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June 3, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd 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**
and
AT&T Communications of Pennsylvania, LLC et al v. Armstrong Telephone Company – Pennsylvania, et al; **Docket Nos. C-2009 – 2098380 *et al***

Dear Secretary Chiavetta:

Enclosed for filing, please find Sprint's Reply Brief in the above-captioned matter, which was electronically filed today.

Copies of this Brief have been served in accordance with the Certificate of Service. Thank you and please contact me if you have any questions.

Best regards,

STEVENS & LEE

Michael A. Gruin

Enclosures
cc: Hon. Kandace Melillo, ALJ
Certificate of Service

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

SPRINT'S REPLY BRIEF

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OTHER AUTHORITIES

Sprint Communications Company L.P., Sprint Spectrum, L.P., and Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint" or "Sprint Nextel"), hereby submit this Reply Brief. Given the volume of the Main Briefs submitted in this docket, and the page limits for Reply Briefs, Sprint simply cannot respond to every argument with which it disagrees. Thus, in this Reply Brief, Sprint has attempted to prioritize its arguments to address only those points most central to the matter at bar. Accordingly, silence in response to any of the various arguments put forth by the opponents of switched access reform should not be interpreted in any way as a sign of Sprint's agreement or acquiescence to those arguments. To the contrary, Sprint continues to contend that nothing in the record or supported by sound policy-making principles supports the continuation of the RLEC intrastate switched access overcharges and there is urgency to order those rates reduced to mirror each carrier's own interstate rates.

I. STATEMENT OF QUESTIONS AND SUMMARY OF POSITIONS

While not necessarily agreeing with all points made by other parties, Sprint reserves comment on the other parties' statements of questions and summary of positions.

II. FACTUAL AND LEGAL BACKGROUND

While not necessarily agreeing with all points made by other parties, Sprint reserves comment on the other parties' statements of the factual and legal background of this proceeding.

III. BURDEN OF PROOF

While not necessarily agreeing with all points made by other parties, Sprint largely reserves comment on the other parties' statements regarding the burden of proof. It was widely acknowledged in the various parties' Main Briefs that each public utility must support its own

rates in the context of a Commission initiated investigation. Sprint explained its position regarding the burden of proof in its Main Brief and stands by that earlier provided explanation.

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

A. The RLECs' Broadband Network Construction Obligations Must not be Considered in the Context of Whether Intrastate Switched Access Rates Should be Reduced.

Several parties have inappropriately insinuated or contended outright that RLECs derive support for construction of their broadband networks from intrastate switched access revenues. For instance, at page 18 of its Main Brief, CenturyLink indicates that access reduction "would erode funding for Act 183's broadband obligations." OSBA goes substantially further, and claims that Act 183[1] recognized access charges as a source of funding for an RLEC's broadband deployment. These statements, and similar statements by PTA, are dramatically and demonstrably wrong. Act 183 announces as a policy of the Commonwealth that rates from protected services shall not subsidize competitive ventures.[2]

It is important to note this policy is broadly applicable to competitive *ventures*, not merely competitive services. This distinction is important. Some parties have made much ado over the fact that the affirmative proscription contained in Act 183 prohibits RLECs from using costs and revenues from their non-competitive services to subsidize their "protected services."[3] From this, some parties have concluded that they are precluded *only* from using their revenues from protected services to subsidize their "competitive services" as that term is defined by Act 183,[4] but are not precluded from using revenue from protected services to subsidize anything

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1 66 Pa.C.S. § 3011 *et seq.*

2 66 Pa.C.S. § 3011(4).

3 66 Pa.C.S. § 3016(f)(1).

4 66 Pa.C.S. § 3012.

other than "competitive services." Such a conclusion necessarily ignores that the policy of the Commonwealth proscribes the use of revenue derived from protected services to subsidize competitive *ventures.*

Thus, regardless of whether the specific proscription within Act 183 applies only to services within the definition of "competitive services," the use of revenues from switched access, a protected service,[5] to subsidize any competitive venture violates the policy of the Commonwealth and must not be tolerated by the Commission. This position is fully consistent with the position of OTS, which indicated that the Commission must regulate the companies over which it has jurisdiction in such a way as to effectuate all the goals of Act 183.[6] Toleration of the use of access revenues to subsidize broadband, which is beyond question a competitive venture,[7] is fundamentally contrary to the Commission's mission and the policy of the Commonwealth.[8]

It also bears mentioning that Sprint is not alone in concluding that revenues from switched access services cannot be used to subsidize RLECs' competitive ventures. The Commonwealth Court stated as follows on the subject:

> Further, if [the RLECs] were permitted to implement switched access rates that were above cost then the purpose of Act 183 would be frustrated. The Commission would be powerless to "ensure that rates for protected services do not subsidize the competitive ventures" of Petitioners.[9]

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5 66 Pa.C.S. § 3012.

6 *See* Transcript at page p. 539, lines 18-21.

7 *Transcript at p. 264, line 14 – p. 247, line 9.*

8 Perhaps recognizing the danger of characterizing its access revenue as providing support for broadband network construction, when asked specifically whether access reductions would threaten its broadband construction commitments under its Network Modernization Plan, CenturyLink admitted that there is no such threat. *See* Transcript at page 466, lines 1-10.

9 *Buffalo Valley Telephone Co. v. Pennsylvania Public Utilities Commission*, 990 A.2d 67, 81 (Pa.Cmwlth. 2009).

While Sprint agrees with the Commonwealth Court that access rates set above cost do frustrate the policy against cross subsidization, Sprint does not go so far as to presently advocate a reduction of access rates to cost based levels. That is for another day. Sprint contends, however, that those parties attempting to argue that Act 183 permits, encourages, or even tolerates the use of revenues from protected services like switched access to subsidize broadband network construction obligations are grossly mistaken. It is obvious from any plain reading of Act 183 that such subsidization is prohibited, and the Commonwealth Court has reached the same conclusion. In fact, to the extent the Commission wishes to further promote broadband, the record evidence in this case demonstrates that reducing access charges is the best course of action. Accordingly, statements by CenturyLink, PTA, OSBA and others indicating that support for broadband network construction would be threatened by access reductions must be rejected with no further consideration.

B. Neither Existing Alternative Regulation Plans nor Access Tariffs Have any Bearing on Whether Rates are Just and Reasonable Prospectively.

One theme common to both PTA and Century Link's Main Briefs is their argument that because their intrastate switched access rates were approved via the process described in their Alternative Regulation Plans and are contained in tariffs, those rates are insulated from any Commission determination that those rates are unjust and unreasonable.[10] Despite the fact that this argument has been specifically rejected by the Commission on numerous occasions in the context of analyzing the Commission's authority to review RLEC access rates, CenturyLink and PTA inexplicably repeat the same argument. The regurgitation of this argument is all the more odious when one considers that it has already been rejected by the presiding officer in this docket

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[10] *See* CenturyLink Main Brief at pages 18-19, and PTA Main Brief at pages 30-38.

on June 22, 2009. In rejecting the argument tendered by the PTA and CenturyLink, ALJ Melillo found as follows:

> I have considered the parties' arguments and disagree with PTA that the alleged commonly included Plan language (concerning restrictions on Section 1309 complaints), in light of Section 3015(g), somehow constrains the Commission's rate authority. I note that the Commission apparently does not subscribe to this position, as indicated in its Advance Form Brief in Buffalo Valley Telephone Company et al. v. Pa. P.U.C. (No. 847 C.D. 2008) and Popowsky v. Pa. P.U.C. (No. 940 C.D. 2008), pages 25-27. Therein, the Commission interpreted the second sentence of Section 3015(g) of the Code as not limiting its authority over rate proposals to a determination of whether rate changes comply with the applicable Chapter 30 plan. As stated by the Commission, the effect of Section 3015(g) is to preserve Commission authority, not limit it. Otherwise, those sections of Act 183 (such as the first sentence of Section 3015(g) and Section 3019(h)) which expressly preserve the Commission's authority under Section 1301 (concerning the "just and reasonable" rate requirement), would be read out of the statute, contrary to principles of statutory construction in 1 Pa. C.S. §1921.
>
> Indeed, the Legislature clearly dispelled any notion that Chapter 30 plan language supersedes the Commission's rate review authority under Sections 1301 and 1309 of the Code, when it enacted Section 3019(h). That provision, in no uncertain terms, states that the plan's terms shall supersede conflicting provisions of the Public Utility Code, **other than** Sections 1301 (relating to rates to be just and reasonable, 1302 (relating to tariffs; filing and inspection), 1303 (relating to adherence to tariffs), 1304 (relating to discrimination in rates), 1305 (relating to advance payment of rates; interest on deposits), 1309 (relating to rates fixed on complaint; investigation of costs of production) and 1312 (relating to refunds). Under principles of statutory construction, the letter of the statute is not to be disregarded when, as in the instant case, the words are clear and free from all ambiguity. 1 Pa. C.S. §1921(b).
>
> Accordingly, PTA's argument ... is rejected.[11]

Sprint wholeheartedly agrees with ALJ Melillo's reasoning and notes that it is in accord with Commission precedent, a plain reading of the statute, and simple logic. The Commission addressed this very issue in its *Global Order* as well as in the more recent *Buffalo Valley* case. In the *Global Order* the Commission stated as follows:

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[11] *See Order Denying Preliminary Objections and Motion for Consolidation or Stay*, Docket No. I-00040105, p. 7 (June 22, 2009)(emphasis in original).

> **[T]he fact that we may have found BA-PA's access rates to be just and reasonable at some earlier point is of no relevance here.** As explained earlier in this opinion and order, the Commission's fundamental and continuing authority to ensure that rates are just and reasonable has not been abrogated by adoption of BA-PA's Chapter 30 Plan. In addition to the continuing oversight authority and responsibility provided by various sections of Chapter 30 ... the Commission has continuing authority over the rates charged and all services rendered by jurisdictional utilities pursuant to other provisions of the Public Utility Code, 66 Pa.C.S. §§ 1301, 1309, 1325 and 1501, and may amend the duration and terms of previous orders upon notice and opportunity to be heard, 66 Pa. C.S. §§ 703(e) and (g). Therefore, state law provides ample authority to address BA-PA's access charges in this proceeding.[12]

As is plain and obvious from the foregoing, the Commission's authority to review rates is not diminished or extinguished by virtue of a Commission approved Alternative Regulation Plan. RLECs' switched access rates are never beyond the Commission's jurisdiction to review those rates and determine whether they remain just and reasonable. Arguments to the contrary have been rejected in numerous instances and should not be given any weight presently.

In addition to the foregoing, it must also be acknowledged that the Commission never intended for the RLEC access rates – set as a result of a settlement in an earlier docket[13] – to be final rates. When setting the RLECs' access rates by accepting the then-proposed settlement, the Commission stated "we do not intend to declare the access rates established by this Order as the final word on access reform. Rather, *this is the next step in implementing continued access reform for Pennsylvania* in an efficient and productive manner."[14] As is obvious from the quoted text, the Commission found that the RLEC access rates set seven years ago were merely an interim step in access reform. The RLECs' access rates were intended to be subject to further

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12 *Re Nextlink Pennsylvania, Inc.,* Docket No. P-00991648, P-00991649, 93 PaPUC 172 (September 30, 1999)("*Global Order*")(emphasis added); 196 P.U.R. 4th 172, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utitlity Commission*, 763 A.2d 440 (Pa. Cmnwlth 2000), *alloc. granted*, 844 A.2d 1239 (Pa. 2004).

13 Order, *Access Charge Investigation per Global Order of September 30, 1999,* Docket No. M-00021596, *et al.* (entered July 15, 2003).

14 *Id.* at 12.

review and downward adjustment even at the time they were set. The Commission included in its 2003 Order the requirement that a proceeding be instituted no later than the end of 2004 to investigate issues related to access and the PA USF.[15] With the foregoing in mind, it is obvious that the RLECs' access rates were never intended to be permanent rates and were intended to remain subject to the Commission's continuing authority and obligation to ensure that rates charged by public utilities are just and reasonable.

C. Act 183 Cannot be Interpreted to Contain, Whether Explicitly or Implicitly, a Policy Disfavoring Switched Access Reform.

Another misguided theme common to several of the parties' Main Briefs is the misguided allegation that the absence of language in Act 183 requiring access reductions should be interpreted as weighing against the propriety of imposing access reform.[16] This erroneous interpretation of Act 183 and the Commission's unwavering policy and commitment to reform intrastate switched access rates – both prior and subsequent to the passage of Act 183 – has been previously addressed and debunked by the Commission. The argument should be given no greater weight today than it has in the past when it has been rejected by the Commission.

The fact that certain repealed sections of Chapter 30 mandated access reform, while Act 183 does not, makes for a provincially interesting anomaly, it is hardly suitable for any serious discussion as this point has been addressed and rejected by the Commission and the Commonwealth Court. In addressing this specific point in an earlier, related docket, the Commission stated as follows

> We are mindful of the necessity for this Commission, as a creature of statute, to give effect to the intent of the General Assembly in the enactment of Act 183.

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[15] *Id.* at 12; *see also* Order, *Investigation Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, p. 4 (entered December 20, 2004).

[16] *See* CenturyLink Main Brief at pages 20-21, PTA Main Brief at pages 35-37, OCA Main Brief at pages 23-24, and OSBA Main Brief at page 16.

> We do not, however, conclude that policy goals of access charge reform have been nullified as a result of Act 183. ... Contrary to the interpretation of Section 3017 argued by OSBA, the absence of an express reference to access charge *increases* in Act 183 is more consistent with the view that the General Assembly was aware of, and approved, the Commission's direction in achieving access charge reform. **That reform**, while not prohibiting increases, *per se*, **unequivocally encompassed removing implicit subsidies in these charges and moving them closer to cost** ... We do not, however, reach the conclusion that such market realities created by, *inter alia*, intermodal competition and the necessity for ILECs to increase revenues to meet an accelerated broadband deployment commitment to insinuate a movement toward the return to implicit subsidies in access rates ... [W]e are reluctant to abandon a generic, industry-wide approach to achieve access charge reform ...[17]

The Commission's opinion on this issue could not be clearer. In the Commission's judgment, there can be no doubt that the removal of implicit subsidies from access rates and moving access rates closer to cost is still well within its jurisdiction and remains a valid goal and policy of the Commission even after passage of Act 183.

The Commission's above quoted order was appealed to the Commonwealth Court by certain PTA members dissatisfied with the Commission's refusal to allow them to increase their access rates. Reviewing the Commission's order, the Commonwealth Court, too, found that the Commission has ample and obvious authority under Act 183 to reduce RLEC switched access rates. The court stated as follows.

> Under *66 Pa.C.S. § 3017* the Commission has specific authority to rebalance revenue among noncompetitive services by reducing access rates and making revenue neutral increases to other noncompetitive rates. *Section 3017* states that "[t]he Commission may not require a local exchange telecommunications company to reduce access rates **except on a revenue neutral basis.**" (Emphasis added). Therefore, *Section 3017* envisioned situations where the Commission would require a rural LEC to reduce access rates and provided an independent basis for the Commission to require Petitioners to reduce access rates ...[18]

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[17] Opinion and Order, *2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, et al.*, Docket No. P-00981428F1000 *et al.*, p. 22-23 (entered July 11, 2007)(italics in original, bold emphasis added)

[18] *Buffalo Valley Telephone Co. v. Pennsylvania Public Utility Commission*, 990 A.2d 67, 80 (Pa. Cmnwlth 2009)(emphasis in original).

To the extent that this issue had been reviewed and rejected by the Commission and the Commonwealth Court, it must be rejected here again.

D. Whether Access Charge Reform Leads to Consumer Benefits.

Without exception, the parties opposed to access charge reform allege that no consumer benefits will result from such reform.[19] These arguments defy logic. Nearly 100 years of monopoly control of the telephone network yielded virtually no innovation and unacceptably high prices. Between the end of the Bell monopoly in the early 1980s and the Telecommunications Act of 1996 (the "1996 Act"), competition accelerated and consumer benefits far beyond those of the earlier Bell monopoly period developed. Following the passage of the 1996 Act, competition advanced even more dramatically, as reflected both in lower retail prices and technological innovations far, far beyond any that had preceded it. These facts are hardly in question.[20] It is also beyond question that the federal and Commonwealth legislatures have indicated their preference to allow competition to transform the telecommunications market and ensure that benefits accrue to consumers.[21] Finally, state utility Commissions far and wide have concluded that reductions to intrastate switched access rates will result in lower consumer prices and telecommunications infrastructure development and services at low rates.[22]

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19 *See* CenturyLink Main Brief at pages 20-28, PTA Main Brief at pages 39-42, and OSBA Main Brief at pages 18-19.

20 *See* Sprint Statement 1.1 (Supplemental Main Testimony) at p. 12-13, JAA-5, and JAA-6 (discussing technological innovations between 1984 and today);

21 While Sprint feels this point can hardly be disputed, even a cursory review of the Telecommunications Act of 1996 and the codified policy goals of the Commonwealth, at 66 Pa.C.S. § 3011, establish the veracity of the statement beyond question.

22 *See* Order, *In the Matter the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates,* Docket TX08090830, at p. 27 (released February 1, 2010)("New Jersey Access Reform Order")(this decision was attached to AT&T Panel Rebuttal Testimony at Attachment 2)(access charge reductions will flow through to end users in reduced toll rates); *see also* Order, *In the Matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., d/b/a Sprint, to Conduct General Investigation into the Intrastate Access Charges of United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern*

Despite these facts, the RLECs continue to advocate the indefensible notion that access charge reform will not lead to consumer benefits. To support their indefensible position, a position better suited for the mid-20th century than the present, the opponents of access charge reform point doggedly to the fact that their competitors favor allowing the market to determine how access charge reductions flow through to consumers rather than making commitments to particular rate reductions. In 1997, the FCC recognized that allowing market forces to determine the flow of investments within the market was by far preferable to prescribing rates.[23] According to the FCC,

> Regulation cannot replicate the complex and dynamic ways in which competition will affect the prices, service offerings, and investment decisions of both incumbent LECs and their competitors. A market-based approach to rate regulation should produce, for consumers of telecommunications services, a better combination of prices, choices, and innovation than can be achieved through rate prescription.[24]

Although the market based approach discussed by the FCC in the above quotation is contained in an order that also indicated the FCC's desire to expose access charges to competition, subsequent FCC orders make clear that switched access is a monopoly service and is not subject to competitive forces.[25] The statement quoted, however, is relevant, applicable and illustrates the folly of the RLEC-promoted notion of prescribing, through affirmative commitments from the competitive carriers, direct flow-through of access savings. As indicated

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Kansas, d/b/a Embarq., Docket No. 08-GIMT-1023-GIT, at ¶ 138 (March 10, 2010) ("Kansas Access Order")(access reductions will result in greater infrastructure development and services at low rates).

23 *In the Matter of Access Charge Reform*, First Report and Order in CC Docket 96-262, 12 FCC Rcd 15982, 16106-07, ¶ 289 (released May 16, 1997). It bears noting that the work the FCC began in this First Report and Order is as of yet unfinished as it continues to consider further access charge reductions in the National Broadband Plan (*see* National Broadband Plan at p. 148, Recommendation 8.7). The most current thinking by the FCC is to completely eliminate access charges.

24 *Id.*

25 *See* Sprint Statement 1.0 (Sprint Main Testimony) at 12; Transcript at page 242, lines 19-23, Transcript at page 255, lines 5-22; *see also* Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd 9610, at 9616-17 (rel. April 27, 2001)(the FCC acknowledges that terminating access is a monopoly).

by the FCC, market forces are by far the best determinant of prices, choices, and innovation. Following the RLEC's suggestion and requiring flow-through savings from the competitive carriers to be concomitant to access reductions does no more than prolong the heavy hand of regulation in the marketplace rather than allowing the market to produce the most efficient results.

Beyond the point that allowing competitive forces to determine the flow of access savings back into the market is the most advantageous method of ensuring efficient delivery of consumer benefits, there are several other insular points raised by access reform opponents that bear rebutting. CenturyLink argues that competition is vibrant in rural Pennsylvania (although it self-servingly argues the opposite in other areas of its Main Brief and its pre-filed testimony), and indicates that because "competition in Pennsylvania is alive and well," there is no need for access reform. This position is contrary to the basic premise expressed by the FCC, and embraced by the Commission, that the market will function most efficiently without implicit access subsidies. It also fails to acknowledge that the presence of competition can in no way lead to the conclusion that competitive injuries have not occurred since it is simply not possible to know what offers were not brought to market and what carriers failed to enter the market due to inflated access rates.[26]

Access reform opponents contend that access reductions are inappropriate as they will lead to an underfunded broadband build-out commitment.[27] As discussed above in Section IV.A., if the RLECs are using access revenues to fund their broadband buildout, their actions are in contravention of the policy of the Commonwealth as codified in Act 183. The appropriate response to such allegations is not to maintain inflated access rates, but to reduce those rates so

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[26] Sprint Rejoinder Testimony (Sprint Statement 1.3) at 6.

[27] CenturyLink Main Brief at 23 and OSBA Main Brief at 17.

that the purposes of Act 183 are not frustrated by the illegal cross-subsidization that has been acknowledged on the record and in briefs.[28]

In addition to the above-stated points, Sprint takes exception to CenturyLink's statement that somehow access reductions would put the interests of competitors above the interests of consumers.[29] Quite the opposite is true. The record establishes that consumers are voting in favor of access reductions. This is evidenced by the fact that consumers are leaving the RLECs for competitive providers in great numbers. CenturyLink has admitted that it is consistently experiencing access line loss at a 7% - 8% annual rate.[30] In fact since 2005, CenturyLink indicates that it has lost a very significant percentage of its customer base to its competitors.[31] These customers are choosing competitive services over plain old telephone service; they are doing so regardless of the higher price of those competitive services they chose;[32] and the prices of those competitive prices customers are choosing are unnecessarily inflated due to excessive access rates.[33] Any decision by the Commission that adjusts the subsidy burden in the market in a manner that reflects the choices being made by Pennsylvania consumers cannot credibly be characterized as one favoring competitors over consumers. To the contrary, such an adjustment is one that favors competition and consumers over all else.

As indicated by PTA:

> Wireless service is growing because of mobility, convenience and the high tech functionalities of the phones ... Wireless phones no longer offer just voice service, or voice and camera services. They have "apps." Web browsing and

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28 *See Buffalo Valley Telephone Co. v. Pennsylvania Public Utility Commission*, 990 A.2d 67, 80 (Pa. Cmnwlth 2009).

29 CenturyLink Main Brief at 20.

30 Transcript at p. 433, lines 13-16; PTA has conducted no study to determine line loss, *see* Transcript at p. 676, lines 3-6.

31 CenturyLink Statement 3.1 at p.10, line 23.

32 AT&T Statement 1.2 (AT&T Rebuttal Testimony) at 40-41.

33 Sprint Statement 1.0 (Sprint Direct Testimony) at p. 5, lines 1-9.

> data transmission over wireless phones are exponentially expanding wireless' viable options. Consumers in younger generations are very willing to use wireless exclusively for their communications needs. VoIP phones are gaining widespread favor. Reliability and privacy are less valued features ... This overall maturation of technology and usability has driven growth of competitors' lines, including wireless carriers, at the expense of traditional lines.[34]

Sprint agrees with Mr. Zingaretti that consumers are increasingly favoring competitive offerings over basic local exchange service. Sprint also agrees with Mr. Zingaretti that the wealth of additional services available from competitive offerings is leading consumers to abandon traditional lines. Insofar as consumers are in ever-increasing numbers abandoning traditional lines for competitive offerings, any decision by the Commission to reduce the subsidy burden on those competitive carriers – thereby enabling them to pass through cost savings or bring other non-price benefits to the market[35] – is a decision that places the interests of consumers over the interests of RLECs.

Over a decade ago, Administrative Law Judge Schnierle clearly articulated the role of competition in delivering consumer benefits.

> In short, politically unpopular though it may be, rate rebalancing is required, along with access charge reductions, if there is to be competition for all customers in all locations ... I am aware of no other way to solve this problem, and the parties here have presented no other proposal that is likely to solve the problem. **Moreover, the very point of introducing competition to the local exchange market is to bring about lower prices through the operation of the market.** An unwillingness to rebalance rates suggests an unwillingness to trust the market to bring about lower prices. If that is the case, I suggest that society rethink the notion of attempting to have competition in the local exchange market.[36]

Sprint wholeheartedly agrees with this sentiment. What may not have been clear in 1998, but is now abundantly clear and summarized above in the quote from Mr. Zingaretti, is that consumers

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34 *See* PTA Statement 1.0 (PTA Direct Testimony) at 42-43.

35 Transcript at p. 273, lines 3-14, Sprint Statement 1.2 (Sprint Rebuttal Testimony) at 19.

36 *In Re: Intrastate Access Charge Reform*, Docket No. I-00960066, Recommended Decision, at 28 (June 30, 1998)(emphasis added).

are interested in more than just artificially low rates from a solitary wireline provider. Consumers want mobility, convenience, high tech functionalities, "apps," camera services, web-browsing, data transmission, and VOIP. There can be no serious dispute that the RLECs' competitors are bringing to market services and technology that consumers desire. To the extent that these services and technology are being brought to market by RLECs' competitors, it is hardly credible to state that access charges – which inflate competitors' rates, innovation and service improvements – do not impede delivery of consumer benefits. They do. They have the direct effect of reducing the funds competitors use to bring to market new service, new products, new technology, service improvements, coverage improvements, etc.[37] Sprint urges the Commission to follow the sage advice of ALJ Schnierle and allow the market to do the job of delivering consumer benefits without being impeded by excessive access charges.

E. Activity at the FCC Provides No Compelling Reason to Further Delay Access Reform and Indeed Supports Institution of Access Reform Promptly.

Predictably, a number of the parties contend in their briefs, as they did in their pre-filed testimony, and during cross examination, that the Commission should be reluctant to exercise its jurisdiction over intrastate rates, and should instead wait to be ordered to do so by the FCC. This is folly. The Commission has consistently and methodically taken steps to reduce intrastate switched access rates since 1999. The Commission acknowledged the need to remove implicit subsidies and make them explicit over ten years ago, but its work remains unfinished as the intrastate switched access rates of RLECs in Pennsylvania remain swollen with excessive access overcharges for which they have failed to establish any need.

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[37] Transcript at p. 273, lines 3-14, Sprint Statement 1.2 (Sprint Rebuttal Testimony) at 19.

The latest impetus from outside Pennsylvania cited by the RLECs as justification for the Commission to ignore its switched access reform policy is the publication by the FCC of its National Broadband Plan. The RLECs urge the Commission to take heed of the plan only insofar as the plan indicates that the FCC will attempt to conduct global intercarrier compensation and federal USF reform. What the RLECs conveniently ignore, however, is that the National Broadband Plan indicates that the FCC intends first to reduce intrastate switched access rates to mirror interstate levels.[38] Ultimately, the FCC intends to move towards the elimination of traffic termination charges, and has indicated that after mirroring interstate rates, mirroring reciprocal compensation rates might be an appropriate next step.[39] The FCC has also indicated that increases to basic local exchange rates and subscriber line charges are the appropriate mechanism to offset lost access revenues.[40] Additionally, the FCC indicates that artificially low rates that are no longer reflective of cost must be increased.[41]

The opponents of access reform indicate that the Commission should take no action lest it be "penalized" as an early adopter. This is mere pettifoggery. It is contrary to logic to contend that somehow the FCC will initiate reform in a manner which penalizes early reformers. It is more logical to presume that those states which have not yet instituted reform will not be eligible for federal broadband funding, while states that have accomplished reform will be eligible for such funding. Making funding available to those who have accomplished the reform tasks laid out by the FCC is an effective means of incenting states to accomplish reform. Taking the converse approach, making funding available to those states that fail to accomplish reform, does

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38 National Broadband Plan at 148 (Recommendation 8.7).

39 *Id.* at 148 – 150 (Recommendations 8.7, 8.11 and 8.14).

40 *Id.*

41 *Id.* at 148-149 and fn. 110 (citing a $20 threshold as an example of a level below which rates would be considered too low).

not provide incentive to reform at all. The RLEC position is rendered all the more absurd when one considers that the FCC acknowledges that the current intercarrier compensation system creates a disincentive to broadband, IP telephony and innovation.[42]

Faced with the same issue, advanced by CenturyLink, the Kansas Corporation Commission reached the following conclusion.

> Obviously, the Commission cannot predict what the FCC will do. However, Kansas has already taken a leadership role on access reform. ... Other states have also implemented reforms aimed at achieving parity of interstate and intrastate rates ... The Commission agrees that is not highly likely that FCC action will occur quickly. The FCC [intercarrier compensation] docket ... has not seen significant recent activity and the new FCC Chairman has not indicated access rate reform is a priority ... The Commission appreciates the efforts of AT&T, which has filed comments urging the FCC to protect the interest of Kansas consumers ... Other "early adopter" states have also filed comments. It is also reasonable to believe that the FCC would give the interests of early adopter states consideration. For these reasons, **the Commission does not believe the potential of FCC action that would negatively affect Kansas customers, although troubling, is a factor that outweighs the benefits discussed in this Order.**[43]

Leaving all of the foregoing aside, the Commission needs to ask itself a fundamental question: Does the Commission prefer to reform on its own terms or on terms dictated to it by the federal government? The FCC has already made clear its intent to institute sweeping reform to intercarrier compensation and do away with the existing system in its entirety as that system rewards carriers for maintaining outdated systems rather than incenting them to build new ones.[44] Thus, the Commission must determine whether it wishes to reform the Pennsylvania market on its own terms or on terms dictated in the manner determined by the FCC. If the Commission is satisfied to wait for the FCC to indicate how reform will occur and delay or deny the consumer

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42 *See* FCC National Broadband Plan at 142.

43 Order, *In the Matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., d/b/a Sprint, to Conduct General Investigation into the Intrastate Access Charges of United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas, d/b/a Embarq.*, Docket No. 08-GIMT-1023-GIT, , ¶ 178 – 179 (March 10, 2010)("Kansas Access Order").

44 FCC National Broadband Plan at 142.

benefits of reform, then the Commission should heed the advice of the RLECs and this docket should be closed with no further ado. The totality of the Commission's orders on access reform lead Sprint to conclude that Commission will find that path objectionable. Rather, Sprint believes that the Commission will choose the path that continues to be keep Pennsylvania at the forefront of access reform. That path leads inexorably to the conclusion recommended by Sprint in this proceeding: reducing intrastate switched access rates to mirror interstate switched access rates in structure and level.

F. The Record Establishes That the RLECs' Intrastate Switched Access Rates are Unjust and Unreasonable.

The opponents of access reform have provided nothing of substance in their briefs to support a conclusion that the RLECs' rates are just and reasonable. To the contrary, all credible evidence on the record supports the conclusion that the RLECs' access rates are *unjust and unreasonable*. As Sprint has provided a thorough analysis of the various indicia leading to the conclusion that the RLECs' switched access rates are too high, and therefore unjust and unreasonable, it will not rehash the same points here.[45] Nevertheless, Sprint will raise a few points in response to the various arguments made by the RLECs in this regard.

The Commission has indicated that the most reasonable interpretation of Act 183 is that it supports the reduction of access rates to cost-based levels.[46] There can be no doubt whatsoever that access rates are currently well above such levels. This conclusion is inescapable as both CenturyLink and PTA have argued throughout this docket that their switched access rates provide support to allegedly below-cost basic local exchange service. While Sprint does not

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[45] In its Main Brief, Sprint analyzed record evidence in a number of different ways in order to illustrate that RLEC switched access rates are unjust and unreasonable. The specific issue of whether RLEC rates are unjust and unreasonable was focused on specifically, however, in Section IV.F., at pages 58-61, and throughout the Main Brief in general.

[46] Opinion and Order, *2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, et al.*, Docket No. P-00981428F1000 *et al.*, p. 22-23 (entered July 11, 2007).

agree that basic local exchange service is provided below cost, and has urged the Commission to condition future PA USF support on a cost showing, Sprint does wholeheartedly agree that switched access rates are far above cost. To the extent that there is no disagreement that the RLECs' switched access rates are far above cost, and far above interstate levels,[47] there can be no doubt that those rates are unjust and unreasonable as they do not comport with the Commission's stated interpretation of appropriate rate levels as distilled from Act 183.

It also bears noting that it is not necessary for the Commission to even make a finding that the RLECs switched access rates are unjust and unreasonable in order to reduce those rates. This is so for several reasons. First, each RLECs' Alternative Regulation Plan contains a provision making them subject to the Commission's ongoing access reform dockets. For instance, CenturyLink's Alternative Regulation Plan indicates that "The terms of this Plan relating to access charges are subject to modifications resulting from the *Generic Access Charge Investigation* and the *Global* proceedings ... as well as any other applicable final Commission order(s) entered, or to be entered, after the foregoing named proceedings."[48] In short, the RLECs' Alternative Regulation Plans each include language that specifically permits the Commission to alter their access rates as a result of an order in an access proceeding and such authority is not conditioned upon any finding of unjust and unreasonable switched access rates. The inclusion of this language in the Alternative Regulation Plans makes obvious that the Commission did not intend to be deterred from instituting access reform by the presence of the Alternative Regulation Plans. The clear intent of the quoted passage is to ensure that the Commission is unimpeded in its ability to reduce access rates as a result of policy determinations

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47 *See* Sprint Main Brief at p. 50 (chart illustrating that intrastate switched access rates are well above interstate levels).

48 CenturyLink Main Brief at Appendix A, p. 27.

on the appropriate level of intrastate switched access rates. While this provision does not free the Commission from the requirement that any order it issues comply with law and precedent, it does make clear that the various RLECs' Alternative Regulation Plans do not require an unjust and unreasonable finding in order to institute rate changes in the limited area of intrastate switched access charges.

It also bears noting that in the Commission's last individual review of an RLEC's access rates, the Commission concluded that the RLEC's access rates were excessive. As stated by the Commonwealth Court, "[t]he Commission specifically found that Petitioners' access charges were already excessive, above cost and higher than rates charged by others for the same service."[49] Record evidence indicates that the conclusion for each carrier would be the same. The Commonwealth Court has stated, and Sprint agrees, that rates for protected services that are above cost levels frustrate the purpose of the Act 183 by allowing subsidization of competitive services.[50] Thus, as the record establishes that all RLECs' intrastate switched access rates are above interstate levels, and that interstate rates cover costs and include a reasonable return on investment,[51] and since Act 183 has consistently been interpreted to require that protected services should be priced at cost-based levels, an immediate reduction of intrastate switched access rates to interstate levels furthers the goals of Act 183 and 66 Pa.C.S. § 1301 of ensuring that rates for protected services are just and reasonable.

As much has been made in briefs, and will undoubtedly be made in reply briefs, of the fact that the cost of the local loop is separate and apart from interstate rates for traffic sensitive elements – since the FCC appropriately allocated the obligation to pay for the cost of the local

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49 *Buffalo Valley Telephone Co. v. Pennsylvania Public Utility Commission*, 990 A.2d 67, 75 (Pa. Cmnwlth 2009).

50 *Id.* at 81.

51 Transcript at p. 609, lines 1-3.

loop to the end user – Sprint will briefly address that issue here. In 1983, more than a quarter-century ago, the FCC indicated that its goal was for common-line costs to be removed from the calculation of the cost of switched access.[52] The FCC found that a customer which does not use his or her local-loop to place or receive even a single call generates the same local-loop expense as a customer who places calls over the local-loop; accordingly, every LEC customer causes the same local-loop cost, and does so regardless of whether the local-loop is ever used.[53] Thus, as the LEC customer causes 100% of the local-loop expense without any traffic-sensitivity, the FCC concluded that those costs should ultimately be bourn exclusively by the LEC customer and/or the LEC, and should not be shifted to competing carriers. The FCC has never wavered from this conclusion, and federal appeals courts have upheld the FCC's position when challenged.[54]

The Commission, too, is well aware of the fact that non-traffic sensitive traffic elements exist within the network. In the *Global Order* the Commission commented on non-traffic sensitive elements of the local network.

> In providing switched access for the completion of a toll call, a LEC will incur both non-traffic-sensitive (NTS) costs and traffic-sensitive (TS) costs. NTS costs are those associated with providing and maintaining the local loop. They consist of the facilities required to connect the customer's premises to the local central office. NTS costs are not dependent on the number or length of telephone calls and cover parts of the local telephone network such as cables and poles. TS costs, on the other hand, vary with the amount of usage of the telephone network.[55]

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52 *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, Phase 1, 93 FCC 2d 241, 264-65 (1983); recon., 97 FCC 2d 682 (1983), second recon., 97 FCC 2d 834 (1984)("1983 Access Charge Reform Order").

53 *Id.* at 278.

54 *See In the Matter of Access Charge Reform*, Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd. 12962, 12999-1300 (rel. May 31, 2000)("CALLS Order"); *see also Southwestern Bell Telephone v. Federal Communications Commission,* 153 F.3d 523, 559 (8th Cir. 1998).

55 *See Global Order*

> ... [NTS] costs pose particularly difficult problems ... because all of the facilities would be required even if they were used only to provide local service.[56]

ALJ Schnierle also determined that the local loop is not traffic sensitive and his findings were incorporated by reference into the *Global Order*.[57] "Once a loop and switch are in place, however, there is very little additional cost involved in providing "access" to toll services, or vertical services such as Call Waiting. Thus, most of the cost involved in rendering telephone service is incurred in simply providing the minimum equipment necessary to render basic service."[58] It is noteworthy that CenturyLink presented testimony in this docket before ALJ Colwell indicating unequivocally that the entire loop cost is directly caused by basic local exchange service.

> Therefore the cost causation to [the RLEC] for the loop is basic local exchange service. Dial tone requires a loop to a requesting customer. If a customer chooses to add other services, such as long distance or a custom calling feature, the dial tone must be there first. Loop investment is a direct cost of basic local exchange service.[59]

While the nature and cost causation for the non-traffic sensitive elements of the network cannot be seriously disputed, the issue of whether or how best to allocate these costs is in substantial dispute. In analyzing the appropriate allocation of local loop cost, it is absolutely essential to begin that analysis with the recognition that in the context of switched access traffic termination, the local loop is a monopoly controlled network element.[60] Because the local loop is a monopoly controlled network element, competition cannot exert downward pressure to drive

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56 *Global Order* at fn. 7.

57 *In Re: Intrastate Access Charge Reform*, Docket No. I-00960066, Recommended Decision, at 28 (June 30, 1998) (" the cost of the local loop that connects an end user to the telephone company's switch does not vary with usage ...").

58 *Id.*

59 *See* Sprint Statement 1.2 (Sprint Rebuttal Testimony) at JAA-13R at p. 7 (Rebuttal Testimony of Christy V. Londerholm, Docket No. I-00040105, at 7, January 15, 2009).

60 Transcript at p. 242, lines 19-23, and p. 255, lines 5-22.

prices to levels reflective of the broader competitive market.[61] In its pre-filed testimony, Sprint addressed this situation and suggested that

> the Commission can permit the marketplace to constrain RLEC profits by exposing the inflated access revenue to the discipline of the marketplace. By requiring RLECs to replace their access overcharges with revenues received through the prices they charge for retail services, instead of through "hidden taxes" in access charges or a "universal service" fund, consumers will be provided information about the RLECs costs of retail services. The consumers can use this improved information to pick the provider that fits their needs best.[62]

Sprint's point is aligned with the very underpinnings of the 1996 Act and the Commission's efforts to reform markets: implicit support should be eliminated or made explicit. In the Commission's own words, it "as well as the FCC, acknowledged that a policy of implicit subsidies must be changed in light of competition in the local exchange telecommunications industry."[63] Sprint contends that local loop costs must be included in rates that are explicit, apparent to customers, and subject to competitive forces. In that manner, the Commission can be sure that any excess charges currently contained in the carrier charge, the sole Pennsylvania RLEC rate element for local loop charges, will be reduced to just and reasonable levels by market forces. To the extent that RLECs can make a cost-based showing that RLECs' carrier charge rates are necessary and not merely overcharges, the Commission can provide the necessary cost-based subsidy via the PA USF. Short of such a showing, market forces cannot

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61 Order, *In the Matter the Board's Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates,* Docket TX08090830, at p. 27 (released February 1, 2010)("New Jersey Access Reform Order")(" [S]witched access service is a monopoly because there is no ability for an IXC or its customers to avoid excessive access charges."). Available at http://www.state.nj.us/bpu/pdf/telecopdfs/ TX08090830.pdf. This decision was also attached to AT&T Panel Rebuttal Testimony at Attachment 2.; *see also* Sprint Main Testimony (Sprint Statement 1.0) at 12; Transcript at page 242, lines 19-23, and page 255, lines 5-22; *see also* Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, 16 FCC Rcd 9610, at 9616-17 (rel. April 27, 2001)(the FCC acknowledges that terminating access is a monopoly).

62 Sprint Statement 1.2 (Sprint Rebuttal Testimony) at p. 19-20 (internal footnote omitted).

63 Opinion and Order, *2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, et al.*, Docket No. P-00981428F1000 *et al.*, p. 7 (entered July 11, 2007).

ensure that carrier charge rates are just and reasonable, and the record establishes that these rates are unjust and unreasonable. Sprint contends that regardless of whether carrier charge rates are adjudged unjust and unreasonable, allocating those charges to end user, and providing subsidy only upon the basis of a cost showing, is the appropriate result. To review RLEC access charges and allow access charges to remain intact as a hidden tax would be folly, and would leave substantially unfinished the access reform that this Commission has diligently pursued since 1999.

G. RLECs are Violating the Proscription against Cross Subsidization

As discussed above in Section IV.A., Act 183 twice proscribes cross subsidization. The text of Act 183 makes clear that cross subsidization of any competitive venture violates the express policy of the Commonwealth, and that subsidization of competitive services with revenues or costs from non-competitive, protected services is proscribed.[64] The Commonwealth Court has opined that access rates set at above-cost levels frustrate the purposes of Act 183.[65] As the RLECs claim that access rates provide support for allegedly below-cost basic local exchange service, there can be no doubt access rates are set above cost. [66]

From the foregoing alone, it is obvious the danger that the RLECs' switched access rates violate Act 183's ban on cross subsidization is palpable and extreme, but the record provides more cause for concern. The record unequivocally establishes both that the Commission takes no steps to enforce the statutory ban against cross subsidization,[67] and that neither the RLECs,

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64 66 Pa.C.S. §§ 3011(4) and 3016(f)(1).

65 *Buffalo Valley Telephone Co. v. Pennsylvania Public Utilities Commission*, 990 A.2d 67, 81 (Pa.Cmwlth. 2009).

66 The RLECs claim that access charges must be maintained at current levels because they provide support to basic local service rates that the RLECs allege are priced below cost. If access rates provide support to basic local service, it cannot be claimed that they are not generating revenues above cost.

67 Transcript at page 546, lines 13-16.

nor the Commission are aware of the cost of basic local service or access service.[68] The record also establishes that even if the RLECs or the Commission were aware of the costs of basic local exchange service and switched access, it is difficult for multi-modal firms, such as the RLECs, to track revenues from any particular service and determine whether they are spent on permissible or impermissible purposes.[69] To the extent that access charges are known to be priced above cost, a matter not contested by the RLECs, and as there is no currently implemented or apparent means of tracking how access revenues are spent, the Commission has few options in order to ensure that cross-subsidization is not occurring. Those options are to set access rates at cost based level, or to set rates at a level low enough that the Commission can be reasonably assured that any cross subsidization would be significantly reduced.. The interstate rate mirroring Sprint advocates can serve as a temporary or interim "safe harbor" for a finding of a minimized risk of cross subsidy.

In addition to the foregoing, the Commission should immediately take notice of current overt cross subsidization established on the record and in widespread practice amongst the RLECs. Under cross examination CenturyLink admitted unabashedly that it imposes a Carrier Charge on its broadband-only lines.[70] This quite obviously is a direct and unequivocal violation of the statutory ban on cross-subsidization. Sprint contends that the RLECs' practice of imposing their Carrier Charge on bundled lines is also a violation of the statutory ban against cross subsidization as rates for protected services are quite obviously subsidizing the RLECs competitive ventures. The revenues extracted by the RLECs from their competitors via Carrier

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68 Sprint Cross Examination Exhibits 1 and 2 (CenturyLink does not know its cost of access or basic local service); Transcript at Transcript at page 544, line 11 – page 545, line 7 (staff is unaware of common line cost); Transcript at page 632, line 11 – page 633, line 4 (PTA has not calculated the cost of its carriers' access, basic local exchange service or COLR costs).

69 Transcript at Page 97, lines 5-13.

70 Transcript at page 381, line 17 – page 382, line 1.

Charges imposed on access lines in service bundle quite obviously is a factor taken into account in pricing service bundles. To the extent service bundles are priced at a particular level due to the imposition of a Carrier Charge, the goal of Act 183 to prevent subsidization of competitive ventures is plainly and obviously frustrated. The Commission should waste no time in proscribing this RLEC practice.

H. The Inequity Between Terminating Compensation Wireless Carriers Collect and That Which RLECs Collect is Distinctly to the RLECs' Advantage

On the topic of the obvious advantages RLECs enjoy via inequality in traffic termination compensation, there are a number of misstatements and inaccuracies Sprint must clarify. In what was almost certainly merely a case of careless drafting, PTA inexplicably, and without citation, indicates that "Sprint, in particular, claim[s] that federal intercarrier compensation rules have allowed an unlevel playing field to develop, which has allowed wireless carriers to unfairly gain market share."[71] Devoid of citation, Sprint cannot understand the genesis of PTA's comment, but trusts the presiding officer is aware that the position PTA attributes to Sprint is actually the opposite of Sprint's position in the matter at bar.[72]

OCA advances a position that is substantially at odds with record evidence, federal rules, and plain logic. OCA argues that traffic termination rules unfairly favor wireless carriers. This is, of course, absurd. According to OCA, "the FCC rules allow wireless carriers to pay extremely low reciprocal compensation rates for intra-MTA termination and, thus, provide unfair discrimination in favor of the wireless carriers."[73] There are any number of inaccuracies and fallacies in that statement. First, it is important to note that the rate levels applicable for

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71 PTA Main Brief at 26.

72 *See e.g.* Sprint Statement 1.2 (Sprint Rebuttal Testimony) at p. 20, lines 3-9.

73 OCA Main Brief at 25.

reciprocal compensation traffic are the same for each carrier – thus the moniker *reciprocal* compensation.[74] Given that each carrier pays the same rate to the other for such traffic, it can hardly be said that the rate is any source of a competitive advantage.

The record also establishes that while RLECs charge wireless carriers excessive switched access rates for non-local call termination, RLECs do not pay anything to wireless carriers for non-local call termination.[75] The RLECs pay nothing to wireless carriers for non-local traffic termination because although RLECs can enter into agreements obligating them to pay access charges for such traffic, they have universally declined to enter into agreements and there are no rules or statutes that otherwise allow wireless carriers to impose access charges for non-local traffic termination.[76] Thus, when OCA misguidedly attempts to characterize the existing traffic termination rules as discriminatory in favor of wireless carriers OCA ignores the disparity in non-local traffic termination and the fact that reciprocal compensation rates are symmetrical with each carrier paying the other an identical rate. In short, traffic termination rules and rates are discriminatory, but contrary to OCA's statement, they discriminate *against* wireless carriers, not in favor of them. As stated by Mr. Appleby during cross examination.

"We're heading towards a competitive market which transitions to a fully competitive market. One of the changes that has to occur is, we have to get symmetrical compensation at reasonably priced rates. We can't have a situation where certain carriers collect five, eight, ten cents for termination of traffic while other carriers collect one cent or wireless carriers zero. You just can't have that and have full and complete retail competition across all the providers in the market."[77]

In response to Sprint's arguments about the discriminatory termination compensation system that puts wireless carriers at a competitive disadvantage, PTA indicates that "this

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74 Transcript at p. 627-628.

75 Transcript at p. 619, line 21 – p. 620, line 19, and p. 355, line 1 – p. 359, line 14.

76 *Id.*

77 Transcript at p. 219, lines 12-20.

Commission can do nothing about it."[78] Sprint respectfully disagrees. While it is true that the Commission cannot change the FCC's rules to make terminating access charges apply for non-local traffic termination on wireless carriers' networks and end the free ride that RLECs receive on Sprint's network,[79] it is far from true that the Commission cannot dramatically improve the competitive inequality. Insofar as the Commission can reduce RLEC access rates to mirror interstate rates, the Commission has the ability to dramatically affect the extent and impact of the competitive inequality even if it cannot eradicate it entirely. Thus, PTA is grossly inaccurate when it indicates that "this Commission can do nothing about it."

I. Setting Rates for All RLECs.

OSBA argues that the Commission should set each RLEC's rates following an individual-carrier inquiry for each RLEC.[80] This position is contrary to the position Sprint urges, that RLECs should all be ordered to mirror their own interstate rates. Lest there be any doubt, there is no impediment preventing the Commission from setting rates in the manner Sprint suggests rather than by addressing the rates of each RLEC individually.

> This Court has repeatedly recognized that legislatures and administrative agencies may calculate rates for a regulated class without first evaluating the separate financial position of each member of the class; it has been thought to be sufficient if the agency has before it representative evidence, ample in quantity to measure with appropriate precision the financial and other requirements of the pertinent parties.[81]

It should also be noted that the FCC proceeded in much the same manner when it set all CLEC access rates equal to the rates of the ILEC in whose territory the CLEC competes.[82] While Sprint

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78 PTA Main Brief at p. 27.

79 Transcript at p. 355, line 1 – p. 359, line 14.

80 *See* OSBA Main Brief at 22-23.

81 *Permian Basic Area Rate Cases*, 390 U.S. 747, 769 (1968).

82 *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local exchange Carriers*, CC Docket No. 96-262, FCC 01-146, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9931 (2001).

is uncertain whether any party has directly challenged the Commission's authority to proceed by collectively ordering all RLECs to mirror interstate rates, Sprint provides this clarification in an abundance of caution.

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

A. Rate Levels

1. Rates Based on the CALLS Order are Just, Reasonable, Cover Costs, and Return a Reasonable Profit.

CenturyLink goes to some length to argue that its interstate rates, based on the FCC's CALLS Order,[83] are not reasonable rates for its Pennsylvania operations.[84] CenturyLink's position is curious at best. In the FCC CALLS Order, the FCC found that the rate it set were reasonable.[85] The FCC description of the parties' positions and the rhetoric on the issue must sound strikingly familiar:

> For many years, IXCs and consumer groups have argued that access rates are significantly above cost and contain monopoly profits, the amount of which was itself subject to serious debate. Incumbent LECs, on the other hand, have contended that reducing access charges threatened universal service support. This dispute cannot be resolved with exactitude, as setting access charges is at best an imprecise process whose success can be measured only by using a zone of reasonableness. With adoption of the CALLS Proposal, we believe that we have achieved a reasonable and appropriate up-front reduction to access rates that addresses the positions of both sides.[86]

It also bears noting that CenturyLink has been operating, without challenge, under the interstate rates set in the CALLS Order for the past ten years, in several states it already charges intrastate

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83 *In the Matter of Access Charge Reform*, CC Docket NO. 96-262, Sixth Report and Order, FCC 00-193 (rel. May 31, 2000)("CALLS Order").

84 CenturyLink Main Brief at 44.

85 CALLS Order at 12978.

86 *Id.*

switched access rates that mirror the CALLS rates, and CenturyLink is still managing to pay record-level cash dividends to CenturyLink shareholders.[87]

When the FCC set price-cap ILEC access rates in the CALLS Order, the FCC recognized that not all carriers would necessarily agree that the rates set therein were reasonable. While the CALLS Order was the result of a settlement proposed by many industry stakeholders, that agreement was certainly not universal. In order to ensure that no carrier was unnecessarily aggrieved by the rates set in the CALLS Order, the FCC allowed carriers the option of opting out of the rates adopted in the CALLS Order. The FCC stated,

> Accordingly, out of an abundance of caution, we provide an opportunity for price cap LECs to choose between two options for certain rate-level, as opposed to rate structure, components of the CALLS Proposal. Specifically, price cap LECs may elect CALLS for the full five-year period. Alternatively, price cap LECs may elect to submit a cost study based on forward-looking economic cost that will be the basis for reinitializing rates to the appropriate level.[88]

Not surprisingly, CenturyLink did not opt to take the second of the two listed options, but instead adopted the CALLS Order rates and has never challenged the validity of its interstate rates. It is fundamentally inappropriate for CenturyLink to use the instant docket as a forum to perform a collateral attack on its interstate rates – rates which it never challenged despite the FCC's invitation for it to do so.

CenturyLink has presented similar arguments in other jurisdictions, but the argument has been rejected repeatedly. Earlier this year, the New Jersey Board of Public Utilities stated the following regarding setting intrastate rates to mirror interstate rates.

> the ILEC interstate access rate that the Board is setting herein as the appropriate rate for Intrastate Access charges at the conclusion of the phase-in period, is in excess of cost for providing Intrastate Switched Access service. Therefore, the

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87 *See* Sprint Statement 1.4 (Sprint Rejoinder Testimony) at 7-9.

88 CALLS Order at 12984.

> revenues from the reduced Intrastate Access Rates will continue to provide a contribution to LECs.[89]

The Kansas Corporation Commission, in a March 10, 2010 Order setting intrastate rates at parity with interstate rates, made similar findings.[90]

Sprint must also point out that CenturyLink has not quantified its costs at all.[91] In fact, when asked directly to indicate what it believes to be "fair compensation" for its services, CenturyLink admitted it did not know.[92] Similarly, when asked whether it could quantify a "fair share" of contribution to costs, CenturyLink admitted it did not know that either.[93] Similarly, PTA admitted that it had not calculated the cost of its services, but PTA did acknowledge that its interstate rates covered costs and included a reasonable profit.[94] It is, at best, disingenuous for CenturyLink, or PTA, to fail in the first instance to calculate their costs, but proceed later to argue that the rate level urged by other parties will not cover costs. If interstate rates will not cover the RLECs' costs, it was incumbent upon them to so indicate through record evidence. The burden of proof rests on the RLECs, and they have not borne their burden. Having failed to do so, or even to present a scintilla of cost evidence, the RLECs' vacuous allegations that rate levels mirroring interstate rates will not cover costs must be rejected out of hand.

It must also be noted that since Pennsylvania statutes require revenue neutral access reductions, the issue of whether interstate rates cover intrastate costs is somewhat beside the point. If each RLEC covers costs based on their revenues from access rates today, then their revenues will cover costs after rebalancing with the only difference being the source of the

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89 New Jersey Access Reform Order *at* 28; *see also* Transcript at 609, lines 1-3 (PTA admits that interstate rates include a reasonable return on investment).

90 Kansas Access Order, p. 69-75.

91 Sprint Cross Examination Exhibit 1 and 2.

92 *See* Transcript at p. 348, line 10 – p. 349, line 16.

93 *See* Transcript at p. 349, line 20 – p. 350, line 17.

94 *See* Transcript at p. 609, lines 1-3, and p. 632, line 11 – p. 633, line 4.

revenues. Arguments regarding covering costs merely provide the RLECs' cover for their primary position, which is that they want to continue to recover their costs from their competitors rather than their customers. This method of recovery is abhorrent to competitive markets and the time is well at hand to put an end to monopoly era subsidies.

2. There is no Transfer of Revenues from RLEC Customers to RLEC Competitors, Nor is There any "Income Hole"

PTA makes several inaccurate arguments regarding the net affect of access reductions on Pennsylvania consumers. In describing the net effect on consumers, PTA indicates that the result of access reductions will be "a direct transfer of $100 million from the RLECs and their customers" to their competitors.[95] This statement is directly contrary to record evidence and plain logic. Record evidence demonstrates that access reductions will flow through to Pennsylvania consumers.[96] The record also demonstrates that rates are not the only manner in which access reductions will benefit consumers, and that improvements in coverage area, products, services, and service quality will result from access reductions.[97]

Furthermore, access charges are no more and no less than the "hidden taxes" that ALJ Schnierle identified over a decade ago.[98] ALJ Colwell similarly found that PA USF subsidy is also a hidden tax on consumers.[99] The commonality in the findings by both judges is the recognition that regardless of whether charges are paid by carriers or consumers, the impact is ultimately felt by consumers.[100] This is so because whether subsidies take the form of access charges or PA USF surcharges, and whether reflected on a bill or prohibited from being placed

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95 PTA Main Brief at 45.

96 Transcript at p. 186, lines 1-5, and p. 199, lines 12-13.

97 *See* Transcript at page 273, lines 3-14; *see also* Sprint Statement 1.0 (Sprint Main Testimony) at p. 7, lines 1-7.

98 *See Generic Investigation of Intrastate Access Charge Reform*, Docket No. I-00960066 (June 30, 1998).

99 See Recommended Decision, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, Docket No. I-00040105, at 87 (July 22, 2009).

100 *See* Sprint Statement 1.2 (Sprint Rebuttal Testimony) at p. 47, lines 4-8 and fn. 79.

overtly on a bill, carriers collect the revenue necessary to pay access charges or PA USF surcharges via consumer bills. The net result, therefore, is that the revenue to make subsidy payments comes from consumers, as recognized by ALJs Schnierle and Colwell. Accordingly, the "transfer" discussed by PTA is baseless.

As to PTA's further argument that nearly $100 million of revenues reductions will occur, and the resulting "income hole" will comprise nearly 80% of RLEC operating income,[101] this argument has already been addressed and dispelled by Sprint.[102] PTA conveniently ignores both its own cost savings from access charges imposed on PTA carriers by other PTA carriers and CenturyLink, and the RLECs' extremely significant revenues from other sources earned over the local loop.[103]

PTA's "income hole" discussion is simply inaccurate. The table Sprint attached to its Main Brief illustrates from record evidence that PTA's claim regarding the impact to its operating revenues is highly misleading. The percentage of income that may be affected by Sprint's suggested outcome to this proceeding, interstate mirroring, is a mere 13% on the average, not 80% as suggested by PTA, and for more than half of the PTA carriers, the impact is less than 10%.[104] Sprint contends that its estimate actually overstates the true level of impact as Sprint calculated the impact based on *existing* basic local exchange service rates, not on the increased rates that will undoubtedly coincide with access reductions.[105]

The RLECs offer far, far more than merely basic local exchange service and access over the local network, so to look only at those lines of business for these multi-modal businesses is

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101 PTA Main Brief at 46.

102 *See* Sprint Main Brief at p. 69-73 and Appendix I.

103 *Id.*

104 Sprint Main Brief at 72 and Appendix at I.

105 *Id.*

illogical and contrary to settled Commission precedent, as discussed in Sprint's Main Brief.[106] CenturyLink is on the record with its investors indicating that it expects to use its broadband products and services offered over the rate-payer funded network to offset access reductions.[107] Access revenue reductions are nothing new either in Pennsylvania or nationally. RLECs are currently experiencing access revenue declines through line loss, and are adjusting to reduced access revenues through cost cutting efficiencies, consolidation, and by diversifying their business plans. Accordingly, PTA's argument must be rejected.

3. 66 PA.C.S. § 1309(h) is no Impediment to Access Reform

PTA makes a brief, but misguided, argument that the presence of the RLECs' Alternative Regulation Plans under Chapter 30 and the provisions of Act 183 deprive the Commission of the authority and ability to institute access reform without the agreement of the RLECs. This preposterous argument is easily dispelled. Sprint discusses above, at Section IV.F., that language in the RLECs' Alternative Regulation Plans counters the RLECs arguments. In addition, as stated by the Commonwealth Court:

> [T]he Amended Plans reserved the Commission's regulatory oversight over "**noncompetitive**" services to ensure that any proposed changes would further the purposes of Act 183 -- that noncompetitive or protected services remained reasonable and did not impede the development of competition.[108]
>
> Under *66 Pa.C.S. § 3017* the Commission has specific authority to rebalance revenue among noncompetitive services by reducing access rates and making revenue neutral increases to other noncompetitive rates. *Section 3017* states that "[t]he Commission may not require a local exchange telecommunications company to reduce access rates **except on a revenue neutral basis.**" (Emphasis added). Therefore, *Section 3017* envisioned situations where the Commission would require a rural LEC to reduce access rates and provided an independent

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106 *See* Sprint Main Brief at p. 74-82.

107 *See* Sprint Statement 1.2 (Sprint Rebuttal Testimony) at 39-40.

108 *Buffalo Valley Telephone Co. v. Pennsylvania Public Utilities Commission*, 990 A.2d 67, 73 (Pa.Cmwlth. 2009)(emphasis in original).

> basis for the Commission to require Petitioners to reduce access rates ... on a revenue neutral basis.[109]

As is obvious from the cited text, Act 183 has not been interpreted to diminish the Commission's authority to reduce access rates. PTA's argument that Act 183 and the PTA carriers' Alternative Regulation Plans render the Commission impotent to institute access charge reform without the PTA carriers' express consent is as misguided as it is unsavory. As recognized by the Commonwealth Court, nothing in Act 183 leads to the conclusion that the legislature somehow vested in carriers a veto power over the Commission's rate making authority. PTA's argument must be discarded with as little regard as it is due.

4. Instituting Interstate Mirroring Will not Result in a Constitutional Confiscation Violation

PTA makes a hardly credible argument that the Commission will violate the rate-making tenet that rates may not be set so low as to violate constitutional principles requiring that utility rates be set at levels which return adequate compensation lest they violate constitutional proscriptions against taking private property without just compensation.[110] Sprint concedes that it is axiomatic in regulatory rate-making that a state commission cannot set a rate so low as to be confiscatory. As stated by Justice Harlan in 1897 "[A] corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it."[111] Nevertheless, at first blush, PTA's argument itself makes little sense. Pennsylvania law requires revenue neutral access reductions, so the question is not whether the RLECs will receive just compensation for use of their facilities, but simply from whom they will receive such compensation. It cannot be said that rates must cover costs under any specific

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109 *Id.* at 80 (emphasis in original).

110 PTA Main Brief at 50-51.

111 *Smyth v. Ames*, 169 U.S. 466, 546 (1897).

methodology, so if the Commission changes the manner in which recovery occurs, but still allows the RLECs a reasonable opportunity to recover their costs, no constitutional violation can be found. It is generally understood that

> [a]gencies to whom this legislative [rate making] power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances ... If the commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary results, our inquiry is at an end.[112]

From the foregoing, it is clear that the Commission is free, both under Act 183 and by virtue of the weight of precedent, to realign the recovery mechanism in a revenue neutral manner – with no danger whatsoever of a takings violation.

PTA next cites to *Illinois Bell* as supporting the proposition that the Commission can only look to services within its jurisdiction in setting rates. This is a misstatement of the holding in *Illinois Bell.* The *Illinois Bell* case dealt with the often vexing question of how to properly apportion *the value of property* between the intrastate and interstate jurisdictions when such property is necessary to commerce in both jurisdictions. Reflecting on this issue, the Court stated as follows.

> While the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required, only reasonable measures being essential (*Rowland v. Boyle, 244 U.S. 106, 108*; *Groesbeck v. Duluth South Shore & Atlantic Railway, 250 U.S. 607, 614)* it is quite another matter to ignore altogether the actual uses to which the property is put. It is obvious that, unless an apportionment is made, the intrastate service to which the exchange property is allocated will bear an undue burden -- to what extent is a matter of controversy.[113]

From the above quote, it is evident that the Court was quite concerned that *apportionment* of property be accomplished in such a way as to appropriately recognize the uses to which the

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112 *Federal Power Comm. v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942).

113 *Smith v. Ill. Bell Tel. Co.*, 282 U.S. 133, 150-151 (1930).

property is put and avoid allowing use of the property for services in one jurisdiction without an associated contribution to the expense generated by that use.

While Sprint does not believe that the resolution of the instant matter is properly determined by a review of the use of the local loop, other parties have contended that competitive providers will essentially get a "free ride" for their use of the local network if common line costs are shifted to local users. As the FCC, this Commission, other state commissions, and CenturyLink (*see* Section IV.F. herein) have all concluded that common line costs are caused by the local end user, the "free-ride" argument advanced by other parties is demonstrably unfounded. Nevertheless, if the outcome of this case is to be determined by an apportionment based on usage, it must be acknowledged that in addition to benefitting from the ability to make and receive calls to and from the end user customers of other carriers, the RLEC's end user customers use the local network and the local loop for many more services today than ever before. OTS agreed that those uses of the network should contribute to cost recovery for their use of the local network and the local loop.[114] Insofar as PTA urges that the outcome of the instant docket be based on apportionment, Sprint has put evidence in the record indicating that less than 2% of local loop usage is attributable to switched access traffic.[115] Therefore, any resolution of this case based on apportionment will necessarily result in a dramatic reduction in switched access charges, more dramatic, in fact, than even urged by Sprint as the appropriate outcome to this investigation.

PTA also misstates the holding in another case to support its misguided constitutional takings argument. PTA alleges that the holding in *Brooks-Scanlon Co. v. Railroad Comm'n* supports the proposition that "only those rates that the regulator controls and can take credit for

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[114] Transcript at p. 549, line 20 – p. 550, line 7.

[115] *See* Sprint Statement 1.2 (Sprint Rebuttal Testimony) at 66-68.

may be considered in determining whether the regulator has met its obligation to provide just compensation."[116] This, too, is no more than a misstatement of a holding. The Court in *Brooks-Scanlon* addressed quite different circumstances than those facing the Commission today. In *Brooks-Scanlon*, the Court addressed whether a state commission could require a sawmill and lumber company to maintain a passenger rail line after the company's primary use of the railroad line for its lumber and sawmill business ceased. The Court concluded that it would constitute a constitutional violation to force a sawmill and lumber business to operate a passenger rail line at a loss when the passenger rail line had been a mere adjunct to the industrial use of the rail line, and when the passenger rail line could not be operated independently at a profit. Unlike the factual situation facing the Court in *Brooks-Scanlon*, here the Commission is presented with RLEC revenues from competitive and regulated services, all offered to the public commercially, all offered over the same network, and that are all generated from use of the same network in the same line of business - communications. Whatever similarity PTA finds between the facts facing the Commission and the facts in the *Brooks-Scanlon* case are unexplained in PTA's Main Brief, but as described above, the holding in *Brooks-Scanlon* is inapplicable to the matter at bar.

Sprint has already extensively addressed this Commission's precedent and precedent from other jurisdictions pertaining to the question of how to treat all revenues earned on the local network, or which could not be earned but for the presence of the local network, and will not replicate that argument here.[117] Sprint's earlier argument established and illustrated that use of the rate-payer funded network to generate nonjurisdictional income is a revenue event that has traditionally been taken into account in setting regulated rates as a matter of course. There remains no reason, and certainly nothing presented by PTA leads to a contrary conclusion, that

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[116] PTA Main Brief at 51, *citing Brooks-Scanlon Co. v. Railroad Comm'n*, 251 U.S. 396 (1920).

[117] *See* Sprint Main Brief at p. 74-82.

the Commission should ignore its own precedent and ignore substantial nonjurisdictional revenues when setting access rates.[118]

5. Teledensity Information Indicates that PTA and CenturyLink Costs Attributable to Rural Operations are not Significant.

PTA argues that the rural nature of its service territory is a primary driver of the extremely high RLEC switched access rates in Pennsylvania.[119] Despite the PTA's arguments, the record establishes that Pennsylvania RLECs do not serve territories that are especially rural. To determine whether a service territory was rural, the FCC used a metric, teledensity, to set interstate switched access rates.[120] Compared to rural carriers elsewhere in the country, CenturyLink's and the PTA carriers' service areas allow the RLECs to recover their fixed costs far more easily.[121] In the CALLS Order, the FCC examined carriers at the holding company level to determine the nature of their service territories.[122] By this standard, no RLEC in Pennsylvania today would be able to charge the higher switched access rate allowable under the CALLS Order based on the teledensity of the service territory.[123] The record establishes that the

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118 *See Federal Power Commission v. Conway Corp.*, 462 U.S. 271, 280 (1976)(" These facts will naturally include those related to nonjurisdictional transactions, *but consideration of such facts would appear to be an everyday affair.* As the Commission concedes, in determining whether the proposed wholesale rates are just and reasonable, it would in any event be necessary to determine which of the Company's costs are allocable to its nonjurisdictional, retail sales and which to its jurisdictional, wholesale sales - this in order to insure that the wholesale rate is paying its way, but no more. In this sense, consideration of the relationship between jurisdictional and nonjurisdictional rate structures is commonplace ...").

119 PTA Main Brief at 59-63.

120 *Access Charge Reform*, Sixth Report and Order, CC Docket 96-262, 15 FCC Rcd 12962, 13021-22 (rel. May 31, 2000)("CALLS Order").

121 *See* Sprint Main Testimony (Sprint Statement 1.0) at page 14, line 5 – page 15, line 8, and Exhibit JAA-3. Exhibit JAA-3 graphically illustrates RLEC access lines per square mile and compares that metric with the 19 lines per square mile that the FCC used as a threshold to justify higher rates. *See* CALLS Order at 13021-22.

122 Calls Order at 13022, fn 304 (the "... target rate would be available to price cap LECs with a holding company average of less than 19 End User Common Line charge lines per square mile served").

123 *See* Sprint Main Testimony (Sprint Statement 1.0) at Exhibit JAA-3.

teledensity of all RLECs in Pennsylvania exceeds the national average of all small and medium sized ILECs.[124]

The PTA's argument that its carriers have high costs is lacking in one glaring regard: record data on cost. Despite bearing the burden of proof and being afforded ample opportunity to produce cost data, the RLECs declined to produce any cost data. This RLEC strategy makes clear that while the RLECs are adept at making *policy* arguments regarding the nature of their service territories, they cannot establish those costs based on *record evidence.* Were it true that the RLECs' costs justify their rates, the RLECs would have every incentive to produce evidence establishing those costs. Since the RLECs bear the burden of proof in the instant docket, the conclusion that the RLECs cannot establish that their rates are cost justified is inescapable. The bottom line is that the RLECs have not even attempted to establish their costs because they simply do not support the rate levels they seek to unjustifiably maintain. Additionally, the last time the Commission had occasion to review PTA cost evidence that evidence was found unpersuasive and was rejected.[125] The RLECs' failure to produce cost evidence, all the while arguing that their costs justify their rates, must lead to the same conclusion the Commission reached when reviewing much the same issue in the *Buffalo Valley* case: RLEC rates are excessive. Any conclusion to the contrary would essentially reward the RLECs for failing to produce the cost evidence sought by Sprint and other parties.[126]

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124 *Id.*

125 *Buffalo Valley Telephone Co. v. Pennsylvania Public Utilities Commission*, 990 A.2d 67, 75 (Pa.Cmwlth. 2009)("The Commission specifically found that Petitioners' access charges were already excessive, above cost and higher than rates charged by others for the same service.").

126 *See* Sprint Cross Examination Exhibits 1 and 2, and Transcript at p. 632, line 11 – p. 633, line 4.

B. Timing

The various parties have added little of substance under this heading to which Sprint will specifically reply, however CenturyLink does inaccurately indicate that access reform "must be undertaken on a revenue-neutral basis from the PA USF." For the reasons stated elsewhere herein and in its Main Brief, Sprint contends that this statement is markedly inaccurate. There is no need to increase the PA USF, and Sprint urges the Commission to make future PA USF support available only upon a cost-based showing of need.

CenturyLink indicates that activity at the FCC and thriving competition in its service territory dictate that access reform be delayed. While Sprint finds it amusing that CenturyLink, which has argued elsewhere in this docket that there is inadequate competition in its service territory, points to "thriving competition" in this section where the presence of such competition suits its argument, Sprint urges the Commission to take note that CenturyLink has recently sought the Commission's consent to its proposed acquisition of Qwest.[127] There can perhaps be no better indicia of the lack of any need to maintain CenturyLink's inflated intrastate switched access rates than CenturyLink's own insatiable appetite for purchasing its competitors. In Qwest, CenturyLink is proposing to acquire what is described as one of "America's largest corporations."[128] It hardly seems reasonable to believe CenturyLink's allegations regarding its exceedingly high cost of service, when it is generating sufficient revenues to purchase one of the largest corporations in America.

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[127] *See* Joint Application for Approval Under Chapter 11 of the Pennsylvania Public Utility Code of The Change of Control Of Qwest Communications Company, LLC and For All Other Approvals Required Under the Public Utility Code, Docket No. A-2010-2176733 (May 14, 2010).

[128] *Id.* at 5.

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

A. Meaning of the Revenue Neutrality Requirement under 3017

As has been extensively discussed in its Main Brief and herein, the RLECs have presented no cost data whatsoever. This fact makes all the more puzzling that in the context of discussing the meaning of revenue neutrality under Pennsylvania law, CenturyLink indicates that revenue neutrality "cannot be relegated to cookie-cutter application" and that "Act 183 cannot be interpreted to result in unfunded or inadequately funded mandates for statutory obligations or Commission policies."[129] It is unfortunate that CenturyLink and the PTA refused to provide cost data requested of them by other parties including Sprint. It is inexcusable, however, for the RLECs to argue that the lack of cost information on the record – information they failed to voluntarily place on the record, and repeatedly refused in discovery to produce – can somehow form the basis for a determination that any statutory mandate or Commission policy is unfunded. Tellingly, not a single Commission policy or statutory obligation is identified. This is so because while the RLECs argue continuously that they are saddled with COLR obligations, they have not been able to refute the fact that there are no such obligations in Pennsylvania.[130]

In a desperate attempt to gin up some evidence to support their allegations of unfunded mandates, CenturyLink resorts to discussing its network modernization obligations. This is unfortunate both because CenturyLink has already admitted during cross examination that access reductions will not impact its ability to meet its network modernization obligations,[131] and because any allegation by CenturyLink that access revenues provide support to network

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129 CenturyLink Main Brief at 52.

130 *See* Transcript at p. 170, lines 22-24, and p. 175, line 5 – p. 176, line 2.

131 *See* Transcript p. 466, lines 1-10.

modernization is tantamount to an admission that it is illegally cross subsidizing its competitive ventures with protected, non-competitive revenues from switched access.[132]

CenturyLink continues to press its point by claiming that revenue neutrality must be realizable. Sprint agrees. The record supports the proposition that there is considerable headroom for rate increases. In fact, OCA's testimony indicates that many Pennsylvanians already spend $114 for telecommunications services from their ILEC,[133] and that $23.14 is an affordable rate.[134] AT&T provided testimony indicating that CenturyLink customers purchasing only local service spend an average of $30.19 per month.[135] Additionally, AT&T established that the majority of CenturyLink customers are not basic local customers at all, but are bundle customers that spend an average of $57.63 per month on their service.[136] Much as CenturyLink is disinclined to accept it, the artificially suppressed $18 rate for local service, held in place by the Commission for seven years, is well below appropriate levels, and re-setting the rate cap to a higher, affordable rate does satisfy the revenue neutrality as such an increase is realizable.

CenturyLink also indicates that it expects to see customer losses as a direct result of access reform. This should surprise no one. The record establishes that CenturyLink is hemorrhaging customers at a pace of 7% to 8% annually.[137] The cause of these line losses, according to Mr. Zingaretti, is that competitive services offer mobility, convenience, high tech functionality, camera service, "apps," web browsing, data transmission, and VoIP, and "[t]his overall maturation of technology has driven growth of competitors lines, including wireless

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132 *See* discussion at Section IV.A. herein.

133 Transcript at p. 481, lines 6-20.

134 Transcript at p. 508, lines 7-10.

135 AT&T Statement 1.2 (AT&T Rebuttal Testimony) at p. 10, lines 5-6.

136 AT&T Statement 1.2 (AT&T Rebuttal Testimony) at p. 10, lines 7-8.

137 Transcript at p. 433, lines 13-16.

carriers, at the expense of traditional lines."[138] The question to be asked is not whether CenturyLink will lose customers in the future due to rate increases imposed to offset access reductions, but how many of those customers would have left CenturyLink regardless of rate increases. This question was notably absent from CenturyLink's evidence. The record establishes that customer losses are occurring already and will likely continue to occur for reasons unrelated to the outcome of this docket. The bottom line is that RLEC customers are leaving RLECs at a steady pace, and a decision to maintain access rates will not staunch that exodus. A decision to lower access rates will empower the market to bring about consumer benefits and lower prices – a causal relationship long since acknowledged.[139] The focus of the instant docket must be on promoting consumer interests through furthering the incentives and benefits caused by competition, not on promoting the corporate welfare interest of RLECs seeking to prolong their insulation from competition via preservation of a completely outmoded subsidy regime.

Although PTA and CenturyLink both argue, under heading VI.A. of their Main Briefs, that the Commission can only look to regulated revenues regarding any revenue neutrality determination, Sprint will not address that subject here. Sprint has addressed that topic extensively above and in its own Main Brief at Section VI.B. Sprint trusts that its position is fully detailed at this point and will not burden the presiding officer with yet another recitation at this juncture.

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138 *See* PTA Statement 1.0 (PTA Direct Testimony) at 42-43.

139 *See In Re: Intrastate Access Charge Reform*, Docket No. I-00960066, Recommended Decision, at 28 (June 30, 1998).

OCA tenders a badly misplaced argument that Sprint "attempts to turn this case into a rate-of-return regulation rate case."[140] Sprint is at a loss to understand what significance OCA places on Part 64 of the FCC's rules, or otherwise to understand the manner in which it believes Sprint "attempts to turn this case into a rate-of-return regulation rate case." The record establishes time and again that the RLECs are earning extremely substantial revenues from competitive and non-jurisdictional services offered over the local network. Sprint suggests to the Commission that to ignore the presence of those revenues is to ignore the weight of its own precedent and inappropriately saddle consumers and/or competitors with an inappropriately large share of any necessary rate rebalancing.[141] Sprint's positions are well explained both in its testimony and in its Main Brief, and Sprint is unaware that it has anywhere suggested a return to rate-of-return rate making. OCA's contention to the contrary is inadequately developed for Sprint to offer more clarification or refutation. It may be observed, however, that if any party is suggesting a "rate-of-return" approach to this case, it is those opponents of access reform that make claims about an "income hole" and a need for guaranteed, make-whole revenue replacement from the PA USF. It is those arguments that sound exactly like a plea for a return to guaranteed rate-of-return style regulation.

OCA also argues that Verizon's position regarding the limited temporal scope of statutory revenue neutrality obligations is inappropriate.[142] Without belaboring the point, Sprint agrees with Verizon that the statute must be read to cognize but a short period within which the revenue neutrality requirement must be ensured. Were there no sunset to the revenue neutrality obligation, there would be an endless series of rate adjustments to maintain revenue neutrality

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140 OCA Main Brief at 34, *citing* OCA St. 1-S at 20.

141 *See* Sprint Main Brief at Section VI.B.

142 OCA Main Brief at 35-36.

into perpetuity. Sprint sees nothing on the record or in the statute that would support such an interpretation. To the contrary, Act 183 clearly espouses a policy favoring competition, not endless subsidy. Accordingly, Sprint contends that the revenue neutrality requirement, contrary to OCA's interpretation, is temporally limited.

OCA next argues that the Commission should essentially wear blinders when reviewing the RLECs rates, considering only their Pennsylvania regulated revenues and ignoring all else. This is inadvisable. First, as discussed in Sprint's Main Brief, to do so would be to ignore long-standing Commission precedent regarding revenues generated on or directly attributable to the local network. Contrary to OCA's contention, state Commissions rulings on competitive entry obligations under 47 U.S.C. § 251(f)(1)(A) have little bearing on the question of whether competitive and non-jurisdictional revenues may be considered in concluding that access rate reform is appropriate. The competitive entry decisions cited by OCA rely on the narrow language specific to Section 251(f)(1)(A), and have nothing to do with the case at bar.[143] The Commission would do well to review the precedent cited by Sprint which actually addressed the issue of the appropriate review of extra-jurisdictional revenues, rather than rely on the cases cited by OCA pertaining to rural exemptions from interconnection obligations under federal law, and which are wholly unrelated to any question involved in the matter at bar.

It is also worthwhile to recognize and take note of the vehemence with which parties seek to hide these other services from any commission scrutiny or consideration. That is because, upon examination, if these other services are money losers, that is simply additional evidence confirming cross-subsidization violations. If on the other hand, these other services are

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[143] *See Re Sprint Communications Company, L.P.*, Case No. P-294, sub. 30, North Carolina Utilities Commission at 15 (Order entered Aug. 29, 2009)("Given that the relevant statutory language refers to the economic burden *on the ILEC*, the Commission believes that its analysis must focus on the impact on Randolph alone rather than on RTMC as a consolidated entity.")(emphasis added).

profitable on their own, then that demonstrates that the excessive access rates are nothing more than overcharges unduly enriching the RLECs and their shareholders at the expense of the public. In either case, the public interest is clearly harmed by ignoring these revenues, and to do so ignores the weight of precedent regarding income earned over or because of the local network.

B. Rate Increases

CenturyLink makes much ado about the danger of setting the retail rate cap at a level "where market based recovery up to the benchmark levels is a reasonably viable option."[144] Sprint does not disagree. On the other hand, Sprint contends that the task of determining that level is complex as it is undisputed that RLECs are losing customers at a 7% - 8% annual rate.[145] Discerning a rate level that reflects no more customer loses than would have occurred without a rate change was simply not addressed by CenturyLink's customer survey. Additionally, no such survey was submitted by PTA, so no parallel conclusions can be reached for PTA.

The many flaws with CenturyLink's survey were addressed by AT&T as follows:

> CenturyLink conducted a hypothetical and improperly loaded survey to investigate possible consumer reactions to hypothetical price increases, instead of looking at real-world reactions real-world price increases. Obviously, consumers are likely to decrease their purchase of a product or service to some extent when its price increases. But the exact magnitude and timing of each consumer's reaction, whether drastic or gradual, instantaneous or over a longer period, depends on many real-world factors that are not easy to predict through a survey – and CenturyLink made no attempt to account for those factors here … CenturyLink was not able to provide any instance where CenturyLink used a similar survey in any state where CenturyLink has increased its retail rates. If CenturyLink truly believes that the best way to determine a customer's reaction to a price increase is to conduct a survey identical to that presented in this case, then CenturyLink should have been able to come up with one example of where CenturyLink used a similar survey to determine whether to implement a retail price increase, and then followed that up with empirical data about whether customers reacted in a manner consistent with the survey. If CenturyLink does not think this type of survey is reliable for making its own retail rate decisions,

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144 CenturyLink Main Brief at 57.

145 Transcript at p. 433, lines 13-16.

> then the Commission should not rely on it for making its decision here ... Rather than rely on a hypothetical, flawed survey that was created and conducted solely for litigation purposes, CenturyLink should have provided evidence about its real-world experience of consumer responses to actual price increases. Obviously, CenturyLink has increases rates both in Pennsylvania and in other states throughout the country, so there was no need to present a hypothetical survey to prove how customers will react to hypothetical price increases ... CenturyLink has raised prices in Pennsylvania in the past five years, and at no time prior to those increases did CenturyLink first conduct a survey to determine whether such increases would lead to mass defections of customers ... the evidence shows that CenturyLink's customers are in fact moving ***away*** from lower price services, and moving ***towards*** higher priced bundled services. Further, evidence shows that there was no difference in the amount of customers that left CenturyLink at a time of price increases than during years with no price increases. [The survey is flawed b]ecause it ignores the fact that asking a limited number of customers loaded and isolated questions does not accurately predict how those customers will react in the "real world."[146]

Additionally, the record establishes that CenturyLink's local service customers spend an average of $30.19 per month on local service inclusive of calling features.[147] The record also establishes that the majority of CenturyLink customers are not basic local customers at all, but are bundle customers that spend an average of $57.63 per month on their service.[148] In light of the clear record evidence that, proportionally, relatively few CenturyLink customers purchase only basic local service, and the majority spend an average of $57.63 monthly on services, CenturyLink's contention that an $18 rate cap remains relevant in today's market is obviously unfounded and self-serving.

C. Pennsylvania USF

Few opinions were expressed within this section that were not already addressed elsewhere by Sprint. CenturyLink argues that a failure to honor its Alternative Regulation Plan

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146 AT&T Statement 1.2 (AT&T Rebuttal Testimony) at p. 39, line 12 – p. 41, line 15 (emphasis in original).

147 AT&T Statement 1.2 (AT&T Rebuttal Testimony) at p. 10, lines 5-6.

148 AT&T Statement 1.2 (AT&T Rebuttal Testimony) at p. 10, lines 7-8.

is tantamount to confiscation.[149] Sprint has addressed at length the confiscation argument and issues related to Alternative Regulation Plans under Act 183 earlier in response to nearly identical arguments raised by PTA.[150]

CenturyLink additionally argues, again entirely without record support, that it has high expenses related to its COLR and universal service obligations.[151] As Sprint has stated earlier herein, it is fundamentally inappropriate for CenturyLink to decline to present cost evidence, but to continue to advance arguments that its rate levels are necessary to support its costs. CenturyLink's election to proceed in this docket without including cost evidence must not be ignored, and, due to the burden of proof being squarely placed on the RLECs, must guide the Commission in finding that the RLECs have not carried their burden of establishing *any* need for their inflated switched access rates.

VII. GENERAL LEGAL ISSUES

A. Retroactivity of any Access Rate Reductions

While not necessarily agreeing with all points made by other parties, Sprint reserves comment on the other parties' statements of questions and summary of positions.

B. Compliance[152]

In the Commission's Opinion and Order in this docket issued on December 10, 2009, the Commission expressly precluded consideration of whether wireless and VoIP carriers should be required to contribute to the PA USF from this stage of the Commission's investigation. The

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149 CenturyLink Main Brief at 67.

150 *See* Sections V.A.3. and 4., and IV.A. and B herein.

151 CenturyLink Main Brief at 68-69.

152 While not necessarily agreeing with all points made by other parties, Sprint reserves comment on the other parties' statements of questions and summary of positions. Nevertheless, Sprint finds it convenient to here insert its argument in opposition to OCA's discussion of a precluded issue. Since OCA's decision to ignore an affirmative Order of the Commission setting the scope of this stage of the Commission's investigation, it seems appropriate to insert this discussion in a section captioned "Compliance."

Commission's ruling in this regard was not formally challenged by any party to this docket. Every party, other than OCA, has complied with this ruling. OCA, however, has consistently ignored the Commission's mandate regarding the scope of this stage of the investigation and presented pre-filed testimony regarding the precluded issue.

OCA's disregard for the Commission's authority to set the scope for its investigation is unfortunate. OCA's conduct placed the parties in a quandary. Should they engage with OCA and debate in pre-filed testimony the very issue the Commission precluded from the investigation, or should they ignore OCA's testimony as it has been precluded? All parties chose to ignore this element of OCA's testimony in fealty to the Commission's jurisdiction over the scope of its investigations, and in recognition that scarce resources should be dedicated to matters within the investigation, not matters OCA inappropriately attempted to include over the Commission contrary instructions.

Sprint indicated at the evidentiary hearing, and reiterates here, that it was reluctant to attempt to strike from OCA's testimony one part of a four-part plan OCA had proffered in its testimony. Sprint's reluctance springs from its recognition of the important and essential mission OCA effectuates. Notwithstanding the importance of OCA's mission, Sprint indicated at the hearing that it would move to strike portions of OCA's post-hearing Brief that dwelt on precluded issues. Sprint, jointly with several other carriers, did just that, but to no avail. Consequently, Sprint regrets that it is now placed in the untenable position of addressing an issue the Commission specifically precluded from this stage of this docket and which is therefore, presumably, inappropriate for inclusion in any Recommendation Decision issued in this stage of the instant docket. Nevertheless, in an abundance of caution, Sprint here reiterates arguments it

previously, successfully, tendered to the Commission in support of its position that the inclusion of wireless carriers in the PA USF ought not to be considered.

Under 66 Pa. C.S. § 501(b), the Commission is endowed with "power and authority to supervise and regulate all public utilities doing business within this Commonwealth." The definition of "public utility" contains the following reservation, however: "[t]he term does not include: [a]ny person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service" 66 Pa. C.S. § 102. Accordingly, the Commission is without jurisdiction to impose PA USF contribution obligations on wireless carriers. The Commission recognized as much in promulgating its PA USF regulations. The Commission defined carriers obligated to contribute to the PA USF as follows:

> *Contributing telecommunications providers*—Telecommunications carriers that provide intraState telecommunications services. Whether a provider or class of providers is a telecommunications carrier will be determined based upon whether the provider or class of providers is considered a telecommunications carrier under Federal law as interpreted by the Federal Communications Commission ***except that wireless carriers are exempt from this subchapter*** under 66 Pa.C.S. § 102(2)(IV) (relating to definitions)

52 Pa. Code § 63.152 (emphasis added). Considering the jurisdictional disconnect between OCA's precluded suggestion that wireless carriers should contribute to the PA USF and the reality that the Commission lacks jurisdiction to make wireless carriers contribute, the issue should be given no weight whatsoever. If such an issue is to be addressed at all, it is an issue to be addressed by the legislature, not by the parties to the instant docket.

Additionally, this issue is not new to this docket. The issue was identified in the Investigation Opening Order in 2004. Subsequently, on March 25, 2005, wireless carriers Verizon Wireless, Omnipoint Communications, and Nextel Communications filed a Motion for a Declaratory Ruling acknowledging that the Commission lacks the statutory jurisdiction to require wireless providers to contribute to the PA USF. The Motion was decided on June 8,

2005 by ALJ Colwell. ALJ Colwell granted the wireless carriers' Motion "insofar as it depends on the determination that wireless carriers are not public utilities within the meaning of the Public Utility Code." No party, including OCA, sought reconsideration, rehearing, or review of ALJ Colwell's determination issued some five years ago. As to OCA, and other parties to this docket, the issue is *res judicata.*

OCA's decision to ignore ALJ Colwell's 2005 ruling on this issue and the Commission's *affirmative, direct exclusion* of this issue from this stage of the investigation should not be rewarded. OCA's decision to ignore the Commission should be met in kind: its argument should be ignored. The presiding officer should find that OCA's discussion of the precluded issue was contrary to the Commission's obvious, affirmative instruction adhered to by all other parties, and thus inappropriate for discussion within the Recommended Decision in any way. To take any other action is to place those parties that complied with the Commission's instructions at risk of having their rights compromised by OCA's inappropriate conduct. This is an inappropriate outcome and must be avoided.

VIII. CONCLUSION

A review of the record in this case makes it clear that the RLECs have not carried their burden of proving that their existing intrastate access rates are just and reasonable, and the RLECs' Main Briefs do not include any valid arguments to justify the continuation of their inflated access rates. To remedy the insidious competitive distortions caused by the RLECs' unjust and unreasonable rates and to continue moving forward with the longstanding goal of moving access rates closer to cost, the Commission should immediately order each of the RLEC's to reduce their intrastate access rates to mirror the rate levels and structure of their interstate access charges. As set forth in Sprint's Main Brief, the Commission should recognize

all of the ample revenue sources that are available to the RLECs for purposes of ensuring that the access charge reductions take place in a revenue neutral manner.

Respectfully submitted this 3rd day of June, 2010.

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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
AT&T Communications of Pennsylvania, LLC Complainant	:	
v.	:	Docket No. C-2009-2098380, et al.
Armstrong Telephone Company - Pennsylvania, et al. Respondents	:	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Reply Brief upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55, via electronic mail and first class US Mail.

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