



May 11, 2009

VIA ELECTRONIC FILING

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street, Second Floor
Harrisburg, PA 17120

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

Dear Secretary McNulty:

On behalf of The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (hereinafter "Embarq Pennsylvania"), enclosed please find Embarq Pennsylvania's Main Brief. Please note that there is only a public version of Embarq Pennsylvania's Main Brief, no proprietary information is included in the Main Brief.

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

Sincerely,

A handwritten signature in black ink that reads "Joseph Stewart".

Joseph Stewart
Admitted Pro Hac Vice

ZEB/jh

cc: The Honorable Susan D. Colwell (*via electronic and overnight mail*)
All Parties on the attached Certificate of Service (*via electronic and first-class mail*)

Joseph R. Stewart
Senior Counsel
50 West Broad Street, Suite 3600
Columbus, Ohio 43215
(614) 220-8625 (phone)
(614) 224-3902 (fax)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF
UNITED TELEPHONE COMPANY OF PENNSYLVANIA LLC d/b/a
EMBARQ PENNSYLVANIA**

Joseph R. Stewart, Esquire
50 West Broad Street, Suite 3600
Columbus, OH 43215
Phone: (614) 220-8625
Fax: (614) 224-3902
email: joseph.r.stewart@embarq.com

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

Attorneys for Embarq Pennsylvania

Dated: May 11, 2009

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
I. STATEMENT OF THE CASE AND INTRODUCTION.....	1
II. SUMMARY OF ARGUMENT	2
III. ARGUMENT.....	4
A. Whether the \$18 Cap On Residential Monthly Service Rate and Any Responding Cap on Business Month Service Rates Should be Raised. The Commission Need Not, and Should Not, Increase the \$18.00 Rate Cap on Residential Monthly Service Rates of Business Monthly Service Rates at this Time.....	4
B. Whether the Commission has the Authority under Chapter 30 and Other Relevant Provisions of the Public Utility Code to Perform a Just and Reasonable Rate Analysis of the Rural ILECs’ Residential Rates for Basic Local Exchange Services when such Rates Exceed the Appropriate Residential Rate Benchmark. The Commission’s Authority to Perform a Just and Reasonable Rate Analysis of Embarq’s Residential Rates for Basic Local Exchange Service is Constrained by Embarq’s Amended Alternative Regulation Plan	5
C. Whether Funding for the Pennsylvania Universal Service Fund should be Increased to Accommodate Rural ILECs’ Chapter 30 Annual Revenue Increases. The Commission need not make Decisions at this Time Regarding the PAUSF; However, if Deemed Necessary, Funding for the PAUSF should be Increased to Accommodate any Chapter 30 Annual Revenue Increase of RLECs	6

D.	Whether or not a Needs-Based Test (and Applicable Criteria) for Rural ILEC Supporting Funding from the PAUSF in Conjunction with the Federal USF in Conjunction with the Federal USF Support Payments that the Rural LECS Receive should be Established In Order to Determine which Rural ILECS Qualify for PAUSF Funding. If Needs-Based Test Should be Implemented, then Addressed the Issue Identified at Ordering Paragraph 2(E) of the Commission’s Order Entered April 24, 2008	
	The Commission should not Adopt a New Needs-Based Test for Rural ILECS to Receive Support from the PAUSF	9
E.	Whether PAUSF Funding Support should be Received by Rural ILECs that Incrementally Pierce the Appropriate Residential Rate Cap because of the Regular Annual Chapter 30 Revenue Increases, and whether the Commission’s PAUSF Regulations should be Accordingly Revised. Include the Role of Non-Expired “Banked Revenues” that Rural ILECs may have Accumulated through the Operation of their Respective Chapter 30 Modified Alternative Regulation Plans and Corresponding Price Stability Mechanisms.	
	Rural ILECs should be Permitted to Seek Support from the PAUSF if their Authorized Chapter 30 Revenue Increase Result in Piercing the Residential Rate Cap.....	11
F.	Whether the Potential Availability of PAUSF Support Distributions to those Rural ILECs that Pierce the Appropriate Residential Rate Cap because of their Respective Annual Chapter 30 Annual Revenue Increases has any Anti-Competitive or other Adverse Effects, Especially with Respect to the Currently Established PAUSF Support Contribution Mechanism and its Participating Telecommunications Utility Carriers	
	There are no Anti-Competitive or other Adverse Effects from Providing PAUSF Support to Rural ILECs that Pierce the Residential Rate Cap Because of Chapter 30 Revenue Increases.....	13
IV.	CONCLUSION	18

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES</u>	
<u>Federal</u>	
<u>Bell Atlantic-Pennsylvania Inc. vs. PA PUC, 763 A.2d 440</u> <u>(PA Commw 2000)</u>	8
<u>MCI v. PA PUC, 844 A.2d 1239 (Pa. 2004).</u>	8

ADMINISTRATIVE DECISIONS & ORDERS & POLICY STATEMENTS

Pennsylvania Administrative

<u>Joint Petition for Global Resolution of Telecommunications Proceedings;</u> <u>Petition of Senators Vincent J. Fumo, Roger A. Madigan and Mary Jo</u> <u>White, Pennsylvania Cable & Television Association and Seven Competitive</u> <u>Local Exchange Carriers for Adoption of Partial Settlement Resolving</u> <u>Telecommunications Issues, Docket Nos. P-00991649 & P-00991648,</u> <u>Opinion & Order (Sept. 30, 1999)</u>	8, 14
--	-------

STATUTES & REGULATIONS:

Pennsylvania

52 Pa. Code §§63.161	8
52 Pa. Code §§63.164	9

I. STATEMENT OF THE CASE AND INTRODUCTION

This proceeding was begun by the Pennsylvania Public Utility Commission (“Commission”) pursuant to its Order entered April 24, 2008 (“April 24 Order”). The April 24 Order summarized the considerable background and prior proceedings that led to the April 24 Order.¹

Based upon a joint motion filed by the Rural Telephone Company Coalition, Office of Consumer Advocate (“OCA”), Office of Trial Staff (“OTS”), and the United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (“Embarq”), the Commission granted a further stay of the procedural schedule of Docket No. I-00040105 with respect to intrastate access charge reform.² The April 24 Order reopened this investigation for certain limited purposes, including whether the residential monthly service rate cap of \$18.00 should be raised, whether funding for the Pennsylvania Universal Service Fund (“PaUSF”) should be increased, and whether a needs-based test should be established for rural ILEC support funding from the PaUSF.³

In order to assist the Commission in resolving the issues identified in Ordering Paragraph 1 of the April 24 Order, the Commission also directed that the investigation should examine certain additional issues, *e.g.*, the Commission’s legal authority to perform a just and reasonable rate analysis of rural ILEC residential rates when those rates exceed the residential rate cap, the appropriate rate cap for rural ILEC residential rates for basic local exchange service, and various sub-issues regarding PaUSF funding support, and the operation of the fund itself.⁴

¹ April 24 Order at 2-22.

² *Id.* at 30, 31.

³ *Id.* at 30.

⁴ *Id.* at 31-33.

The parties to this case conducted discovery and filed direct, rebuttal, and surrebuttal testimonies. An evidentiary hearing was held in February 2009, at which parties had the opportunity to cross-examine the various witnesses. The hearing transcript contained numerous errors, but the parties have, for the most part, been able to reach agreement regarding the necessary corrections. Those errors necessitated a slight extension of the briefing schedule herein.

II. SUMMARY OF ARGUMENT

Embarq submits that the Commission need not act now to increase the \$18.00 rate cap for residential monthly service or for the corresponding business monthly service rate. Embarq is not seeking any change to the rate caps, and there is no widespread effort by other rural ILECs to pierce the \$18.00 rate cap. It would be better for the Commission to address changes to the rate caps on an individual case basis.

Whether Embarq's residential rates for basic local exchange service are just and reasonable is an issue that must be decided based upon the terms of Embarq's amended alternative regulation plan. Simply put, if the rates are consistent with that plan, they are, by definition, just and reasonable.

As with the question of residential rate caps, the Commission does not need to make a decision now regarding increased funding for the PaUSF. But, should the PaUSF need to be increased, the Commission has the power to do so.

It is both unnecessary and undesirable for the Commission to adopt a new needs-based test for rural ILECs to receive support from the PaUSF. The PaUSF was designed to offset access charge and toll rate reductions by rural ILECs. That was the need, and that need continues to exist because the rural ILECs have continued to charge the reduced

intrastate access charges and toll rates that provided the original basis for their draws from the PaUSF. Furthermore, if an authorized Chapter 30 revenue increase for a rural ILEC results in that ILEC's piercing residential rate cap, the ILEC should be permitted to seek additional support from the PaUSF. That additional support is justified based on broadband commitments and carrier of last resort obligations.

Because rural ILECs serve less dense, high-cost areas, it is appropriate and not anti-competitive to provide rural ILECs with PaUSF support even if they pierce the residential rate cap. Because rural ILECs have carrier of last resort obligations, and because Pennsylvania supports the goal of universal service, explicit support from the PaUSF is appropriate for a rural ILEC whose alternative regulation plan allows the ILEC to pierce the residential rate cap.

Accordingly, based upon record evidence, Embarq recommends the Commission do the following:

1. Conclude that there is presently no need to adjust the \$18.00 monthly residential rate cap and associated business monthly service rate cap;
2. Defer any decision on what an affordable rate cap is for basic residential local service until a rural local exchange carrier seeks to increase its basic local service rates and then change the rate cap for only the rural ILEC that sought the increase;
3. Not reduce the size of the PaUSF now and defer any decision on increasing the size of the PaUSF until a rural ILEC effects a change that requires an increase;
4. Find that the record does not support making unnecessary modifications to the PaUSF to include a "needs-based" test because an ILEC's alternative regulation plan defines and prescribes the need for additional support from the state USF;
5. Determine that rural ILECs are permitted to increase rates above the current \$18.00 residential rate cap if the relevant alternative regulation plan permits it and allow a rural ILEC that does so to recover from the PaUSF the increase over \$18.00 (including any banked revenues);

6. Conclude that there are no anti-competitive effects from allowing PaUSF payments to a rural ILEC that pierces the residential rate cap rate because of its Chapter 30 annual revenue increases.

III. ARGUMENT

A. **Whether The \$18 Cap On Residential Monthly Service Rates And Any Corresponding Cap On Business Monthly Service Rates Should Be Raised.**

The Commission Need Not, And Should Not, Increase The \$18.00 Rate Cap On Residential Monthly Service Rates Or Business Monthly Service Rates At This Time.

Several parties have argued that the Commission should increase the \$18.00 rate cap for residential basic service. There is no need for the Commission to make that decision now. First, Embarq itself is not currently seeking to increase the \$18.00 monthly rate cap for residential service.⁵ And there are no current widespread requests by rural ILECs to pierce the \$18.00 rate cap.⁶ The FCC is also considering extensive reform of intercarrier compensation and changes to the federal universal service fund.⁷ The pendency of these issues at the federal level, combined with the lack of any widespread effort by Pennsylvania's rural ILECs to pierce the \$18.00 residential rate cap, demonstrate that it is simply premature for the Commission, at this time, to decide whether to increase the rate cap.⁸

If the FCC decides on a benchmark rate, that decision may influence the policy decisions that this Commission makes regarding affordability standards and the PaUSF.⁹ If the federal benchmark is significantly higher than the Pennsylvania rate cap that may

⁵ Direct Testimony of Russell R. Gutshall, Embarq Statement 1.0 ("Gutshall Direct") at 5.

⁶ *Id.*

⁷ *Id.* at 7.

⁸ *Id.*

⁹ *Id.* at 9.

affect the Commission's policy with respect to the Pennsylvania rate cap.¹⁰

Rather than making a generic and potentially unnecessary decision regarding the residential rate cap now, the Commission should permit a rural ILEC to seek rate levels permitted by its alternative regulation plan. A rural ILEC should be free to prove to the Commission that a proposed rate level consistent with its alternative regulation plan is appropriate and affordable.¹¹ This sort of case-by-case determination is preferable and means that the Commission need not, and should not, decide whether the residential rate cap should be increased at this time.

B. Whether The Commission Has The Authority Under Chapter 30 And Other Relevant Provisions Of The Public Utility Code To Perform A Just And Reasonable Rate Analysis Of The Rural ILECs' Residential Rates For Basic Local Exchange Services When Such Rates Exceed The Appropriate Residential Rate Benchmark.

The Commission's Authority To Perform A Just And Reasonable Rate Analysis Of Embarq's Residential Rates For Basic Local Exchange Service Is Constrained By Embarq's Amended Alternative Regulation Plan.

Embarq witness Russell R. Gutshall testified regarding the effect of Embarq's amended alternative regulation plan on the issue of just and reasonable rates.¹² The plan itself was attached to the Gutshall Direct as Exhibit RRG-2. ("Embarq Alt Reg Plan"). Mr. Gutshall testified that Commission's ability to perform a just and reasonable rate analysis if Embarq's future rates are claimed to exceed the appropriate residential rate cap is governed by the terms of the Embarq Alt Reg Plan.¹³

¹⁰ *Id.*

¹¹ Rebuttal Testimony of Russell R. Gutshall, Embarq Statement 1.1 ("Gutshall Rebuttal") at 6.

¹² Direct Testimony of Russell R. Gutshall, Embarq Statement 1.0 ("Gutshall Direct") at 13, 14.

¹³ Gutshall Direct at 14.

The pertinent provisions of the plan provide that rate changes are governed by the plan's Price Stability Plan ("PSP").¹⁴ Several explicit provisions of the Embarq Alt Reg Plan demonstrate that, if an Embarq tariff filing complies with the Price Stability Mechanism, the resulting rates must be approved by the Commission as just and reasonable. For example, Part 3.A.7. provides, in pertinent part: "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."¹⁵ But the consumer protection section merely confirms that rate changes made pursuant to the plan are automatically deemed just and reasonable. The pertinent section states:

Nothing in this Plan shall be construed to limit the requirement of Section 1301 . . . that rates shall be just and reasonable. The annual rate change limitations set forth in Sprint's Plan or any other Commission-approved rate change limitation shall remain applicable and *shall* be deemed just and reasonable under Section 1301.¹⁶

The Commission's ability to perform a just and reasonable rate analysis is governed by the terms of the Embarq Alt Reg Plan.

C. Whether Funding For The Pennsylvania Universal Service Fund Should Be Increased To Accommodate Rural ILECS' Chapter 30 Annual Revenue Increases.

The Commission Need Not Make Decisions At This Time Regarding The PAUSF; However, If Deemed Necessary, Funding For The PAUSF Should Be Increased To Accommodate Any Chapter 30 Annual Revenue Increases Of RLECS.

The issue of whether funding for the PaUSF should be increased now is more theoretical than real. The Commission need not decide now whether to increase the size of the PaUSF. There have been limited requests for additional funding from the PaUSF.

¹⁴ *Id.* See also, Gutshall Direct, Exhibit RRG-2 at 15-19, 24.

¹⁵ Exhibit RRG-2 at 17, 18 [*emphasis supplied*].

¹⁶ Exhibit RRG-2 at 24 [*emphasis supplied*].

Because there have not been widespread requests for additional funding, the Commission need not decide this issue now, but should instead rule on any specific request based on the evidence presented in individual company cases.¹⁷

It is also prudent for the Commission to defer any major decisions regarding the PaUSF because of potential reforms of intercarrier compensation at the federal level.¹⁸ As Embarq and others have explained in previous filings herein, there are a number of reasons that militate in favor of the Commission's proceeding slowly with any general PaUSF reforms. These reasons were articulated in detail in the joint motion recently filed in this case.¹⁹ Embarq will not repeat all the reasons contained in the Joint Motion for Stay. The reasons can be summarized as follows:

1. The FCC has a pending generic, intercarrier compensation docket;
2. The reform of intercarrier compensation includes the preservation of universal service as a goal;
3. Several comprehensive access rate reform proposals have been filed with the FCC;
4. A bill to reform the federal USF is pending; and
5. There are two appeals pending before the Pennsylvania Commonwealth Court that could affect the PaUSF.

Also, the Commission may be addressing intrastate access charges in the future.

Because matters pending at the federal level, in the Commonwealth Court, and before the Commission have the potential to significantly affect the PaUSF, it would be prudent for

¹⁷ Gutshall Direct at 11.

¹⁸ *Id.*

¹⁹ Joint Motion of the Pennsylvania Telephone Association, et al. for Further Stay of This Investigation Pending Resolution of the FCC Intercarrier Compensation Proceeding at CC Docket No. 01-92 ("Joint Motion for Stay") filed March 29, 2009.

the Commission to defer any significant changes to the PaUSF until the appeals, the pending federal rulemaking, and intrastate access charges are resolved. Until then, addressing specific company requests for additional USF funding on an individual basis would be more efficient.

If the Commission determines to decide now whether the PaUSF should be increased to accommodate Chapter 30 annual revenue increases for rural ILECs, the Commission should decide that funding should be increased. The PaUSF, and the implementing regulations, were created by the Commission per Pennsylvania's statutory scheme, now embedded in Act 183, to ensure maintenance of universal service at affordable rates in rural Pennsylvania.²⁰ Because the Pa USF is a creature of the Commission, the Commission can increase funding for the PaUSF. Support from the PaUSF is required, is critical to long-standing, legislative policies concerning universal service and affordable rates in rural and high-cost areas of the state. The Commission, in the *Global Order*, recognized the need for an explicit funding mechanism when undertaking access reform. By law and rich regulatory legacy in Pennsylvania, rural ILECs in Pennsylvania are entitled to support from the PaUSF.

Moreover, there is ample precedent for the Commission to increase the size of the fund to accommodate changed circumstances. As Mr. Gutshall testified, when Embarq was included in the Small Company Plan, the fund was increased by 9 million dollars.²¹ And during the early days of the fund, the Commission approved a settlement that

²⁰ *Re Nextlink Pennsylvania, Inc.*, 93 Pa.P.U.C. 172 (Sept. 30, 1999) ("*Global Order*"), clarified 93 Pa.P.U.C. 477 (Nov. 5, 1999), aff'd *Bell Atlantic-Pennsylvania, Inc. v. Pa. P.U.C.*, 763 A.2d 440 (Pa. Commw. 2000), vacated in part, *MCI v. Pa. P.U.C.*, 844 A.2d 1239 (Pa. 2004). See also, 52 Pa. Code §§ 63.161 *et seq.*

²¹ Gutshall Direct at 12.

included the Frontier Companies in the fund. These two examples prove that the Commission has the ability to expand the PaUSF.²²

Section 63.164 provides the necessary legal support for the ability of the Commission to increase the size of the PaUSF. That section states:

“The Commission will issue an order within 90 days of receipt of the administrator’s annual report, which establishes the size of the Fund, a budget, assessment rate for contributing telecommunications providers, and administrative guidelines for the upcoming calendar year.”²³

Therefore, although the Commission need not now decide whether to increase the size of the PaUSF, if the Commission decides it must answer that question, the answer is that the Commission has the ability to increase the size of the fund.

D. Whether Or Not A Needs-Based Test (And Applicable Criteria) For Rural ILEC Support Funding From The Pa USF In Conjunction With The Federal USF Support Payments That The Rural LECS Receive Should Be Established In Order To Determine Which Rural ILECS Qualify For Pa USF Funding. If A Needs- Based Test Should Be Implemented, Then Address The Issues Identified At Ordering Paragraph 2(E) Of The Commission’s Order Entered April 24, 2008.

The Commission Should Not Adopt A New Needs-Based Test For Rural ILECS To Receive Support From The PAUSF.

Mr. Gutshall testified that the Commission should not and need not adopt a new needs-based test for rural ILEC support funding from the PaUSF in conjunction with Federal USF support.²⁴ He demonstrated that Embarq’s need is calculated using the price stability mechanism contained in Embarq’s Alt Reg Plan. Furthermore, Embarq’s other commitments and obligations, *e.g.*, broadband build out, support the need.²⁵ Mr. Gutshall

²² *Id.*

²³ 52 Pa. Code § 63.164.

²⁴ *Id.* at 19.

²⁵ *Id.*

also noted that Embarq's alternative regulation plan is working, and has worked smoothly for several years, to address Embarq's total non-competitive revenues need. Because the alternative regulation plan defines "need," there is no reason for a needs-based test.

An additional reason why no new needs-based test should be adopted is that the need for PaUSF support has already been determined. That happened when the fund was created. The rural ILECs reduced intrastate access charges and intrastate toll rates in exchange for receiving PaUSF support. Thus, the need for the support stems from the access charge and toll rate reductions. Because those two reductions remain in effect today, the need for the offsetting revenue from the PaUSF continues to exist and no new needs-based test is required.²⁶

Implementing a needs-based test would also be contrary to both incentive regulation and Embarq's Alt Reg Plan.²⁷ Although this proceeding has not provided a specific definition of a "needs-based test," it is likely that parties who argue in favor of one will claim that a rural ILEC does not need PaUSF support because that rural ILEC is earning a certain rate of return. But that fact is completely irrelevant if the rural ILEC is subject to incentive regulation and not rate-base, rate of return regulation. The theory that underlies incentive regulation is that an ILEC will have an economic incentive to become more efficient, thereby benefitting both itself and its customers. If an ILEC subject to alternative regulation earns a higher rate of return than it would have earned under rate base, rate of return regulation that is not only irrelevant but appropriate. Implementing a needs-based test would simply punish a rural ILEC that is operating efficiently.

²⁶ Gutshall Direct at 10.

²⁷ *Id.*

E. Whether PA USF Funding Support Should Be Received By Rural ILECS That Incrementally Pierce The Appropriate Residential Rate Cap Because Of The Regular Annual Chapter 30 Revenue Increases, And Whether The Commission’s PA USF Regulations Should Be Accordingly Revised. Include The Role Of Non-Expired “Banked Revenues” That Rural ILECS May Have Accumulated Through The Operation Of Their Respective Chapter 30 Modified Alternative Regulation Plans And Corresponding Price Stability Mechanisms.

Rural ILECS Should Be Permitted To Seek Support From The PAUSF If Their Authorized Chapter 30 Revenue Increases Result In Piercing The Residential Rate Cap.

To understand why Embarq should be provided additional support from the PaUSF if Embarq, pursuant to its Alt Reg Plan, increases residential rates above the \$18.00 cap, some general understanding of the Alt Reg Plan is helpful. The original plan was approved in 1999 and amended in 2005 because of changes in Pennsylvania law.²⁸ As required by law, Embarq’s amended Alt Reg Plan included a plan for broadband deployment to all of Embarq’s access lines. It also included various mechanisms for pricing flexibility and regulatory relief.²⁹

The most significant change to the original plan was an acceleration of Embarq’s broadband commitment. The deadline for deployment was advanced from December 31, 2015 to December 31, 2013. In exchange for the accelerated deployment, the productivity offset of two percent was eliminated.³⁰

Since the productivity offset was eliminated, Embarq has had the potential to increase rates by over 12 million dollars. But Embarq has increased rates by only about 4 million dollars and banked over 8 million dollars of rate increases.³¹ Nonetheless,

²⁸ Gutshall Direct at 16.

²⁹ *Id.*

³⁰ *Id.* at 17.

³¹ *Id.* at 18.

Embarq has met its first milestone commitment for broadband deployment and is on track to meet the second milestone.³²

Because Embarq is meeting its required broadband deployment commitments, Embarq should be permitted to recover any non-expired banked revenues accumulated pursuant to Embarq's Alt Reg Plan.³³ The broadband commitments were made pursuant to statutory revisions that offered rural ILECs an incentive to deploy broadband service more rapidly in exchange for increased pricing flexibility. That flexibility was augmented by eliminating the productivity offset in Embarq's priced stability mechanism.³⁴ Because Embarq has kept its side of the bargain and accelerated broadband deployment, the price increases to which Embarq is entitled under its Alt Reg Plan, even if banked, should be recoverable.

Furthermore, Embarq is entitled to the banked revenues because, in addition to the broadband commitment, Embarq has the carrier of last resort obligation in its territory that its competitors do not have.³⁵ And Embarq has lost access lines to competitors, thereby decreasing Embarq's revenues.³⁶ Accordingly, the banked revenues are not only deserved, but necessary for Embarq to meet its legal requirement to provide quality service to any customer in Embarq's service territory.³⁷

Because the Commission can increase the size of the PaUSF, Embarq should be permitted to recover unexpired, banked revenues as additional support from the PaUSF.³⁸

³² *Id.*

³³ *Id.* at 21.

³⁴ *Id.*

³⁵ *Id.* at 22.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

Embarq does not currently plan to do so, but believes it is an option that Embarq should be permitted to pursue.³⁹

F. Whether The Potential Availability Of PA USF Support Distributions To Those Rural ILECS That Pierce The Appropriate Residential Rate Cap Because Of Their Respective Annual Chapter 30 Annual Revenue Increases Has Any Anti-Competitive Or Other Adverse Effects, Especially With Respect To The Currently Established PA USF Support Contribution Mechanism And Its Participating Telecommunications Utility Carriers.

There Are No Anti-Competitive Or Other Adverse Effects From Providing PAUSF Support To Rural ILECS That Pierce The Residential Rate Cap Because Of Chapter 30 Revenue Increases.

Because RLECs are situated far differently than their competitors, it is not anti-competitive to provide PaUSF support to a rural ILEC that pierces the residential rate cap. The reasons rural ILECs are situated differently include the goal of universal service, the carrier of last resort (“COLR”) obligation, and broadband deployment commitments. Each of these factors justifies support from the PaUSF for a rural ILEC.

One of the keys to understanding why PaUSF support (including its expansion) is not anti-competitive is the concept of universal service. Promoting universal service is a key part of Pennsylvania’s regulatory framework.⁴⁰ The universal service policy has been a historic success. It has resulted in the provision of telecommunication services to all consumers at comparable rates, terms, and conditions, regardless of cost.⁴¹ Universal service accomplished this desirable goal largely through a system of product and geographic cross-subsidization. Particularly in high-cost, rural areas, residential basic

³⁹ *Id.*

⁴⁰ Act 183 of 2004, Section 3011 (“Maintain universal telecommunications service at affordable rates . . .”). *See also*, Pennsylvania Public Utility Commission Docket No. P-00991648, Opinion and Order at 1, 3 (Sept. 30, 1999).

⁴¹ Rebuttal Testimony of Jefferey L. Lindsey, Embarq’s Statement 2.0 (“Lindsey Rebuttal”) at 4.

local service was priced below cost.⁴² Several mechanisms of implicit support were used to subsidize residential basic local service in high-cost areas. These sources of implicit support included message toll service, switched access services, and business basic local services, all of which were typically priced above cost.⁴³ Although this system of implicit cross-subsidization works effectively in a monopoly environment, it is now problematic because of the presence of numerous competitors in urban, suburban, and rural town center areas.⁴⁴

Competition in the areas that cost less to serve erodes the implicit subsidies that rural ILECs have relied upon to provide high quality service to rural consumers at rates comparable to those paid by urban consumers. Therefore, it is imperative that universal service funding remain available and sufficient to allow rural ILECs to meet their COLR obligations.⁴⁵

The public goal of universal service is inextricably intertwined with the COLR obligation borne by rural ILECs, but not by their competitors.⁴⁶ And as Mr. Lindsey noted, the COLR obligation is more than providing service to new customers. It includes the need to maintain and enhance a rural ILEC's existing network. Where competition is lacking, generally in the most rural areas, Pennsylvania residents are even more dependent on the ILEC's network than are residents in other areas. That network is essential for the provision of dependable and advanced communication services at affordable rates – the essence of the COLR obligation.⁴⁷

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 5.

⁴⁶ *Id.*

⁴⁷ *Id.*

The COLR obligation of rural ILECs, combined with the goal of universal service, makes an explicit mechanism, such as the PaUSF, necessary. The \$18.00 rate cap does not come close to covering the cost to Embarq of providing basic local exchange services.⁴⁸ Ms. Londerholm compared, at an exchange level, the revenues received by Embarq from its residential customers to the estimated residential cost per line. She determined that only 3 of 61 exchanges did not require a subsidy from another source.⁴⁹ The \$18.00 residential rate cap recovers well under *half* of Embarq's estimated average monthly cost per line. Accordingly, other revenue sources are necessary to fully recover the cost of providing residential basic local service to Pennsylvania customers.⁵⁰

Embarq's competitors have no COLR obligation and generally serve only below-average and average-cost customers.⁵¹ Because they have no COLR obligation, Embarq's competitors can operate business plans to largely avoid high-cost areas. It is economically rational for them to do this.⁵²

But this competition has eroded the historical implicit support that rural ILECs have used to fund their COLR obligations.⁵³ Empirical research prepared by Comcast witness Dr. Pelcovits' firm has confirmed the loss of this implicit support.⁵⁴ Therefore, it is both fair and sound public policy to require **all providers** to contribute to a universal service fund in order that there is sufficient funding to continue the COLR mandate.⁵⁵

⁴⁸ Rebuttal Testimony of Christy V. Londerholm, Embarq Statement 3.0, Proprietary Version ("Londerholm Proprietary Rebuttal") at 7, 8.

⁴⁹ Londerholm Proprietary Rebuttal at 11.

⁵⁰ *Id.* at 17.

⁵¹ Surrebuttal of Jeffery L. Lindsey, Embarq Statement 2.1 ("Lindsey Surrebuttal").

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 4.

Thus, the Commission should neither reduce nor eliminate the PaUSF. If it did so and did not otherwise sufficiently fund universal service, rural ILECs must be relieved of their COLR obligations. But if that happens, the historic policy of universal service will come to an end.⁵⁶

Ending the universal service policy would be quite harmful to rural customers. The build-out of networks in rural areas would become unsustainable and would eventually cease.⁵⁷ As a result, network reliability in rural areas could be significantly impaired, and retail rates in rural areas would increase significantly. This would drive many lower-income customers off the telecommunications network.⁵⁸ Without an explicit universal service fund, rural customers would not receive reliable telecommunications services at comparable rates to those offered to urban consumers. This would exacerbate the digital divide and be unfair to rural customers.⁵⁹

And PaUSF funding is even more critical today than when it was initially established. In 2007, Embarq's receipts from the PaUSF constituted 6.7 % of Embarq's intrastate basic local service revenues. By contrast, in 2005, the PaUSF receipts were less than 6 %. And the financial "burden" on Embarq's competitors is minimal. For example, Verizon's contribution to the PaUSF fund in 2007 was a mere 1.3 % of Verizon's basic local service revenues in Pennsylvania that year.⁶⁰

The rural ILECs are required to serve high-cost, rural customers. The cost of doing so far exceeds the \$18.00 residential local service rate cap. To meet the social goal of universal service, rural ILECs must receive explicit support to offset the difference

⁵⁶ Lindsey Rebuttal at 6.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

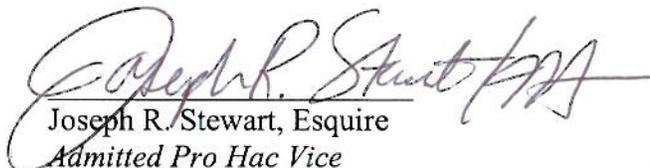
⁶⁰ *Id.*

between what it costs than them to serve high-cost rural customers and what the rural ILECs are able to charge for basic local service in rural areas. The PaUSF is an appropriate mechanism to, at least partially, make up the difference. It is also fair to require competitive carriers to fund the PaUSF. The impact on them is minimal. They enjoy the luxury of being able to choose where they wish to compete, and they have no COLR obligations. Therefore the PaUSF is not anti-competitive, and it would not be even if rural ILECs pierced the \$18.00 residential local service rate cap and thereby obtained additional revenue from the PaUSF.

IV. CONCLUSION

WHEREFORE, Embarq requests that the Pennsylvania Public Utility Commission grant relief consistent with this Brief.

Respectfully submitted,



Joseph R. Stewart, Esquire
Admitted Pro Hac Vice

United Telephone Company of Pennsylvania LLC
d/b/a Embarq Pennsylvania
50 West Broad Street, Suite 3600
Columbus, Ohio 43215
Direct Phone: (614) 220-8625
Fax: (614) 224-3902
E-mail: joseph.r.stewart@embarq.com

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

Attorneys for Embarq Pennsylvania

Date: May 11, 2009

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of May, 2009, served a true copy of the foregoing Main Brief was served upon the persons below, via electronic and first-class mail, in accordance with the requirements of 52 Pa. Code §1.54:

Norman J. Kennard, Esquire
Thomas, Long, Niesen and Kennard
212 Locust Street, Suite 500
Harrisburg, PA 17109
e-mail: nkennard@thomaslonglaw.com

Michelle Painter, Esquire
Painter Law Firm
13017 Dunhill Drive
Fairfax, VA 22030
e-mail: painterlawfirm@verizon.net

Joel Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101
e-mail: jcheskis@paoca.org

Bradford M. Stern, Esquire
Rothfelder Stern, LLC
620 Central Avenue
Westfield, NJ 07090
Email: bmstern@rothfelderstern.com

Suzan DeBusk Paiva, Esquire
Verizon Pennsylvania
1717 Arch Street, 32NW
Philadelphia, PA 19103
e-mail: Suzan.D.Paiva@verizon.com

Christopher M. Arfaa, Esquire
Christopher M. Arfaa, PC
150 North Radnor Chester Road
Suite F200
Radnor, PA 19087
e-mail: carfaa@arfaalaw.com

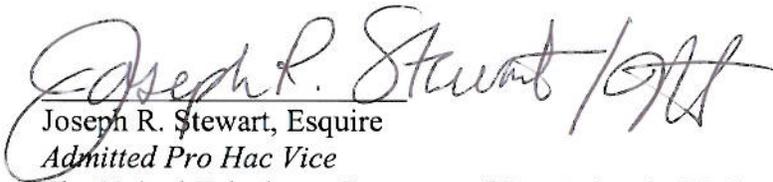
Steven C. Gray, Esquire
Office of Small Business Advocate
300 North 2nd Street, Suite 1102
Harrisburg, PA 17101
e-mail: sgray@state.pa.us

Pamela Polacek, Esquire
McNees Wallace and Nurick LLC
100 Pine Street
Box 1166
Harrisburg, PA 17108
e-mail: ppolacek@mwn.com

Orlando Vidal, Esquire
Sonnenschein, Nath and Rosenthal, LLP
1301 K Street, NW
Suite 600, East Tower
Washington, DC 20005
e-mail: ovidal@sonnenschein.com

John Dodge, Esquire
Davis, Wright, Tremaine, LLP
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
e-mail: johndodge@dwt.com

Respectfully Submitted,

A handwritten signature in black ink that reads "Joseph R. Stewart" followed by a stylized flourish.

Joseph R. Stewart, Esquire
Admitted Pro Hac Vice

The United Telephone Company of Pennsylvania LLC
d/b/a Embarq Pennsylvania
50 West Broad Street, Suite 3600
Columbus, Ohio 43215
Direct Phone: (614) 220-8625
Fax: (614) 224-3902
E-mail: joseph.r.stewart@embarq.com