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June 3, 2010

## VIA UPS OVERNIGHT

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

AT&T Communications of Pennsylvania, LLC, et. al. v.  
Armstrong Telephone Company-Pennsylvania, et.al.,  
Docket Nos. C-2009-2098380, C-2009-2099805,  
C-2009-2098735

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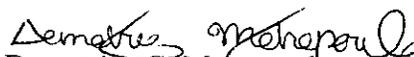
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Ms. Chiavetta:

Enclosed on behalf of AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, and TCG New Jersey, Inc., please find the original and nine copies of the Reply Brief of AT&T, including Appendices 1-3. Please note that the brief contains proprietary information and should be filed as confidential. I have also enclosed a public version of the brief. Copies have been served in accordance with the attached Certificate of Service.

Please contact me if you have any questions or concerns with this matter.

Very truly yours,

  
Demetrios G. Metropoulos

cc: Hon. Kandace F. Melillo  
Certificate of Service

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access	:	
Charges and IntraLATA Toll Rates of	:	Docket No. I-00040105
Rural Carriers and the Pennsylvania	:	
Universal Service Fund	:	
AT&T Communications of	:	
Pennsylvania, LLC, <i>et al.</i> ,	:	
Complainant	:	
v.	:	Docket Nos. C-2009-2098380, <i>et al.</i>
Armstrong Telephone Company -	:	
Pennsylvania, <i>et al.</i> ,	:	
Respondents	:	

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**REPLY BRIEF**

**of**

**AT&T**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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JUNE 3, 2010

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Armstrong Telephone Company -	:	
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Respondents	:	

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**REPLY BRIEF  
OF AT&T**

Pursuant to 52 Pa. Code §5.501 and the Orders issued by Administrative Law Judge Melillo in this matter, AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, and TCG New Jersey, Inc. (collectively "AT&T") hereby submit their Reply Brief using the format of the joint outline agreed upon by the parties.

## I. STATEMENT OF QUESTIONS AND SUMMARY OF POSITIONS

This case is ultimately about consumers – not just consumers in the territories of the Pennsylvania Telephone Association (“PTA”) companies and CenturyLink, but consumers *throughout* Pennsylvania. The Commission long ago determined that consumers in all corners of the Commonwealth would benefit from access reform, and the evidence in this case overwhelmingly confirms that Commission decision.

Access reform is about recognizing the vast changes that have occurred in the telecommunications market, and acknowledging that reforming access rates will allow the competitive market to work, without regulatory distortion, to the benefit of all Pennsylvania telecommunications customers. It is a proven fact in virtually every industry that competition works, and that consumers benefit from full and fair competition. One need only look at the local market in Pennsylvania to see the proof that this “economic theory” works in the real world. Over fifteen years ago, Pennsylvania consumers only had one choice when it came to their local phone provider – the incumbent local exchange carriers. Overcoming the fear-mongering of entrenched monopolists, the Pennsylvania Legislature opened up the markets to competition. This Commission in turn worked for many years and made many difficult decisions that may have seemed “risky” at the time in order to open up local markets to competition and remove regulatory barriers that had previously existed in a monopoly era.

The results have been beyond what anyone could have envisioned. Competitive offerings and alternatives for consumers on the local side are *staggering*. Consumers now have multiple options for their local service, and they can get local service bundled with numerous features, flat-rated long distance, broadband, wireless – all at a price consumers have demonstrated they are willing and able to spend.

The access reforms the Commission has undertaken over the same period also have provided demonstrated benefits to consumers. For example, AT&T has indisputably proven that its toll rates have decreased by even *more* than the access reductions it has realized – not just in Pennsylvania, but in nearly two dozen states where access reform has occurred. And these decreases were not just temporary, as some parties alleged. Rather, AT&T dispositively proved that it had *sustained* such lower toll prices for over a 5-year span. Indeed, during the pendency of this case, consumers just across the border in New Jersey already have experienced a substantial drop in rates as a direct result of the significant access reforms undertaken by the Board of Public Utilities earlier this year.

But just because some benefits have come to customers and competition exists does not mean this Commission can simply stop all reform efforts and maintain artificial regulatory distortions. To the contrary, because this Commission has not completed access reform, regulatory policies from a monopoly era continue to exist, thereby preventing a fully competitive market from working properly. In many cases, AT&T and other IXCs pay more in wholesale access rates than they can charge their own customers -- plainly it is an unsustainable policy to attempt to maintain wholesale prices higher than the retail prices. Indeed, permitting access to remain at inflated levels actually threatens the progress the Commission has achieved to date; refusing to reform access rates is a recipe for watching competition erode.

Above-cost intrastate access rates are not simply preventing the market from working to benefit consumers; it is actually burdening them, especially customers outside of the RLECs' territories who are unknowingly paying the cost. The fact is that the RLECs are being heavily subsidized by other Pennsylvania customers. The RLECs do not deny this.

This subsidy harms customers in multiple ways – by stifling competition, by distorting the market, and by forcing other companies’ customers to pay higher costs than they should, and that they do not even realize they are paying. Rather than competing based on each company’s own merits, efficiencies and offerings, implicit subsidies give some companies an artificial competitive advantage over others, suppressing local competition in rural markets, while harboring inefficient competition in long-distance service. All of these results ultimately are bad policy for society and bad for consumers. What this means is that other companies’ customers are paying the RLECs’ way – including CenturyLink, which has proven to be large enough and financially strong enough to purchase Qwest, a Regional Bell Operating Company. While the PTA and CenturyLink understandably would prefer to keep obtaining the bulk of their revenues from their competitors rather than from their own customers, thereby insulating themselves from competition, there is no need to coddle companies such as Windstream, CenturyLink and Frontier, as they pursue multi-billion dollar mergers; they are fit and aggressive competitors.

In their briefs, the RLECs ignore, and in some cases distort, this evidence in an effort to maintain the subsidy flows and “revenue guarantees.” None of their claims, however, withstand scrutiny. For example, the RLECs claim that absent pre-existing specific and detailed showings as to exactly how the competitive market will respond to the elimination of market distortions, the Commission should not implement access reform. That claim must be rejected. It is impossible to say exactly how the market will respond – but it is a guarantee that the market *will* respond, and will respond in a way that benefits consumers. One only need to look at the benefits that came from opening up the local market to know that is true. In response to the

RLECs' claims that further access reform should not occur, the Commission should recall ALJ

Schnierle's foresight – nearly twelve years ago -- when he stated:

In short, *politically unpopular though it may be*, rate rebalancing is required, along with access charge reductions, if there is to be competition for all customers in all locations, and if urban customers are not to be saddled with excessive universal service fund costs. I am aware of no other way to solve this problem, and the parties here have presented no other proposal that is likely to solve the problem. Moreover, the very point of introducing competition to the local exchange market is to bring about lower prices through the operation of the market. *An unwillingness to rebalance rates suggests an unwillingness to trust the market to bring about lower prices.* If that is the case, I suggest that society rethink the notion of attempting to have competition in the local exchange market.”<sup>1</sup>

Some parties argue that access reform should not occur because it will lead to higher local rates for some consumers. But the Commission should not be deterred from completing reforms in this case because some customers may see local rate increases. Those local rate increases would occur only because the rates have been held at artificially low levels by subsidies that are extracted from other customers across Pennsylvania. The PTA and CenturyLink readily concede that local rates have no rational basis, and are the random product of a series of residual and policy decisions. Some Pennsylvania RLECs have materially higher loop costs yet inordinately low local rates—plainly a random outcome that was based on outdated policies from a monopoly era.

Local rate increases will move rates closer to cost – a natural aspect of a well-functioning market that leads to full and robust competition, again to the ultimate benefit of

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<sup>1</sup> *In Re: Intrastate Access Charge Reform, Docket No. I-00960066, Recommended Decision, June 30, 1998* at p. 28 (emphasis added). The PTA has claimed that the Commission did not incorporate ALJ Schnierle's findings in the *Global Order*, but the PTA is wrong. In fact, the Commission specifically found that “ALJ Schnierle's Recommended Decision at Docket No. I-00960066 reaches various conclusions regarding the necessity of access reform in a competitive environment and we incorporate those conclusions in that regard in this Order by reference.” *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (Sept. 30, 1999) (“*Global Order*”) at p. 25.

consumers. Rate rebalancing will also ensure that the RLECs' services are being supported by the rates charged to their own customers, not hidden in implicit and unfair subsidies extracted from other companies' customers. The RLECs themselves have recognized that moving prices to cost actually benefits customers, even if that means increased rates:

When alternative technologies are forced to compete with subsidized prices – as they are currently – technologies that have genuine efficiency advantages are kept out of the market. *If prices move closer toward actually reflecting costs, all customers will be better served because firms will be able to compete for their business with prices that reflect legitimate differences in costs, not simply differences in cross-subsidization.* It is true that many residential consumers currently enjoy paying below-cost rates for their telecom services. Most consumers would enjoy paying below-cost based rates for *any* good or service. But *these artificially low prices are unsustainable in the face of competition, and they come at a cost: fewer options among services, less innovation, and...no competitive choices.*<sup>2</sup>

*By allowing local rates to approach costs for more and more customers, a true win-win situation is created in the competitive market.* A larger number of basic local service customers become attractive to competitors (which means more customers will be offered choices). And competitive entry will occur when it is efficient and sustainable, not when it is inefficient.<sup>3</sup>

To the extent that access charges (or a portion thereof) serve as an implicit subsidy for loop costs and basic service, it is desirable to reduce them and allow the rates charged for basic service to come closer to covering the costs of basic service. In the process, the rates that IXCs are charged for access to the LECs network come closer to cost, and long-distance charges to end users also come closer to cost. *The goal, which is both economically efficient and social-welfare-enhancing, is to allow rates for all services to approach costs regardless of the direction the rate must move in order to get there.*<sup>4</sup>

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<sup>2</sup> Exhibit CTL Panel 8 to CenturyLink Statement 1.2; Direct Testimony of Dr. Brian K. Staihr, August 27, 2003, pp. 15-16 (emphasis added).

<sup>3</sup> *Id.* at p. 8.

<sup>4</sup> Exhibit CTL Panel-8 to CenturyLink Statement 1.2; Rebuttal Testimony of Dr. Brian K. Staihr in Kansas, July 13, 2001, p. 6.

In an equitable competitive marketplace, all carriers must be able to price and compete according to their own efficiencies.<sup>5</sup>

PTA and CenturyLink also claim that because competition is rampant, the Commission should abandon its long-standing policy to reduce access rates.<sup>6</sup> They have it exactly backwards. In fact, both PTA and CenturyLink previously have advocated for access reform for the exact same reasons AT&T presents here – because generalized subsidies cannot survive in a competitive environment, as they distort the proper functioning of a fully competitive market to the detriment of consumers. Here is just a sampling of what the PTA and CenturyLink have said in the past about why reducing access rates and increasing local rates is critical in order to have full competition, which does not harm consumers, but in fact benefits them greatly:

[T]he removal of implicit subsidies is consistent with-and necessary for-the development of a healthy and sustainable competitive market for basic telecom services,....a competitive market that will simultaneously 1) provide benefits and choices to the largest number of [state] residents as possible, and 2) operate on a level playing field for all competitors.<sup>7</sup>

Removing the implicit subsidies that currently exist in prices will help competition to develop in two ways: it will level the playing field between inter-modal competitors, and it will not force other technologies such as cable telephony to compete head-to-head against *subsidized* prices for basic local service.<sup>8</sup>

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<sup>5</sup> *Buffalo Valley Telephone Company Revenue-Neutral Rate Rebalancing Filing for Year 2003*, Docket No. R-00038351, April 30, 2003 (“*Buffalo Valley 2003 Filing*”), p. 16; See also *Buffalo Valley Telephone Company Revenue-Neutral Rate Rebalancing Filing for Year 2002*, Docket No. R-00027256, April 30, 2002 (“*Buffalo Valley 2002 Filing*”); *Conestoga Telephone and Telegraph Company Revenue-Neutral Rate Rebalancing Filing*, Docket No. R-00027260, April 30, 2002 (“*Conestoga 2002 Filing*”).

<sup>6</sup> CenturyLink and PTA cannot seem to decide if they are operating in a competitive market or not. They argue, on the one hand, that competition is so rampant that they cannot raise rates even slightly without suffering huge competitive losses. In fact, PTA claims that rural Citizens of Kecksburg has had to maintain an incredibly low \$11/month rate because of competition. On the other hand, they claim that competition is not sufficient to protect consumers, and therefore the RLECs must continue to obtain huge subsidies in order to protect those customers that do not have competitive choices. They cannot have it both ways.

<sup>7</sup> Exhibit CTL Panel 8 to CenturyLink Statement 1.2; Direct Testimony of Dr. Brian K. Staihr, August 27, 2003, p. 3.

<sup>8</sup> *Id.* at p. 9.

[T]he continued existence of subsidies in access charges renders [Buffalo Valley] susceptible to a 'toll bypass' by a designated access provider or a facilities based CLEC. Also, [Buffalo Valley] is at risk to lose additional access revenues when customers use wireless telephones to make calls that would usually be billed as toll calls on [Buffalo Valley's] network. High access rates result in high toll rates, thus making wireless service an appealing option for customers trying to avoid high toll rates. This option places a large portion of [Buffalo Valley's] access revenues at risk.<sup>9</sup>

Thus, in their own words, they admit that implicit subsidies are bad for competition, are bad for consumers, and are even harmful to the long-term best interests of the RLECs themselves. While of course these companies would prefer to keep relying on other companies and those companies' customers now that they are facing competitive pressures, that is simply not sustainable and not in the best interests of Pennsylvania consumers.

In opposing further access reform, the PTA and CenturyLink also rely heavily on baseless allegations of dire consequences to their ability to survive, and to the maintenance of universal service in Pennsylvania. When it comes down to actual facts, however, they cannot point to a single harm from nearly two dozen states that have undertaken some form of access reform, and they cannot point to a single harm from this Commission's prior access reform initiatives.

These claims are purely scare tactics. First, the evidence conclusively proves that universal service will not be harmed if the Commission adopts AT&T's proposal.<sup>10</sup> Second, these claims, especially coming from a company that just announced its intention to purchase a

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<sup>9</sup> *Buffalo Valley 2003 Filing* at p. 17.

<sup>10</sup> Contrary to the RLECs and public advocates claims, the Commission is not faced here with a choice between promoting competition or preserving universal service. Both goals are in fact achievable through reasonable and rational access reform. Although it may be that in the past, implicit cross-subsidies, such as from overpriced access to local rates, were the only tools available to achieve universal service, today new explicit tools are available. Lifeline, Link-up, the federal Universal Service Program, and the Pennsylvania Universal Service program are all explicit tools that make implicit cross subsidization as unnecessary as it is unsustainable. In addition, competition itself is the best method for achieving universal service.

multi-billion dollar RBOC, are nothing more than a request for this Commission to insulate these companies from competition and competitive losses. Such a policy is inappropriate, and harmful to consumers throughout the Commission. Finally, the RLECs' claims that they will not be able to meet their broadband and Pennsylvania Carrier of Last Resort ("COLR") obligations are completely unsupported by the record and should therefore be disregarded.

For their part, the OSBA and OTS seek to derail access reform by claiming that there is no evidence that access rates contain a subsidy, or that local rates are below cost. These parties are wrong on the law and the facts. On the law, these parties rely on the formalistic notion that AT&T bears the burden of proving that the RLECs' rates are above cost (even though the RLECs have the evidence of their own cost). This Commission has squarely held that the RLECs bear the burden of supporting their own rates, and even the RLECs admit that they have the burden.

On the facts, the Commission recognized years ago in the *Global Order* that intrastate access rates are well above cost, and the record here conclusively confirms that access rates continue to maintain high subsidy levels. Even the RLECs themselves do not dispute this. It is undisputed that the function of terminating a local call is materially the same as the function of terminating a long distance call. A new cost model is not needed to determine the established fact that intrastate access rates contain a subsidy – a simple comparison to the cost-modeled local reciprocal compensation rates makes it patently clear that the incremental cost of terminating a call is less than a quarter of penny whether that call is a local call or a long distance call.<sup>11</sup> Given that intrastate access rates average around five cents a minute, and are as

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<sup>11</sup> See Exhibit F to AT&T Statement 1.0 (Nurse/Oyefusi Direct) for reciprocal compensation rates (ranging from 4/100<sup>th</sup> of a penny to 2/10<sup>th</sup> of a penny); and AT&T Statement 1.0, pp. 35-36 for the charts showing RLECs' intrastate and interstate access rates.

high as eleven cents a minute, they are clearly above cost and contain a subsidy.<sup>12</sup> Even the RLECs' interstate access rates are in the range of one to three cents, and are therefore well above cost and thus maintain a subsidy.<sup>13</sup> Contrary to the claims of these parties, reducing intrastate access rates to interstate levels is far from a free ride – the access rates will still be substantially above cost and provide a generous contribution to the RLECs' joint and common costs.

Given the obvious presence of subsidies in the intrastate access rates, the OSBA and OTS cases fall apart. In fact, the OSBA testified, just over a year ago, that subsidization cannot be maintained in a competitive environment, and that such subsidization is harmful to competition and consumers:

[T]he Commission should recognize that any subsidy program that is applied to select companies (ILECs only) in a competitive market is anti-competitive.<sup>14</sup>

In fact, the subsidy could be keeping out competitors. These competitors can offer comparable services and new services and may have lower cost operations than the rural ILECs. The PUC should protect competition, not ILECs.<sup>15</sup>

Subsidizing the marginal costs of some players in a market will eventually drive out the non-subsidized carriers. In a competitive market, price equals marginal costs. Ultimately, if the government chooses to subsidize one competitor's marginal cost over another, which is the case here, only the subsidized competitors will survive in the long run.<sup>16</sup>

It may be hard for competitors to enter a market when the ILEC is being subsidized. There is no reason to provide a general subsidy to all rural

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<sup>12</sup> AT&T Statement 1.0 (Nurse/Oyefusi Direct) at pp. 35-36.

<sup>13</sup> *Id.*

<sup>14</sup> OSBA Statement No. 1 (Buckalew Direct), Docket No. I-00040105, December 10, 2008, p. 15, lines 6-8.

<sup>15</sup> OSBA Statement No. 2 (Buckalew Rebuttal), Docket No. I-00040105, January 15, 2009, p. 4, line 20-p. 5, line 2.

<sup>16</sup> OSBA Statement No. 3 (Buckalew Surrebuttal), Docket No. I-00040105, February 10, 2009, p. 2, lines 8-12.

ILECs; each ILEC's costs and particular operating conditions must be examined by the PUC to justify a subsidy in today's market.<sup>17</sup>

Generalized support programs in today's open market should end. You can't have competition and at the same time provide general subsidies. That is simply a tax on one group of consumers to support another group of consumers without any voice in how or why the first group is being taxed. Universal service funds in today's market are not sustainable, enforceable or held to any real accountability standard. Why should small ILECs make excess profits while ratepayers of other ILECs are supporting their operations? How can competitors enter these markets when they can't get these subsidies to support their consumers? The answer is to allow the market to work and end company subsidies.<sup>18</sup>

In contrast to the OSBA and OTS, the OCA at least properly recognizes that *because of competition*, intrastate access rates should mirror interstate rates, as AT&T advocates in this proceeding. Unfortunately, despite this acknowledgment, the OCA advocates for unspecified years of additional delay by arguing for inaction unless and until the types of contributors to the state Universal Service Fund ("USF") are expanded – something that, even if it were within the scope of this proceeding (which it is not), may never happen, and even if it does, would likely take many years to accomplish.<sup>19</sup> The record here plainly does not support the indeterminable delay inherent in OCA's proposal.

In addition, the OCA recommends an unreasonably low benchmark that is even *lower* than the rate cap established seven years ago! The OCA proposal would bloat the state USF to a huge, inequitable and unsustainable size. This OCA proposal would only continue a policy of anti-competitive and anti-consumer cross-subsidies whereby consumers throughout Pennsylvania

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<sup>17</sup> OSBA Statement No. 2 before ALJ Colwell at p. 6, lines 15-18.

<sup>18</sup> OSBA Statement No. 1 before ALJ Colwell, p. 12, lines 5-13.

<sup>19</sup> It is not even clear that the Commission would have control over how long the process would take, as the wireless carriers have vehemently argued that the law as it is currently written does not permit the Commission to require wireless carriers to contribute to the USF. If the Commission (or a court) agrees with the wireless carriers, under the OCA proposal, access reform would be held hostage to the legislative process and the amount of time (if ever) it would take to change the law. Given that the record shows access reform is needed now, such a delay is unacceptable and unwarranted.

are unknowingly and unfairly subsidizing the RLECs' customers—even those RLEC customers with greater economic standing, and even those paying substantially lower local rates.

The bottom line is that the evidence in this case demonstrates that the Commission should follow through with its stated policy to reduce intrastate access rates in this case, and can safely do so while advancing universal service. AT&T's proposal not only provides a balanced and reasonable way to reduce access rates without causing rate shock to consumers, but also ensures that RLECs begin to rely more on their own customers than on the customers of other carriers, which is critical to bringing full, fair and *sustainable* competition to all customers of the Commonwealth.

The time is now for the Commission to finalize intrastate access reform in Pennsylvania. It has been over five years since the Commission initiated this case, and over ten years since the Commission first stated its intention to remove implicit subsidies from access rates and level the playing field. PTA, CenturyLink and even the OCA advocate for little more than additional delay. As just one example, the PTA and CenturyLink *now* claim that settlement collaboratives should be convened to try and resolve the issues in this case. These parties could have requested such collaboratives any time over the past five years, but they did not. To do so at the end of a year-long case that conclusively demonstrates that full access reform must occur is a transparent attempt to postpone a final decision from this Commission. Although AT&T has always been willing to discuss settlement of any issue, there is no basis or need for additional collaboratives at this point. The opponents' attempts to further delay reform should be rejected outright, and a decision should be issued in this case by no later than the end of this year.

## **II. FACTUAL AND LEGAL BACKGROUND**

AT&T presented the factual and legal background in its Main Brief.

### III. BURDEN OF PROOF

PTA and CenturyLink both properly recognize that they have the burden of proof in this case. The OSBA, OCA and OTS got this one wrong. They all ignored the fact that this case involves a generic investigation, and the Commission has already decided who has the burden when a complaint case is consolidated with a generic investigation, and that burden lies with the RLECs.<sup>20</sup> The fact that even the RLECs agree they have the burden of proof with respect to their own rates is persuasive and conclusive.

This issue is important because the OTS position, in particular, relies heavily on its incorrect attempt to foist the burden of proof on AT&T.<sup>21</sup> The OTS argued that access reductions should not occur because AT&T did not present cost studies proving that access rates are above cost. However, because AT&T does not have the burden, OTS's position must fail. In any event, AT&T has presented more than ample proof to demonstrate why and how access reform must occur, and why and how AT&T's proposal is the most equitable and reasonable solution to access reform in Pennsylvania.<sup>22</sup>

If OTS really were concerned with burden of proof, it should have been concerned with the RLECs' complete and sustained failure to present any actual data to support their claims that access reform will hinder their ability to meet obligations. This issue is also important because

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<sup>20</sup> Opinion and Order, Docket No. C-20027195, January 8, 2007, pp. 20-21.

<sup>21</sup> OTS Main Brief at pp. 10-12.

<sup>22</sup> AT&T undertook the burdensome and laborious task of providing scores of detailed tariff sheets of precisely which access rate elements would be modified, for each and every access rate element, and for each and every one of the PTA company parties and CenturyLink. *See Attachment 1 to AT&T Statement 1.2.* AT&T provided the detailed, step-by-step road map of the access rate, local rate, and transitional PA-USF draw if applicable, for each of the the PTA company parties and CenturyLink, at each annual step in AT&T proposal. *See Attachment 5 to AT&T Statement 1.2.* No other party even attempted to produce, present, and support a comparably detailed, company-specific, step-by-step implementation plan.

the RLECs have failed to meet their burden of proof that access rates should remain at their current levels. The RLECs must demonstrate, by a preponderance of evidence, why the Commission's decade-long policy of eliminating implicit subsidies should not be implemented in this case. They have utterly failed to do so.

#### **IV. SHOULD RLECS' INTRASTATE SWITCHED ACCESS RATES BE REDUCED?**

The Commission has already answered this question in the affirmative. The Commission stated in 1999, 2003, 2004, 2007 and again in 2009 that it is the Commission's policy to continue reducing access rates closer to cost.<sup>23</sup> The Commission has not once wavered from that policy -- while it has implemented it with gradualism; it is time now for the next step in that deliberate process. And why has the Commission said access reform is so critical? The Commission has specifically found access reform is necessary "in order to *maintain fair toll competition*,"<sup>24</sup> and to "*promote competitive local markets* by bringing the ILEC's access charges closer to costs."<sup>25</sup>

The RLECs argue in this case for the Commission to change its decade-long policy. Their primary argument as to why the Commission should reverse course and no longer implement access reform is *because* of the competition that has grown in Pennsylvania. That makes absolutely no sense. It is specifically *because* of competition (and the need to ensure sustained full and fair competition) that the practice of imposing extra costs on only one type of competitor must be remedied. In fact, the RLECs themselves have previously recognized that high access charges must not exist in a competitive market:

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<sup>23</sup>23 AT&T Statement 1.0 (Nurse/Oyefusi Direct) at pp. 21-24.

<sup>24</sup>24 *Global Order* at p. 18.

<sup>25</sup>25 *Investigation Regarding Intrastate Access Charges of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, December 20, 2004 Order at p. 3.

“The relationship between implicit subsidies and competition is something of a double-edged sword: On one hand, competition erodes the ability to maintain artificially imposed implicit subsidies. On the other hand, the existence of implicit subsidies inhibits full and fair competition for all customers. Both of these effects are economically undesirable...”<sup>26</sup>

“[A]ccess charges represent implicit subsidies and implicit subsidies are antithetical to effective and healthy competition.”<sup>27</sup>

[R]ate subsidization is not sustainable in a competitive telecommunications market.<sup>28</sup>

Frankly, it is incredible that, over ten years after the Commission recognized the need for access reform, and years after reforms have been implemented by the FCC and by so many states, the RLECs are still arguing that implicit subsidies through inflated access charges are a good idea or that such subsidies should or even can be maintained in today’s competitive environment. The Commission has known for the past decade that access reform is necessary, and the evidence in this case proves such reform is more urgent and critical now than ever.

**A. THE PTA AND CENTURYLINK’S BRIEFS CONTAIN FALSE AND MISLEADING STATEMENTS.**

Unfortunately, the PTA and CenturyLink Main Briefs are replete with factual inaccuracies. Whether intentionally or not, their penchant for presenting false and misleading statements in their Briefs should not be tolerated. Here are just a sampling of the false statements throughout their Briefs:

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<sup>26</sup> Exhibit CTL Panel 8 to CenturyLink Statement 1.2; Direct Testimony of Dr. Brian K. Staihr, August 27, 2003, p. 3.

<sup>27</sup> *Id.* at pp. 4-5.

<sup>28</sup> *Buffalo Valley Telephone Company Revenue-Neutral Rate Rebalancing Filing for Year 2003*, Docket No. R-00038351, April 30, 2003 (“*Buffalo Valley 2003 Filing*”), p. i; *Buffalo Valley Telephone Company Revenue-Neutral Rate Rebalancing Filing for Year 2002*, Docket No. R-00027256, April 30, 2002 (“*Buffalo Valley 2002 Filing*”), p. 11; See also *Conestoga Telephone and Telegraph Company Revenue-Neutral Rate Rebalancing Filing*, Docket No. R-00027260, April 30, 2002 (“*Conestoga 2002 Filing*”).

- Parties seeking access reductions did not “provide a scintilla of credible evidence” to show that customers have benefitted from prior access reductions. CTL Main Brief, p. 24. *See also* PTA Main Brief at p. 41. *In fact, AT&T presented specific evidence that its toll rates have fallen more than any access reductions and that it has sustained such reductions for five years. If there was any doubt that such reductions will occur in the future, AT&T presented evidence that in 19 other states, it also has more than flowed through any access reductions. This evidence was not challenged or disputed in any way. See Attachment H to AT&T Statement 1.0 and Attachment 8 to AT&T Statement 1.2.*
- Verizon mirrored its interstate rates several years ago. CTL Main Brief, p. 25, fn. 57. *Verizon’s intrastate access rates do not mirror their interstate rates, and CenturyLink’s witness admitted this error under cross-examination. Tr. at p. 421. Nonetheless CenturyLink elected to cite the known misstatement in its brief.*
- In Texas, AT&T supported mirroring intrastate and interstate rates, but only with the support from a \$100 million per year state USF. In Kansas, AT&T supported a gradual transition to mirroring with the support from a state USF. CTL Main Brief, p. 64, fn. 183. *AT&T completely rebutted these false claims at pages 15-16 of its Rejoinder Testimony, yet CenturyLink’s Brief simply cut and pasted from its testimony without even acknowledging AT&T’s response evidencing that the “exact opposite was true.” At trial, CenturyLink did not challenge AT&T’s correction of CenturyLink’s misstatement. Instead CenturyLink elected to recite the known misstatement in its Brief. As AT&T witnesses Nurse and Oyefusi testified:*

Contrary to CenturyLink’s claim that AT&T only supported access reductions in Texas if such reductions were recovered from the Texas Universal Service Fund (“TUSF”), **the exact opposite is true.** At the same time AT&T access reductions were being phased in in Texas, AT&T agreed to **reduce** its draw from the TUSF by over \$100 million. AT&T supported legislation in 2005 in Texas that required AT&T to move its intrastate access rates to parity with its interstate access rates in three steps over a three-year period (July 1, 2006 through July 1, 2008). AT&T supported access reductions in exchange for significantly expanded pricing flexibility, including the ability to raise residential basic rates in certain deregulated exchanges without Texas PUC approval. Moreover, AT&T agreed to a significant reduction in its TUSF support in a proceeding that began in Sept. 2007 and finished in April 2008. Thus, in Texas, AT&T did not rely on any state USF support to achieve access parity, but instead relied on the ability

to rebalance its local rates, just as AT&T is advocating here. In Kansas, AT&T argued to increase local retail rates in order to make up for the reduction in access rates. While the Kansas Commission decided to increase the size of the state USF, it is also going to review the USF to determine whether it should be maintained at its current level. AT&T's position in this case -- that access reductions first be recovered from retail rates, and that the state USF be temporarily increased on a transitional basis so that access reductions are phased in more gradually -- will achieve the same result. AT&T Statement 1.4 (Nurse/Oyefusi Rejoinder) at pp. 15-16 (emphasis added)

- All IXC's, except Qwest, oppose any USF. PTA Main Brief at p. 79. *AT&T has specifically advocated that the USF be increased on a transitional basis in the amount of nearly \$20 million in the first year in order to fund access reductions as part of this case. AT&T Statement 1.2 (Nurse/Oyefusi Rebuttal) at p. 14.*
- AT&T supports a 10-year transition period. PTA Main Brief at p. 81. *AT&T does not support a 10-year transition plan to reduce intrastate access rates to interstate levels, and PTA's miscite does not support such a claim. In fact, the cite provided by PTA says nothing about a 10-year transition, and nothing about access reform. AT&T's proposal in this case in fact calls for **immediate** reform of access rates to interstate parity and a four year period for the associated rebalancing.*

## **B. THE PTA'S AND CENTURYLINK'S REASONS FOR OPPOSING ACCESS REFORM ARE NOT VALID.**

The RLECs continue to make the same arguments they've been making for years as to why access reform should not occur in Pennsylvania. Specifically, the RLECs argue if access reform as advocated by AT&T is adopted, the world as we know it will crumble, universal service will be destroyed, and customers will see no benefits.<sup>29</sup> The facts demonstrate otherwise.

The RLECs continue to argue for monopoly era policies that may have been appropriate a decade or two ago, but are no longer sustainable today. For the past 25 years, and certainly since the passage of the federal Telecommunications Act of 1996, telecommunications policy in

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<sup>29</sup> See e.g. PTA Main Brief at pp. 64-68, 79-81; CTL Main Brief at pp. 56-66; 67-72.

this country has been squarely focused on making the market more competitive, and making universal support transparent, founded on well-established economic principles that competition will force all firms in the market to become more efficient, to innovate, and to deliver to consumers the services they want at prices they are willing to pay. Maintaining exorbitant intrastate access rates, or re-labeling the subsidy burden by adopting a nearly \$100 million state USF, are not the answers to maintaining universal service. All that would accomplish is to force the vast majority of consumers across Pennsylvania to subsidize the RLECs, just so the RLECs could be insulated from having to compete based on their own innovation and efficiencies.<sup>30</sup> It is easy to understand why the RLECs think that is a good idea, but it should be equally easy for the Commission to understand that such a result does not serve the best interests of Pennsylvania as a whole.

**1. Access Reform As Proposed By AT&T Will Not Harm Universal Service, But Will Stabilize And Enhance it.**

Unable to contend with the evidence of consumer benefit deriving from access reform, RLECs instead resort to scare tactics. Specifically, the RLECs claim that universal service will be “destroyed” if AT&T’s proposal is implemented. There are several problems with this argument. First, the best way to promote and maintain universal service is by promoting competition, not by artificially subsidizing RLEC local rates or insulating those companies from competitive forces. Second, universal service must be about ensuring customers have access to affordable telephone service, not about protecting individual companies.

Finally, there is absolutely no credible evidence to support the RLECs’ claims that universal service will be destroyed in Pennsylvania if access reform is implemented. To the

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<sup>30</sup> Meanwhile, the over a million rural customers served by Verizon receive no explicit state universal service subsidy.

contrary, access reform has occurred throughout the country, and the dire consequences predicted by the RLECs have not in fact materialized anywhere access reform has been implemented.<sup>31</sup> In addition, the FCC's interstate access reforms, which resulted in significant increases to the subscriber line charge, have not caused any adverse change in national telephone penetration rates.<sup>32</sup> Given the extensive amount of reform that has taken place throughout the country, surely the parties could have pointed to one example where penetration rates decreased as a result of access reform, or where any of the dire predictions about customers losing their ability to obtain universal telephone service at affordable rates has come true. There is no such evidence because these claims are simply not true.

**a. By Promoting Competition Through Reduced Access Rates, the Commission Would Be Protecting Universal Service.**

CenturyLink itself testified that the primary purpose of universal service is to ensure service to "rural, high-cost consumers who generally do not have viable competitive alternatives available and who would otherwise not have any communications services available without implicit and/or explicit universal service support to provide communications services at affordable prices that are comparable to the rates of other consumers."<sup>33</sup> AT&T agrees with this statement. The problem is that CenturyLink's positions do not advance its stated goal. CenturyLink (and PTA and OCA) want universal service subsidization (either through high access rates or an explicit USF) for every single one of the RLECs' customers, even if those customers have multiple competitive alternatives. They confuse universal service support for customers with perpetuation of RLEC business models.

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<sup>31</sup> See Exhibit I to AT&T Statement 1.0 (Nurse/Oyefusi Direct). *See also* AT&T Statement 1.4 (Nurse/Oyefusi Rejoinder) at p. 12, fn. 13.

<sup>32</sup> *Id.* at pp. 12-13.

<sup>33</sup> Panel Surrebuttal Testimony of Lindsey/Harper, Statement 1.1 at pp. 14-15.

The best way to ensure universal service is to promote a sustainable and fully competitive environment. The evidence shows that competition exists throughout Pennsylvania. Although the RLECs claim there are pockets of little or no competition, they have no idea where those areas are or how many customers do not have competitive alternatives. When asked to quantify or identify where consumers do not have competitive alternatives, the RLECs utterly failed to do so. Disregarding this failure, PTA in its Main Brief, and for the very first time in this proceeding, claims that a “substantial percentage of its customers, perhaps, forty percent (40%) of them,” do not have competitive alternatives.<sup>34</sup> This claim has no merit.

First, this statement should be disregarded because it is not supported by any cite to evidence in the record. Second, PTA’s statement is pure speculation given that the PTA itself testified that it has no idea where its companies do or do not face competition.<sup>35</sup> By refusing to provide actual evidence on how many and which customers do or do not face competition, the RLECs are clearly trying to have it both ways – they claim that universal service will be harmed because there is not enough competition, but on the other hand, they claim that they cannot raise rates in order to recover access reductions because there is too much competition. The Commission should not allow this type of “hide the ball” gamesmanship to prevail.

What we *do* know about competition is that the RLECs have described their territories as “hyper-competitive.”<sup>36</sup> For example, Frontier has said that the market is extremely

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<sup>34</sup> PTA Main Brief at p. 75.

<sup>35</sup> Tr. at p. 606, lines 2-6 (Zingaretti).

<sup>36</sup> CenturyLink Statement 3.1 (Bonsick Surrebuttal) at pp. 8, 15

competitive, and that competition is intense and increasing.<sup>37</sup> Similarly, North Pittsburgh has stated that it faces both wireless and cable competition throughout most of its territory.<sup>38</sup>

The record also shows that wireless penetration has absolutely exploded in the past decade and is available throughout the vast majority of Pennsylvania.<sup>39</sup> CenturyLink has stated that “[w]ireless service is available for the overwhelming majority of [CenturyLink’s] customers.”<sup>40</sup> That is consistent with a 2008 Pennsylvania Legislative Budget and Finance Committee Report, which found that “there is at least some coverage in every county, and there are areas in each county where there is a choice of four or more carriers.”<sup>41</sup>

The evidence shows that cable providers as well have expanded and are providing voice service throughout Pennsylvania. PTA’s claim that cable voice availability is still less than 60%,<sup>42</sup> is contradicted by the record. In fact, the FCC has reported that as of 2007 in Pennsylvania, cable modem availability is actually 94% where cable systems offer cable television service.<sup>43</sup> PTA itself previously testified that cable plant passes approximately 90% of homes in Pennsylvania.<sup>44</sup> Surely that number has grown in the past 3 years given the fact that cable companies like Comcast have recently targeted rural areas for the expansion of voice

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<sup>37</sup> AT&T Statement 1.0 (Nurse/Oyefusi Direct) at p. 29.

<sup>38</sup> *Id.*

<sup>39</sup> Each year, the number of wireless subscribers continues to grow, and as of December 2007, there were over 9.6 million wireless subscribers in Pennsylvania alone. *Id.* at p. 26.

<sup>40</sup> Embarq Statement 2.1 (Lindsey Surrebutal) in Docket No. I-00040105, filed Feb. 10, 2009 at p. 6.

<sup>41</sup> AT&T Statement 1.0 (Nurse/Oyefusi Direct) at p. 26, citing to Cell Phone Service in Pennsylvania, Legislative Budget and Finance Committee, November 2008, p. S-1.

<sup>42</sup> PTA Main Brief at p. 75.

<sup>43</sup> See Trends in Telephone Service; Industry Analysis and Technology Division Wireline Competition Bureau; August 2008; Table 2-8. See [www.fcc.gov/wcb/iatd/trends.html](http://www.fcc.gov/wcb/iatd/trends.html). This report was cited in the case before ALJ Colwell at AT&T Statement 1.0 (Nurse/Oyefusi Direct), December 10, 2008, p. 9.

<sup>44</sup> PTA Statement No. 1 (Laffey Direct) in Docket No. I-00040105, December 10, 2008, p. 7. Even if, arguendo, cable passed only 90% of homes as PTA testified, and cable modem service were available from 94% of that as the FCC reported, then cable modem service would be available to 90% of 94% of homes, or 85% of homes.

services, and given the PTA's own admission that cable telephony is growing.<sup>45</sup> In fact, in its Main Brief, PTA cited to evidence that "at this point in time, there are likely at least 800,000 cable telephony customers in Pennsylvania, 'a number that is rapidly growing,' and noting that number exceeds the number of customers served by all PTA companies combined."<sup>46</sup>

Voice over Internet Protocol ("VoIP") is available wherever there is a broadband connection. As this Commission is well aware, all but two RLECs have fully built out their broadband networks, and CenturyLink and Windstream are well on their way towards near complete build-out. Therefore VoIP is available almost ubiquitously throughout the rural territories in Pennsylvania. Although the PTA has stated it does not know how much competition it faces from these VoIP providers, it also testified that, with respect to the competition it faces, it has experienced "measurable line loss, sometimes dramatically in recent years."<sup>47</sup>

Thus, the evidence conclusively proves that the vast majority of the RLECs' customers have multiple competitive alternatives. Given that CenturyLink itself testified that universal service is about protecting customers where competitive alternatives do not exist, it makes absolutely no sense to find that nearly \$100 million in inflated subsidies (hidden either in access rates or in USF support) are necessary to preserve universal service. In fact, the opposite is true. Inflated access charges harm competition by keeping local rates artificially low, and increase the possibility that competitive alternatives will disappear, thereby threatening the best way to maintain universal service. As the OSBA testified,

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<sup>45</sup> AT&T Statement 1.0 (Nurse/Oyefusi Direct) in Docket No. I-00040105 before ALJ Colwell, December 10, 2008, pp. 9-10. *See also* AT&T Statement 1.0 in this case, p. 30 whereby PTA noted that Cablevision added 51,400 net new voice service subscribers in one quarter alone (for a total of 1.93 million), while Charter added 73,400 (for a total of 1.42 million) as of May 2009.

<sup>46</sup> PTA Main Brief at p. 39, fn. 133.

<sup>47</sup> PTA Statement No. 1 (Laffey Direct) in Docket No. I-00040105 before ALJ Colwell, December 10, 2008, p. 7.

Subsidizing the marginal costs of some players in a market will eventually drive out the non-subsidized carriers. In a competitive market, price equals marginal costs. Ultimately, if the government chooses to subsidize one competitor's marginal cost over another, which is the case here, only the subsidized competitors will survive in the long run.<sup>48</sup>

Even if there were some limited number of customers who did not have competitive alternatives, and who could not obtain service at affordable rates without subsidies, those customers should be cared for through targeted subsidy mechanisms, not the sort of broad brush approach the RLECs and OCA advocate. By any measure, the levels of subsidies the RLECs and OCA seek are extreme and go way beyond the amounts needed to assure telephone services for what is, at best, a limited number of customers.

**b. AT&T's Proposal Will Preserve Affordable Rates.**

When focusing on universal service goals, the Pennsylvania Legislature and this Commission have always been properly concerned with ensuring that local rates are affordable for customers throughout the Commonwealth. Access reform under AT&T's proposal will keep rates at or below affordable benchmark levels without the massive, unsustainable subsidies that the RLECs and OCA seek. Moreover, access reform will reduce artificial constraints on competition thereby stimulating more competition, which as ALJ Schnierle recognized, will ultimately lead to lower rates for all customers.

The PTA and OCA claim in their Main Briefs that AT&T's proposal leads to unaffordable rates.<sup>49</sup> PTA continues to make misleading statements by consistently referring to AT&T's benchmark as \$25/month.<sup>50</sup> Of course, AT&T's benchmark is initially set at the \$18 rate brought forward by inflation, or \$22/month, and only gradually moves to \$25/month in the

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<sup>48</sup> OSBA Statement No. 3 (Buckalew Surrebuttal), Docket No. I-00040105 before ALJ Colwell, February 10, 2009, p. 2, lines 8-12.

<sup>49</sup> PTA Main Brief at pp. 73-74.

<sup>50</sup> *Id.* at p. 68, 74.

fourth year, which is barely a percentage point faster than inflation, after a seven year freeze. Most critically, the vast majority of the RLECs will never need to reach \$25/month in order to rebalance local rates from access reductions. In fact, under AT&T's proposal, *thirteen PTA companies will still have rates below the \$22/month benchmark after rate rebalancing.* Another seven companies will be fully rebalanced after reaching the \$23/month benchmark. Only six RLECs will have to reach the \$25/month benchmark in order to rebalance their local rates under AT&T's proposal.<sup>51</sup>

More to the point, the only evidence in the proceeding regarding affordability definitively proves that AT&T's benchmark proposals are below affordability levels, and therefore would not in any way jeopardize universal service for customers throughout Pennsylvania.

There are two sources of evidence on affordability. First, the OCA presented an affordability study in the case before ALJ Colwell. That study showed that affordability is between \$32-\$42.91/month, inclusive of fees and surcharges.<sup>52</sup> PTA has presented evidence that taxes and surcharges are \$8.57/month.<sup>53</sup> Thus, the affordability rate today in Pennsylvania, based on OCA's own study, is anywhere from \$23.43-34.34/month.<sup>54</sup> AT&T's initial benchmark of \$22/month is obviously well below this range, and even its ultimate benchmark of \$25/month after four years is at the lower end of this range.

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<sup>51</sup> See Appendix C to AT&T's Main Brief.

<sup>52</sup> AT&T Statement 1.2 (Nurse/Oyefusi Rebuttal) at p. 9 and fn. 15.

<sup>53</sup> Direct Testimony of Joseph Laffey on behalf of PTA, Docket No. I-00040105, December 10, 2008, p. 5. PTA now claims in its Brief that the amount is \$9.12 based solely on estimates from the OCA. PTA Main Brief at p. 74. It is unclear why PTA does not just rely on its own numbers, rather than to try and improperly reduce the affordability rate by choosing a number that is higher and it therefore likes better.

<sup>54</sup> As Verizon pointed out in its Main Brief at p. 35 (see fn. 63), the lower end of this range is probably unrealistic and too low. The lowest number is based on customers spending 0.75% on telephone services, but FCC data shows even low income customers spend over 3% on telephone services. Raising the OCA affordability analysis to a mere 1% rather than the 0.75% advocated by OCA raises the benchmark to \$34/month. Verizon Main Brief at p. 35.

The second source of affordability is to look at what customers are actually spending. All of the evidence proves that customers are willingly spending much more than \$22/month on telephone service. AT&T presented evidence demonstrating that many customers are now spending over \$50/month.<sup>55</sup> In fact, the majority of CenturyLink's customers now are on bundles, spending an average of \$57.63 per month as of December 2008.<sup>56</sup>

Once the Commission determines that AT&T's proposal will not lead to rates that are unaffordable for customers, as it must based on the evidence, then the other parties' claims that AT&T's proposal will harm universal service completely disintegrate. As discussed above, competition is the best way to ensure universal service, and AT&T's proposal removes current distortions from the competitive marketplace, which in turn encourages competition and thereby promotes universal service.

**2. The Commission Should Reject The RLECs' Vague Arguments That They Will Not Be Able To Meet Some Purported Pennsylvania Carrier of Last Resort Obligations If Access Reform Is Implemented.**

PTA and CenturyLink both allege in their Main Briefs that reducing intrastate access rates will adversely affect their ability to serve their customers. More specifically, they claim that without guaranteed revenues either through implicit subsidies in access rates, or explicit subsidies from a USF, the Commission would be depriving the RLECs of all the revenues they need to meet their purported Pennsylvania Carrier of Last Resort ("COLR") obligations.<sup>57</sup>

There are multiple problems with these arguments. First, the RLECs fail to identify with any specificity what their COLR obligations even are in Pennsylvania. Second, even if such COLR obligations do in fact exist, the RLECs have utterly failed to show that the current amount

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<sup>55</sup> AT&T Statement 1.2 (Nurse/Oyefusi Rebuttal) at pp. 9-10.

<sup>56</sup> *Id.* See also AT&T Cr. Exh. 2, which shows that only 20% of CenturyLink's customers are purchasing standalone basic local service.

<sup>57</sup> PTA Main Brief at pp. 64-68; CenturyLink Main Brief at pp. 67-72.

of subsidies in access rates are required to maintain and support those COLR obligations. These failures are fatal to their cases.

With respect to the first point, the RLECs were unable to cite to any Pennsylvania statute, any Pennsylvania rule, any Pennsylvania Order or any Pennsylvania regulation that imposes COLR obligations on them. In fact, the Commission recently appeared to acknowledge that COLR mandates do not exist in the telecommunications arena, unlike with electric and/or gas utilities.<sup>58</sup> To the extent there even are COLR obligations, they come from obligations as an Eligible Telecommunications Carrier (“ETC”), which are not peculiar to the ILECs. To the contrary, incumbent carriers, competitive carriers and even wireless carriers can *voluntarily* seek ETC status.<sup>59</sup>

With regard to the second point, according to the PTA, the current amount of subsidy in intrastate access rates caused by the difference in intrastate and interstate rates is \$91.7 million.<sup>60</sup> The RLECs also receive approximately \$33 million from the current state USF.<sup>61</sup> The RLECs are arguing that the Commission should just close its eyes and take it on faith that the RLECs need this full \$124.7 million in subsidization from other carriers in order to meet their unidentified, unquantified COLR obligations. This is truly unbelievable. When PTA was asked whether their COLR obligations are \$10, \$10 million, \$30 million or \$100 million, its witness could not answer.<sup>62</sup> The Commission cannot maintain the current access reform system based on a “just trust us” claim that the RLECs will be unable to meet COLR obligations if access rates are reduced.

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<sup>58</sup> Rulemaking to Amend Chapter 63 Regulations so as to Streamline Procedures for Commission Review of Transfer of Control and Affiliate Filings for Telecommunications Carriers. Docket No. L-00070188, Final Rulemaking Order, April 29, 2010, pp. 9-10.

<sup>59</sup> *Id.*

<sup>60</sup> Tr. at p. 588.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

But even more importantly, AT&T's proposal for reform in this proceeding does not deprive the RLECs of any legitimate revenues. First, under AT&T's proposal, RLECs will be obtaining an additional \$20 million from the USF, on top of \$33 million in existing support. That's \$53 million in universal service funding in the first year. Second, AT&T's proposal does not reduce the RLECs' access rates all the way to cost, and therefore the rates will still contain some subsidy (as demonstrated by the fact that the RLECs rates will in almost all cases be much higher than their cost-based reciprocal compensation rates). Finally, AT&T's proposal gives the RLECs the opportunity to remain revenue neutral, but does so in a way that requires the RLECs to obtain revenues first from their own customers up to a reasonable, affordable benchmark. That is the proper way to ensure that RLECs are able to meet any COLR obligations they may have – not to perpetuate implicit subsidies from excessively high access rates.

### **3. Customers Throughout Pennsylvania Will Benefit From Access Reform.**

Disregarding yet again the evidence of record, the RLECs claim consumers will not benefit from access reform. The PTA argues that there is no “evidence that end user customers will benefit from further access reductions.”<sup>63</sup> And CenturyLink asserts that access reductions “will not provide any net measurable consumer benefits.”<sup>64</sup> In effect, both parties allege that AT&T has not demonstrated that it has “flowed through” prior access reductions. And both parties are plainly wrong.

The clear and undisputed evidence on this point demonstrates that AT&T has in fact flowed through prior access reductions, not only here in Pennsylvania, but in all states where reform has been implemented. As AT&T witnesses Nurse and Oyefusi testified:

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<sup>63</sup> PTA Main Brief at p. 1, 39-42.

<sup>64</sup> CenturyLink Main Brief at p. 22.

This repeated claim[that AT&T has not flowed through access reductions] is a blatant attempt to mislead the Commission – *AT&T has provided concrete proof that its toll rates have come down faster than its access expenses.*<sup>65</sup> In 19 states where access rates have been reduced, AT&T's average toll rates have come down by more than its access reductions. That is hardly surprising, given the intense competition that has occurred in the long distance business since 1984, and given the universally accepted economic principle that *any* business – even an unregulated monopolist with zero competition – will reduce its retail price if costs go down, all else equal. What is surprising, however, is that, even with this long-term, broadly based evidence in hand, the RLECs are still arguing that access reform does not benefit consumers.<sup>66</sup>

Even when AT&T made a specific commitment to reduce its In State Connection Fee (“ISCF”), that was not enough for the RLECs. To the contrary, they criticized AT&T's commitment, claiming that this nearly \$1/month rate reduction will not be meaningful.<sup>67</sup> Interestingly, this position is in direct conflict with prior testimony by CenturyLink. In a case where CenturyLink was advocating for reduced access rates, CenturyLink's witness, Dr. Staihr, testified that there were numerous benefits to reducing implicit subsidies in access rates, including the “elimination of the ‘In state connection fee.’ As a result, toll customers currently paying this fee to an IXC – regardless of their level of usage – will benefit as this charge is eliminated.”<sup>68</sup>

As discussed previously and in AT&T's Main Brief, customers benefit greatly from access reform. But if AT&T's evidence is not enough, the Commission can look to the RLECs' own statements. CenturyLink has testified that the benefits of reducing implicit subsidies “will come through increased choices brought about by competition, and enhanced service offering

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<sup>65</sup> See Attachment H to our Direct Testimony and Attachment 8 to our Rebuttal Testimony, comparing AT&T's toll rates and access expenses in Pennsylvania and in 19 other states.

<sup>66</sup> AT&T Statement 1.4 (Nurse/Oyefusi Rejoinder) at p. 4.

<sup>67</sup> CenturyLink Main Brief at pp. 27-28; PTA Main Brief at p. 41.

<sup>68</sup> Exhibit CTL-Panel 8 to CTL Statement No. 1.2; Direct Testimony of Brian K. Staihr, August 27, 2003, p. 14.

and innovation that are stimulated by competition.”<sup>69</sup> CenturyLink also testified that “the removal of implicit subsidies is consistent with-and necessary for-the development of a healthy and sustainable competitive market for basic local telecom services..., a competitive market that will simultaneously 1) provide benefits and choices to the largest number of [state] residents possible, and 2) operate on a level playing field for all competitors.”<sup>70</sup>

#### **4. The Commission Should Not Further Delay Access Reform In Pennsylvania By Waiting For The FCC.**

The RLECs once again argue that the Commission should not take control over reform of its own intrastate access rates, but should instead wait for the FCC. The PTA specifically states that the Commission should “defer[] action on the RLECs’ intrastate access rates until the FCC acts.”<sup>71</sup> This is inconsistent with what the PTA’s witness said at the hearing. There, PTA said that any Commission decision in this case should be “harmonized” with the FCC (whatever that means, because it was not adequately explained), but “that doesn’t mean having to wait” for the FCC.<sup>72</sup>

CenturyLink similarly argued that the Commission should “coordinate the substance and the timing of its decision and policies with those occurring at the federal level...”<sup>73</sup> In case CenturyLink has forgotten, this Commission originally did choose to try and coordinate the timing of this case with the FCC. That amounted to a lot of waiting and no coordination because there was no action at the FCC. Just as the Commission did not know five years ago when the FCC would act, or what the FCC would do when it did act, the Commission does not know today. Given the fact that this Commission made the right decision to stop waiting on the FCC,

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<sup>69</sup> *Id.* at p. 15.

<sup>70</sup> *Id.* at p. 3.

<sup>71</sup> PTA Main Brief at p. 45.

<sup>72</sup> Tr. at p. 591.

<sup>73</sup> CenturyLink Main Brief at p. 31.

and to move forward with this case (as well as re-opening the Verizon access case at Docket No. C-20027195), there is no valid reason to wait for the FCC now that the proceeding has been completed.

There have been numerous proposals on intercarrier compensation put out by the FCC and introduced by multiple parties over the past nine years. Yet again, a new rulemaking that will be one of an incredible 60 rulemakings will be issued by the FCC at the end of this year.<sup>74</sup> Yet again, no party can possibly anticipate when the FCC will issue any kind of decision on that rulemaking. One thing is clear, though. This Commission can most certainly take control over its own affairs and can increase the likelihood that, as more and more states implement intrastate access reform, the FCC must take into account that state action when adopting national intercarrier compensation policies. In fact, in the recently released National Broadband Plan, there was a specific recommendation, based on comments by this Pennsylvania Commission, that state and federal efforts should be harmonized.<sup>75</sup>

This Commission has already found that waiting for the FCC is not necessary.<sup>76</sup> It would make no sense to re-open this case, have a fully litigated and extensive record, and then yet again delay reform to wait for possible and speculative FCC action. Chairman Cawley recently observed that “we do not need and cannot afford to wait and speculate whether the FCC will reach some sort of coherent and sustainable solution to its IP-enabled services and intercarrier compensation reform proceedings, when this might happen, and what the FCC’s conclusions might be.”<sup>77</sup> And most recently, the Commission lifted the stay on the Verizon access case,

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<sup>74</sup> AT&T Cross Examination Exhibit No. 4. *See also* Transcript at pp. 590-591.

<sup>75</sup> <http://download.broadband.gov/plan/national-broadband-plan.pdf>, p. 143, fn 65.

<sup>76</sup> August 5, 2009 Order at pp. 18-19.

<sup>77</sup> *Palmerton Telephone Company v. Global NAPS South, Inc., et. al.*, Docket No. C-2009-2093336, Motion of Chairman James H. Cawley, February 11, 2010, p. 15.

again noting that there has been no substantial action at the FCC, and it is unclear whether the FCC will act anytime soon.”<sup>78</sup>

**C. THE OSBA’S REASONS FOR NOT REDUCING INTRASTATE ACCESS RATES ARE INCONSISTENT WITH ITS OWN PRIOR POSITIONS.**

The OSBA’s position that access rates should not be reduced is based entirely on its claim that “IXCs must pay their fair share of the cost of the RLECs’ local exchange facilities.”<sup>79</sup> Even assuming that this reworking of the now discredited theories of loop allocation had any validity in a competitive market – and they do not – OSBA’s position is undermined by the fact that there is nothing in the record to show that IXCs will not be paying their fair share under AT&T’s proposal to reduce intrastate access rates to interstate levels. To the contrary, interstate access rates remain several times above cost-based levels,<sup>80</sup> and will therefore ensure that IXCs are still generously contributing to the cost of the loop. There is absolutely no “free ride” by the IXCs paying RLECs’ interstate rates for access charges.

Incredibly, in a proceeding aimed at reforming above cost access rates, OSBA actually goes so far as to propose “raising [access] charges to assure that IXCs pay their fair share of the cost of accelerated broadband deployment.”<sup>81</sup> There are multiple problems with this argument. First and foremost, it is *directly contrary* to testimony filed only a year ago by the OSBA in the associated docket. There, the OSBA said in its testimony:

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<sup>78</sup> Opinion and Order, *AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc. and Verizon Pennsylvania Inc.*, Docket No. C-20027195; May 11, 2010, pp. 17-18.

<sup>79</sup> OSBA Main Brief at p. 14.

<sup>80</sup> See Exhibit F to AT&T Statement 1.0 (Nurse/Oyefusi Direct) showing reciprocal compensation rates in the range of 4/100<sup>th</sup> of a penny to 2/10<sup>th</sup> of a penny, compared to the RLECs’ interstate access rates on the chart at pp. 35-36 of AT&T’s Statement 1.0, showing rates generally in the range of 1-3 cents per minute.

<sup>81</sup> *Id.* at p. 18.

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

A. Yes. There is *no reason for other broadband competitors to fund the competitive business of any ILEC's broadband business*, yet that is exactly what the local exchange cap advocated by the OCA and PTA does. It allows rural ILECs to collect PAUSF funds for supporting the very same loop facilities that are being upgraded for broadband service. For example, Comcast may have broadband facilities in the very same location as the rural ILEC, but Comcast gets no support from the PAUSF.<sup>82</sup>

Second, there is no basis in the law, or policy, for an argument that IXC's should fund the broadband deployment costs of the RLECs. The IXC's did not request, do not utilize, and do not benefit from the RLECs' abilities to build broadband networks; the IXC's do not obtain additional revenues through the RLECs' broadband build-out, and the IXC's should not be paying for and thus cross-subsidizing the RLECs' competitive and unregulated ventures.

The OSBA has previously recognized and correctly argued the basic economic theory that you cannot have some companies subsidizing another in a competitive environment. Yet that is exactly what the OSBA is asking the Commission to do in this case by maintaining the current exorbitant and subsidy-laden intrastate access rates. Even the RLECs themselves do not dispute that access rates contain a subsidy. The OSBA should re-read its own prior testimony, because there, the OSBA got it exactly right:

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

A. Dr. Loube has forgotten basic economic theory. Subsidizing the marginal costs of some players in a market will eventually drive out the non-subsidized carriers. In a competitive market, price equals marginal costs. Ultimately, if the government chooses to subsidize one competitor's marginal cost over another, which is the case here, only the subsidized competitors will survive in the long run.<sup>83</sup>

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<sup>82</sup> OSBA Statement No. 2, January 15, 2009, Docket No. I-00040105, p. 12, lines 3-13 (emphasis added).

<sup>83</sup> OSBA Statement No. 3 (Buckalew Surrebuttal), February 10, 2009, Docket No. I-00040105, p. 2.

Apparently, the OSBA has similarly forgotten basic economic theory, and its own argument.

The OSBA claim that IXCs must contribute to the cost of the loop has been specifically criticized by CenturyLink itself. CenturyLink's Dr. Staihr has previously testified that an "allocation method where a customer pays for part of a loop every time he or she makes a toll call through access charges...is inefficient, uneconomical, and unfair..."<sup>84</sup> Dr. Staihr goes on to explain that the logic that IXCs must pay for the loop because long distance calls cannot be made without a loop is fundamentally flawed. He points out that it is impossible to watch cable television without a TV set, but nobody suggests that part of the TV should be included in the cable bill.<sup>85</sup> In 2001, Dr. Staihr again testified that, "With regard to the claim that the loop is a common cost, it is Sprint's position, *a position supported by the majority of today's leading regulatory economists*, that the cost of the loop is not a common or shared cost, but a direct cost of access to the public switched network."<sup>86</sup>

In short, there is no basis in either theory or the evidentiary record for OSBA's effort to turn this access reform proceeding into a platform for access increases. The Commission should categorically reject that attempt. In addition, the OSBA's loop allocation is both incorrect and irrelevant because, under AT&T's proposal, IXCs still contribute to the cost of the local loop.

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<sup>84</sup> Exhibit CTL Panel-8 to CenturyLink Statement 1.2 (Lindsey/Harper Rejoinder), Rebuttal Testimony of Brian K. Staihr on behalf of Sprint, May 24, 1999, Kansas, p. 6.

<sup>85</sup> *Id.* at p. 7.

<sup>86</sup> Exhibit CTL Panel-8, Rebuttal Testimony of Brian K. Staihr, July 13, 2001, Kansas, p. 8.

**V. IF THE RLECS' INTRASTATE SWITCHED ACCESS RATES SHOULD BE REDUCED, TO WHAT LEVEL SHOULD THEY BE REDUCED AND WHEN?**

**A. RATE LEVELS**

On one point at least, the PTA and CenturyLink, as well as OCA and Sprint, all are in agreement with AT&T and the evidence of record – specifically, insofar as intrastate access rates are reduced, they should be reduced to each carriers' respective interstate levels.

Even on this point, however, the PTA is less than forthright. In response to AT&T's evidence that the PTA has previously acknowledged the need for intrastate rates to mirror interstate, the PTA claims in its Main Brief that it has only recommended that *traffic-sensitive* rates be mirrored, specifically to avoid arbitrage and traffic avoidance schemes.<sup>87</sup> However, PTA provides no cite to this claim because it is not true and it makes no sense. The Carrier Common Line ("CCL") charge is a major component of the RLECs' intrastate access rates – it is billed or allocated based on usage according to the PTA.<sup>88</sup> Therefore, arbitrage is not just caused by the differences in traffic sensitive rates, it is caused by the overall difference in rates. This is especially true because the CCL rate is a *de facto* traffic sensitive rate since it is recovered based on relative usage, in contrast to the way the federal Subscriber Line Charge is collected from an end user regardless of the level of usage, or even if there is no usage at all. Thus, parity has always meant mirroring both the traffic sensitive and CCL rates, and both CenturyLink and the PTA have acknowledged that interstate parity is both desirable and critical.

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<sup>87</sup> PTA Main Brief at p. 34.

<sup>88</sup> PTA Statement No. ISR (Zingaretti Surrebuttal) at pp. 24-25.

The only other proposal on access rate levels was the one advanced by Verizon and Qwest, which both propose reducing the RLECs' rates to match Verizon's intrastate rate levels. For the reasons stated in AT&T's Main Brief, the Commission should not adopt this proposal as it does not reduce intrastate access rates to their proper levels, and it would continue to retain differences in the RLECs' respective intrastate and interstate rates, thereby maintaining the incentive for arbitrage.<sup>89</sup>

## B. TIMING

No party has given any valid reason as to why RLEC intrastate access rates should *not* be immediately reduced to interstate levels. CenturyLink's claim that such a reduction is a "rush" is laughable.<sup>90</sup> The Commission first stated it would reform access rates over a decade ago; it has been seven years since the last phase of access reform was implemented; and the final phase is well overdue. The *only* reason given for phasing in access reform is to avoid rate shock to consumers. However, AT&T's proposal accounts for such alleged "rate shock" by using an affordable local rate benchmark to phase in basic local retail rate increases, and by using the PaUSF as a transitional tool for RLECs to recover access revenue reductions. AT&T's proposal phases in full reform over a four year period, meaning that full access reform in Pennsylvania will be completed fourteen years after the Commission first said it should happen. By *any* interpretation, this is hardly "rushed" or irresponsible reform.

The record in this case demonstrates that access reform is needed now. The Commission has said for a decade that it intended to remove implicit subsidies, and this is the case where reform must be completed. There is no legitimate basis for phasing in access

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<sup>89</sup> AT&T Main Brief at pp. 42-43.

<sup>90</sup> CenturyLink Main Brief at p. 30.

reductions, as that will just perpetuate the harms caused by forcing other customers throughout Pennsylvania to subsidize the RLECs' inefficiencies and extracurricular activities. The Commission has already implemented two phases of access reform, and this should be the third and final step towards reducing intrastate access rates to interstate levels.

**VI. IF THE RLECS' INTRASTATE SWITCHED ACCESS RATES SHOULD BE REDUCED, HOW SHOULD ANY REVENUE REDUCTIONS BE RECOVERED IN COMPLIANCE WITH 66 Pa.C.S.A. 3017?**

**A. MEANING OF THE REVENUE NEUTRALITY REQUIREMENT UNDER SECTION 3017**

As AT&T stated in its Main Brief, Chapter 30 requires the Commission to give the RLECs the *opportunity* to make up any lost revenue from access reductions on a revenue neutral basis.<sup>91</sup> This section of the law does *not* require the Commission to *guarantee* the RLECs' revenues.

CenturyLink claims that it is “not requesting a guarantee of revenues...”<sup>92</sup> PTA, for its part, claims that it must have a “real chance to actually recover the lost revenues.”<sup>93</sup> This is not simply a matter of semantics. As an initial matter, RLEC access lines and access revenues are steadily declining year over year—they cannot use this case as a way to lock in revenues in a way that shields them from this market reality. Additionally, even in the monopoly era, rates were set to create an opportunity for a company to realize revenue requirements, but never to guarantee such recovery. By requesting that each dollar lost be recovered from the USF rather than from their own customers, the RLECs are requesting revenue guarantees, which is wholly inappropriate, and is unsupported by the plain language of Section 3017 and the history of telephone rate regulation.

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<sup>91</sup> AT&T Main Brief at p. 46.

<sup>92</sup> CenturyLink Main Brief at p. 54.

<sup>93</sup> PTA Main Brief at p. 52.

A good way to understand the meaning of the revenue-neutral provision in Section 3017 is to examine the mechanics of Section 3015, which eliminated the productivity offset, thereby requiring the Commission to allow RLECs to raise local rates by the rate of inflation each year.<sup>94</sup> This requirement does not mean the Commission must determine whether the RLECs have a “real chance” to raise their rates by inflation each year given market conditions. It simply requires the Commission to give RLECs the *opportunity* to raise their rates if they file just and reasonable proposals consistent with the calculations under the law. If the RLECs choose not to raise their rates, it is not the Commission’s responsibility to find a way to make up the foregone revenues.

Similarly, by permitting carriers to raise their local rates to a reasonable benchmark level and transitionally recover any additional revenues from the USF, as proposed by AT&T, the Commission is giving the RLECs reasonable opportunities to recover access rate reductions on a revenue neutral basis. Whether a RLEC chooses to implement such a rate increase is its own decision. PTA’s witness Zingaretti even testified on this exact issue in a way that supports AT&T’s position:

If a company for its own purposes determines that \$11 or 13.50 is the rate that they need to charge, it can't charge any more than that, it would be the PTA proposal that that difference between the 11 and the 18.94, or whatever benchmark is chosen, is essentially eaten by that company. It's imputed against their revenues.

[A]s companies chose not to increase rates to get to that benchmark rate, that would be a decision they would make knowing full well that they were losing access revenue and not recovering all of the offsetting increases.<sup>95</sup>

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<sup>94</sup> 66 Pa. C.S.A. §3015.

<sup>95</sup> Tr. at pp. 599-600.

This position is entirely consistent with the way Chapter 30 works for annual inflation-based retail rate increases, and it is how it should be interpreted for revenue neutral recovery of access reductions – RLECs are given the opportunity to raise their local rates to the benchmark rate. Whether they choose to avail themselves of that opportunity is discretionary and a business decision properly left to the RLECs.

## **B. RATE INCREASES**

Consistent with their obdurate refusal to deal directly with the record developed on this proceeding, both the PTA and CenturyLink’s discussion of this issue in their Main Briefs directly contradicts the evidence, including the testimony of their own witnesses.

CenturyLink claims in its Main Brief that there should not be any local rate increases in order to recover access reductions because CenturyLink’s “local rates can no longer absorb even a small portion of revenue reductions associated with additional reductions to access rates.”<sup>96</sup> However, during the hearings, CenturyLink’s witness Bonsick stated that he did not know what a reasonable benchmark would be because CenturyLink had not done that analysis, but that a reasonable benchmark “could be something above \$18.”<sup>97</sup> Further, CenturyLink previously argued *against* a \$18 rate cap, calling the \$18 rate “unreasonable and burdensome,” citing to the fact that the \$18 cap was established seven years ago, and claiming there was no justification for continuing such a cap for an additional three years.<sup>98</sup>

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<sup>96</sup> CenturyLink Main Brief at p. 57.

<sup>97</sup> Tr. at pp. 425-426.

<sup>98</sup> AT&T Cross Ex Exh. 3.

Additionally, CenturyLink states in its Main Brief that local rates should not be increased because “aligning prices with cost is contrary to universal service.”<sup>99</sup> This statement is wrong, as CenturyLink itself previously acknowledged:

*To the extent that access charges (or a portion thereof) serve as an implicit subsidy for loop costs and basic service, it is desirable to reduce them and allow the rates charged for basic service to come closer to covering the costs of basic service. In the process, the rates that IXCs are charged for access to the LECs network come closer to cost, and long-distance charges to end users also come closer to cost. **The goal, which is both economically efficient and social-welfare-enhancing, is to allow rates for all services to approach costs regardless of the direction the rate must move in order to get there.***<sup>100</sup>

The PTA spends this section of its Main Brief lamenting the fact that its companies are rural carriers that must have full subsidization<sup>101</sup> and claiming, with respect to recovering revenue reductions from local rates, that “[t]here is little or no ‘headroom’ in the market for the IXC proposed price increases.”<sup>102</sup> Incredibly, PTA makes this claim on behalf of all carriers regardless of the level of their current retail rates – whether that rate is \$18/month or an incredibly low \$11/month. These claims ring hollow, however, when contrasted with the testimony of PTA’s witness Zingaretti, who testified at the hearing that the PTA’s position is to support a benchmark of \$18.94/month.<sup>103</sup> Given this contradiction, it is unclear what position PTA is taking in this case. However, whether PTA is arguing against any increase to local rates, or is proposing instead to establish a benchmark of \$18.94/month, the Commission should reject both positions.

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<sup>99</sup> CenturyLink Main Brief at p. 72.

<sup>100</sup> Exhibit CTL Panel-8 to CenturyLink Statement 1.2; Rebuttal Testimony of Dr. Brian K. Staihr in Kansas, July 13, 2001, p. 6 (emphasis added).

<sup>101</sup> While PTA claims that its carriers are so rural that they cannot realize any scope or scale economies (*See e.g.* PTA Main Brief at p. 60), it is important to realize that the PTA companies choose their serving areas. There is nothing that prevents the PTA companies from expanding their territories into more urban areas.

<sup>102</sup> PTA Main Brief at p. 76.

<sup>103</sup> Tr. at p. 585.

The OCA proposes a sub-rate-cap benchmark of \$17.09/month, which is based entirely on a flawed comparability analysis that has already been rejected by ALJ Colwell. The OCA benchmark leads to an exorbitant USF – tripling the size of the current USF without any legitimate basis. Increasing the size of the USF in this manner is directly contrary to ALJ Colwell’s recommendation that the USF not be treated as if it is “free money” to be plundered at will.<sup>104</sup>

Finally, Qwest presents a proposed benchmark that is “based on 125% of the average Pennsylvania RLEC residence rate.”<sup>105</sup> Unfortunately, Qwest does not calculate or even state what that rate would be. Inasmuch as Qwest does not provide any rationale for its benchmark, it must be rejected as baseless and arbitrary.

**1. The Commission Should Disregard the CenturyLink Customer Survey That Was Developed Solely for Litigation Purposes.**

CenturyLink claims that if access rates are reduced, 100% of revenue reductions must be recovered from the state USF because CenturyLink cannot profitably increase prices even a penny due to overwhelming competitive forces.<sup>106</sup> This conclusion is based entirely on a flawed, self-serving CenturyLink elasticity study survey that purports to determine how customers will react to hypothetical price increases, and comes to the very unsurprising conclusion that customers told CenturyLink they do not want to spend more for their service.<sup>107</sup>

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<sup>104</sup> ALJ Recommended Decision, Docket No. I-00040105, July 22, 2009, p. 87.

<sup>105</sup> Qwest Main Brief at p. 8.

<sup>106</sup> CenturyLink Main Brief at pp. 56-66.

<sup>107</sup> The Commission should treat this survey just as ALJ Schnierle treated a Verizon survey years ago where Verizon asked business customers if they wanted Verizon to offer discounted pricing plans. ALJ Schnierle completely discredited the survey and said the only thing surprising about it was the fact that 2% of customers actually said they did not want a discounted price. *Re: Bell Atlantic-Pennsylvania, Inc., Docket No. P-00971307, Recommended Decision, July 24, 2008*; 1998 WL 694516 (Pa.P.U.C.); p. 9.

This survey was not an independent market-based survey – it was conducted solely for purposes of supporting CenturyLink’s attack on access reductions in this case.<sup>108</sup> In fact, in e-mails exchanged between the survey company and CenturyLink, the CenturyLink market research manager told CenturyLink’s original witness, Dr. Brian Staihr, that he wanted to “make sure the output gets you what you want...”<sup>109</sup>

AT&T detailed the multiple problems with this survey and its methodology in its *Main Brief*<sup>110</sup> – among them, asking customers if they would be willing to spend more money for telephone service in the middle of the Christmas buying season, and failing to take into account real world factors that would affect customers’ decisions. In addition, the survey is useless in determining all customers’ behavior patterns as it was directed to just 810 -- or less than 3 tenths of a percent -- of CenturyLink’s approximately 300,000 customers.

The Commission simply cannot give any weight to this survey as a basis to reach the conclusion that retail rate increases must not be used for the revenue neutral recovery of access reductions. Indeed, CenturyLink itself does not rely upon or even conduct such surveys to manage its real-world business. For instance, CenturyLink did not conduct any similar customer surveys prior to implementing local rate increases in New Jersey, where CenturyLink also claimed it was facing competitive pressures.<sup>111</sup> In addition, CenturyLink did not present any evidence in the record that, as a result of the local rate increases in New Jersey, it experienced line losses its survey claimed it would see in a competitive market. Obviously, if the empirical evidence supported CenturyLink’s case, it would have introduced that evidence rather than relying on a flawed, hypothetical survey.

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<sup>108</sup> Tr. at p. 311.

<sup>109</sup> AT&T Cross Ex. Exh. 1.

<sup>110</sup> AT&T Main Brief at pp. 56-58

<sup>111</sup> Tr. at p. 423.

In addition to the multiple problems with the survey identified in AT&T's testimony and its Main Brief,<sup>112</sup> CenturyLink itself previously acknowledged that a Commission cannot rely on elasticity studies to determine how customers react to price. Specifically, CenturyLink's own Dr. Staihr – who oversaw the Pennsylvania survey -- has previously testified that *“elasticity studies tend to overestimate the responsiveness of customers to price changes for basic telephone service...”*<sup>113</sup> CenturyLink further recognized that a Commission should not refuse to raise rates solely because customers may claim they do not want rate increases:

The fact that a customer might be faced with a price adjustment that he or she finds disagreeable does not constitute ‘rate shock.’ Obviously all consumers would be happy to never see price increases on the goods and services they buy. But price adjustments occur throughout any market economy, and prices tend toward cost in a market economy, and the fact that many local service customers have been accustomed to reaping the benefits of cross-subsidization for years is no reason to attempt to maintain an inefficient, unsustainable pricing mechanism any longer than necessary.<sup>114</sup>

Although the PTA did not conduct its own elasticity study, the PTA attempts to jump on the CenturyLink bandwagon and claims, without any actual evidence, that if the PTA were to undertake the same survey, the results would be the same.<sup>115</sup> This claim is not only highly speculative, but it is demonstrably false, as real world evidence in the record shows. In fact, as demonstrated in the charts attached hereto as Appendix 1, PTA's line losses over the years have absolutely nothing to do with changes in price.<sup>116</sup> For instance, in 2002, the PTA company Denver and Ephrata raised its price by over 35%, yet there was virtually no change in its line

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<sup>112</sup> AT&T Main Brief at pp. 56-58.

<sup>113</sup> Exhibit CTL Panel 8 to CenturyLink Statement 1.2 (Lindsey/Harper Rejoinder); May 1999 Kansas testimony at p. 19.

<sup>114</sup> Exhibit CTL Panel 8 to CenturyLink Statement 1.2 (Lindsey/Harper Rejoinder); Rebuttal Testimony of Brian K. Staihr, September 19, 2003, Florida, p. 5.

<sup>115</sup> PTA Main Brief at p. 78.

<sup>116</sup> See Tr. at pp. 604-605. *See also* AT&T Cross Examination Exhibit 5.

loss.<sup>117</sup> In other years, line losses remained steady regardless of the changes in price.<sup>118</sup> As yet another example, Citizens of Kecksburg has maintained an \$11/month local rate for many years, but each year its number of lines have changed by large percentages, thereby showing that line losses (or gains) have little relation to price.<sup>119</sup>

There is one final point worth noting with respect to the CenturyLink survey. CenturyLink claims that its elasticity survey shows that a small percentage change in price will lead to a much larger change in demand. Although CenturyLink created this study for the purpose of *disproving* that rate *increases* would produce higher overall revenues, they inescapably proved the contrary as well. CenturyLink's survey asserts that a \$2 change in price will yield nearly a 30% change in quantity.<sup>120</sup> Assuming CenturyLink's untested survey were actually valid, then it is inescapably true that the same \$2 *reduction* in price would yield nearly a 30% *increase* in the quantity of customers, with a significant net increase in total revenues.

AT&T agrees—as CenturyLink's expert witness previously testified—that CenturyLink's “elasticity study tends to overestimate the responsiveness of customers to price changes for basic telephone service.” However, *if CenturyLink actually believed* the elasticity results, then it could *lower* its retail rate by \$2 in order to reap the revenue net increase from the associated 30% increase in customers. That CenturyLink did not take such a step, and does not advocate for that result here, simply underscores the lack of credence the Commission should place in CenturyLink's survey and its results.

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<sup>117</sup> *Id.*

<sup>118</sup> Tr. at p. 605.

<sup>119</sup> See Attachment 3 to AT&T Statement 1.2 (Nurse/Oyefusi Rebuttal) for Citizens-Kecksburg's number of lines each year.

<sup>120</sup> CenturyLink Main Brief at p. 54.

## 2. The PTA's Position On Local Rate Increases Is Unclear.

In this section of its Main Brief, the PTA argues that the PTA companies are all rural carriers, and that it is expensive to serve rural areas.<sup>121</sup> These arguments are presumably made to claim that all fixed costs in the rural territories cannot possibly be recovered from the end users. AT&T has never requested that local rates be increased to cost-based rates in the most highly rural areas. To the contrary, AT&T has proposed that the rates be increased to a reasonable and affordable benchmark, with transitional support for the RLECs from the PaUSF.

There are three primary responses to the PTA's arguments on these issues. First, the record evidence is that Pennsylvania generally, and the Pennsylvania RLECs specifically, are not in fact as rural as the PTA would like this Commission to believe.<sup>122</sup> The facts are:

- Out of the 50 states, Pennsylvania is ranked as the tenth most densely populated state.
- There are three PTA so-called "rural" companies whose service areas are actually *more* densely populated than Verizon's territory in Pennsylvania.
- Ironton Telephone Company has an amazingly high density of 235.6 households/square mile – substantially more densely populated than Verizon's Pennsylvania service area.
- Denver & Ephrata Telephone & Telegraph Company has a density of 197 households/square mile – also more densely populated than Verizon's Pennsylvania service area.
- North Pittsburgh Telephone Company has a density of 164 households/square mile – essentially equal to Verizon.
- Verizon serves more rural Pennsylvanians than all the PTA companies combined (including CenturyLink).

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<sup>121</sup> PTA Main Brief at pp. 54-63.

<sup>122</sup> See AT&T Statement 1.2 (Nurse/Oyefusi Surrebuttal) in Docket No. I-00040105 before ALJ Colwell, p. 21 and Attachment 5 thereto. See also ALJ Colwell July 2009 Recommended Decision, Findings of Fact 35-38.

The second response is that the PTA companies' intrastate costs are reduced dramatically when taking into account the amount they receive from federal universal service funding. It is well known that the local loop constitutes the overwhelming majority of the cost of providing basic service. When factoring in federal USF receipts, the largest PTA companies' loop costs are reduced to around \$21/month, while the highest loop cost is only approximately \$28/month.<sup>123</sup> Therefore, the amount these companies must recover from their local customers is dramatically reduced, and the claims that the PTA companies cannot largely recover their costs from their own customers are not valid.

Finally, the PTA companies' costs and rates have absolutely no rational correlation to each other. When looking at the amount of PTA loop costs after the federal USF support is received, the local rates of each company have nothing to do with how "rural" a company may be (and no party disputes that the more rural a company is, the more expensive its costs will be).<sup>124</sup> In addition, while the PTA claims that it must have high loop contribution from the Carrier Common Line ("CCL") charge, the CCL rates likewise have nothing to do with a company's loop costs.<sup>125</sup> In fact, *Armstrong North has the second highest loop costs, yet it has no CCL at all!*

Boiled down to basics, these data completely undermine the PTA's claims that it must recover all rate reductions from sources other than its own retail customers. If a company like Armstrong North, which is one of the most rural companies with the highest costs, can survive without a CCL and with intrastate access rates that are actually lower than their interstate rates, there is no valid basis for concluding other companies cannot similarly survive.

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<sup>123</sup> Exhibit K to AT&T Statement 1.0 (Nurse/Oyefusi Direct). *See also* Appendix 2 to this Reply Brief.

<sup>124</sup> See Appendix 2 to this Reply Brief.

<sup>125</sup> *Id.*

When asked on cross examination whether it is the PTA's position that no RLEC can recover any access reductions through increased local rates, the PTA witness admitted that is not PTA's position.<sup>126</sup> For the first time, the PTA stated that its position is to support a local retail benchmark of \$18.94/month.<sup>127</sup> In its Main Brief, the PTA admits that this benchmark is based exclusively on its comparability analysis presented to ALJ Colwell.<sup>128</sup> As AT&T noted in its Main Brief,<sup>129</sup> ALJ Colwell (and this Commission) explicitly rejected this comparability analysis. There is no basis for retrying the comparability analysis issue, and no reason for reaching a different conclusion than ALJ Colwell.

Finally, PTA, pointing to an FCC report showing a national average rate for largely unreformed residential basic local service at \$15.03/month, asserts that AT&T's proposed benchmark will exceed this national average local rate by a considerable margin.<sup>130</sup> This claim is circular and utterly irrelevant. It is circular to introduce an average that includes unreformed local rates as a bar to reforming local rates because they would exceed the average. Also, each state obviously has its own characteristics and the Commission should not be deterred from following the evidence *in this case* that adopting a \$22/month benchmark *for this state* is entirely consistent with universal service and affordability principles. If in fact the Commission is concerned that it will become an "outlier," the Commission can take comfort in knowing that RLECs do in fact charge \$22/month and higher in other states. As AT&T stated

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<sup>126</sup> Tr. at p. 598-599.

<sup>127</sup> *Id.*

<sup>128</sup> PTA Main Brief at p. 72.

<sup>129</sup> AT&T Main Brief at pp. 55-56.

<sup>130</sup> PTA Main Brief at p. 72.

in its testimony, companies in bordering New York charge \$23/month.<sup>131</sup> Therefore, AT&T's \$22/month benchmark plainly is not extraordinarily high and is eminently reasonable.

### 3. The OCA's Proposed Benchmark of \$17.09 Must Be Rejected.

Similar to the PTA, the OCA proposed a benchmark based *exclusively* on comparability. This benchmark is flawed for many reasons. First and foremost, it is below the current \$18 rate cap, and below the rate that some companies, such as D&E and CenturyLink, already charge. It makes absolutely no sense to have a benchmark that is *below* a rate this Commission found to be reasonable seven years ago. Lowering the current benchmark presumably should be based on an empirical showing that the current benchmark has failed to achieve its universal service goal. Of course, OCA did not, and could not make such a showing. To the contrary, ALJ Colwell recently recognized that no rate cap at all is required, in direct contrast to OCA's position to essentially lower the cap in this case.<sup>132</sup>

Second, and just as with the PTA's proposal, ALJ Colwell has already rejected the OCA's comparability standard.<sup>133</sup> It is improper to re-litigate that issue again in this case, and in event, there is no reason to reach a different conclusion than that of ALJ Colwell.

Third, Verizon convincingly demonstrated in its Main Brief why the OCA's calculation of comparability to reach the \$17.09 rate is itself flawed.<sup>134</sup> Even if this Commission were inclined to reverse ALJ Colwell and its own stated positions directly contrary to the OCA's comparability analysis, and adopt a comparability standard as the basis for a benchmark in this

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<sup>131</sup> AT&T Statement 1.2 (Nurse/Oyefusi Rebuttal) at fn. 8. *See also* Appendix 3 attached to this Reply Brief.

<sup>132</sup> ALJ Colwell Recommended Decision, Docket No. I-00040105, July 22, 2009, p. 75

<sup>133</sup> *Id.* at p. 80-82, wherein ALJ Colwell states at fn. 18, "AT&T argues convincingly that the OCA and PTA offer a flawed standard for comparability."

<sup>134</sup> Verizon Main Brief at pp. 32-33.

case, a properly applied comparability analysis would still lead to rates nearly as high as \$25/month.<sup>135</sup>

Finally, as discussed further below, the OCA benchmark would lead to a gigantic USF. OCA appears overly concerned about ensuring the RLECs are made whole, but callously ignores the millions of customers throughout the state that would be required to fund the nearly \$100 million RLEC subsidy program. ALJ Colwell held that a plan to even maintain the current fund was not good policy, much less tripling the size of the fund as the OCA proposes to do through its \$17.09 benchmark:

The OCA plan will institutionalize the present fund and will keep RLEC rates comparable to Verizon PA rates -- as long as the Commission requires Verizon's customers as well as those of the other contributors to the Fund to subsidize RLEC services. The OCA plan will promote the goals of universal service in providing affordability and comparability but does not promote competition.<sup>136</sup>

#### **4. Qwest's Proposed Benchmark Cannot Be Adopted.**

In its Main Brief, Qwest proposed that the Commission set a residential benchmark rate at 125% of the average Pennsylvania RLEC residence rate.<sup>137</sup> Qwest's entire support for this proposed benchmark amounts to a single sentence claiming that this figure will "help limit the need for significant increases in the PaUSF, thereby striking an appropriate balance between local rate affordability and the need for PaUSF assistance."<sup>138</sup> It is unclear how Qwest can even know this because Qwest does not even know what its benchmark rate actually is – is it \$15? Is it \$25? If we do not even know what the benchmark rate is, it is impossible to know what the drain will be on the PaUSF and whether Qwest's benchmark will in fact limit the need for

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<sup>135</sup>

*Id.*

<sup>136</sup>

*Id.* at p. 82.

<sup>137</sup>

Qwest Main Brief at p. 8.

<sup>138</sup>

*Id.*

significant increases in the PaUSF. Further, Qwest does not explain why using the average RLEC residence rate makes any sense at all when comparability is supposed to be based on a comparison to urban rates. The Qwest proposal is completely unsupported, and it should not be adopted.

### C. PENNSYLVANIA USF

The solution to access reform cannot be to simply shift all (or even most) implicit subsidies from access charges to the Pennsylvania USF. This would just perpetuate the inefficient and anti-competitive cross-subsidization of the RLECs to the detriment of consumers throughout Pennsylvania. The OSBA got it exactly right when it argued against the expansion of the current USF in the case before ALJ Colwell:

You can't have competition and at the same time provide general subsidies. That is simply a tax on one group of consumers to support another group of consumers without giving the first group any voice in how or why it is being taxed.<sup>139</sup>

More importantly, ALJ Colwell got it exactly right when she found:

The PA USF is a fund which exists because the ratepayers of other telecommunications providers have paid the money, unwittingly, as a hidden tax. It is not "free money" to be plundered at will and without concern for its origins or for whether it is the best use of the money. All parties agree that the concept of universal service is a worthy one. This fund should be reconstructed to provide assistance to those customers who need it, and for those companies who can meet a stringent test for determining that they serve an area whose costs are so high that the company itself deserves extra help for that area alone.

At some point, the market is meant to rely on competition to keep rates affordable. Institutionalizing the PA USF in its present form to provide subsidies to companies who do not have to prove need will not assist the market in reaching its goals and will, instead, provide barriers to entry for new carriers.<sup>140</sup>

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<sup>139</sup> OSBA Statement 1.1 (Buckalew Rebuttal), January 15, 2009, p. 14.

<sup>140</sup> ALJ Recommended Decision, Docket No. I-00040109, July 22, 2009, pp. 87-88.

The burden some parties nevertheless would place on the majority of Pennsylvania consumers cannot be overstated. The OCA's proposal to *triple* the size of the PA USF to nearly \$100 million, for example, would amount to a \$90/line annual subsidy even for those customers who have competitive options, and for those customers who are voluntarily purchasing bundles at prices much higher than AT&T's proposed benchmark of \$22/month.<sup>141</sup> ALJ Colwell has already found that perpetuating the existing \$34 million USF would be bad policy. It should go without saying that tripling the current USF would be three times as bad.

AT&T does not deny, and has never denied, that universal service is a laudable goal. However, as stated above, the best way to achieve universal service is by promoting a healthy, robust, and sustainable competitive market for voice-grade communications, not by propping up and artificially subsidizing certain companies at the expense of others (and of those other companies' ratepayers).

In its Main Brief, the PTA blatantly misrepresents AT&T's position on universal service funding. Specifically, the PTA claims that "[a]ll of the IXCs, with the exception of Qwest, adamantly opposed the sustained availability of any USF as continued support for comparable, affordable and sustainable local rates."<sup>142</sup> To the contrary, AT&T's position in this case is that the USF should be *expanded* by nearly \$20 million on a transitional basis in order to immediately reform access rates and achieve measured access reform through reasonable rebalancing.

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<sup>141</sup> AT&T Statement 1.4 (Nurse/Oyefusi Rejoinder) at p. 3.

<sup>142</sup> PTA Main Brief at p. 79.

The PTA also argues that AT&T is somehow being hypocritical in this case because it receives state and/or federal universal service funding in other states.<sup>143</sup> While PTA chose to ignore the evidence countering this claim, the Commission should not. As AT&T stated in its Rebuttal Testimony,

AT&T has already responded numerous times to the RLECs' claims about AT&T being a recipient of both state and federal universal service funding so it is a bit baffling as to why they keep raising it, other than to create confusion. AT&T is the largest rural carrier in the country, so it is hardly surprising that AT&T would be the largest recipient of high cost universal service funding. The more important point, however, is that AT&T pays more into each and every state and federal USF than it receives. Therefore, it is perfectly consistent for AT&T to advocate a properly structured and limited USF.<sup>144</sup>

The problem with the OCA, the PTA and the CenturyLink positions to permanently expand the USF to an unreasonably large size is that there is no credible evidence that such a large fund is necessary to actually ensure all customers pay affordable local rates.<sup>145</sup> It is critical to remember what a universal service fund is about – it is about protecting customers and ensuring that they are paying affordable rates so that all customers can have telephone service. USF support is not about protecting RLECs and their revenue streams, or about insulating them from the effects of competition, the way that the RLECs and OCA propose.

CenturyLink itself testified that the primary purpose of universal service is to ensure service to “rural, high-cost consumers who generally do not have viable competitive alternatives available and who would otherwise not have any communications services available without

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<sup>143</sup> *Id.* at pp. 81-83.

<sup>144</sup> AT&T Statement 1.2 (Nurse/Oyefusi Rebuttal) at pp. 37-38.

<sup>145</sup> OCA claimed in its Main Brief at p. 50, fn. 48 that its USF is not permanent because the USF would decrease each year by \$10 million if Verizon raised its retail rates by 41 cents. However, this was based on an incorrect calculation that the RLECs have 2 million access lines – in fact they have just over 1 million access lines. *See* AT&T Statement 1.1 at p. 36. Thus, the reduction each year to a \$100 million fund would be only about \$5 million. In addition, if Verizon chose not to implement a rate increase, there would be no reduction at all.

implicit and/or explicit universal service support to provide communications services at affordable prices that are comparable to the rates of other consumers.”<sup>146</sup> There is no record evidence as to how many of these customers even exist, if any. However, as discussed above, there cannot be very many because competition exists throughout Pennsylvania. Even if there are some limited number of customers who do not presently have competitive alternatives, and who cannot presently obtain voice-grade service at affordable rates without subsidies, those customers should be cared for through *targeted* subsidy mechanisms, not the sort of massive expansion to the USF that the RLECs and OCA advocate.

By any measure, the levels of subsidies the RLECs and OCA are claiming are needed are extreme and go far beyond the amounts needed to assure telephone services for that exceedingly limited number of customers. As an example, the OCA proposes that CenturyLink receive nearly **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** in subsidies.<sup>147</sup> As AT&T testified:

If CenturyLink is given **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** in subsidies, *every single one of CenturyLink’s lines would be subsidized by over* **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**. This includes business lines. This includes the majority of CenturyLink’s customers who have elected to forego standalone local service in favor of a bundled offering. More importantly, this includes a subsidy for customers that have multiple competitive alternatives, and therefore under CenturyLink’s own definition, do not *need* universal service protections or subsidies. Assume for the sake of argument that 50% of CenturyLink’s customers have no competitive alternative – and by CenturyLink’s own claims that is way too high – a **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** subsidy to CenturyLink’s “universal service customers” would equate to over **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**. Under a more realistic, but still conservative, assumption that 10% of CenturyLink’s customers have no competitive alternative, the **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** CenturyLink subsidy would equal over **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**. Even more troubling, this subsidy will continue

<sup>146</sup> CenturyLink Statement 1.1 (Lindsey/Harper Surrebuttal Testimony) at pp. 14-15.

<sup>147</sup> AT&T Statement 1.4 (Nurse/Oyefusi Rejoinder) at p. 8.

permanently.<sup>148</sup> Thus, under CenturyLink's proposal, as more and more CenturyLink customers leave to go to a competitor (or at least have the option), the constant **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** subsidy would continue on, supporting an ever-smaller number of customers.<sup>149</sup>

This evidence shows that the RLECs' and CenturyLink's approach is clearly wrong, and unarguably bad policy. If subsidies were truly about universal service and protecting customers, then the amount of subsidies should *decrease* when there are less customers to support. But that is not how their proposal works. To the contrary, the RLECs and CenturyLink, and even the OCA, envision a USF that actually will grow the subsidy to those companies even as they lose lines to competition.<sup>150</sup>

In contrast, AT&T's proposal in this case provides a reasonable and balanced approach to universal service concerns. It reduces implicit subsidies, thereby eliminating market distortions and allowing full and fair competition to remain sustainable throughout the Commonwealth. AT&T's proposal also requires the RLECs to first turn to their own customers to recover any revenue reductions from access rate decreases. Again, this sends the proper pricing signal to the market and will even allow local competition to develop and thrive where it does not exist today because local rates are being artificially suppressed. Finally, AT&T's proposal permits the expansion of the state USF on a transitional basis in order to reform access rates immediately while phasing in local rate increases over a period of four years. This furthers the Commission's original intent regarding the purpose of a USF, as noted by ALJ Colwell:

The PA USF anticipated in the *Global Order* was intended to be an interim measure for easing rural ILECs away from high access charges by compensating them for the difference which competition introduced into the

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<sup>148</sup> The OCA claimed that under its proposal, the size of the USF would decrease each year, but that was based on speculation about whether Verizon will increase its retail rates each year, thereby increasing the "comparable" benchmark. OCA has no proposal of decreasing the size based on a reduction in customers that actually need support.

<sup>149</sup> AT&T Statement 1.4 (Nurse/Oyefusi Rejoinder) at pp. 9-10.

<sup>150</sup> *Id.* At 9-11

market. That “interim measure” has continued for ten years, and that is considerably longer than the Order anticipated.<sup>151</sup>

## **VII. GENERAL LEGAL ISSUES**

### **A. RETROACTIVITY OF ANY ACCESS RATE REDUCTIONS**

Contrary to PTA’s claim,<sup>152</sup> AT&T did not waive this issue. However, at this time, AT&T’s proposal is for the Commission to implement access reform on a going-forward basis, and therefore AT&T is not requesting that the Commission reach a decision on this issue.

### **B. COMPLIANCE**

As AT&T stated in its Main Brief, there is no need for a long, drawn out compliance process.<sup>153</sup> The telecommunications industry is adept at implementing rate changes, and “compliance” issues should not in any way be used as a basis for delaying much needed reform.

## **VIII. CONCLUSION**

Whatever merit the access regime once may have held in the era of monopoly telecommunications, it has long since outlived that usefulness in today’s radically changed markets. Perversely, the mechanism that once was conceived as a means of protecting consumers instead harms them, forcing consumers across the Commonwealth – not just in the RLECs’ territories –to pay more for their telecommunications services, exacerbating inefficient and unfair cross-subsidies, and impeding the Legislature’s and the Commission’s efforts to foster full competitive choice for all of the Commonwealth’s telecommunications customers. The Commission recognized this fact over ten years ago, and has steadfastly stated its intention to

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<sup>151</sup> ALJ Colwell Recommended Decision at Docket No. I-00040105, p. 88.

<sup>152</sup> PTA Main Brief at p. 7.

<sup>153</sup> AT&T Main Brief at pp. 60-62.

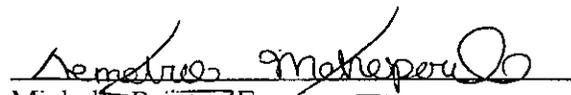
complete reform in light of the changes to the market. The record developed in this case presents the Commission with the tools to follow through on that commitment, and to do so without further delay.

The RLECs argue that the Commission should abandon its policy of access reform, claiming that RLECs will be harmed and universal service will be destroyed. However, the RLECs' claims of dire consequences are overblown and unsupported by any actual evidence. To the contrary, the evidence demonstrates that eliminating implicit subsidies will foster an environment for full and fair competition, thereby bringing all of the benefits of competition to consumers, and promoting universal service policies. In addition, consumers throughout Pennsylvania will no longer be paying to keep rural local rates artificially low. Instead, the RLECs will have to compete on their own merits rather than rely on subsidies from their competitors. Just as substantial benefits were brought to customers by opening the local market to competition, requiring all companies to compete for customers based on their own efficiencies and offerings will bring measurable and continued benefits to all Pennsylvania customers.

AT&T's proposal in this case is to immediately reduce intrastate access rates to interstate levels and rate structures. In order to recover any revenue reductions from these access rate changes, AT&T proposes that the Commission require RLECs to first turn to their own customers, and establish a retail rate benchmark of \$22/month—this Commission's \$18 rate cap from seven years ago merely brought forward by inflation. This benchmark will then increase each year by \$1/month for those limited carriers that have not fully rebalanced their rates on a revenue neutral basis. If the RLECs cannot recover all revenue reductions by increasing their retail rates to the benchmark, then AT&T proposes that the RLECs be permitted to obtain any additional revenue from the state USF on a transitional basis. As the benchmark is raised each

year, the amount of funding from other carriers through the USF will decrease. AT&T submits that this proposal is a reasonable and balanced approach that fully accomplishes this Commission's goals of maintaining universal service while promoting a full and healthy and sustainable competitive market throughout all of Pennsylvania. AT&T respectfully requests that the Commission adopt its proposal and finalize access reform for the RLECs by no later than the end of this year.

Respectfully submitted,

  
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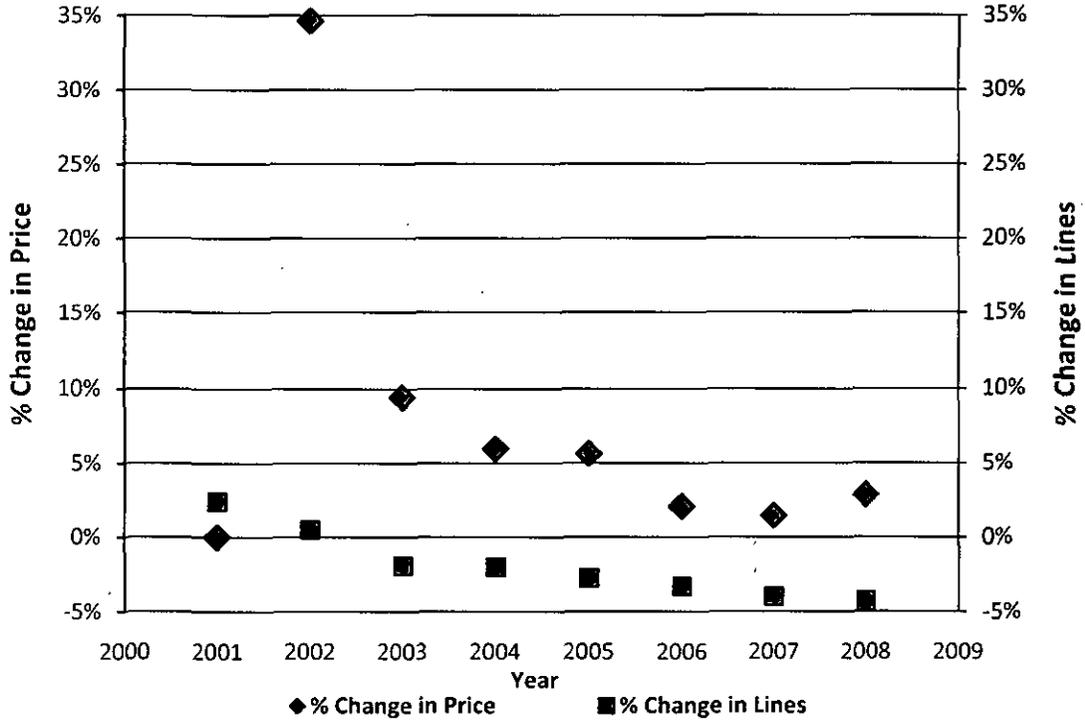
Date: June 3, 2010

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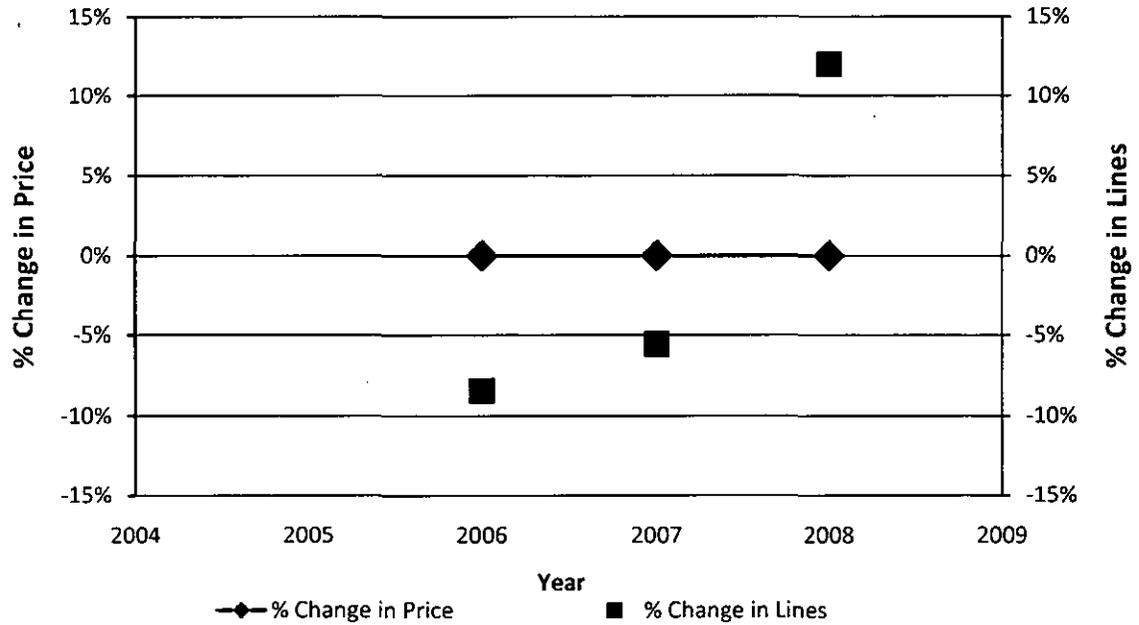
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**SECRETARY'S BUREAU**

## PTA Data Show Line Losses Are Largely Unrelated to Price Changes



Per Hearing Transcripts p. 604, 4/16/2010, (PTA/Zingaretti).  
Data from PTA response to ATT- Cross Exhibit # 5.

## Citizens - Kecksburg Data Demonstrate the Lack of a Correlation Between Line Losses and Price



Data from PTA response to ATT-PTA 1-1(b), included in Attachment # 3, AT&T Statement 1.2.

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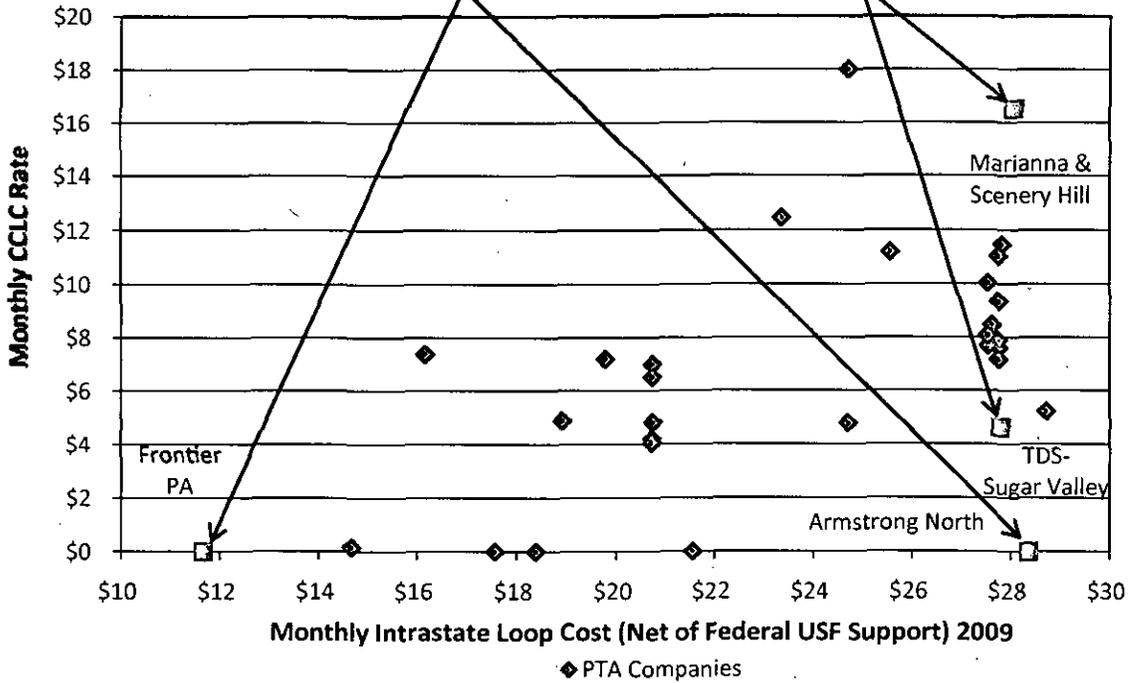
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**PA PUBLIC UTILITY COMMISSION**  
**SECRETARY'S BUREAU**

## There Is No Logical Correlation Between the PTA Companies' CCL Rates and Intrastate Loop Costs

*Neither Frontier PA nor Armstrong North has a CCL charge, yet their intrastate loop costs vary by more than \$16 a month.*

*Marianna & Scenery Hill and TDS-Sugar Valley have similar intrastate loop costs, but their CCL rates vary by almost \$12 a month.*



Company	Loop Cost After FUSF 2009 <sup>1</sup>	CCLC Rate <sup>2</sup>	Company	Loop Cost After FUSF 2009 <sup>1</sup>	CCLC Rate <sup>2</sup>	Company	Loop Cost After FUSF 2009 <sup>1</sup>	CCLC Rate <sup>2</sup>
North Penn	\$28.72	\$5.23	Palmerton	\$27.55	\$10.03	Wnd Conestoga	\$20.73	\$4.83
Arm. North	\$28.36	\$0.00	Bentleyville	\$27.54	\$7.68	Wstrm. D & E	\$20.73	\$4.04
M' & Scenery	\$28.06	\$16.50	Laurel Highl.	\$27.53	\$8.07	CenturyLink	\$19.78	\$7.19
Yukon Waltz	\$27.83	\$11.45	Citzns Kecksbg	\$25.56	\$11.18	Windstream	\$18.91	\$4.88
TDS-Sugar Val	\$27.79	\$4.63	TDS - M & M	\$24.71	\$4.78	Frntr Canton	\$18.39	\$0.00
Venus	\$27.75	\$7.59	Ironton	\$24.70	\$17.99	Frntr Lakewood	\$17.57	\$0.00
Hickory	\$27.75	\$9.34	Armstrong PA	\$23.35	\$12.44	Lackawaxen	\$16.16	\$7.38
Pennsylvania	\$27.75	\$7.16	Frt Breezewood	\$21.56	\$0.00	Frt Oswayo Rvr	\$14.67	\$0.17
South Canaan	\$27.75	\$11.02	Buffalo Valley	\$20.73	\$4.20	Frontier Pa.	\$11.67	\$0.00
NEPA	\$27.74	\$7.88	Frt Comwlth	\$20.73	\$7.00			
Pymatuning	\$27.62	\$8.46	N. Pitt. Consol.	\$20.73	\$6.51			

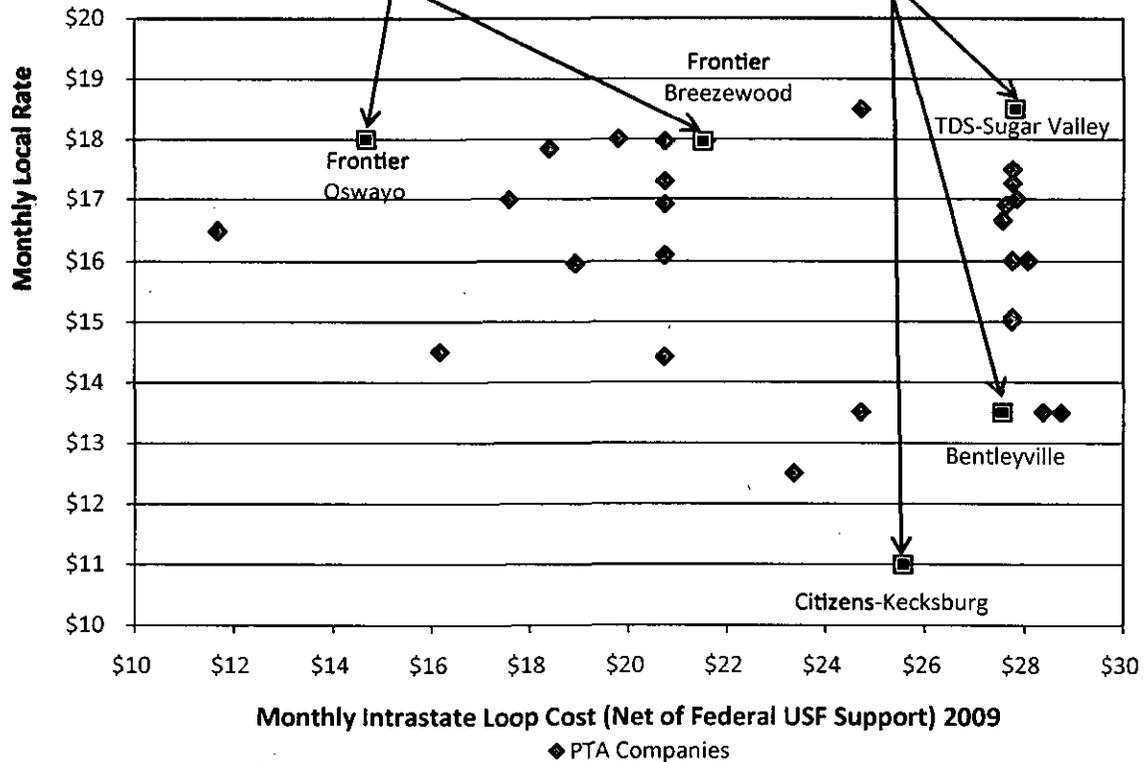
<sup>1</sup> Source: AT&T Panel Direct Testimony Ex. K

<sup>2</sup> Source: PTA Exhibit GMZ-9 (Pg. 2), CTL Response to ATT-EQ-1-25.

## The PTA Companies' Local Rates Have No Rational Relationship to Intrastate Loop Costs

*Frontier Oswayo and Frontier Breezewood have essentially equal local rates, but their intrastate loop costs vary by about \$7 a month.*

*TDS Sugar Valley and Bentleyville have similar intrastate loop costs, but their local rates vary by \$5 a month, and Citizens Kecksburg's local rate has no cost rationale.*



Company	Loop Cost After FUSF 2009 <sup>1</sup>	Current Res Rate <sup>2</sup>	Company	Loop Cost After FUSF 2009 <sup>1</sup>	Current Res Rate <sup>2</sup>	Company	Loop Cost After FUSF 2009 <sup>1</sup>	Current Res Rate <sup>2</sup>
North Penn	\$28.72	\$13.49	Palmerton	\$27.55	\$16.66	Wnd Conestoga	\$20.73	\$16.09
Arm. North	\$28.36	\$13.50	Bentleyville	\$27.54	\$13.50	Wstrm. D & E	\$20.73	\$17.96
Ma & Scenery	\$28.06	\$16.00	Laurel Highl.	\$27.53	\$13.51	CenturyLink	\$19.78	\$18.00
Yukon Waltz	\$27.83	\$17.00	Citzns Kecksbg	\$25.56	\$11.00	Windstream	\$18.91	\$15.96
TDS-Sugar Val	\$27.79	\$18.50	TDS - M & M	\$24.71	\$18.50	Frnrtr Canton	\$18.39	\$17.84
Venus	\$27.75	\$16.00	Ironton	\$24.70	\$13.50	Frnrtr Lakewood	\$17.57	\$16.99
Hickory	\$27.75	\$17.27	Armstrong PA	\$23.35	\$12.50	Lackawaxen	\$16.16	\$14.50
Pennsylvania	\$27.75	\$17.50	Frt Breezew'd	\$21.56	\$17.96	Frt Oswayo Rvr	\$14.67	\$18.00
South Canaan	\$27.75	\$15.07	Buffalo Valley	\$20.73	\$17.30	Frontier Pa.	\$11.67	\$16.49
NEPA	\$27.74	\$15.00	Frt Comwlth	\$20.73	\$14.41			
Pymatuning	\$27.62	\$16.90	N. Pitt. Consol.	\$20.73	\$16.91			

<sup>1</sup> Source: AT&T Panel Direct Testimony Ex.K

<sup>2</sup> Source: AT&T Panel Rebuttal Testimony, Attachment 5 (Revised).

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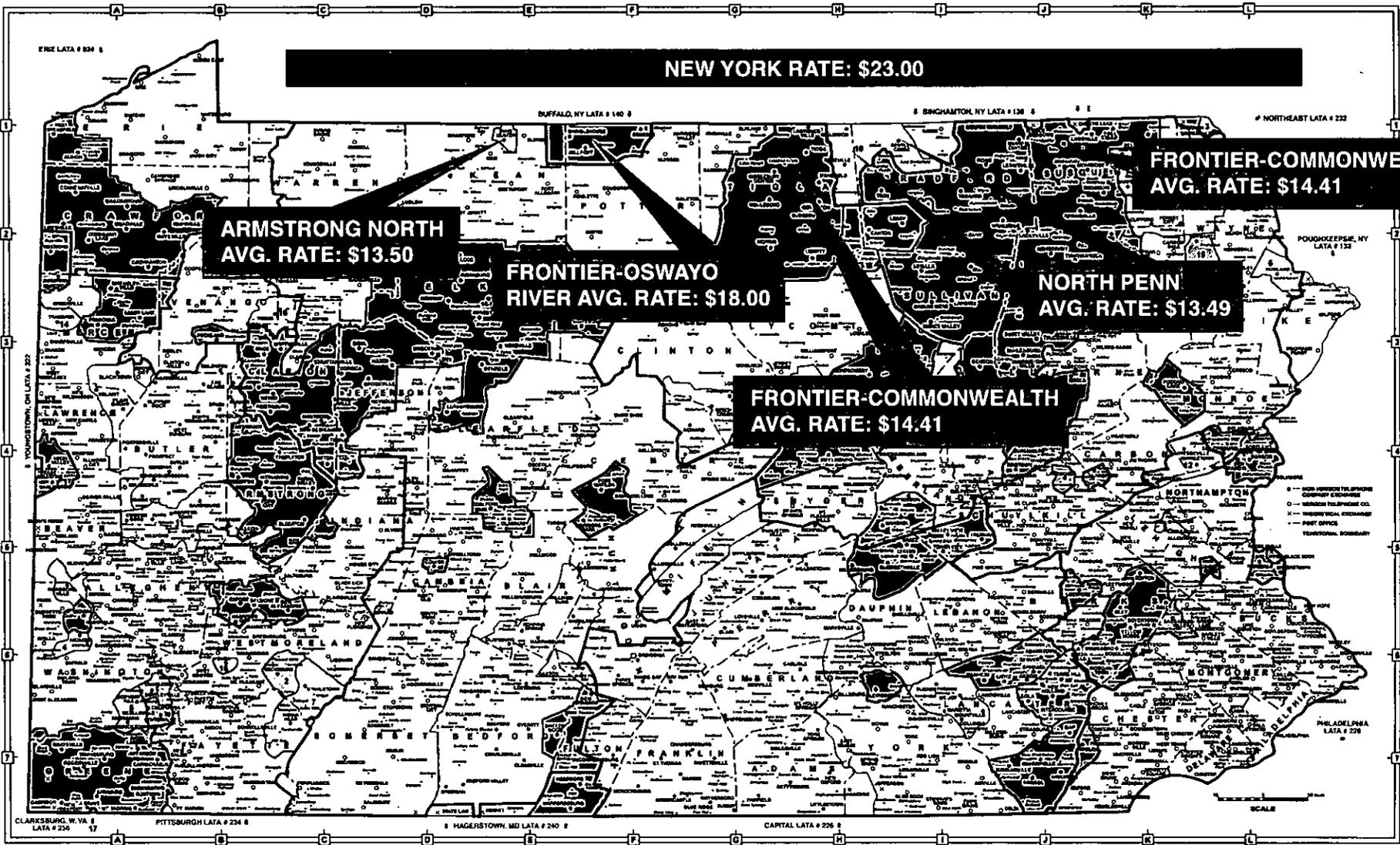
PA PUBLIC UTILITY COMMISSION  
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COMPANY	LOCATION	COMPANY	LOCATION	COMPANY	LOCATION
AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.
AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.
AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.

# TELEPHONE MAP OF PENNSYLVANIA

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 PENNSYLVANIA TELEPHONE ASSOCIATION  
 Harrisburg, Pennsylvania  
 June 2000

COMPANY	LOCATION	COMPANY	LOCATION	COMPANY	LOCATION
AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.
AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.
AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.	AMERICAN TELEPHONE & TELEGRAPH CO.	ALTOONA, PA. INC.



**SOURCES:**  
 See map from Verizon Direct St. 1.0, Exhibit 1  
 Local rates from PTA Direct, Exhibit GM2-7  
 New York Rate from AT&T Panel Rebuttal Testimony, Page 8, fn. 12

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of AT&T's Reply Brief upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Chicago, Illinois, this 3rd day of June, 2010.

**VIA E-MAIL AND FIRST CLASS MAIL**

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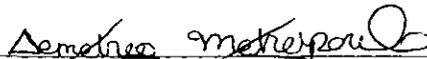
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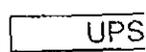


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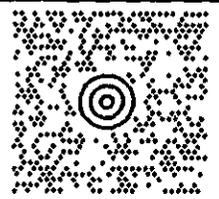
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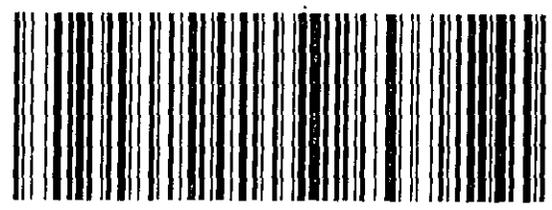
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