

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

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September 17, 2010

**HAND DELIVERED**

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

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,

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

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

Enclosures

cc: Cheryl Walker Davis  
Office of Special Assistants

John W. Wilson

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

**RECEIVED**  
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**Dated: September 17, 2010**

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## **I. Introduction**

### **A. Procedural History**

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

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

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

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

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

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

On March 19, 2009, AT&T Communications of Pennsylvania, LLC, TCG New Jersey, Inc., and TCG Pittsburgh, Inc. (collectively, “AT&T”) each filed individual complaints with the Commission against 32 RLECs. The 96 complaints requested that the RLECs be ordered to

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

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

reduce their intrastate access rates to levels which match the rates each RLEC charges for interstate switched access.<sup>3</sup>

On April 24, 2008, the Commission entered an Order (“*April 2008 Order*”) which “further stayed [the investigation] pending the outcome of the FCC’s *Unified Intercarrier Compensation* proceeding at CC Docket No. 01-92 or for one year from the date of entry of this Order, whichever is earlier,” for the majority of issues set forth in the *Investigation Order*. *April 2008 Order*, at 31, Ordering Paragraph 1(b).<sup>4</sup>

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

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

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

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

On June 26, 2009, PTA and The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania (“Embarq PA”) submitted a Petition Requesting Interlocutory Review and

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<sup>3</sup> *AT&T Communications of Pennsylvania, LLC, et al. v. Armstrong Telephone Company – Pennsylvania, et al.*, Docket Nos. C-2009-2098380, *et al.*

<sup>4</sup> *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Order entered April 24, 2008).

Answer to Material Questions in regards to the AT&T complaints. PTA and Embarq PA sought, among other things, to have the AT&T complaints dismissed.

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

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

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

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

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

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

- a) Whether intrastate access charges and intraLATA toll rates should be further reduced or rate structures modified in the rural ILECs’ territories.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On September 2, 2010, the OSBA submitted Exceptions to the ALJ’s RD.

The OSBA submits these Reply Exceptions in response to Exceptions filed by the Office of Consumer Advocate (“OCA”) and Verizon.

**B. Summary of the Problem**

The central problem that the Commission faces in this proceeding is: If the Commission decides to lower access rates as the RD recommends, who will pay for it?

- One option is to raise the rates for the RLECs’ noncompetitive services, including both residential and business local exchange rates, by the total amount needed to pay for the access charge reductions. The OCA has presented extensive testimony against that option.
- If Verizon has its way, business customers will bear a disproportionate burden of paying for the access charge reductions. However, the OSBA will vigorously oppose discriminatory treatment of the RLECs’ business customers.
- The Commission could significantly increase funding for the Pennsylvania Universal Service Fund, whether by raising contributions or adding contributors. However, Verizon and the wireless carriers are likely to oppose this option.
- The OSBA’s proposal offers a possible compromise to mitigate the increases in local exchange rates by reducing access charges by less than the RD proposes. Under this option, the interexchange carriers (“IXCs”) will pay their fair share of the cost of the loop

because the RLECs' non-traffic sensitive charges will be included in the calculation of access charges.

## II. REPLY EXCEPTIONS

### **Reply Exception No. 1: The ALJ properly decided that local exchange rates can be increased without consideration of a comparability analysis. (OCA Exception No. 1)**

In its Exceptions, the OCA stated:

In her Recommended Decision, the ALJ recommends that reductions in the RLECs' intrastate access rates be offset with increases in basic local exchange rates constrained only by an affordability analysis. In doing so, the ALJ failed to recognize that the RLECs' basic local exchange rates should also satisfy a comparability analysis in order to be found just and reasonable.

OCA Exceptions, at 6-7.

The OCA cited primarily to the federal Telecommunications Act of 1996, 47 U.S.C. § 254(b)(3), to support this "comparability" argument. OCA Exceptions, at 8. Section 254(b)(3) states:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are *reasonably comparable* to those services provided in urban areas and that are available at rates that are *reasonably comparable* to rates charged for similar services in urban areas.

47 U.S.C. § 254(b)(3) (emphasis added).

The OSBA agrees with the ALJ that Section 254(b)(3) is not dispositive of the issues in this proceeding. *See RD*, at 115. *See also Buffalo Valley Telephone Company v. Pennsylvania Public Utility Commission*, 990 A.2d 67, 85-86 (Pa. Cmwlth. 2009).

Furthermore, the OCA did not strengthen its argument by citing to Section 3015(a)(3) of the Public Utility Code, 66 Pa. C.S. § 3015(a)(3). *See OCA Exceptions*, at 9-10. Section 3015(a)(3) states:

Where annual rate adjustments made under a *nonrural* telecommunications carrier's price stability mechanism are calculated using revenues from protected services, an average rate adjustment for protected residential customer local exchange telecommunications service lines shall be determined by dividing the total protected service revenues associated with such lines, as adjusted by the price stability formula, by the number of such lines, and the rate adjustment for any individual line shall not vary from this average rate adjustment by more than 20%.

66 Pa. C.S. § 3015(a)(3) (emphasis added).

The OCA observed that Section 3015(a)(3) “ensures reasonable comparability between a nonrural ILEC’s inflation-based revenue increase allowed pursuant to their Chapter 30 plans and the specific increase for residential basic local exchange service.” OCA Exceptions, at 9-10. However, while Section 3015(a)(3) places a cap on the residential rates of a nonrural ILEC for purposes of that nonrural ILEC’s annual price stability mechanism (“PSM”) filing, there is no comparable mechanism in Chapter 30 that imposes a cap on the residential rates of a *rural* ILEC or that links a nonrural ILEC’s rates to the rates of *rural* ILECs. Rather, under both Original Chapter 30 and New Chapter 30, rural and nonrural ILECs have been permitted to implement inflationary adjustments in the rates that were in effect prior to the enactment of Original Chapter 30. These rate increases have been allowed without regard to how one ILEC’s rates compare to the rates of other ILECs. *See* Section 3003 of the Public Utility Code, 66 Pa. C.S. § 3003 (repealed). *See also* 66 Pa. C.S. § 3015. Thus, Chapter 30 provides no support for the OCA’s comparability argument.

Furthermore, even if the Commission were to adopt a comparability analysis, Section 254(b)(3) asserts only that rates be “reasonably comparable.” Reasonably comparable does not mean identical. A “reasonably comparable” standard could be satisfied as long as the difference in rates is based on reasonable differences in cost of service for rural and nonrural ILECs

throughout the Commonwealth. In that regard, OSBA witness John W. Wilson testified as follows:

Rural carriers are a very diverse group of companies. Each has a different operating environment and their costs can be quite different. In addition, some companies have low access charges and some have high access charges due to different operating costs.

OSBA Statement No. 1, at 14. Consequently, even if the Commission were to adopt a comparability analysis, such analysis would have to compare the rates of nonrural ILECs to the rates of a wide range of RLECs, each with its own operating characteristics and costs.

Essentially, the OCA's comparability analysis would act as yet another cap on local exchange rates. Regardless of the wide range of comparisons that could be made, the OCA proposes that the Commission engage in a comparability analysis that, in the end, will determine whether a given residential local exchange rate is too high when compared to other ILECs. If an RLEC has a residential local exchange rate that is comparably determined to be too high, apparently the OCA envisions that the Commission will step in and order that RLEC to reduce that rate.

However, the OCA does not explain how the annual PSM rate increases would be factored into this comparability analysis. As permitted by Chapter 30, the RLECs may increase their noncompetitive service rates on an annual basis. Although this will tend to increase the RLECs' local exchange rates, the magnitude of those increases will be unique to each RLEC.<sup>5</sup> Furthermore, the OCA's proposed comparability analysis would have to include local exchange rate increases that are due to both access charge reductions and PSM filings. The complexity of

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<sup>5</sup> The annual dollar increase in *revenues* authorized for each RLEC will vary on the basis of the RLEC's revenues from noncompetitive services and the number of access lines each RLEC serves. Therefore, although the inflation rates applied to the revenues of multiple RLECs may be the same, different RLECs are likely to be authorized to increase their *rates* by different amounts.

such a comparability analysis would be daunting, to say nothing of administering a cap that would deny a rate increase caused by a reduction in access charges but allow a rate increase caused by a PSM filing.<sup>6</sup>

Therefore, the OSBA respectfully requests that the Commission deny OCA Exception No. 1 and uphold the ALJ on this issue.

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<sup>6</sup> The caps on residential and business local exchange rates apply only when those local exchange rates are being increased in tandem with access charge reductions. *See Buffalo Valley Telephone Company v. Pennsylvania Public Utility Commission*, 990 A.2d 67 (Pa. Cmwlth. 2009).



**Reply Exception No. 2: The ALJ's affordability benchmark for residential local exchange rates should not be turned into a hard cap. (OCA Exception No. 2)**

In her RD, the ALJ recommended as follows:

After consideration of the parties' positions, I agree with OSBA that the cap on business rate increases should be abolished, along with the \$18.00 residential cap, for rebalancing purposes.

RD, at 118.

Nevertheless, the ALJ also recommended:

The Commission has specifically recognized the Commonwealth policy of '[m]aintaining universal telecommunications service at affordable rates. . .' 66 Pa. C.S. §3011(2). Indeed, in its August 2009 Order lifting the RLEC access charge investigation stay, the Commission stated as follows: 'we recognize the mandates of Chapter 30 require that local service rates be reasonable and affordable in all areas of this Commonwealth' (emphasis supplied). Accordingly, I recommend that the Commission use the OCA affordability rate of \$23.00 (net of taxes and other fees) and \$32.00 on a total bill basis for analyzing the affordability of local service rates that are rebalanced as a result of this Investigation. This rate would increase if the Pennsylvania median rural household income increases over time. See, OCA St. No. 2 (ALJ Colwell proceeding), Sched. RDC-5.

RD, at 116.

In its Exceptions, the OCA asserted that the ALJ's affordability rate should be turned into a hard cap on residential local exchange rates. The OCA stated:

The OCA supports the ALJ's recommendation to adopt the OCA affordability analysis, but submits that the ALJ's Recommended Decision is unclear on two points. First, the ALJ did not affirmatively state in her Recommended Decision that the affordable rate should not be exceeded.

\* \*\*

The Commission should clarify these points by specifically stating in its Order that the RLECs' basic local exchange rate cannot exceed the affordability rate.

OCA Exceptions, at 14.

The remedy sought by the OCA is exactly what the OSBA opposed in its Exception No. 3: the use of an affordability rate for residential local exchange service as a hard cap on residential local exchange rates. The OSBA argued:

In short, the OSBA is concerned that the \$23.00 affordability level will operate as a residential-only rate cap, leaving it to the RLECs' noncompetitive service business customers to absorb any shortfall in revenue caused by the decrease in intrastate access charges which can not be collected from residential customers because of the \$23.00 limit. Such a result would be discriminatory and violate Section 1304 of the Public Utility Code.

OSBA Exceptions, at 17-18.

The OCA asserted that affordable rates are the "keystone" of setting local exchange rates in the Commonwealth. OCA Exceptions, at 14-15. In support of that argument, the OCA cited Section 3011 of the Public Utility Code, 66 Pa. C.S. § 3011, which states as follows:

§ 3011. Declaration of policy

The General Assembly finds and declares that it is the policy of this Commonwealth to:

(2) Maintain universal telecommunications service at affordable rates . . .

66 Pa. C.S. § 3011.

However, the legislature did not state how affordable rates are to be determined. There is no specific language in Chapter 30 which mandates (or even expressly authorizes) the OCA's approach of setting residential local exchange rates by comparing "the overall local bill and

median family income.” OCA Exceptions, at 17. Furthermore, there is nothing in Chapter 30 that suggests that local exchange rates should be subsidized for those residential customers in an RLEC’s service territory who are able to afford the rates without a subsidy, *e.g.*, those customers above the median family income.

Contrary to the OCA’s theory, Chapter 30 explicitly anticipates that the RLECs will increase their noncompetitive service rates on an annual basis. *See, e.g.*, Section 3015. Rather than authorizing those rates to be set on the basis of affordability, both Section 3015(g) and Section 3019(h) explicitly preserve the Commission’s authority to regulate an ILEC’s rates under the “just and reasonable” standard of Section 1301. Furthermore, Section 3019(h) explicitly incorporates Section 1304, granting the Commission the power to ensure that the rates are not discriminatory against business customers, *i.e.*, do not require business customers to subsidize residential customers. *See Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeals denied*, 916 A.2d 1104 (Pa. 2007). In view of these specific statutory provisions, it is much more rational to infer that the legislature intended local exchange rates to be set to recover an RLEC’s costs (with inflationary adjustments to help accelerate broadband deployment) and for assistance to be provided to those customers that cannot afford to pay those rates.<sup>7</sup>

As the OSBA has repeatedly argued, there is no reason to treat everyone in an RLEC’s service territory as a low-income customer. Let those who can afford it, pay the full rate for residential local exchange service. Then, provide assistance to those who cannot afford to pay that rate. OSBA Main Brief, at 25-27; OSBA Exceptions, at 17-18.

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<sup>7</sup> The general exhortation in Section 3011(2) about “affordable rates” must give way to the specific language in Section 3019(h) of the Public Utility Code, 66 Pa. C.S. § 3019(h), which applies Sections 1301 and 1304 of the Public Utility Code, 66 Pa. C.S. §§ 1301 and 1304, to rates set under Chapter 30. *See* 1 Pa. C.S. § 1933, which provides that specific language in a statute supersedes general language.

Therefore, the OSBA respectfully requests that the Commission deny OCA Exception No. 2. In addition, the OSBA believes that the ALJ has, in fact, already done what the OCA seeks through its Exception No. 2, *i.e.*, create a new rate cap for residential local exchange rates. *For the reasons set forth above, and in the OSBA's own Exceptions, imposing a hard cap on residential local exchange rates is not only a bad policy for the Commission to adopt, but also is discriminatory in relation to the RLECs' business customers. See OSBA Exceptions, at 15-18.*

**Reply Exception No. 3: The ALJ correctly abolished the rate caps for local exchange service. (OCA Exception No. 4)**

In its Exceptions, the OCA asserted:

[T]he ALJ's recommendation to 'abolish' the cap on residential basic local exchange service should be rejected or clarified to be consistent with the remainder of her Recommended Decision. It appears that the ALJ did not intend to abolish the rate cap in its entirety but, rather, to raise the rate cap from its current level to a level based on the OCA affordability constraint.

OCA Exceptions, at 35.

As set forth above, the ALJ did, in fact, recommend as follows:

After consideration of the parties' positions, I agree with OSBA that the cap on business rate increases should be abolished, along with the \$18.00 residential cap, for rebalancing purposes.

RD, at 118.

In its Exceptions, the OCA pointed to the statements of Representative William Adolph in support of its argument for the local exchange service rate caps.

When House Bill 30 (the legislation that ultimately became New Chapter 30) was initially debated on the floor of the Pennsylvania House of Representatives in November 2003, Representative Adolph stated the following:

HB 30 . . . codifies all existing rate caps currently contained in existing incumbent local exchange company network modernization plans, \$18 or lower.

*House Legislative Journal*, November 25, 2003, at 2245. In other words, Representative Adolph implied that the caps to which he was referring were those set forth in an ILEC's alternative form of regulation plan (frequently called a "Network Modernization Plan").

Representative Adolph continued later on the same day in a similar vein:

Furthermore, it is important to keep in mind that this amendment preserves the \$18 rate cap currently contained in most network modernization plans.

*Id.*

A year later (in November 2004), the House was considering concurrence in Senate amendments to House Bill 30. In explaining the bill, as amended by the Senate, Representative Adolph stated as follows:

*Additionally, the legislation grandfathers rate change limitations contained in current network modernization plans, and keep in mind that there is an \$18 cap for basic telephone service.*

*House Legislative Journal*, November 19, 2004, at 2161.

In sum, Representative Adolph's comments provide insight into how Section 3015(g) of the Public Utility Code, 66 Pa. C.S. § 3015(g), would operate. Section 3015(g) is frequently described as a "grandfather" clause and states as follows:

Nothing in this chapter shall be construed to limit the requirement of section 1301 (relating to rates to be just and reasonable) that rates shall be just and reasonable. The annual rate change limitations set forth in a local exchange telecommunications company's effective commission-approved alternative form of regulation plan or any other commission-approved annual rate change limitation shall remain applicable and shall be deemed just and reasonable under section 1301.

66 Pa. C.S. § 3015(g).

As discussed in the OCA's Exceptions, the *Rural Access Settlement Order*<sup>8</sup> raised the rate caps on residential and business local exchange rate increases following access charge and toll rate reductions. OCA Exceptions, at 33. However, the *Rural Access Settlement Order* raised

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<sup>8</sup> *Access Charge Investigation per Global Order of September 30, 1999*, PUC Docket No. M-00021596, *et al.* (Order entered July 15, 2003) ("*Rural Access Settlement Order*").

caps that were originally established in the *Global Order*<sup>9</sup> “for a minimum three (3) year period January 1, 2004 through December 31, 2006.” *Rural Access Settlement Order*, Attachment A, at 18. Thus, Section 3015(g) “grandfathered” the current caps on local exchange service for residential and business customers only as set forth in the *Rural Access Settlement Order*. Significantly, the *Rural Access Settlement Order* does not state that those caps will exist in perpetuity, or that the Commission is powerless to modify or abolish them. In that regard, even the OCA concedes that “the \$18.00 level of the rate cap was not carved in legislative stone.” OCA Exceptions, at 34.

Therefore, the OSBA respectfully requests that the Commission deny OCA Exception No. 4 and uphold the ALJ’s explicit recommendation: that the caps on residential and business local exchange rates be abolished.

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<sup>9</sup> *Joint Petition of Nextlink Pennsylvania, Inc., et al.*, 196 PUR 4th 172, 93 Pa. PUC 172 (Order entered September 30, 1999) *affirmed*, *Bell Atlantic-Pennsylvania v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated in part*, *MCI v. Pennsylvania Public Utility Commission*, 577 Pa. 294, 844 A.2d 1239 (Pa. 2004) (colloquially known as the “*Global Order*”).

**Reply Exception No. 4: The ALJ correctly held that business customers cannot be the payor of last resort in order to keep residential local exchange rates low. (Verizon Exception No. 3)**

In her RD, the ALJ stated:

With respect to business rate increases, I recommend that RLECs be provided flexibility to design a rate rebalancing for the various companies within 'just and reasonable' parameters that will be addressed subsequently. As a 'just and reasonable' analysis includes consideration of affordability and avoidance of rate shock, I will provide for these considerations in my rebalancing parameters. However, I agree with the OSBA that residential rate affordability and avoidance of rate shock cannot be accomplished through unreasonable increases to business rates.

RD, at 118.

In its Exceptions, Verizon stated as follows:

First, the Commission should instruct the RLECs to design their rate rebalancings *to minimize residential rate increases* and take reasonable steps to avoid exceeding the \$23 level.

\* \* \*

For example, the RD specifically found that the RLECs' 'business rates are relatively low and could be increased' in greater proportion to residential rate increases if needed to keep residential rates lower. Accordingly, the Commission should direct that a particular RLEC, if necessary to avoid having the residential rates exceed \$23: (i) increase its business rates in a greater proportion to residential rates until they reach the national average of \$36.59 and (ii) reasonably consider additional increases to other noncompetitive rates.

Verizon Exceptions at 5-6 (emphasis added) (citations omitted).

The OSBA will again repeat that favoring residential rates (as Verizon proposes) would violate Section 1304, in that it would permit RLECs to discriminate against business customers and in favor of residential customers. Section 1304 was *specifically incorporated* into New Chapter 30 by Section 3019(h).

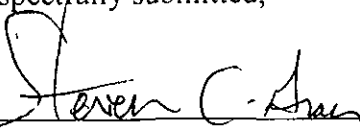


Therefore, the OSBA respectfully requests that the Commission deny Verizon Exception No. 3 and uphold the ALJ on this issue, so that the RLECs' business customers do not become the payor of last resort for access charge reductions.

**III. Conclusion**

For the reasons set forth herein, the OSBA respectfully requests that the Commission deny OCA Exceptions Nos. 1, 3, and 4 and Verizon Exception No. 3, and thereby reject a new residential local exchange service rate cap that would shift the burden to business customers to pay for what otherwise would be the residential customers' share of the cost of access charge reductions.

Respectfully submitted,

  
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Dated: September 17, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Reply Exceptions, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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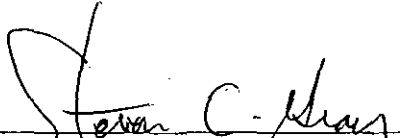
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