

COMMONWEALTH OF PENNSYLVANIA



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September 2, 2010

**HAND DELIVERED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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

**AT&T Communications of Pennsylvania, LLC, et al. V. Armstrong Telephone Company - Pennsylvania, et al.  
Docket No. C-2009-2098380 et al.**

Dear Secretary Chiavetta:

Enclosed for filing are the original and ten (10) copies of the Exceptions on behalf of the Office of Small Business Advocate in the above-docketed proceedings. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

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

Sincerely,

A handwritten signature in black ink that reads "Steven C. Gray".

Steven C. Gray  
Assistant Small Business Advocate  
Attorney ID No. 77538

Enclosures

cc: Cheryl Walker Davis  
Office of Special Assistants

John W. Wilson

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**EXCEPTIONS  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Dated: September 2, 2010**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. EXCEPTIONS ..... 7

Exception No. 1: The ALJ erred when she improperly assigned the Burden of proof to the RLECs. (RD, at 47-48)..... 7

Exception No. 2: The ALJ erred when she failed to adopt the OSBA’s Access rate proposal. (RD, at 90-93).....10

A. Summary of the RD .....10

B. Recovery of Loop Costs.....11

C. OSBA’s Proposal .....13

Exception No. 3: The ALJ erred when she created a new rate cap by Way of an “affordability standard.” (RD, at 116).....15

A. Residential and Business Rate Caps .....15

B. Business Rate Increases .....15

C. Residential Affordability Rate .....16

III. CONCLUSION.....19

## TABLE OF AUTHORITIES

### Cases

<i>Unified Intercarrier Compensation</i> , CC Docket No. 01-92.....	2, 4, 8
<i>Joint Petition of Nextlink Pennsylvania, Inc., et al.</i> , 196 PUR 4th 172, 93 Pa. PUC 172 (Order entered September 30, 1999) <i>affirmed</i> ; <i>Bell Atlantic-Pennsylvania v. Pennsylvania Public Utility Commission</i> , 763 A.2d 440 (Pa. Cmwlth. 2000), <i>vacated in part</i> ; <i>MCI v. Pennsylvania Public Utility Commission</i> , 577 Pa. 294, 844 A.2d 1239 (Pa. 2004) (colloquially known as the “Global Order”).....	1
<i>Pennsylvania Public Utility Commission v. Breezewood Telephone Company</i> , 74 Pa. P.U.C. 431 (1991).....	12
<i>Buffalo Valley Telephone Company, et al. v. Pennsylvania Public Utility Commission</i> , 990 A.2d 67, (Pa. Cmwlth.2009).....	1
<i>Milkie v. Pa. PUC</i> , 768 A.2d 1217 (Pa. Cmwlth.2001).....	9
<i>Access Charge Investigation per Global Order of September 30, 1999</i> , Docket No. M-00021596, <i>et al.</i> (Order entered July 15, 2003) (“Rural Access Settlement Order”).....	1
<i>AT&amp;T Communications of Pennsylvania, LLC, et al. v. Armstrong Telephone Company - Pennsylvania, et al.</i> , Docket Nos. C-2009-2098380, <i>et al.</i> .....	2, 3, 7, 8, 9
<i>AT&amp;T v. Verizon</i> , Docket No. C-20027195 (Order entered January 8, 2007).....	8
<i>In re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth</i> Docket No. I-00940035 (Order entered January 28, 1997).....	13
<i>Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund</i> (“Investigation Order”), Docket No. I-00040105.....	1-5, 8

**Statutes**

66 Pa. C.S. § 315(a) .....7  
66 Pa. C.S. § 1304.....16, 18  
66 Pa. C.S. § 3011(2).....16  
66 Pa. C.S. § 3015.....4, 8  
66 Pa. C.S. § 3017.....4, 8  
66 Pa. C.S. § 3019(h).....16

**Regulations**

52 Pa. Code § 69.264.....15  
52 Pa. Code § 54.73.....15  
52 Pa. Code § 62.3.....15

## **I. Introduction**

On September 30, 1999, the Pennsylvania Public Utility Commission (“Commission”) entered the *Global Order*.<sup>1</sup> The *Global Order* created the Pennsylvania Universal Service Fund (“PaUSF”), reduced the access charges of the rural local exchange carriers (“RLECs”), and established a cap on local exchange rates for the RLECs’ residential and business customers.

On July 15, 2003, the Commission entered the *Rural Access Settlement Order*.<sup>2</sup> That Order approved a settlement that further reduced the RLECs’ access charges, raised the residential and business local exchange rate caps, and left the PaUSF unmodified.<sup>3</sup>

On December 20, 2004, the Commission entered an Order in the *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund* (“*Investigation Order*”), Docket No. I-00040105, which provided:

That an investigation to consider whether intrastate access charges and intraLATA toll rates in rural ILECs’ territories should be decreased and to consider any and all rate issues and rate changes that should or would result in the event that disbursements from the Pennsylvania Universal Service Fund are reduced and/or eliminated is hereby instituted.

*Investigation Order*, at 7, Ordering Paragraph 1.

Subsequently, the Commission issued a series of orders staying the investigation.

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<sup>1</sup> *Joint Petition of Nextlink Pennsylvania, Inc., et al.*, 196 PUR 4th 172, 93 Pa. PUC 172 (Order entered September 30, 1999) *affirmed*, *Bell Atlantic-Pennsylvania v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated in part*; *MCI v. Pennsylvania Public Utility Commission*, 577 Pa. 294, 844 A.2d 1239 (Pa. 2004) (colloquially known as the “*Global Order*”).

<sup>2</sup> *Access Charge Investigation per Global Order of September 30, 1999*, Docket No. M-00021596, *et al.* (Order entered July 15, 2003) (“*Rural Access Settlement Order*”).

<sup>3</sup> The caps on residential and business local exchange rates apply only when those local exchange rates are being increased in tandem with access charge reductions. *See Buffalo Valley Telephone Company, et al. v. Pennsylvania Public Utility Commission*, 990 A.2d 67 (Pa. Cmwlth. 2009).

On March 19, 2009, AT&T Communications of Pennsylvania, LLC, TCG New Jersey, Inc., and TCG Pittsburgh, Inc. (collectively, “AT&T”) each filed individual complaints with the Commission against 32 RLECs. The 96 complaints requested that the RLECs be ordered to reduce their intrastate access rates to levels which match the rates each RLEC charges for interstate switched access.<sup>4</sup>

On April 24, 2008, the Commission entered an Order (“*April 2008 Order*”) which “further stayed [the investigation] pending the outcome of the FCC’s *Unified Intercarrier Compensation* proceeding at CC Docket No. 01-92 or for one year from the date of entry of this Order, whichever is earlier,” for the majority of issues set forth in the *Investigation Order*. *April 2008 Order*, at 31, Ordering Paragraph 1(b).<sup>5</sup>

Despite continuing to stay the proceeding with regard to access charges, the *April 2008 Order* also provided:

that this investigation is reopened for the express and limited purposes of addressing whether the cap of \$18.00 on residential monthly service rates and any corresponding cap on business monthly service rates should be raised, whether funding for the Pennsylvania Universal Service Fund should be increased, and whether or not a ‘needs based’ test (and applicable criteria) for rural ILEC support funding from the PaUSF in conjunction with the federal USF support payments that the rural ILECs receive should be established in order to determine which rural ILECs qualify for PaUSF funding as described in the body of this order.

*April 2008 Order*, at 30, Ordering Paragraph 1(a).

On April 30, 2009, the RLECs, represented by the Pennsylvania Telephone Association (“PTA”), filed answers to each of the AT&T complaints. PTA also filed preliminary objections.

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<sup>4</sup> *AT&T Communications of Pennsylvania, LLC, et al. v. Armstrong Telephone Company – Pennsylvania, et al.*, Docket Nos. C-2009-2098380, et al.

<sup>5</sup> *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Order entered April 24, 2008).

On June 26, 2009, PTA and The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (“Embarq PA”) submitted a Petition Requesting Interlocutory Review and Answer to Material Questions in regards to the AT&T complaints. PTA and Embarq PA sought, among other things, to have the AT&T complaints dismissed.

On July 23, 2009, Administrative Law Judge (“ALJ”) Susan D. Colwell issued her Recommended Decision (“RD”) in the limited proceeding directed by the *April 2008 Order*. The Commission has not yet acted on the exceptions and reply exceptions to that RD.

On July 29, 2009, the Commission entered an Order in the AT&T complaint proceeding. The Commission ruled that the AT&T complaints would not be dismissed, but would be consolidated with the *Investigation Order* proceeding.

On August 5, 2009, the Commission entered an Order lifting the stay in the *Investigation Order* proceeding at Docket No. I-00040105 (“*August 5<sup>th</sup> Order*”). The *August 5<sup>th</sup> Order* also addressed the scope of the newly consolidated *Investigation Order* proceeding. The Commission observed:

On December 20, 2004, the Commission entered an order in the above-captioned case instituting an investigation into whether there should be further intrastate access charge reductions and intraLATA toll rate reductions in the service territories of rural incumbent local exchange carriers. This investigation was instituted as a result of the Commission’s prior order of July 15, 2003, which discussed implementing continuing access charge reform in Pennsylvania.

*August 5<sup>th</sup> Order*, at 3. The Commission summarized the scope of the investigation initiated in 2004 as follows:

The December 20, 2004 order directed the Office of Administrative Law Judge (OALJ) to conduct the appropriate proceedings including, but not limited to, a fully developed analysis and recommendation on the following questions:

- a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs' territories.
- b) What rates are influenced by contributors to and/or disbursements from the PaUSF?
- c) Should disbursements from the PaUSF be reduced and/or eliminated as a matter of policy and/or law?
- d) Assuming the PaUSF expires on or about December 31, 2006, what action should the Commission take to advance the policies of this Commonwealth?
- e) If the PaUSF continues beyond December 31, 2006, should wireless carriers be included in the definition of contributors to the Fund? If included, how will the Commission know which wireless carriers to assess? Will the Commission need to require wireless carriers to register with the Commission? What would a wireless carrier's contribution be based upon? Do wireless companies split their revenue bases by intrastate, and if not, will this be a problem?
- f) What regulatory changes are necessary to 52 Pa. Code §§63.161 – 63.171 given the complex issues involved as well as recent legislative developments?

*August 5<sup>th</sup> Order*, at 3-4.

The Commission ultimately concluded in the *August 5<sup>th</sup> Order* that “we are persuaded that the access charge investigation should be resumed at this time.” *Id.*, at 19. Therefore, the Commission ordered “[t]hat the stay of the intrastate access charges portion of this investigation is hereby lifted.” *Id.*, Ordering Paragraph 2, at 21. The Commission also ordered:

That the participating parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between: a) any Federal Communications Commission's ruling in its *Unified Intercarrier Compensation* proceeding; b) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§ 3015 and 3017; c) the Pennsylvania Universal Service Fund; and d) the potential effects on rates for the basic local exchange services of

the rural ILECs to the extent this is consistent with the Commission's determinations in the limited investigation.

*August 5<sup>th</sup> Order*, Ordering Paragraph 5, at 21-22.

On August 19, 2009, a prehearing conference was held before ALJ Kandace F. Melillo. During that prehearing conference, ALJ Melillo ordered the parties to submit legal memoranda regarding the scope of the consolidated proceeding.

On September 2, 2009, the Office of Small Business Advocate ("OSBA") submitted a memorandum of law regarding the scope of the consolidated proceeding.

On September 15, 2009, ALJ Melillo issued her *Order Addressing Scope of Consolidated Proceeding*.

On September 25, 2009, AT&T; Verizon Pennsylvania Inc., Verizon North Inc., Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, MCImetro Access Transmission Services, LLC d/b/a Verizon Transmission Services, and MCI Communications Services, Inc. (collectively, "Verizon"); Qwest Communications Company, LLC ("Qwest"); Sprint Communications Company, LP, Sprint Spectrum, LP, Nextel Communications of Mid Atlantic, Inc., and NPCR, Inc. (collectively, "Sprint"); and Omnipoint Communications Inc. d/b/a T-Mobile, Omnipoint Communications Enterprises LLC d/b/a T-Mobile, and Voicestream Pittsburgh LP d/b/a T-Mobile (collectively, "T Mobile") filed a Petition for Review and Answer to Material Question in regards to ALJ Melillo's *Order Addressing Scope of Consolidated Proceeding*.

On December 10, 2009, the Commission upheld ALJ Melillo's *Order Addressing Scope of Consolidated Proceeding* with only minor modifications.

On January 20, 2010, the OSBA served the Direct Testimony of John W. Wilson.

On March 10, 2010, the OSBA served the Rebuttal Testimony of John W. Wilson.

On April 1, 2010, the OSBA served the Surrebuttal Testimony of John W. Wilson.

April 14, 15, and 16, 2010, evidentiary hearings were held before ALJ Melillo.

On May 13, 2010, the OSBA submitted its Main Brief.

On June 3, 2010, the OSBA submitted its Reply Brief.

On August 3, 2010, the Recommended Decision ("RD") of ALJ Melillo was issued.

The OSBA submits these Exceptions to the ALJ's RD.

## II. EXCEPTIONS

### **Exception No. 1: The ALJ erred when she improperly assigned the burden of proof to the RLECs. (RD, at 47-48)**

In her RD, the ALJ concluded that the burden of proof in this consolidated proceeding rested with the RLECs. The ALJ stated her legal reasoning, as follows:

In stand-alone complaint proceedings brought by customers against a public utility's existing rates, like the AT&T Complaint proceeding prior to consolidation, the burden of proof is on the complainant to prove that the challenged rate is no longer just and reasonable.

\* \* \*

When the AT&T Complaint proceeding was first initiated, it was beyond dispute that AT&T, as the Complainant, had that burden as to the RLECs' existing access rates. Recognition of AT&T's burden of proof was reflected in the procedural schedule, which required AT&T and aligned parties to file their direct testimony first. However, for the reasons explained herein, the party with the burden of proof changed upon the consolidation of the AT&T Complaints with the ongoing *RLEC Access Charge Investigation*, and the RLECs now have the burden of proof, as they have recognized in their respective briefs.

The *RLEC Access Charge Investigation* was initiated 'upon the motion of the Commission' in its *December 2004 Order*, and clearly involves the existing access charges of the RLECs, which are regulated public utilities. The *Investigation* was stayed for a number of years, but was never concluded and the docket remained open during the stay.

With respect to the burden of proof in a Commission-initiated investigation of existing public utility rates, such as the *RLEC Access Charge Investigation*, the applicable statute is Section 315(a) of the Public Utility Code (Code), 66 Pa. C.S. §315(a).

\* \* \*

Accordingly, the RLECs have the burden of proof upon consolidation of the AT&T Complaint proceeding with the *Investigation*.

RD, at 47-48.

The OSBA is cognizant of the Commission's ruling on the burden of proof in the *AT&T v. Verizon*, Docket No. C-20027195 (Order entered January 8, 2007) proceeding. However, the OSBA observes that the Commission's Order in this consolidated proceeding appears to contradict the ALJ's conclusion that the burden of proof should be on the RLECs. In the *Investigation Order*, the Commission stated as follows:

The investigation will address the estimated rate impacts of any further changes to access charges and toll rates and will form the basis for any proposed regulatory changes.

*Investigation Order*, at 6.

In addition, the Commission ordered:

That the participating parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between: a) any Federal Communications Commission's ruling in its *Unified Intercarrier Compensation* proceeding; b) the intrastate access charge reform for rural ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§ 3015 and 3017; c) the Pennsylvania Universal Service Fund; and d) the potential effects on rates for the basic local exchange services of the rural ILECs to the extent this is consistent with the Commission's determinations in the limited investigation.

*August 5<sup>th</sup> Order*, Ordering Paragraph 5, at 21-22.

Unlike the *AT&T v. Verizon* proceeding, the *Investigation Order* does not appear to contemplate ordering specific RLECs to reduce their access charges by specific amounts. In fact, the *Investigation Order* speaks in generalities, such as ordering the parties to "address" and "provide record evidence" on the issues listed. Therefore, the *Investigation Order* appears to contemplate the creation of a record from which the Commission will update its access reform

policy, possibly resulting in new regulations or further proceedings to address specific reductions by specific RLECs.

Consequently, in regards to the AT&T complaints (which seek specific access charge reductions), the burden of proof should remain on AT&T, as AT&T is the party seeking affirmative relief from the Commission. *Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

**Exception No. 2: The ALJ erred when she failed to adopt the OSBA's access rate proposal. (RD, at 90-93)**

**A. Summary of the RD**

In her RD, the ALJ recommended that the level of the RLECs' intrastate access rates be set at "AT&T's proposed access rate level and structure." RD, at 90. The ALJ set forth the AT&T proposal as follows:

AT&T's proposal, as summarized previously, is that the RLECs' intrastate access rates should mirror each RLEC's corresponding interstate access rates in rate level and structure. For 30 of the RLECs in this proceeding (all except for Armstrong North), the mirroring of interstate access will result in an intrastate rate decrease, according to AT&T St. No. 1.3, Attachment 2.

RD, at 79 (footnote omitted).

The ALJ further explained:

In its Reply Brief, AT&T clarified that its proposal was that both TS [traffic sensitive] access rates and the CCLC [carrier common line charge] should be mirrored, which would entail the setting of intrastate TS rates at interstate levels, and the elimination of the CCLC.

*Id.*, at 82. In regards to the CCLC, the ALJ observed that "AT&T also noted that the vast majority of the access reform calculation comes from elimination of the CCLC." *Id.*, at 119.

In regards to the OSBA's proposal, the ALJ stated as follows:

In its Reply Brief, OSBA highlighted the difference between its proposal and AT&T's proposal. In contrast to the AT&T mirroring proposal, in which RLEC intrastate access rates would be required to mirror usage-based interstate rates and CCLC revenue would be recovered from other sources, the OSBA proposal would allow for recovery in intrastate access

rates of the total interstate revenue, including SLC [subscriber line charge] revenue. OSBA opined that an RLEC may not be recovering much (or all) or [sic] its interstate access revenue in usage charges and may instead be recovering much (or all) or [sic] its interstate access revenue through a SLC. OSBA contended that its own recovery proposal was more accurate and fair in that the proposal would allow for full recovery of all interstate access revenue from intrastate rates.

RD, at 87. To be clear, the OSBA proposal was as follows:

The simplest way to set an RLECs' intrastate access charge would be to total the revenue that RLEC is currently collecting in interstate access charges. The RLEC may be using a subscriber line charge, usage charges, or both. The interstate access total would include all of these revenues, regardless of recovery mechanism. The RLEC could then develop its new intrastate access rate to produce the same amount of total revenue which is being recovered for interstate access.

OSBA Main Brief, at 21.

The ALJ explained the SLC, as follows:

In its *CALLS Order* issued in 2000, the FCC concluded the removal of local loop costs from switched access rates by combining all local loop expenses into a single subscriber line charge (SLC). Thus, at the federal level, loop costs are not recovered through access charges to LECs' competitors but rather from the LECs' own customers.

RD, at 21 (footnotes omitted).

## **B. Recovery of Loop Costs**

By eliminating the CCLC, the RD will reverse Commission policy and allow the interexchange carriers ("IXCs") to use the RLECs' networks without contributing toward

the non-traffic sensitive costs of the loop. The result will be significant increases in local exchange rates.

The OSBA respectfully submits that the Commission must decide whether it wishes to continue its policy of having the IXCs contribute toward the cost of the loop in any significant fashion. As discussed in the OSBA's Main Brief, the Commission precedent on this issue is as follows:

We reaffirm our findings in our September 5, 1995 Order at Docket No. L-00950105 that the local loop is a 'joint cost', not a direct cost of providing only those services included in the definition of BUS [Basic Universal Service]. It is used for a variety of services other than BUS and must be allocated among the services which utilize it. For universal service funding purposes, not allocating a portion of the local loop to all the services which utilize it fails to give recognition to the fact that the loop is used to provide many services in addition to BUS.

This finding is consistent with our earlier rulings including *Pennsylvania Public Utility Commission v. Breezewood Telephone Company*, 74 Pa P.U.C. 431 (1991) wherein we stated:

...[W]e consider the costs associated with the loop from the central office to the customers premises a non-traffic sensitive joint cost.

\* \* \*

We reject the ILECs' arguments that the local loop is not a joint cost because other services which use the loop do not result in any additional cost. We do not find the arguments of Bell's expert witness Dr. Kahn persuasive on this point. In particular, we do not accept the basis of Dr. Kahn's argument that because the loop is needed for local service and the incremental cost of the loop does not increase to provide other services, that its full cost must be attributed to local services. This same argument could be made with respect to toll service. Since the loop is necessary to provide toll service, it could at the same time be argued that the full cost should be allocated to toll, and in so doing the incremental cost to provide local service would be zero. Moreover, since the installation of an additional subscriber loop increases the capacity

available for placing and receiving all three types of calls, the telephone company cannot increase the capacity for local calls without concurrently increasing the capacity for toll calls.

*In re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth*, Docket No. I-00940035 (Order entered January 28, 1997), at 82-83.

The ALJ acknowledged that, with the elimination of the CCLC (as advocated in the AT&T proposal), the “vast majority” of access charge revenue will vanish. In spite of the loss of the vast majority of access revenue, the ALJ concluded:

In addition, at the interstate rate level, intrastate access rates will still include a contribution to the local loop, according to AT&T’s unrebutted evidence, and this serves to address the OCA, OSBA and OTS concerns that access charges contribute to the costs of the local loop.

RD, at 91.

The OSBA respectfully submits that with the loss of the CCLC, the “contribution to the local loop” contemplated by AT&T and the ALJ will be “vastly” reduced, *i.e.*, it will include only revenue from traffic-sensitive costs.

Consequently, the Commission is left with the decision as to whether to continue its policy of having the IXCs significantly contribute towards the cost of the local loop, or, effectively, whether the customers of the RLECs should pay most of the costs related to that loop. As the ALJ euphemistically put it, the “CCLC revenue would be recovered from other sources.” RD, 87.

### **C. OSBA’s Proposal**

The OSBA respectfully recommends that the Commission should set each RLEC’s intrastate access rate so that it recovers intrastate access revenue equal to its total interstate

access revenue from the SLC and from traffic-sensitive charges. *See* OSBA Statement No. 1, at 15. This would provide more access revenue than the approach recommended by the ALJ, in that the ALJ proposes to lower each RLEC's intrastate access rate to its interstate traffic sensitive ("TS") rate. The additional access revenue under the OSBA's proposal would provide significantly more contribution to the RLECs' loop costs, comport with Commission precedent on this issue, and significantly mitigate the increases in local exchange rates. *See* OSBA Statement No. 2, at 2-7.<sup>6</sup>

In her Findings of Facts, the ALJ concluded as follows:

The OSBA proposal could allow RLECs to increase their intrastate access rates, perhaps substantially, to the extent the total interstate revenue to be matched (TS rates plus a \$6.50 SLC) exceeds current intrastate revenue.

RD at 37, Finding of Fact No. 29.

The OSBA observes that the goal of this proceeding should be to investigate whether, and how, the RLECs' intrastate access charges should be modified. The OSBA submits that an RLEC's intrastate access rates should be set to recover the same amount of total revenue that the RLEC is currently collecting in interstate access charges. The RLEC may be using TS charges, non-TS charges, or both to recover those interstate access charges. Setting the RLECs' intrastate access rates in this manner will ensure that the IXCs are contributing an appropriate amount to the cost of the local loop. In regards to the ALJ's Finding of Fact No. 29, properly setting the RLECs' intrastate access rates may or may not result in some RLEC's intrastate access rates' increasing rather than decreasing. However, that should be irrelevant to the goal of setting those access rates correctly.

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<sup>6</sup> For example, Dr. Wilson observed that under the OCA proposal, elimination of the CCLC would require an additional \$64 million in funding from an alternative source such as the Pennsylvania Universal Service Fund. OSBA Statement No. 2, at 7.

**Exception No. 3: The ALJ erred when she created a new rate cap by way of an “affordability standard.” (RD, at 116)**

**A. Residential and Business Rate Caps**

The OSBA advocated that the rate caps on local exchange service be removed in their entirety for all noncompetitive service residential and business customers. These local exchange service rate caps have the effect of treating all residential and business noncompetitive service customers as low-income customers in need of assistance to pay their monthly telephone bill. Treating all residential customers as though they are low-income is not rational and is not the practice of the Commission in either the natural gas or electric industries. *See, e.g.*, 52 Pa. Code §§ 69.264, 54.73, and 62.3.

The OSBA has recommended that, instead of employing a broad assumption that all noncompetitive service customers need help paying their telephone bills, the Commission focus customer assistance programs on those low-income residential customers that can demonstrate a need for support. OSBA Main Brief, at 25-26. *See also* OSBA Statement No. 3, at 2-3 (“[C]aps should be removed entirely, except for a social welfare/universal service subsidy that may be justified for those low income consumers where affordability is a real economic issue.”)

The ALJ agreed with the OSBA’s position, and recommended as follows:

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.

RD, at 118.

**B. Business Rate Increases**

The OSBA also advocated that the noncompetitive service business customers should not become the “payors of last resort,” *i.e.*, business rates should not be raised without limit in order

to keep residential rates low. This discriminatory treatment of business customers would result from eliminating the business rate cap while retaining a residential rate cap. Such an outcome would violate Section 1304 of the Public Utility Code, 66 Pa. C.S. § 1304.<sup>7</sup> OSBA Reply Brief, at 22-33.

The ALJ again agreed with the OSBA on this issue, and recommended as follows:

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. As a ‘just and reasonable’ analysis includes consideration of affordability and avoidance of rate shock, I will provide for these considerations in my rebalancing parameters. However, I agree with the OSBA that residential rate affordability and avoidance of rate shock cannot be accomplished through unreasonable increases to business rates.

RD, at 118.

### **C. Residential Affordability Rate**

However, in contrast to her recommendations to remove the rate caps on noncompetitive service residential and business customers and to protect business customers from unjust and unreasonable rates, the ALJ recommended the adoption of an “affordability” rate for residential customers of \$23.00. The ALJ explained her conclusion, as follows:

The Commission has specifically recognized the Commonwealth policy of ‘[m]aintaining universal telecommunications service at affordable rates. . .’ 66 Pa. C.S. §3011(2). Indeed, in its August 2009 Order lifting the RLEC access charge investigation stay, the Commission stated as follows: ‘we recognize the mandates of Chapter 30 require that local service rates be reasonable and affordable in all areas of this Commonwealth’ (emphasis supplied). Accordingly, I recommend that the Commission use the OCA affordability rate of \$23.00 (net of taxes and other fees) and \$32.00 on a total bill basis for analyzing the affordability of local service rates that are rebalanced as a result of this Investigation. This rate would increase if the Pennsylvania median rural household income

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<sup>7</sup> Section 1304 is specifically incorporated into New Chapter 30 by Section 3019(h) of the Public Utility Code, 66 Pa. C.S. § 3019(h).

increases over time. See, OCA St. No. 2 (ALJ Colwell proceeding), Sched. RDC-5.

As a point of clarification, based upon further recommendations contained herein, I am not treating the \$23.00 rate as a benchmark for purposes of triggering PA USF support.

RD, at 116.

The OSBA is concerned that the ALJ is removing the rate caps for both noncompetitive service residential and business customers on one hand, and establishing a new \$23.00 rate cap for residential customers, on the other. For example, although the ALJ does not state that the \$23.00 is a cap, it clearly would operate to constrain residential rates:

I recommend, based upon review of current RLEC residential and business rates, that RLECs be given the opportunity to initially (Phase I) increase residential rates to the \$18.00 rate cap set by the Commission as a 'just and reasonable' rate in its July 2003 Order, with nondiscriminatory increases to business rates. At this same time, offsetting access reductions towards mirroring of interstate rate levels and structure will be implemented. During each of the next three (3) years (Phases II through IV), the RLECs will transition to mirroring in three (3) approximately equal stages of access reductions, with opportunity for corresponding revenue neutral increases to noncompetitive rates.

RD, at 134-135. The ALJ continued, as follows:

However, by that time [the ALJ's Phase II], as the rulemaking recommended by ALJ Colwell may have concluded, the PA USF may have been reformed to provide assistance to customers if the \$23.00 affordability level is exceeded. To the extent offsetting revenue is not available from a reformed PA USF or otherwise when an RLEC reaches the affordability level with respect to its local service rates, the Commission will need to consider whether complete mirroring can be accomplished for that particular RLEC, consistent with universal service goals.

RD, at 136 (footnote omitted).

In short, the OSBA is concerned that the \$23.00 affordability level will operate as a residential-only rate cap, leaving it to the RLECs' noncompetitive service business customers to

absorb any shortfall in revenue caused by the decrease in intrastate access charges which can not be collected from residential customers because of the \$23.00 limit. Such a result would be discriminatory and violate Section 1304 of the Public Utility Code.

Furthermore, the OSBA does not see any conflict between achieving universal service and “affordability” and eliminating all caps on residential local exchange rates. Every rural residential customer is not a low-income customer in need of rate assistance. There is no obvious or compelling reason why non-low-income residential customers should be protected from paying the full cost of local exchange service when they are subject to paying the full cost of even more fundamental utility services, *i.e.*, water, heat, and light. A much better approach would be to develop a customer assistance program for the RLECs’ low-income residential customers, and provide them with help if they can demonstrate a need.

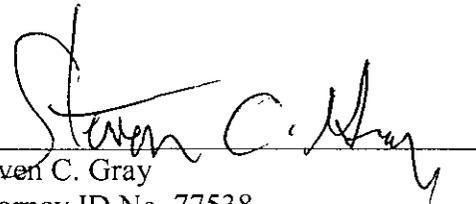
Therefore, the OSBA respectfully requests that the Commission reject the ALJ’s proposed residential affordability rate.

III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission:

1. Grant OSBA Exception Nos. 1, 2, and 3; and
3. Grant such other relief as may be necessary.

Respectfully submitted,



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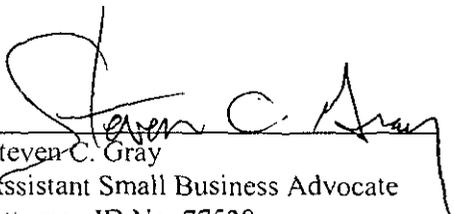
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