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PA PUBLIC UTILITY COMMISSION
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VIA OVERNIGHT MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Second Floor
Harrisburg, PA 17120

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

AT&T Communications of Pennsylvania, LLC., TCG New Jersey, Inc. and TCG Pittsburgh, Inc. vs. Armstrong Telephone Company – Pennsylvania, et al..
Docket Nos. C-2009-2098380, C-2009-2099805 and C-2009-20098735

Dear Secretary Chiavetta:

On behalf of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (hereinafter "CenturyLink") please find an original and nine (9) copies of CenturyLink's Exceptions in the above-referenced matter.

Please note that these Exceptions are Proprietary and should be treated in accordance with the protective order. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Sue Benedek

Enclosures

ZEB/jrh

cc: The Honorable Kandance D. Mellio (*via overnight and electronic mail*)
Certificate of Service (*via electronic and first-class mail*)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

EXCEPTIONS OF
THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA LLC
d/b/a
CENTURYLINK

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

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Dated: September 2, 2010

PUBLIC VERSION

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I. INTRODUCTION

The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (“CenturyLink”), a Rural Local Exchange Carrier (“RLEC”), respectfully submits the following Exceptions to the Recommended Decision (“RD” and “Decision”) of Administrative Law Judge (“ALJ”) Kandace F. Melillo, as issued on August 3, 2010 by Secretary Rosemary Chiavetta. CenturyLink thanks ALJ Melillo for her efforts and diligence in reviewing the record and the various positions of the parties. CenturyLink also thanks the Pennsylvania Public Utility Commission (“Commission”) and its Staff in advance for its time and consideration of the important far-reaching matters addressed in the Decision and CenturyLink’s Exceptions.

CenturyLink respectfully submits, however, that the ALJ erred in recommending that all intrastate switched access rates of the RLECs be re-priced to mirror the “rates and structure” of each RLEC’s interstate switched access rates. Under the ALJ’s Decision, if adopted, AT&T and aligned parties will pay lower access charges of approximately \$86 million (excluding Verizon),¹ with no required flow through of the savings or demonstration of net consumer benefits to rural Pennsylvanians arising from such significant access expense savings inuring to them.

If the Decision is adopted, consumers served by CenturyLink and the other RLECs in Pennsylvania – an estimated 1.08 million lines – will likely see their local exchange rates (and rate of other noncompetitive services) significantly increase (given the ALJ’s recommended local rate benchmark of \$23.00/month (\$32.00 on total bill

¹RD at p. 40.

basis) simply to fund the significant access reductions recommended by the ALJ.² The PA USF is not relied upon in the Decision *at all* to effectuate the Decision's intrastate switched access reductions.³ In addition, the Decision rejects expanding the PA USF, although consistency with ALJ Colwell's Decision in the USF Investigation is not required.⁴

The Decision also leaves to "technical conferences" the determination of which noncompetitive consumer rates, which include business rates, can be increased to meet the new \$23.00/month "affordability" benchmark. Assuming the benchmark can be achieved through local rate increases as recommended, CenturyLink's residential customers will see local and noncompetitive rates increase *from \$18.00/month to \$23.00/month over a 2-4 year period*, commencing "as early as six (6) months, but no later than twelve (12) months from the date of entry of the Final Commission Order (Phase I)."⁵ When the access charge reductions recommended by the ALJ are spread over the 1.08 million RLEC lines in Pennsylvania, local service rates would have to increase by approximately \$6.65 per line, per month (\$86 million/1.08 million lines).

The ALJ's Decision to have consumers bear the burden for access reductions through local rate increases is not only inconsistent with the record, but also totally ignores of the realities and nuances of today's hyper-competitive telecommunications marketplace. The record shows that 29.5% of CenturyLink's customers would be highly likely to leave CenturyLink with just a \$2 price increase, while 41.4% would be highly

² See, e.g., RD at FOF 78 and COL 36.

³ FOF 74. RD at p. 116. However, the ALJ in discussing her alternative proposal to adopt a hybrid AT&T/Verizon position notes the Decision recommends an initial increase in local service rates (or revenue imputation) to a \$22.00 benchmark to qualify for PA USF funding. RD at p. 136. Whether the retail benchmark rate recommended is \$22.00 or \$23.00, CenturyLink excepts as addressed herein.

⁴ RD at pp. 131-133.

⁵ *Id.*, at p. 138.

likely to leave with a \$3 price increase. The Decision gives *no weight* to CenturyLink's consumer survey. The Decision thereby demonstrates total disregard for the fact that local rate increases of this magnitude (simply to provide alleged benefits to AT&T and aligned parties) result in unfunded regulatory mandates and disadvantage CenturyLink's ability to price competitively (particularly in the rural town centers of its service territory experiencing hyper-competition) while still meeting COLR/universal service obligations. As a result, the decision to rebalance access rate reductions on the backs of rural Pennsylvanians does not result in realizable revenue neutral recovery and must be rejected as violating Section 3017(a) of the Pennsylvania Public Utility Code.⁶

If intrastate access charges are causing distortions in the new intermodal telecommunications market place as the Decision seems to conclude, then rational access reform is the answer. However, access reform is not simply a matter of pushing reductions for sake of reducing access expense (and thereby increasing profits) for the global carriers that AT&T and aligned parties are today.⁷ A rational approach to moving the support for high-cost areas recovered through intrastate switched access rates to a more competitively-neutral recovery mechanism like the PA USF must be part of the answer. CenturyLink's unique COLR/universal service obligations throughout its service territory must be recognized and given co-equal weight to the interests of alleged competitors (AT&T and aligned parties). The ALJ swallowed in whole the unfairness claims of AT&T, Sprint and Comcast, yet these carriers benefit from the provision of universal service by RLEC's like CenturyLink and yet are free to make market-based, business decisions about where they serve and the prices they charge. The unfairness in

⁶ 66 Pa. C.S. § 3017(a).

⁷ CTL MB at p. 55.

their claims, as adopted by the ALJ, arises from their no longer wanting to support rural areas and as a result their position force up the prices of the very RLECs they compete. The ALJ's Decision thereby is a win-win for them. By rebalancing intrastate switched access reductions through the PA USF, realizable revenue neutrality consistent with Section 3017(a) results and there are no unfunded and/or inadequately funded regulatory or legislative requirements for RLECs.⁸

CenturyLink supports rational access reform. The ALJ's Decision, unfortunately, does not effectuate rational access reform for the reasons set forth herein.

II. EXCEPTIONS

Exception No. 1: The ALJ erred concerning the application of the burden of proof. (RD at pages 49-50, 74-78, 90-93, 106-108, 116, 118, and 131-137; FOF at 7-12, 30-33; 35-36, 39, 48-54, 58-61, and 63; COL at 8-14, 16, 20, 31, and 39-40.)

CenturyLink does not dispute the ALJ's conclusion that the RLECs have, and ultimately retain, the burden of proof to demonstrate the justness and reasonableness of their intrastate switched access rates given that this proceeding involves an investigation.⁹ However, the ALJ erred in several respects regarding application of the burden of proof when finding that the RLECs have failed to make a prima facie case in response to the ALJ's position that parties seeking access reductions presented "more than co-equal evidence so as to rebut the prima facie case."¹⁰

First, the ALJ finds the RLECs cannot rely upon statutes, prior Commission rulings, or Chapter 30 Plan language in establishing a prima facie case.¹¹ CenturyLink

⁸ CTL M.B. at pp. 40-41 (CenturyLink's position).

⁹ R.D. at p. 49.

¹⁰ *Id.*, at p. 74.

¹¹ *Id.*, at p. 75.

recognizes and agrees that the Commission has the authority to re-evaluate and modify intrastate switched access rates. As thoroughly addressed in CenturyLink's briefs, however, existing RLEC switched access rates were deemed just and reasonable by the Commission upon approval, and are consistent with the Commission's *pricing* decisions designed to provide revenue support for high-cost local telephone rates in rural, less dense areas of the state.¹² The ALJ wrongly found that the RLECs failed to meet their prima facie case sufficient to shift the burden of going forward with evidence on the IXC's.¹³ The ALJ's claimed "approved" nature of existing interstate switched rates does not require or limit a state Commission's policy decision making to price intrastate switched access rates. CenturyLink maintains, that the parties seeking specific access rate reductions must demonstrate how those access rate reductions will provide net consumer benefits – i.e., benefits in excess of the consumer harms associated with increased local rates and upward pressure on local rates, business rates, and other noncompetitive rates.¹⁴ They have not done so and the ALJ has failed to do so.

Second, the Decision on several substantive issues erred in requiring the RLECs to prove up the value of the existing regulatory compact associated with the Commission's pricing decisions to date. The "failure to prove" approach taken by the ALJ appears in her ruling on COLR/universal service and her assumption that significant increases to residential rates and business rates, along with other noncompetitive services, are simply a matter of rate design, are in any way viable in today's telecommunications marketplace, and will result in revenue neutrality such that COLR/universal policies

¹² CTL MB at pp.2-16; RB at p. 2

¹³ See, e.g., RD at p. 90.

¹⁴ CTL M.B. at 21-28, 66-67; CTL R.B. at 3-6, 20-22, 29.

remain funded.¹⁵ The ALJ found that the lack of any cost studies or other cost information attributable to carrier of last resort (“COLR”) and universal service obligations resulted in RLECs’ not meeting their prima facie case concerning the justness and reasonableness of intrastate switched access rates.¹⁶ The ALJ extrapolates from an electric utility case, *Lloyd v. Pa. P.U.C. et al. (Lloyd)*, 904 A.2d 1010, 2006 Pa. Commw. LEXIS 438 (2006).¹⁷

The ALJ improperly relies upon the *Lloyd* case to make generalities not applicable to telecommunications.¹⁸ The ALJ then errs in applying the burden of proof to require cost information to quantify the value of universal service/COLR. By setting up the straw man in this manner, the ALJ wrongly proceeds to find that the RLECs have failed to satisfy their prima facie case.¹⁹

This Commission has routinely priced intrastate switched access rates, local exchange rates, and other rates based upon policy objectives rather than through cost studies and cost support.²⁰ As former ALJ Schnierle once noted: “[T]he present rate structure...is based largely upon implicit subsidies and rates that are not remotely cost-based.”²¹ Costing has not been a standard for pricing of access/local/other rates leading to the *Global Order*, in the *Global Order*, and since the *Global Order*. And, there is no

¹⁵ For example, the ALJ erroneously finds that RLECs business rates are relatively low and that access reform is simply a matter of “rate design” relative to local rates, business rates, and other noncompetitive rates. See, e.g., FOF 58-61, 63. See also, RD at 118 (“With respect to business rate increases, I recommend that RLECs be provided flexibility to design a rate rebalancing for the various companies within “just and reasonable” parameters that will be addressed subsequently.”).

¹⁶ RD at p. 75-76. See also, FOF 8.

¹⁷ RD at p. 75.

¹⁸ See, e.g., RD at p. 75.

¹⁹ RD at p. 75 (“Absent a conclusive legal determination of rate reasonableness and absent any cost studies, the RLECs focused on the revenue support provided by access rates for RLEC compliance with the regulatory and legislative priorities of COLR/universal service and broadband service. CenturyLink, in particular, asserted that access rates were just and reasonable *because* of this necessary support.”).

²⁰ CTL St. 1.0 at p. 24; CTL St. 1.1 at p. 47.

²¹ *In re: Generic Investigation on Access Charge Reform*, Docket No. 1-00960066, ALJ Recommended Decision (Judge Schnierle) dated June 30, 1998, at p.58.

Commission-recognized single cost method for establishing just and reasonable telephone rates.²² The RLECs cannot be held in this context to have failed to meet a prima facie case to present costs of complying with COLR/universal service obligations when the Commission has not seen fit to define a cost standard or require cost support when undertaking pricing decisions. Universal service/COLR policy does not – and never has – been subject to proof of costs to verify its existence and consumer value.

The RLECs serving high-cost areas of the Commonwealth are the instruments of the Commission’s universal service policy. The prima facie case has been demonstrated by showing that existing RLEC intrastate switched access rates – priced above cost to support local exchange service – are just and reasonable as revenues from intrastate switched access rates support affordable rates and universal service/COLR obligations. The burden thus shifts to the IXCs and others to support their specific access rate reductions in the context of universal service/COLR policy objective. That is, the proponents of the specific intrastate switched access rate reductions sought in this proceeding have the burden to demonstrate that the policies of consumer rate affordability and universal service/COLR will be satisfied with their rate recommendations. The IXCs are not required to provide cost studies – just as the RLECs are not required to provide cost studies – but they are required to demonstrate net consumer or public interest benefits from the rate adjustments they propose. This net benefit analysis was not undertaken by the ALJ or any other party, as addressed below.²³

²² In any event, if cost information is deemed to be required, then that information was provided in the record at Docket No. I-00040105 (Judge Colwell proceeding). *See, e.g.*, CTL M.B. at pp. 68-69, and fn. 190 therein.

²³ The ALJ also wrongly held that, even if the RLECs had established a prima facie case that existing intrastate switched access rates are just and reasonable, the IXCs have presented “more than co-equal evidence so as to rebut the prima facie case and shift the burden of going forward back to the RLECs.” R.D. at 74.

The ALJ merely finds that “the IXCs have shown that public interest benefits will result from access reform, for the competitive and arbitrage reduction reasons set forth above with respect to the AT&T and Sprint positions.”²⁴ In doing so, the ALJ puts the interests of those parties above the interests of rural Pennsylvanians. In sum, the ALJ erred when finding the RLECs cannot rely upon statutes, prior Commission rulings, or Chapter 30 Plan language in establishing a prima facie case. The ALJ also erred in requiring the RLECs to prove up via a cost study and thus provide a numerical value of the existing regulatory compact associated with the Commission’s pricing decisions.

Exception No. 2: The Recommended Decision Reduces RLEC Intrastate Switched Access Rates Based Upon Several Flawed Premises and Inadequate Grounds.
(**RD** at pp. 49-50, 74-78, 90-93, and 132-137; **FOF** at 7-10, 13-19, 20-22, 30-33, 35-36, 39, 41-43, 45, 75-77, 88, and 90; **COL** at 8-14, 16, 20, 23-24, and 39-40.)

A. The ALJ erred in recommending an inadequate and incomplete mirroring rate result rather than rational, comprehensive access reform in Pennsylvania.

To say that a rate should “mirror” another rate begs the question of why the rate attempted to be mirrored – in this case the FCC’s interstate switched access “rates and structure”²⁵ – is an appropriate proxy for setting intrastate switched access rates. It also

²⁴ RD at p. 77.

²⁵ See, e.g., FOF 36 and 75. The “rates and structure” language in the RD contains an important qualifier – “and structure.” The reference to “and structure” is an important component of the mirroring proposals set forth by AT&T and aligned parties, and adopted by the ALJ, because the FCC’s interstate switched access rate regime does not contain a common carrier charge, or CCL. The FCC eliminated the CCL and replaced it with additional revenue support – such as the federal subscriber line charges (SLC) charges and explicit federal universal service funding sources. When parties seek to re-price RLEC intrastate switched access rates to “mirror” interstate rates and structure” what is being requested is the elimination of the Pennsylvania carrier line charge established in the *Global Order* and to mirror interstate rates and the FCC’s structure which does not contain a CCL. The mirroring of interstate rates and structure adopted by the ALJ thereby does not recognize the method by which low interstate rates were achieved. For CenturyLink, the qualifier has considerable import as CenturyLink’s intrastate switched access rates already mirror interstate rates. Pursuant to the *Global Order*, CenturyLink charges a CCL of \$7.19 pursuant to tariffs on file at the Commission. CTL M.B. at 18-19.

begs the question of whether the interstate pricing proxy approach is consistent with continued comprehensive intrastate switched access reform in Pennsylvania.

In answering these questions, it is important to note that the ALJ recommended pricing at interstate rates and structure. By doing so, the ALJ did not recommend moving toward interstate switched access rates for pricing of RLEC intrastate switched access rates. The two-dimensional approach to pricing decisions as proposed by AT&T and aligned parties and adopted by the ALJ never asks whether moving toward interstate switched access rates is appropriate at this time and for Pennsylvania. Such a two-dimensional recommendation is devoid of competitive market realities and relegates the Commission to the either/or result of the claimed interstate mirrored rate and structure as sought by AT&T or not. The ALJ also introduces the concept of technical conferences and waivers of circumstance somehow to fix and do implementing an erroneous decision. Certainly, on paper, RLEC intrastate switched access rates can be reduced mathematically to mirror the interstate rates and structures as the ALJ recommends.

As CenturyLink addressed in its Reply Brief, paper bleeds little.²⁶ The ALJ erred in failing to recognize in the Decision the underlying methods by which those low interstate rates were achieved. The FCC not only reduced interstate access charges they increased SLC charges established the IAS and established ICLS for price cap and non-price cap companies in its MAG²⁷ and CALLS²⁸ orders. As pertinent to CenturyLink, the

²⁶ CTL RB at pp.3-6, 27-28.

²⁷ *In re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al., Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304, November 8, 2001.*

²⁸ *In Re: Coalition for Affordable Local and Long Distance Service (CALLS) Access Charge Reform, et al., Sixth Report and Order in CC Docket Nos. 96-262 and 94-1 Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, May 31, 2000 (FCC CALLS ORDER).*

CALLS plan adopted by the FCC was a single comprehensive reform plan for price cap carriers that encompassed all, then existing, interstate switched access elements. In describing the plan, the FCC stated “CALLS is most appropriately judged as a single, cohesive proposal, because the underlying issues it addressed are themselves interrelated.”²⁹ The CALLS reform plan not only created a target rate for switching and transport, but also implemented an interrelated plan that eliminated any minute of use based carrier common line (“CCL”) charges, and increased Subscriber Line Charges – creating a \$650 million interstate access support (“IAS”) fund and also creating the interstate common line support (“ICLS”) fund – within the overall federal USF funding system to offset the revenue not recovered from the measured increases in SLC.³⁰

The ALJ’s Decision, however, isolates only the FCC’s resulting rates arising from the overall CALLS plan *as if* reflective of the FCC’s interstate switched access regime. It is not given that the “rates and structure” recommended by the ALJ does not reflect the fact that the FCC undertook extraordinary measures to establish explicit federal universal service funding to achieve the low interstate rates and the elimination of the federal CCL. Thus, the Decision’s mirroring recommendation is fundamentally incomplete and flawed as it fails to reflect the methods by which the interstate rates regime exists today. By only mirroring the “rates and structure,” *none* of the corresponding support associated with how the FCC achieved interstate rates are reflected in the ALJ’s recommendation. The ALJ’s recommended intrastate switched access rates, therefore, are incomplete, flawed, and cannot be just and reasonable under Section 1309 of the Pennsylvania Public Utility Code.

²⁹ FCC CALLS Order at Par. 49.

³⁰ See also, RD at pp. 21-22.

Rational, measured access reform in Pennsylvania can be continued in Pennsylvania, but not as recommended by the ALJ and for the reasons set forth in the Decision.³¹ The Commission need not price intrastate switched access rates *at* the interstate access “rates and structure” as recommended by the ALJ. The Commission need not adopt the Decision’s determination that interstate switched access rates should be the end result for intrastate switched access rate pricing. Given the reform undertaken by the Commission to date,³² and given the facts and circumstances applicable to Pennsylvania, the Commission can proceed with continued access reform by reducing intrastate switched access rates in a measured manner and in a comprehensive manner through the PA USF.³³ However, if the Commission adopts the Decision’s approach and uses interstate switched access rates as a definitive proxy for the pricing of intrastate switched access rates, then the methods used by the FCC to achieve the resultant low interstate rates and the federal structure (which no longer includes a CCL) must be included in this Commission’s continued reform of Pennsylvania intrastate switched access rates. The RD creates a funnel whereby the decrease in rates to many causes a significant increase in rates to the few. The FCC avoided this outcome in their approach.

³¹ RD at p. 74.

³² CTL MB at p. 2-14.

B. The ALJ erred when concluding that RLECs' interstate rates are compensatory – i.e., have not been challenged as unreasonable – and that interstate rates recover their costs, provide a reasonable return, and contribute to the local loop.

The ALJ makes several erroneous statements that the recommended mirroring of intrastate/interstate switched access rates would be compensatory of RLEC costs. CenturyLink excepts to the ALJ's Decision. The ALJ erred in assuming that the recommended mirroring of interstate switched access rates and structure – without the explicit support to achieve those low interstate rates and the FCC's elimination of the federal CCL – are compensatory or otherwise provide sufficient cost recovery.

First, in the context of addressing Verizon's RLEC pricing proposal, the ALJ supported her finding of RLEC interstate rates as those rates “have not been challenged as unreasonable by any RLEC.”³⁴ The interstate switched access rates are part of an overall switched access regime. The ALJ thereby improperly implies that RLEC interstate rates are reasonable and compensatory and supports the fallacy that interstate and intrastate rates are comprised of the same elements, determined in the same manner and support the same regulatory objectives.³⁵

The CALLS Average Traffic Sensitive (“ATS”) rate of \$.0065 rate for CenturyLink was not, and was never intended to be, based upon CenturyLink's costs and certainly not for CenturyLink's rural PA costs. The FCC stated that “CALLS proposes a multi-tier target rate system for interstate average traffic sensitive charges, with a target rate of 0.55 cents for the BOCs and GTE, and a target rate of 0.65 cents for other price cap LECs.”³⁶ The CALLS rates adopted by the FCC were not based on CenturyLink's

³⁴ RD at p. 133.

³⁵ Similarly, at page 91 in the context of rejecting Verizon's proposal, the ALJ states:

³⁶ *FCC CALLS ORDER* at Para. 142.

costs and cannot, therefore, be presumed to be compensatory – particularly if the explicit federal USF support that is part and parcel of the FCC’s method of achieving its overall interstate rate regime is, as the ALJ recommends, not included in the mirroring required by the Decision.

In addition, it is important to stress that the CALLS election process for price cap carriers, such as CenturyLink, required that any decision regarding participation and thus the adoption of the ultimate ATS rate of \$.0065 be made at the holding company level.³⁷ In other words, all of the CenturyLink operating companies in 18 states had to participate in the plan including the appropriate tiered ATS rate.³⁸ Thus, participation in the CALLS plan cannot be used as evidence that CenturyLink’s ATS rate of \$.0065 represents the cost of providing switched access in rural Pennsylvania. All that can be said is that CenturyLink’s predecessor in year 2000 considered the overall FCC CALLS plan for its overall interstate operations was reasonable. The ALJ’s view of “unchallenged” RLEC interstate rates is flawed and must be rejected.

The ALJ makes several additional flawed statements effectively imputing cost recovery associated with interstate switched access rates – i.e., interstate rates recover their costs and provide a reasonable return (RD at pp.91) and contribute to local loop costs (RD at pp. 24, 91, 133). The ALJ claims “the methodology for achieving ‘just and reasonable’ rate levels” is an objective of this proceeding.³⁹ CenturyLink disagrees. The Commission has not developed a “methodology” – let alone a costing methodology – to make pricing decisions. Section 3017(a) requires any reduction to RLEC switched access

³⁷For the rate level components, each price cap LEC will, at the holding company level, choose between two options.” *FCC CALLS ORDER* at Par. 59.

³⁸ Thus, if ATS rate of \$.0065 would be used an approximate for costs, the appropriate comparison would be the average costs of all of CenturyLink’s operating territories, not just Pennsylvania.

³⁹ RD at p. 17. *See also*, COL 17.

rates to be revenue-neutral and does not require a cost methodology. The ALJ erred. Just and reasonable intrastate switched access rates should not be relegated to assuming, as the ALJ has done, that interstate switched access rates are at cost. The costs for interstate are a national average for all companies so in no way should be interpreted to represent PA, to represent the rural LEC's, to represent current costs. It is in error to connect dots going from national interstate rates set in 2000 equal to or even comparable to PA intrastate rates today.

Moreover, to the extent the Commission deems it necessary to base its intrastate access pricing decision on costs and finds it necessary to have a methodology for determining just and reasonable access rates, then the ALJ's assumption that intrastate access rates if priced at interstate levels would be sufficient to recover costs and provide a return is directly belied by the non-rebutted record from the Judge Colwell's PA USF proceeding. While not specific intrastate switched access cost study, CenturyLink presented residential cost data demonstrating that the average monthly cost per line, as set forth in OCA witness Dr. Loube's study, when compared to the average amount of revenue received by CenturyLink per line demonstrated that switched access revenues contribute significantly to CenturyLink's costs of providing residential service.⁴⁰ CenturyLink's overall estimated average cost per line was approximately [BEGIN CONFIDENTIAL] END CONFIDENTIAL]. The costs by wire center were as high

⁴⁰ See, e.g., CTL M.B. at pp. 67-72. OCA witness Dr. Loube provided a reasonable surrogate for CenturyLink's costs and those can be used to compare to exchange-level densities in the form of a simple regression. These costs were addressed in the record at Docket No. I-00040105, litigated before Judge Colwell. See, OCA Loube Testimony filed December 10, 2008, at Exhibit RL-8. CenturyLink accepts Dr. Loube's cost analysis in his testimony as a reasonable surrogate of costs for purposes of this analysis in this proceeding, but reserves the right to submit its own cost data. CTL St. 1.1 at p. 32. A copy of a confidential table as submitted in the Judge Colwell proceeding is appended hereto as Attachment A. See, CTL St. 3.0 at p. 14 (table CVL-1) (Judge Colwell proceeding).

as [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] per line in one of CenturyLink's most rural exchanges.

Clearly, intrastate access revenues if priced at CenturyLink's interstate access levels would not be sufficient to recover CenturyLink's residential service costs in Pennsylvania. What the ALJ seems to miss is that the revenue support currently provided through intrastate switched access rates provide critical revenue support for CenturyLink for serving customers in high-cost, less dense areas per COLR/universal service obligations and to continue to do so requires viable and sustainable replacement of revenue support, such as replacing revenues on an competitively neutral basis with explicit support from the PA USF. However, the ALJ errs by placing the burden and the risk of recovery of revenue support on local customers through significant increases to local rates, business rates and any other noncompetitive rate charge by RLECs.

The ALJ also relied upon various erroneous facts to determine interstate access rates cover costs and contribute to local loop costs and thus can be used as a proxy for pricing of RLEC intrastate switched access rates.⁴¹ Notably, the CALLS order was clear that the CCL charge, or the implicit contribution to the cost of the local loop, was not included in interstate access charges. The FCC increased the SLC and implemented explicit support through the IAS and ICLS to recover the interstate cost of the local loop, not the intrastate cost of the local loop.

Similarly, in relying upon AT&T's erroneous statements, the ALJ finds: "Even at the level of parity with interstate access charges, the RLECs' intrastate access charges

⁴¹ For example, the ALJ states "AT&T obtained an acknowledgment from PTA's witness, in effect, that interstate access rates cover their costs and provide a reasonable return." RD at p. 91. However, PTA witness, Mr. Gary Zingaretti, also said: "Individual company would be indicative of each individual company." Tr. at 608.

would still include a contribution to the cost of the local loop.”⁴² The AT&T statement at the basis of the ALJ’s finding refers to the FCC’s National Broadband Plan (NBP) at page 142. However, upon review of page 142 of the NBP, the FCC says: “Most ICC [intercarrier compensation] rates are above incremental cost....” Nowhere in the NBP does the FCC state that interstate rates for CenturyLink or any other RLEC in this proceeding are above incremental costs. It simply cannot be interpreted that the NBP’s reference to “most ICC rates” provides sufficient evidentiary support for the ALJ’s conclusion that AT&T has met its prima facie case and her assumption that RLEC interstate rates are compensatory or otherwise cover costs and provide contribution to loop costs in Pennsylvania. Indeed, as addressed above, interstate rates are based upon averaging of costs and are not Pennsylvania-specific costs. Interstate rates at best recover interstate traffic sensitive costs at the time of FCC’s CALLS Order, i.e., approximately year 2000. A preponderance of the evidence does not support the ALJ’s findings and assumptions that interstate rates are somehow compensatory or just and reasonable to replace existing intrastate switched access charges including the CCL charge.

Finally, the ALJ claims intrastate access charges are not being used to provide a targeted subsidy to the RLECs.⁴³ The ALJ correctly recognized that less dense areas of the Commonwealth generally have higher costs. COLR/universal service is a costly policy for an RLEC like CenturyLink to sustain.⁴⁴ Given the cost realities, as addressed in Exception 2.B., above, CenturyLink submits that the issue of targeting of support to CenturyLink’s “least dense areas of Pennsylvania” may not be explicit but does indeed

⁴² FOF 31, citing AT&T St. No. 1.3, pp. 6, 8.

⁴³ FOF 9

⁴⁴ CTL St. 1.0 at p. 30.

contribute to the building and maintaining of the quality network operating today in an exchange where the cost far exceeds the revenue.

The ALJ erred when ruling, or implying, that intrastate switched access rates should be designed in a manner “to provide targeted subsidy to RLECs.”⁴⁵ The view results in an absurd result with varying access rates throughout an RLEC’s territory. Intrastate switched access rates were never designed to provide “targeted” support as the ALJ wrongly assumes. In any event, the claim that intrastate switched access rates should provide “targeted support” was raised by Comcast and was thoroughly addressed in CenturyLink’s testimony.⁴⁶ The issue of “targeted support” is more appropriately addressed in the context of universal service funding mechanism and, therefore, the proceeding before Judge Colwell.

C. The ALJ erred in finding that AT&T met its prima facie case based upon the lack of functional or technical differences between terminating intrastate and interstate long distance calls.

The ALJ erred in finding that pricing of RLEC intrastate switched access rates should be priced at interstate rates and structure as “there is no material technical difference between termination” between interstate and intrastate calls.⁴⁷ It is a correct statement that interstate and intrastate call functions in the same manner (for example, both calls use a switching function). However, the lack of any technical differences – or

⁴⁵ FOF 9.

⁴⁶ See, CTL MB at 37-39. See also, CTL RB at p. 31.

⁴⁷ RD at p. 90. See also, RD at p. 91 (“AT&T’s proposal also has the advantage of administrative ease and efficiency since RLECs are already charging the rates sought to be implemented herein.”). The ALJ seems to view “already approved” intrastate switched access rates as support for the end result of interstate mirroring for intrastate switched access rates. It is arbitrary, capricious and contradictory for the ALJ to find that existing RLEC intrastate switched access rates as “already approved” support AT&T’s prima facie case, yet find that the same “already approved” rates cannot be used by the RLECs as part of supporting their position that existing intrastate switched access rates are just and reasonable. RD at p.93. The Commission should reject the ALJ’s finding that rates “already approved” somehow signal that interstate switched access rates are just and reasonable going forward.

conversely the finding of similarities – is not a basis upon which to require that intrastate switched access rates be priced at interstate rates and structure as recommended. As the Panel Direct Testimony of CenturyLink explained, “functionality does not dictate regulatory pricing decisions.”⁴⁸ The argument has been raised in the past and the Commission to CenturyLink’s knowledge has not seen fit to use it as a rationale for its pricing decisions.

The functionality used for interstate and intrastate calling remains an incomplete basis upon which to exercise expertise and discretion when make *pricing* decisions. Call functionality is incomplete for pricing decisions because interstate rates for the various functions used to terminate calls are isolated from the FCC’s overall methods for reaching those rate elements and are not indicative of Pennsylvania costs, as addressed above. Indeed, the ALJ’s “no material technical difference” rationale, if adopted, could justify meeting prima facie case for re-pricing of local exchange rates and other services that are also have no material functional difference between/among network functions.⁴⁹ It is a slippery slope embedded in the ALJ’s rationale to re-price RLEC access rates based upon call functionality.

Finally, the ALJ erred in finding that the lack of a functional difference between intrastate and interstate calling is sufficient to AT&T’s prima facie case for mirroring. Once the ALJ made the finding, the burden of proof shifts to other parties to rebut AT&T’s alleged prima facie showing. Yet, no party disputes the functionality between

⁴⁸ CTL St. 1.0 at p. 34.

⁴⁹ For example, in the access proceeding before Judge Schnierle, Sprint in support of its proposal to price access charges at TELRIC stated: “Sprint notes that there are no technical differences between transporting and terminating a toll call (“access”) and a local call (“interconnection”). *In re: Generic Investigation on Access Charge Reform*, Docket No. 1-00960066, ALJ Recommended Decision (Judge Schnierle) dated June 30, 1998, at p. 36.

interstate/intrastate long distance calls is the same; it is simply not relevant or appropriate in pricing decisions. The ALJ's finding that no material technical difference between intrastate and interstate calling does not satisfy a prima facie case and does not thereby shift the burden of proof to other parties. The ALJ's finding would reduce pricing for one aspect of historic compact existing between access, local rates and other services as addressed in the *Global Order* based upon call functioning. The record amply demonstrates that continued access reform in Pennsylvania must be rational, comprehensive and measured – rather than based upon a gimmicky, useless rationale that remains ill-suited for pricing decisions.

D. The ALJ erroneously finds that intrastate switched access rates burdens IXC's with "excessive" access rates and that RLEC intrastate access rates "must be reduced."

The ALJ claims none of the IXC competitors are burdened by access charges in the same way as traditional wireline carriers, and this places a disproportionate and unfair subsidy burden on the IXCs. The ALJ concludes: "Clearly, intrastate access rates are excessive and must be reduced."⁵⁰ CenturyLink respectfully disagrees. The ALJ incorrectly concludes that because "intrastate access rates are excessive" that intrastate access rates must be reduced to interstate levels. As stated previously, no consideration was given to an intrastate rate that moved toward interstate rates. Instead, the ALJ makes the leap to mirroring of interstate rates without gauging whether the Decision's result provides net consumer benefits.

The telecommunications marketplace has changed. The "IXC" players participating in this case are no longer the same carriers that battled one another when the

⁵⁰ RD at p. 77.

stand-alone long distance market existed.⁵¹ At the expense of rural consumers, the recommended switched access reductions will simply reduce the expenses paid by Comcast, Verizon, AT&T and Sprint – all of which are Fortune 100 corporations and all of which are completely different enterprises than when the Commission entered the *Global Order* in 1999. Indeed, in February 2005, AT&T in its application to the Commission regarding the SBC/AT&T transaction admitted:

In the mass market or consumer market, AT&T's independent, irreversible decision in 2004 to stop pursuing such customers for either local or long distance wireline telephony, including those in Pennsylvania, means that it will no longer be a substantial competitor in that market.⁵²

Moreover, market distortions allegedly associated with existing intrastate switched access rates remain unfounded. AT&T, Sprint, Verizon, and Comcast are not at a competitive disadvantage due to RLEC intrastate switched access rates. As Messrs. Lindsey and Harper testified, in terms of wireless market growth, the number of wireless subscribers in Pennsylvania has grown from fewer than 3 million in 1999 to nearly 10 million in 2008, an increase of more than 300%.⁵³ Similarly, local service competition is flourishing in dense areas of Pennsylvania and does not appear to suffer effects of anticompetitive distortion as claimed by AT&T. CenturyLink's access lines have declined by approximately [BEGIN CTL CONFIDENTIAL] [END CTL CONFIDENTIAL] since 2000. Clearly, CenturyLink's existing intrastate switched access rate levels do not appear to be burdening IXCs or "distorting" competition.

Moreover, as CenturyLink's Mr. Bonsick testified, since 2005, CenturyLink has lost [BEGIN CTL CONFIDENTIAL] [END CTL

⁵¹ CTL St. 1.0 at pp. 37-38.

⁵² CTL Cross Exh. 1.

⁵³ See, CTL St. 1.0 at p. 28.

CONFIDENTIAL] of its access lines in Pennsylvania to competitors like Sprint, Comcast and others. And, even today, CenturyLink’s access line erosion continues at a significant pace (approximately 7%-8% per year).⁵⁴ Similarly, between October 1, 2009 and February 28, 2010 [**BEGIN CTL CONFIDENTIAL]**

[**END CTL CONFIDENTIAL]** had ported their CenturyLink telephone number over to Comcast. Obviously, if over a 5 month period Comcast was able to lure away nearly [**BEGIN CTL CONFIDENTIAL]** [**END CTL CONFIDENTIAL]** of CenturyLink’s customer base, the current access charge rates are not an inhibiting factor in the ability to compete.⁵⁵ Clearly, AT&T, Sprint, Comcast and others have had no problems garnering customer demands in spite of the current intrastate switched access rates.

Consumers in rural Pennsylvania are the direct beneficiaries of this Commission’s universal service and carrier of last resort policies. The continuance of these regulatory obligations has been at the heart of prior access reform efforts. Because of the Commission’s measured approach to access reform, universal service at affordable local rates co-exists with robust competition in Pennsylvania. Existing RLEC intrastate switched access rates are just and reasonable *because* those rates help provide critical revenue support for RLECs to comply with COLR/universal service policies and to undertake legislative requirements such as Act 183’s broadband commitments. The Commission can proudly claim that it has to date successfully balanced the competing interests involved with its prior access reform efforts. RLECs’ access rates are not excessive, nor do they create a “subsidy burden” given the critical policies supported by

⁵⁴ CTL St. 3.1 at pp. 10-11.

⁵⁵ *Id.*, at p. 12.

intrastate switched access revenues. There is no requirement and no good reason to reduce just one aspect of the linkages to these critical policies and mandates. And, there is also no proven rationale that the Commission needs to remove subsidies and shift the complete burden to the customers of RLECs serving rural areas when competition in Pennsylvania is alive and well.⁵⁶

E. ALJ erred in finding that current access rate levels are being artificially maintained and insulating RLECs from efficiency.

To support the Decision's recommendation to mirror interstate rates, the ALJ sides with AT&T and aligned parties regarding the alleged benefits of access reductions to consumers.⁵⁷ The ALJ completely misses the fact that RLEC intrastate switched access revenues are keeping local exchange rates below cost in areas not subject to significant competition while the market sets prices in areas subject to intense competition. At no point does the ALJ do what this Commission has asked and that is to provide a "comprehensive ruling which appropriately balances the major considerations (access charges, local service rates, and the PA USF.)"⁵⁸ And at no point does the ALJ undertake a net benefits analysis from the standpoint of the consumer, particularly consumers in rural areas.⁵⁹

Furthermore, the ALJ's findings are unsupported by the record. The ALJ erroneously assumes that reductions in RLECs' intrastate access rates will somehow flow through to and will on net benefit consumers. The findings are unsupported by the record.

⁵⁶ See, e.g., CTL St. 3.0 at p. 7.

⁵⁷ See, FOF 16 and 10.

⁵⁸ RD at p. 17.

⁵⁹ The Decision's failure to address net consumer benefits is addressed at Exception 4.D., below.

As the record fully demonstrates, the Commission and the public cannot have any confidence that the access reductions being sought will provide any real consumer benefits in rural Pennsylvania. In fact, in its July 2003 Order reducing RLEC intrastate access rates, the Commission required AT&T, Sprint and others to flow through such reductions to consumers. When asked in the record to demonstrate how they flowed through such reductions AT&T and aligned parties could provide no verifiable evidence of any flow through to consumers. Yet, in her decision, the ALJ mistakenly bases much of her support for adopting the mirroring proposal on the fact that: 1) IXCs are harmed by high access reductions; and 2) consumers will benefit through increased competition. The record in this case does not support these conclusions, nor does the record of the parties benefitting from access reductions.

Moreover, the ALJ erred in citing to AT&T – and only AT&T – testimony claiming to commit to reduce its In-State Connection Fee.⁶⁰ This is addressed in Exception 4.D, below. There is no credible evidence that this rate “benefit” is meaningful in Pennsylvania or New Jersey or anywhere else. No direct, tangible, and durable net benefits to rural Pennsylvanians arise when viewed against the harms to consumers associated with significantly increased local rates, continued upward pressure on rates, and other adverse ramifications to rural Pennsylvania due to compromised regulatory obligations.

The ALJ’s finding of a “level playing field” is also misguided. Long gone are the days when Candice Bergen would call consumers to sell competitive long distance

⁶⁰ See, FOF 22. In-State Connection fees are tariffed charges implemented by IXCs to redress ILECs’ switched access rates.

services.⁶¹ There is no causal nexus between intrastate switched access rate reductions and alleged enhancement to competition. It is a fallacy of causation in today's marketplace to hold that intrastate switched access reductions today can increase competition or provide "choice" to consumers. Intrastate switched access reductions today are solely about increasing the profits of the largest international companies like AT&T and aligned parties.

The telecommunications marketplace has dramatically changed in the last 10 years. The technological changes and competitiveness brought on by VoIP providers and cable competitors do not require reductions to RLEC access rates as the ALJ wrongly assumes. The proverbial "playing field" is not level as RLECs have COLR/universal obligations; access reductions fix only one component (the component affecting AT&T and the others only) associated with comprehensive reform. In the absence of the complete elimination of the RLEC COLR/universal service obligations (or in its place, realizable revenue neutrality associated with any access reductions), access rates should remain at the just and reasonable levels existing today. It is ironic as well as telling that the calls for a level playing field from AT&T and the aligned parties do not include acceptance of COLR obligations and mandatory network build out requirements.

The Commission's history of access reform in Pennsylvania and its fashioning of the policies to date have been effective *because* those policies required carriers to share the funding burden through the PA USF to ensure that all Pennsylvanians in rural and high-cost areas have access to high-quality telecommunications services.⁶² Part of the cost of universal service policy has been and should continue to be borne by intrastate

⁶¹ CTL St. 1.0 at pp. 14-15.

⁶² CTL St. 3.0 at pp. 8-9.

switched access rates. While this creates some level of economic inefficiency, the social benefits that arise from such – primarily the availability of basic local exchange service for those customers who would not otherwise have it or be able to afford it --, more than outweigh the economic inefficiencies.. Further, the expansion of the Pennsylvania USF as down by many states to include the support for high cost rural areas and a broad contribution based of all carriers that utilize and depend on the local exchange network would resolve the so-called inefficiency without endangering affordable and available quality basic service throughout Pennsylvania. Claims of competitive “harms” allegedly caused by this inefficiency are overblown, as competition has been growing and thriving in many areas of the Commonwealth, especially the most densely populated areas where competitors focus their attention because of the lower cost to provide service.

Exception No. 3 **The ALJ erred in significantly increasing consumer rates and in doing so fails to achieve realizable revenue neutrality which in turn results in unfunded regulatory mandates. (RD at pp. 17-23,102, 118, 131-137, and 146-147; FOF at 44-46, 47-54, 55-59, 63-64, 72-75, and 77-79; COL at 10-14, 16, 26, 29-31, 36, and 38-40.)**

- A. The ALJ erred when ordering a new \$23.00/month “affordability” residential rate and assuming increases to other noncompetitive services for rebalancing purposes, thereby failing to consider revenue neutrality through the PA USF.**

As an initial matter, CenturyLink excepts to the Decision’s finding that \$23.00/month residential “affordability” rate is reasonable. The ALJ, in citing to Verizon, unbelievably relegates the significant rate increase decisions to a simple, unsupported matter of rate design.⁶³ As addressed in Exception 5, below, there is no record support for the Decision’s conclusion that the re-pricing scheme envisioned in the Decision is

⁶³ FOF 57 (“Each and every RLEC has room for access rebalancing if approached with an open mind to optimum rate design. Verizon St. No. 1.1, pp. 39-40; Tr. 425-426, 508, 585.”).

doable. All is relegated to fast track technical conferences when the underlying question of whether the Decision's rate recommendations are achievable – let alone just and reasonable remains very much open. The ALJ simply accepts Verizon's unsupported statements that rate increases can be minimized as Verizon asserted.⁶⁴ An "open mind" to "rate design" is a fundamentally flawed basis upon which to foist significant consumer rate increases.

Furthermore, CenturyLink objects to the ALJ's \$23.00/month residential affordability rate (or a total residential rate of \$32.00/month with taxes and fees) as adopted for rebalancing of RLEC access reductions recommended by the ALJ.⁶⁵ The ALJ acknowledges an increase to this level could cause rate shock, but the ALJ assumes "offsetting revenue neutral rebalancing of noncompetitive rates" and simply relegates the rate shock concern to a 2-4 year period for rebalancing to the \$23.00/month rate.⁶⁶ The Judge also states the \$23.00/month residential affordability rate cap is not treated as such for purposes of triggering PA USF support.⁶⁷

The Commission has every reason to be concerned with the ALJ's \$23.00/month residential "affordability" rate and presumed rebalancing through noncompetitive services. Not only does the ALJ's affordability rate ignore the realities of today's competitive telecommunications marketplace, it would result in imposition of unfunded regulatory mandates on Pennsylvania's RLECs. The ALJ appears to side with the position of Verizon, but adds the 2-4 year phase in period.⁶⁸ Verizon had objected to

⁶⁴ See, RD at p. 105.

⁶⁵ RD at p. 134. See also, RD at p. 118 ("After consideration of the parties' positions, I agree with OSBA that the cap on business rate increases should be abolished, along with the \$18.00 residential cap, for rebalancing purposes.").

⁶⁶ RD at p. 134.

⁶⁷ *Id.*, at p. 116.

⁶⁸ RD at pp. 27, 134.

OCA's "comparability" as a basis for a local service benchmark and contended that "affordability" would permit an initial benchmark R-1 rate (first phase of rebalancing) of at least \$23.00 per month, net of taxes and other fees, with no corresponding limit on business rate increases.⁶⁹ It appears that the ALJ first adopted the mirroring proposal of AT&T and aligned parties and then simply conveniently used the inclusion of the \$23 affordability rate in the record as a way to provide partial revenue recovery for the aggrieved parties. And, clearly, a result fashioned from the positions of Verizon and AT&T does not bode well for rural Pennsylvanians.

If the retail benchmark rate is set above market levels, and if no explicit support from the PA USF is provided, then there is no realistic way in today's marketplace that the \$23 recommended benchmark can be a viable revenue-neutral opportunity. To be effective, a benchmark rate must be set at levels where market-based recovery up to the benchmark level is a reasonably viable option.⁷⁰ Policies designed to move retail prices above competitive levels or to preclude USF funding below retail rate benchmarks that are above competitive pricing levels fail to meet the standard of reasonable viability.⁷¹ It also only exacerbates the problems by forcing all of the RLEC customers to self fund high cost areas through rate increases everywhere in the RLEC's serving areas including denser lower cost areas where competitors like Comcast serve. Competitors that do not serve or have the obligation to serve throughout the RLEC's high cost areas and thus are not presented with the RLEC's choice of either raising prices to non-competitive levels and hoping the customers in low cost areas do not flee to the unburdened competitor like

⁶⁹ RD at p. 27, citing Verizon St. No. 1.2, pp. 7-8.

⁷⁰ CTL M.B. at pp. 56-57. Conversely, AT&T's \$22 to \$25 retail rate proposal – which is not supported by any Pennsylvania-specific study – is unreasonable and inappropriate for Pennsylvania. This Commission is unable to find that AT&T's proposal complies with Section 3017(a)'s revenue-neutral requirement.

⁷¹ CTL St. 1.1 at p. 18.

Comcast, Sprint wireless, AT&T wireless or Verizon wireless or adjusting its business plans as noted by the ALJ. The adjusted business plan would have to entail dramatically less investment, maintenance and employees. CenturyLink excepts to the ALJ's residential rate affordability recommendations as failing to meet the standard of reasonable viability.

The ALJ on the one hand finds that in competitive environment, the market should be relied upon, in large measure, to keep rates affordable and there has been no proof of any RLEC service area that lacks sufficient competitive options.⁷² If the Commission believes the ALJ is correct in that competition essentially exists throughout every corner Pennsylvania, thereby providing universal service, then the market should set the price for all consumer rates and the RLEC universal service/COLR obligations should be completely eliminated. The \$23.00/month residential affordability rate is simply antithetical to today's market dynamics, but only if this Commission believes that competition is a satisfactory surrogate for universal service/COLR as the ALJ seems to find.

The ALJ's \$23.00/month rate for residential basic local exchange service is too high and the ability of RLECs to resort to pushing recovery to the rates for noncompetitive services is too specious and unsupported, especially as many business services are included in the noncompetitive services bucket. It is the worst of both worlds, the rates are both non-competitive and will cause significant customer loss and the support they provide for high cost areas and not sufficient to recover the cost of service in rural high cost areas. As addressed throughout these Exceptions, the Decision on these points must be rejected as the \$23.00/month residential rate and assumed

⁷² RD at p. 133. Yet, on the other hand, the Decision imposes a residential "affordability" rate.

increases to noncompetitive services utterly fails to achieve realizable revenue neutrality and thus creates unfunded regulatory mandates.

B. The ALJ erred in dismissing CenturyLink's consumer survey.

The ALJ dismissed CenturyLink's consumer survey – which demonstrated significant customer defection upon increases to their monthly bill from CenturyLink -- and thereby rejected the only piece of evidence in this record gauging the impact of access reductions on residential consumers.⁷³ The ALJ rejected the survey based upon AT&T's testimony⁷⁴ and thereby gave no weight to the consumer survey's findings. The consumer survey goes to the heart of the issue of AT&T's theory, as adopted by the ALJ, that significant retail rate increases can and will achieve revenue neutrality for purposes of Section 3017(a). As customers leave CenturyLink, the costs to comply with the COLR/universal obligations increase as those costs are spread over a smaller number of customers. The survey very clearly demonstrates that CenturyLink cannot rebalance access revenue reductions by increasing the rates for basic local and noncompetitive services. Furthermore, no other party presented a consumer survey to support their position. Each of the ALJ's erroneous findings regarding the survey is addressed below.

i. The residential Pennsylvania-specific consumer survey.

CenturyLink undertook a Pennsylvania-specific consumer survey in this proceeding. In December 2009, through an independent marketing research firm, CenturyLink undertook a Pennsylvania-specific telephonic survey of its Pennsylvania residential customers.⁷⁵ The survey participants were selected on a random basis, with a

⁷³ RD at p. 108.

⁷⁴ RD at p. 113.

⁷⁵ CTL St. 2.0 at pp. 5-6.

total population of 810 customers surveyed.⁷⁶ The purpose of the survey was to understand how Pennsylvanians would react when faced with an increase in the price they pay for wireline telephone service. The survey questionnaire, raw data and labels to raw data were provided to parties in discovery and were appended to CenturyLink's Direct Testimony.

Each respondent was reminded of their total monthly billing for all non-usage sensitive services from CenturyLink prior to the questions regarding price increases. Therefore, each survey respondent had the context under which to evaluate an increase in their CenturyLink billing.⁷⁷ The survey then asked respondents how likely they would be to leave CenturyLink if the price of their service increased by \$2, by \$3, by \$4, or by \$5 monthly. The table below shows the percentage of respondents who fell into the *highly likely to leave* category at various price levels:

If faced with this price increase...	Percentage of respondents "highly likely" to leave CenturyLink...
\$2 monthly	29.5%
\$3 monthly	41.4%
\$4 monthly	53.1%
\$5 monthly	61.5%

What the survey results show is that the Decision's recommended rate increases create the risk that CenturyLink will not have the ability to actually recover lost access revenues because many customers will not accept such adjustments.⁷⁸ The survey results

⁷⁶ Tr. at p. 312.

⁷⁷ CTL St. 1.1 at pp. 43-44.

⁷⁸ CTL ST. 2.0 at p. 5. Mr. Harper adopted the direct testimony of Dr. Brian Staihr (Statement 2.).

fatally confirm the ALJ's rate shock concern. The Decision if adopted would amount to that \$5 monthly increase from CenturyLink's \$18.00/month residential local rate currently to recommended \$23.00/month rate, which per the survey shows that 61.5% of the customers surveyed would likely leave CenturyLink at a \$5 (28%) incremental rate increase. As customers leave CenturyLink the costs to continue to provide adequate and reliable telephone service in high-cost, less dense areas of the state and to all customers irrespective of costs or location will have to be spread over a smaller number of customers. Moreover, when a customer "leaves" CenturyLink this means that the customer's total revenue—not just "access replacement" revenue—is no longer available to provide safe, adequate and reliable service and meet COLR/universal service obligations.⁷⁹ Clearly, the survey presented by CenturyLink in this record demonstrates rebalancing access reductions through significant local rate increases and increases to noncompetitive rates is no longer the reality in Pennsylvania today.

ii. **The ALJ erred in rejecting the consumer survey**

The ALJ improperly narrows the proof debate as one that "only focuses upon a speculative impact" if the rates are changed."⁸⁰ The ALJ therefore gave no weight to reality today in the telecommunications marketplace for an RLEC like CenturyLink serving high cost, less dense areas. As customers leave CenturyLink the costs to continue to provide adequate and reliable telephone service in high-cost, less dense areas of the state and to all customers irrespective of costs or location will have to be spread over a smaller number of customers. Moreover, when a customer "leaves" CenturyLink this means that the customer's total revenue—not just "access replacement" revenue—is no

⁷⁹ CTL St. 1.1 at p. 43.

⁸⁰ RD at p. 76.

longer available to provide safe, adequate and reliable service and meet COLR/universal service obligations. The survey presented by CenturyLink in this record is not “speculative” and should have been given weight by the ALJ. The consumer survey demonstrates the ability to rebalance access reductions through significant increases to local rates is no longer the reality in Pennsylvania today. The survey also dispels the Decision’s assumption that the risk of non-revenue neutrality given the significant consumer rate increases somehow passes muster as realizable revenue neutrality required by Act 183.⁸¹

Furthermore, the ALJ improperly concluded that CenturyLink’s consumer survey was “seriously flawed as it was results-oriented, timed to coincide with holiday shopping when consumers’ budgets were already stretched, and prepared solely for litigation.”⁸² Similarly, the ALJ erred in finding that CenturyLink has not used a similar survey to determine whether to implement a price increase and therefore does not rely on this type of survey to make its own retail rate decisions.⁸³

The survey is not “result oriented” or otherwise flawed as it was prepared for litigation. The survey was done in real time and included real-world rates.⁸⁴ The ALJ ignores the undeniable fact that when presented with information about their current bill from CenturyLink, over 29% of the respondents replied that they were highly likely to cancel their CenturyLink home service and use their wireless service or switch to another provider at even a \$2 monthly increase. All revenue, not just access revenues, from 29%

⁸¹ CTL St. 2.0 at pp. 11-12.

⁸² FOF 48.

⁸³ FOF 50.

⁸⁴ The ALJ also finds that Windstream/D&T raised its price by over 35% in 2002 with virtually no change in its access line loss. FOF 53. This finding demonstrates the lack of the Decision’s appreciation for marketplace changes over the last 8 plus years. Rate changes in year 2002 – which was prior to the RLEC access reductions undertaken due to the Commission’s July 2003 Order – are not relevant today and do not provide a meaningful gauge of the likelihood to leave CenturyLink today.

of CenturyLink's customers would be gone while CenturyLink would retain the majority of the costs to continue to be ready to provide service as required by Section 1501 of the Pennsylvania Public Utility Code and the Commission's regulations. Furthermore, the Decision does not address how such significant revenue reductions of 29% or greater will enable CenturyLink to continue to meet its broadband commitments under Act 183.

Moreover, the Decision's findings that the survey is flawed due to its timing or that it was prepared for litigation are meritless and do not change the conclusion that the Decision creates material risk of non-revenue neutrality. The survey was conducted soon after the Commission's September 2009 Order defining the scope of the case and the issues for this investigation. AT&T provides no supporting evidence that the survey results were inaccurate due to its timing. It is just as likely that the customers that responded were still in the holiday cheer mode since the celebration was yet to come and the bills were not due. The survey is just as valid as AT&T's litigation stance and conjecture that consumers will continue to stay with CenturyLink after significant rate increases. The Judge should not have accorded no weight to the only voice of consumer predilection presented in this record.

The ALJ also finds CenturyLink's survey was flawed as it made no attempt to account for such real-world factors as possible rate decreases for wireline long distance that could result in a decreased overall bill.⁸⁵ The ALJ's finding of "possible rate decreases" in long distance rates is unproven in the record. Further, even if AT&T followed through on its promised reduction in its in-state access fee, even for the relatively small portion of CenturyLink's customers that pay that fee, the net increase in their bill under the ALJ's recommendation would exceed \$3 per month. There was no

⁸⁵ FOF 49, citing AT&T St. No. 1.2, p. 42.

need to explain to survey respondents complicated, ethereal scenarios when the outcome remains an overall increase in a customer's bill. The record demonstrates that AT&T and aligned parties failed to demonstrate how or if prior access reductions were flowed through to consumer – a point lost in the Decision's rush to significantly increase consumer rates. In fact, the Decision does not undertake any analysis – and nor has any party provided one – tallying the rate increases relied upon to fund access reductions with “possible rate decreases” to long distance services. No net benefits to consumers can support a Decision with such significant retail rate increases and more upward pressure in consumer rates when the promises of benefits have been hollow and meaningless.

Fourth, the ALJ also adopts the AT&T stance when finding that CenturyLink does not rely on this type of survey to make its own retail rate decisions and failed to produce evidence of any actual experience it had with customer migration in reaction to price increases.⁸⁶ The points are completely irrelevant. CenturyLink uses consumer focus groups and surveys to make pricing decisions. And, with continued access line erosion and the dismal economy, the timing and nature of an empirical analysis of potential customer reactions to unprecedented, significant consumer rate increases is relevant and germane. The ALJ erred in giving the survey no weight.

Finally, the ALJ also erroneously finds that CenturyLink's customers are moving away from lower priced services and moving towards higher priced bundled services.⁸⁷ The point is another one adopted from AT&T.⁸⁸ The majority of CenturyLink's

⁸⁶ FOF 50 and FOF 51.

⁸⁷ FOF 54.

⁸⁸ AT&T M.B. at p. 58. Each respondent was reminded of their total monthly billing for all non-usage sensitive services from CenturyLink prior to the questions regarding price increases. Therefore, each survey respondent had the context under which to evaluate an increase in their CenturyLink billing. CenturyLink M.B. at p. 58.

customers have bundled services and spend an average of \$57.63 per month.⁸⁹ AT&T also wrongly states the survey shows consumers are moving toward higher priced bundles. The total number of residential lines, including bundles and stand alone lines, purchased by CenturyLink's customers has declined by [BEGIN CTL CONFIDENTIAL] [END CTL CONFIDENTIAL] since January 2007.⁹⁰ Total residential customers have declined in every month of the past three years. The evidence in fact shows that more of CenturyLink's customers are simply moving away from CenturyLink rather than to higher priced products. For every seven stand-alone lines that were lost, only one bundled line was gained throughout this time period.⁹¹ The ALJ's attempt to side step the consumer survey through the Decision's erroneous reliance upon flawed AT&T contentions should be rejected.

In sum, the ALJ erred when effectively finding that consumers in Pennsylvania should bear the brunt of funding intrastate switched access through retail rate increases. CenturyLink respectfully requests that the Commission reverse the ALJ and find that the survey demonstrates that retail consumer rate increases of the magnitude recommended do not achieve realizable revenue neutrality and cannot be implemented as recommended.

C. In support of Decision's retail rate increases, the ALJ errs in downplaying COLR/universal service obligations.

The ALJ erroneously concludes that the RLECs have failed to produce any cost information regarding their universal service/COLR responsibilities or other proof that universal service/COLR would be adversely impacted.⁹² In other words, per the ALJ, since costs were not presented in this record, there must not be any costs associated with

⁸⁹ RD at p. 40. *See also*, FOF 54, citing AT&T St. No. 1.2, p. 10.

⁹⁰ CTL St. 1.1 at pp. 38-39.

⁹¹ *Id.*

⁹² Tr. 632. *See also*, RD at p. 107.

universal service/COLR obligations. The Decision seems to question the need for the revenue support provided to local exchange service through existing RLEC intrastate switched access rates.⁹³ Thus, the Decision effectively discounts COLR/universal service by requiring cost studies to demonstrate the value of COLR/universal service. Not only is the ALJ's rationale here flawed with respect to this proceeding, it is totally inconsistent with the long-standing policies of this Commission. Therefore, the Decision must be rejected.

The RLECs' COLR obligations arise from statute and from regulation. As CenturyLink's testimony addressed, RLECs have specific service installation requirements, including the installation of 95 percent of our primary service orders completed within 5 working days and 90 percent of our non-primary service orders completed within 20 days.⁹⁴ Section 1501 of the Pennsylvania Public Utility Code, need not contain the words "COLR" or "carrier of last resort," as it already contains the requirement that utilities provide safe, adequate and reliable utility service.⁹⁵ When Section 1501 and the Commission's regulations are applied to CenturyLink's factual circumstances as an RLEC serving high-cost, less dense areas of the State, then what this means is that CenturyLink has to construct and maintain facilities in order to be ready to provide safe, adequate and reliable telephone service to requesting consumers, irrespective of where that customer lives in CenturyLink's territory.

Moreover, the statutory and regulatory COLR/universal service obligations require that CenturyLink continually upgrade and maintain its facilities even for customers who have departed our network for the services of another carrier. This is an

⁹³ RD at p. 133 ("There simply has been no showing of need for these massive subsidy transfers.").

⁹⁴ CTL St. 3.1 at p. 21, citing 52 PA Code § 63.58 (Installation of Service).

⁹⁵ 66 Pa.C.S. §1501.

important point to stress: Costs to serve per the COLR/universal service requirement do not go away as customers leave CenturyLink.⁹⁶ When a CenturyLink customer disconnects from its highly-fixed cost network, a proportional amount of costs are not eliminated. The fixed cost nature of the network and COLR require a continued funding need.⁹⁷ Conversely, competitors do not have such onerous regulatory obligations. CLECs rationally choose which areas of Pennsylvania are the most economic (read: profitable) to serve and where to deploy their facilities. A predominantly wireless carrier such as Sprint can terminate service to customers it deems a nuisance because such customers called customer service too often. Competitors can make such choices, but long-standing regulatory obligations prevent CenturyLink from doing so.⁹⁸ Within our franchised service territory, CenturyLink must provide service to any and all consumers who request us to do so, thus fulfilling the Commission's universal service/COLR policies.⁹⁹ And given Act 183, CenturyLink and the other RLECs effectively have a universal service obligation for broadband service.¹⁰⁰

To the extent COLR/universal service requires cost support, then the record from the Judge Colwell proceeding demonstrates that in the high-cost, less-dense areas of Pennsylvania, financial support for COLR/universal service obligations is essential. Access rates are a critical aspect of this necessary financial support. As also addressed above, the record in the Judge Colwell demonstrates revenues from CenturyLink's residential end-user revenues are insufficient to recover the cost of providing their

⁹⁶ Nor, are those costs mitigated, as Sprint and other have suggested through their attempt to impute revenues (exclusive of expenses) from additional services provided over the loop.

⁹⁷ CTL St. 1.0 at p. 30.

⁹⁸ CTL Cross Exh. No. 3.

⁹⁹ CTL St. 3.1 at pp. 14-15. Conversely, interexchange carriers in Act 183 received numerous regulatory freedoms as services provided by IXCs were deemed competitive services. 66 Pa.C.S.A. § 3018.

¹⁰⁰ 66 Pa.C.S.A. §§ 3011 (2) and (3).

service.¹⁰¹ COLR/universal service is a costly policy.¹⁰² As addressed in Exception 2.B. above, loops in CenturyLink's rural areas are expensive to build and to maintain. All consumers and carriers benefit from access to a robust telecommunications network. Regardless of whether users stay connected through landlines, cell phones or calls completed over the Internet, virtually all calls travel through the traditional network at some point. Building and maintaining a local network that benefits the public certainly remain capital intensive in rural, high-cost areas.¹⁰³

Finally, the glaring disconnect with the ALJ's recommended rate increases and the lack of funding for COLR/universal service obligation funding is this: The Decision results in significant revenue losses which the ALJ presumes can be managed through creative rate design, operating efficiencies, and by untenable increases in the RLECs' local and noncompetitive rates. The Decision leaves unanswered how a RLEC such as CenturyLink with high-cost, less dense areas and significant competitive pressures can continue to price competitively, recover its costs, comply with COLR/universal service obligations, and fund its regulatory mandates arising from Act 183.

Regulatory pricing decisions that force a no-win on CenturyLink and rural Pennsylvanians are not in the public interest. Unfunded regulatory mandates are not in the public interest. The Decision's result is not in the public interest and, in fact, is anticompetitive given that COLR/universal service obligations are shouldered solely by the RLECs and are nowhere recognized in the Decision.

¹⁰¹ Testimony of Christy V. Londerholm on behalf of Embarq PA (now CenturyLink), St. 3.0, pre-filed January 15, 2009 at 12-15, at Docket No. I-0004015. *See also*, Attachment A hereto.

¹⁰² CTL St. 1.0 at p. 30.

¹⁰³ CTL St. 3.0 at pp. 17-18.

D. The ALJ also erred when claiming the RLECs' position on competition was contradictory and by assuming competition is a substitute for universal service/COLR obligations.

The ALJ found that the RLECs' factual presentation was contradictory as, on the one hand, RLECs claimed that access reform would cause harmful local service rate increases through rebalancing, but on the other hand, they claimed an inability to increase local service rates due to competitive pressure.¹⁰⁴ The ALJ misunderstands.

The positions are not contradictory. Rather, the ALJ clearly missed the sophistication of competitive telephone market dynamics. Intense competition exists only in CenturyLink's rural town centers.¹⁰⁵ Pennsylvania's variable market conditions run the spectrum from no competition to highly competitive, even at the wire center level. Competition in these town centers has developed notwithstanding alleged "high" RLEC intrastate switched access rates and such market entry shows no sign of stopping. The competition that has developed, however, is intermodal in nature and is not aided or deterred from RLEC intrastate switched access levels. And, intermodal competition and VoIP-based services seek expansion based upon a business case, not because COLR/universal service obligations require them to serve. Comcast in this record admitted that it does not view itself as having COLR obligations in Pennsylvania.¹⁰⁶ Long distance service providers no longer operate in a meaningful competitive market. Today, the requested access reductions are purely about increasing profits for the largest international global carriers that are AT&T and aligned parties.

¹⁰⁴ FOF 11, citing PTA St. No. 1, pp. 18-20, Ex. GMZ-13; CenturyLink St. No. 2.0.

¹⁰⁵ CTL St. 3.0 at p. 7 ("Indeed, competition – particularly in rural town centers like Gettysburg Hanover, Fayetteville and Bedford – has developed and shows no sign of decreasing notwithstanding existing intrastate switched access rate levels.").

¹⁰⁶ CTL MB at p. 72.

Herein rests the crux of the flaw in the ALJ's competition findings. Specifically, the ALJ errs when essentially assuming that competition is a substitute for universal service/COLR obligations.¹⁰⁷ Accordingly, the Commission must either reject the ALJ's misstep or relieve RLECs of COLR/universal service obligations. In many cases, competition is not found in high-cost, less dense rural areas of CenturyLink's territory because it is simply uneconomical for competitors to operate in these markets. As such, high-cost areas are the antithesis of competition. And, in those areas with competitive options, CLECs and wireless carriers do not have COLR/universal obligations. Conversely, CenturyLink by statute and regulation is required to adhere to COLR obligations and be ready to provide reliable telephone service, regardless of location, customer, or circumstance. If, as the ALJ concludes, competition is a surrogate for COLR/universal service, then RLECs should be free from pricing constraints and should not be held to bear COLR/universal service obligations in high-cost, rural areas.

E. To the extent the ALJ relied upon other states to support the Decision's retail rate increases, the ALJ erred.

Under a heading in the Decision marked "Access Reform in Other States," the ALJ also notes a recent New Jersey Board decision regarding CenturyLink's sister affiliate in New Jersey and goes on to add that New Jersey is a "net USF payor like Pennsylvania."¹⁰⁸ To the extent the ALJ relied upon New Jersey or any other state to justify mirroring of intrastate/interstate rates, CenturyLink maintains that the decisions of other state Commission's are neither binding upon this Commission nor instructive of the policy and pricing determinations needed for Pennsylvania relative to rational access

¹⁰⁷ See, e.g., RD at p. 133. See also, RD at p. 107.

¹⁰⁸ RD at p. 23.

reform.¹⁰⁹ Each state has specific requirements and specific factual circumstances, including demographics, densities, and cost characteristics. In New Jersey, for example, CenturyLink is one of only three ILECs and the population densities and cost characteristics have not been shown in this record to have any correlation or relevancy to Pennsylvania or as to RLECs in Pennsylvania.

Similarly, the fact that both Pennsylvania and New Jersey are both net payer states for federal USF is not relevant. CenturyLink's local residential rate in New Jersey was \$7.95/month from 1991 until 2008, when local residential were increased to \$10.95/month in 2008. Tr. at pp. 470, 423-424. In January 2010, as authorized by a settlement, CenturyLink's New Jersey sister affiliate increased the local residential rate to \$13.45 per month. The final allowed increase will raise residential local rates to \$15.45 per month – which is considerably lower than CenturyLink's current R1 rate in Pennsylvania. Clearly, to the extent the ALJ relied upon New Jersey or activity in other states, the ALJ's ruling should be rejected.

Exception No. 4 **The ALJ erred in not relying upon the PA USF.**
(RD at pp. 17-23, 90-93, 106-107, 131-137, and 146-147; FOF at 20-22, 86-89, and 92; COL at 10-13, 26, 29-31, 36, and 38-40.)

A. The Decision is not revenue neutral and violates Section 3017(a).

The ALJ erroneously finds there to be “no net revenue decrease associated with the access reductions in this proceeding due to revenue neutrality.”¹¹⁰ The ALJ goes one to find the “opportunity for revenue neutral rebalancing provided by Section 3017(a) of the Code can be satisfied by permitting rate increases for noncompetitive services rather

¹⁰⁹ CTL M.B. at 27.

¹¹⁰ FOF 92.

than guaranteeing dollar for dollar revenue recovery.”¹¹¹ The ALJ’s Decision is far from revenue neutral. The Decision remains unsupported in this record and in reality.

The Decision recommends re-pricing of CenturyLink’s intrastate switched access rates to CenturyLink’s interstate rates and structure, resulting in annual loss of revenues [BEGIN CTL CONFIDENTIAL] [END CTL CONFIDENTIAL] in CenturyLink’s intrastate access revenues, equating to [BEGIN CTL CONFIDENTIAL] [END CTL CONFIDENTIAL].¹¹² The Decision, however, effectively foists all revenue recovery on assumed increases to local rates and noncompetitive rates (including business rates) notwithstanding that well over a quarter (29.5%) of CenturyLink’s surveyed consumers have said they will leave CenturyLink – and take all revenues with them for revenue neutrality purposes – with just a \$2 increase to local rates.¹¹³ The Decision’s presumed local rate increases of \$4 to \$5 in no way can achieve revenue neutrality as required by Pennsylvania law. While rebalancing to local rates or other noncompetitive rates as the Decision recommends might be a viable option for Pennsylvania’s dominant ILEC Verizon,¹¹⁴ the Decision is not compliant with Section 3017(a) and must be rejected.

The ALJ recommends revenue neutrality through local and business rate increases (and other noncompetitive rates). The Decision’s recommendations in this regard are not viable or sustainable in the competitive marketplace today. The record at Docket No. I-00040105 demonstrates revenues from CenturyLink’s residential end-user revenues are insufficient to recover the cost of providing their service. CenturyLink, with

¹¹¹ RD at p. 108.

¹¹² See, CTL MB at p. 43.

¹¹³ CTL St. 2.0 at pp. 7-8.

¹¹⁴ CTL RB at pp. 35-36. See also, CTL MB at pp.46-48.

COLR/universal obligations serving high-cost areas and with broadband obligations, is not on an equal playing field in the intermodal competitive marketplace today. The Decision's \$23.00 residential local affordability rate is pure fiction. Increasing the business rates is not a viable or revenue-neutral option as business customers typically have competitive options. The Decision's finding that RLEC business rates are "relatively low" (FOF 59) and could be increased is contrary to reality and is unsupported by any study or competent record evidence. The ALJ's recommended rebalancing access rate reductions on end users customers local and business rates simply does not result in realizable revenue-neutral recovery as required by Section 3017(a).

The Decision's mirroring recommendation will reduce CenturyLink's revenues by approximately [BEGIN CTL CONFIDENTIAL] [END CTL CONFIDENTIAL], or approximately \$7.00 per access line even if spread to every CenturyLink line. Given CenturyLink's current \$18.00/month rate for R1's, those residential rates would need to increase to \$20.33, \$22.66, and \$24.99 annually (per the three step process in the Decision) to be revenue neutral, given equal treatment to CenturyLink's local residential and business lines. This is only the appearance of revenue neutrality since the calculation assumes, for example, that business customers under existing contracts can be raised contrary to any terms and that customers with bundles that are the most highly targeted customers by cable VoIP competitors will willingly pay more and remain with CenturyLink.

Of course, capping CenturyLink's residential rates at either \$22.00/month or \$23.00/month, but increasing business rates is woefully contrary to Section 3017(a)'s revenue neutrality requirement as business customers generally have more competitive

options. For example, between October 1, 2009 and February 28, 2010 [BEGIN CTL CONFIDENTIAL]

[END CTL CONFIDENTIAL] had ported their CenturyLink telephone number over to just Comcast, representing nearly [BEGIN CTL CONFIDENTIAL] [END CTL CONFIDENTIAL] of CenturyLink's customer base.¹¹⁵ In addition, RLECs in their annual price cap filings routinely bank revenues that they are unable to apply to rate increases associated with noncompetitive services (including business rates) for purposes of annual price stability mechanism filings.¹¹⁶

CenturyLink maintains that the ALJ's virtually exclusive resort to rebalancing access reductions by significantly increasing retail rates is unreasonable and unnecessary and remains contrary to Section 3017(a). The ALJ erred in failing to utilize the PA USF for rebalancing purposes, striving instead to harmonize her reductions with Judge Colwell's Decision. CenturyLink maintains that the PA USF is the only realizable means by which comply with revenue neutrality under Section 3017(a). Intrastate switched access rates are no longer an impediment to competition.¹¹⁷ The record amply supports continued access reform in a rational manner and the key to continued access reform in Pennsylvania necessarily involves the PA USF. Alternatively, if the retail rate rebalancing result recommended by the ALJ is adopted, then RLEC should be relieved of COLR/universal service obligations and all pricing constraints and caps should be removed.

¹¹⁵ CTL MB at pp. 32-33.

¹¹⁶ PTA St. 1.1 at pp. 19-20, CTL St. 1.1 at pp. 17-18.

¹¹⁷ CTL RB at pp. 35-36 and fn 129 (citing PTA St. 1.1 at pp. 19-20, CTL St. 1.1 at pp. 17-18).

B. The ALJ erred in interpreting and applying Section 3017(a) and in not relying upon the PA USF to mitigate retail rate impacts.

Other than a passing comment of being “sensitive” to concerns about COLR and universal service obligations, the ALJ fails to accord *any weight* in this decision to CenturyLink’s survey and the resulting impact of not being able to achieve revenue neutrality as CenturyLink’s customers in rural town centers leave CenturyLink and take revenues with them that today support COLR/universal service. The ALJ blatantly ignores the realities when stating: “There simply is no substantial basis on which to conclude that the PA USF must “guarantee” revenue replacement for RLEC access reductions to protect universal service/COLR obligations.”¹¹⁸

The ALJ claims Section 3017(a)’s revenue neutrality requirement is not a guarantee to dollar-for-dollar,¹¹⁹ yet as addressed below errs assigning all risk of revenue neutrality on the very entities with one-sided regulatory obligations in Pennsylvania, namely COLR/universal service and broadband commitments. Section 3017(a)’s wording prohibits and limits the Commission’s discretion to require access reductions except on a revenue-neutral basis.¹²⁰ CenturyLink’s alternative regulation plan also provides that the Commission may not require CenturyLink to reduce access rates except on a revenue-neutral basis to CenturyLink.¹²¹ By foisting significant access reductions

¹¹⁸ RD at 107.

¹¹⁹ See, e.g., FOF 44. Interestingly, while the Decision claims RLECs seek guaranteed dollar-for-dollar recovery of revenue losses, the Decision does not require IXCs to flow through to the consumers in rural Pennsylvania – whose retail rates would significantly increase – the benefits of access reductions on a dollar-for-dollar basis.

¹²⁰ 66 Pa.C.S. § 3017(a) (“The commission may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis.”). Prior to Act 183, Chapter 30’s revenue neutrality entailed what a local exchange telecommunications company “shall provide for” in the implementation of alternative regulation plans. CTL MB at pp. 49-55. The language used by the General Assembly in Act 183 at Section 3017(a), however, unequivocally makes revenue neutrality an obligation of the Commission to ensure if the Commission implements access reductions.

¹²¹ Attachment A, CenturyLink Amended Alternative Regulation Plan at p. 25.

on the RLECs through the Decision's mirroring of "rates and structure" recommendation, all risk of revenue neutrality is borne on the RLECs. The result is contrary to the letter and the spirit of Section 3017(a) and the regulatory compacts existing in Pennsylvania under Act 183.

The ALJ erred in placing all risk of access reform on rural Pennsylvanians. The ALJ recommends:

Upon consideration of the parties' positions, I conclude that the RLECs are essentially seeking a revenue neutrality guarantee through the PA USF in their arguments and that Section 3017(a) of the Code does not provide that level of certainty. (RD at p. 106)

For all the above reasons, the PA USF should not be utilized as the exclusive funding source for RLECs to offset access reductions. The opportunity for revenue neutral rebalancing provided by Section 3017(a) of the Code can be satisfied by permitting rate increases for noncompetitive services rather than guaranteeing dollar for dollar revenue recovery. (RD at p. 108)

CenturyLink strongly disagrees with the ALJ's statements and findings that revenue neutrality can be satisfied through rate increases. The Decision results in unfunded regulatory mandates and is both contrary to Section 3017(a) and Act 183's overall regulatory compact.

In Chapter 30, Pennsylvania's first alternative regulation statute, local exchange companies serving more than 250,000 lines (including CenturyLink), were required to have an effective per-minute switched-access service price not to exceed 12¢ (both originating and terminating rates) per the first five years from the implementation date of its petition and plan for alternative regulation. 66 Pa.C.S. § 3007(1) (repealed). Chapter 30 provided for an explicit phase down of access rates, restricted access rate increases, and provided for revenue neutrality associated with access rate reductions.¹²² However,

¹²² Section 3007(1) of Pennsylvania's first alternative regulation statute in part provided:

the revenue neutrality provision in Chapter 30 merely stated that a local exchange telecommunications company “shall provide for” revenue neutrality upon “implementation” of the ILEC’s petition and plan for alternative regulation per Chapter 30.¹²³

Conversely, the language used by the General Assembly in Act 183 at Section 3017(a) unequivocally makes revenue neutrality an obligation of the Commission to ensure if the Commission implements access reductions. Unlike Chapter 30, Act 183 is not tied to the implementation date of a renewed alternative regulation plan submitted under Act 183. In Act 183, the General Assembly explicitly stated the Commission may not require CenturyLink or the other RLECs to reduce access rates except on a revenue neutral basis.¹²⁴ Thus, revenue neutrality must be viewed from the standpoint of the carrier and the customers of the carrier faced with the access reductions. If the access reductions create a loss of revenues, as is the case with the ALJ’s Decision meaningless application of an “opportunity” for revenue neutrality,¹²⁵ then both the express language and the spirit of Section 3017(a) are violated.

The General Assembly in Act 183 through Section 3017(a) ensured that consumers continue directly and tangibly to benefit from revenue neutrality. As addressed in these Exceptions and in its Briefs, CenturyLink is required to incur costs to provide COLR/universal service to customers in high-cost, less dense exchanges and to

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

¹²³ *Id.* See also, CTL MB at pp. 49-55.

¹²⁴ 66 Pa.C.S. §3017(a).

¹²⁵ See, e.g., FOF 64 (“The RLECs should not be forced to increase their rates for other noncompetitive services during the rebalancing process, but should be provided the opportunity to do so. [citation omitted]”).

be ready to provide service even in the rural town centers where competition is hypercompetitive.¹²⁶ Act 183 cannot be interpreted or applied to result in unfunded mandates and/or inadequately funded mandates for statutory obligations and COLR/universal service policies.

Act 183's regulatory compact also includes significant broadband infrastructure obligations on CenturyLink. Section 3014(k) of Act 183, for example, requires carriers reasonably to balance deployment of its broadband network between rural, urban and suburban areas within its service territory, as those areas are applicable.¹²⁷ While access revenues do not support broadband availability, what the Decision does is improperly assign all risk of revenue recovery through retail rate increases on the RLECs. The Decision thereby contravenes the letter and spirit of Section 3017(a)'s revenue neutrality requirement. Sections 3017(a) and the broadband mandates in Section 3014 must be interpreted to coexist. Section 3017(a) cannot be interpreted and applied – as done by the ALJ – to shift all risk of access reform on the RLECs and their consumers and thereby create unfunded regulatory mandates. Yet, this is precisely what results from the Decision's lack of reliance upon the PA USF.

The revenue neutrality requirement of Section 3017(a) must mean realizable revenue-neutral recovery to the RLEC and the customers it serves relative to COLR/universal service obligations when faced with Commission-required access reductions. The FCC in its CALLS Order implemented significant reductions to interstate switched access rates with realizable revenue offsets through explicit universal service

¹²⁶ CTL MB at pp. 63; CTL RB at pp. 10-11.

¹²⁷ 66 Pa.C.S. § 3014(k).

funding.¹²⁸ The ALJ erred in failing to rely upon the PA USF to meet Section 3017(a)'s revenue neutrality requirement. The ALJ's recommendations improperly reduces CenturyLink's access rates without realizable revenue-neutrality, threatens the regulatory compacts in Act 183, deprives CenturyLink of constitutional due process protections, and diverts support currently used to provide direct and tangible benefits to consumers in rural Pennsylvania to AT&T and aligned parties.

C. The ALJ erred in wrongly claiming CenturyLink seeks a windfall and a guarantee of competitive losses.

The ALJ finds access rate reform should not be used as a "windfall" to the RLECs and that the purpose of the PA USF on a going forward basis should not be to guarantee the RLECs' competitive losses.¹²⁹ There is no windfall. The current PA USF is operating as ordered by the Commission and produces the amount of support established by the Commission.¹³⁰

Rebalancing of RLEC access reductions to the PA USF also is not equivalent to requesting a guarantee of revenues or a guarantee of dollar-for-dollar revenues. There has been no proposal made by CenturyLink to true up the revenues. Revenue neutrality is a point in time and once the revenue neutrality occurs, CenturyLink recognizes that it will need to compete to maintain revenue levels.¹³¹

Per the ALJ, Verizon also presented compelling argument that it is unreasonable to expect other carriers and their customers to fund the RLECs' operations through an expanded PA USF in today's competitive environment.¹³² The ALJ wrongly views the

¹²⁸ CTL 1.0 at p. 45.

¹²⁹ FOF 45 and 46. *See also*, RD at pp. 106-107, 131.

¹³⁰ CTL St. 3.2 at p. 2.

¹³¹ CTL St. 3.1 at p. 27.

¹³² RD at p. 131.

PA USF, and RLEC intrastate switched access charge, as money provided to a “competitor.” The ALJ in this regard seems to give considerable weight to Verizon’s significant contribution to the PA USF.¹³³

As CenturyLink’s witnesses testified, the PA USF is inherently inefficient.¹³⁴ Universal service policy requires prices for the highest-cost customers to be below cost in support of affordability and comparability objectives. Such policy mandates that some other prices for other customers will be increased to offset the cost of the policy. Thus, the primary purpose of universal service policy is equity, not efficiency.¹³⁵

Moreover, in a perfect world, all competitors, including RLECs, would be free to price services as the market demands or as their cost structure requires without regulatory constraints. In a perfect world, COLR/universal service obligations are satisfied without regulatory intervention. RLEC intrastate switched access rates do not exist in a competitively perfect market and should not be priced by this Commission as if existing in perfectly competitive markets. RLECs have COLR/universal service obligations in high-cost, less dense areas of the Commonwealth while AT&T, Sprint, Verizon, Qwest, and Comcast do not.¹³⁶ Thus, unless the Commission releases RLECs from COLR/universal service obligations and pricing constraints, the pricing of intrastate switched access rates must recognize these realities. The pricing of RLEC intrastate switched access rates cannot be assumed to exist in perfectly competitive markets as recommended by the ALJ. Likewise, because of the lack of perfectly competitive

¹³³ RD at pp.133.

¹³⁴ CenturyLink is not inefficient and no party has demonstrated otherwise. CTL St. 1.1 at p. 15

¹³⁵ CTL St. 1.1 at pp. 14-15.

¹³⁶ CTL MB at pp. 22-23.

markets in Pennsylvania, the PA USF must be a meaningful part of the solution of continued reform.

Finally, this view that access rate levels or the PA USF are allegedly anticompetitive or somehow unfair is premised upon the flawed assumption that competition is the only policy that this Commission must consider. The interests of one aspect of the public interest (competition and competitors) should not trump all others.¹³⁷ Fostering competition should be given equal weight to that universal service at affordable rates and the funding of COLR/universal service obligations and Act 183 broadband requirements. Local RLEC rates, the PA USF and access rates are interlinked and elevating the interests of alleged competitors over all others is not rational, continued access reform.

And, increasing the profit margins of AT&T and aligned parties to accommodate access reductions with unrealizable revenue neutral recovery over benefits AT&T and aligned parties at the expense of rural Pennsylvania. Comcast admits it does not have COLR obligations¹³⁸ and AT&T, Sprint and Verizon are focused on business strategies that have nothing to do with consumers in rural America.¹³⁹ Obviously, continued successful implementation of state and federal universal service policy will continue to depend on COLR-bound ILECs delivering high-quality service to rural Pennsylvanians at rates comparable to their urban and suburban counterparts.¹⁴⁰ As Messrs. Lindsey and Harper further explained:

¹³⁷ CTL St. 1.0 at p. 26.

¹³⁸ CTL MB at p. 72.

¹³⁹ *Id.*

¹⁴⁰ CTL St. 1.0 at p. 30. Similarly, funding the COLR/USF obligation is not guaranteeing ILEC revenues. Like other carriers, RLEC revenues are not “guaranteed” today and will not be in the future. CTL St. 1.1 at p. 17.

As the primary instruments of the state and federal universal service/COLR policy, ILECs must be fairly compensated for the cost of fulfilling this social compact. Funding provides an “insurance policy” for universal service – not for RLECs as claimed by Verizon (at page 5). **Failure to fund this policy creates an unfunded mandate that competitively disadvantages ILECs and places implementation of universal service policy at-risk. Failure to fully fund also may result in non-ILECs not paying their fair share of the burden of this social obligation.** This would produce an unfair outcome that would create a competitive advantage for non-ILECs who would neither be required to serve the highest cost customers nor fully participate in funding the universal service obligation borne by the ILECs to do so.¹⁴¹

The Commission’s history of access reform in Pennsylvania and its fashioning of the policies to date have been effective because those policies required carriers to share the funding burden through the PA USF to ensure that all Pennsylvanians in rural and high-cost areas have access to high-quality telecommunications services.¹⁴² Part of the cost of universal service policy has been and is borne by intrastate switched access rates. While this creates some level of economic inefficiency, the social benefits of equity, primarily availability of service for those customers who would not otherwise have it without a universal service policy, more than outweighs the inefficiency, on balance. Claims of competitive “harms” allegedly caused by this inefficiency are vastly overblown, as competition has been growing and thriving in many areas.

D. The ALJ’s recommendations fail to provide net consumer benefits.

Under Decision, consumers are guaranteed significant, unprecedented rate increases and further upward pressure on local rates and all noncompetitive rates. CenturyLink supports a balanced, well-transitioned approach to access reform that includes changes to the entire construct of intercarrier compensation at both the federal and state levels. Such reform would have to recognize the tremendous growth of

¹⁴¹ CTL St. 1.1 at pp. 15-16 (*emphasis added*).

¹⁴² CTL St. 3.0 at pp. 8-9.

intermodal competition in the telecommunications industry and that the historic remedy of simply increasing rates for rural Pennsylvanians (*i.e.*, the “end users” under the theory of “cost causation”) is no longer a viable or feasible. This type of outmoded response is no longer sustainable as it directly and adversely harms rural Pennsylvanians without any net benefits demonstrated by the proponents of access reductions. The result is less ability to invest in infrastructure, increased local rates, and less incentive to invest in new and innovative products and services.¹⁴³ The ALJ erred in ordering significant rate increase and failing to ensure that rural Pennsylvania consumers will benefit on net given the Decision’s rate increases. The Decision’s error in this regard can be remedied through reliance upon the PA USF rather than retail rate rebalancing to effectuate RLEC access reductions.

The PA USF ensures that rural consumers in Pennsylvania continue to benefit if access reductions are required by the Commission. The ALJ erred in failing to ensure net consumer benefits. CenturyLink maintains that net consumer benefits must support a Commission finding of any reduction to intrastate switched access rates.¹⁴⁴ Thus, revenue neutrality through the PA USF is absolutely critical to Section 3017(a) and to ensuring net consumer benefits associated with any further RLEC access rate reductions in Pennsylvania. The ALJ in this regard errs when finding reductions to RLEC access rates will result in lower long-distance rates and somehow will benefit consumers.¹⁴⁵ The ALJ erroneously cites to AT&T’s In-State Connection Fee.¹⁴⁶

¹⁴³ CTL St. 3.1 at p. 5.

¹⁴⁴ CTL M.B. at pp. 49-56, 21-24. *See also*, CTL St. 3.0 at pp. 14-16.

¹⁴⁵ FOF 20, 21, and 22. *See also*, RD at pp. 35.

¹⁴⁶ FOF 22. RD at pp.35.

The Commission and the public cannot have any confidence that the access reductions these parties seek will provide consumer benefits Pennsylvania. As the record demonstrates, Sprint, AT&T and Verizon (former MCI) could not identify any specific reductions that they ostensibly flowed-through to Pennsylvania consumers as a result of the access reductions ordered by the Commission in 1999 and 2003. These parties have failed to produce any documents – not in compliance with Ordering Paragraph 8 of the Commission’s 2003 Order and not in their direct testimonies where they now seek additional reductions in RLEC access rates.

Moreover, the ALJ appears to have accepted the theory espousing a causal relationship between reductions in intrastate switched access rates and benefits such as new products and services.¹⁴⁷ That causal relationship that once may have been true is no longer the case. Competition will not ensure flow through as once thought given the lack of stand-alone IXCs and the lack of stand-alone long distance plans. And, as the record demonstrates, even if there is a minimal benefit, these parties have not quantified the assumed benefit. It could be pennies per month or a fraction of that. The ALJ wrongly accepts the outdated and inapplicable theory.

Of course, even assuming competition will somehow translate to better pricing or more products as the ALJ notes,¹⁴⁸ the point here is that the ALJ never undertakes a net analysis as to whether the impact of the retail rate increases outweigh these so-called benefits arising from access reductions. The Commission can make a finding of net consumer benefits.¹⁴⁹

¹⁴⁷ CTL St. 3.0 at p. 17.

¹⁴⁸ CTL MB at p. 31.

¹⁴⁹ AT&T St. 1.2 at p. 50.

The ALJ cites to the “commitment” of AT&T to reduce its In-State Connection Fee.¹⁵⁰ Again, while seemingly a benefit in theory, the reality is that the Pennsylvania customer base to which any alleged rate reduction could apply has eroded significantly due to competition and the migration of stand-alone toll service to bundled packages. In fact, the stand-alone toll market had eroded so significantly that in 2005 AT&T effectively abandoned the local and long distance mass market. This seeming rate benefit relied upon by the ALJ is not a benefit – certainly not on net when viewed against the harms to consumers associated with increased local rates, upward pressure on rates, and other adverse ramifications to rural Pennsylvania. Assertions that reductions in RLECs’ intrastate access rates will somehow flow through to consumers are pure illusion. The ALJ’s erred in concluding AT&T’s In-State Connection Fee reduction and other theories of benefits somehow flowing from access reductions support the Decision’s mirroring recommendation and the rebalancing of access reductions to local consumer rates.

If the Decision is adopted, consumers – the statute’s intended beneficiaries of the revenue-neutral requirement – will be harmed through untenable rate increases and unfunded regulatory mandates. RLECs continue to shoulder the lion’s share of regulatory burdens in the Pennsylvania telecommunications market and Decision’s outcome only makes the RLECs’ regulatory burdens more difficult to sustain going forward. Even if one assumes there are some limited benefits that may flow to Pennsylvania consumers from such access reductions, the reality is that, on net,

¹⁵⁰ CTL St. 3.1 at p. 6. The ALJ favorably cited to AT&T’s claims that it implemented a 36% reduction in its New Jersey In-State Connection Fee in conjunction with the New Jersey Board’s Order in an access proceeding in that state. RD at pp.70. However, when asked to quantify that reduction or identify the number of impacted customers by that alleged 36% reduction, AT&T did not produce any quantification. CTL St. 3.1 at pp 24-25, citing Exhibit DFB-9, ATT Supplemental Response to CTL-ATT 2-31. There is no credible evidence that this rate “benefit” was meaningful in New Jersey or anywhere else. A meager 35% reduction does not prove net consumer benefits to rural Pennsylvania given the harms associated with AT&T’s proposals.

consumers in Pennsylvania – especially rural Pennsylvania – will be harmed by the significant rate increases proposed by these parties.¹⁵¹

E. The ALJ erred in not expanding the PA USF given the significant retail rate impact associated with the Decision’s mirroring and consumer rate increases recommendations.

The ALJ finds that the principal reason she is not recommending PA USF expansion is “the compelling record evidence of its negative impact on Verizon ILEC customers, many of whom are rural.”¹⁵² The ALJ also reiterated, as addressed above, what the ALJ viewed as “lack of countervailing evidence” that the PA USF is necessary to fulfill RLEC universal service/COLR commitments.¹⁵³ The ALJ concludes by repeating Judge Colwell’s recommendation to target subsidy mechanisms through a reformed PA USF in a rulemaking.¹⁵⁴

As addressed above, the Commission need not require that RLEC intrastate switched access rates be priced at interstate rates. The Commission can reduce RLEC intrastate switched access rates toward interstate or it can reduce RLEC rates without making interstate the end goal of its future pricing decisions. Thus, the issue of the expansion of the PA USF is primarily driven by the magnitude of the RLEC access reform ordered by the Commission. PA USF has been critical to universal service and access reform undertaken by the Commission to date. The PA USF, as existing or as expanded, should be part of any continued access reform going forward.

The ALJ deems it a burden to Verizon and its customers of expanding the PA USF, and then takes the drastic remedy of rendering the existing PA USF and a future PA

¹⁵¹ CTL St. 3.1 at pp. 2-3.

¹⁵² RD at p. 132 or 133. *See also*, FOF 15: It is inequitable to impose a disproportionate subsidy burden on one industry segment. OCA St. No. 1, p. 12; Tr. 478.

¹⁵³ RD at p. 132 or 133

¹⁵⁴ *Id.*

USF meaningless for purposes of rebalancing for the significant RLEC access reductions recommended in the Decision. The ALJ's view that Verizon is too burdened with its contribution to the PA USF goes to the issue of *how* the PA USF should be structured if undertaking significant access reductions. The ALJ erred in limiting the PA USF for rebalancing of RLEC intrastate access reductions it recommended and then erred again in foreclosing expansion of the PA USF thus remaining aligned with Judge Colwell's decision.

CenturyLink fully addressed Verizon's redirection of USF funding.¹⁵⁵ On this point, CenturyLink adds that OCA in its Briefs correctly noted that parties (such as Verizon) seek interim solutions for long-term access reductions.¹⁵⁶ In the long term, the ALJ's Decision (along with Verizon's claims which the ALJ seems to agree with) will dismantle the PA USF and universal service in rural Pennsylvania. Verizon's wireless and wireline affiliates – along with the IXC customers they serve – directly benefit from universal service and a robust local telephone network in all parts of Pennsylvania. COLR/universal service goals cannot be relegated to short term, interim approaches relative to the PA USF as Verizon and the ALJ endorse.

Similarly, the Decision also contains an alternative recommendation regarding PA USF expansion. In event that the Commission disagrees with the recommendation that the PA USF not be expanded, the ALJ recommends, as an alternative, that the Commission consider adopting the AT&T modified rebalancing proposal.¹⁵⁷ The ALJ's undue focus on the size of the PA USF overshadows the Decision's failure to recognize the need for the PA USF.

¹⁵⁵ CTL M.B. at pp. 73-74.

¹⁵⁶ OCA M.B. at pp. 32-33, responding to AT&T. *See also*, OCA M.B. at pp. 36-37.

¹⁵⁷ RD at p. 94, p. 131 and 136-137.

The ALJ's view that Verizon also has rural customers is misguided. Verizon's parent is shedding its rural properties in other states.¹⁵⁸ If Verizon cannot or has not taken such measures in Pennsylvania, it certainly accomplishes the next best thing to that when it raises red-herring issues (such as the PA USF being anti-competitive or anti-consumer) and other unsupported claims of administrative difficulties with continuation and expansion of the PA USF. The Commission in this proceeding should fashion policy and balance obligations to ensure RLECs are not left with unfunded or inadequately funding policies and legislative mandates. In the final analysis, the ALJ's recommendation fail to rely upon the PA USF for sizable RLEC access reductions (with an affordability residential rate cap) as recommended therein and thereby the Decision fails to provide any *opportunity* for RLECs: (1) to continue to recover their costs of providing universal service in high-cost, less dense areas and meet COLR obligations; (2) to continue to price competitively in today's competitive market (the same market these parties claim justify access reductions); and (3) to continue to meet Chapter 30's broadband requirements.

The Commission should reject the Decision's failure to rely upon the PA USF. The record also demonstrates that the PA USF is needed more today than it was 10 years ago. Competition exists and has expanded to rural town centers, but competition is not ubiquitous.¹⁵⁹ Competitors avoid the highest cost areas and customers. Significant revenues are at issue for purposes of Section 3017(a)'s revenue neutrality requirement and the PA USF is now even more necessary than it was 10 years ago to preserve COLR/universal service policy in rural Pennsylvania,.

¹⁵⁸ CTL St. 3.1 at p. 27.

¹⁵⁹ See, e.g., CTL RB at pp. 9-12.

The Commission must continue to protect the customers most at risk rather than simply react to the complaints of those carriers seeking to reduce their access expense. Even if competitors served all customers in all rural areas, they still do not have COLR obligations. So long as COLR/universal obligations remain on ILECs and the Commission determines to implement further access reductions, the PA USF, as expanded, will ensure that regulatory and legislative obligations are adequately funded.

Exception No. 5 **The Decision’s access reduction implementation is unreasonable, fails to pass muster under Section 3017(a), and is contrary to the measured decision-making historically undertaken by the Commission. (RD at pp. 74-78, 88-90, 106-108, 131-137, and 137-140; FOF at 55, 75-77, and 90; COL at 23-24, 29-31, 39, and 40.)**

CenturyLink’s local rates for residential consumers are already at \$18.00/month. The Decision, if adopted, would require CenturyLink to begin increasing its local rates during “each of the next three (3) years (Phases II through IV)” so as to “transition to mirroring in three (3) approximately equal stages of access reductions.¹⁶⁰ CenturyLink would begin decreasing its intrastate switched access rates in Phase I per the Decision.¹⁶¹ However, while unclear in the Decision, CenturyLink would begin increasing rate increases to noncompetitive services in Phase I. The Decision also would impose rate increases for all noncompetitive rates, which include local exchange rates and other rates as well. For CenturyLink, noncompetitive services consist of business services and other services such as Caller ID and numerous vertical features. Noncompetitive services also include charges to the state and other carriers for 911 and information services, IXC non-recurring charges or porting charges paid by CLECs.¹⁶²

¹⁶⁰ *Id.* at p. 135.

¹⁶¹ *Id.*, at pp. 134-135.

¹⁶² CTL RB at p. 50.

The ALJ erred with assuming an ability to recover access reductions in Phase I through rate increases to noncompetitive services has not been demonstrated to be revenue neutral as required by Section 3017(a) of the Public Utility Code.¹⁶³ Relegating a flawed plan to technical conferences does not cure defect of Section 3017(a). Each year in its annual price cap filings, CenturyLink is unable to avail itself of “headroom” to increase rates to noncompetitive services.¹⁶⁴ Moreover, the ALJ’s Decision also fails to address the interplay of its timing recommendations on how funding will be accomplished for the broadband commitments required under Act 183 and CenturyLink’s alternative regulation plan. CenturyLink is required to meet a 100% broadband availability obligation by December 31, 2013. The significant rate increases envisioned by the Decision create actual, significant risk of lack of revenue neutrality. That risk is improperly and solely foisted onto CenturyLink and its customers contrary to the meaning and spirit of Section 3017(a), as also addressed above.

The statutory concern with the ALJ’s Recommended Decision is further compounded by the fact that the ALJ forced an unreasonable and unprecedented glide path for timing of access reductions and retail rate increases.¹⁶⁵ CenturyLink excepts both to the unreasonableness of the ALJ’s accelerated time frames and the overall 2-4 year glide path for implementing the ALJ’s recommended phases.¹⁶⁶

The ALJ provides no basis for the reducing access rates and increasing consumer rates within six (6) months of a Commission order – just two (2) months after the ALJ-imposed technical conferences. As to the 2-4 year glide path underlying the Decision’s

¹⁶³ See, e.g., CTL M.B at pp. 65; CTL R.B. at pp. 17.

¹⁶⁴ PTA St. 1.1 at pp. 19-20; CTL St. 1.1 at pp. 17-18.

¹⁶⁵ RD at p. 138.

¹⁶⁶ *Id.*, at p. 137.

phases, the ALJ states the 2-4 year period (with four phases) is “reasonable” (four phases because it is “consistent with the time period recommended under the FCC’s NBP for mirroring of interstate access rates.”¹⁶⁷

First, the FCC’s NBP does not require or encourage state Commissions to undertake rebalancing of local rates to offset the impact of lost access revenues, which is what the ALJ recommended for Pennsylvania. Second, the ALJ erred in taking the FCC’s NBP out of context. The FCC’s NBP does not recommend reducing in a vacuum intrastate terminating switched access rates, but rather as part of an overall comprehensive plan that includes reducing such intercarrier compensation (ICC) revenues (including revenues from switched access charges), with gradual increases in the federal subscriber line charges (SLC) and with rebalancing of local rates to offset the impact of lost access revenues. Moreover, that context also explicitly recognizes the need for support from the reformed Universal Service Fund to ensure adequate cost recovery.¹⁶⁸ As the FCC in the NBP stated:

The FCC should also encourage states to complete rebalancing of local rates to offset the impact of lost access revenues. Even with SLC increases and rate rebalancing, some carriers may also need support from the reformed Universal Service Fund to ensure adequate cost recovery. When calculating support levels under the new CAF, the FCC could impute residential local rates that meet an established benchmark. (Footnote omitted.) Doing so would encourage carriers and states to “rebalance” rates to move away from artificially low \$8–\$12 residential rates that represent old implicit subsidies to levels that are more consistent with costs. (Footnote omitted).¹⁶⁹

The ALJ’s picking and choosing only a piece of the NBP without the context is flawed.

¹⁶⁷ RD at p. 151, 134. In the Conclusions of Law (No. 24), the ALJ incorrectly notes that the “FCC’s National Broadband Plan (NBP) recommends that states approve the moving of carriers’ intrastate terminating switched access rates to interstate terminating switched access rate levels in equal increments over a period of two (2) to four (4) years.”

¹⁶⁸ CTL R.B. at p. 26, citing NBP at p. 148.

¹⁶⁹ FCC National Broadband Plan at p. 148 (*emphasis added*).

Third, as the above-referenced quote from the NBP makes clear, Pennsylvania's \$18.00 residential local benchmark is already 2.25 to 1.5 times higher than the \$8.00 to \$12.00 range addressed by the FCC. Under the ALJ's Decision, Pennsylvania RLECs would be at \$23.00/month rates – i.e., almost double the FCC's noted local residential rate range. Raising local consumer rates in the magnitude recommended and in the 2-4 year time frame recommended by the ALJ is reckless. Competition is thriving in more dense urban areas of Pennsylvania in spite of alleged high intrastate switched access rates. The record demonstrates that the new competitive intermodal marketplace is not one with level competition throughout Pennsylvania. Competition of a formidable kind has emerged in rural town centers like Gettysburg, Hanover, Fayetteville and Bedford, all of which are situated in CenturyLink's service territory, and shows no sign of decreasing notwithstanding existing intrastate switched access rate levels.¹⁷⁰ Meanwhile, CenturyLink has a broadband availability obligation until December 31, 2013 which has not been factored in to the ALJ's timing recommendations. As the Commission is also fully aware, the United States is experiencing – and by all accounts will continue to experience – one of the worst economic downturns in recent memory. The recommended time frames are unreasonable and are not consistent with rational access reform. There is no basis in the record and given the realities to undertake such significant access reductions and such steep unprecedented increases to consumer rates – solely to provide AT&T and aligned parties with windfall profits.

Moreover, the ALJ justifies the recommended 2-4 year time frame on the ground that it “provides time for the RLECs to adjust their business plans and avoid rate shock.” However, the ALJ's time frames for implementing the phase-in consumer increases and

¹⁷⁰ CTL RB at pp. 10-11.

access reductions contain inherent contingencies, uncertainties, and potential increases beyond the \$23.00 local rate to effectuate the mirroring put into motion if her Decision was adopted.¹⁷¹

The result is a far cry from rational access reform, but is the epitome of arbitrary and capricious decision making. The Commission should not implement reductions and set on a course without a reasonable end result to accomplish just and reasonable rates while continuing to maintain the public interest. The ALJ's Decision, however, does not effectuate these goals. Once embarking upon the path set forth in the Decision, there is no way to "un-ring the bell" associated with significantly increasing local rates and other rates just to reduce intrastate switched access rates. CenturyLink supports a gradual phase-in of access reform over reasonable transition period, such as to protect ratepayers in the most rural portions of our service territory and shield all consumers from burdensome rate increases in these very difficult economic times. The ALJ's 2-4 year glide path is very unreasonable and certainly is not indicative of a holistic, comprehensive reform.

Finally, the Recommended Decision's view of technical conferences relegates the impact of rate rebalancing at each stage limited to considering "whether mirroring can be accomplished sooner than the designated number of stages."¹⁷² CenturyLink expressly objects to the ALJ's limiting the purpose and scope of technical conferences to whether mirroring can be accomplished sooner. Technical conferences as envisioned in the Decision cannot cure an ill-fated outcome of \$23.00 residential local rates, unspecified

¹⁷¹ RD at p. 136.

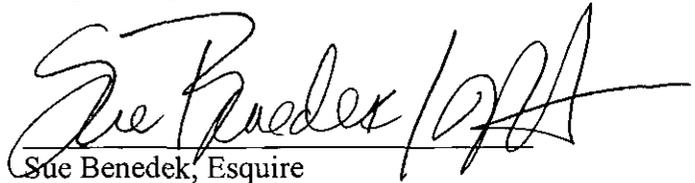
¹⁷² *Id.*, at p. 135.

increases to business rates and other noncompetitive rates, and limited viable options and so much uncertainty.

III. CONCLUSION

CenturyLink respectfully requests that the Commission reject the ALJ's Recommended Decisions as set forth in CenturyLink's Exceptions and take any other action that the Commission deems appropriate.

Respectfully submitted,



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Dated: September 2, 2010

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**PA PUBLIC UTILITY COMMISSION
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BEFORE THE
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Investigation Regarding Intrastate :
Access Charges and IntraLATA Toll :
Rates of Rural Carriers and :
The Pennsylvania Universal :
Service Fund :

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. I-00040105

AT&T Communications of :
Pennsylvania, LLC :
Complainant :

v. :

Docket Nos. C-2009-2098380, *et al.*

Armstrong Telephone Company - :
Pennsylvania, et al. :
Respondents :

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of September, 2010, served a true copy of the foregoing Exceptions upon the persons below, via electronic and first-class mail, in accordance with the requirements of 52 Pa. Code §1.54:

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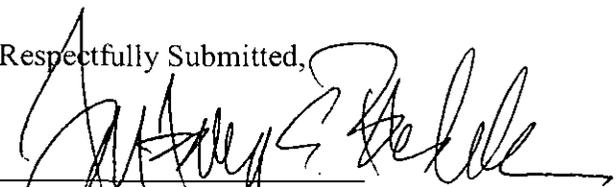
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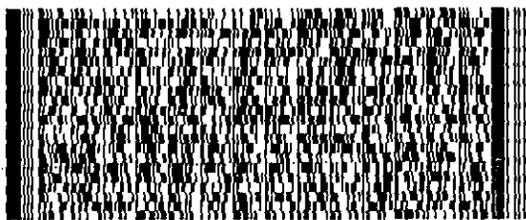
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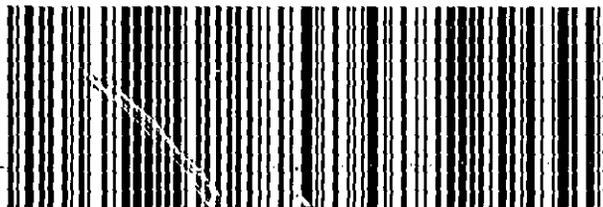


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