

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

FAX (717) 783-7152  
consumer@paoca.org

IRWIN A. POPOWSKY  
Consumer Advocate

September 18, 2009

James J. McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
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:

Enclosed for filing please find an original and nine (9) copies of the Office of Consumer Advocate's Reply Exceptions, in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joel H. Cheskis".

Joel H. Cheskis  
Assistant Consumer Advocate  
PA. Attorney ID# 81617

Enclosures

cc: All parties of record  
Hon. Susan D. Colwell, ALJ

\*112196

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

---

REPLY EXCEPTION OF THE  
OFFICE OF CONSUMER ADVOCATE

---

Joel H. Cheskis  
Assistant Consumer Advocate  
PA Attorney I.D. # 81617  
E-Mail: [JCheskis@paoca.org](mailto:JCheskis@paoca.org)  
Barrett C. Sheridan  
Assistant Consumer Advocate  
PA Attorney I.D. # 61138  
E-Mail: [BSheridan@paoca.org](mailto:BSheridan@paoca.org)  
Christy M. Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
E-Mail: [CApplby@paoca.org](mailto:CApplby@paoca.org)

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

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

Dated: September 18, 2009

## I. INTRODUCTION

On December 20, 2004, the Pennsylvania Public Utility Commission ("Commission") entered an Order commencing an investigation at Docket No. I-00040105 seeking to determine whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers ("RLECs"). Since that time, the investigation has been stayed by subsequent orders of the Commission. By Order entered April 24, 2008, however, the Commission bifurcated the investigation and reopened a portion for "the express and limited purpose" of addressing selected issues pertaining to, among other things, rural basic local exchange service rate affordability and the Pennsylvania Universal Service Fund ("Pa USF"). The Commission sought a determination as to "whether the cap of \$18.00 on residential monthly service rates and any corresponding cap on business monthly rates should be raised" and also what the "appropriate benchmark for the rural residential rate for basic local exchange service should be." April 24, 2008 Order at 30-31.

On July 22, 2009, the Office of Administrative Law Judge issued the Recommended Decision of Administrative Law Judge Susan D. Colwell. In that Recommended Decision, ALJ Colwell recommended, among other things, that "there is no need for [a rate cap] in the context of this part of the investigation; and that the Pa USF should be reformed to provide monetary assistance to only those RLECs for service in high-cost areas and for assistance to low-income customers." R.D. at 66. On August 28, 2009, the Office of Consumer Advocate ("OCA") filed Exceptions to ALJ Colwell's Recommendation Decision. The Pennsylvania Telephone Association ("PTA") and The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania ("Embarq") filed Exceptions as well. The OCA submits this single Reply Exception to one of the Exceptions that was filed by Embarq.

## II. REPLY EXCEPTION

OCA Reply Exception No. 1 - **The Commission Should Reject Embarq's Argument That The ALJ Erred In Her Factual Finding That The Local Loop Is Not A Direct Cost Of Basic Local Exchange Service.** (R.D. at 11, 12; Embarq Exception No. 5; OCA M.B. at 30-32, 40, 41-42).

In its Exceptions, Embarq argues that “the ALJ errs in [her] factual finding that the local loop is not a direct cost of basic local exchange service.” Embarq Exc. at 8. More specifically, Embarq takes exception to Findings of Fact 9, 10 and 16 which are as follows:

9. The incremental cost of basic local exchange service as estimated by the Synthesis Model would be the total cost of the network minus the cost of the loop;
10. The loop is an input used by multiple services and should not be assigned as a direct cost of basic voice grade services; and
16. Model non-loop cost estimates are a reasonable proxy for the incremental cost of basic local exchange service, and that in almost all instances, the estimated incremental cost of the rural ILECs is less than the \$18 residential rate bench mark.

Id. at 8-9, *citing*, R.D. at 11, 12. Embarq argues that “the local loop is a direct cost of basic local exchange service” because “cost causation to Embarq PA for the loop is basic local exchange service.” Id. at 9. Embarq’s Exception must be denied by this Commission.<sup>1</sup>

ALJ Colwell was correct in her Findings of Fact 9, 10 and 16, above, and the Commission should adopt those findings and deny Embarq Exception No. 5. The ALJ correctly

---

<sup>1</sup> The FCC Synthesis Model is a forward-looking cost model adopted by the FCC for the purposes of determining the non-rural universal service support. *See, In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Report and Order (rel. Oct. 28, 1998); and *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Report and Order (rel. Nov. 2, 1999). This model was used in this case by OCA witness Loube as set forth below. As noted by Dr. Loube, when the costs of the local loop are properly treated as joint and common costs of the network, the incremental cost of providing residential basic exchange service is less than the current \$18.00 rate benchmark. OCA St. 1 at 14-27.

adopted the testimony of OCA witness Dr. Robert Loube in this proceeding that an estimate of the incremental cost of basic residential service can be calculated using the Federal Communications Commission (“FCC”) Synthesis Model as the total cost of the network minus the cost of the loop. OCA M.B. at 30, *citing*, OCA St. 1 at 17. Embarq argues that the local loop is “a direct, not incremental, cost because, when a customer contacts Embarq PA for service, it is to establish basic local exchange service. To provide that service, Embarq PA must build a loop to that customer. Therefore, cost causation to Embarq PA for the loop is basic local exchange service.” Embarq Exc. at 9.

Embarq raised this same argument in testimony before ALJ Colwell. In response, Dr. Loube testified that the order in which services are offered should not dictate the cost of service allocation. OCA St. 1-S at 3-4. Dr. Loube stated:

The fact that one service preceded another service does not determine how a carrier is currently building or using a particular facility. It is current usage and current building practices along with the regulatory goals that determine the cost allocation process. With regard to the particular reference to the lack of long distance service, one must remember that long distance has been around for a very long time. As early as 1885, AT&T was created as the Bell System long distance carrier. The Kingsbury Agreement required AT&T to allow non-competing carriers to use its long distance system and the first transcontinental line was established in January 1915. Therefore, while there may be a few loops still in service in Pennsylvania that existed prior to the beginning of long distance, the overwhelming majority of Pennsylvania loops were constructed with the understanding that the loop would provide both local and long distance service.

Id. at 4 (citations omitted). Dr. Loube noted that “the local loop is required to provide many services including local service, long distance service, emergency services, data services such as internet access and more recently video services.” Id. Dr. Loube added that “the local loop is constantly being redesigned to provide additional services.” Id. at 5. Dr. Loube concluded:

It is my opinion that local residential rates should be equal to the incremental cost of service plus a contribution to partially recover the joint and common cost of service. This same basic principle should be applied to all services using the local loop including access charges paid by other carriers.

Id. at 8.

Commission Chairman James H. Cawley also recently stated that the cost of the loop is not a direct cost of basic exchange service because the loop is required to provide access service, data service and, in some instances, video services.<sup>2</sup> Chairman Cawley stated:

The Commission has consistently adopted the position that the fixed costs associated with the loop plant and facilities of ILECs should be allocated and recovered by services that utilize the local loop, including the ILECs' intrastate carrier access services. This position was clearly enunciated in a number of our prior proceedings.<sup>3</sup>

Similarly, in affirming this Commission's Global Order, the Commonwealth Court determined that "users of all services, including access, should share in the payment of total network costs, with the cost of the local loop included as an element of that total network."<sup>4</sup> This Commission had previously stated:

We reaffirm our findings in our September 5, 1995 Order at Docket No. L-00950105 that the local loop is a 'joint cost,' not a direct cost of providing only those services included in the definition of B[asic] U[niversal] S[ervice]. It is used for a variety of services other than BUS and must be allocated among the services which utilize it.<sup>5</sup>

---

<sup>2</sup> See, Verizon Pennsylvania, Inc., et al. v. CTSI, LLC, et al., Motion of Vice Chairman James H. Cawley, Docket Nos. C-20077332 and C-20066987, August 7, 2008 at 3 (attached to OCA Main Brief as Appendix A).

<sup>3</sup> Id.

<sup>4</sup> Bell Atlantic-Pennsylvania, Inc. v. Pa.P.U.C., 763 A.2d 440, 480 (Pa. Cmwlth 2000), *vacated in part sub nom, MCI WorldCom, Inc. v. Pa.P.U.C.*, 844 A.2d 1239 (Pa. 2004).

<sup>5</sup> In re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth, Docket No. I-00940035, Order (entered Jan. 28, 1997).

This position has also been adopted by the FCC and other state commissions. The FCC has noted that “the cost of the local loops and their associated line cards in local switches, for example, are common with respect to interstate access service and local exchange service, because once these facilities are installed to provide one service they are able to provide the other at no additional cost.” OCA M.B. at 31.<sup>6</sup> Similarly, at the state level, the Washington Utilities and Transportation Commission has found that “the local loop is not appropriately included in the incremental cost of local exchange service. The local loop facilities are required for nearly every service provided by the Company to a customer.” *Id.* at 19.<sup>7</sup>

Embarq’s Exception No. 5 should be denied. The ALJ properly found that the loop costs are joint and common costs that should be allocated and recovered by all services that use the local loop. ALJ Colwell’s Findings of Fact 9, 10 and 16 are correct.

### **III. CONCLUSION**

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that the Public Utility Commission should deny Exception No. 5 filed August 28, 2009 by Embarq Pennsylvania in response to the July 22, 2009 Recommended Decision of Administrative Law Judge Susan D. Colwell. Instead, the Commission should determine that the local loop is part of

---

<sup>6</sup> *Citing, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (rel. Aug. 8, 1996), ¶ 678. *See also, In the Matter of High Cost Universal Service Support, Further Notice of Proposed Rulemaking*, WC Docket No. 05-337 (rel. Nov. 5, 2008), Appendix A, ¶ 247.

<sup>7</sup> *Citing, Washington Utilities and Transportation Commission v. U.S. West Communications, Inc.*, Docket No. UT-950200, Fifteenth Supplemental Order, page 83.

the joint and common cost of the network and its costs cannot be directly assigned to basic local exchange service.

Respectfully Submitted,



Joel H. Cheskis, Esquire (PA Attorney I.D. No. 81617)  
Barrett C. Sheridan, Esquire (PA Attorney I.D. No. 61138)  
Christy M. Appleby, Esquire (PA Attorney I.D. No. 85824)  
Assistant Consumer Advocates

Counsel for: Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

Dated: September 18, 2009  
117657

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 18th day of September, 2009.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Johnnie Simms, Esq.\*  
Office of Trial Staff  
Pa. PUC  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17105

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Steven C. Gray, Esq.\*  
Office of Small Business Advocate  
300 North Second Street  
Suite 1102 Commerce Bldg.  
Harrisburg, PA 17101

Norman J. Kennard, Esq.\*  
Regina L. Matz, Esq.  
Thomas, Long, Niesen & Kennard  
212 Locust Street, Suite 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500

Zsuzsanna E. Benedek, Esq.\*  
240 North Third Street  
Suite 201  
Harrisburg, PA 17101

Michelle Painter, Esq.\*  
Painter Law Firm  
13017 Dunhill Drive  
Fairfax, VA 22030

Bradford M. Stern, Esq.\*  
Martin C. RothFelder, Esq.  
Rothfelder Stern, L.L.C.  
625 Central Avenue  
Westfield, N.J. 07090

Suzan DeBusk Paiva, Esq.\*  
Leigh A. Hyer, Esq.  
Verizon  
1717 Arch Street, Fl. 17 West  
Philadelphia, PA 19103

Christopher M. Arfaa, Esq.\*  
150 North Radnor Chester Rd.  
Suite F200  
Radnor, PA 19087-5245

Pamela C. Polacek, Esq.\*  
McNees Wallace & Nurick LLC  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17108-1166

Renardo L. Hicks, Esq.  
17 North Second Street, 16<sup>th</sup> Floor  
Market Square Plaza  
Harrisburg, PA 17101

John C. Dodge, Esq.\*  
Davis, Wright Tremaine, LLC  
1919 Pennsylvania Ave. NW, Suite 200  
Washington, DC 20006

Benjamin Aron, Esq.\*  
Sprint Nextell Corp.  
2001 Edmund Halley Dr.  
Room 708  
Reston, VA 20191

Joseph R. Stewart, Esq.\*  
Embarq  
50 West Broad Street, Suite 3600  
Columbus, OH 43215



---

Joel H. Cheskis  
Assistant Consumer Advocate  
PA Attorney ID# 81617  
[jcheskis@paoca.org](mailto:jcheskis@paoca.org)

Counsel for  
Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048  
\*82775

\*Receiving Proprietary Information  
Where Applicable