution*

**[9, 10]** United suggests that its NMP is "inextricably intertwined" with its request for alternative regulation and that the NMP is the "linchpin" of its ability to transition to alternative regulation. Clearly, there will be no alternative regulation without an approved NMP. Conversely, however, there can clearly be network modernization without alternative regulation. The only question is the speed with which United would modernize its network absent alternative regulation.

In light of our conclusion that substantial evidence supports the adoption of the major components of United's Revised Plan, we also agree that United has met its burden of proof under the standard of Section 3003(b) of Chapter 30 concerning its NMP. United's NMP projects universal broadband availability throughout its network by 2015, with many significant technologies slated for availability well in advance of that date. Reaching such milestones in advance of 2015 manifests a further acceleration. Additionally, United appears committed to a balanced deployment of facilities throughout its service territory. Finally, United has a clear plan for deployment of such facilities at or adjacent to governmental, educational, and medical centers, industrial parks, and 911 centers. Based upon the record before us, we believe that the ALJ was correct in his conclusion that the NMP, proffered as part of the Revised Plan submitted in conjunction with the Partial Settlement, contained all of the elements required by Chapter 30.

Accordingly, we shall approve the NMP, subject to the biennial updates required by Section 3003(b)(6) of Chapter 30. See *Reporting Requirements for Biennial Updates of Network Modernization Plans Filed Pursuant to 66 Pa. C.S. § 3003(b)(6); Re: Implementation of the Public Utility Code*; Docket No. C-9; M-00930441 (Order adopted December 17, 1998).

#### *F. Access Charges*

Before discussing the position of the parties on access charges, we shall provide some background on Chapter 30's access charge requirements and United's original and settlement proposals.

Section 3007 of Chapter 30 (66 Pa. C.S. § 3007) contains specific Access Charge requirements for LECs (such as United) serving more than 250,000 access lines as stated below:

#### § 3007. Determination of access charges

Local exchange telecommunications companies serving more than 250,000 access lines in this Commonwealth as of the effective date of this chapter shall comply with the following provisions:

(1) Local exchange telecommunications companies shall have an effective per minute switched-access service price that shall not exceed 12[cent] for the first five years from the implementation date of the petition and plan, unless the company can justify a higher rate based on the total cost of switched access services. The per-minute switched-access service price includes both originating and terminating rates and excludes non-recurring rates. A local exchange telecommunications company with an effective per-minute switched-access service price greater than 12[cent] on the implementation date of the petition and plan shall provide for a revenue neutral phase-down to not more than 12[cent] in not more than three equal annual increments commencing with the implementation of the petition and plan. Upon the sixth year from the implementation date of the plan, the commission shall review the per-minute switched-access service price and, after notice and hearing, determine a just and reasonable per-minute switched-access service price.

(2) Local exchange telecommunications companies with an effective per-minute switched-access service price at or below 12[cent], including both originating and terminating rates and excluding nonrecurring rates, may not increase switched-access prices either in conjunction with the filing or consideration of a petition and plan or for four years from the approval date of a petition, not to extend beyond December 31, 1999, unless the company can show that, absent an increase, total switched-access revenues would be below total switched-access costs. Revenue-neutral access tariff rate changes and restructures may be proposed subject to commission approval.

(3) Upon the commission's evaluation of the consistency of tariff rates and structures with the interstate access service tariff, revenue-neutral tariff rate changes and restructures may be proposed by local exchange telecommunications companies in order to implement the results of the commission evaluation. No rate change or restructure shall be approved if it constitutes or promotes unfair competition. Rate changes and restructures for access services submitted in accordance with this paragraph are subject to commission approval, after notice and hearing.

(4) Any existing limits, by tariff or otherwise, on the amount of revenue that a local exchange telecommunications company may recover from the carrier common line rate shall continue at the effective date of this chapter. At the conclusion of any phasedown period provided in paragraph (1), the annual revenues to be derived from carrier common line rates shall be no more than the total carrier common line revenues applicable to the final 12 months of any phasedown period.

66 Pa. C.S. § 3007.

It is important to note that United's original proposal in its Chapter 30 Plan does not include specific access charge changes, per se, but instead hinges on the outcome of the *Generic Access Charge Investigation* currently pending before the Commission at Docket No. I-00960066, as reflected in United witness Ms. Emily E. Binder's testimony

which was attached to and incorporated in United's Chapter 30 Petition. In her testimony, Ms. Binder stated the following:

Sprint's Plan complies with the access charge requirement in Section 3007. The Generic Access Charge Reform Investigation currently is pending before the Commission, and that decision will have an impact on [United's] access rates and compliance with Section 3007. If the Commission adopts the ALJ's Recommended Decision [in the Generic Access Charge Reform Investigation], [United's] access rates will be below the Section 3007 benchmark. Should other actions be taken by the Commission that result in the Company's effective per minute switched access rate being higher than the Section 3007 benchmark on the implementation date of [United's] Plan, then the Company will submit a revenue neutral phase-down proposal as required by Section 3007.

Direct Testimony of Emily E. Binder, p. 11.

In addition, United's actual Chapter 30 Plan touches only briefly on access charges. This discussion is contained in Part 3, Paragraph B.2. of its Price Stability Plan for Noncompetitive Services and is stated as follows:

2. The Company may also make revenue neutral tariff rate changes to implement the results of Commission orders involving generic industry issues. Current examples include, but are not limited to, intraLATA presubscription, universal service, access charge reform, Commission mandated extended service, Commission mandated optional calling plans and state tax adjustment surcharges.

Alternative Regulation Plan (United Exhibit # 1 of Petition), pp. 29-30.

The Partial Settlement contains specific access charge proposals and allows for United to rebalance its access rates to an effective rate of \$ 0.12 per minute of use over a three-year phase-in period subject to the following limitations:

(a) During the phase-in period through December 31, 2001, [United] will not increase basic local service rates as a result of its price stability mechanism or rate of basic local service rates above the following levels and as set forth in Appendix A [of the Partial Settlement] :

i. Basic monthly local residential rates will be allowed to increase by no more than \$ 1.00 in each of the next three (3) years, at the following points in time: within ninety (90) days of Commission final approval of the Plan, one year later and two years later.

ii. Basic monthly local business rates will be allowed to increase by no more than \$ .50 in each of the next three (3) years, at the following points in time: within ninety (90) days of Commission final approval of the Plan, one year later and two years later. All increases to the local business rate will be limited to no more than one-half of the increase permitted for local residential basic service rates.

iii. After the increase to local residential and business rates, the remaining access rate reductions to an effective switched access rate of \$ 0.12 will be achieved at the discretion of the [United] through increases to rates for other noncompetitive services in a revenue neutral manner.

(b) Through December 31, 2003, [United's] residential local basic service rates shall not increase above a \$ 16.00 weighted average rate cap. This Plan specifies no further rebalancing beyond that indicated above.

(c) After December 31, 2003, [United] shall be permitted to increase residential local basic service rates above \$ 16.00 if (1) the Commission requires [United] to charge a residential local basic service rate in excess of \$ 16.00 in order to receive universal service funding, or (2) the Commission requires [United] to reduce its access rates and the Commission determines that it would be just, reasonable and affordable to increase residential basic service rates to fund all or a portion of such access reduction.

(d) [United] shall also have the opportunity to petition the commission to increase or eliminate the aforementioned residential rate cap after December 31, 2003. All parties to [United's] Chapter 30 proceeding will have the opportunity to respond to such a petition.

(e) The rate rebalancing set forth under the subsections of this Plan shall be used to reduce [United's] access rates to an effective switched access rate of \$ .12 per minute of use. If [United] receives funding as a result of the Global Telecommunications Settlement [at Docket Nos. P-00991648 and P-00991649], any of the Settlement, or Commission Order, the rate rebalancing set forth under Part 3, Section B. of this Plan shall remain unaffected by such funding. Any universal service funding received by [United] shall be on a revenue neutral basis and shall be used to reduce access rates even further or to reduce other rates.

(f) [United] may increase its Directory Assistance rates to the level requested by [United] in the Petition of the Pennsylvania Telephone Association for Adjustment of Directory Assistance Charges, Docket No. P-00981397. Any increase in revenues as a result of these increases in Directory Assistance must be offset by rate reductions in the first year of this Plan.

March 24, 1999 Final Settlement Revised, pp. 29-32.

### *1. Recommended Decision*

The ALJ concluded that both current and proposed access charges are blatantly anti-competitive and a per se violation of Sections 1304 and 3004(d) of the Public Utility Code and that there are no adequate remedies available which could solve the problem by modifying the Revised Plan. (R.D., pp. 23-34). Acknowledging that the *Generic Access Charge Investigation* would be the best place to resolve the access charge issues, the ALJ recommended that access restructuring be considered in a new United Chapter 30 Plan, to be filed within six (6) months, because the *Generic Access Charge Investigation* has no time limit for resolution while the Chapter 30 case has a very specific time limit. (R.D., pp. 30-31).

### *2. Exceptions*

#### *(a) United*

United believes that the ALJ erroneously concludes that both United's current and proposed access charges are blatantly anti-competitive and a per se violation of Sections 1304 and 3004(d) of the Public Utility Code because: (a) the proceeding is about Chapter 30 --- network modernization and alternative regulation --- and not United's specific rate elements (Ex., p. 22); (b) United's current access and toll rates are in compliance with Chapter 13, just and reasonable by law, and are charged pursuant to effective tariffs previously approved by the Commission (Ex., p. 23); (c) it would be unreasonable to overlay a multi-million dollar access rebalancing plan over the fundamental Chapter 30 issues and expect closure through a fully litigated proceeding within the nine (9) month statutory time frame (Ex., p. 25); (d) the Commission has not resolved the "subsidy" issue in access rates (Ex., p. 29); and (e) United's Revised Plan meets the \$ .12 per minute of use access rate test of § 3007 and the test of § 3004(d)(2), because it provides the rules and context for further rate rebalancing on a prospective basis. (Ex., p. 29). United objects to the misleading evidence provided by AT&T in the proceeding because AT&T's evidence of United's access costs is based upon a calculation that was done in the *Generic Access Charge Reform Investigation* to be consistent with United's position that the loop is a direct cost of Universal Service and the Commission has not yet determined whether local loop allocation should be included in an access cost study. (R.E., p. 3). Furthermore, United believes that the "bald assertion by AT&T that access rates are above cost does not establish that they are unjust, unreasonable or unduly discriminatory." (R.E., p. 4).

#### *(b) The OTS*

The OTS believes that the ALJ erred in finding that the access charge proposal in the Partial Settlement and Revised Plan (two to three-year phase-down of access charges) is violative of Sections 1304 and 3004(d)(4) of the Public Utility Code (Ex., p. 6) because there has been no evidence in the record to indicate that unreasonable access rate discrimination exists (Ex., p. 7), and there has been no showing that the Revised Plan unduly or unreasonably discriminates on the basis of rates between or among customer classes. (Ex., p. 8). The OTS believes that the *Generic Access Charge Investigation* is a more appropriate proceeding than a Chapter 30 case to resolve the access restructuring. (R.E., pp. 3-4).

(c) *The OCA*

The OCA excepted to the ALJ's rejection of the Partial Settlement based upon the level of the proposed access charge reductions because it believes that the Partial Settlement reduces United's access charges to the level required by Chapter 30 of the Public Utility Code in a way which is fair and equitable to all of the parties in the case. (Ex., pp. 4-7). Furthermore, the OCA excepts to the R.D. because Chapter 30 only requires United's access rates to be reduced to \$ .12 and any further reductions to access charges do not necessarily have to be achieved during United's Chapter 30 proceeding but should, instead, be addressed in the *Generic Access Charge Investigation* or Global Settlement Proceeding. (Ex., p. 9). The OCA argues that prior Pa. P.U.C. and FCC Decisions require that the Commission should not accept AT&T's views concerning United's costs related to access services because the joint and common line costs should also be considered in these costs. (R.E., pp. 4-10). The OCA believes that AT&T has improperly characterized United's own access costs when both ends of a toll call originate and terminate within United's territory. (R.E., pp. 3-4).

(d) *AT&T*

AT&T believes that the ALJ erred in rejecting Implementation of Access Restructuring through an access pool and that the Commission should adopt, as a moderate approach, the exact restructuring proposal sponsored by United in the *Generic Access Charge Investigation*. (Ex., pp. 7-10). AT&T believes that United's present and proposed access regime constitutes a per se violation of Chapter 30. (R.E. pp. 8-13).

3. *Resolution*

**[11]** It is apparent that the main thrust of the ALJ's rejection of the Partial Settlement centers around the access charge issue. The ALJ integrates the generic access issue with United's commitment in its Chapter 30 Plan to reduce its current access charges to \$ 0.12 per minute within a three-year period as required under Chapter 30.

We agree with the settling parties that the access charge proposal in the Partial Settlement is in compliance with the provisions of Chapter 30 and should be permitted to go forward at this time. This is especially the case in light of the phased-in, minimal effect that the implementation of United's plan will have on its ratepayers.

It is important to note, however, that our ultimate decision on access charges, generally, will be addressed in the Global Telecommunications proceeding and our case-specific decision in the instant proceeding shall be taken without prejudice to our future deliberation and decisions in that regard. In the future, United shall, therefore, be obliged to conform its access structure to the extent directed in the forthcoming resolution of the *Generic Access Charge Investigation*, and the Global Proceeding, until such time, we agree with United that it would be inappropriate that we overlay an access charge restructuring proposal on one LEC which we have not, heretofore, overlaid on any other carrier in a Chapter 30 proceeding. See United Main Brief, p. 15. Thus, the degree of access charge reform sought by AT&T exceeds the Chapter 30 requirement and is an industry-wide, generic concern which currently is being addressed.

Therefore, we shall accept the overall structure of the Partial Settlement with regard to Access Charges without prejudice to the resolution of related issues in the Global Telecommunications proceeding.

G. *Imputation*

1. *Recommended Decision*

The ALJ concluded that any Plan of United for alternative regulation must include an imputation formula as one of many competitive safeguards. However, the ALJ did not recommend a specific imputation formula. (R.D., p. 36).

2. *Exceptions*

(a) *United*

United believes that the ALJ erred in concluding that United's Revised Plan, if refiled, should include imputation as a competitive safeguard because (a) imputation has nothing to do with this proceeding and is being considered in other proceedings; (b) under Chapter 30, only a service which has been declared "competitive" must pass an imputation test and United has not proposed that its toll services be declared competitive, (c) the Commission previously rejected an imputation requirement on all ILECs, except Bell Atlantic-Pa., Inc., and (d) it would be imprudent to place an imputation requirement into United's Revised Plan until a permanent resolution has been found. (Ex., pp. 37-39).

*(b) AT&T*

AT&T believes that access restructuring and an imputation requirement, while far from perfect, is the proper outcome for this case and is fully supported by evidence of the record. (Ex., p. 10). AT&T believes that an imputation test is a necessary component of compliance with 66 Pa. C.S. § 3004(d)(4). (R.E., p. 15).

*3. Resolution*

[12] With respect to the imputation issue, we note that we previously directed initiation of a Proposed Rulemaking by Order entered March 23, 1999, at Docket Nos. L-00990141 and M-00960799, in which we specifically requested comment on imputation requirements for incumbent intraLATA toll service providers, other than Bell Atlantic-Pa., Inc., due to the fact that our September 9, 1996 Order regarding *In re: Implementation of the Telecommunications Act of 1996* at Docket No. M-00960799, suspended the imputation requirement to all LECs other than Bell Atlantic-Pa., Inc. Consequently, we are of the opinion that there is no reason to delay implementation of United's Chapter 30 Plan by requiring it to develop an imputation formula. The action we take today to defer the imputation requirement for United maintains the status quo on this issue until a resolution of the imputation issue has been reached in the Commission's pending proceedings involving this matter. Upon completion of those pending proceedings and a resolution of the imputation issue, we shall require United to comply with our directives on this matter.

*IV. Conclusions*

On review of the Revised Settlement, as modified by our discussion in the instant Opinion and Order, we hereby conclude that a modified plan filed by United consistent with the foregoing, will meet the criteria of Section 3004(d)(1)-(15) of the Public Utility Code, and is, therefore, in the public interest; THEREFORE,

IT IS ORDERED:

1. That in accordance with Sections 3004(b), (d)(2), (d)(4), (d)(5), (e), 3005(a), (e)(2), and 3007(1) of the Public Utility Code, the Petition of The United Telephone Company of Pennsylvania d/b/a Sprint For Approval Under Chapter 30 Of The Public Utility Code Of An Alternative Regulation And Network Modernization Plan and the Partial Settlement and Revised Plan, dated March 24, 1999, is hereby adopted as modified by the discussion contained in this Opinion and Order.
2. That in accordance with Section 3004(b) of the Public Utility Code The United Telephone Company of Pennsylvania must advise the Commission within ten (10) days of whether or not it will accept the revisions directed by this Opinion and Order.
3. That should United Telephone Company of Pennsylvania, Inc., d/b/a Sprint accept the modifications contained in this Opinion and Order, it shall file a modified Plan consistent with said Order within sixty (60) days of the date of entry of said Order.
4. That in all respects not specifically addressed by this Opinion and Order, the Settlement is adopted by the Commission as in the public interest, subject expressly to modifications resulting from the pending "Global Telecommunications" dockets, *supra*.
5. That a copy of this Opinion and Order be served on all participating parties to this proceeding.

**STATEMENT OF COMMISSIONER NORA MEAD BROWNELL**

Sue E Benedek

Before us for consideration is the Recommended Decision of Administrative Law Judge Louis Cocheres recommending the rejection of Sprint/United's Revised Chapter 30 Plan. Although I agree with the ALJ's recommendation that the Company may not have met its burden of proof on certain issues, I vote to accept Sprint/United's Revised Chapter 30 Plan because the settlement reached by nearly all parties brings the benefits of network modernization to customers in the near future. Through the Settlement Agreement and Revised Plan, the Company makes significant commitments to update its network in a shorter period of time than required by Chapter 30. Many of the Company's commitments are completed by the years 2003 and 2004 which brings the benefits of a modernized network to Sprint/United's business and residential customers in the near future.

I understand that what we have before us today is the Company's commitments to modernize its network. I look forward to the Company's reports as required by Chapter 30 and this Commission to demonstrate the fulfillments of these commitments and the actual deployment of its advanced network within their aggressive time frames.

Nora Mead Brownell  
Commissioner

Date: June 24, 1999 .sp 10P *RECOMMENDED DECISION*

Before Louis G. Cocheres Administrative Law Judge

May 11, 1999

#### ***PROPRIETARY DATA DELETED***

#### ***I. SUMMARY OF RECOMMENDATION***

In the ordinary case a settlement, even a partial settlement (as was submitted in this case), creates a good impression as an effort to save the parties and the Commission expensive, time consuming litigation. Unfortunately, not all settlements can be found to be in the public interest. My recommendation is that the partial settlement in this case be rejected because approval would sanction *per se* violations of the Public Utility Code. In addition, approval would permit portions of the partial settlement to be implemented without record evidence to support their fact related terms. In the few instances in which I have previously rejected a utility's total filing, I have tried to provide the Commission with an alternative analysis which could be used to salvage part of the filing. In this case, there is none. I hasten to add that, if the Commission agrees with my recommendation, the Public Utility Code requires the United Telephone Company of Pennsylvania, Inc., doing business as Sprint (Sprint/United or Company), to file a new petition and plan within six months of the Commission's final order. Public Utility Code, 66 Pa. C.S. § 3004(b).

#### ***II. HISTORY OF THE PROCEEDING***

On October 16, 1998, the Commission received the Petition Of The United Telephone Company Of Pennsylvania For Approval Under Chapter 30 Of The Public Utility Code Of An Alternative Regulation Plan And Network Modernization Plan. The Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA) and AT&T Communications of Pennsylvania, Inc. (AT&T) all intervened. The Office of Trial Staff (OTS) participated as well.

A prehearing conference was held before the undersigned on November 20, 1998. At that time, a litigation schedule for the service of testimony, hearing dates and filing of briefs was finalized. A total of four prehearing orders were issued. Among them was a protective order, dated January 6, 1999.

Two public input hearings were held. The first hearing was held on January 5, 1999, in Chambersburg, Pennsylvania. The second one was held on January 7, 1999, in Butler, Pennsylvania.

On March 10, 1999, I received the Settlement Agreement Among The United Telephone Company Of Pennsylvania, The Office Of Trial Staff, The Office Of Consumer Advocate And The Office Of Small Business

Advocate (Partial Settlement) . Included with the Partial Settlement was a revised Alternative Regulation Plan Of The United Telephone Company Of Pennsylvania, Doing Business As "Sprint" (Revised Plan) which was labeled Appendix A. Also included were the various statements in support of the settlement from the signatory parties and other attachments. AT&T was not a signatory to the agreement.

The initial hearing was re-scheduled to March 15, 1999. The hearing had two purposes: First, it gave AT&T and the Company the opportunity to complete litigation of all issues. Second, I used the hearing as the opportunity for a settlement conference and to ask for clarification of some of the settlement terms.

As a result of the March 15 hearing, the Partial Settlement was revised to accommodate certain requests and suggestions I made during the settlement conference portion of the hearing. The revised Partial Settlement was submitted and dated March 24, 1999. (A copy of the March 24 version of the Partial Settlement, Revised Plan and the attachments are attached to this Recommended Decision.)

Main briefs were filed by Sprint/United and AT&T. Reply briefs were filed by Sprint/United, AT&T and OTS.

### **III. DISCUSSION**

As noted above, this case should have had two distinct sections: litigated issues and the settlement. However, there is no question that my recommendation on the litigated issues negates the value of the settlement. With that in mind, the salient portions of the settlement are discussed within the relevant litigated issues sections.

One other caveat should be emphasized: Any argument made by a party which is not specifically discussed and/or concluded is hereby rejected.

#### **A. LITIGATED ISSUES**

##### *1. Evidentiary Problems*

###### *a. Parties' Positions*

###### **(1) AT&T**

AT&T began its main brief by arguing that the submission of a Partial Settlement did not relieve this Commission of its duty to make the determinations required by the Public Utility Code and the Administrative Agency Law. 66 Pa. C.S. §§ 332, 3001-3009. 2 Pa. C.S. §§ 504, 505. More particularly, AT&T asserted that the Sprint/United failed to carry its burden of proving that its Chapter 30 filing 1) produced just and reasonable rates, 2) did not prejudice or disadvantage any customer class, 3) was in the public interest, 4) enhanced economic development, 5) made the requisite access charge adjustments, 6) assured the provision of customer and network information on a non-discriminatory basis, 7) demonstrated the need for a designation of competitive services and 8) applied the appropriate competitive safeguards. 66 Pa. C.S. §§ 332(c)-(d), 3004(d)(2), (4)-(6), (9) and (15), 3005(a)(1) and 3005(e). Citing cases, AT&T asserted that the inclusion of the Partial Settlement in the record was insufficient to meet the burden of proof which the law imposed on the Company. AT&T concluded that Revised Plan (and particularly the proposed inflationary offset) was not supported by any record evidence. AT&T M.B., pp. 3-8, 16-20.

In its main brief, Sprint/United represented that its Network Modernization Plan (NMP) met all Chapter 30 requirements. Sprint/United M.B., p. 8. In its reply brief, AT&T added to its lack of record evidence argument by attacking the Company's proposed deployment of interactive broadband. AT&T continued that the NMP did not provide for accelerated deployment and, thus, failed to provide the *quid pro quo* needed to justify approval of an alternate form of rate regulation. AT&T R.B., p. 9.

###### *(2) Sprint/United*

Sprint/United did not address this issue in its main brief. However, it did respond in its reply brief. At first, it argued that every aspect of the Revised Plan was supported by substantial evidence. The Company noted that AT&T had not presented any evidence to challenge the Revised Plan and that AT&T had not used the opportunity to do so at

the hearing. Sprint/United claimed that AT&T had ignored and not challenged the provisions of the Partial Settlement which lowered access charges and were counter-balanced by revenue-neutral rate increases for local service. The Company claimed that the Revised Plan should be approved because there was notice and a hearing held, because the Plan complied with the Chapter 30 requirements and because there was no record evidence to refute it. Sprint/United ended this argument by asserting that the cases cited by AT&T were distinguishable and not dispositive of the issue. Sprint/United R.B., pp. 2-3.

Sprint/United disagreed with the AT&T's assertion that the Company had failed to demonstrate the need for competitive services classifications. Sprint/United explained that its witness proposed an expedited time frame for the competitive classification of services to parallel similar grants made to other Local Exchange Carriers (LECs). The Company continued that the Revised Plan contained the rebuttable presumption which AT&T had advocated. Sprint/United pointed out that AT&T had entered into settlement agreements with other small telecommunications companies which contained the same kinds of competitive services provisions which AT&T now opposed. The Company concluded that the services previously declared competitive by the Commission were self-evident and did not require further proof. Sprint/United R.B., pp. 6-7.

With respect to the competitive safeguards issue, Sprint/United argued that the Revised Plan satisfied the AT&T criticisms and the statute. Sprint/United R.B., pp. 7-8.

Finally, Sprint/United disputed the suggestion that the proposed 2% inflationary offset in the Revised Plan was not supported by the evidence. The Company began by noting that AT&T had improperly referred to extra-record evidence in this portion of its main brief. It pointed to the testimony of Dr. Taylor who had recommended a productivity range of 0.65% to 1.62% and noted that AT&T had failed to produce any evidence on the issue. The Company continued that Dr. Taylor's testimony had followed the approach adopted by the Commission in its Opinion and Order in *Petition of Commonwealth Telephone Company For An Alternative Regulation and Network Modernization Plan*, at Docket No. P-00961024, wherein the Commission had approved a similar 2% rate. Sprint/United R.B., pp. 8-10.

### **(3) OTS**

The OTS did not submit a main brief. It did choose to submit a reply brief to support the Partial Settlement and to respond to AT&T. The OTS responded to the inflationary offset issue. It began by noting that AT&T had improperly referred to extra-record evidence in its main brief, too. The OTS continued that Dr. Taylor's rebuttal testimony included a stretch factor which when added to his original 1.1% offset recommendation was more than adequate to cover the 2% offset contained in the Revised Plan. The OTS asserted that this Commission in its Opinion and Order in *Petition of Commonwealth Telephone Company For An Alternative Regulation and Network Modernization Plan*, at Docket No. P-00961024, added a stretch factor to the proposed offsets and proceeded to adopt a similar 2% rate. OTS R.B., pp. 6-8.

#### *b. Analysis*

Having reviewed the parties' briefs, the record and the law, I have concluded that AT&T is correct and, generally, should prevail on this issue. However, before trying to explain my reasoning for coming to this conclusion, a general description of the record is required.

#### *(1) Burden of Proof and the Evidentiary Record*

This is a case where smart legal tactics have made a distinct difference. This case began normally enough with a prehearing conference on November 20, 1998, at which time a litigation schedule was put in place. The litigation schedule was confirmed by Prehearing Order No. 1, dated December 16, 1998. The litigation schedule set forth all of the prepared testimony service dates, and the parties complied with those deadlines. All of the testimony reflected the parties' litigation positions for Sprint/United's *original* case. In the interim, the parties entered into settlement negotiations which ultimately produced the Partial Settlement and the Revised Plan. *The Revised Plan differed in some important aspects from Sprint/United's original proposal.* Since the Company, OTS, OCA and OSBA were the signatories to the Partial Settlement, the only remaining litigating party was AT&T. At the request of

Sprint/United and AT&T, the hearing schedule was slightly delayed and collapsed to one day, March 15, 1999. That hearing date was used for two purposes: First, it was the only opportunity for the litigating parties to present their evidence to support their positions. Second, I used it as a settlement conference to discuss certain issues and questions about the Partial Settlement.<sup>1</sup>

By agreement between the Company and AT&T, the litigation portion of the hearing became a non-event. Both agreed to allow each to stipulate their previously prepared written testimony into the record without cross-examination or presentation of the actual witnesses. In addition, Sprint/United was permitted to admit its original petition for alternative regulation, the supporting documents (including the testimony which was its case-in-chief) which were appended to the petition, the Partial Settlement and the Revised Plan with its attachments. Tr. 122-131, 139-140. Sprint St. Nos. 1.1, 1.2 and 1.3. AT&T St. Direct and Surrebuttal. Sprint Ex. No. 1. The remaining public advocates did not present any evidence.

This format proved to be a serious disadvantage to Sprint/United because the Company failed to note that its litigation position had shifted from support of its original filing to support of the Partial Settlement and Revised Plan. Unfortunately for Sprint/United, AT&T was entirely correct when it argued that Sprint/United retained the burden of proof.<sup>2</sup> 66 Pa. C.S. §§ 332(a) and 3004(e). In fact, all of Sprint/United's and AT&T's testimony (*i.e.* direct, rebuttal and surrebuttal) was written to support or criticize the Company's *original* filing which was no longer an issue. Thus, if there was support for the Partial Settlement and Revised Plan in the evidentiary record, it came from the Partial Settlement and Revised Plan themselves and, by coincidence, from the prepared testimony. In sum, the support for the Partial Settlement and Revised Plan in the record was meager at best.

## (2) *Competitive Services*

Having reviewed the parties' briefs, the record and the law, I find that Sprint/United failed to establish a *prima facie* case that any service it offers should be classified competitive. The Company's position appeared to be based upon the assumption that, if this Commission declared any telecommunication services competitive in any prior Chapter 30 case, then similar services offered by Sprint/United (and mentioned in this case) should *automatically* be competitive as well. The assumption is incorrect.

Chapter 30 sets forth the criteria which this Commission must evaluate in order to conclude that a service offered by a company is competitive. Among the standards are: ease of market entry, existence and impact of cross-subsidization, presence and viability of other competitors and their market share, opportunity for competitors to offer those services at competitive prices and the availability of similar services in the relevant geographic area. 66 Pa. C.S. § 3005(a)(1). I emphasize that the preceding list was not exhaustive, but demonstrates that the evidence to justify a competitive service classification must be specific to the company in question and its relevant market. In addition, the list will be more than sufficient to highlight the failings in the Company's case.

AT&T offered the following critique of Sprint/United's position. I agree with it and adopt its reasoning as my own:

With respect to competitive services, United's revised Plan provides as follows:

The following services are currently competitive and shall continue to be classified as competitive under Chapter 30: customer premises equipment, inside wire, billing and collection and voicemail. . . .

When the Company requests that new or existing services be classified as competitive, a sixty (60) day notice procedure shall be followed . . . . The Commission shall enter an Order within sixty (60) days of the filing concerning the service's competitive status; otherwise, the service shall be deemed to be competitive.

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<sup>1</sup> Ultimately, the signatory parties adopted my suggestions and made minor revisions to the Partial Settlement and Revised Plan which was resubmitted and dated March 24, 1999.

<sup>2</sup> Contrary to the Company's suggestion, I hasten to add that AT&T had no duty to introduce evidence or prove anything and that its failure to adduce proof on any issue in no way infringed on its right as a party to criticize the Company's case or make other arguments.

Plan at 20-21. Ms. Binder's direct testimony in support of the classification of the four services as "competitive" consisted of the following: "Other than current competitive services, such as customer premises equipment, inside wire, billing and collection and voicemail, the Company is not proposing that any additional services be classified as competitive." Sprint St. 2 at 27.

United's only other attempt to provide evidentiary support for its proposal is contained in Ms. Binder's rebuttal testimony:

Clearly, services that have been deregulated are competitive. There is no need for the Company, other Parties or the Commission to spend time and resources litigating whether these services are competitive when they have already been deregulated, which would only occur if competition for these services existed. The Commission already has pronounced these services to be deregulated. See Appendix EEB-2.1.3. Also, AT&T, in a number of Chapter 30 stipulations has agreed that these services are deregulated.

If these services were not classified as competitive, they would be classified as noncompetitive. If the services were classified as noncompetitive, the opportunity for United to decrease the price for these services while increasing the price for other noncompetitive services through rebalancing is possible. This is the very example that OTS identifies as a potential problem on page 10, lines 12-14 of Mr. Yarolin's Direct Testimony. The Commission should reject AT&T's opposition to United's competitive classification of current deregulated services.

United St. 2.1 at 30-31. This testimony is legal argument, not *evidence* upon which the PUC can make the determinations required by Section 3005(a)(1) of the Code. Indeed, Ms. Binder makes a startling suggestion to justify United's classification of these existing services as competitive: "The opportunity for United to decrease the price for these services while increasing the price for other noncompetitive services through rebalancing" is possible if these services are *not* classified as competitive. *Id.* at 31. Clearly, Ms. Binder's testimony provides no evidentiary basis for classifying as competitive under the company-specific criteria of Section 3005(a)(1) services detariffed for United or declared competitive in *other* LECs' Chapter 30 proceedings. United has not identified an exception from the requirements of Section 3005(a)(1) for previously deregulated services or services classified as competitive for other LECs.

AT&T M.B. pp. 16-17.

My analysis did not start or end with the reasoning offered by AT&T above. Even if one assumes incorrectly that the AT&T premise is wrong, I note there is no mention in the Company testimony of the kinds of facts needed to support any of the required statutory findings. For example, other than identifying the services set forth in the original and Revised Plans which Sprint/United desired to be classified competitive, there was no mention of any competitor in the market or its market share, the relevant geographic market, the availability of substitute services, etc.

Not only were these necessary facts omitted from the Company's case-in-chief (*i.e.* Sprint St. 2), but also from the rebuttal testimony, as well. These omissions from both rounds of testimony were significant. With respect to the direct testimony, the absence of this evidence meant the Commission did not have a sufficient record from which to conclude that a competitive classification was needed.

Because AT&T raised the issue of the sufficiency of the Company's proof of the need for a competitive service classification in AT&T's direct case, Sprint/United's failure to properly address the issue in the rebuttal phase demonstrated its failure to grasp the importance of the statutory language. In other words, Sprint/United knew or should have known when it received the AT&T direct testimony that the competitive services aspect of its case was under attack. Instead of bolstering its position in the rebuttal phase, it chose to dismiss the issue by claiming that further litigation was not needed. Sprint St. 2.1, pp. 30-31. The cross-reference in the rebuttal testimony to the fact that this Commission had granted competitive service classifications to other companies for similar services (*i.e.* Appendix EEB-2.1.3.) demonstrated the Company's failure to comprehend that a competitive services classification is based on company specific data. Accordingly, my conclusion is unchanged: The absence of the needed facts of record in the rebuttal phase continued to deprive the Commission of the evidence from which to make the required findings.

*(3) Competitive Safeguards*

AT&T also raised the issue of the sufficiency of the proposed competitive safeguards. Even though I have recommended that the Revised Plan be rejected, Sprint/United will be required to file a new petition in six months (66 Pa. C.S. § 3004(b)) and will have the opportunity to seek competitive service classifications which must be subject to safeguards. Accordingly, I offer the following for the Company's guidance.

Having read the parties' briefs, the record and the law, I have concluded that, with one exception, Sprint/United should have prevailed on this issue. The primary challenge raised by AT&T concerned the Company's initial failure to include the filing of tariffs and price lists for competitive services in its original plan. AT&T M.B., pp. 18-19. Had the original plan remained in contention, I would have agreed with AT&T. However, Sprint/United pointed out that the Revised Plan remedied that criticism. Sprint/United R.B., pp. 7-8. I agree.

The Revised Plan included the following protections: 1) a prohibition on cross-subsidization by non-competitive services of competitive services, 2) the adoption of a forward-looking incremental cost methodology for competitive services, 3) Sprint/United cost studies, 4) competitive service tariffs or price lists, 5) the continuation of Public Utility Code, Chapter 15 jurisdiction over all services, 6) the continuation of compliance with EAS regulation subject to approved waivers, 7) the continuation of limited affiliated interest jurisdiction, 8) the continuation of Public Utility Code, Chapters 63 and 64 jurisdiction subject to approved waivers, and 9) additional reporting requirements. Revised Plan, pp. 22, 36-39.

I emphasize that the Revised Plan was a noticeable improvement over the protections offered in the original plan. Indeed, many of the protections, noted above, were specifically excluded in the original. Under these circumstances, I find that the Revised Plan remedied almost all of the criticisms and failings in the original plan.

As noted earlier, there is one problem with the Competitive Services Deregulation Plan. The Revised Plan would allow a service to be deemed competitive if the Commission failed to act on the Company's petition within 60 days. This 60 day procedure is binding even if a complaint is filed. Appendix A, pp. 20-21. AT&T argued that the procedure violated Chapter 30. AT&T M.B., pp. 17-18. I agree. Section 3005(a) requires 60 days notice of the request for a competitive service classification, notice of a hearing and a hearing. It also gives the Commission 180 days in which to enter an order. 66 Pa. C.S. § 3005(a). I find that the purpose of this statutory system is to give the LEC the opportunity to make a record from which the Commission can derive the necessary statutory findings as set forth in the other subsections of 3005. 66 Pa. C.S. § 3005(a)(1)-(2) and (e). Accordingly, Part 2.A. P 4, p. 21. of the Revised Plan (Appendix A) did not meet the statutory standard and could not have been accepted.

*(4) Inflation Offset*

The Partial Settlement and Revised Plan set the inflation offset at 2%. AT&T challenged this number as unsupported in the record. Having reviewed the parties' briefs, the record and the law, I find that AT&T is correct.

The arguments offered by Sprint/United and the OTS in support of the 2% figure are misguided<sup>3</sup> at best: The Company contended that it provided record evidence to support the 2% figure from its witness, Dr. Taylor. Unfortunately, Dr. Taylor's testimony and exhibits do not support the Sprint/United position. More specifically, Dr. Taylor advocated an inflation offset in the range of .65% to 1.62%. Sprint St. 3, p. 2. At the risk of stating the obvious, 2% is not a number which falls within that range.

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<sup>3</sup> Both the Company and the OTS claimed that the AT&T argument contained extra-record evidence which was in violation of my clear record admonition. Tr. 165-166. Initially, I was disturbed by the AT&T references to OCA and OTS testimony (recommending inflation offsets of 4.8% and 5.0%, respectively) on page 19 of the AT&T main brief because the OCA and OTS had not introduced any testimony into the record. However, in reviewing the rebuttal testimony of Dr. Taylor (Sprint St. 3.1, p. 3) which is in the record, I discovered a cross-reference to the same information which forms the basis for extensive discussion of the errors in those calculations. Thus, the AT&T error was to fail to properly provide a citation to the record. Finally, I note that the reference to the testimony is simply not helpful to AT&T's argument either. It has the legal right to challenge the 2% figure. The fact that two other parties had litigation positions which supported numbers different from 2% is irrelevant.

Analysis of Dr. Taylor's rebuttal testimony did nothing to enhance the Company position. True, he did discuss the OCA and OTS inflation offset litigation positions of 4.8% and 5.0% (respectively) and their recommended stretch factors. However, the entire reason for his rebuttal testimony was to explain why he believed their litigation positions were wrong and to defend his original position. Sprint St. 3.1, *passim*. Thus, there was nothing in his rebuttal testimony which could be used to justify the 2% figure, either.

I hasten to add that this analysis of the Taylor rebuttal testimony undermined the OTS argument, as well. The OTS asserted that Dr. Taylor referenced a stretch factor range of .5% to 2% in his rebuttal testimony. OTS R.B., p. 7. While it may be true that such a range was mentioned, a fair reading of that portion of the testimony revealed the source for that range was the OTS witness. In addition, the purpose for bringing the subject up was to advocate the reasons for rejecting it. Sprint St. 3.1, p. 23. Under these circumstances, I cannot use evidence from Dr. Taylor's testimony which he was intent on discrediting as a basis for finding support for the 2% inflation offset.

Sprint/United's argument that AT&T did not introduce testimony on the issue is to no avail. The Company had the burden of proving the new 2% figure was reasonable. AT&T had no burden of proof at all. Indeed, the question is a legal one: Is there record evidence to support the 2% inflation offset? The answer is "No." Without evidence, the 2% figure was not justified and could not have been adopted.

#### (5) *Network Modernization Plan*

As noted above, Sprint/United asserted that its NMP met the statutory standards. Sprint/United M.B., p. 8. In its reply brief, AT&T challenged the Company position. AT&T R.B., p. 9. Having read the parties' briefs, the record and the law, I have concluded that Sprint/United would have prevailed.

Essentially, Chapter 30 requires a LEC 1) to commit to a plan which makes universal broadband available throughout its network by December 31, 2015, 2) to balance deployment of the facilities throughout the service territory and 3) to deploy the facilities at or adjacent to governmental, educational and medical centers. 66 Pa. C.S. § 3003(b)(1)-(3). The question then becomes: Did Sprint/United carry its burden of meeting these requirements? The answer would have been "Yes." The Company's case included the testimony of Mr. Studdard who explained Sprint/United's plan for providing universal broadband availability by the year 2015. Sprint St. 1 and 1.1. He authenticated the original NMP for the record. The NMP in the Revised Plan also contained all of provisions mandated by the statute. It was nearly identical to, and somewhat improved over, that offered in the original plan. *Compare*, Sprint Ex. 1, pp. 3-19 to Appendix A, pp. 3-19. Under these circumstances, the proof offered by the Company was more than sufficient to find that the NMP in the Revised Plan would have complied with the statute.

### 2. *Per Se Violations And Access Charges*

#### a. *Parties' Positions*

##### (1) *Sprint/United*

Sprint/United initially argued that Sprint/United's witness testified that the original plan met the statutory standard in Section 3007 of the Public Utility Code. 66 Pa. C.S. § 3007. The Company interpreted Section 3007 to "require only that the Company propose a plan to phase down access charges once the Chapter 30 Plan is approved and implemented." Sprint/United M.B., p. 10. Sprint/United then explained that the Partial Settlement contained the statutorily mandated reduction of access charges over a three year period from \$ .152542 to \$ .119965. Therefore, the settlement obviated the need to adopt AT&T's position. Sprint/United M.B., pp. 8-12.

Sprint/United argued that the proper forum for resolving access charge issues was in the Commission's *Generic Investigation of Intrastate Access Charge Reform*, at Docket No. I-00960066 (*Generic Access Investigation*). The Company distinguished between the generic industry wide investigation which was completed before Administrative Law Judge (ALJ) Schnierle and the Company specific Chapter 30 case pending before the undersigned. Sprint/United expressed its continued support for ALJ Schnierle's Recommended Decision, dated June 30, 1998. However, it disagreed with AT&T's position to the effect that the Company recommended solutions pending in the *Generic Access Investigation* should automatically be imposed in the instant case and could be easily modified later

to fit any subsequent Commission final decision in the investigation. The Company emphasized that, once a Chapter 30 plan was approved, the resolution of the *Generic Access Investigation* would become an **exogenous event** which in turn would trigger the need for rate rebalancing. Sprint/United argued that Chapter 30 did not require access charge reform beyond that proposed in the Partial Settlement. Sprint/United M.B., pp. 12-15.

Sprint/United contended that imputation was only applicable to competitive services issues and should not be analyzed as part of an access issue. At best, the Company characterized the intraLATA toll imputation issue as a generic industry issue. It explained that the Commission had imposed imputation safeguards only on Bell-Atlantic. Sprint/United claimed that there was no factual basis to impose imputation on itself because the Company had not requested intraLATA toll to be classified competitive. Sprint/United M.B., pp. 12-15.

In its reply brief, Sprint/United asserted that the AT&T proposed modifications were nothing more than a reargument of AT&T's position in the *Generic Access Investigation*. It argued that the Revised Plan (which was included with the Partial Settlement) fully complied with Section 3007 of the Public Utility Code. The Company reiterated its position that access charge reform should be accomplished in the *Generic Access Investigation* or in the recently instituted Global Settlement proceedings at docket numbers P-00991648 and P-00991649. It continued by noting that no party had challenged, and the Commission had approved, the tariff which AT&T indicated was an example of an anti-competitive action in favor of Sprint/United and its parent company. Sprint/United explained that introduction of the Revised Plan into the record was sufficient evidence from which to conclude that there was compliance with Section 3007 of the Code. Sprint/United R.B., pp. 3-6.

## **(2) AT&T**

In its main brief, AT&T argued that Section 3007 of the Public Utility Code required Sprint/United to immediately lower its per minute switched-access service to the statutory maximum of 12[cent] per minute. 66 Pa. C.S. § 3007. It continued that the Public Utility Code also required that access service rates be reasonable and not impede the development of competition and not unreasonably prejudice a customer class. 66 Pa. C.S. §§ 3001(4) and 3004(d)(4). AT&T then attacked the Company's case-in-chief for failing to propose any provision which complied with the cited sections of the statute. AT&T reviewed its evidence which indicated that the wide discrepancy between access prices and costs created a serious anti-competitive situation which was manipulated to favor Sprint/United's parent company, Sprint Communications, L.P. AT&T claimed to represent a customer class which would be unreasonably prejudiced by Sprint/United's failure to implement the access charge proposals advocated by Sprint/United in the *Generic Access Investigation*. AT&T M.B., pp. 8-15.

AT&T criticized the Partial Settlement for using a three year phasedown to the maximum 12[cent] figure and for failing to conform the Company access charges to the proposals in the *Generic Access Investigation*. It continued that the Partial Settlement did not demonstrate compliance with Sections 3001(4) and 3004(d)(4) of the Public Utility Code. AT&T M.B., pp. 15-16.

In its reply brief, AT&T disagreed with Sprint/United's contention that access charge reform was not within the statutory purview of the Chapter 30 cases. AT&T reiterated its position that there was no evidence to support a finding that the Partial Settlement and the Revised Plan did not impede competition and/or unreasonably prejudice the access customer class. It reviewed its evidence which showed that Sprint/United's access rates contained an implicit universal service subsidy and a wide disparity between access prices and costs. AT&T contested the suggestion that access rate reform would require revenue-neutral rebalancing of local rates and urged the Commission to reform Sprint/United's access rates in this proceeding in conformity with the Public Utility Code. AT&T R.B., pp. 2-7.

AT&T responded to the Company's imputation argument by emphasizing that intraLATA toll imputation issues were addressed by the Commission on a case-by-case basis. It reviewed its evidence which showed how Bell-Atlantic's rates could be used to impose a price squeeze on competitors and how the same problem was possible with Sprint/United. AT&T R.B. p. 7-9.

## **(3) OTS**

The OTS argued that the introduction of the Partial Settlement and the Revised Plan with its attachments provided the record evidence to demonstrate a major problem with the AT&T position. More specifically, if the access charges were immediately lowered to 12[cent] as per AT&T, the local rate customers would experience rate shock. See, Attachment A to the Revised Plan. OTS M.B., pp. 3-5.

The OTS continued that the statute provided for a three year revenue-neutral phasedown to reach the 12[cent] figure which coincided precisely with the Partial Settlement terms. 66 Pa. C.S. § 3007(1). The OTS pointed out that all of the AT&T evidence critiqued the original Chapter 30 Plan, as proposed by the Company. The AT&T witness did not comment on the Revised Plan.

Finally, the OTS agreed with the Company to the effect that the issue of access charge reformation should be addressed in the *Generic Access Investigation*. The OTS also referred to the two pending Global Settlement petitions at docket numbers P-00991648 and P-00991649 as the appropriate cases in which to resolve the access issues. OTS R.B., pp. 3-6.

#### b. Analysis

##### (1) Access Charges

The issue of access charges presents this Commission with a Hobson's choice in which none of the possible solutions are fair or entirely comply with the Public Utility Code. AT&T did an excellent job of demonstrating how Sprint/ United's current and proposed access charges are anti-competitive and, consequently, contrary to the Public Utility Code. Unfortunately, the anti-competitive format of the current and proposed access charges is so blatant that I find it impossible to reconcile the Revised Plan with the requirements of Section 3004(d) of the Code. 66 Pa. C.S. § 3004(d). As a result, I have recommended rejection of the Sprint/ United petition, Partial Settlement and Revised Plan. The Company will be required to file a new petition within six months of the Commission's final order. 66 Pa. C.S. § 3004(b).

In order for the Commission to approve a petition for alternative rate regulation, the plan must meet many standards, which include, *inter alia*: 1) assures just, reasonable and not unduly discriminatory rates for noncompetitive services, 2) will not unduly prejudice or disadvantage a customer class or providers of competitive services, 3) is in the public interest, 4) complies with access charge restrictions, 5) ensures that users of noncompetitive services do not cross-subsidize the costs of competitive services and 6) requires effective per-minute switched-access prices greater than 12[cent] be lowered in a revenue-neutral phasedown to not more than 12[cent] in not more than three annual equal increments. 66 Pa. C.S. § 3004(d)(2), (4), (5), (9) and (14) and § 3007(d)(1).<sup>4</sup>

AT&T's main brief and witness explained the problem as follows:

The evidence reveals that United access rates are currently well over 15[cent] per minute for two ends, while its corresponding costs are approximately *Begin Proprietary End Proprietary* cents per minute. Accordingly, United's access rates are presently approximately [*Begin Proprietary*] [*End Proprietary*] the cost of providing the service.[10]

Such a discrepancy between price and cost creates a severe anti-competitive situation. As Mr. Nurse explained:

Since United is an active participant in the intraLATA toll market in its service territory and its parent company, Sprint Communications, L.P., is one of the largest IXCs participating in the interLATA toll markets in United's service territory, United's current access regime --- which provides both United and Sprint an access advantage over other market participants --- cannot be viewed as competitively fair. While non-affiliated IXCs like AT&T must pay real money to United for each access minute of use, United does not have to pay itself for access. Furthermore, while monies [sic] may be transferred from Sprint to United for Sprint's minutes of use, such phantom

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<sup>4</sup> According to Sprint/United's petition, it serves over 367,000 access lines. Petition, p. 3, 6. Therefore, it met the 250,000 line threshold in the statute. 66 Pa. C.S. § 3007.

transactions are revenue neutral to the Companies' stockholders. This sets up a scenario of competitive inequity which is unacceptable if the toll markets in United's service territory are to be truly opened to competition.

Mr. Nurse is not alone in his views of the anti-competitive effects of such a discrepancy. As ALJ Schnierle stated in his Recommended Decision addressing Bell's intraLATA toll services:

Considering the fact that access charges are a very significant portion of the cost of intraLATA toll, while representing an almost negligible cost to BA-PA and considering that BA-PA is a monopoly provider of access in much of its service territory, BA-PA will be in a position to put many other providers of intraLATA toll in a price squeeze between toll rates and access charges, if the petition is granted as filed. I would add that the Commission also appears to have agreed, as recently as January 28, 1997, that access charges must be closer in magnitude to access costs for there to be true competition in the toll market ... [11]

Of course these findings by the ALJ were made pertaining to Bell Atlantic which, while having its own anti-competitive access scenario, does not have as great a discrepancy between price and cost as United. While Bell's current access rates are approximately 5.4 cents per minute, United's present rate levels are approximately three times as high. Even reduced to 12 cents, United's access rates will remain more than twice Bell's levels and approximately *[Begin Proprietary]* *[End Proprietary]* the cost of providing the service.[12]

[10]AT&T Direct at 11.

[11]*Petition of Bell Atlantic-Pennsylvania, Inc.*, P-00971293, Recommended Decision, p. 13.

[12]AT&T Direct, pp. 14-16.

AT&T M.B., pp. 10-11. (Emphasis in the original.) AT&T further emphasized the anti-competitive importance of the Sprint/United's access charge problem with the following additional testimony:

Q. DO YOU HAVE OTHER CONCERNS REGARDING UNITED'S ACCESS PROBLEM?

A. Yes. A recent service offering by United provides a perfect example of how an ILEC the size of United can "price squeeze" the market because of its access advantage. In response to discovery, United provided me with tariff pages of Section 6 of Pa. P.U.C. Toll No. 30 under which, effective October 11, 1998, it began offering an intraLATA toll discount plan entitled "Sprint Simply Five." Under "Sprint Simply Five," a customer that pays a \$ 4.95 monthly fee can receive up to 200 minutes of intraLATA toll service at \$ .05 a minute as long as the customer resides in United's service territory. Keep in mind that United's competitors, including AT&T, must pay United over \$ .15 per minute just in access charges if the call originates and terminates in United's service territory and over 7 1/2 cents a minute for just the originating side even if the call terminates in another service territory. [16]

In response to an AT&T interrogatory, United refused to provide data which would enable me to demonstrate arithmetically that the service offering is below United's imputed costs; however, notwithstanding United's continued lack of cooperation in the discovery process, it is easy to see my point.[17] Because United does not have to pay its own exorbitant access charges, it is able to make its "Sprint Simply Five" offering. No competitor which has to pay United's access charges could meet the offer to United's customers for any sustainable period. Likewise, United could not sustain such an offering to customers outside of its service territory where it actually has to pay both originating and terminating access. Accordingly, it is no surprise that United's "Sprint Simply Five" service offering is restricted to customers placing calls from within its service territory.

[16]Of course, the competitor would also have to pay the terminating carrier's terminating access rate if the call terminated outside of United's service territory.

[17]While a complete analysis is not possible with the data I have been provided, a simplified evaluation is possible. If a customer uses all 200 minutes, the effective per minute rate would be less than 7 1/2 cents ( $\$ 4.95 + [200 \times \$ .05] / 200 = \$ 7.47$  cents [sic], or less than United's access charge for the originating end of a call. Accordingly, no matter where a given call terminates, the access rates incurred by an unaffiliated IXC would be more than the 7 1/2 cent effective rate by a wide margin. For calls that terminate in United's service territory, an

unaffiliated IXC would incur an access charge from United more than double United's effective toll rate under the above scenario, without even considering the IXC's other costs which it must recover just to break even.

AT&T Direct, pp. 18-20. Based on this testimony, I find that both current<sup>5</sup> and proposed<sup>6</sup> access charges are blatantly anti-competitive and a *per se* violation of Sections 1304 and 3004(d) of the Public Utility Code. 66 Pa. C.S. §§ 1304 and 3004(d)(4). Further, there are no adequate remedies available which could solve the problem by modifying the Revised Plan.

The first two remedies I rejected were those offered by AT&T. Its first position was to immediately lower access charges from 15[cent] to 12[cent] per minute. AT&T M.B., pp. 9-10. The first problem with this idea is that it does not cure the illegality of the rate structure. The fact that AT&T is willing to acquiesce in paying 6[cent] per minute for one end of the call while Sprint/United pays less than 3.75[cent] per minute for the same end does not make the rate structure legal for AT&T or any other access customer. The AT&T proposed rate structure would still be discriminatory, still be violative of Sections 1304 and 3004(d)(4) and still require rejection of the Plan.

Another problem with immediately lowering the rate to 12[cent] stems from the operation of Section 3007(1) of the Public Utility Code. 66 Pa. C.S. § 3007(1). Section 3007(1) requires that, if Sprint/United were to lower its access charge to 12[cent], it must be in a revenue-neutral manner. In other words, the customers would be required to make up the lost revenues, immediately. The one step drop to 12[cent] should be compared to the Revised Plan. The Revised Plan also lowers the access charge to 12[cent] per minute, but does so in three approximately equal increments over a three year period. This three year spread is specifically authorized by Section 3007(1). One obvious reason for spreading the decrease over three years is to avoid rate shock. Even though I am not endorsing the Revised Plan, its provisions for phasedown are useful because they highlight the problem with the AT&T proposal. I find it impossible to endorse the AT&T suggestion which guarantees rate shock to the customers immediately.

AT&T also endorsed implementing the pooling plan advocated by Sprint/United in the *Generic Access Investigation*. AT&T M.B., pp. 12-13. I have two problems with this suggestion: The first is that Sprint/United's proposal was the starting point for, but not fully adopted by, ALJ Schierle in his Recommended Decision, dated June 30, 1998, at Docket No. I-00960066. The second is that the Commission has taken no action on the Recommended Decision. Accordingly, I don't find that the prior Sprint/United testimony is precedent which should control the imposition of a remedy in this case.

The solution proffered by the Company suffered from significant shortcomings. The Sprint/United witness, Ms. Binder, asserted that the original plan complied with Section 3007 of the Public Utility Code, as follows:

*(9) Complies with the access charge requirement in Section 3007.* Sprint's Plan complies with the access charge requirement in Section 3007. The Generic Access Charge Reform Investigation currently is pending before the Commission, and that decision will have an impact on Sprint's access rates and compliance with Section 3007. If the Commission adopts the ALJ's Recommended Decision, Sprint's access rates will be below the Section 3007 benchmark. Should other actions be taken by the Commission that result in the Company's effective per minute switched access rate being higher than the Section 3007 benchmark on the implementation date of Sprint's Plan, then the Company will submit a revenue neutral phase-down proposal as required by Section 3007.

Sprint St. 2, p. 11. (Emphasis in the original.) Ms. Binder supplemented her position in her rebuttal testimony with the following:

**Q. ON PAGE 16, LINES 22 AND 23; AND PAGE 17, LINE 1 OF MR. NURSE'S DIRECT TESTIMONY, AT&T RECOMMENDS THAT SPRINT SHOULD MODIFY ITS PLAN TO BECOME COMPLIANT WITH SECTION 3007**

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<sup>5</sup> *i.e.* Sprint/United pays less than 7.5[cent] per minute and all others pay more than 15.0[cent] per minute.

<sup>6</sup> *i.e.* Sprint/United pays less than 7.5[cent] per minute and, as per the Revised Plan, after a three year revenue-neutral phasedown all others will pay slightly less than 12.0[cent] per minute.

**IN A MANNER WHICH IS SUBJECT TO INVESTIGATION AND CROSS-EXAMINATION IN THIS PROCEEDING.  
DO YOU SUPPORT THIS RECOMMENDATION?**

A. No. Sprint already has set forth why access charges are not an issue in this proceeding. Without waiving that position, however, I will provide rebuttal to AT&T on this issue.

Sprint's Plan is currently compliant with Section 3007 as described on page 11, lines 5-16 of my Direct Testimony. As a requirement of Chapter 30, Sprint's access charges must be below the \$ .12 benchmark upon implementation of its Chapter 30 Plan. Sprint has committed to submit a revenue neutral phase-down proposal if Sprint's access charges are not below the \$ .12 benchmark required by Section 3007 when the Plan is approved by the Commission. At that time, AT&T will have the opportunity to intervene in the Company's revenue neutral phase-down proposal if it chooses to do so. The Commission should reject AT&T's recommendation since AT&T will have the opportunity to participate in the Company's phase-down proposal should one be necessary.

Sprint St. 2.1, pp. 31-32. She continued by explaining Sprint/United's continued support for its position at the *Generic Access Investigation*, but refusing to implement that concept in its own Chapter 30 case. *Id.* at 32-33.

I found the Company position, at this point, somewhat disturbing. First, she was advocating the original plan which had *no* phasedown from the 15[cent] per minute at all. Sprint/United simply refused to acknowledge that Section 3007(1) required it to include a proposal to lower its access charges immediately. 66 Pa. C.S. § 3007(1). The vague reference in the direct testimony to later action was not sufficient to comply with the statute. AT&T was correct in its criticism that the planning process for access charge phasedown should not start after the original plan was approved by the Commission.

The second point is related to the first. More specifically, the Company and OTS positions that this access charge issue should not be resolved in this case misses the point of Chapter 30. While I agree in concept that the *Generic Access Investigation* would be the best place to resolve the access charge issues, I note that the *Investigation* has no time limit for resolution. On the other hand, Sprint/United's Chapter 30 case has a very specific time limit with two statutory requirements that make access charge issues unavoidable for this Company. 66 Pa. C.S. §§ 3004(d)(4) and (9), 3007. Under these circumstances, the original plan and Ms. Binder's support thereof fell far short of the mark.

Third, I recognized that the Revised Plan did propose a revenue-neutral three year phasedown to lower the rate from 15[cent] to the statutory ceiling of 12[cent]. This proposal met the bare minimum required by the statute. 66 Pa. C.S. § 3007(1). However, at the risk of being repetitious, the fact that the proposal met the minimum standard required in one section of the statute did not make it comply with the whole statute. Namely, the existence of the Sprint Simply Five tariff (with the resultant price break for Sprint/United and its parent company) demonstrated that the present and proposed rate structure unreasonably discriminates against the access customer class and is illegal. 66 Pa. C.S. §§ 1304 and 3004(d)(4). I hasten to add that the Revised Plan proposal was not enhanced by virtue of spreading the reduction over a three year period. In my view, the three year spread only lengthened the period of statutory violation.

Fourth, Ms. Binder, even without appearing in the courtroom, was not a credible witness. My doubts about Ms. Binder's credibility began on my initial review of her direct testimony. I believe that she misinterpreted and/or misunderstood prior Opinions and Orders issued by this Commission. Some of those prior Opinions reviewed decisions which I authored. Thus, my initial impression was not improved when the AT&T witness pointed out, and Ms. Binder confirmed, that she had provided prior inconsistent testimony on the access charge issue. In the *Generic Access Investigation*, she testified that a pooling plan should be implemented. Before me, all of her prepared direct and rebuttal testimony on access charges supported the original plan which contained at best a promise to lower the 15[cent] per minute charge after the Commission approved the plan. While I appreciate the candor of her acknowledgment of the differences in her testimonies, I find that her credibility was severely impaired and find it impossible to accept the positions she advocated.

Having rejected all of the positions offered by the parties, I reviewed the record to determine if it supported some modification which would remedy the problem. Unfortunately, the answer was "No." I first examined the possibility

of lowering the access charges for the access customer class to parity (*i.e.* 7.5[cent] per minute) with Sprint/United and its parent. While the record supported the 7.5[cent] figure, there was nothing to judge other important variables. More specifically, there was no evidence on the total revenues the Company would lose. In addition, the operation of Section 3007(1) would require a revenue-neutral phasedown. Thus, the statute would make the customers suffer an immediate rate increase to offset the lost revenue. 66 Pa. C.S. § 3007(1). Further, there was no evidence to support how the increase should be spread on the customer classes. And finally, given the OTS position that an immediate drop from 15[cent] to 12[cent] would create rate shock, I assumed that even a three year phasedown from 15[cent] to 7.5[cent] would also create rate shock and, most likely, unjust and unreasonable rates.

Next, I carefully reviewed the operative language of Section 3007(1) which states, in part, as follows:

A local exchange telecommunications company with an effective per-minute switched-access service price greater than 12[cent] on the *implementation date* of the petition and plan shall provide for a revenue-neutral phasedown to not more than 12[cent] in not more than three equal annual increments commencing with the implementation of the petition and plan.

66 Pa. C.S. § 3007(1). (Emphasis supplied.) I considered lowering the access charge to 7.5[cent] on the day *before* the "implementation date of the petition and plan." While that reduction would have eliminated the impact on the customers, the absence of evidence of the revenue loss to the Company made the action irresponsible and contrary to the public interest.

I also considered allowing the Revised Plan's three year phasedown to go into effect as a temporary measure and subject to some other conditions. More specifically, the Company would have been required to separately account for all revenues received during this temporary status until the *Generic Access Investigation* was completed. As a corollary, I would have denied Sprint/United *exogenous event* status for the implementation of the *Generic Access Investigation* solution. There were problems with this idea: First, it did not remedy the violations of the statute. 66 Pa. C.S. § 1304 and 3004(d)(4). Second, it was unduly complicated by virtue of raising accounting and other pass through issues. Third, it ignored the potential seriousness of the revenue loss to the Company.

I also rejected the concept of imposing a specific remedy for the *per se* violations of the Public Utility Code. No remedy (*e.g.* refunds) was requested by AT&T. The record discloses no information on the revenues collected by the Company. Indeed, even the direction to cease and desist might have brought with it a procedural problem: Sprint/United had no notice that its Sprint Simply Five tariff would be at issue. While the Company put the legality of its original plan and Revised Plan at issue, it could not have anticipated the challenge to its existing tariff. Accordingly, if AT&T or some other access customer wishes to pursue the matter, they should file a complaint.

I emphasize that rejection of the Plan has both benefits and detriments. Among the benefits are the facts that 1) it eliminates any violation of Chapter 30 (which regulates future conduct), 2) it puts Sprint/United on notice that it must solve the access charge problem (and the other issues noted above) before filing the petition again, 3) it requires the filing of another petition in six months (66 Pa. C.S. § 3004(b)) and 4) the Company remains subject to rate base, rate-of-return regulation which gives the OTS and other private parties the opportunity to investigate and, if justified, challenge earning levels at current rates. The major disadvantage is that it preserves the *status quo*. In other words, the 15[cent] per minute charge will continue until the next petition is filed and the case is litigated. Hopefully, the completion of the *Generic Access Investigation* can occur sometime during that time frame and would assist in resolving one of the most difficult issues.

## (2) Imputation

Having concluded that the original and Revised plans are violative of the Public Utility Code, the question of whether Sprint/United plan should include an access imputation formula for intraLATA toll is basically moot. However, there is a good reason to decide the issue: The Company is required to petition again in six months. A decision on this issue will serve the interests of judicial economy and provide the needed guidance for the preparation of the new plan.

Having reviewed the parties' briefs, the record and the law, I find that any Sprint/United plan for alternative regulation should include an imputation formula. The Company contended that no imputation formula was needed 1) because it had not requested that access services be classified competitive, 2) because imputation was a generic industry issue which this Commission had not finalized, 3) because, with the exception of Bell Atlantic, the Commission had not imposed imputation on any other LEC and 4) because Sprint/United should be treated like the other LECs. Sprint/United M.B., pp. 15-17.

I find that the Company's arguments overlook the facts proved by AT&T. Namely, it proved that access services are competitive and that the Sprint Simply Five plan is grossly anti-competitive. Indeed, Sprint/United did not dispute that AT&T competed in the access customer market. Further, my review of Chapter 30 did not reveal any requirement that the Company must initiate the request for a competitive services designation. The basic requirements for a decision on competitive service classification are notice and a hearing. 66 Pa. C.S. § 3005(a) and (e).

This Company's original filing and evidence also underscore the need for carefully drawn competitive safeguards. More specifically, this case was initiated by the "Petition of the *United Telephone Company of Pennsylvania ...* " (Emphasis added.) After that initial identification, all documents were designated as United "doing business as Sprint." All of the witness statements and exhibits were submitted as "Sprint" evidence. I concluded that United's marketing and trial strategy was to be identified with its parent. This conduct gave further credence to AT&T's concern about the preferences granted to Sprint/United and its parent.

Given the Company's demonstrated proclivity for anti-competitive conduct and its efforts to assume the "Sprint" identity, I have concluded that any plan it promulgates must include imputation as one of many competitive safeguards.<sup>7</sup>

## **B. PUBLIC REACTION**

The original plan did not request a rate increase. Prior to the submission of the Partial Settlement, two public input hearings were held. Those hearings were held in Chambersburg on January 5, 1999, and in Butler on January 7, 1999. In diplomatic terms, the hearings were sparsely attended.

Thereafter, the Partial Settlement was filed which included an increase for each residential line of \$ 1.00 per month and an increase for each business line of \$ .50 per month. Since the customers had no prior notice of the potential for a rate increase, Sprint/United agreed during an off-the-record conference call, on March 18, 1999, to provide bill stuffer notice to its customers of the settlement features (including the rate increase). The bill stuffer also directed the customers to send all comments to the undersigned no later than May 1, 1999. At the time of preparation of this Decision, I had received eight letters. None of them were favorable to the settlement. Two of them protested AT&T's rates. Comments in all of the letters generally opposed rate increases, expressed concern for those who were poor and/or lived on fixed incomes and opposed additional fees which had been added to basic service bills.

Given that I am not recommending the approval of the Partial Settlement and the Revised Plan, I can only speculate that the authors of those letters will be relieved that no rate increase will be forthcoming from this case.

## **IV. ORDER**

NOW THEREFORE, IT IS RECOMMENDED:

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<sup>7</sup> AT&T offered a detailed plan for imputation. AT&T Direct, pp. 21-23. However, since I am not recommending the approval of any plan in this proceeding, there is no reason to adopt the AT&T position. Settlement Agreement Among The United Telephone Company of Pennsylvania, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate

1. That in accordance with Sections 3004(b), (d)(2), (d)(4), (d)(5), (e), 3005(a), (e)(2), and 3007(1) of the Public Utility Code, the Petition Of The United Telephone Company Of Pennsylvania For Approval Under Chapter 30 Of The Public Utility Code Of An Alternative Regulation And Network Modernization Plan and the Partial Settlement and Revised Plan, dated March 24, 1999, are hereby rejected.

2. That in accordance with Section 3004(b) of the Public Utility Code, The United Telephone Company Of Pennsylvania must submit a new petition for approval of an alternative regulation and network modernization plan within six months of the Commission's final order.

Louis G. Cocheres

Administrative Law Judge .bp April 8, 1999

**AIRBORNE EXPRESS**

Mr. James J. McNulty, Secretary Pennsylvania Public Utility Commission Commonwealth Avenue and North Street Harrisburg, PA 17105-3265

Re: Docket No. P-00981410, *Petition Of The United Telephone Company of Pennsylvania For Approval Under Chapter 30 Of The Public Utility Code Of An Alternative Regulation And Network Modernization Plan* Dear Secretary McNulty:

Enclosed for filing with the Commission on behalf of The United Telephone Company of Pennsylvania, doing business as Sprint, are an original and three (3) copies its Revised Settlement Agreement, dated March 10, 1999, in the above-captioned proceeding. This document is being filed *nunc pro tunc* as a result of some minor changes to the original document at the Administrative Law Judge's request.

Would you please time-stamp the additional copy of the Revised Settlement Agreement with the date of April 8, 1999.

As evidenced by the Certificate of Service, I have served a copy of this document on the parties and the Administrative Law Judge.

Thank you for your cooperation.

Sincerely,

H. Kay Dailey

Enclosures .Hi cc: Honorable Louis G. Cocheres

Administrative Law Judge

Service List *CERTIFICATE OF SERVICE*

I hereby certify that I have this day served a true copy of the attached Revised Settlement Agreement upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54:

OVERNIGHT MAIL

Kandace F. Melillo, Esq. Office of Trial Staff PA Public Utility Commission 901 North Seventh Street (Rear) Third Floor-Pitnick Building Harrisburg, PA 17101 (717) 787-1976 (717) 772-2677 Fax

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Honorable Louis G. Cocheres Administrative Law Judge PA Public Utility Commission Commonwealth Avenue and North Street Harrisburg, PA 17105-3265 (717) 787-9816 (717) 787-0481 Fax

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Dated this 8th day of April, 1999.

H. Kay Dailey

Counsel for The United Telephone Company of Pennsylvania

***SETTLEMENT AGREEMENT AMONG THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA, THE OFFICE OF TRIAL STAFF, THE OFFICE OF CONSUMER ADVOCATE AND THE OFFICE OF SMALL BUSINESS ADVOCATE***

The following parties in the above-referenced proceeding, The United Telephone Company of Pennsylvania, doing business as Sprint ("Sprint"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA") and the Office of Trial Staff ("OTS"), (collectively the "Parties"),<sup>1</sup> agree to and hereby seek approval by the presiding officer and the Commission of this Settlement Agreement and Appendix A, attached hereto and incorporated herein by reference, as in the public interest.

1. On October 16, 1998, Sprint filed a Petition for Approval Under Chapter 30 of the Public Utility Code of an Alternative Regulation and Network Modernization Plan, with the Pennsylvania Public Utility Commission, in which it set forth its proposals for a price stability plan, a competitive services deregulation plan and a network modernization plan, pursuant to Chapter 30 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 3001 *et seq.*

2. Interventions were filed timely in this proceeding by OCA, OSBA, OTS and AT&T. A prehearing conference was held on November 20, 1998, and two public input hearings were held on January 5, 1999 and January 7, 1999 respectively in Chambersburg and Butler, Pennsylvania.

3. The Parties have engaged in extensive discovery, as well as settlement meetings and discussions. As a result of this process, the give and take of positions and interests, and the comments received at the public input hearings, the Parties to this Settlement Agreement ("Settlement") have resolved their differences in accordance with the Commission's policy of encouraging settlements.

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<sup>1</sup> AT&T Communications of Pennsylvania, Inc. ("AT&T"), while an active party to this proceeding, is not a party to this Settlement Agreement.

4. The major features of the Settlement, which are set forth in Appendix A include <sup>2</sup>:

a) *Inflation offset* : The parties agree to an inflation offset of 2.0%, in lieu of a 1.1% offset, as proposed by Sprint, at the network deployment schedule set forth in Appendix A.

b) *Price Changes*: The Company shall restructure its rates in the first year of the Plan to include touch tone charges as part of basic service rates, to eliminate zone charges and multi-party service, to consolidate rate bands, and to perform other restructuring on a revenue neutral basis. The Company will be allowed to increase monthly basic local residential and business rates by no more than \$ 1.00 and \$ .50 respectively in each of the next three years. All increases to local business rates will be limited to no more than one-half of the increase for local residential rates. Through December 31, 2003, Sprint's residential local basic service rates shall not increase above a \$ 16.00 weighted average rate cap. The proposed rate rebalancing shall be used to reduce Sprint's access rates to an effective switched access rate of \$ .12 per minute of use.

c) *Network Modernization*: Sprint has revised its Network Modernization Plan to accelerate the availability of CLASS and SS7 services to 2004 as shown on page 10 of the Plan.

d) *Retention of Regulatory Powers by the Commission*: Provisions regarding compliance with 66 Pa. C.S. Chapter 21, as modified by the Plan, and Chapters 63 and 64 will continue, as well as reporting requirements, quality of service, and the Commission's powers under Section 3009 of the Public Utility Code, 66 Pa. C.S. § 3009.

e) *Satisfaction of Statutory Criteria*: The Parties agree that the Plan, as contained in Appendix A, meets the criteria specified in Sections 3004 and 3007 of the Public Utility Code, 66 Pa. C.S. §§ 3004 and 3007, and that Commission approval of the Plan is warranted.

5. No party to this Settlement shall oppose the rate restructuring and rebalancing set forth in Appendix A and illustrated by Attachment A, incorporated therein by reference. All other procedural requirements of the Commission, however, are available to the Parties.

6. The Parties hereby acknowledge that Sprint has provided a breakdown of proposed rate increases to other services to the Parties prior to their execution of this Settlement.

7. The Parties respectfully request that the Presiding Officer and the Commission approve this Settlement because its benefits include, with respect to the Chapter 30 Plan:

a) The avoidance of further administrative proceedings and litigation among the parties on the issues addressed which are time consuming and expensive to the Parties, the Commission and to customers;

b) The resolution of issues so as to balance the Commission's obligation to establish just and reasonable rates with its obligations under Chapter 30 to provide for network modernization in a manner which satisfies the criteria specified at Section 3004 of the Public Utility Code, 66 Pa. C.S. § 3004; and

c) The implementation of an access charge reduction plan, which results in a revenue neutral phasedown of the effective switched access rate to not more than \$ .12 beginning with implementation of the Plan, in accordance with Section 3007 of the Public Utility Code 66 Pa. C.S. § 3007.

8. This Settlement is subject to all applicable administrative and common law treatments of settlement offers and/or negotiations. Accordingly, this Settlement is made without any admission against, or prejudice to, any position which any party might adopt in any other proceeding, including this proceeding if this Settlement is rejected by the Commission or withdrawn by any of the Parties as provided below. Commission approval of this Settlement shall not be construed as binding or persuasive precedent in any other Commission proceeding or in

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<sup>2</sup> The controlling, precise or specific details of the Plan under this Settlement appear in Appendix A, Alternative Regulation Plan of The United Telephone Company of Pennsylvania. The following is offered only to highlight the general features. Appendix A

any appeal from a Commission proceeding, except to effectuate the terms and conditions of this Settlement. This Settlement is, therefore, a compromise and is conditioned upon the Commission's approval of all the terms and conditions contained herein without modification or amendment. This paragraph shall survive and be binding upon the parties, whether or not the Settlement is accepted or rejected by the Commission.

9. If ALJ Cocheres recommends that the Commission adopt the Settlement as proposed, the Parties agree to waive the filing of exceptions; however, the Parties do not waive their rights to file exceptions with respect to any additional matters dealt with, including pursuit of any complaint by any non-signatory party to this Settlement, or to any modifications to the terms and conditions of this Settlement that are recommended by ALJ Cocheres' Recommended Decision. The Parties also reserve the right to file replies to contest any exceptions which may be filed.

10. In the event that the Commission does not approve this Settlement, or should modify the terms and conditions herein, this Settlement may be withdrawn by a party upon written notice to the Commission and all Parties within five (5) business days of receipt of the Commission's Order. In such event, this Settlement shall be of no force and effect. If the proceeding continues to hearing, the Parties reserve their respective rights to submit testimony and to conduct full cross-examination, briefing and argument, and to take, without prejudice, positions different from the terms of this Settlement.

11. OSBA, OCA, OTS, and Sprint have prepared and attached to this Settlement, as Appendices B, C, D, and E respectively, statements of support setting forth the bases upon which each party believes this Settlement is in the public interest.

WHEREFORE, the Parties, by their respective counsel, respectfully request as follows: Administrative Law Judge Louis G. Cocheres recommend that the Commission approve, without modification, this Settlement Agreement, including all terms and conditions herein, and Appendix A attached hereto; and that the Commission approve, without modification, this Settlement Agreement.

Respectfully submitted,

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Joel H. Cheskis, Esquire  
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H. Kay Dailey, Esquire

The United Telephone Company of  
Pennsylvania  
1201 Walnut Bottom Road  
Carlisle, PA 17013

Dated: March 10, 1999 .bp Appendix A

## **ALTERNATIVE REGULATION PLAN**

**OF**

## **THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA, DOING BUSINESS AS "SPRINT"**

Dated: March 24, 1999 (Final Settlement Revised)

### **EXECUTIVE SUMMARY**

This Alternative Regulation Plan ("Plan") introduces a state-of-the-art telecommunications network in The United Telephone Company of Pennsylvania's ("Sprint" or "the Company" hereinafter) service territory and also provides a new regulatory framework for the Company. It is designed to replace entirely rate base/rate of return regulation and procedures. Sprint will operate under a regulatory framework that will allow the Company to meet its customers' telecommunications needs in a more efficient way, while continuing to provide adequate consumer and competitive safeguards.

Project Pennsylvania Intelligent Network ("Project PIN") is the name that Sprint has given its plan. The name "Project PIN" will be used within the Company and for external notifications, as well as for the purpose of identification and simplification.

The Plan has four principal components: (1) a Network Modernization Plan ("NMP"); (2) a Competitive Services Deregulation Plan ("CSP"); (3) a Price Stability Plan ("PSP") for noncompetitive services; and (4) commitments regarding quality, safety, adequacy and reliability of service. These four parts of the Plan are interrelated and dependent upon one another.

Part 1 of the Plan is the Network Modernization Plan, which describes the Company's commitment to provide universal broadband availability by December 31, 2015.

Part 2 of the Plan is the Competitive Services Deregulation Plan, which allows for the deregulation of the rates and earnings of competitive services, but preserves Commission authority over the quality of these services. In addition, the CSP contains safeguards to protect competitors from potential abuses and to mitigate the economic risk of competitive services upon basic ratepayers. In order to expedite this process, the Company does not initially propose that any services be classified as competitive, beyond those that already have been found to be competitive for the industry (*e.g.*, customer premises equipment, inside wire, billing and collection and voicemail).

Part 3 of the Plan is the Price Stability Plan, which governs revenue changes for noncompetitive services for the duration of the Plan. The PSP also constrains noncompetitive service revenue changes, based on an independent inflation index and Commission review, and provides for interim rate adjustments. Through December 31, 2003, Sprint's residential local basic service rates shall not increase above a \$ 16.00 weighted average rate cap. Access charges will be phased down to \$ .12 per minute over three years under the Plan.

Part 4 of the Plan describes Sprint's ongoing obligations and commitments regarding quality, safety, adequacy and reliability of telecommunications services and other business activities. It also describes the reports that the Company will continue to file with the Commission. *PART 1. NETWORK MODERNIZATION PLAN A. Introduction*

Sprint's Network Modernization Plan ("NMP") establishes the Company's commitment to modernize its network infrastructure within the guidelines of Chapter 30.

Included in the modernization plan are details of the network facilities that the Company already has deployed or plans to deploy, descriptions of service capabilities, and examples of the services each network facility will support. The NMP portrays how the existing network infrastructure will evolve to support broadband service delivery. The Company's network strategy for broadband implementation includes the continued deployment of technologies that will upgrade the existing switching, signaling, interoffice and exchange distribution network to support future, increased bandwidth requirements. The NMP includes charts that refer to specific network facilities and projected completion schedules in five year intervals, beginning with 1998 as the base year.

Sprint's NMP relies extensively on digital switching and fiber optics technology; however, the Company projects that the existing copper distribution network, with the appropriate overlay electronics, will be able to support broadband services to small business and residential customers by the year 2015. Sprint cannot predict future technological evolution with any degree of certainty. The NMP, therefore, does not commit the Company to deploying any specific technology for broadband implementation. As future technologies are developed, the Company will modify its infrastructure plans accordingly. Such changes in deployment strategy will be included in periodic updates to the NMP that will be filed with the Commission. Sprint's commitment to Chapter 30 guidelines, however, will not change.

This NMP outlines Sprint's deployment schedules and commitments for broadband availability. It represents the Company's plan to conform to the intent of Chapter 30 guidelines for 1.544 Mbps bandwidth requirements to customers on a demand basis, predicated on standard service arrangements and terms as set forth in the Company's tariff. The Plan accelerates the provision of CLASS and SS7 services to 2004. As the existing network evolves to support broadband capabilities, customers will benefit from network capabilities as they are made available throughout the time period of the NMP, which includes services based on the digital network already in place.

Chapter 30 requires the Company to balance reasonably the deployment of its broadband network among rural, urban and suburban areas within its service territory. Chapter 30 does not define these urban, suburban and rural areas, and, for the purpose of this NMP, Sprint has classified each of its exchanges as rural.<sup>1</sup> See Attachment C. Regardless of exchange classification, the Company will endeavor to balance deployment across its entire network.

The Company commits to biennial updates to the NMP in compliance with approved PUC filing requirements. Absent exceptional circumstances,<sup>2</sup> the Company will commit to meeting its deployment schedule. The Company has developed the following timelines for deployment of the services referenced in this NMP.

Forecasting construction costs is difficult to determine in view of potential changes in technology, the economy and the financial condition of the Company. Thus, while the Company recognizes there will be significant capital required to meet the demands of the NMP, it emphasizes its right to make or change decisions regarding how to fund deployment or as to what technology or services should be used or offered to meet the Chapter 30 1.544 Mbps standard at any given point in time during the life of the NMP.

### *B. Digital Switching*

The Company's first digital central office switch was deployed in 1978. The Company's analog switch replacement program continued over the years, culminating in 100% digital central office status in 1996. The Company will

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<sup>1</sup> The Company has provided support for its classification as a rural LEC in the proceeding at Docket Nos. M-00960799F0002 and I-00940035, *Rural Telephone Company Status*. That proceeding has not yet been resolved by the Commission. Sprint's characterization of the rural nature of its territory for purposes of its Plan does not constitute a binding conclusion concerning the Commission's on-going proceedings to resolve Sprint's RTC status; conversely, the Commission's decision on Sprint's RTC status will not affect the rural characterization of Sprint's territory for purposes of the Plan.

<sup>2</sup> Such exceptional circumstances shall be set forth in a petition to the Commission, with all Chapter 30 parties in this proceeding being given notice and the opportunity to respond, and shall be subject to Commission approval.

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continue to modernize its central office plant, as evidenced by the fact that some first generation digital switches already have been replaced with newer technology. Other vintage digital network facilities have been identified for future replacement so that customers will continue to enjoy state-of-the-art digital services throughout the period of the NMP.

The following chart represents the availability of digital switching in the Company's network, based on the percentage of central office lines equipped:

	1998	2003
Digital Switching	100.0%	100.0%
2008	2013	2015
100.0%	100.0%	100.0%

### *C. Integrated Services Digital Network ("ISDN")*

#### *1. Basic Rate ISDN ("BRI")*

BRI service provides the capability for simultaneous transmission of voice and data over a single subscriber line. Each BRI line has two 64 kbps bearer ("B") channels and one 16 kbps data ("D") channel. A typical operation would provide for the simultaneous transmission of two voice calls and one data connection. Other options are possible, however. In addition to plain old telephone service ("POTS") calls, BRI can be used for services such as internet access, computer to computer dial-up data telecommunications and facsimile transmission.

#### *2. Primary Rate ISDN ("PRI")*

PRI provides the capability of dial-up voice and data calls on the public switched telephone network. Typically, a PRI line operates at 1.544 Mbps. The line is divided into twenty-four 64 kbps DS-0 channels and is arranged with 23 bearer ("B") channels and one data ("D") channel. There can be various combinations of voice and/or data calls on a PRI line at any given time. These combinations can be reconfigured dynamically by the customer, as needed. A PRI line requires a T-1 (DS-1 equivalent) carrier facility between the customer's location and the Company's PRI serving office. In addition to voice calls, PRI can be used for internet access, video conferencing, facsimile, computer to computer dial-up data communications and mainframe to mainframe computer applications.

The following chart shows the availability of ISDN, based on the ratio of digital host switches equipped to total host switches in the network:

	1998	2003
BRI	78.2%	98.0%

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PRI	64.7%	98.0%
2008	2013	2015
100.0%	100.0%	100.0%
100.0%	100.0%	100.0%

### 3. Asynchronous Transfer Mode ("ATM")

The explosion in demand for new high bandwidth services, such as internet access, company intranets, telecommuting and remote local area network ("LAN") access, is a driving factor in the development of new transmission technology. One of these technologies is Asynchronous Transfer Mode ("ATM"). ATM is a networking technology developed by American National Standards Institute ("ANSI") and Consultative Committee for International Telephone and Telegraph ("CCITT") for a high speed, fixed cell-based network. The ATM network is capable of transporting different types of services --- voice, data and video applications --- multiplexed over the same bandwidth. With transmission speeds reaching from 45 Mbps to the Gigabit per second ("Gbps") range, ATM has the potential to become the universal transmission medium for many future applications. The Company has not deployed ATM in its network to date, but future use, beginning in 1999, is being investigated.

#### D. Signaling And Intelligent Network

##### 1. Signaling System 7 ("SS7")

Another important element for migrating the Company's network to broadband capability is SS7. SS7 is a signaling system that overlays the traditional interoffice voice switching network and is an intelligent transport and switching platform that enables internodal features and services to work. The SS7 network requires hardware and software in digital host switches. The SS7 protocol is a 56 kbps packet data network that moves SS7 call management messages from one node to another. The main elements in the SS7 network are Service Switching Points ("SSP"), Signal Transfer Points ("STP") and Service Control Points ("SCP").

The Company's SS7 equipped central offices provide network features and services, such as interoffice trunk setup and teardown capabilities. The SS7 network also provides enhanced subscriber features and services such as Custom Local Area Signaling Services ("CLASS").

CLASS is designed for originating and terminating call management across local loop plant to the established customer base. The key attribute of CLASS features is that the central office switch delivers information about the calling party to the called party during call set-up. CLASS also offers various call origination features. To extend CLASS features across a network of multiple switching nodes, each digital host central office requires hardware and software that support Common Channel Signaling, the BellCore-defined signaling protocol for these features. Examples of CLASS features presently available in the Company network are as follows:

*Calling Number Delivery (Caller ID)* --- Identifies the number or name of the calling party so the called party can determine the origin of the call.

*Calling Number Delivery Blocking (CNDB)* --- Blocks the calling party's directory number or name from being displayed at the termination end of the call.

*Repeat Call* --- Permits the subscriber automatically to re-originate a call to the last dialed number by entering a two-digit activation code.

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*Return Call* --- Permits the subscriber to call the last incoming call, without having to know the number of the call, by entering a two-digit activation code.

To complete the ubiquitous deployment of SS7 capability in the Company's network, Alcatel N1210 and Northern Telecom DMS-10 switches need to be replaced. Implementation of CLASS display/non-display features also will require replacement of the switch types mentioned and the replacement of certain remote switches.

The following chart depicts the availability of SS7, based on the ratio of central office lines supported by SS7 to total central office lines:

	1998	2003
SS7 Availability	90.8%	98.0%

2004	2008	2013	2015
100.0%	100.0%	100.0%	100.0%

The following chart depicts the availability of CLASS services, based on the number of CLASS capable central offices as a ratio to total central offices:

	1998	2003
CLASS display services <sup>3</sup>	86.7%	95.6%
CLASS non-display services	88.9%	95.6%

2004	2008	2013	2015
100.0%	100.0%	100.0%	100.0%
100.0%	100.0%	100.0%	100.0%

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<sup>3</sup> Display services are those which allow a subscriber's equipment visually to display information, such as Caller ID that displays the number or name of the calling party. Non-display services are those which have no need to show information, such as Repeat Call which simply reoriginates a call to the last number dialed.

## 2. Intelligent Network ("IN")

The Intelligent Network uses the SS7 network as a platform to provide network functions in the traditional voice environment. IN is based on SS7 queries and data elements within SS7 messages. Enhanced 800 ("E800") and Line Information Database ("LIDB") services use SS7 to query data bases, (i.e., E800 service queries a database to determine the appropriate interexchange carrier ("IXC") for call routing, and LIDB queries a database to guarantee that billing information is legitimate). The IN also is used to complete data dips for CLASS services. The Company has E800 and LIDB service fully deployed in its network.

The Advanced Intelligent Network ("AIN") is an evolution of the Intelligent Network. Like the IN, AIN uses the capabilities of the SS7 network as a platform to provide network functions. AIN is based on switch trigger software that, when encountered, causes SS7 query messages to be sent to other nodes in the SS7 network. At the present time, the Company is equipping AIN switch triggers to provide Local Routing Number ("LRN") functionality in support of federally mandated Local Number Portability ("LNP") guidelines. The Company will update its switch network as required to comply with LNP timelines. Other AIN services will be deployed in the future, based on marketing strategies and customer demand.

### E. Interoffice Trunking

Another important part of the Company's universal broadband availability strategy is the deployment of fiber optic facilities in the interexchange ("IX") network. The Company aggressively is deploying fiber in the IX network and commits to converting 100% of its IX network to fiber, in advance of Chapter 30 guidelines.

#### 1. Fiber Cable

Fiber optic facilities were first installed in the IX network in 1979, and by the end of 1998, 88.5% of the interoffice route miles in the Company's service area will have fiber optic transport capability. This represents 1,183 route miles of fiber cable in the Company's existing interexchange network.

There are 31 interoffice routes remaining in the Company network that use traditional T-Carrier on copper cable as the transport medium. These routes, comprising 154 IX route miles, will be overbuilt with fiber, with tentative plans for completion by 2003.

The following chart shows the availability of fiber cable in the Company's interoffice network, based on the percentage of IX route miles:

	1998	2003
Fiber Cable	88.5%	100.0%
2008	2013	2015
100.0%	100.0%	100.0%

#### 2. Fiber Optic Terminal Equipment ("FOTS")

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Fiber optic terminal equipment is required for optical transport at the originating and terminating ends of the fiber path in order to convert the transmission from electrical format to optical line rates and vice versa. Sixty three percent (63%) of the Company's fiber optic terminals in place today are Synchronous Optical Network ("SONET") devices. SONET defines optical carrier ("OC") levels and electrically equivalent, synchronous transport signals ("STS") for a new fiber optic based transmission hierarchy. The remaining FOTS terminals are asynchronous terminals that are used primarily for point-to-point systems. The Company is deploying SONET equipment for all new installations in its IX network and is tentatively scheduled to be 100% SONET capable by 2008.

The following chart shows the availability of SONET capable fiber optic terminal equipment in the Company's interoffice network, as a percentage of total fiber optic terminals installed:

	1998	2003
SONET Terminals	66.0%	94.0%
2008	2013	2015
100.0%	100.0%	100.0%

### 3. SONET Rings

SONET rings are being deployed in the Company's IX fiber network to improve service reliability and curtail "out of service" occurrences for traffic being carried between nodes on the ring. The purpose of the ring configuration is to provide an alternative communications path between the originating and terminating nodes in case of fiber cable cuts.

The Company has identified that it needs 24 multi-node SONET rings to protect IX traffic and central office host/remote links in its network. Four SONET rings have been deployed to date. The Company tentatively plans to complete installation of the remaining ring configurations by 2008.

The following chart shows the availability of tentative SONET rings in the Company's interoffice network, as a percentage of total SONET rings identified for placement:

	1998	2003
IX rings	16.67%	75.0%
2008	2013	2015
100.0%	100.0%	100.0%

The following chart shows a projection of the central offices that will be nodes on interexchange SONET rings, as a percentage of total central offices in the network:

	1998	2003
Central offices	18.9%	70.0%
2008	2013	2015
92.2%	100.0%	100.0%

### *F. Local Distribution Network*

The distribution network is comprised of the local loop, which includes the service drop and network interface device ("NID") that connects the subscriber's premises to the central office switch. This portion of the network generally will be the last to be provisioned for broadband capability. The Company, however, has been preparing the local distribution network for broadband service delivery and commits to meeting the Chapter 30 guidelines for 1.544 Mbps bandwidth availability to subscribers on a demand basis by 2015.

#### *1. Carrier Serving Area Implementation*

An integral part of the Company's broadband strategy is the implementation of Carrier Serving Areas ("CSAs") within each exchange. A CSA is a planning entity that consists of a distinct geographical area that is capable of being served by a digital loop carrier ("DLC") remote terminal device. The area is defined in such a manner that the customer who resides the furthest from the remote terminal site will be within the 64 kbps serving limits of properly designed copper feeder and distribution cable.

The idea behind CSA is to sectionalize cable routes in each exchange into discrete geographical units, or carrier serving areas. Then when digital loop carrier is deployed along the route, every customer will have access to 64 kbps service. With this planning approach, cable routes generally beyond 12,000 feet to 15,000 feet of the central office will be segmented into CSAs. When relief is required along the route, the serving area locations are known in advance and can be activated. Detailed site planning, timing and sizing of the remote terminal sites are required prior to implementation.

Customers within 12,000 feet to 15,000 feet of the central office can be provided 1.544 Mbps service over existing copper today using High Bit Rate Digital Subscriber Line ("HDSL") technology. Because T-1 lines, or their equivalent, are required from the remote terminal device for connection to the serving central office in CSA design, the deployment of CSAs also provides for 1.544 Mbps service using HDSL. HDSL transceivers reliably can transmit a 1.544 Mbps data signal over two nonloaded, 24 gauge, unconditioned copper cable pairs up to 13,000 feet without the need for repeaters. The use of repeaters can extend the signal even further. As a limiting factor, fiber facilities are required to connect the remote terminal to the central office and remote terminal cabinets. Those cabinets require sufficient space to mount the transceiver required for HDSL operation. An additional copper pair is required to the customer's premises for each 1.544 Mbps circuit, because HDSL is transported on two nonloaded pairs. DLC remote terminals from some vendors will allow HDSL transmission with the addition of special HDSL cards.

The Company views HDSL as an interim solution for 1.544 Mbps service to the small business and residential markets. HDSL is, however, being used in the Company's network to provide DS-1, high capacity ("HI-CAP") service for business customers where fiber optic or T-carrier facilities are not available. The Company submits that Asymmetrical Digital Subscriber Line ("ADSL"), or some other technology that provides high bandwidth over copper

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pairs without amplifiers or repeaters, may be the future technology of choice. The Company reserves the right to use such state-of-the-art technology as necessary.

The Company has identified 916 potential CSA zones for implementation of DLC remote terminals. Year-end 1998 projections are for 423 to be in service. Of this total, 246 CSA devices are fed by fiber optic facilities. The Company anticipates that the number of CSAs will increase over time as technology drives smaller zone sizes. In addition, an estimated 35% of the existing CSA devices will require either remote terminal replacement, or replacement of existing T-carrier transport with fiber, in order to have the capacity to be broadband.

The following chart shows a projection of Carrier Serving Area implementation, as a percentage of total CSAs planned for implementation:

	1998	2003
% of CSAs Deployed	46.0%	64.0%
2008	2013	2015
80.0%	94.0%	100.0%

The Company estimates that 54% of its current subscriber lines are within 15,000 feet of the serving central office, and an additional 16% are served from broadband capable CSA switches where the longest customer loop is no more than 12,000 feet. These customers could be candidates for 1.544 Mbps bandwidth provisioning, depending on the copper pair availability, transmission loss and installation of HDSL transceivers at the originating and terminating end of the subscriber's line.

The following chart shows a projection of broadband availability, based on a percentage of access lines in-service:

	1998	2003
Broadband availability within 60 days	72.0%	80.0%
Broadband availability within 5 days	44.0%	53.0%
2008	2013	2015
88.0%	96.0%	100.0%
69.0%	92.0%	100.0%

## 2. Government, Educational And Medical Markets, Industrial Parks And 911 Centers ("GEMs")

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The Company has made significant progress in providing fiber in the local network for public schools, healthcare facilities, government institutions, 911 centers and industrial parks. Fiber capability to these GEM market segments is included in the Company's criteria for fiber sizing of all new fiber cable installations in the interexchange and local distribution networks. As new fiber routes are constructed, fiber pairs are dedicated for GEM markets.

At GEM locations where fiber is not immediately available, the Company will work with the customer to meet anticipated service and bandwidth requirements.

The following chart provides 1997 statistics concerning fiber availability to GEM markets in the Company's service area:

	# OF GEM LOCATIONS	# WITH FIBER CABLE AVAILABLE
Total GEM Locations	799	587
Educational facilities	377	259
Healthcare facilities	161	127
Governmental offices	209	162
County 911 centers	7	6
Industrial parks	45	33

% WITH FIBER  
CABLE AVAILABLE

73.4%

68.7%

78.9%

77.5%

85.7%

73.3%

The following chart projects the percentage of GEM markets with fiber availability by market segment during the period of the NMP:

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GEM Category	1998	2003
Educational facilities	71.4%	86.1%
Healthcare facilities	82.0%	96.9%
Governmental offices	80.4%	95.2%
County 911 centers	85.7%	100.0%
Industrial parks	75.6%	91.1%
Total GEMS and Industrial Parks	76.2%	91.1%

2008	2013	2015
100.0%	100.0%	100.0%
100.0%	100.0%	100.0%
100.0%	100.0%	100.0%
100.0%	100.0%	100.0%
100.0%	100.0%	100.0%
100.0%	100.0%	100.0%

*G. NMP Updates*

1. The Company will submit an initial NMP report which describes the status of the Company's network, based on December 31, 1999 data, and the report will be submitted no later than March 15, 2000.

*2. Biennial Updates*

The Company will provide biennial updates to its NMP in compliance with approved PUC filing requirements and, absent exceptional circumstances, as set forth in footnote 2 above, will meet or exceed its commitment schedule.

*3. Other Updates*

The Company will provide detailed NMP updates every six years; however, a biennial summary NMP update will not be provided in years when the detailed NMP update is due.

**PART 2 --- COMPETITIVE SERVICES DEREGULATION PLAN**

The Company's Competitive Services Deregulation Plan ("CSP") allows for the price and earnings deregulation of any services or locations which have been, or may be, found by the Commission to be competitive. No additional services, beyond those already found to be competitive by the Commission, currently are sought to be declared competitive under this Plan. The Company may submit future requests, however, to classify services as competitive and may request competitive classification, upon sixty (60) days' notice, for services or locations that are found to be competitive for other companies for similar services.

*A. Competitive Services*

1. The following services are currently competitive and shall continue to be classified as competitive under Chapter 30: customer premises equipment, inside wire, billing and collection and voicemail.

2. Services not deemed to be competitive under this Plan are classified as "noncompetitive" for purposes of the Price Stability Plan.

3. Competitive services shall not be regulated on any basis, including rates, rate structures, rate base, rate of return or earnings. The Commission will retain its existing general authority over competitive services for the purpose of safety, adequacy and reliability under 66 Pa. C.S. § 1501, et seq. Sprint will continue to monitor service quality standards as set forth in 52 Pa. Code § 63.56.

4. When the Company requests that new or existing services be classified as competitive, a sixty (60) day notice procedure shall be followed. The public shall be notified by general newspaper notice, billing insert or bill message. Such request for competitive classification shall be served in hand upon the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, all intervenors in this Chapter 30 proceeding and any other person as directed by the Commission's Secretary on the day of filing with the Commission. Any complaint or comment in support of, or opposition to, the proposed classification shall be filed with the Commission within twenty (20) days of the original filing. The Company may respond within ten (10) days thereafter. The Commission shall enter an Order within sixty (60) days of the filing or the next Commission Public Meeting thereafter, whichever is later, concerning the service's competitive status; otherwise, the service shall be deemed to be competitive.

5. In the event that the Commission declares a service to be competitive in another company's Chapter 30 proceeding or subsequent filing, such declaration shall then also be applied as a rebuttable presumption in any proceeding filed by the Company requesting that the same or similar service be declared to be competitive under Chapter 30, so long as the markets are substantially similar.

#### *B. Statutory Protections*

1. The Company shall meet the requirements of Chapter 30 with respect to services deemed to be competitive. 66 Pa. C.S. § 3005(e)(1) and (2).

2. By operation of the PSP, the revenues earned and expenses incurred for any noncompetitive service will not cross-subsidize or support any competitive service; therefore, this Plan is in compliance with the requirements of 66 Pa. C.S. § 3005(g)(2).

3. There is no cross-subsidy between services when the price charged for that service covers its incremental cost. Incremental cost shall be defined as forward-looking costs directly attributable to the specified service. The price for each of the Company's services deemed to be competitive shall cover its incremental cost. Such cost documentation will be provided only under appropriate proprietary protection.

4. Sprint will perform its own cost studies in order to comply with competitive costing and pricing safeguards and will share those studies with intervenors under appropriate proprietary agreements.

5. Tariffs or price lists may be required to be filed by the Company for future competitive services under 66 Pa. C.S. § 3009(f).

6. Formal challenges to the Company's compliance with the provisions of the CSP can be made only through separate complaint procedures. Any competitor or other party who believes the Company has violated any of the provisions of this CSP may file a complaint with the Commission. That party, however, bears the burden of proof under 66 Pa. C.S. § 332(a). The Commission retains the right to institute proceedings on its own motion, and the Company shall have the burden of proof in those proceedings.

### **PART 3 --- PRICE STABILITY PLAN FOR NONCOMPETITIVE SERVICES**

The Company's Price Stability Plan ("PSP") sets forth the principles and procedures applicable to changes in the Company's rates.

The PSP will calculate the allowable change (increase or decrease) in rates for noncompetitive services, equal to the annual change in the Gross Domestic Product Price Index ("GDP-PI"), as calculated by the United States Department of Commerce, less an inflation offset and adjusted for any exogenous events. The Company's inflation offset shall be 2.0%. The PSI changes based upon this formula then are tracked cumulatively after 2001.

The PSP also addresses revenue neutral rate rebalancing/ restructuring, the introduction of new services and the banking of price changes.

The PSP in the Plan is a complete replacement of rate base/rate of return regulation for the Company and is the exclusive basis upon which the Company's rates and services will be regulated, upon implementation of this Plan. All tariff filings for noncompetitive services are subject to review under the terms of this Plan. Noncompetitive services are those services which are not declared to be competitive.

*A. Price Stability Mechanism ("PSM")*

1. The Price Stability Index ("PSI") is based upon the Company's rates in effect on October 16, 1998, as a starting point. Those rates are just, reasonable, nondiscriminatory and otherwise fully in compliance with all Pennsylvania laws.

2. Annually the Company will calculate the PSI as follows:

$$PSI_{s-2 dt u s+2} = PSI_{s-2 dt-1 u s+2} \times [1 + \% \Delta GDP-PI_{s-2 dt-1 u s+2} - 2.0\% (+- Z)]$$

When:

$PSI_{s-2 dt u s+2}$	=	The new maximum change in price for the noncompetitive service category for the current twelve month period.
$PSI_{s-2 dt-1 u s+2}$	=	The current maximum change in price for the noncompetitive service category for the previous twelve month period. <sup>4</sup>
$\% \Delta GDP-PI_{s-2 dt-1 u s+2}$	=	The percent change in the Gross Domestic Product Price Index based on the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year.
Z	=	The effect of any exogenous changes. Exogenous changes are

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<sup>4</sup> The PSI relates to the sum of effective rates and units of demand which were realized during the previous twelve-month period. Growth in revenues that occurs as a result of growth in demand, customers, new services or any other source that is unrelated to the PSP formula rate changes already is reflected in the 2.0% offset. Such growth in revenues is solely the productivity gain of the Company and may not be used for any other purpose.

			positive or negative changes in the Company's revenues or expenses as defined in the Plan.  In the calculation of the PSI, exogenous changes are expressed as a percentage  of the Company's revenue received from intrastate, noncompetitive services.  Inflation offset.
2.0%	=		

An example of how the Price Stability Mechanism will work is attached as Attachment B.

3. The PSI will start at 100 upon Commission approval of this Plan. The PSI will remain at 100 through the year 2001. Sprint's first calculation of the PSI will be for the annual price cap filing in the year 2002.

4. The Service Price Index ("SPI") is the cumulative price change from current and prior years which tracks the actual total price changes for noncompetitive services. No Company proposed SPI may exceed, on a total intrastate basis, the PSI, except as otherwise expressly provided in this Plan (e.g., banking of decreases as set forth in Part 3, Section E.1. herein).

5. The SPI shall be computed according to the following methodology:

$$SPI_{s-2 dt u s+2} = SPI_{s-2 dt-1 u s+2} \left[ \sum_{i=1}^n V_{s-2 di u s+2} \left( \frac{P_{s-2 dt u s+2}}{P_{s-2 dt-1 u s+2}} \right)^{V_{s-2 di u s+2}} \right]^5$$

When:

SPI <sub>s-2 dt u s+2</sub>	=	The proposed new SPI value.
SPI <sub>s-2 dt-1 u s+2</sub>	=	The existing SPI value as of the last approved tariff filing.
P <sub>s-2 dt u s+2</sub>	=	The proposed price for rate element "i."
P <sub>s-2 dt-1 u s+2</sub>	=	The existing price for rate element "i."
V <sub>s-2 di u s+2</sub>	=	The current estimated revenue weight for rate element "i," calculated

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<sup>5</sup> If the Department of Commerce should cease reporting the GDP-PI during the term of the Plan, then, subject to Commission approval, the Company will substitute an alternative index and make any adjustments to the formula necessary to replicate the current formula as closely as possible.

as the ratio of the base period demand for the rate element "I" priced at the existing rate, to the base period demand for all noncompetitive services priced at existing rates.

When a new service is incorporated into the index calculations, the demand for the new service during the base period must be included in determining the weights to be used in calculating the SPI.

6. On September 1st of each year (or the closest Commission working day to such date), beginning in 2000, the Company shall file with the Commission a PSI and SPI Report. Each such annual filing may be accompanied by tariffs to implement any required or authorized SPI.

7. The proposed tariffed rates will become effective subject to the Tariff Filing Process set forth below. The Commission shall review the tariff rate change proposals to determine whether they are designed to produce revenues so that the SPI is not greater than the PSI. If the Commission determines that the Company's rate proposals do not comply with this criterion, then the Commission may order the Company to modify them to produce an SPI value which is equal to the PSI. If the Company's proposals comply with this criterion, then the Commission shall approve them subject to the Consumer Protections in Part 3, Section F. herein.

8. The Company's annual PSP will be approved according to the following Tariff Filing Process. The Company will provide fifteen (15) days' advance notice of filing to the Commission and will generally describe the anticipated filing.<sup>6</sup> The Company will provide cost studies with its pre-filing notice for proposed rate increases other than those rate increases agreed upon in this Plan. Any and all interventions or complaints shall be due within ten (10) days of such filing. Twenty (20) days shall be reserved for Commission review of recommended decisions, if any, in this process. Responses to interrogatories would be due within ten (10) days of service. A Commission Order must be entered within one hundred five (105) days of the filing; otherwise, the tariff (s) shall become effective as filed, and shall be deemed to be approved. This procedure, as specified in this paragraph, is hereinafter referred to as the "Tariff Filing Process."

9. Notwithstanding any other limitations specified herein, the Company, or any other party, may request that the Commission make special revenue adjustments within the scope of the PSI to recognize significant **exogenous events** that are outside the Company's control as follows:

- (a) Jurisdictional shifts in cost recovery when interstate revenues actually change;
- (b) Subsequent state or federal regulatory and legislative changes which affect revenues or expenses, to the extent they are not captured in GDP-PI; and
- (c) Unique changes in the telephone industry which are not reflected in the overall inflation factor as measured by GDP-PI.

For example, the institution of a universal service fund in Pennsylvania, and any requirement that the Company participate as a contributor, shall be a qualifying **exogenous event**. **Exogenous** revenue changes shall be flowed through on a dollar-for-dollar basis, using the most recent per books revenue levels, without any investigation or review of earnings. Exogenous expense changes shall be flowed through, dollar-for-dollar, on the basis of review of that single expense item for which an exogenous change is sought, without any investigation or review of earnings,

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<sup>6</sup> Notice may be provided to the public through newspaper advertisements, bill inserts or bill messages. Notice also will be served upon the OCA, OSBA, OTS and any other Chapter 30 party, as identified by the Commission's Secretary.

and using the most recent per books level of such expense. Results shall be adjusted to recognize the impact of gross receipts taxes. The Tariff Filing Process and Part 3, Section F. herein shall apply to any such exogenous changes.

*B. Rate Restructuring And Rebalancing*

1. The Company shall restructure its rates during the first year of this Plan for residential and business customers and include touch tone charges as part of basic service rates, eliminate zone charges and multi-party service, consolidate its rate bands to three, and perform other local restructuring on a revenue neutral basis as provided for in Attachment A, attached hereto and incorporated herein by reference.

2. The Company shall be allowed to rebalance its rates in order to reduce Sprint's access rates to an effective switched access rate of \$ .12 per minute of use, subject to the following limitations:

(a) During the phase-in period through December 31, 2001, Sprint will not increase basic local service rates as a result of its price stability mechanism or rate rebalancing of basic local service rates above the following levels and as set forth in Appendix A:

i. Basic monthly local residential rates will be allowed to increase by no more than \$ 1.00 in each of the next three (3) years, at the following points in time: within ninety (90) days of Commission final approval of the Plan, one year later and two years later.

ii. Basic monthly local business rates will be allowed to increase by no more than \$ .50 in each of the next three (3) years, at the following points in time: within ninety (90) days of Commission final approval of the Plan, one year later and two years later. All increases to the local business rate will be limited to no more than one-half of the increase permitted for local residential basic service rates.

iii. After the increases to local residential and business rates, the remaining access rate reductions to an effective switched access rate of \$ .12 will be achieved at the discretion of the Company through increases to rates for other noncompetitive services in a revenue neutral manner.

(b) Through December 31, 2003, the Company's residential local basic service rates shall not increase above a \$ 16.00 weighted average rate cap. This Plan specifies no further rebalancing beyond that indicated above.

(c) After December 31, 2003, the Company shall be permitted to increase residential local basic service rates above \$ 16.00 if (1) the Commission requires the Company to charge a residential local basic service rate in excess of \$ 16.00 in order to receive universal service funding, or (2) the Commission requires the Company to reduce its access rates and the Commission determines that it would be just, reasonable and affordable to increase residential basic service rates to fund all or a portion of such access reduction.

(d) The Company shall also have the opportunity to petition the Commission to increase or eliminate the aforementioned residential rate cap after December 31, 2003. All parties to the Company's Chapter 30 proceeding will have the opportunity to respond to such a petition.

(e) The rate rebalancing set forth under the subsections of this Plan shall be used to reduce the Company's access rates to an effective switched access rate of \$ .12 per minute of use. If the Company receives funding as a result of the Global Telecommunications Settlement, any other Settlement, or Commission Order, the rate rebalancing set forth under Part 3, Section B. of this Plan shall remain unaffected by such funding. Any universal service funding received by the Company shall be on a revenue neutral basis and shall be used to reduce access rates even further or to reduce other rates.

(f) The Company may increase its Directory Assistance rates to the level requested by the Company in the Petition of the Pennsylvania Telephone Association For Adjustment of Directory Assistance Charges, Docket No. P-00981397. Any increase in revenues as a result of these increases in Directory Assistance charges must be offset by rate reductions in the first year of this Plan.

3. The Company may file tariffs proposing to rebalance and/or restructure its rates for noncompetitive services, either an increase or a decrease, upon the implementation date of the Plan, consistent with the rebalancing restrictions set forth in paragraph 2. above. If a proposed tariff would not cause the Company's SPI to exceed the PSI as calculated in the most recent annual filing, then such tariff shall be approved, subject to Part 3, Section F. provided that:

(a) The SPI is not greater than the PSI except for the banking of decreases;

(b) Beginning in the year 2002, no other rate restructuring/rebalancing filing has become effective in the same calendar year which affects exchange service rates<sup>7</sup> exclusive of changes made pursuant to the PSI/SPI formula and **exogenous events**;

(c) The rates for those services which are established by the Commission as universal services do not exceed the level determined by the Commission to be affordable pursuant to the Universal Service proceeding or any successor docket; and

(d) In the event that an affordable rate is not established by the Commission, exchange service rates may not exceed the cost of providing such service.

4. The Company may also propose revenue neutral tariff rate changes to implement the results of Commission orders involving generic industry issues.

5. The Company may make rate decreases at any time.

6. The Commission shall review the tariff proposals to determine whether they are within the criteria listed in paragraph 3. above. If the Commission determines that the Company's rate proposals are not within these criteria, then the Commission may order the Company to modify them to produce a tariff which does not exceed these criteria. If the tariff proposals are within the criteria listed in paragraph 3. above, then the Commission shall approve them.

7. The Tariff Filing Process, as defined above, shall apply to all rate restructuring and rebalancing filings, and the Commission's standards at 66 Pa. C.S. § 1308 would apply for any increase above the \$ 16.00 weighted average rate cap for local residential service set forth in paragraph 2. (b) above.

#### *C. Lifeline Service, Link Up Service and Universal Service*

1. The Company provides Lifeline and Link Up programs for qualifying, low-income residential customers, which programs will remain in effect during the Plan. Lifeline service provides qualifying, residential service customers with the applicable residence local service monthly rate, minus \$ 5.25 (including a \$ 3.50 discount for the federal subscriber line charge). The Link Up America program provides for a 50% discount on the service connection charges on new residential service, not to exceed \$ 30.00.

2. Sprint also provides Optional Local Measured Service ("LMS") which allows measured calling to all points within the existing non-toll calling area. LMS is an economical way for customers to reduce their exchange service bills. LMS also will remain in effect during the Plan.

3. The Company also provides discounts or exemptions to disabled persons, which exemptions and percentage discounts will remain in effect during the Plan.

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<sup>7</sup> Exchange service, as defined in Sprint's tariffs, is the general telephone service rendered in accordance with individual Local Exchange Tariff and General Exchange Tariff provisions. See, Tariff Telephone Pa. P.U.C. No. 26, First Revised Page 13, attached hereto as Attachment D.

4. The Company shall be fully qualified to participate as a recipient of any universal service program instituted by the Commission. Nothing in this Plan, or the Company's regulation under Chapter 30, shall disqualify it from full participation in any Pennsylvania or federal universal service programs.

#### *D. New Services*

1. The Company may introduce new services at any time.
2. If a new service is offered which falls within the definition of "protected services," then the Tariff Filing Process, as detailed above, shall apply. Protected services are as follows:
  - (a) Telecommunications services provided to business or residential customers that are necessary for completing a local exchange call.
  - (b) Switched access service.
  - (c) Special access service.
  - (d) Ordering, installation, restoration and disconnection of the above-listed services.
3. Any new service which does not fall within the definition of "protected services" shall become effective upon one day's notice to the Commission.
4. Revenues from new services shall be included in the calculation of PSI and SPI, beginning with the first annual PSP filing after the new service has been in effect for one year.
5. Sprint may file special tariffs offering experimental treatment for new services, and such tariffs shall be effective when filed.

#### *E. Banking of Annual Price Decreases*

1. After 2001, annual price decreases calculated under the PSI filed on September 1 of each year may be banked for application in future years, not to exceed four (4) consecutive years.<sup>8</sup> Such banking of decreases will be with interest at a rate set forth in 66 Pa. C.S. § 1308.
2. The banked price changes must be implemented no more than four (4) years after the annual price change is applied.
3. If a decrease is greater than \$ 500,000, the Company will implement the decrease immediately.

#### *F. Consumer Protections*

1. The requirement that rates remain just and reasonable and subject to Commission oversight shall apply to all rate proposals under the Company's Tariff Filing Process.
2. Cost support shall be provided for all rate increase proposals for protected services, except those provided under Section B., paragraph 2 above.

### **PART 4 --- ADDITIONAL COMPANY**

#### **COMMITMENTS AND OTHER TERMS**

##### *A. Ongoing Regulatory Requirements*

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<sup>8</sup> For annual price increases, the Company may apply them in future years, without limitation as to time.

## 93 Pa. PUC 1

1. All services provided by the Company within the jurisdiction of the Commission are still subject to all provisions of 66 Pa. C.S. § 1501, *et seq.*, regarding safety, adequacy and reliability of telecommunications services.

2. The Company will continue to monitor service quality for noncompetitive services in compliance with the Commission's regulations at 52 Pa. Code §§ 63.56.

3. The Company will comply with the Commission's Extended Area Service ("EAS") regulations, as revised by the Universal Service task force, on an interim basis. The Company may petition for waivers from those regulations as needed and can petition for an automatic waiver if a waiver is granted to a similarly situated company.

The Company will continue to provide EAS on required routes, will continue to regroup exchanges as appropriate and will be allowed to implement EAS-related rate increases, subject to restrictions in Section B., paragraph 2 above on Rate Rebalancing.

4. The Company will file affiliated interest agreements, in accordance with 66 Pa. C.S. § 2101, *et seq.*, unless such agreements involve services found to be competitive in accordance with this Plan; however, such filings shall constitute notice to the Commission only. Review of the associated costs and benefits shall be deemed to be unnecessary.

5. The Company shall continue to comply with Chapter 63 and 64 of the Commission's regulations as amended from time to time. The Company reserves the right to petition for waivers of those regulations and to petition for an automatic waiver if it is granted to a similarly situated company.

6. Approval of this Plan shall not operate in any way to foreclose the Company from exercising any of its options, pursuant to the enactment of new state or federal legislation.

7. In the event that the Company effects a change either to its depreciation expense or depreciation reserve, Commission approval shall not be required; however, in the event of the reinstatement of any form of rate base/rate of return regulation of the Company, then the Company will request permission from the Commission to establish booked amounts for depreciation at that time.

8. In the event that the Company acquires, or merges with, another local telephone company in Pennsylvania, then upon Commission approval of the acquisition or merger, that company automatically shall be subject to the Company's Chapter 30 Plan and Alternative Form of Regulation.

### *B. Reporting Requirements*

1. The Company will continue to provide the following reports:

(a) Summary of biennial updates and a six-year detailed report to the Company's Network Modernization Plan, in compliance with approved PUC filing requirements.

(b) Access line summary in accordance with Docket No. M-900239;

(c) Pennsylvania Telecommunications Relay Surcharge report in accordance with Docket No. M-900239;

(d) The Company's annual assessment for regulatory expense in accordance with 66 Pa. C.S. § 510(b); and

(e) Measurement of service quality in accordance with 52 Pa. Code § 63.56.

(f) Annual financial reporting requirements.

2. Should the Commission request any additional report or audit, the Company may oppose such submission on the grounds that the benefit of the report or audit will not exceed the attendant expense or administrative time requirements associated therewith, and the Company shall have a rebuttable presumption to that effect if the cost exceeds \$ 10,000.

*C. Term of the Plan*

1. The legislation underlying this Plan has a sunset date of December 31, 2003, absent an act of the General Assembly. In the event that Chapter 30 sunsets, is modified in any way or is repealed, the Company may seek appropriate modifications or revisions to its Plan. The procedures set forth at 66 Pa. C.S. § 3004 then shall apply.

2. In the event of any appellate court reversal, remand, vacation, amendment or other modification of any Commission order approving or interpreting this Plan, or any aspect thereof, the Company retains the right to withdraw from the Plan.

3. The Company retains the right to seek a modification or revision of any or all aspects of the Plan at any time after its approval.

4. Procedures applicable for review and approval of the initial plan, as set forth at 66 Pa. C.S. § 3004 (b), shall also apply to subsequent modifications or revisions, if any, of this Plan.

*D. Miscellaneous*

1. The Companies will provide aggregated customer and network information on a nondiscriminatory basis to any other provider, upon request, unless prohibited by law. ATTACHMENT A [AVAILABLE IN ORIGINAL - MS. P. 2] [AVAILABLE IN ORIGINAL - MS. P. 3] [AVAILABLE IN ORIGINAL - MS. P. 4] [AVAILABLE IN ORIGINAL - MS. P. 4A] [AVAILABLE IN ORIGINAL - MS. P. 4B] ATTACHMENT D

Telephone-Pa. P.U.C. No. 26

First Revised Page 13

Cancelling Original Page 13

EXPLANATION OF TERMS (Continued)

## DATA ACCESS ARRANGEMENT

The term "data access arrangement" denotes a protective connecting arrangement for use with the network control signaling unit, or in lieu of the connecting arrangement, an arrangement for use with the network control signaling unit to identify a central office line and protective facilities and procedures to determine compliance with criteria set forth in this Section of the tariff.

## DIRECT CURRENT SUPPLY

Electrical energy for talking and signaling purposes, other than ringing.

## DIRECT ELECTRICAL CONNECTION

A physical connection of the electrical conductors in the communications path.

## EXCHANGE SERVICE

The general telephone service rendered in accordance with individual Local Exchange Tariff and General Exchange Tariff provisions. Exchange service is a general term describing the facilities together with the right to send and receive a specified or an unlimited number of local messages at charges in accordance with the provisions of the Local or General Exchange Tariffs.

(a) Extension Service: A classification of exchange service that is connected on the same central office access line as main service. Extension instruments are provided by the customer. (C)

(b) Flat Rate Service: A classification of exchange service furnished a subscriber under tariff provisions, for which a stipulated charge is made, regardless of the amount of use.

(c) Foreign Exchange Service: A classification of exchange service furnished under tariff provisions by means of a circuit connecting a subscriber's main service with a central office of an exchange other (C) than that which regularly services the exchange area in which the subscriber is located.

(d) Individual Line Service: A classification of exchange service furnished under tariff provisions which provide that only one main service shall be served by the circuit connecting such service with the central office. (C)

(C) Indicates Change

Telephone-Pa. P.U.C. No. 26

Fourth Revised Page 14

Cancelling Third Revised Page 14

EXPLANATION OF TERMS (Continued)

EXCHANGE SERVICE (Continued)

(e) Party Line Service: A classification of exchange service furnished under tariff provisions which provide that two but no more than four main services may be served by the same central office circuit.

\*\*\* (C)

(f) Pay Telephone Line Service (PTL): Pay Telephone Line Service is one-party exchange service for use by pay telephone providers, location owners and interexchange carriers and is furnished solely for connection with coin, coinless or combination coin/coinless pay telephone equipment to the Telephone Company's network. (C)

(g) U-Touch Calling Service: A classification of exchange service furnished from central offices whereby calls are originated through the use of push buttons in lieu of a rotary dial.

GRANDFATHERED SERVICE

Any service that has been grandfathered is considered to be obsolete as of the grandfathered date. Only those customers who had the service at the time it was grandfathered can continue with the service *and* only if they remain at the same location *and* make no changes to the existing account. Upon any customer initiated change to their account, the grandfathered service will no longer be available to the customer. Such changes include but are not limited to: physical address changes, addition of services, change of responsibility, discontinuance of service, or any other changes requiring service orders.

NETWORK CONTROL SIGNALING

The term "Network Control Signaling" denotes the transmission of signals used in the Telephone Company's exchange facilities which perform functions such as supervision (control, status, and charging signals), address signaling (dialing), calling and called number identification, audible tone signals (call progress

(C) Indicates Change

Issued: January 15, 1997

Effective: April 1, 1997

## **APPENDIX B**

*Office of Small Business Advocate Statement In Support of Settlement*

On October 16, 1998, The United Telephone Company of Pennsylvania, doing business as Sprint ("Sprint"), filed a Petition for Approval under Chapter 30 of the Public Utility Code of an Alternative Regulation and Network Modernization Plan ("Plan"). The Office of Small Business Advocate ("OSBA") intervened on behalf of the small

business customers of Sprint. The OSBA actively participated in all aspects of this case, including the filing of direct and rebuttal testimony, submission of discovery, and participation in the settlement discussions held among the parties.

The OSBA is a signatory to the Settlement Agreement among the United Telephone Company of Pennsylvania, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate ("Settlement Agreement"). The OSBA submits this Statement in Support of the Settlement Agreement, and respectfully requests that the terms and conditions of the Settlement Agreement be approved by the Administrative Law Judge and the Commission.

The Settlement Agreement clearly is in the interest of the small business customers of Sprint and should be approved. The following issues, resolved in the Settlement Agreement, are of particular importance to the small business customers of Sprint:

. The 100% availability of Sprint's Signaling System 7 ("SS7") protocol has been accelerated from 2008 to 2004. SS7 provides the network platform for the implementation of Sprint's Advanced Intelligent Network ("AIN"). AIN services allow small business customers to realize the benefits of competition and improved service offerings;

. The 100% availability of Sprint's Custom Local Area Signaling Services ("CLASS") has been accelerated from 2008 to 2004. CLASS services are increasingly relied upon by small businesses in order to compete effectively;

. The Price Stability Plan ("PSP") as set forth in the Settlement Agreement sets a maximum increase of 50 cents per year for basic local business rates. This maximum is in effect through December 31, 2003. The settled maximum increase is in stark contrast to Sprint's proposed maximum increase of 40% of the current rates, or \$ 3.50 per month, whichever is higher, as set forth in Sprint's original Plan;

. The PSP set forth in the Settlement Agreement limits the maximum increase to basic local business rates to one-half of the increase to basic local residential rates. This begins the much needed process of narrowing the wide differential between residential and business local rates;

. Finally, adoption of the Settlement Agreement allows the OSBA to conserve resources that would be expended to fully litigate this matter, and removes the uncertainties of litigation.

For the reasons set forth in the Settlement Agreement, and in this Statement in Support, the OSBA respectfully requests that the ALJ and the Commission approve the Settlement Agreement in its entirety.

Steven C. Gray  
Assistant Small Business Advocate

Dated: March 10, 1999

Appendix C

## **STATEMENT IN SUPPORT OF SETTLEMENT**

### **OF THE**

### **OFFICE OF CONSUMER ADVOCATE**

#### *I. Introduction*

The Office of Consumer Advocate ("OCA") files this Statement in Support of the Alternative Regulation Plan of the United Telephone Company of Pennsylvania, Doing Business as "Sprint" ("Plan") as modified by the Final Settlement dated March 10, 1999 ("Settlement") in the above-captioned proceeding. The OCA has conducted extensive discovery in this proceeding and has been assisted by a variety of experts regarding network modernization issues, competitive service deregulation and price stability plans as well as other additional issues.

The OCA believes the Settlement is in the public interest and that the terms established therein are just and reasonable.

Chapter 30 of the Public Utility Code, 66 Pa.C.S. § 3001, *et seq.* ("Chapter 30"), is designed to, *inter alia*, maintain universal telecommunications service at affordable rates while encouraging the accelerated deployment of a universally available, state of the art, interactive, public switched also requires any such LEC to provide for a revenue neutral phase-down of their access rates to not more than 12[cent] through not more than three equal annual increments commencing with the implementation of the plan. *Id.*

With these factors in mind, the Settlement provides for a productivity offset of 2.0% and contains a rate rebalancing provision which limits local rate increases for residential customers to not more than \$ 1.00 per year for the first three years of the plan. Furthermore, residential local basic service rates cannot increase above a \$ 16.00 weighted average rate cap through December 31, 2003. This rate cap is significant and provides certain rate protections even as the statute requires some rates to increase. In addition, this Settlement uses other revenue sources so that basic local rates would not absorb all of the increases required to reduce access rates under Section 3007. The Settlement provides that Sprint will use the rate rebalancing proposed under this Settlement to reduce its access rates to an effective switched access rate of 12[cent] per minute of use in three years. The Settlement also provides that, if Sprint receives funding as a result of any other settlement or Public Utility Commission ("Commission") Order, such funding received by Sprint shall be used on a revenue neutral basis to reduce access rates even further or to reduce other rates. It is important to note that the local rate increase is necessary because of the Section 3007(1) requirements of Chapter 30 which mandate that Sprint's access rates be down to 12[cent].

The Settlement also establishes a rate restructuring plan which allows for the roll in of touch tone and zone charges, elimination of multi-party service and consolidation of rate bands. Zone charges are a method of determining rates according to an end-user's distance from the Central Office. Zone charges will now be eliminated and will produce rate reductions for customers living in the most rural areas of Sprint's territory. Rate bands are a method of determining rates according to a community's local calling area and the number of people that can be called from that community without incurring a toll charge. Currently, there are nine rate bands in Sprint's service territory which will be consolidated into three as a result of the Settlement.

Additionally, on February 16, 1999, the Commission issued an Order in *Petition of the Pennsylvania Telephone Association for Adjustment of Directory Assistance Charges*, Docket No. P-00981397, which allowed Sprint to increase its Directory Assistance charges from \$ 0.35 to \$ 0.60. Directory Assistance service is furnished upon customer request for assistance in determining telephone numbers. Sprint will receive a revenue increase due to this Order. Through this Settlement, Sprint will immediately offset this additional revenue as a result of increases in Directory Assistance charges with rate reductions on a revenue neutral basis.

This Settlement also requires Sprint to comply with the reporting and filing requirements of the Commission including a "120 day procedure" for annual price cap formula, exogenous filings and rate rebalancing filings.

### *III. Competitive Services Determination*

Concerning Sprint's Competitive Services Deregulation Plan, Chapter 30 notes that the Commission is authorized to determine, after notice and hearing, whether a telecommunications service or other service or business activity offered by a LEC is a competitive service. 66 Pa.C.S. § 3005(a). As such, a LEC may petition the Commission for a determination of whether any service or activity offered is competitive, either in conjunction with the filing of the plan or at any time after the plan has been approved. *Id.* In its plan, Sprint sought no additional services to be declared competitive beyond those already found to be competitive by the Commission. However, Sprint also sought the ability to submit future requests to classify services as competitive and request competitive classification for services or locations that are found to be competitive for other companies for similar services. The parties have agreed that such a request may be submitted upon sixty days notice, instead of the one day notice proposed by Sprint. The Settlement also requires that Sprint will provide its own cost studies in order to

comply with the competitive costing and pricing safeguards and that Sprint will provide competitive cost documentation without the necessity of filing a complaint.

#### *IV. Network Modernization*

Concerning network modernization issues, Chapter 30 requires each LEC to commit to universal broadband availability and converting 100% of its interoffice and distribution network to broadband capability by December 31, 2015 with balanced deployment between rural, urban and suburban areas. 66 Pa.C.S. § 3003(b)(1) & (2). The parties negotiated an accelerated deployment of customer local area signaling services ("CLASS"). CLASS features are services where information about the calling party is delivered to the called party during the call set-up. For instance, CLASS features include Calling Number Delivery ("Caller ID"), Calling Number Delivery Blocking, Repeat Call and Return Call. Therefore, due to this Settlement, rural customers in Sprint's service territory will now be able to receive these features several years earlier than the plan originally provided. Specifically, full deployment of CLASS services is scheduled to be completed by 2004 with 95.6% completed by 2003.

#### *V. Conclusion*

The OCA emphasizes that a key element to this Settlement is the rate rebalancing provision which includes a rate cap of \$ 16.00 through December 31, 2003. Along with the \$ 1 per year limitation on basic rate increases, this will provide significant universal service rate protection. Even though Sprint has been forced to raise local rates in order to meet the Chapter 30 access rate reduction requirements, the Settlement places real limitation as to how far such rate increases will go.

For all of the foregoing reasons, the OCA respectfully requests the Administrative Law Judge and the Public Utility Commission approve the Plan as modified by the Final Settlement dated March 10, 1999.

Respectfully submitted,

Philip F. McClelland  
Assistant Consumer Advocate

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

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

Dated: March 10, 1999

#### **APPENDIX "D"**

##### OFFICE OF TRIAL STAFF'S STATEMENT IN SUPPORT OF SETTLEMENT AGREEMENT

BEFORE ADMINISTRATIVE LAW JUDGE LOUIS G. COCHERES:

The Office of Trial Staff respectfully requests that the terms and conditions of the foregoing Settlement Agreement Among The United Telephone Company Of Pennsylvania, The Office of Trial Staff, The Office of Consumer Advocate, and The Office of Small Business Advocate ("Settlement Agreement") be approved by Administrative Law Judge Cocheres and the Pennsylvania Public Utility Commission. This request is based upon OTS' conclusion that the proposed Settlement is in the public interest, as supported by consideration of the following factors:

1. On October 16, 1998, the United Telephone Company of Pennsylvania, d/b/a "Sprint" (hereinafter referred to as "Sprint" or "the Company"), filed a Petition and Alternative Regulation Plan (Plan) with the Pennsylvania Public Utility Commission (Commission), pursuant to Chapter 30 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §

3001 et seq. In its Plan, Sprint included its Network Modernization Plan, Competitive Services Deregulation Plan, Price Stability Plan for Noncompetitive Services, and Additional Company Commitments and Other Terms.

2. The Office of Trial Staff (OTS) filed a Notice of Appearance and actively participated in this proceeding pursuant to statutory authority contained in Section 306(b) of the Public Utility Code, 66 Pa. C.S. § 306(b).

3. This proceeding was referred to Administrative Law Judge (ALJ) Louis G. Cocheres, who convened a Prehearing Conference on November 20, 1998. Parties to this proceeding, which were represented at this Prehearing Conference, are Sprint, OTS, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and AT&T Communications of Pa. (AT&T).

4. Public Input Hearings were held in Sprint's service territory on January 5 and 7, 1999, in Chambersburg, Pa., and Butler, Pa., respectively. The settling parties considered the concerns expressed at the Public Input Hearings in this Settlement Agreement., which included "Extended Area Service" (EAS) concerns and affordability.

5. The parties engaged in discovery to gain a thorough understanding of the Company's filing and also participated in settlement discussions, in furtherance of the Commission's policy encouraging settlements. As a result of this process, the settling parties were able to achieve a complete settlement of all their issues, including an agreement as to the Sprint Chapter 30 Plan language as set forth in Appendix "A" to this Settlement Agreement.

6. The Settlement Agreement provides for a 2% inflation offset, consistent with several other previously-approved Chapter 30 Plans, in lieu of the 1.1% inflation offset originally proposed by the Company. This enhances the consumer benefits of price cap regulation, by providing further control on aggregate price increases and by promoting utility efficiency.

7. The Settlement Agreement provides a rate cap for basic local service rates, which had not been proposed in the original Plan. In addition, basic local service increases are limited to \$ 1.00 per month for residence service and \$ .50 per month for business service for each year of the first three years of the Plan. This is in lieu of Sprint's original proposal, which provided the opportunity for an annual \$ 3.50 per month or 40% increase to basic local rates, whichever was higher. The Price Stability Index will remain at 100 through the first three years of the Plan, so that basic local service rates will not increase as a result of inflation.

8. The above-mentioned increases, and certain other limited increases set forth in Attachment "A," are to be offset with decreases in access charges, to achieve the \$ .12 per minute of use access charge level required by Section 3007 of Chapter 30. The lowering of access charges may result in reduced long distance rates for consumers.

9. The Company's original Plan had proposed to eliminate Sprint's obligation to file annual financial reports and affiliated interest agreements. These obligations are retained in the Settlement Agreement.

10. Also, Sprint's original Plan had proposed to eliminate certain sections of the Commission's service regulations in Chapters 63 and 64, with respect to competitive services. In addition, the original Plan had included a complete waiver of all EAS regulations. The applicability of all regulations as to service is retained by the Settlement Agreement, except to the extent modified in the Subcommittee Report on EAS.

11. Sprint's original proposal had proposed to remove the Commission's discretion, under Section 3009(f) of the Public Utility Code, 66 Pa. C.S. § 3009(f), to require tariffs or price lists for competitive services. This discretion is properly retained in the Settlement Agreement.

12. Sprint has also agreed to certain procedural modifications for seeking competitive declarations and for noncompetitive tariff filings, which provide further opportunity for regulatory review and analysis.

13. Cost support and other consumer protections have been added to the Plan, as set forth in the Settlement Agreement and Appendix "A."

14. In addition, the Plan provides for acceleration of CLASS and SS7 service availability in the Network Modernization Plan.

15. For the above-stated reasons, and the following additional reasons, OTS asserts that approval of the Settlement Agreement is in the public interest:

- a. Approval of the Settlement Agreement will avoid the substantial time, expense and uncertainty involved in litigation of all issues in the case; and
- b. The Settlement Agreement achieves a just and fair result of difficult issues and provides benefits to consumers, such as the rate cap, which may not have been achieved with full litigation.

Respectfully submitted,

Kandace F. Melillo  
Prosecutor

Charles F. Hoffman  
Chief Prosecutor  
Office of Trial Staff

Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265

Dated: March 10, 1999

*Appendix E*

**STATEMENT OF THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA IN SUPPORT OF SETTLEMENT AGREEMENT**

The United Telephone Company of Pennsylvania, doing business as "Sprint," hereby submits its statement in support of the Settlement Agreement submitted to Administrative Law Judge Louis G. Cocheres in the above-captioned matter. Sprint urges Your Honor and the Commission to consider and approve the Settlement Agreement expeditiously and allow Sprint's Chapter 30 Plan to become effective at the earliest possible date. In support of the Settlement Agreement, Sprint avers as follows:

1. The Settlement Agreement is in the best interests of Sprint, its customers and the general public. It is, therefore, in the public interest.

5. The Settlement Agreement provides for the following:

a) *Inflation offset* : The parties agree to an inflation offset of 2.0%, in lieu of a 1.1% offset, as proposed by Sprint in its original Plan.

b) *Price Changes*: The Company will restructure its basic local exchange service rates in the first year of the Plan to roll in touch tone charges, roll in zone charges, eliminate multi-party service, consolidate rate bands (from 8 bands to 3), and perform other restructuring on a revenue neutral basis. This restructuring simplifies Sprint's rate structure for the benefit of its customers.

In addition to the rate restructuring, the parties to the Settlement Agreement have agreed to a rate rebalancing in order to reduce Sprint's access rates to an effective switched access rate of \$ .12 per minute of use, as required by 66 Pa. C.S. § 3007. This reduction is approximately \$ 15.9 million. It will be phased in to avoid dramatic changes in basic local exchange rates and will provide significant access rate relief to all toll carriers in Sprint's territory.

Local exchange residential and business rate increases will be limited to three annual increases of \$ 1.00 and \$ .50 respectively during the phase-in period. All increases to local exchange business rates will be limited to no more than one-half of the increase for local residential rates. Through December 31, 2003, Sprint's residential local basic service rates shall not increase above a \$ 16.00 weighted average rate cap.

c) *Network Modernization*: Sprint has revised its Network Modernization Plan to accelerate the availability of CLASS and SS7 services for residential and business customers to 2004 as shown on page 10 of the Plan. The Plan also focuses network improvements on reaching out to governmental, educational and medical markets, industrial parks and 911 centers.

d) *Retention of Regulatory Powers by the Commission*: Provisions regarding compliance with the Commission's requirements at 66 Pa. C.S. Chapter 21, as modified by the Plan, and Chapters 63 and 64 will continue, as well as reporting requirements, quality of service, and the Commission's powers under Section 3009 of the Public Utility Code, 66 Pa. C.S. § 3009.

e) *Satisfaction of Statutory Criteria*: The Parties agree that the Plan, as contained in Appendix A and its Attachments, meets the criteria specified in Sections 3004 and 3007 of the Public Utility Code, 66 Pa. C.S. §§ 3004 and 3007, and that Commission approval of the Plan is warranted and in the public interest.

6. Sprint submits that it is desirable to the Company and its customers for its Chapter 30 case to be resolved without full litigation. Indeed, the approval of this Settlement Agreement in its entirety by Your Honor and the Commission will avoid the necessity of further administrative proceedings and litigation, including possible appeals, and the attendant costs to the Commission and the parties to the Settlement Agreement. Under the current state of regulation in the Commonwealth, the time and expense incurred by utilities in full litigation of such cases is not in the best interests of the Company nor the Commission, and the expenses incurred may affect the ability of the Company to meet its Chapter 30 commitments. Accordingly, the Commission has an established policy of encouraging such settlements in its regulations at 52 Pa. Code § 5.231.

7. The Settlement Agreement is the result of extensive negotiations among the Office of Consumer Advocate ("OCA"), the Office of Trial Staff ("OTS"), the Office of Small Business Advocate ("OSBA") and Sprint, and it was achieved after all parties completed extensive discovery of Sprint's Chapter 30 filing and supporting information. The Settlement Agreement also takes into account public input from two hearings held in Butler and Chambersburg, Pennsylvania. The Settlement Agreement fully and adequately addresses all issues presented in the proceeding and fairly compromises the opposing interests of all parties to the Settlement Agreement.

8. For all of the foregoing reasons, and those set forth in the Settlement Agreement, Sprint submits that the Settlement Agreement is in the interest of all signatory parties, as well as in the public interest, and requests that Your Honor and this Commission approve the Settlement Agreement in its entirety as being in the public interest. Respectfully submitted,

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Company of Pennsylvania

Dated: March 10, 1999

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EDITOR'S APPENDIX

Citations in Text

[PA.] [Re Pennsylvania Telephone Asso., P-00981397, 92 Pa PUC 160](#), Feb. 11, 1999; entered Feb. 16, 1999.